

FILE NO. 121028

Petitions and Communications received from October 9, 2012, through October 15, 2012, for reference by the President to Committee considering related matters, or to be ordered filed by the Clerk on October 23, 2012.

**Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information will not be redacted.**

From Public Works, regarding their Annual Report for July 1, 2011, through June 30, 2012. Copy: Each Supervisor. (1)

From Youth Commission, regarding First Quarter Report for FY2012-2013. (2)

From the Clerk of the Board, individual who submitted a Form 700 Statement: (3)  
Jeffrey Cretan - Legislative Aide - Assuming

From Mayor's Office, submitting Notice of Appointment to the Commission on Aging: (4)  
Samer A. Itani

From Planning, submitting Notice of Preparation of an Environmental Impact Report. (5)

From Contoller's Office of Public Finance, submitting a memo regarding the City's Commercial Paper Program. (6)

From Treasure Island Development Authority, regarding communications. (7)

From concerned citizen, regarding KPOO radio. Copy: Each Supervisor. (8)

From Mayor's Office, regarding a memorial service for slain J. Christopher Stevens, U.S. Ambassador to Libya. (9)

From UCSF Medical Center, regarding the relocation of Medical Center Clinics.. (10)

From Golden Gate Park Preservation Alliance, regarding support for another case that should come before the Ethics Commission. (11)

From concerned citizen, regarding Fleet Week. (12)

From Rich Pasco, regarding Naturist Action Committee Action Alert.  
File No. 120984. (13)

From Russel Morine, regarding concerns for Real Property Lease 2650 Bayshore.  
File No. 120904. (14)

From Aaron Goodman, regarding the demolition of a national eligible master-planned  
community. (15)

From concerned citizens, regarding the reinstatement of Sheriff Ross Mirkarimi.  
15 Letters. (16)

From concerned citizens, regarding Sheriff Ross Mirkarimi. 26 Letters. File No.  
120949. (17)

\*(An asterisked item represents the cover sheet to document that exceeds 25 pages.  
The complete document is available at the Clerk's Office, Room 244, City Hall.)



Edwin M. Lee, Mayor  
Mohammed Nuru, Director

Office of the Director  
1 Dr. Carlton B. Goodlett Place, City Hall, Room 348  
San Francisco, CA 94102  
(415) 554-6920 ■ www.sfdpw.org

BOS-11  
cpag



September 28, 2012

Ms. Angela Calvillo  
Clerk of the Board  
Board of Supervisors  
City and County of San Francisco  
Room 244, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4845

Subject: Report of the Department of Public Works  
Adopt-A-Tree Account

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2012 OCT -9 PM 3:29  
AK

Dear Ms. Calvillo:

Pursuant to Section 10.100-227 of the Administrative Code, attached is the Annual Report of the Department of Public Works Adopt-A-Tree Account for the period of July 1, 2011 through June 30, 2012.

Sincerely,

Mohammed Nuru  
Director of Public Works

Attachment: As noted

CC: Jerry Sanguinetti, BSM  
Carla Short, BUF  
Robert Carlson, DDFMA  
Jocelyn Quintos  
Sreed Pisharath



**Department of Public Works  
Adopt-A-Tree Fund  
Annual Report  
Fiscal Year Ending June 30, 2012**

Beginning Fund Balance - July 1, 2011	\$ 293,730.00
Revenues	141,329.00
Expenditures	(308,542.00)
Ending Fund Balance - June 30, 2012	<u><u>\$ 126,517.00</u></u>



Youth Commission  
City Hall ~ Room 345  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4532



(415) 554-6446  
(415) 554-6140 FAX  
[www.sfgov.org/youth\\_commission](http://www.sfgov.org/youth_commission)

## YOUTH COMMISSION MEMORANDUM

**TO:** Honorable Mayor Edwin M. Lee  
Honorable Members, Board of Supervisors

**CC:** Angela Calvillo, Clerk of the Board  
Maria Su, Director, Department of Children, Youth and Their Families  
Todd Rufo, Director, Office of Economic and Workforce Development  
Rhonda Simmons, Director, Office of Economic and Workforce Development  
Phil Ginsburg, General Manager, Recreation and Parks Department  
Greg Suhr, Chief of Police  
Barbara Garcia, Director, Department of Public Health  
Ed Reiskin, Director of Transportation  
José Luis Moscovich, Director, San Francisco County Transportation Authority  
William P. Siffermann, Chief Juvenile Probation Officer  
Honorable Members, San Francisco Board of Education  
Carlos Garcia, Superintendent, San Francisco Unified School District  
Wendy Still, Chief Probation Officer  
Trent Rhorer, Director, Human Services Agency  
Hydra Mendoza, Mayor's Families and Children Advisor  
Jason Elliott, Mayor's Director of Legislative and Government Affairs  
Nicole Wheaton, Mayor's Director of Commissions & Appointments

**FROM:** Mario Yedidia, Youth Commission Director  
Phimy Truong, Youth Commission Coordinator of Youth Development and Administration

**DATE:** Tuesday, October 9, 2012

**RE:** First Quarter Youth Commission Report  
Fiscal Year 2012-2013

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2012 OCT -9 AM 11:15  
PV

This memo is to update you on the business of the Youth Commission (YC) during the first quarter of the current fiscal year.

### Overview

Mayor Lee administered the oath of office to 16 members of the 2012-2013 YC on Thursday, August 30, 2012 (our 17<sup>th</sup> and final seat was filled on September 20). Between August 30 and today, the Youth Commission has met 3 times as a full body and the Commission's five standing committees have met the following number of instances: Executive, 2; Education, 3; Employment, 3; Housing, Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) and Transitional Age Youth (TAY) Issues, 2; and Justice, 2.

In the last month, the YC has adopted a single resolution, *Following Through on Free Youth Transportation* (attached) and our continuing work on improving recreation access at Juvenile Hall has received media coverage in a *Bay Citizen* article from October 4.<sup>1</sup>

### **Legislative, Policy and Programmatic Work**

At our third meeting of the year last Monday, October 1, the Youth Commission adopted a resolution calling on the Mayor, the Board of Supervisors, the San Francisco Municipal Transportation Agency (SFMTA) and the Board of Education to find the necessary funding to implement the free MUNI for low-income youth policy, for which each of the above-mentioned policy makers has expressed support (and for which \$4.9 million has already been secured from the SFMTA, the San Francisco County Transportation Authority, and the school district).

Meanwhile, the Youth Commission's five standing committees have been developing other policy and programmatic priorities.

#### *Executive Committee*

There are at least 22 youth commissions in the nine Bay Area counties. San Francisco Youth Commissioners and staff began building relationships with our counterparts at these institutions this past summer during the run-up to a vote regarding funding for free MUNI at the regional Metropolitan Transportation Commission on July 25, 2012. In the past weeks, the Executive Committee has begun laying the groundwork for a Bay Area-wide Youth Commission Action Summit to be held, tentatively, sometime in February 2013.

Moreover, the Executive Committee has also led the way in organizing dozens of young people to assist in piloting a new smart-phone based community outreach application regarding the Transportation Effectiveness Project run out of the Controller's Office. So too is the Executive Committee planning the first ever San Francisco Youth of the Year award.

#### *Education Committee*

This joint committee, comprised of both commissioners and representatives from the school district's Student Advisory Council (SAC), has thus far met with the district's Associate Superintendant of Student, Family and Community Support, Kevin Truitt and staff from Coleman Advocates for Children and Youth. The committee will likely be assessing the effectiveness and accessibility of the school district's credit recovery programs.

#### *Youth Employment Committee*

In its 3 meetings over the last months, the YC's employment committee has met with and received presentations from senior City staff and administrators and the biggest youth employment nonprofit service providers. The committee has a bevy of policy plans, including an assessment of the Summer Jobs+ initiative and exploration of how the Obama Administration's "deferred action" policy for undocumented youth can be used to increase youth employment opportunities locally.

#### *Housing, Lesbian, Gay Bisexual, Queer and Questioning (LGBTQ) and Transitional Age Youth (TAY) Issues Committee*

Following up on YC work from last year, this committee is trying to the City to implement Chapter 12N of the Administrative Code, an ordinance which has gone unimplemented for some

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<sup>1</sup> "Juvenile detainees entitled to time outdoors, but many not interested," Trey Bundy, October 4, 2012, *Bay Citizen*. <http://www.baycitizen.org/youth/story/juvenile-detainees-prefer-stay-indoors/>.

13 years and which requires all City employees who work with youth – as well as all youth service providers at agencies that receive \$50,000 or more in City or City-administered dollars – to be trained in LGBTQ youth sensitivity. Happily, in collaboration with the Youth and Human Rights Commission, the Department of Public Health has developed a training video that is in the process of being completed.

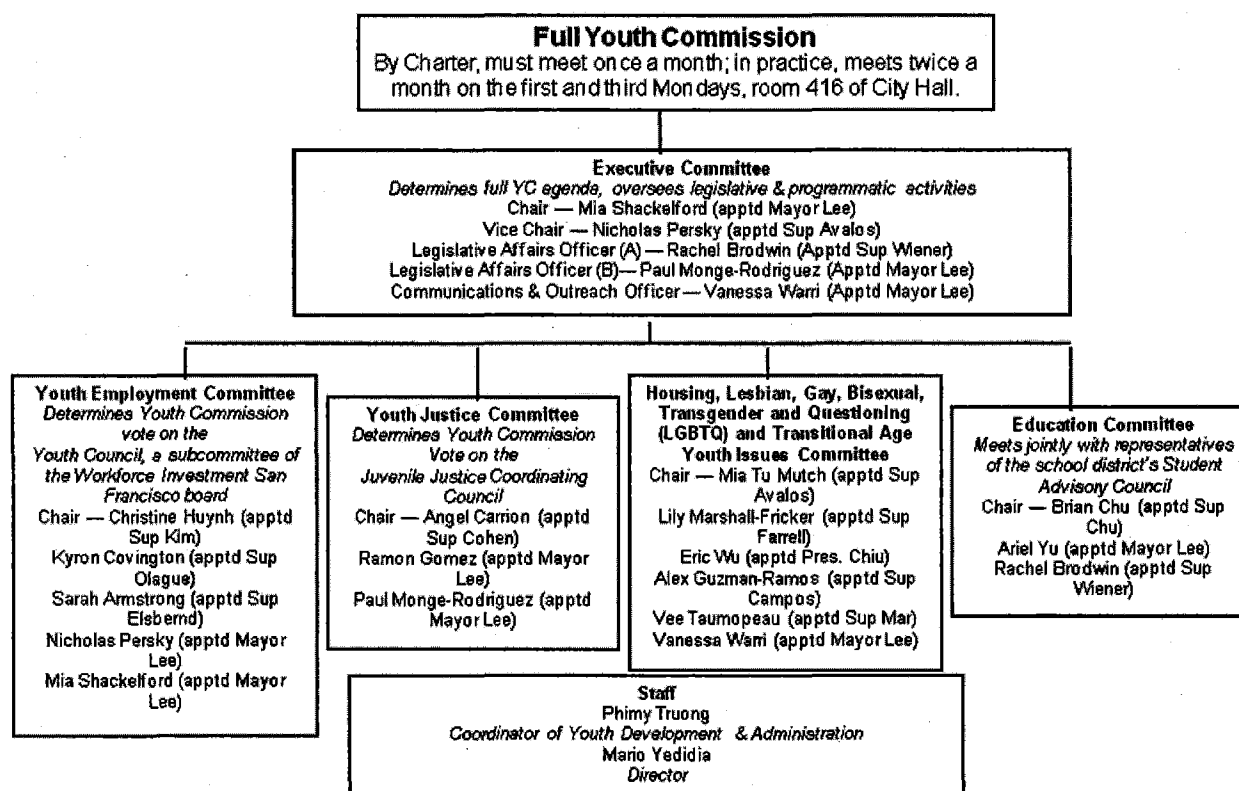
### *Youth Justice Committee*

The Youth Justice Committee continues to pursue full and improved recreation access for detainees at Juvenile Hall (see *Bay Citizen* article).<sup>2</sup> Our quarterly meetings with Chief Juvenile Probation Officer Siffermann are set to continue this week, and the committee is considering conducting focus groups with recently released youth about how to improve recreation access in partnership with DCYF's Transitional Age Youth Team.

### **Questions:**

To get more information about anything related to the YC, please do not hesitate to contact YC staff Phimy Truong at (415) 554-7112. (Please note that YC Director Mario Yedidia will be out of the office until November 26, 2012.) Thank you.

### **2012-2013 Organizational Chart:**



<sup>2</sup> "Juvenile detainees entitled to time outdoors, but many not interested," Trey Bundy, October 4, 2012, *Bay Citizen*. <http://www.baycitizen.org/youth/story/juvenile-detainees-prefer-stay-indoors/>.

**BOARD of SUPERVISORS**



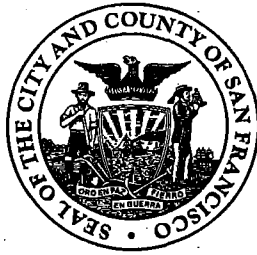
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 544-5227

Date: October 9, 2012  
To: Honorable Members, Board of Supervisors  
From: Angela Calvillo, Clerk of the Board  
Subject: Form 700

This is to inform you that the following individual has submitted a Form 700 Statement:

Jeffrey Cretan – Legislative Aide – Assuming

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

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## MEMORANDUM

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Date: October 10, 2012  
To: Honorable Members, Board of Supervisors  
From: *ACE* Angela Calvillo, Clerk of the Board  
Subject: APPOINTMENT BY THE MAYOR

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The Mayor has submitted an appointment to the following body:

- Samer A. Itani, Commission on Aging, term ending June 25, 2016

Under the Board's Rules of Order Section 2.24, a Supervisor can request a hearing on an appointment by notifying the Clerk in writing.

Upon receipt of such notice, the Clerk shall refer the appointment to the Rules Committee so that the Board may consider the appointment and act within 30 days of the appointment as provided in Charter Section 3.100(18).

Please notify me in writing by 5:00 p.m., Wednesday, October 24, 2012, if you would like to request a hearing on the above appointment.

Attachments

OFFICE OF THE MAYOR  
SAN FRANCISCO



*Orig: Rule Clerk  
C. COB, Leg. Dep. Ac. File*  
EDWIN M. LEE  
MAYOR

**Notice of Appointment**

October 9, 2012

San Francisco Board of Supervisors  
City Hall, Room 244  
1 Carlton B. Goodlett Place  
San Francisco, California 94102

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2012 OCT -9 PM 4:41  
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Honorable Board of Supervisors:

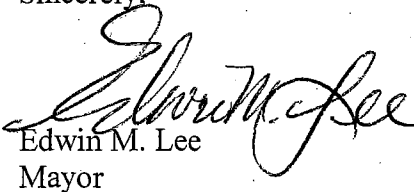
Pursuant to Section 3.100 (18) of the Charter of the City and County of San Francisco, I hereby make the following appointments:

Samer A. Itani to the Commission on Aging, assuming the seat formerly held by Rosario Carrion-Di Ricco, for a term ending June 15, 2016

I am confident that Mr. Itani, a CCSF elector, will serve our community well. Attached, please find Mr. Atani's resume, which demonstrates how his appointment represents the communities of interest, neighborhoods and diverse populations of the City and County of San Francisco.

Should you have any questions related to this appointment, please contact my Director of Appointments, Nicole Wheaton, at (415) 554-7940.

Sincerely,

  
Edwin M. Lee  
Mayor

OFFICE OF THE MAYOR  
SAN FRANCISCO



EDWIN M. LEE  
MAYOR

October 9, 2012

Angela Calvillo  
Clerk of the Board, Board of Supervisors  
San Francisco City Hall  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102

Dear Ms. Calvillo,

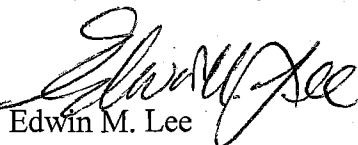
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I am confident that Mr. Itani, a CCSF elector, will serve our community well. Attached, please find Mr. Atani's resume, which demonstrates how his appointment represents the communities of interest, neighborhoods and diverse populations of the City and County of San Francisco.

Should you have any questions related to this appointment, please contact my Director of Appointments, Nicole Wheaton, at (415) 554-7940.

Sincerely,

  
Edwin M. Lee  
Mayor

## Samer A. Itani, DDS

450 Sutter St. Suite 2318, San Francisco, CA 94108. 415.810.4475. [samer@itanidental.com](mailto:samer@itanidental.com) [www.itanidental.com](http://www.itanidental.com)

### Summary

For several years, I have focused my practice on treating patients suffering from dental anxiety and phobias; and physically or medically challenged patients requiring special medical and dental treatment. In 2009 I launched Itani Dental, working closely with specialists and hospitals serving the local community. My focus is on crown and bridge, restorative implant dentistry and full mouth dental rehabilitation cases using general anesthesia in a hospital setting.

### Education

Graduated in March 2001 from Charles University in Prague, School of Dentistry in Pilsen, Czech Republic

Bachelors in Biology, 1992, from the University of the Pacific, Stockton, California

### Practice

- 12/2011 – Present      California Hospital Dental Group, San Francisco, CA  
President of CHDG. Our dentists and specialists have expertise in working with dental and facial reconstruction for trauma patients. We provide inpatient consultations for many conditions that have dental implications, such as heart valve surgery, bone marrow and other organ transplants, chemotherapy, radiotherapy, and immune-compromised patients.
- 07/2009 – Present      Itani Dental San Francisco, San Francisco, CA  
Dentist owner of IDSF. Our office provides dental services for the San Francisco Bay Area. We specialize in special care dentistry, home care & house call dentistry, treatment of phobic and senior patients, 24-hour emergency dentistry, as well as dental implant & cosmetic dentistry. We have more than a decade of experience working with phobic, medically compromised, special needs, disabled and senior patients, and offer a full array of sedation dentistry options. We also work with patients on an emergency basis, and provide house call dentistry services to personal homes, group home, assisted living facility, or treatment center.
- 05/2006 – 12/2009      Blende Dental Group, San Francisco, CA  
Dentist in private practice treating patients with special dental needs.
- 2003 – 2005      California Board Dental License Preparation  
University of California, School of Dentistry, Los Angeles, CA

### Ancillary Positions

- |                |                            |  |
|----------------|----------------------------|--|
| 2011- Present  | President                  | California Hospital Dental Group, San Francisco, CA            |
| 2007 – Present | Vice Chair Dental Division | Kaiser Permanente Hospital, San Francisco, CA                  |
| 2006 – Present | Active Medical Staff       | California Pacific Medical Center Hospitals, San Francisco, CA |
| 2006 – Present | Active Medical Staff       | Kaiser Permanente Center, San Rafael, CA                       |

### Certifications & Licenses

Fellowship International Congress of Oral Implantology (ICOI)

California Adult Oral Conscious Sedation License CA#690

California Dental Board License CA#54410





## SAN FRANCISCO PLANNING DEPARTMENT

To Responsible Agencies, Trustee Agencies, and Interested Parties:

October 10, 2012

RE: CASE NO 2009.0159E: 1510-1540 MARKET STREET  
NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

A Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the above-referenced project, described below, has been issued by the Planning Department. The NOP is either attached or is available upon request from **Michael Jacinto**, whom you may reach at 415-575-9033 or at the above address. It is also available online at <http://tinyurl.com/sfcedadocs>. This notice is being sent to you because you have been identified as potentially having an interest in the project or the project area.

**Project Description:** The proposed project entails demolition of an existing four-story building and parking lot located at 1510-1540 Market Street and construction of a residential tower with 258 dwelling units over ground-floor retail use. The height of the proposed tower would be 435 feet above street grade to its roof; mechanical equipment and a parapet would extend an additional 20 feet above the roof line. The project would comprise a total of 330,986 gross square feet (gsf) in 37 above-ground levels and two below-ground levels. The project would accommodate 69 off-street parking spaces and 82 bicycle storage units in its basement levels. The proposed project also includes pedestrian improvements on Oak Street to the north of the project site that could include the installation of decorative paving/bricks, benches and landscaping. Additionally, the project entails construction of a wind screen structural feature that would extend across the width of Oak Street. Preliminary conceptual descriptions indicate that it would consist of a free standing, horizontal canopy that would allow wind to pass through. The proposed wind screen would extend from the third floor roof (top of the base) across Oak Street at a height of 42 feet over the length of the project site. The wind screen would be anchored to the ground near the existing buildings at 11-35 Van Ness Avenue and 70 Oak Street. The canopy would consist of a porous material to diffuse the effects of ground-level winds.

The Planning Department has determined that an EIR must be prepared for the proposed project prior to any final decision regarding whether to approve the project. The purpose of the EIR is to provide information about potential significant physical environmental effects of the proposed project, to identify possible ways to minimize the significant effects, and to describe and analyze possible alternatives to the proposed project. Preparation of an NOP or EIR does not indicate a decision by the City to approve or to disapprove the project. However, prior to making any such decision, the decision makers must review and consider the information contained in the EIR.

Written comments will also be accepted until 5:00 p.m. on **November 9, 2012**. Written comments should be sent to Bill Wycko, San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, CA 94103. Referenced materials are available for review by appointment at the Planning Department's office on the fourth floor of 1650 Mission Street. (Call 415-575-9033). If you work for an agency that is a Responsible or a Trustee Agency, we need to know the views of your agency as to the scope and content of the environmental information that is relevant to your agency's statutory responsibilities in connection with the proposed project. Your agency may need to use the EIR when considering a permit or other approval for this project. We will also need the name of the contact person for your agency. If you have questions concerning environmental review of the proposed project, please contact **Michael Jacinto** at 415-575-9033.

[www.sfplanning.org](http://www.sfplanning.org)



## SAN FRANCISCO PLANNING DEPARTMENT

### Notice of Preparation of an Environmental Impact Report

**Date:** October 10, 2012  
**Case No.:** 2009.0159E  
**Project Title:** 1510-1540 Market Street  
**BPA Nos.:** N/A  
**Zoning:** C-3-G (Downtown General Commercial), Van Ness and Market  
Downtown Residential Special Use District  
120-R-2 / 120/400-R-2 Height and Bulk District  
**Block/Lot:** 836; Lots 2, 3, 4, 5  
**Lot Size:** Lot 2 – 1,398 square feet  
Lot 3 – 1,746 square feet  
Lot 4 – 5,073 square feet  
Lot 5 – 9,426 square feet  
Total – 17,643 square feet  
**Project Sponsor:** 1540 Market Street NV, LLC c/o Reuben & Junius, LLP;  
Andrew Junius, LEED AP – (415) 567-9000  
**Lead Agency:** San Francisco Planning Department  
**Staff Contact:** Michael Jacinto – (415) 575-9033  
michael.jacinto@sfgov.org

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

**Reception:**  
**415.558.6378**

**Fax:**  
**415.558.6409**

**Planning  
Information:**  
**415.558.6377**

### PROJECT DESCRIPTION

The proposed project entails demolition an existing four-story building and parking lot located at 1510-1540 Market Street and construction of a residential tower with 258 dwelling units over ground-floor retail use. The height of the proposed tower would be 435 feet above street grade to its roof; mechanical equipment and a parapet would extend an additional 20 feet above the roof line. The project would comprise a total of 330,986 gross square feet (gsf), in a tower-over-podium building type that would consist of 37 above-ground levels and two below-ground levels. Proposed building program characteristics and unit mix are presented in the following table:

**Building Program Characteristics and Unit Mix**

Floor	Area	Use	Unit Type and Size Range	Unit Count	Unit Ratios
1:	9,660 gsf	Retail (5,377 gsf) Residential lobby (4,283 gsf)	-	-	-
2-3:	15,878 gsf	Residential amenities (approx. 7,900 gsf each level)	-	-	-
4-37:	235,255 gsf	Residential units	(500 – 825 sq. ft.)	142	55%
			(950 – 1,400 sq. ft.)	104	40%
			(2,000 – 2,500 sq. ft.)	12	5%
B1-B2:	34,246 gsf	Building services, parking area, car and bicycle storage			
		<b>Residential Total</b>		<b>258</b>	<b>100%</b>

On the ground-floor, the proposed building would include 5,377-square-feet of retail space accessible from both Market and Oak Streets and a 4,283-square-foot residential lobby. Two loading zones, each approximately 35 feet in length would be located along the north side of Oak Street across from the residential lobby entrance. The ground-level floor plan is presented in Figure 1, Ground Floor Plan. Building levels 2 and 3 would include space for residential amenities, which could include one or more resident community rooms, homeowners' association office, a full service fitness center, and entertainment and screening rooms for residents to reserve for private events, as well as potentially space for concierge services. Residential units would be located on levels 4 through 37. The building would contain a mix of one-, two- and three-bedroom units ranging in size from 500 to 2,500-square feet. Representative examples of the floor plan for the proposed residential uses are presented in Figure 2, Fourth Floor Plan, Figure 3, Tenth Floor Plan, and Figure 4, 27<sup>th</sup> Floor Plan.

The project would provide 13,451 square feet of common residential open space on the ground floor (Figure 1), the Fourth Floor (Figure 2) and on the roof. The proposed roof-level open space plan is presented in Figure 5, Roof-Level Open Space. The project is required to provide 108 square feet of public open space based on the retail use proposed by the project. This would be provided as part of the ground floor open space component of the project.

The project would accommodate off-street parking in two basement levels. A car elevator would be provided at the northwest corner of the building, which would transport the automobiles to level B2, where 69 car parking spaces would be accessible via a robotic parking system within the building's garage. In addition, 82 bicycle storage units would also be provided within this level. Figure 6, Basement Levels, illustrates the basement floor level configurations.

#### **Oak Street Plaza Variant**

The project proposes streetscape improvements within the Oak Street public right-of-way. The proposed Oak Street Plaza Variant would involve a reconfiguration and public improvements to Oak Street, adjacent to and north of the project site to accommodate the proposed driveway, vehicle queuing, on-street parking, traffic and pedestrian circulation, emergency vehicle access, and loading zones. Pedestrian improvements include the installation of decorative paving/bricks, benches, and landscaping. From the easternmost section of Oak Street, from Van Ness Avenue to approximately 165 feet westward, motor vehicle traffic could be restricted. Existing curbside parking along the south side of Oak Street could be removed to accommodate a fire/emergency access and the proposed improvements. A minimum of 14 head-in public parking spaces on the north side of Oak Street and 12 parallel curbside spaces along the south side of the street would be eliminated to accommodate streetscape and plaza components. The proposed plaza would be improved with pedestrian amenities such as public seating, landscaping, bulb outs, etc., consistent with the City's Better Streets Plan.

Emergency vehicles and bicycles would have through access from Franklin to Market Street. Access to all existing driveways (Figure 1) along Oak Street would be maintained, including the driveway for the proposed project. On-street parking along the north side of Oak Street along the western section of the affected block, from Franklin Street to approximately 235 feet eastward, would be maintained.

In order to address and reduce ground-level wind speeds, the design of the proposed building includes articulated facades on levels four through six that would allow wind to pass through these open sections

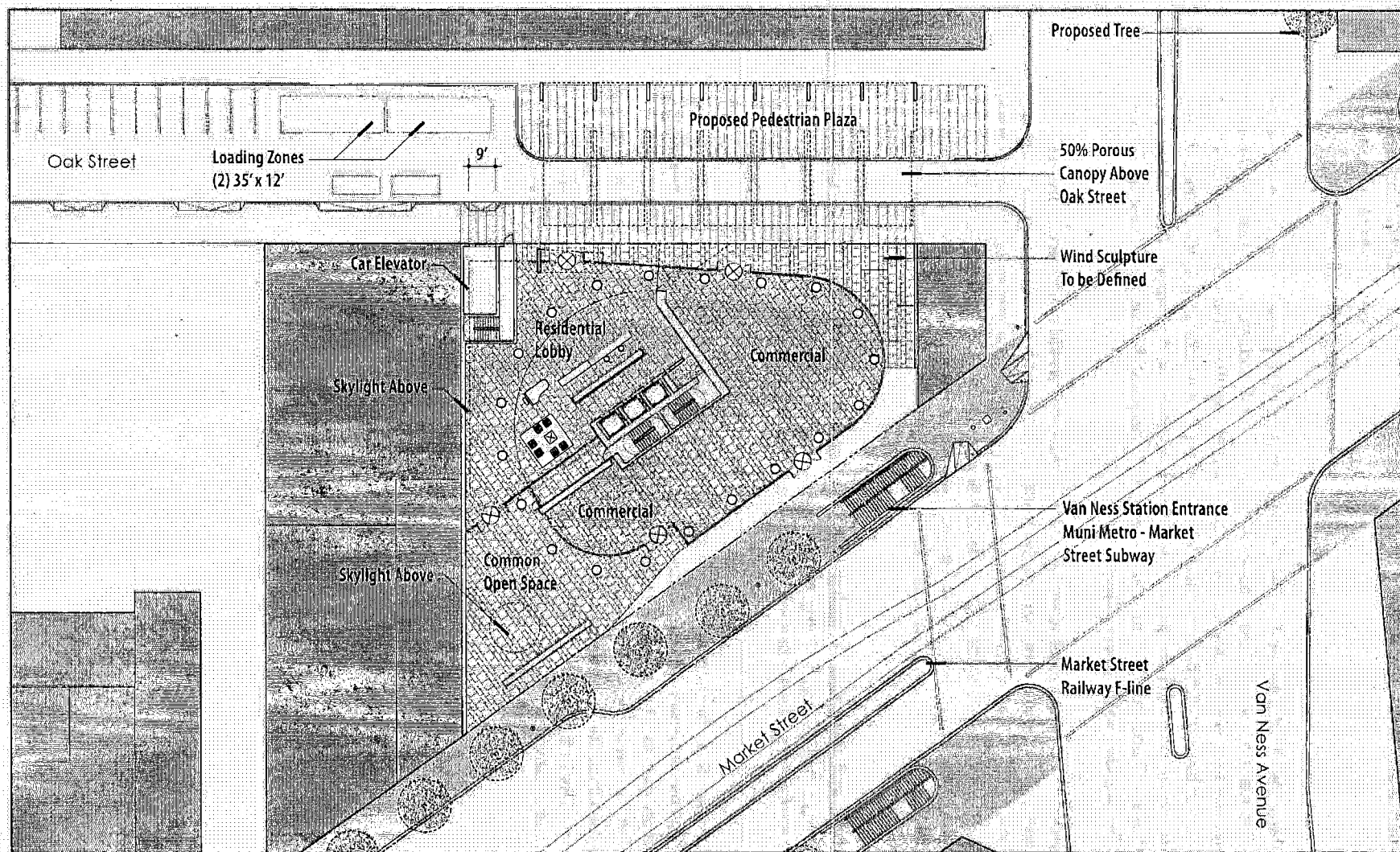
of the building, above the third floor and below the seventh floor. The proposed design reduces the amount of enclosed space on these floors and utilizes a "cut-away" architectural element on the proposed building that allows wind to travel through the structural elements of these floors on the east and west side of the building. Vertical support pillars would follow the exterior building lines where the building shell would otherwise be, in order to provide structural support for the upper floors. Figure 7, Conceptual Elevations – North and South, and Figure 8, Conceptual Elevations – East and West, illustrates the building façades and support pillars.

The proposed project also includes a wind screen structural feature that would extend across the width of Oak Street. Preliminary conceptual descriptions indicate that it would consist of a free standing, horizontal canopy that would allow wind to pass through. The proposed wind screen would extend from the third floor roof (top of the base) across Oak Street at a height of 42 feet over the length of the project site. The wind screen would be anchored to the ground near the existing buildings at 11-35 Van Ness Avenue and 70 Oak Street. The canopy would consist of a porous material to diffuse the effects of ground-level winds.

Each of these architectural features is intended to reduce hazardous ground level wind speeds by rendering wind through the building, but may also limit the amount of useable common open space on the fourth floor. An exception to the Market and Octavia Area Plan requirements for common open space may be required.

An existing 56,000 square foot commercial building and 8,217 square foot surface parking lot would be demolished as part of the proposed project. Excavation of the entire site would occur to a depth of at least 30 feet to accommodate two below-grade garage levels. Some over-excavation may need to occur in order to reach below a marsh deposit layer. Approximately 16,000 cubic yards of soil would be excavated and exported from the site. Pile driving could be required in order to install the pillar supports on the east and west sides of the building. Demolition of the existing improvements is expected to take roughly 3 months, and construction of the proposed project is expected to take roughly 21 months.

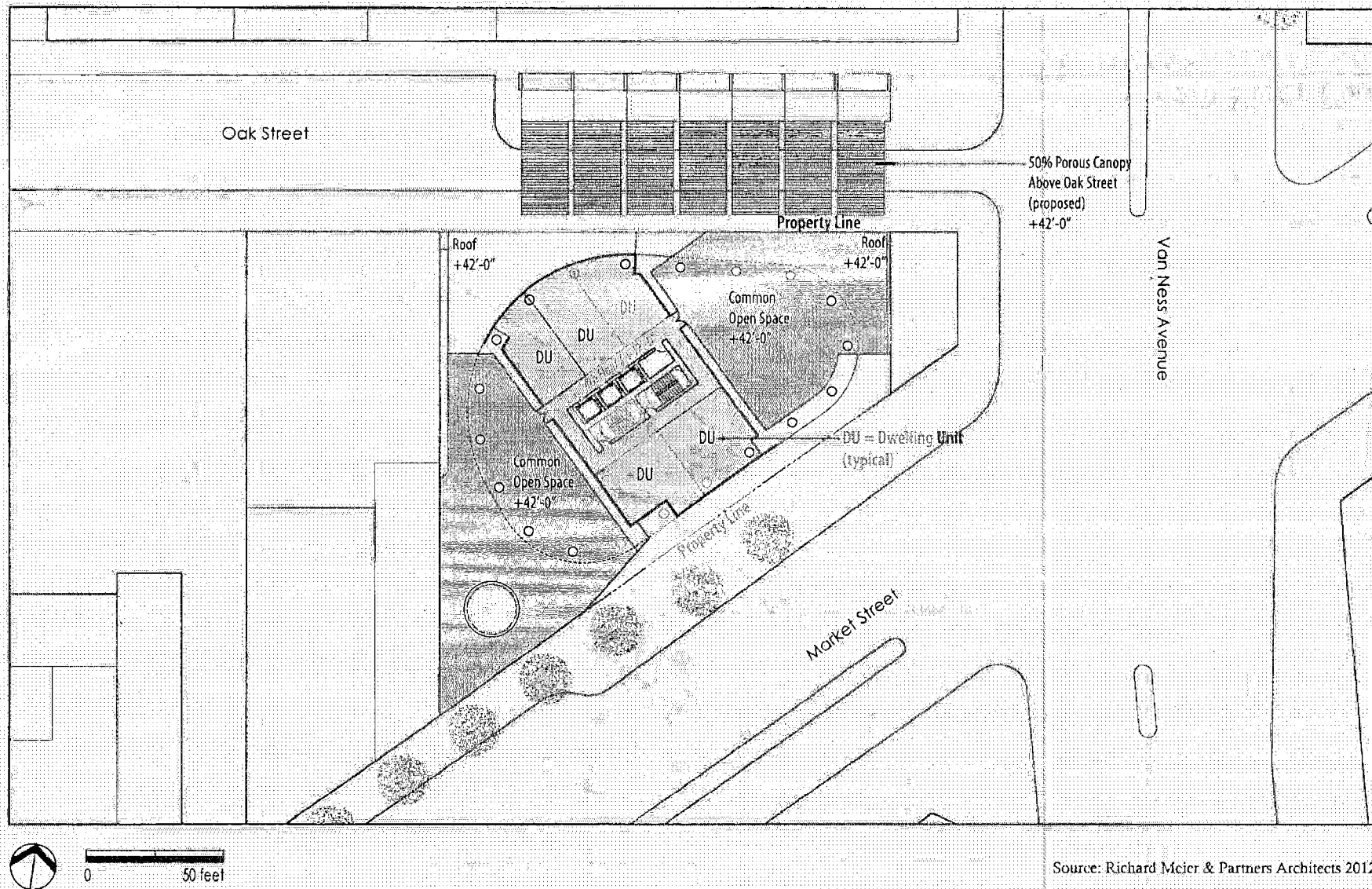




Source: Richard Meier & Partners Architects 2012

Figure 1  
Ground Floor Plan

1510-1540 Market Street EIR NOP



Source: Richard Meier & Partners Architects 2012

Figure 2  
Fourth Floor Plan

1510-1540 Market Street EIR NOP

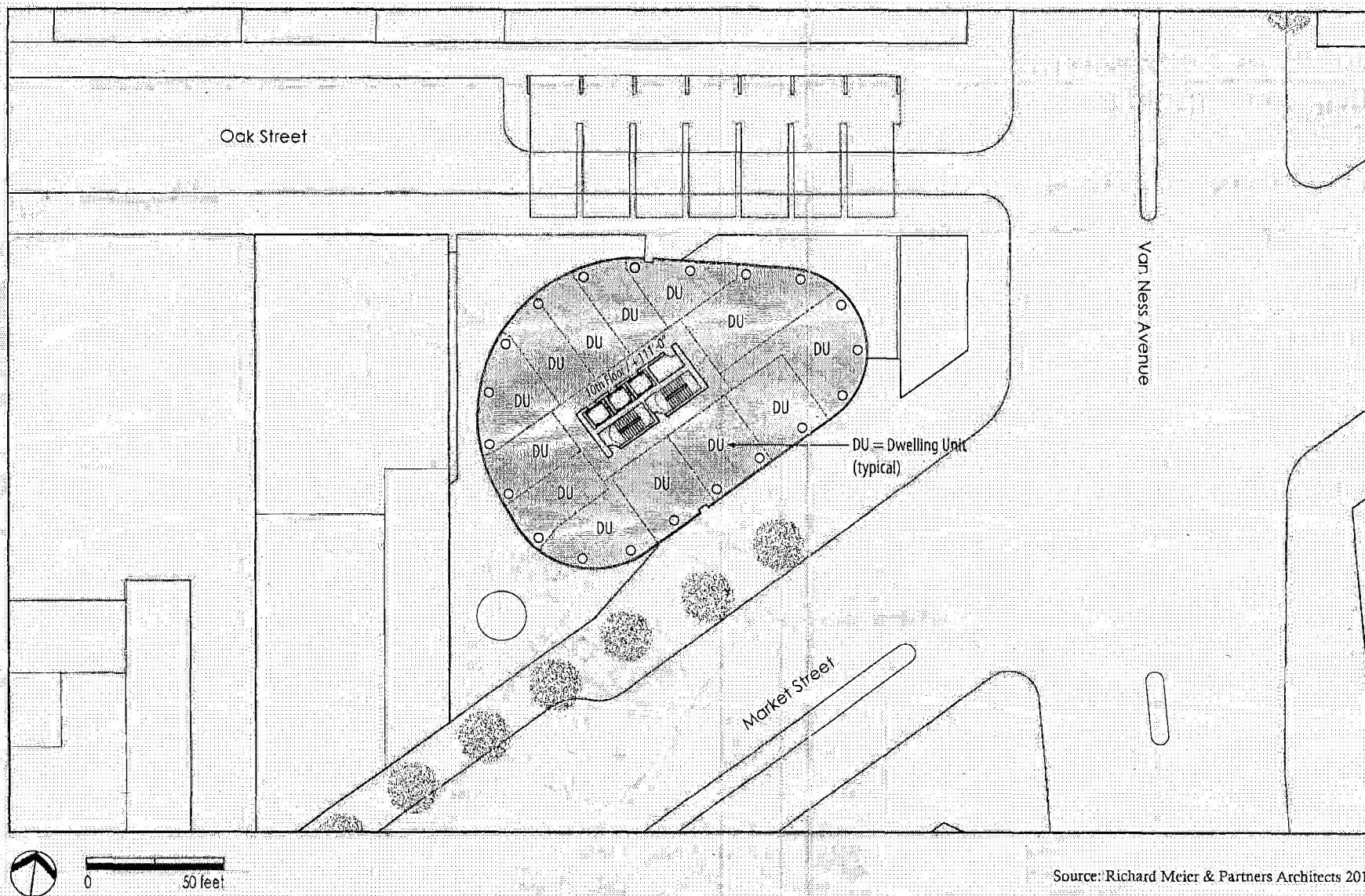
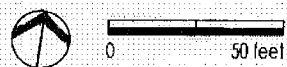
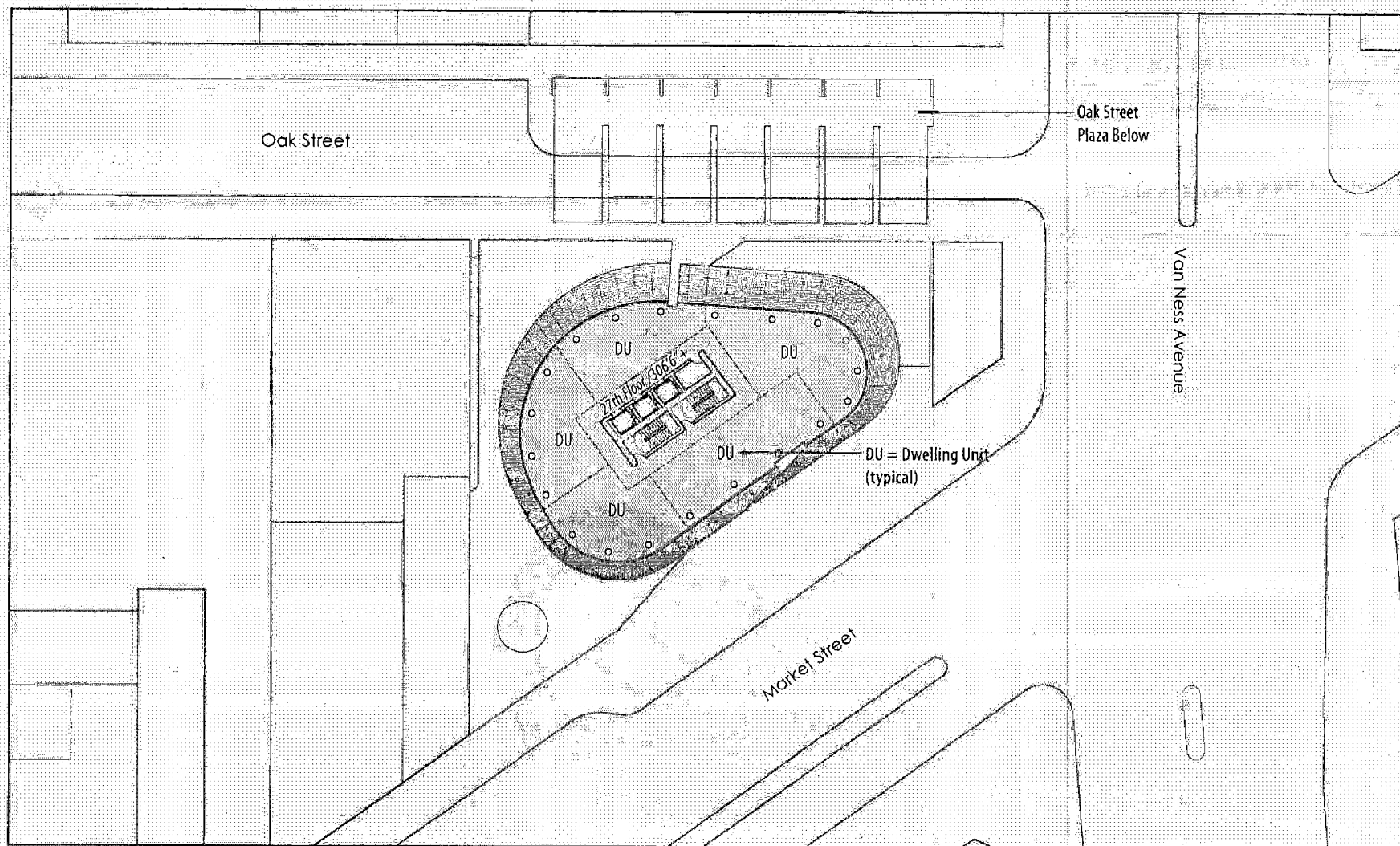


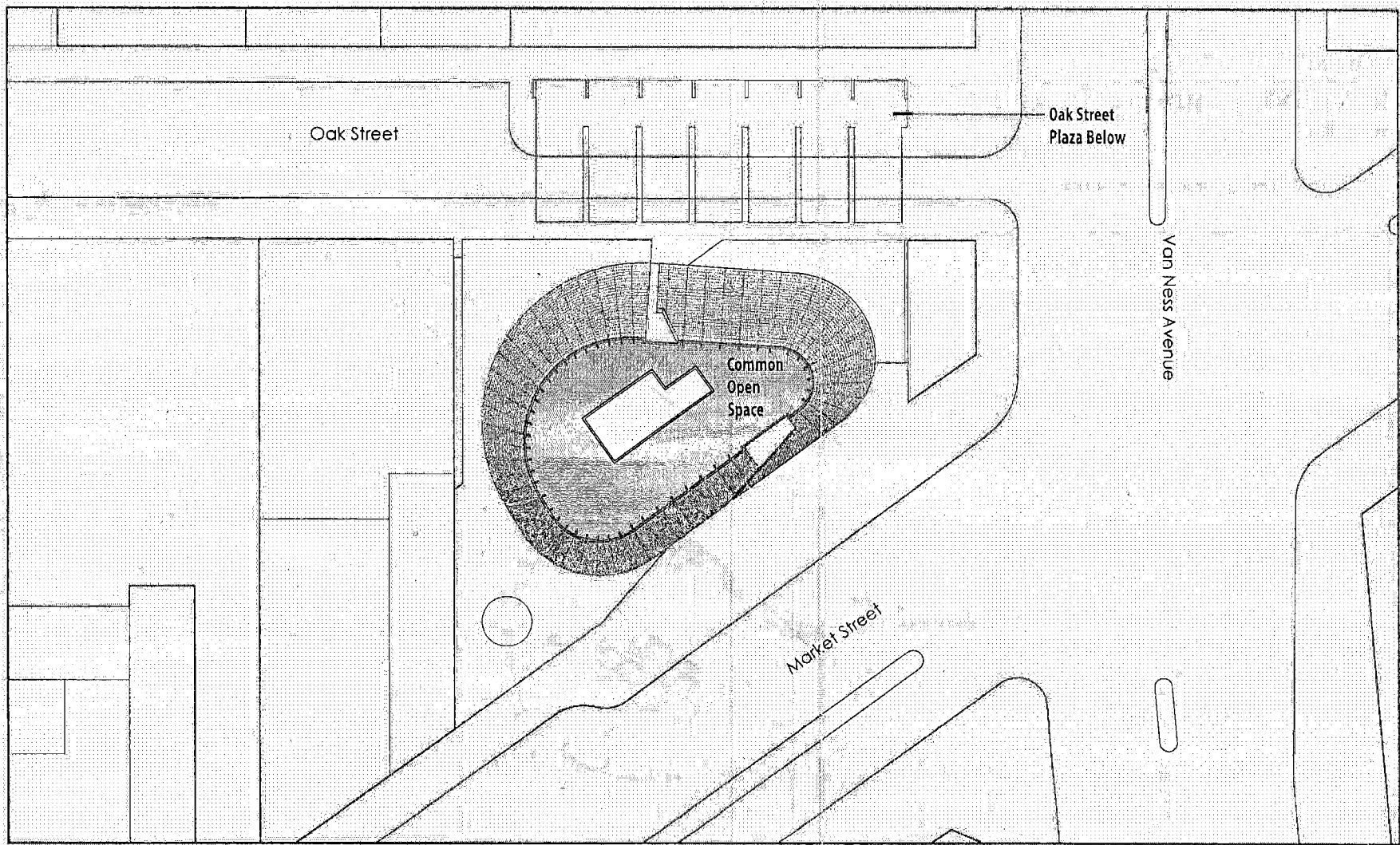
Figure 3  
Tenth Floor Plan  
1510-1540 Market Street EIR NOP



Source: Richard Meier & Partners Architects 2012

Figure 4  
 Twenty-Seventh Floor Plan  
 1510-1540 Market Street EIR NOP

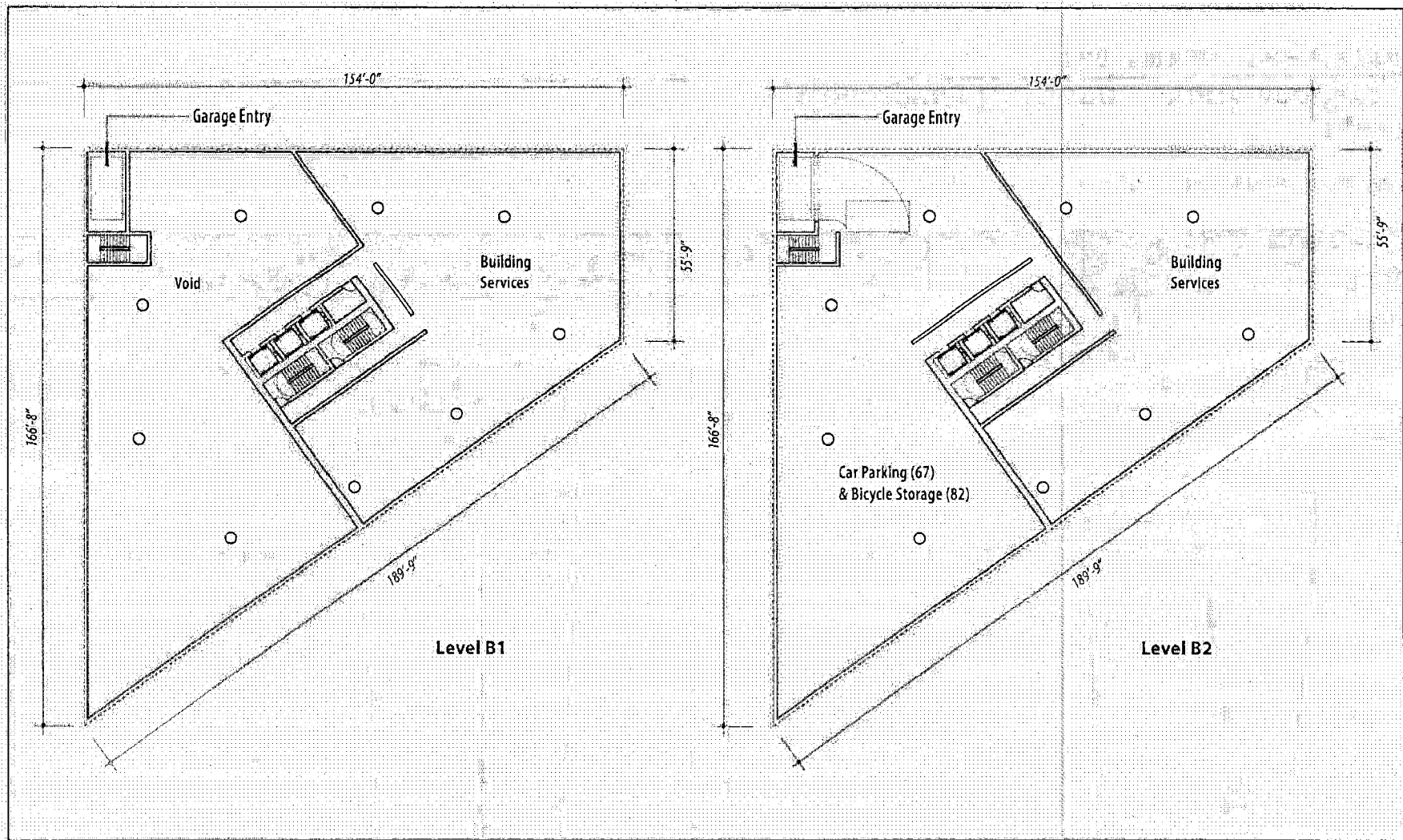




0 50 feet

Source: Richard Meier & Partners Architects 2012

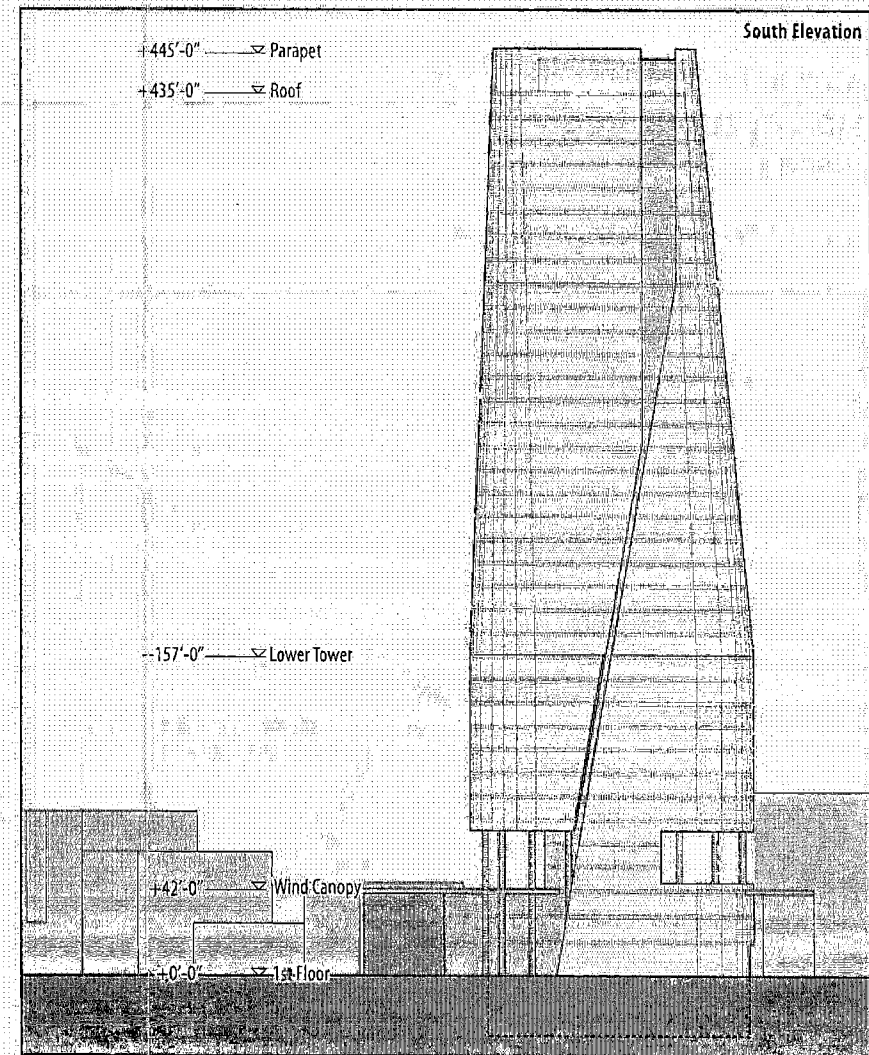
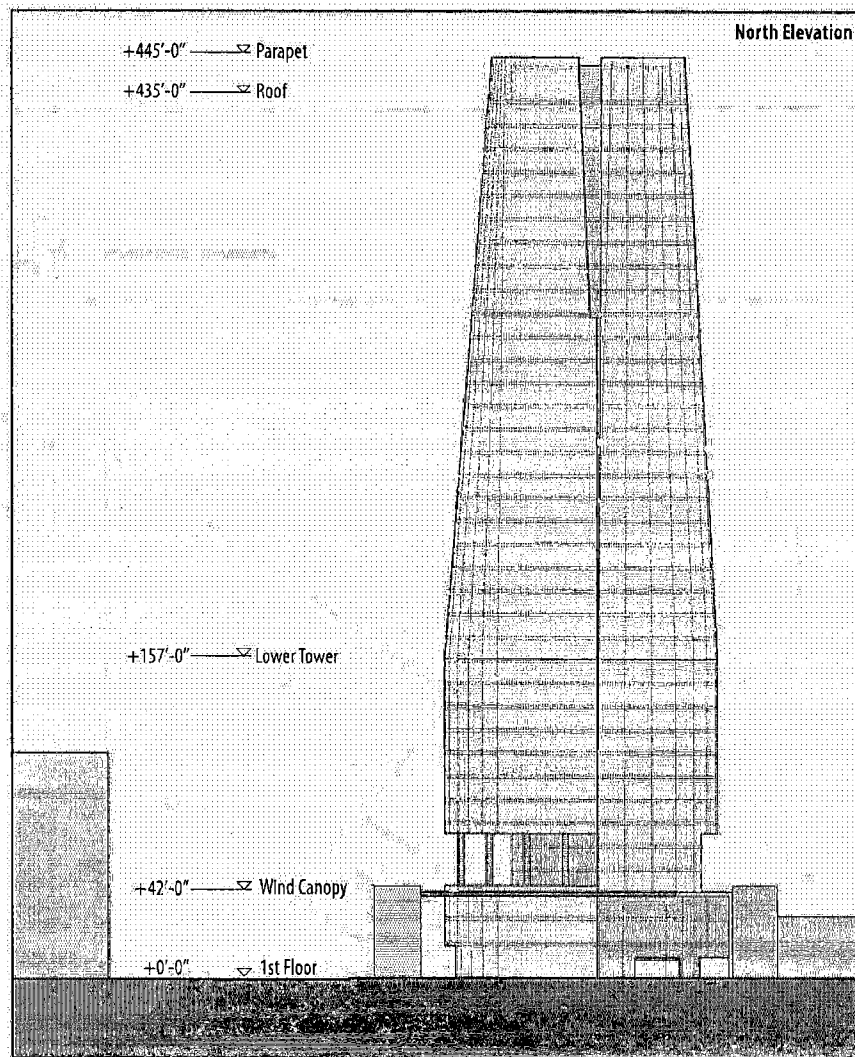
Figure 5  
Roof-Level Open Space  
1510-1540 Market Street EIR NOP



Source: Richard Meier & Partners Architects 2012

Figure 6  
Basement Levels

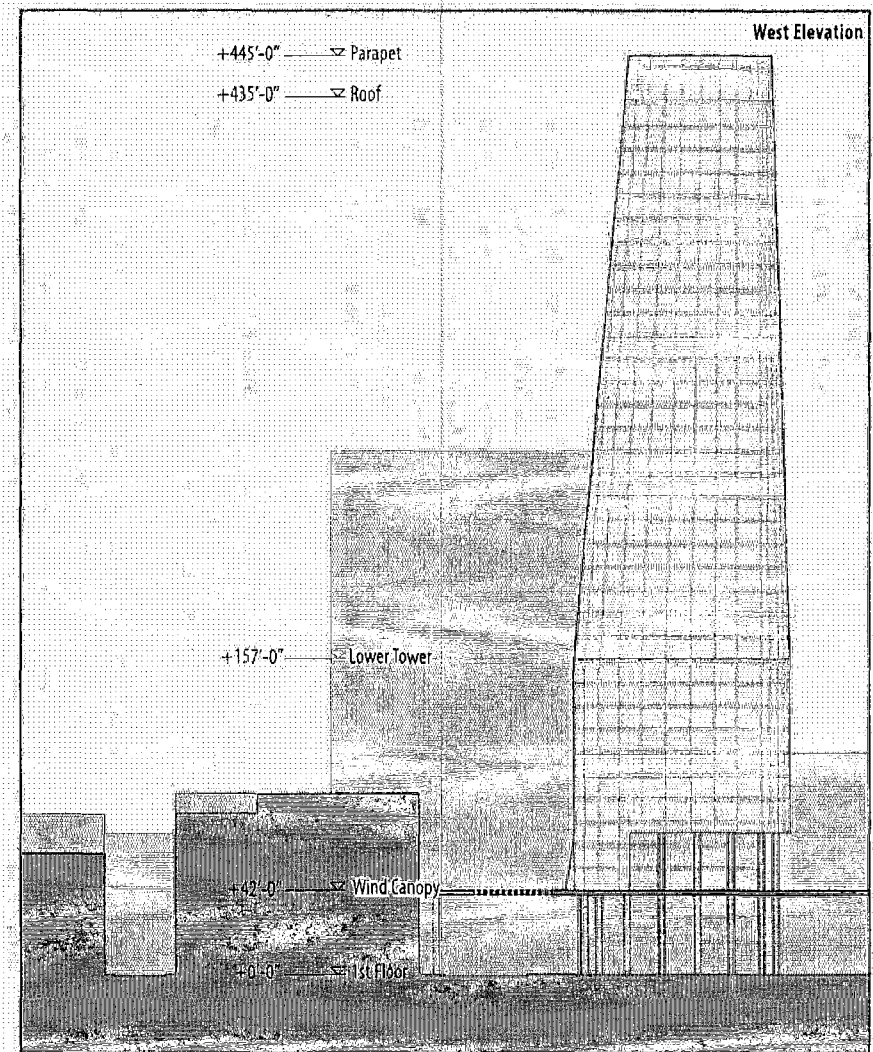
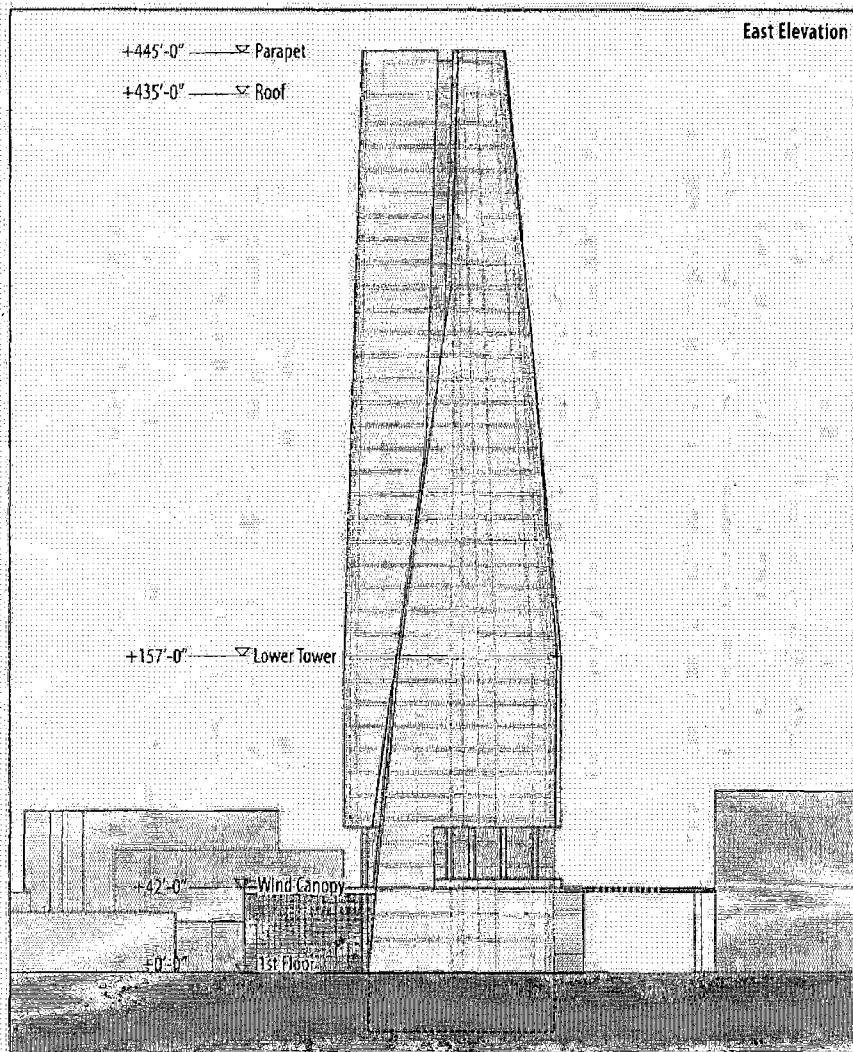
1510-1540 Market Street EIR NOP



Source: Richard Meier & Partners Architects 2012

Figure 7  
Conceptual Elevations - North and South

1510-1540 Market Street EIR NOP



Source: Richard Meier & Partners Architects 2012

Figure 8  
Conceptual Elevations - East and West

1510-1540 Market Street EIR NOP



## ENVIRONMENTAL SETTING

The project site is located at 1510-1540 Market Street, near the northeast corner of the intersection of Market Street and Van Ness Avenue in the City and County of San Francisco.

The 17,643-square foot project site is irregularly shaped and consists of four adjoining lots. The site is bounded by Oak Street to the north, a three-story commercial office building to the east at 1500 Market Street, (aka "All Star Donuts"), Market Street to the south, and two buildings to the west: one occupied by an automotive repair shop and retail uses fronting on Oak Street at 1554 Market Street, and the second occupied by a small market at 1546 Market Street. An entrance to the Van Ness Avenue Municipal Railway underground metro station is located along the site's Market Street frontage and an F-line Market Street railway transit platform is located in the median of Market Street about 80-feet south of the site's southern boundary.

The project site is relatively flat and is developed with a 30-vehicle surface parking lot on three of the four lots (1510-1530 Market Street), and a four-story, 48,225-square-foot office building constructed in 1920, with ground floor retail space on the fourth lot, 1540 Market Street.

Land uses in the vicinity of the project site include the San Francisco New Conservatory Theater and Conservatory of Music to the north across Oak Street at 25 Van Ness Avenue and 50 Oak Street, respectively, and further north: ground floor retail and residential uses at 77 Van Ness Avenue, and the San Francisco Unified School District offices located at 135 Van Ness Avenue. Several low-rise office buildings with street-level retail, including the auto repair shop, retail uses and market noted previously, are located to the west of the project site. Uses along Market Street to the south and west of the site include an auto dealership to the south at 10 South Van Ness Avenue, between Van Ness and 12<sup>th</sup> Street, residential uses in the five-story building located at 20 12<sup>th</sup> Street, and an adjacent parking lot. Land uses along the north side of Market Street include a three-story warehouse located at 1576 Market Street and a seven-story mixed use building with ground floor retail uses and residential/office uses above located at 1596 Market Street.

Existing uses in the vicinity east of the project site along Market Street include the following: an eight-story building occupied by Bank of America and other offices located at 1 South Van Ness Avenue, south east of the site; ground floor retail with office space above in the five-story building located at 1496 Market Street (aka 30 Van Ness Avenue), office and residential uses located on the north side of Market at 1446 Market Street; office and ground floor retail uses located in the five-story building at 1455 Market Street. Uses to the east of the site along Van Ness Avenue north of Market include the 40-story California State Automobile Association building (currently vacant) located at 100 Van Ness Avenue; and City parking garage and office uses in the eight-story building at 150 Van Ness Avenue.

Residential uses are located throughout the area and in the immediate vicinity include a 71-unit, six-story building at 1580-1598 Market Street; a 64-unit, eight-story building at 41 Van Ness Avenue; a 33-unit, four-story building at 150 Franklin Street; a 34-unit, two-story building at 171 Fell Street; and a 41 unit, five-story building at 145 Fell Street.

There are no parks in the immediate vicinity of the project site. Within about 0.25-miles of the site, open spaces include Civic Center Plaza, Patricia's Green, Jefferson Square, Hayward Playground and Hayes

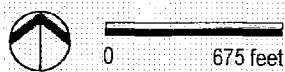
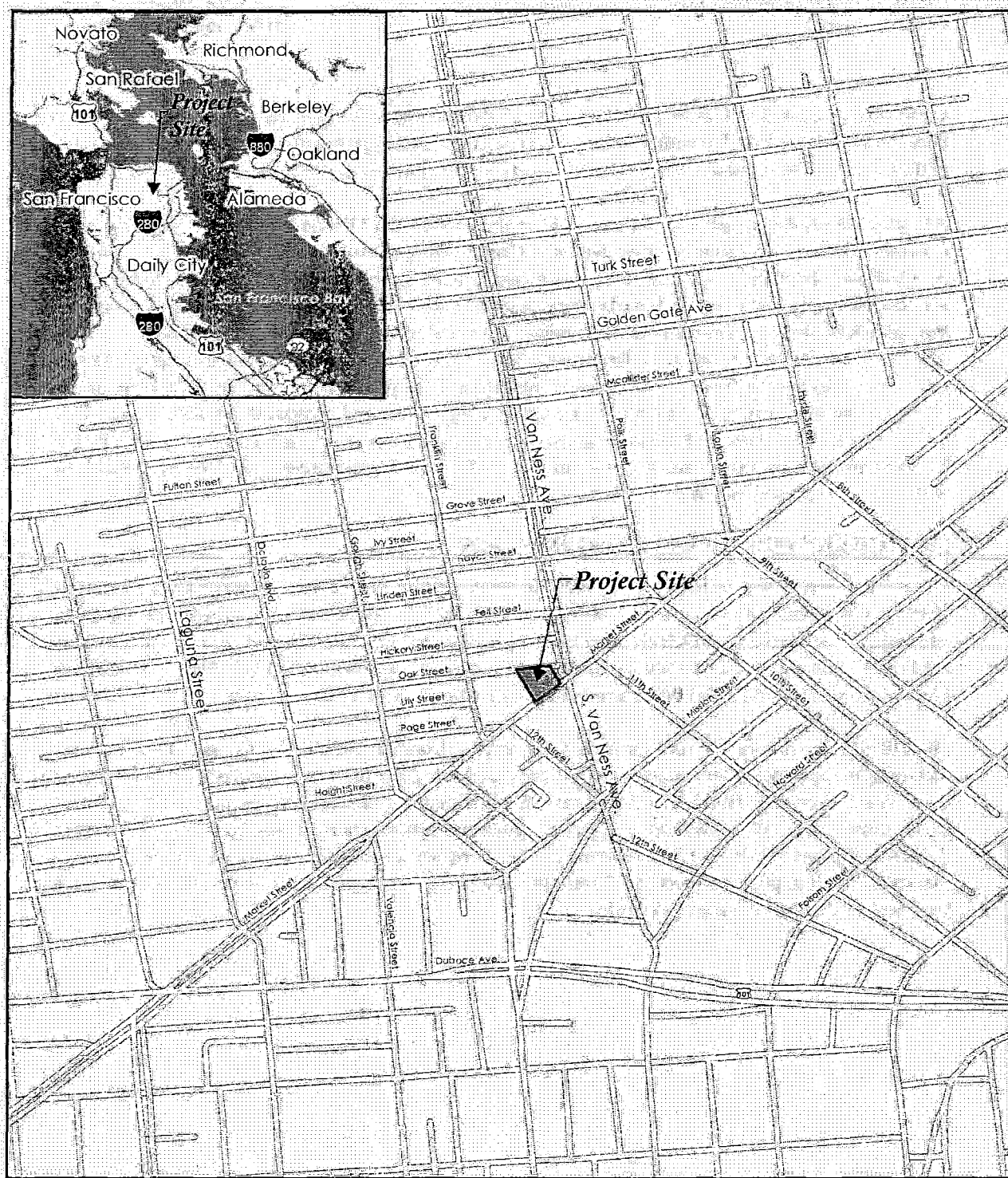
Valley Playground. The Market and Octavia Area Plan identifies the location of a future park, Brady Park, on a Bay Area Rapid Transit District (BART) parcel located approximately 700 feet to the southwest of the project site on the south side of Market Street east of Brady Street.

As stated above, the project site is located within the Market and Octavia Plan area, west of the city's Downtown district and southwest of the Civic Center. The pertinent Market and Octavia Area Plan objectives are, among others, to encourage high density housing and supporting uses close to the transit services on Van Ness Avenue and Market Street and to create a network of civic streets and open spaces, through parks, street improvements and extensive tree planting. The project site is also located within the Van Ness and Market Downtown Residential Special Use District, which seeks to create a mix of residential uses on the boulevard; preserve and enhance the pedestrian environment; encourage the retention and appropriate alteration of architecturally significant and contributory buildings; conserve the existing housing stock; and enhance the visual and urban design quality of the street. Figure 9, Project Location, presents the project site location and Figure 10, Project Aerial, presents the existing aerial view of the site and its surroundings.

#### COMPATIBILITY WITH EXISTING ZONING AND PLANS

The Environmental Impact Report (EIR) will discuss the proposed project's inconsistencies relating to physical environmental effects, if any, with the San Francisco *General Plan* and its relevant elements, particularly the Market and Octavia Area Plan, as well as the Housing Element, among others. Other applicable planning documents will be discussed for context, including, the Bicycle Plan, Sustainability Plan, Climate Action Plan, and Better Streets Plan, as well as the City's Transit First policy.

The EIR will also discuss the conformance of the proposed project with the *San Francisco Planning Code*, including the specific sections relevant to the area, including but not limited to, Sections 148 (Ground Level Wind Currents), 249.33 (Van Ness and Market Downtown Residential Special Use District), 270 (Bulk Limits), 295 (Shadows on Properties within the Jurisdiction of the Recreation and Park Commission), and 309 (Permit Review in the C-3 Districts). Inconsistencies with relevant plans or zoning that could result in physical effects on the environment will be analyzed in the applicable environmental topic sections, such as noise and air quality.



Source: ESRI 2010

Figure 9  
Project Location  
1510-1540 Market Street EIR NOP





Source: Google Earth 2011

Figure 10  
Project Aerial

1510-1540 Market Street EIR NOP



## POTENTIAL ENVIRONMENTAL ISSUES

The proposed project could result in potentially significant environmental effects. The Planning Department will prepare an EIR to evaluate the physical environmental effects of the proposed project. As required by the California Environmental Quality Act (CEQA), the EIR will examine those effects, identify mitigation measures, and analyze whether the proposed mitigation measures would reduce the environmental effects to a less-than-significant level. The EIR also will evaluate a No Project Alternative, which will assume no change to the existing conditions on the project site, as well as a range of project alternatives that could potentially reduce or avoid any significant environmental impacts associated with the proposed project.

The following topics will be addressed in the EIR:

### Land Use

This section of the EIR will evaluate whether the proposed project would disrupt or divide the surrounding neighborhood or adversely affect the character of the vicinity. The EIR will assess land use changes in conjunction with Planning Code requirements and the goals, objectives and requirements of the Market and Octavia Area Plan.

### Aesthetics

The proposed project would alter views of the project site and surrounding areas by removing the existing four-story building and parking lot on the site and replacing them with a residential tower of up to 455 feet in height (435 feet in height per the San Francisco Planning Code). The EIR will describe the existing visual setting of the project site and vicinity and describe potential project impacts in terms of whether the project would substantially affect scenic views, degrade scenic resources, or generate obtrusive light or glare. In addition, visual simulations (photomontages) will be presented of the site from publicly accessible locations under existing conditions and with the project that illustrate short-range, mid-range and long-range views. The viewpoints will be identified based on sensitive areas identified in the Market and Octavia Area Plan. The analysis of potential effects will focus on visual contrast and compatibility, including consistency with the urban design objectives of the Market and Octavia Area Plan and *General Plan*. The EIR will illustrate impacts in terms of the type and magnitude of change in the visual components identified in the setting. The EIR will also evaluate potential view obstruction on the portion of Oak Street affected by the proposed wind canopy.

### Population, Housing, and Employment

The EIR analysis will use standard factors provided in Planning Department guidelines for transportation analysis to estimate the project-related employment and population change. The EIR will estimate the resulting changes in on-site population and employment associated with the project's commercial space, also based on standard factors. The impact analysis will identify any inconsistencies with the objectives and policies of the *General Plan's* Housing Element.

### Cultural Resources

According to Planning Department records, the existing 1540 Market Street building was constructed in 1920. CEQA requires that a property be evaluated for its potential to be an historic resource as part of the environmental review process. The Market and Octavia Area Plan included a historic architectural

survey of properties within the plan area boundaries. This property was assigned a status code of 6Z, meaning it was found ineligible for listing on the California Register of Historical Resources through survey evaluation. Moreover, the Planning Department reviewed a property-specific historic resource evaluation for the site and concluded that the extant building on the subject property is not eligible for listing as an historic resource (Kelly and VerPlanck 2010). This information will be summarized in the EIR, and the EIR will also evaluate potential project effects to nearby historic resources, as applicable.

Excavation and other earth movement could disturb prehistoric cultural resources that may be buried at the project site. The project site has been evaluated for the likely presence of such artifacts, and the potential to disturb them, as part the June 2010 Preliminary Archeological Sensitivity Study. As part of that initial review, an Archeological Research Design and Treatment Plan will be undertaken to identify the potential for the site to contain subsurface archaeological resources from the prehistoric and historic periods. The EIR will summarize the findings of the archeological report with respect to the project site. The impact analysis will identify mitigation, as required, that could include further archeological investigation beneath the project site once the existing building is removed, to ensure that potential significant impacts are mitigated.

#### **Transportation and Circulation**

The proposed project would generate new vehicle trips to and from the project site, as well as increases in transit ridership, pedestrian and bicycle activity, and parking and loading demand. A Transportation Impact Study will be prepared for the proposed project in accordance with the Planning Department's *Transportation Guidelines for Environmental Review* (October 2002) and will include an analysis of direct and cumulative transportation impacts and mitigation measures associated with the project as applicable, including potential public improvements on Oak Street. The EIR transportation impact analysis will summarize the findings of the transportation study. The EIR impact analysis will also analyze transit conditions, pedestrian and bicycle conditions, freight loading, emergency access and parking conditions. The EIR will also evaluate cumulative effects associated with anticipated area-wide growth and potential changes to the transportation system such as the planned bus rapid transit on Van Ness Avenue.

#### **Noise**

The EIR will evaluate the proposed project for noise compatibility with adjacent land uses (including traffic levels, bus operations, and building mechanical equipment). The noise analysis will use available published information, such as the Department of Public Health's recent updated map of roadway noise levels, to evaluate compatibility of the proposed uses with traffic noise levels. The EIR also will identify sensitive receptors (residences) nearest to the project site and describe construction-period noise and vibration levels, compliance with the Noise Ordinance, and identify measures for noise producing practices, as applicable.

#### **Air Quality**

The air quality effects of the proposed project will be analyzed in accordance with the Bay Area Air Quality Management District's (BAAQMD) *2010 CEQA Guidelines*. The EIR will identify and evaluate health risks to sensitive receptors and to project residents from emissions of nearby mobile and stationary source air pollutants. Mitigation measures will be identified, as applicable, for both construction and operational impacts.

### **Greenhouse Gas Emissions**

The EIR will include an analysis of greenhouse gas (GHG) emissions, which includes a general discussion of effects of GHGs, including a discussion of current regulations related to GHG emissions, such as discussion of California's Assembly Bill 32 (AB 32) and the California Air Resources Board's Scoping Plan to implement AB 32, the City's actions taken in connection with GHGs and climate change, as well as mitigation measures, if applicable. A significance determination will be made based on the BAAQMD 2010 CEQA Guidelines and project consistency with the City's qualified Climate Action Plan.

### **Wind**

Tall structures (those over about 100 feet in height) tend to redirect winds downward along building facades and have the potential to result in adverse impacts on the pedestrian wind environment. With a building proposed at 455 feet in height, the project could result in changes to ground-level winds near the base of the proposed tower and, potentially, up to several hundred feet away. San Francisco Planning Code regulations concerning pedestrian-level wind speeds apply in the greater downtown (including the project site), and the Planning Code's evaluation criteria are typically employed for CEQA analysis of tall buildings. The approach to wind analysis will involve testing a scaled model of the proposed project (at a massing level of detail) in a wind tunnel and to obtain and interpret test results in accordance with the criteria of Planning Code Section 148. The results of that testing, as well as an evaluation of potential wind effects of reasonably foreseeable cumulative development, will be reported in the EIR. The EIR also describe any mitigation measures necessary to alleviate potentially hazardous wind conditions in areas where wind speeds might exceed the established wind criteria.

### **Shadow**

Tall buildings cast shadow for long distances—to a distance up to about six times the height of the building during early morning and late afternoon around the winter solstice, when shadows are longest. San Francisco Planning Code Section 295 generally prohibits the addition of new shadow to parks under the jurisdiction of the Recreation and Park Commission. The EIR will include the results of a detailed analysis of potential shadow effects of the proposed building on properties subject to Section 295, and also to illustrate potential shading on surrounding streets, sidewalks, and publicly accessible but privately owned open spaces in the vicinity.

The EIR will present graphical depictions of net new shadow from the proposed project in the morning, at midday, and in the afternoon, on four days of the year—the summer and winter solstices and spring and fall equinoxes. The EIR will also quantify project shadow impacts in terms of the durations and amounts of park area that may be shaded by the proposed project. Mitigation measures for shadow impacts will be identified as appropriate.

### **Recreation and Public Space**

Given that the proposed project would be developed within the adopted Market and Octavia Plan area, the analyses for recreation and public space resources will be derived from the area-wide evaluation of service and capacity prepared for that plan. The EIR will summarize the Market and Octavia Area Plan Final EIR analyses of parks and open space facilities and programs, and determine whether project-related population and proposed building heights would raise specific issues regarding effects to

park and recreation facility use to a level that would result in significant environmental impacts or that may result in the need for construction of additional park facilities.

#### **Utilities and Service Systems; Public Services**

The EIR analyses for utility, recreation, and public service resources will be derived from the area-wide evaluation of service and utility capacity prepared for the Market and Octavia Plan. The EIR will summarize the Market and Octavia Area Plan Final EIR analyses for utilities including those for water and sewer infrastructure, water supply, sewer treatment capacity, schools, and the Fire and Police Departments. The EIR will determine whether the project would raise specific issues regarding current equipment, preparedness, or practices regarding public safety or fire protection, or would result in increased school enrollment to a degree that would result in significant environmental impacts.

#### **Biological Resources**

A review of the California Natural Diversity Database indicates that the project site and vicinity do not generally provide habitat for special-status plant or animal species, and no substantial, adverse effects are anticipated due to loss or disruption of habitat. However, the development of a tall building on the project site may increase the potential for bird strikes. The EIR analysis will describe materials and design features in the proposed project to assess how and whether the project might affect special status avian species consistent with the Planning Department's recently-adopted *Standards for Bird-safe Buildings*.

#### **Geology, Soils, and Seismicity**

The EIR will summarize the findings of a site-specific preliminary geotechnical investigation and analyze the proposed project related to geology and seismicity. The analysis also will disclose the geotechnical feasibility of the proposed tower, and identify any mitigation measures required to reduce impacts to a less-than-significant level.

#### **Hydrology and Water Quality**

The EIR will describe the City's combined sewer-storm drain system and the regulatory framework for control of water quality. To assess potential construction-related impacts to water quality, the analysis will rely on the geotechnical report for a description of depth to groundwater and the potential need for dewatering during construction. The EIR will describe requirements associated with the recently adopted Stormwater Management, Construction and Phasing Ordinance and evaluate the potential changes in municipal sewage and stormwater runoff associated with project, which are expected to be minimal because the proposed project would not increase the amount of impervious surface on the project site.

#### **Hazards and Hazardous Materials**

The EIR will summarize findings of the Phase I and, if applicable, the Phase II environmental site assessment and environmental database review. This section will describe the types of contaminants that are expected to be encountered on the project site, and discuss the legal requirements, processes for remediation of contaminated sites, and may include any measures that are determined to be warranted.

#### **Mineral and Energy Resources**

The EIR will briefly discuss potential effects related to mineral and energy resources.

#### **Agricultural and Forest Resources**

The EIR will briefly discuss potential effects related to agricultural and forest resources.

### **Cumulative Impacts**

All environmental topic analyses will include cumulative impact analyses that will take into account, as applicable to each topic area, growth projections and transportation forecasts for the larger Market and Octavia Plan area, as well as any pertinent reasonably foreseeable nearby projects.

### **REQUIRED APPROVALS**

The proposed project would require the following approvals:

#### **Planning Department**

- General plan referral for the proposed Oak Street canopy.

#### **Planning Commission**

- Certification of the Final EIR and adoption of CEQA Findings and adoption of a Mitigation Monitoring and Reporting Program.
- Approval of the project under Planning Code Section 309, including possible exceptions with regard to ground-level winds (Section 148) and off-street freight loading spaces (Section 152.1).
- Recommendation of zoning map amendment to change the height/bulk district from 120/400-R-2 to 120/435-R-2.
- Recommendation of general plan amendment to amend map 3 of the Market and Octavia Plan to change the height classification from 120/400-R-2 to 120/435-R-2.
- Determination that project will have no adverse impact on Patricia's Green or other park subject to Section 295.

#### **Zoning Administrator**

- Possible variances for residential open space (Section 135) and dwelling unit exposure (Section 140).

#### **Board of Supervisors**

- Approval of zoning map amendment to change the height/bulk district from 120/400-R-2 to 120/435-R-2.
- Approval of general plan amendment to amend map 3 of the Market and Octavia Plan to change the height classification from 120/400-R-2 to 120/435-R-2.

#### **Recreation and Park Commission**

- Determination that project will have no adverse impact on Patricia's Green or other park subject to Section 295.

#### **Department of Building Inspection**

- Demolition, site, and building permits.

#### **Department of Public Works**

- Approval for changes in or vacations of public rights-of-way and for use of a public street space as a pedestrian plaza.
- Permit for removal and planting of street trees.
- Approval for subdivision map and condominium map applications.



Notice of Preparation of an EIR  
October 10, 2012

Case No. 2009.0159E  
1510 – 1540 Market Street

**Municipal Transportation Agency**

- Approval for public street space to be used as a pedestrian plaza.
- Approval for a yellow commercial loading zone for two freight loading spaces on the north side of Oak Street across from the project site.

**FINDING**

In accordance with CEQA Guidelines Section 15082, this project may have a significant effect on the environment and an Environmental Impact Report is required. As required by the CEQA, the EIR will focus on those effects, identify mitigation measures, and analyze whether the proposed mitigation measures would reduce the environmental effect to a less than significant level. The EIR will also evaluate a range of project alternatives in addition to a No Project alternative that could reduce, avoid or eliminate significant impacts of the proposed project.

**PUBLIC COMMENTS ON THE SCOPE OF THE EIR**

Written comments will be accepted until 5:00 p.m. on November 9, 2012. Written comments should be sent to Bill Wycko, San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, CA 94103 and should reference the proposed project, Case Number 2009.0159E.

If you work for a responsible State agency, we need to know the views of your agency regarding the scope and content of the environmental information that is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency may need to use the EIR when considering a permit or other approval for this project. Please include the name of a contact person in your agency.

October 4, 2012

Date

Bill Wycko

Bill Wycko

Environmental Review Officer



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: The City's commercial paper program

From: "Ababon, Anthony" <anthony.ababon@sfgov.org>  
To: "Rosenfield, Ben" <ben.rosenfield@sfgov.org>, "Howard, Kate" <kate.howard@sfgov.org>, "Elliott, Jason" <jason.elliott@sfgov.org>, "Rose, Harvey" <harvey.rose@sfgov.org>, "Newman, Debra" <debra.newman@sfgov.org>, Board of Supervisors <board.of.supervisors@sfgov.org>, "Calvillo, Angela" <angela.calvillo@sfgov.org>,  
Cc: "Sesay, Nadia" <nadia.sesay@sfgov.org>, "Whittaker, Angela" <angela.whittaker@sfgov.org>, "Brown, Larry" <larry.brown@sfgov.org>, "Forbes, Elaine" <elaine.forbes@sfgov.org>, "Woo, John" <john.woo@sfgov.org>, "Wu, Mei" <mei.wu@sfgov.org>, "Oro, Elmor" <elmor.oro@sfgov.org>, "Cheng, Queenie" <queenie.cheng@sfgov.org>, "LeFranc, Carmen" <carmen.lefranc@sfgov.org>, "Lamont, Tara" <tara.lamont@sfgov.org>, "Murray, Elizabeth" <elizabeth.murray@sfgov.org>, "Yanga, Teresa" <teresa.yanga@sfgov.org>, "Whitley, Gigi" <gigi.whitley@sfgov.org>, "Lopez, Edgar" <edgar.lopez@sfgov.org>, "Magill, Cindy" <cindy.magill@sfgov.org>, "Gee, Oscar" <oscar.gee@sfgov.org>, "Colon, Carlos" <ccolon@sfgov.org>, "Bouhamama, Youcef" <youcef.bouhamama@sfgov.org>, "Sandler, Risa" <risa.sandler@sfgov.org>, "Levenson, Leo" <leo.levenson@sfgov.org>, "Blake, Mark" <mark.blake@sfgov.org>, "Roux, Kenneth" <kenneth.roux@sfgov.org>  
Date: 10/15/2012 09:49 AM  
Subject:

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The City's commercial paper program provides interim financing for project costs in connection with the acquisition, improvement, renovation, and construction of real property and the acquisition of capital equipment and vehicles (Resolution No. 85-09). Pursuant to Resolution No. 85-09, the Board of Supervisors established a \$150,000,000 commercial paper program, and the City currently has letters of credit supporting a \$100,000,000 program.

The attached memorandum briefly summarizes the City's commercial paper program performance from its launch in June 2010 through June 30, 2012. Thank you.

Anthony Ababon  
Controller's Office of Public Finance  
City & County of San Francisco  
(P) 415.554.6902  
(F) 415.554.4864



(E) [Anthony.Ababon@sfgov.org](mailto:Anthony.Ababon@sfgov.org) CCSF CP Update Memo.fnl.10-2012.pdf

40



**CITY AND COUNTY OF SAN FRANCISCO**  
**OFFICE OF THE CONTROLLER**

**Ben Rosenfield**  
**Controller**

**Monique Zmuda**  
**Deputy Controller**

**Nadia Sesay**  
**Director**  
**Office of Public Finance**

**MEMORANDUM**

**TO:** Honorable Members, Board of Supervisors  
**FROM:** Nadia Sesay, Director of Public Finance  
**SUBJECT:** Commercial Paper Status Update  
**DATE:** Monday, October 15, 2012

The purpose of this memorandum is to advise members of the Board of Supervisors as to the status of the City's commercial paper program and to briefly summarize the program performance from its launch in June 2010 through June 30, 2012. The City launched its commercial paper program to pay for project costs in connection with the acquisition, improvement, renovation, and construction of real property and the acquisition of capital equipment and vehicles (Resolution No. 85-09). Pursuant to Resolution No. 85-09, the Board of Supervisors established a \$150,000,000 commercial paper program, and the City currently has letters of credit supporting a \$100,000,000 program. The City has the option to upsize the program from its current size of \$100,000,000 to \$150,000,000, when and as necessary. The last memorandum updating the City's commercial paper program was circulated August 2011.

Through June 30, 2012, the City has issued 21 commercial paper notes totaling \$284,427,000 to provide interim financing for capital projects and capital equipment acquisitions, with each project receiving prior approval from the Board of Supervisors: Moscone Center Improvements, HOPE SF, the War Memorial Veterans Building project, and the Port Facilities Improvement project.

*Projects Summary:*

**Moscone Center Improvement Project:** In adopting Resolution No. 530-08, the Board of Supervisors authorized the issuance of not to exceed \$45,000,000 in City and County of San Francisco certificates of participation to finance the Moscone Center Improvement project. The Board of Supervisors approved the appropriation in Supplemental Appropriations Ordinance No. 06-09. The commercial paper program has provided interim financing of approximately \$33,477,000 for Moscone Center Improvement Project costs, of which approximately \$31,953,000 has been expended.

**HOPE SF:** In adopting Ordinance No. 266-10, the Board of Supervisors authorized the issuance of not to exceed \$38,000,000 in City and County of San Francisco certificates of participation to partially finance the rebuilding of severely distressed public housing sites, while increasing affordable housing and ownership opportunities and improving the quality of life for existing residents and the surrounding communities (the HOPE SF Project). Proceeds pending



the sale of the certificates in the amount of \$24,950,000 were appropriated by the Board in the supplemental appropriations ordinance 267-10. Of \$1,475,000 in commercial paper issued for the HOPE SF project, \$1,352,000 has been expended.

Department of Public Works – Capital Equipment Acquisitions: In adopting the annual appropriations ordinance 190-10, the Board of Supervisors appropriated lease payments for various Department of Public Works capital equipment totaling \$932,252 for various DPW Vehicles, IT Equipment and miscellaneous other capital equipment. The commercial paper program has provided financing of approximately \$843,000 for capital equipment acquisition costs, of which approximately \$666,000 has been expended.

War Memorial Veterans Building Seismic Retrofit: In adopting Ordinance No. 149-11, the Board of Supervisors authorized the issuance of not to exceed \$170,000,000 in City and County of San Francisco certificates of participation to finance the costs of the construction and installation of improvements in connection with the renovation of the War Memorial Veterans Building (WMVB) located at 401 Van Ness Avenue. Proceeds pending the sale of the certificates in the amount of \$15,000,000 were appropriated by the Board in the annual appropriations ordinance 190-10 and \$155,000,000 in supplemental appropriations ordinance file no. 120487. As of August 28, 2012, the commercial paper program has provided financing of approximately \$6,211,000 for various WMVB project costs, of which approximately \$3,453,000 has been expended.

Various Port Commission Projects: In adopting Resolution No. 152-12, the Board of Supervisors authorized the issuance of not to exceed \$45,000,000 in City and County of San Francisco certificates of participation to finance a portion of the costs of the development of the Cruise Terminal Project at Pier 27 and infrastructure and mitigation requirements related to the 34th America's Cup event. Proceeds pending the sale of the certificates in the amount of \$45,000,000 were appropriated by the Board in Ordinance No. 84-12. The commercial paper program has provided financing of approximately \$9,297,000 for related project costs, of which approximately \$1,704,000 has been expended.

Refunded Projects: The commercial paper program also provided interim financing for various street improvement projects and ADA accessibility improvements in the amount of \$16,184,000. In June 2012, the City issued Certificates of Participation Series 2012A that refunded the previously issued commercial paper financing the project and related costs and funded the remaining costs of the project.

*Issuance Summary:*

The table below summarizes the City's commercial paper issuances since its launch. The City has remaining outstanding \$57,569,000 with scheduled maturities on December 5, 2012 and January 14, 2013.

<b>Issuance Date</b>	<b>Rollover Date</b>	<b>Ref Note</b>	<b>CUSIP</b>	<b>Tax Status</b>	<b>Principal</b>	<b>Rate</b>
6/23/2010	9/8/2010	2010-01	79768DAA5	Tax Exempt	\$ 5,035,000	0.30%
9/8/2010	3/8/2011	2010-02	79768DAB3	Tax Exempt	5,345,000	0.32%
2/3/2011	3/8/2011	2011-01	79768DAC1	Tax Exempt	9,011,000	0.29%
3/8/2011	8/8/2011	2011-02	79768DAD9	Tax Exempt	8,963,905	0.31%
3/8/2011	8/8/2011	2011-02	79768DAD9	Tax Exempt	5,272,095	0.31%
3/8/2011	8/8/2011	2011-02	79768DAD9	Tax Exempt	2,283,000	0.31%
6/28/2011	9/26/2011	2011-03	79768GAA8	Taxable	1,000,000	0.22%
8/8/2011	10/5/2011	2011-04	79768DAE7	Tax Exempt	22,541,000	0.13%
9/26/2011	1/12/2012	2011-05	79768GAB6	Taxable	4,001,000	0.29%
10/5/2011	11/2/2011	2011-06	79768DAF4	Tax Exempt	22,550,000	0.10%
10/5/2011	1/9/2012	2011-07	79768DAG2	Tax Exempt	17,000,000	0.14%
11/2/2011	3/8/2012	2011-08	79768DAH4	Tax Exempt	22,444,000	0.17%
1/9/2012	4/3/2012	2012-01	79768DAJ6	Tax Exempt	17,007,000	0.10%
1/9/2012	4/3/2012	2012-02	79768CAB5	Tax Exempt	12,031,000	0.10%
1/12/2012	5/8/2012	2012-03	79768GAC4	Taxable	4,060,000	0.28%
3/8/2012	4/3/2012	2012-04	79768DAK3	Tax Exempt	22,458,000	0.12%
4/3/2012	6/7/2012	2012-05	79768CAC3	Tax Exempt	17,120,000	0.17%
4/3/2012	6/7/2012	2012-05	79768DAM9; AL1	Tax Exempt	39,471,000	0.18%
5/8/2012	8/8/2012	2012-06	79768GAD2	Taxable	4,160,000	0.21%
6/7/2012	9/12/2012	2012-07	79768CAD1	Tax Exempt	10,508,000	0.16%
6/7/2012	9/12/2012	2012-07	79768DAN7	Tax Exempt	29,911,000	0.16%
6/7/2012	8/8/2012	2012-07	79768GAE0	Taxable	2,255,000	0.18%
8/8/2012	10/11/2012	2012-08	79768GAF7	Taxable	13,728,000	0.20%
9/12/2012	12/5/2012	2012-09	79768CAE9	Tax Exempt	13,910,000	0.18%
9/12/2012	12/5/2012	2012-09	79768DAQ0;AP2	Tax Exempt	29,925,000	0.17%
10/11/2012	1/14/2013	2012-10	79768GAG5	Taxable	13,734,000	0.25%

*Utilized and Remaining Capacity:*

The commercial paper program has a remaining capacity of approximately \$25,777,000 out of its current program size of \$100,000,000, after allowing for the current commercial paper outstanding of \$57,569,000, maximum interest at 12%, and maximum annual program fees. Stated differently, \$25,777,000 in commercial paper is available to support the City's ongoing capital programs relying on commercial paper. As noted above pursuant to Resolution No. 85-09, the City has the option to upsize the program from its current size of \$100,000,000 to \$150,000,000, when and as necessary.

*Interest Costs, Capitalized Program Fees and Costs of Issuance:*

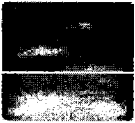
As noted in the table above, interest costs on the tax exempt commercial paper have ranged from 0.10% (85 days) to 0.32% (181 days) with a weighted average of 0.17%. As of October 12, 2012, capitalized interest on the commercial paper totals approximately \$90,000. To compare in June 2012, the City's most recent issuance of long-term certificates of participation with final maturity in 2036 achieved a true interest cost of 3.68%.

In support of the program, capitalized program fees total \$3,367,000, of which \$2,704,000 has been expended for letter of credit fees to U.S. Bank and J.P. Morgan Chase as letter of credit providers, commercial paper dealer fees, monitoring and surveillance credit rating fees, trustee fees and contingencies. Including estimated capitalized program fees and interest costs, the annualized all in costs of the commercial paper program has averaged approximately 1.26%.

The program's final cost of issuance for initial program costs is \$693,000. The costs of issuance account for commercial paper was closed upon approval of final invoices. Cost of issuance includes amounts budgeted for legal fees, rating agency fees, financial advisory, trustee and delivery & paying agent, property and business interruption insurance, title insurance, City fees and contingencies.

Please contact Nadia Sesay at 554-5956 or Anthony Ababon at 554-6902 if you have any questions. Thank you.

cc (via email): Angela Calvillo, Clerk of the Board of Supervisors  
Jason Elliott, Mayor's Director of Legislative & Government Affairs  
Kate Howard, Mayor's Budget Director  
Harvey Rose, Budget Analyst  
Ben Rosenfield, Controller  
Mark Blake, Deputy City Attorney  
Kenneth Roux, Deputy City Attorney



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: TIDA Communications for the next BOS agenda package

From: Asja Steeves/ADMSVC/SFGOV  
To: Angela Calvillo/BOS/SFGOV@SFGOV,  
Cc: Peggy Nevin/BOS/SFGOV@SFGOV  
Date: 10/10/2012 12:15 PM  
Subject: TIDA Communications for the next BOS agenda package

---

Please include the attached in the communications section of your next BOS agenda.



TIDA\_Communications.pdf

Thank you,

Asja Steeves  
Assistant to Mirian Saez, Director of Island Operations  
Treasure Island Development Authority  
One Avenue of the Palms, Building 1, 2nd Floor  
San Francisco, CA 94130  
Phone: 415-274-0300 Fax: 415-274-0299

CITY & COUNTY OF SAN FRANCISCO

TREASURE ISLAND DEVELOPMENT AUTHORITY  
ONE AVENUE OF THE PALMS,  
2<sup>ND</sup> FLOOR, TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0660 FAX (415) 274-0299  
WWW.SFTREASUREISLAND.ORG



MIRIAN SAEZ  
DIRECTOR OF ISLAND OPERATIONS

October 9, 2012

Ms. Angela Calvillo  
Clerk of the Board  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102


Dear Ms. Calvillo,

At its August 8, 2012 meeting, the Treasure Island Development Authority ("TIDA") Board of Directors approved Resolution #12-39-08/08 (attached) establishing an Area Standard Wage for grounds maintenance and landscaping services. In the Resolution, the TIDA Board urges the Board of Supervisors to establish a prevailing wage for grounds maintenance and landscaping under Administrative Code Chapter 6 or Chapter 21.

Please submit this letter and the attached TIDA Board Resolution # 12-39-08/08 as a communication for the Board of Supervisors.

Thank you for your attention to this matter. Should your office have any questions, please do not hesitate to contact me at 415-274-0669.

Sincerely,

  
Mirian Saez  
Director of Island Operations

Cc: file

1 [Establishing an Area Standard Wage.]

2       **Resolution Establishing an Area Standard Wage for Grounds Maintenance and**  
3 **Landscaping in Accordance with the Jobs Equal Opportunity Program attached to the**  
4 **Previously Approved Disposition and Development Agreement and Amended and**  
5 **Restated Base Closure Homeless Assistance Agreement.**

6       WHEREAS, On June 7, 2011, the San Francisco Board of Supervisors approved a  
7 Disposition and Development Agreement ("DDA") by and between Treasure Island  
8 Community Development, LLC ("TICD") and TIDA; and,

9       WHEREAS, The DDA became effective on July 14, 2011; and,

10       WHEREAS, The Jobs and Equal Opportunity Program ("JEOP") is an exhibit to the  
11 DDA; and,

12       WHEREAS, On June 7, 2011, the San Francisco Board of Supervisors approved an  
13 Amended and Restated Base Closure Homeless Assistance Agreement ("TIHDI Agreement");  
14 and,

15       WHEREAS, The JEOP is also an exhibit to the TIHDI Agreement; and,

16       WHEREAS, Section 6.1(a)(vi) of the JEOP requires that for any TIDA service contracts  
17 issued under Section 6.3(a) "Grounds Maintenance and Landscaping" the service provider will  
18 be required to pay area standard wages as determined by TIDA or the prevailing rate of  
19 wages as established by the Board of Supervisors, if any; and,

20       WHEREAS, The Board of Supervisors under Administrative Code Chapter 6 or  
21 Chapter 21 has not established a prevailing rate of wage for grounds maintenance and  
22 landscaping services; and,

23       WHEREAS, The Authority Board of Directors has not previously established an area  
24 standard wage for grounds maintenance and landscaping; and,  
25

WHEREAS, The Authority Board of Directors is obligated to establish an area standard wage in absence of the Board of Supervisors setting a prevailing wage for ground maintenance and landscaping service contracts , in accordance with the requirements of the JEOP; and now, therefore, be it

**RESOLVED, The Authority Board of Directors hereby sets the area standard wage to reflect the greater of either the General Prevailing Wage Determination made by the Director of Industrial Relations, State of California for "Landscape Maintenance Laborer" in the County of San Francisco or the hourly wage required by the City and County of San Francisco's Minimum Compensation Ordinance, described in San Francisco Administrative Code Chapter 12P, or its successor, and the City and County of San Francisco's Health Care Accountability Ordinance, described in San Francisco Administrative Code Chapter 12Q, or its successor, as the area standard wage for purposes of grounds maintenance and landscaping services contracts entered into under Section 6.3(a) of the JEOP; and**

**FURTHER RESOLVED, The Authority Board of Directors urges the Board of Supervisors to establish a prevailing wage for ground maintenance and landscaping service contracts**

## CERTIFICATE OF SECRETARY

**I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on August 8, 2012.**



BDS-11

**Sunshine Business Services**

959 Haight St., #11, San Francisco, CA 94117 (415) 626-2911

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

OCT -9 PM 3:55

Supervisors,

We have been missing you.

We listen at work.

Are you still on KP00?

Will you be doing the meeting  
for Ross Munkkini on  
Radio?

Paul

BOS-11, COB  
CPAGE

MAYOR'S OFFICE OF PROTOCOL  
SAN FRANCISCO



EDWIN M. LEE  
MAYOR  
CHARLOTTE MAILLIARD SHULTZ  
CHIEF OF PROTOCOL

October 9, 2012

The Honorable David Chiu  
President  
San Francisco Board of Supervisors  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2012 OCT - 9 PM 2:12  
PM

Dear President Chiu:

A public memorial for slain U.S. Ambassador to Libya J. Christopher Stevens will be held on Tuesday, October 16 at 4:30 p.m. in the rotunda at San Francisco City Hall. We certainly are aware that this is the day on which the Board meets; however, this is the only day that the rotunda's availability could accommodate the family's schedule.

We in the Office of Protocol have met with Ambassador Stevens' family, and are helping to coordinate the services. The family has developed a memorial program that will feature musical performances and remarks by family and State Department officials.

Ambassador Stevens' family has requested the honor of you and your colleagues' presence at the memorial. I know that it would mean a great deal to them if you were able to attend.

Most sincerely,

A handwritten signature in cursive script that reads "Charlotte Shultz".

Charlotte Mailliard Shultz  
Chief of Protocol

CITY HALL, ROOM 200  
1 DR. CARLTON B. GOODLETT PLACE  
SAN FRANCISCO, CALIFORNIA 94102-4681  
(415) 554-6143  
(415) 554-5255 FAX

RECYCLED PAPER

9

Department of Regulatory  
Affairs

Mailing Address:

505 Parnassus Avenue, Box 0208  
San Francisco, CA 94143-0208

Physical Address:

3330 Geary Boulevard, Suite 100  
San Francisco, CA 94143-1818

Tel: 415.353.8497

Fax: 415.353.8645

University of California  
San Francisco

October 3, 2012

Angela Calvillo  
Clerk of the SF Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, Ca. 94102-4689

**RE: Relocation of the UCSF Medical Center Clinics**

Dear Ms. Calvillo,

UCSF Medical Center is providing notification to the San Francisco Board of Supervisors that six (6) UCSF Medical Center clinics will be relocating/expanding sites of services to a UCSF-owned building located at 1500 Owens Street on the UCSF Mission Bay Campus in San Francisco. Additionally, a new clinic will also be housed at the same location. Details about the specific clinics follow:

1. Pediatrics at Pediatric Specialties: This clinic is currently located at 400 Parnassus Avenue, 2<sup>nd</sup> and 4<sup>th</sup> Floors, SF. The pediatric diabetes component of the specialties practice is relocating from the 4<sup>th</sup> floor to 1500 Owens Street, 3<sup>rd</sup> Floor, SF and will be called UCSF Madison Clinic. There will no longer be pediatric specialties on the 4<sup>th</sup> floor of 400 Parnassus Avenue. Effective date is November 6, 2012.
2. Memory and Aging Center: There are currently two sites (1) Memory & Aging Center located at 350 Parnassus Avenue, 7<sup>th</sup> Floor, SF and (2) Memory & Aging Center located at 400 Parnassus Avenue, Suite A-877, 8<sup>th</sup> Floor, SF. These two clinic sites are consolidating and relocating to 1500 Owens Street, 3<sup>rd</sup> Floor, SF. The name of the clinic will continue as Memory and Aging Center. Effective date is November 6, 2012.
3. Multiple Sclerosis Clinic: This clinic is currently located at 400 Parnassus Avenue, Suite A877, 8<sup>th</sup> Floor, SF. It is relocating to 1500 Owens Street, 3<sup>rd</sup> Floor, SF. The name will remain the same. Effective date is November 6, 2012.
4. Headache Center at Migraine Center: This clinic is currently located at 1701 Divisadero Street, #480, SF. It is relocating to 1500 Owens Street, 3<sup>rd</sup> Floor, SF. The name of the clinic will be Headache Center. Effective date is November 6, 2012.
5. Executive Health Practice: This clinic is currently located at 350 Parnassus Avenue, 1<sup>st</sup> Floor, SF. It will be expanding to a new primary site at 1500 Owens Street, 3<sup>rd</sup> Floor, SF and will continue to use the current location as a secondary site. Effective date is November 6, 2012.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2012 OCT -9 PM 3:55  
PM

**Department of Regulatory  
Affairs**

**Mailing Address:**

505 Parnassus Avenue, Box 0208  
San Francisco, CA 94143-0208

**Physical Address:**

3330 Geary Boulevard, Suite 100  
San Francisco, CA 94143-1818

Tel: 415.353.8497

Fax: 415.353.8645

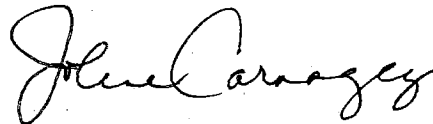
University of California  
San Francisco

6. Orthopedic Institute: This outpatient clinic and ambulatory surgery center is currently located at 1500 Owens Street, 2<sup>nd</sup> Floor, SF. It will be expanding to the 4<sup>th</sup> floor of the same building. Effective date is November 6, 2012.
7. OB GYN: This is a new clinic that will be located at 1500 Owens Street, 3<sup>rd</sup> Floor, SF. Effective date is November 6, 2012.

At your convenience, we would like to request that this notification be distributed to each of the Board of Supervisors.

If you have any questions or need further information, please contact me at (415) 353-1967.

Sincerely,



Jolene G. Carnagey, RN, MS  
Director, Regulatory Affairs  
UCSF Medical Center

Cc: Diana Marana, Manager, SF CDPH District Office



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: Support for Another Case that should come before the Ethics Commission

From: "Golden Gate Park Preservation Alliance" <ggppa@earthlink.net>  
To: <Board.of.Supervisors@sfgov.org>,  
Date: 10/08/2012 02:23 PM  
Subject: Support for Another Case that should come before the Ethics Commission

---

Supervisors,

if the BOS is serious about investigating Ethics, please consider that Rec and Park "Willful failure and Official Misconduct" issues have been forwarded to the Ethics Commission, and nothing has been done about them.

Please review all of the attached documents to understand that this incident is about more than just trying to cover up documents. It is about a City Department's efforts to limit the free speech of residents who were trying to present a program outside of the City's jurisdiction.

Members of Rec and Park, speaking as City officials, tried to cover up e-mails from RPD staff to the Commonwealth Club, discrediting the reputation of the professional panelists and asking the Commonwealth Club to cancel the forum. This effort to abridge free speech is a serious matter, and it should be considered by the Ethics Commission.

I hope that you will mention this in the hearing tomorrow and encourage the Mayor and the Ethics Commission to fulfill their duty in this matter.

Sincerely,  
Katherine Howard  
Golden Gate Park Preservation Alliance.



11049\_Ethics\_Referral\_HJ.pdf



11049\_George Wooding v Recreation and Park Department\_HJ.pdf



Sunshine Complaint 11 - 049.pdf

**SUNSHINE ORDINANCE  
TASK FORCE**



**City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. 415) 554-7854  
TDD/TTY No. (415) 554-5227**

December 5, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

**Re: Sunshine Complaint No. 11049, George Wooding v. Recreation and Parks  
Department  
Notice and Referral for Willful Failure and Official Misconduct**

The Sunshine Ordinance Task Force ("Task Force") hereby provides notification of willful failure and official misconduct findings against Phil Ginsburg and Sarah Ballard of the San Francisco Recreation and Parks Department for failure to comply with the Order of Determination ("Order") issued on August 8, 2011 in Sunshine Complaint No. 11049, George Wooding v. Recreation and Parks Department.

This willful failure and official misconduct finding is noticed for appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.34 whereby the "willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct";
- (2) San Francisco City Charter Section 15.105 (Suspension and Removal); and
- (3) San Francisco City Charter Sections C3.699-11(5) and C3.699-13 (c) and (d).

Additionally, the Task Force hereby refers Mark Buell, President of the Recreation and Parks Commission, and Olive Gong of the Recreation and Parks Department for failure to comply with the Order. These referrals are made pursuant to:

- (1) Sunshine Ordinance Section 67.30(c) whereby "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts";



- (4) (2) San Francisco City Charter Section 15.105 (Suspension and Removal); and
- (5) San Francisco City Charter Sections C3.699-11(5) and C3.699-13 (c) and (d).

## **Background**

George Wooding filed a complaint with the Task Force on June 22, 2011 alleging the Recreation and Parks Department failed to provide records responsive to two document requests, one dated June 3, 2011 and another dated June 10, 2011.

## **Task Force Hearings on Complaint**

On July 26, 2011, the Task Force held a hearing on the complaint. The Task Force found respondents in violation of the Sunshine Ordinance and ordered disclosure of the requested records no later than August 15th. A description of the hearing, violations found, and the Task Force decision are described in the attached Order.

Mr. Wooding subsequently requested respondents review Recreation and Parks Department back up files for the improperly deleted email correspondence. Respondent Olive Gong agreed to accommodate the request, and the matter was continued by the Task Force.

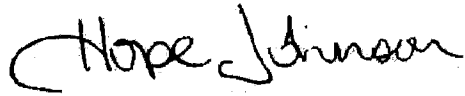
On October 11, 2011, the Task Force's Compliance and Amendments Committee held a hearing to monitor compliance with the Order and agreement to review back up files for responsive records. Ms. Gong had provided Mr. Wooding with nonresponsive department promotional materials she said were discovered in files created by an intern no longer working with the Recreation and Parks Department.

Although the original records request had been submitted four months prior to the Committee hearing, Ms. Gong requested additional time for the technology departments to review back up files. She could not provide a reason the technology departments required additional time.

The Compliance and Amendments Committee referred the matter to the full Task Force regularly scheduled meeting on October 25, 2011 for action on the failure to comply.

On October 21, 2011, two business days before the Task Force was to consider action on the failure to comply with its Order issued on August 8, 2011, respondents finally produced responsive records to Mr. Wooding.

Thank you for your attention to this matter. A copy of the Order is attached. Please contact the Task Force Administrator at [sotf@sfgov.org](mailto:sotf@sfgov.org) or (415) 554-7724 for any additional information

A handwritten signature in black ink that reads "Hope Johnson". The signature is fluid and cursive, with the first name "Hope" and last name "Johnson" clearly legible.

Hope Johnson, Chair  
Sunshine Ordinance Task Force

Encl.

cc: George Wooding, Complainant  
Mark Buell, Respondent  
Phil Ginsburg, Respondent  
Sarah Ballard, Respondent  
Olive Gong, Respondent  
Jerry Threet, Deputy City Attorney

**SUNSHINE ORDINANCE  
TASK FORCE**



**City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. 415) 554-7854  
TDD/TTY No. (415) 554-5227**

**ORDER OF DETERMINATION**

August 8, 2011

**DATE THE DECISION ISSUED**

July 26, 2011

*GEORGE WOODING v RECREATION AND PARKS DEPARTMENT (CASE NO. 11049)*

**FACTS OF THE CASE**

Complainant George Wooding alleges that the Recreation and Park Department ("Rec and Park") violated the Ordinance by failing to provide documents responsive to his two public records requests, one dated June 3, 2011 and the other dated June 10, 2011.

**COMPLAINT FILED**

On June 22, 2011, Mr. Wooding filed a complaint against Rec and Park.

**HEARING ON THE COMPLAINT**

On July 26, 2011, Mr. Wooding presented his case to the Task Force. Olive Gong represented Rec and Park as its Custodian of Records.

Mr. Wooding testified he was a panelist on a May 11, 2011 Commonwealth Club forum about Golden Gate Park. He said he contacted Rec and Park on June 3<sup>rd</sup> and asked for any correspondence related to the forum, including correspondence between Rec and Park employees Sarah Ballard, Phil Ginsburg, Elton Pon, Staci White, Mark Buell, President of the Recreation and Park Commission, and Commonwealth Club representatives. He said Ms. Gong responded on June 8<sup>th</sup> that staff had searched and found no responsive records. He said he contacted Ms. Gong the next day and asked her to clarify her response. He said Ms. Gong emailed him the same day with the same response. If there were none, he said, Ms. Gong should have directed him to other members of the staff who might have the documents. On June 10<sup>th</sup>, he asked Ms. Gong for the names of the staff she had contacted and the process Rec and Park uses to determine the presence or absence of responsive records. Ms. Gong, he said, has not responded to this request.

He said the supporting documents he has provided to the Task Force shows Ms. Ballard, as Rec and Park's Director of Policy and Public Affairs, sent an email from her City email account to Commonwealth Club Member Ross Lawley. On April 20<sup>th</sup>, he said, Ms. Ballard again sent an email from the same account to Commonwealth Club Member Kerry Curtis in

an attempt to discredit the forum's panelists and try to influence the content of the panel discussion. On April 25<sup>th</sup>, he said, Mr. Buell alleged in an email that the forum's panelists were biased. On April 26<sup>th</sup>, an email from a Commonwealth Club member was sent to Mr. Ginsberg's private email account, suggesting that Mr. Ginsburg may have additional information about the May 11<sup>th</sup> forum. Another email was from Susan Hirsch who claimed that the forum's panelists were only representatives of people who oppose change. These five emails, he said, suggest there should be more documents that are not being produced. He asked the Task Force to order Rec and Park to search its email accounts for additional documentation.

Ms. Gong testified she asked staff if they had any documents in response to Mr. Wooding's request and they all came back negative. Those are the only records she has on the subject, she said. Mr. Wooding, she said, was made known of the outcome by email. She said Mr. Wooding's July 19<sup>th</sup> letter to the Task Force claiming that he had copies of emails to support his claim were those that were deleted under Category 4 of Rec and Park's Record Retention and Destruction policy. Category 4 says: "Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law."

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Task Force concluded the emails and documents requested are related to the conduct of the public's business and fall under the definitions outlined in CPRA Section 6252 and, therefore, are not appropriately included under Category 4 of Rec and Park's Record Retention and Destruction policy. The Task Force further concluded that the Sunshine Ordinance supersedes local policy and Rec and Park should have kept the emails and produced them when requested, especially noting Sunshine Ordinance Sec. 67.29-7(a). The Task Force also said the fact that Mr. Wooding could produce the documents suggest that Rec and Park should have told the requestor that copies could be available at the Commonwealth Club.

### **DECISION AND ORDER OF DETERMINATION**

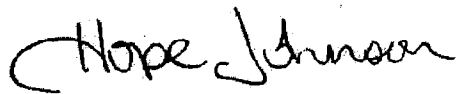
The Task Force finds that Mark Buell of the Recreation and Park Commission and Phil Ginsburg, Sarah Ballard, and Olive Gong of the Recreation and Park Department violated Sunshine Ordinance Sections 67.25 for failure to respond to the Immediate Disclosure Request before the end of the next business day, 67.26 for not keeping withholding to a minimum, 67.27 for failure to justify the withholding of records, and 67.21(c) for not assisting the requestor.

The agency shall release the records requested within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, September 13<sup>th</sup>, at 4 p.m. in Rm. 406 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 26, 2011 by the following vote: (Johnson/Wolfe)

Ayes: Cauthen, Manneh, Washburn, Costa, Wolfe, West, Johnson

Excused: Knee,  
Absent: Snyder, Chan, Knoebber

A handwritten signature in black ink that reads "Hope Johnson". The signature is written in a cursive, flowing style.

Hope Johnson, Chair  
Sunshine Ordinance Task Force

cc: George Wooding, Complainant  
Mark Buell, Respondent  
Phil Ginsburg, Respondent  
Sarah Ballard, Respondent  
Olive Gong, Respondent  
Jerry Threet, Deputy City Attorney

poster #2: May 5, 2011

The Commonwealth Club  
OF CALIFORNIA

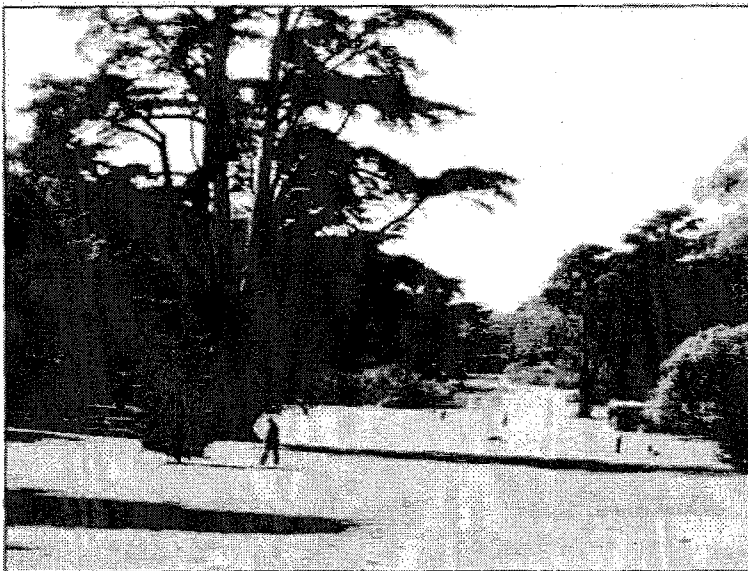
## GOLDEN GATE PARK UNDER SIEGE?

Wednesday, May 11, 2011

Treasured by millions of people from all over the world, Golden Gate Park's meadows, forests, and lakes have served as a refuge from the pressures of urban life for both people and wildlife for over 140 years. Yet throughout its history, the park continues to attract those who view it as free land available for their favorite projects. In addition, with the current short-term budget crises, some view the park as a source of revenue rather than a precious civic asset to be protected.

### JOIN OUR DISTINGUISHED PANEL TO LEARN ABOUT CURRENT CONSTRUCTION PLANS FOR GOLDEN GATE PARK

Jim Chappell, Moderator	Interim Director of San Francisco Beautiful, Past Executive Director of SPUR
Mark Buell	President, San Francisco Recreation and Park Commission
Anthea Hartig	Ph.D., President of Western Office National Trust for Historic Preservation
Katherine Howard	ASLA, Golden Gate Park Preservation Alliance
Mike Lynes	Conservation Director and General Counsel for Environmental Matters, Golden Gate Audubon Society
George Wooding	President, West of Twin Peaks Central Council, Columnist, <i>Westside Observer</i>



San Francisco Club Office  
595 Market Street, SF 94105  
Montgomery Metro Station

Wednesday, May 11, 2011  
6:00 - 6:30 pm Networking Reception  
6:30 - 7:30 pm Program

Tickets: \$20 standard, \$8 members,  
\$7 students (with valid ID)

Pre-Registration is Advised  
Call 415-597-6705 or register online at  
[www.commonwealthclub.org](http://www.commonwealthclub.org)

MLF: Environment and Natural Resources  
Program Coordinator: Ann Clark, Ph.D.

*"Destroy a public building and it can be rebuilt in a year; destroy a city woodland park and all the people living at the time will have passed away before its restoration can be effected."*

—William Hammond Hall, Surveyor  
First Superintendent of Golden Gate Park



The Commonwealth Club  
OF CALIFORNIA

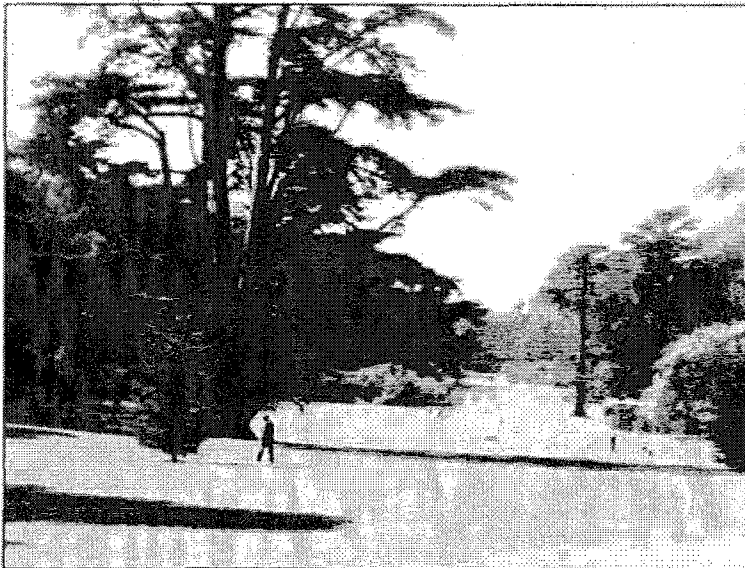
## GOLDEN GATE PARK UNDER SIEGE

Wednesday, May 11, 2011

Treasured by millions of people from all over the world, Golden Gate Park's meadows, forests, and lakes have served as a refuge from the pressures of urban life for both people and wildlife for over 140 years. Yet throughout its history, the park continues to attract those who view it as free land available for their favorite projects. In addition, with the current short-term budget crises, some view the park as a source of revenue rather than a precious civic asset to be protected.

### JOIN OUR DISTINGUISHED PANEL TO LEARN ABOUT CURRENT CONSTRUCTION PLANS FOR GOLDEN GATE PARK

- |                            |   |
|----------------------------|---|
| Jim Chappell,<br>Moderator | Interim Director of San Francisco Beautiful, Past Executive Director of SPUR                        |
| Anthea Hartig              | Ph.D., President of Western Office National Trust for Historic Preservation                         |
| Katherine Howard           | ASLA, Golden Gate Park Preservation Alliance  |
| Mike Lynes                 | Conservation Director and General Counsel for Environmental Matters,<br>Golden Gate Audubon Society |
| George Wooding             | President, West of Twin Peaks Central Council, Columnist, <i>Westside Observer</i>                  |



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—William Hammond Hall, Surveyor  
First Superintendent of Golden Gate Park

the periods prescribed for substantially similar records. Current or storage records may be destroyed five years after they were created if they have served their purpose and are no longer required for any public business or public purpose, and destruction of the record has been approved by the Controller (for records pertaining to financial matters), the City Attorney (for records have legal significance) and the Retirement Board (for payroll checks, time cards and relate documents).

#### **C. STORAGE OF RECORDS**

Records may be stored in the Recreation and Park Department's office space or equipment if the records are in active use or are maintained in the office for convenience or ready reference. Examples of active files appropriately maintained in the Recreation and Park Department's office space or equipment include active chronological files, research and reference files, legislative drafting files, administrative files and personnel files. Inactive records, for which use or reference has diminished sufficiently to permit removal from the Recreation and Park Department's office space or equipment, may be sent to the City's off-site storage facility or maintained in the Department's storage facility.

#### **D. HISTORICAL RECORDS**

Historical records are records which are no longer of use to the Recreation and Park Department but which because of their age or research value may be of historical interest or significance. Historical records may not be destroyed except in accordance with the procedures set forth in Administrative Code section 8.7.

**Category 2: Current Records.** Current records are records which for convenience, ready reference or other reasons are retained in the office space and equipment of the Department. Examples of current records include lease files and personnel files. Current records shall be retained as follows:

- **Where retention period specified by law.** Where federal, state, or local law prescribes a definite period of time for retaining certain records, the Recreation and Park Department will retain the records for the period specified by law. Examples of records required to be maintained for a specific period are Family Medical Leave Act Records and Workers' Compensation Records.
- **Where no retention period specified by law.** Where no specific retention period is specified by law, the department must specify the retention period for those records that the department is required to retain. Records shall be retained for a minimum of two years, although such records may be treated as "storage records" and placed in storage at any time during the applicable retention period. Examples of current records include but are not limited to invoices for purchases of supplies and budget documents.

**Category 3: Storage Records.** Storage records are records that are retained offsite. Storage records are subject to the same retention requirements as current records.

**Category 4: No Retention Required.** Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law. Documents and other materials (including originals and duplicates) that are not otherwise required to be retained, are not necessary to the functioning or continuity of the Department and which have no legal significance may be destroyed when no longer needed. Examples include materials and documents generated for the convenience of the person generating them, draft documents (other than draft of agreements subject to disclosure pursuant to Administrative Code Section 67.24(a)) which have been superseded by subsequent versions, or rendered moot by departmental action, and duplicate copies of records that are no longer needed. Specific examples include calendars, telephone message slips, miscellaneous correspondence not requiring follow-up or departmental action, notepads, e-mails that do not contain information required to be retained under this policy, and chronological files. With limited exceptions, no specific retention requirements are assigned to documents within this category. Instead, it is up to the originator or recipient to determine when the documents business utility has ended.

## **B. RECORDS NOT ADDRESSED IN THE RECORD RETENTION SCHEDULE**

Records and other documents or materials that are not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for

## **RECREATION AND PARK DEPARTMENT**

### **Record Retention and Destruction Policy**

The Recreation and Park Department Record Retention and Destruction Policy is adopted pursuant to Chapter 8 of the San Francisco Administrative Code, which requires each department head to maintain records and create a records retention and destruction schedule.

This policy covers all records and documents, regardless of physical form or characteristics, which have been made or received by the Recreation and Park Department in connection with the transaction of public business.

### **PART I: POLICY AND PROCEDURES**

#### **A. RETENTION POLICY**

The Recreation and Park Department shall retain records for the period of their immediate or current use, unless longer retention is necessary for historical reference, or to comply with contractual or legal requirements, or for other purposes as set forth below. For record retention and destruction purposes, the term "record" is defined as set forth in Section 8.1 of the San Francisco Administrative Code. Documents and other materials that do not constitute "records" under that section, including those described below in Category 4, may be destroyed when no longer needed, unless otherwise specified in Part II. The records of the Recreation and Park Department shall be classified for purposes of retention and destruction as follows:

**Category 1: Permanent Retention.** Records that are permanent or essential shall be retained and preserved indefinitely.

- **Permanent records.** Permanent records are records required by law to be permanently retained and which are ineligible for destruction unless they are microfilmed and special measures are followed. Under Administrative Code Section 8.4, once microfilmed, or may be placed on an optical imagery system, the original paper records may be destroyed. Duplicate copies of permanent records may be destroyed whenever they are no longer necessary for the efficient operation of this Department. An example of permanent records includes but is not limited to official records of commission action.
- **Essential records.** Essential records are records necessary for the continuity of government and the protection of the rights and interests of individuals. Administrative Code Section 8.9. An example of essential records includes, but is not limited to, the Department Employee Handbook.



Edwin M. Lee, Mayor  
Philip A. Ginsburg, General Manager

7/25/2011

Chris Rustom  
Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place  
Room 244  
San Francisco, CA 94102-4689

Re: Complaint #11049 George Wooding v Recreation and Park Department

Dear Mr. Rustom,

This letter is in response to Complaint #11049, filed by George Wooding against the Recreation and Park Department, a copy of which was received by the Department on June 24, 2011.

On June 3, 2011 the Department received Mr. Wooding's request for communications and documents related to the Commonwealth Club Program of May 11, 2011. On June 8, 2011, the Department responded "staff has searched in their records and there are no documents in response to your request dated 6/3/2011" because the emails were not retained.

Mr. Wooding received emails from another source, however, per our Department's Record Retention and Destruction Policy, we do not keep these documents because they fall under Category 4:

**Category 4: No Retention Required.** Documents and other materials that are not "records" as defined by Administrative Code section 8.1 need not be retained unless otherwise specified by local law. Documents and other materials (including originals and duplicates) that are not otherwise required to be retained, are not necessary to the functioning or continuity of the Department and which have no legal significance may be destroyed when no longer needed... With limited exceptions, no specific retention requirements are assigned to documents within this category. Instead, it is up to the originator or recipient to determine when the documents business utility has ended.

If I can be of further assistance to the Task Force, please do not hesitate to contact me.

Sincerely,

Olive Gong  
Custodian of Records, SFRPD

Figure 5:

Susan Hirsch<sup>1</sup> May 3 E-mail to "May 11 Forum" Moderator Jim Chappell

----- Forwarded Message -----

**From:** Susan Hirsch <susan@hirschassociates.com>

**To:** "Chappell Jim@att.net" <Chappell Jim@att.net>

**Sent:** Tue, May 3, 2011 6:34:26 PM

**Subject:** follow up

Hi Jim:

Hope you are doing well.

I wanted to follow up to the phone message I left you regarding the upcoming Commonwealth Club discussion about Golden Gate Park. I am pleased that there is an opportunity to discuss current issues affecting kids and families in San Francisco; I am surprised though, that the panel is only representative of those who oppose change, and the City Fields Beach Chalet renovation. You know better than many from your days at SPUR that change can be complicated and often mis-communicated; it is the responsibility of those who care about an engaged public, to present more than one perspective.

You and I discussed this project years ago; the private sector is contributing far more than \$20 million to provide safe, accessible, and yes, environmentally sound fields for kids all across San Francisco to use. We have a unique public/private partnership with Rec and Park; it's too bad the focus is on something negative, rather than the positive impact.

I look forward to discussing this with you further.

Regards,

Susan

Susan Mayer Hirsch  
Hirsch and Associates, LLC

<sup>1</sup> Ms. Hirsch is Director of the City Fields Foundation and CEO of Hirsch and Associates, LLC, Philanthropic Advisors.



Figure 2:

**RPD Employee Sara Ballard April 20 E-mail to Commonwealth Club Member Kerry Curtis**

>>> On 4/20/2011 at 3:41 PM, in message <OF12823D27.F3EBFF62-ON88257878.007C7627-88257878.007CB8DF@sfgov.org> <Sarah.Ballard@sfgov.org> wrote:

"Thank you, Mr. Curtis. We appreciate it. At least one of the panelists, if not two, speak only for themselves. Their "organizations" do not appear to have member, by-laws or formal meetings, so I am confident the discussion would be heavily skewed.

I look forward to hearing from you,  
Sarah

Sarah Ballard  
Director of Policy and Public Affairs  
San Francisco Recreation and Parks  
McLaren Lodge  
Golden Gate Park  
501 Stanyan Street  
San Francisco, CA 94117

p- 415-831-2740  
f- 415-831-2096  
www.parks.sfgov.org

Figure 3:

**RPD Commission President Mark Buell April 25 E-mail to Commonwealth Club Member Greg Dalton**

-----Original Message-----

From: mbuell@aol.com [mailto:mbuell@aol.com]  
Sent: Monday, April 25, 2011 2:24 PM  
To: Greg Dalton; jim@sfbeautiful.org; phil ginsburg  
Subject: May 11

Greg, I have been informed that the Commonwealth Club is hosting a panel on May 11 entitled "Golden Gate Park under siege"! Claiming that there are plans for privatization and industrial development. I assume these relate to a water plant and providing additional food vendors. I find the title inflammatory, the participants biased and the fact that no one from the Rec and Park department invited hard to understand. As president of the Commission I would like to urge the club to both alter the title of the event to "issues facing the Park" and have the club ask a representative of the Department to be on the Panel. Thanks,  
Mark

Sent via BlackBerry by AT&T

Figure 4:

**Commonwealth Club Member Kerry Curtis April 26 E-mail to RPD Commission President Mark Buell**

RE: May 11

Tuesday, April 26, 2011 12:43 PM

"Kerry Curtis" <kcurtis@ggu.edu>  
mbuell@aol.com, gdalton@commonwealthclub.org, pginsburg@sbcglobal.net,  
jim@sfbeautiful.org  
msitcosk@yahoo.com

Hi Mark,

I hope you can bear with me for a day or so while I get my arms around this a little better. I'll get back to you when I have a more coherent position, and today is pretty busy for me.

Kerry

Kerry Curtis  
Professor Emeritus, Golden Gate University  
Co-Chair, Environmental Forum, Commonwealth Club  
925-998-9800 cell 925-254-0455 home

Figure 1:

RPD Employee Sara Ballard April 20 E-mail to Commonwealth Club Member Ross Lawley

**From:** Sarah.Ballard@sfgov.org [mailto:[Sarah.Ballard@sfgov.org](mailto:Sarah.Ballard@sfgov.org)]  
**Sent:** Wednesday, April 20, 2011 2:40 PM  
**To:** Ross Lawley  
**Subject:** GGP Under Siege

Mr. Lawley,

Thank you for your help yesterday and for suggesting that I connect with Mr. Curtis to discuss the City's concerns with the member-led forum entitled, "Golden Gate Park Under Siege." Could you please forward this to him?

As we discussed, the headline, summary of the talk and the panelists all suggest an overall tone that is more likely to incite an audience than it is to rationally discuss the facts and merits of the Recreation and Park's current direction. We were all deeply surprised to see the Commonwealth Club's name attached to something that was so clearly hyperbolic.

The Recreation and Park Department has faced over \$45 million of budget cuts in the last six years. Instead of continuing to slash services to the public, the Department has attempted to increase our earned revenue streams, which will enable us to continue to serve the people of San Francisco. We have done this through increasing philanthropy, special events and amenities in our parks (such as the ability to rent a bike in one park, ride it to another and leave it there). Our focus has been on site-appropriate park amenities that enhance the user's experience while giving us a dedicated revenue stream, a revenue stream that will help keep our parks clean and our rec centers and pools open.

While we understand that there is a legitimate debate about amenities and special events in parks, we feel this will be near impossible given the current makeup of the forum panel, which includes individuals who have recently resorted to some very personal vitriol directed at both our Commission and our staff.

I write in the hopes that the Commonwealth Club will see that this is a deeply biased panel that has no interest in discussing facts. I am hopeful that you can cancel the panel and perhaps work to put on a more balanced forum that focuses on problem solving. In an era of shrinking resources, it is impossible for the Parks Department to continue to provide the same level of heavily subsidized services to the public without thinking creatively about how to both fund and deliver those services. We are well aware that our current approach is one of many valid approaches and think a conversation about that fact would be much more appropriate.

Again, thank you for your time.

Best,  
Sarah

Sarah Ballard  
Director of Policy and Public Affairs  
San Francisco Recreation and Parks  
McLaren Lodge  
Golden Gate Park  
501 Stanyan Street  
San Francisco, CA 94117

p- 415-831-2740

f- 415-831-2096

[www.parks.sfgov.org](http://www.parks.sfgov.org)

George Wooding  
Dellbrook Avenue  
San Francisco, CA 94131

Phone: (415) [REDACTED] • e-mail: [REDACTED]@bigeds.com

July 19, 2011

Chris Rustom  
Task Force Administrator  
Sunshine Ordinance Task Force  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

Re: SOTF Complaint #11-049 Supplementary Materials

Dear Mr. Rustom,

Enclosed are additional supplementary materials regarding my Sunshine Complaint against the Recreation and Park Department and the Recreation and Park Commission for consideration by the full Task Force when it hears complaint #11-049 on July 26.

Although RPD's Ms. Gong has claimed there were "no responsive records" to my records request, several e-mails have surfaced which suggest evidence otherwise:

- Figure 1 in this document shows RPD's Director of Policy and Public Affairs, Sarah Ballard, wrote to the Commonwealth Club on April 20 from her City e-mail account, the day after placing a phone call to the Commonwealth Club on April 19, claiming that the proposed panelists for the Commonwealth Club's May 11 forum on the Recreation and Park Department were "likely to incite an audience," may have not been able to "rationally discuss" the issues, were "deeply biased," and had "no interest in discussing facts." She requested that the forum be canceled.
- Figure 2 in this document is another April 20 e-mail from Ms. Ballard using her City e-mail account to a second Commonwealth Club member, alleging that some of the proposed panelists did not have member meetings, by-laws or formal meetings, and the panelists would be "heavily skewed."
- Figure 3 shows that Recreation and Park Commission president Mark Buell also alleged on April 25 that the Commonwealth Club's May 11 forum's proposed panelists were "biased." Notably Buell cc'd both Phil Ginsburg, RPD's General Manager (at either Mr. Ginsburg's City e-mail address or personal e-mail address, which is unclear), and also Jim Chappell.
- Figure 4 is a response from the Commonwealth Club's Kerry Curtis in reply to Mr. Buell, and to Mr. Ginsburg, at Ginsburg's private e-mail address.
- Figure 5 is an e-mail from Susan Hirsch, Director of the *City Fields Foundation* and CEO of *Hirsch and Associates, LLC, Philanthropic Advisors*, to forum moderator Jim Chappell claiming the May 11 forum panelists were only representative of people who oppose change. Hirsch's e-mail shows that a "partner" in a public-private partnership may have been attempting to influence the public on behalf of a Department's business.

Given the evidence presented in these five figures, it is unlikely that there are not other e-mails exchanged in RPD's and the City's internal e-mail system, or in personal e-mail accounts, between Mr. Ginsburg, Mr. Buell, Ms. Hirsch, Ms. Ballard, and other RPD or other City employees relating to the Commonwealth Club's forum that should be produced.

Based on the new evidence enclosed that has become available to date showing that RPD and RPC, in fact, had in its possession e-mail records withheld from my records request, I ask that the Sunshine Ordinance Task Force find in my favor, and order the Recreation and Parks Department and the Recreation and Parks Commission to search their records again — including the private e-mails of Mr. Ginsburg, Mr. Buell, and any and all other RPD or City officials, and including the Deputy City Attorney assigned to the Recreation and Parks Department and the Recreation and Parks Commission — and produce any and all communications that I had initially sought to obtain in my initial records request.

Sincerely,

George Wooding

##

From: Sarah Ballard/RPD/SFGOV  
To: Olive Gong/RPD/SFGOV@SFGOV  
Cc: Elton Pon/RPD/SFGOV@SFGOV, Margaret McArthur/RPD/SFGOV@SFGOV, Phil Ginsburg/RPD/SFGOV@SFGOV, Staci White/RPD/SFGOV@SFGOV  
Date: 06/06/2011 12:03 PM  
Subject: Re: Fw: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

I have nothing

Sarah Ballard  
Director of Policy and Public Affairs  
San Francisco Recreation and Parks  
McLaren Lodge  
Golden Gate Park  
501 Stanyan Street  
San Francisco, CA 94117

p- 415-831-2740  
f- 415-831-2096  
www.parks.sfgov.org

From: Olive Gong/RPD/SFGOV  
To: Sarah Ballard/RPD/SFGOV@SFGOV, Phil Ginsburg/RPD/SFGOV@SFGOV, Elton Pon/RPD/SFGOV@SFGOV, Staci White/RPD/SFGOV@SFGOV, Margaret McArthur/RPD/SFGOV@SFGOV  
Date: 06/03/2011 12:41 PM  
Subject: Fw: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Hi Folks,

Do you have any documents responsive to the request below?  
Thanks for your help with this request,  
Olive

— Forwarded by Olive Gong/RPD/SFGOV on 06/03/2011 12:39 PM —

From: George Wooding <[REDACTED]@bigeds.com>  
To: Olive.gong@sfgov.org  
Date: 06/03/2011 12:35 PM  
Subject: Fwd: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Re: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Ms. Gong,

##

From: Staci White/RPD/SFGOV  
To: Olive Gong/RPD/SFGOV@SFGOV  
Date: 06/06/2011 11:35 AM  
Subject: Re: Fw: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Hi Olive,

Neither I nor Phil have any documents responsive to the request below.

Staci

Staci L. White  
Executive Assistant to the General Manager  
Recreation and Park Department  
McLaren Lodge, GGP  
501 Stanyan St., SF CA 94117  
(415) 831-2701 / (415) 831-2096 (Fax)

From: Olive Gong/RPD/SFGOV  
To: Sarah Ballard/RPD/SFGOV@SFGOV, Phil Ginsburg/RPD/SFGOV@SFGOV, Elton Pon/RPD/SFGOV@SFGOV, Staci White/RPD/SFGOV@SFGOV, Margaret McArthur/RPD/SFGOV@SFGOV  
Date: 06/03/2011 12:41 PM  
Subject: Fw: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Hi Folks,

Do you have any documents responsive to the request below?  
Thanks for your help with this request,  
Olive

— Forwarded by Olive Gong/RPD/SFGOV on 06/03/2011 12:39 PM —

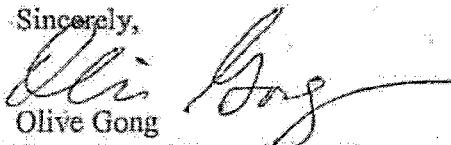
From: George Wooding <[REDACTED]@bigeds.com>  
To: Olive.gong@sfgov.org  
Date: 06/03/2011 12:35 PM  
Subject: Fwd: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

Re: Immediate Disclosure Request: RPD memos on Commonwealth Club program of May 11th, 2011

On June 9, 2011, Department staff responded to Mr. Wooding's request "We do not have any further documents in response to your request dated 6/3/2011 and 6/9/2011". (Exhibit B)

If I can be of further assistance to the Task Force, please do not hesitate to contact me.

Sincerely,

  
Olive Gong  
Custodian of Records, SFRPD



Edwin M. Lee, Mayor  
Philip A. Ginsburg, General Manager

July 19, 2011

Honorable Members  
Sunshine Ordinance Task Force  
c/o Frank Darby, Administrator  
1 Dr. Carlton B. Goodlett Place  
Room 244  
San Francisco, CA 94102-4689

**Re: Complaint #11049 George Wooding v Recreation and Park Department**

Dear Task Force Members:

This letter is in response to Complaint #11049, filed by George Wooding against the Recreation and Park Department, a copy of which was received by the Department on June 24, 2011.

The complaint concerns Mr. Wooding's request for all communications and documents related to the Commonwealth Club Program of May 11th, 2011. The time period requested for documents was April 15th - May 30th, 2011.

On June 8, 2011, Department staff responded to Mr. Wooding's request "Staff has searched in their records and there are no documents in response to your request dated 6/3/2011". (Exhibit A)

On June 9, 2011, Mr. Wooding sent a followup request:

"Identify the staff who searched and what specific documents were reviewed in their search including all electronic communication sources, e-mails, correspondence, reports, proposals, notes, letters, memoranda and other electronic and non-electronic documents pertaining to the Commonwealth Club of California May 11, 2011, program about Golden Gate park (also known as Golden Gate Park Under Siege) in which Mark Buell participated.

My request includes all electronic and non-electronic communications, documents and correspondence sent and received by San Francisco Recreation and Park employees and members of the San Francisco Recreation and Park Commission, including but not limited to Mark Buell, President of the San Francisco Recreation and Parks Commission, Phil Ginsberg, General Manager, San Francisco Recreation and Parks Department and Sarah Ballard, Director of Policy and Public Affairs."

July 5, 2011

**Re: Complaint Regarding Failure to Provide Records**

Page 2

- c. On June 9, I followed up with Ms. Gong (see Enclosure 3), indicating that her response was unclear. I asked her to identify the staff who had searched for documents, and what specific document(s) were reviewed in their search of records. I requested all electronic and non-electronic communications and correspondence. I also asked that if the records were not in her possession that I be directed to the appropriate staff who may have responsive records.
- d. Also on June 9, Ms. Gong responded (see Enclosure 4), saying only that "We do not have any further documents in response" to my June 3 and June 9 records requests. She did not direct me to any other staff members.
- e. On June 10, I submitted a second follow-up request (see Enclosure 5) that I marked as an "immediate request," asking Ms. Gong for the name of all people she had asked, what question(s) had been asked of staff, and the response each person provided to each question asked. I attempted to find out the process RPD used to determine that there were no responsive records. As of today's date, I have received no reply from Ms. Gong to my June 10 e-mail.
- f. I spoke with Olive Gong by phone, and told her there must be some written communications between the RPD and the Commonwealth Club. She verbally told me again that there were no corresponding documents.

I have reason to believe that RPD staff did, in fact, exchange e-mails with Commonwealth Club staff and volunteers prior to the Commonwealth Club's May 11 member-led forum. For over 30 days, RPD has failed to provide the requested records that I believe exist.

**2. Remedies Sought**

Should the Sunshine Ordinance Task Force find that this complaint has merit, I specifically request that the Task Force's Order of Determination be worded to order that:

- a. The Recreation and Parks Department and the Recreation and Parks Commission release any and all e-mails, correspondence or other documents regarding the Commonwealth Club's May 11 panel, to include any e-mails internal to RPD and any e-mails from Mr. Buell's, Mr. Ginsburg's, and other RPD staff member's personal e-mail accounts sent to the Commonwealth Club regarding the May 11 forum.
- b. The RPD provide any and all e-mails and correspondence received from Commonwealth Club staff or volunteers regarding its May 11 forum, whether to RPD or Recreation and Park Commission staff at their City e-mail accounts or addressed to RPD staff's personal e-mail accounts.
- c. The Recreation and Parks Department provide a list of all staff members who were asked by Ms. Gong to search their records for materials responsive to my initial records request.

Sincerely,

George Wooding



George Wooding  
Dellbrook Avenue  
San Francisco, CA 94131

Phone: (415) [REDACTED] • e-mail: [REDACTED]@bigeds.com

July 5, 2011

Chris Rustom  
Task Force Administrator  
Sunshine Ordinance Task Force  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

Re: Complaint Regarding Failure to Provide Records

Dear Mr. Rustom,

Complaint against which Department or Commission:

- Recreation and Parks Department
- Recreation and Parks Commission

Name of individual(s) responsible at Department or Commission

- Philip Ginsburg, Recreation and Parks Department
- Mark Buell, Recreation and Parks Commission
- Sara Ballard, Recreation and Parks Department
- Olive Gong, Recreation and Parks Department

Alleged Violation: ☒ Public Records Access ☐ Public Meeting

Sunshine Ordinance Section(s) §67.24 and/or §67.26

Do you want a public hearing before the Sunshine Ordinance Task Force?

☒ Yes ☐ No

Do you want a pre-hearing conference before the Complaint Committee?

☐ Yes ☒ No

I request confidentiality of my personal information

☒ Yes ☐ No

Please describe alleged violation.

1. Description

As the then-president of the West of Twin Peaks Central Council, I was invited to be a panelist on a Commonwealth Club forum led by its Environment and Natural Resources committee, a member-led group of volunteers. The May 11 panel discussion was titled "Golden Gate Park Under Siege!" and initially was scheduled to have five panelists.

On May 3, the title of the event was changed to "Golden Gate Park Under Siege?" [changing the exclamation point to a question mark] and a fifth panelist — Mark Buell, President of the Recreation and Parks Commission — was added at the last minute.

Clearly, the Recreation and Parks Department must possess some type of correspondence and/or e-mails scheduling Mr. Buell for the Commonwealth Club's panel discussion.

- a. On June 3, I placed an immediate disclosure request for public records with Olive Gong, whom I had previously been instructed to submit public records requests to (see Enclosure 1). Ms. Gong is a 1446 Secretary II at RPD. I specifically asked for any correspondence, e-mails or other documents between April 15 and May 30 pertaining to the May 11 Commonwealth Club program, and specified I was seeking any correspondence between RPD employees Sara Ballard, Phil Ginsburg, Elton Pon, and Staci White and Mr. Buell to or from each other, and/or exchanged with officers, staff, program directors and volunteers of the Commonwealth Club.

I requested any records involving the subject matter of the forum, information or comments on panelists, RPD participation, Rec and Park Commission participation, and all other issues related to the May 11 program.

- b. On June 8, Ms. Gong responded (see Enclosure 2) indicating RPD staff had searched their records and there were no responsive records.

Enclosed in this packet are excerpts from the complaint documents file:

1. July 5, 2011 letter: George Wooding to SOTF<sup>1</sup>, Sunshine Complaint asking for release of documents related to the Commonwealth Club panel program.
2. July 19, 2011 letter: Olive Gong to SOTF - stating that no documents exist on this topic:
  - a. Includes: June 6, 2011 letter: Staci White to Olive Gong - stating that no documents exist from White or Ginsburg
  - b. Includes: June 6, 2011 letter: Sarah Ballard to Olive Gong - stating that she has no documents
3. July 19, 2011 letter: George Wooding to SOTF, Supplementary Materials with Figures 1 - 5, showing that emails do exist and requesting others.
4. July 25, 2011 letter: Olive Gong to SOTF - stating that RPD had destroyed all records pertaining to this case, "... per our Department's Record Retention and Destruction Policy, we do not keep these documents ..."
5. Two Commonwealth Club posters, showing the program before and after RPD exerted their influence.

Sincerely,



Katherine Howard  
Member, Steering Committee

---

<sup>1</sup> SOTF - Sunshine Ordinance Task Force



## Golden Gate Park Preservation Alliance

*"Destroy a public building and it can be rebuilt in a year; destroy a city woodland park and all the people living at the time will have passed away before its restoration can be effected."*

William Hammond Hall, Surveyor  
First Superintendent of Golden Gate Park

July 28, 2011

Re: Commonwealth Club of California Panel Discussion  
George Wooding v. Recreation and Park Department Sunshine Complaint #11 - 049

In March 2011, the Golden Gate Park Preservation Alliance and SF Ocean Edge brought together a panel to discuss the potential impacts of proposed development projects on Golden Gate Park. The Park is beloved by many throughout the Bay Area, and this was our effort to inform the general public in a broader forum than that allowed in government hearings. The Commonwealth Club was chosen due to their commitment to free speech and their willingness to explore a wide variety of issues. (See the enclosed poster describing the program and the panel members.) The Club approved the program, notice went out to the general public, and people started to register for the event.

We were therefore surprised in late April when the panel was modified by the Club, to include a member of the Recreation and Park Commission. The Recreation and Park Commissioners and Recreation and Park Department (RPD) staff have unlimited time to address the public at Commission meetings and in other government venues, and the addition of this person meant that the amount of time that we had in our own forum would be curtailed. However, in the spirit of cooperation, we accepted this addition.

In an effort to learn more about what had caused the change, panelist George Wooding filed a Sunshine Request to RPD asking for any Department communications about the program. The Recreation and Park Department reply denied that there were any documents.

However, according to Mr. Wooding's subsequent Sunshine Complaint, e-mails were provided by other sources. In these communications, City employees, a Recreation and Park Commissioner, and a member of a Recreation and Park public-private partnership, attempted to not only discredit the panel members and to influence the content of the panel discussion but also, in one instance, to have the panel cancelled. The attached documents illustrate the extent that the Department of Recreation and Park went in trying to influence information provided for the public benefit. We applaud the Commonwealth Club for upholding the principles of free speech and proceeding with the panel discussion.

The Sunshine Ordinance Task Force heard this complaint on Tuesday, July 26th, 2011. The decision was unanimous in favor of Mr. Wooding. We will post the full determination on our website as soon as it is available.

The full Commonwealth Club panel discussion can be accessed through website links to Youtube: <http://Home.Earthlink.Net/~Sfoceanedge/Id62.Html>



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: Fleet Week - October 4th - 8th, 2012

From: jonsf725@comcast.net  
To: info@fleetweek.us,  
Cc: mayoredwinlee@sfgov.org, Board.of.Supervisors@sfgov.org  
Date: 10/06/2012 03:08 PM  
Subject: Fleet Week - October 4th - 8th, 2012

---

To whom it may concern,

I would like to say that I am an native San Franciscan and each year I look forward to and enjoy the Fleet Week festivities. Contrary to noise complaints and political implications of Fleet Week, I consider it an important event.

Fleet week is so much more than the air shows and parade of ships. Fleet Week gives me a renewed sense of pride to be an American and is an important reminder of the great sacrifice the magnificent women and men of the Armed Forces have done, so we can continue with our daily civilian lives.

There are San Franciscans that don't see the bigger picture. But know this. I am one of MANY that support Fleet Week and hope your organization will continue this significant San Francisco tradition.

Sincerely,

JR



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: File 120984: NAC Action Alert: San Francisco [ proposed SF city ban on public nudity ]

From: Board of Supervisors/BOS/SFGOV  
To: Board of Supervisors/BOS/SFGOV@SFGOV,  
Date: 10/09/2012 12:04 PM  
Subject: File 120984: NAC Action Alert: San Francisco [ proposed SF city ban on public nudity ]

---

From: savefreedom-owner <savefreedom-owner@yahoogroups.com>  
To: matierandross@sfchronicle.com, ACLUnorCal <executive\_director@aclunc.org>, Gayle Roberts  
sfcenter <gayler@sfcenter.org>, letters@rollingstone.com,  
Cc: sunfreedom76@yahoo.com, SF Pride sfpride <info@sfpride.org>, "SF Supervisor scott.wiener"  
<scott.wiener@sfgov.org>, editor@sfbaytimes.com, mayor edwin lee  
<mayoredwinlee@sfgov.org>, board\_of\_supervisors@ci.sf.ca.us  
Date: 10/07/2012 04:06 PM  
Subject: NAC Action Alert: San Francisco [ proposed SF city ban on public nudity ]

---

>  
>  
> --- On Sun, 10/7/12, Rich Pasco <pasco@bayareanaturists.org>  
> wrote:  
>  
> > From: Rich Pasco <pasco@bayareanaturists.org>  
> > Subject: NAC Action Alert: San Francisco  
> > To: sunfreedom76@yahoo.com  
> > Date: Sunday, October 7, 2012  
> >  
> \*\*\*\*\*  
> >  
> > NATURIST ACTION COMMITTEE  
> >  
> > ACTION ALERT  
> >  
> \*\*\*\*\*  
> >  
> > <http://www.naturistaction.org>  
> >  
> \*\*\*\*\*  
> > Copyright 2012 by the Naturist Action Committee, which  
> is  
> > responsible  
> > for its content.  
> >  
> > Permission is granted for the posting, forwarding or  
> > redistribution  
> > of this message, provided that it is reproduced in its  
> > entirety and  
> > without alteration.  
> >  
> > DATE : October 7, 2012  
> > SUBJECT: San Francisco, California  
> > TO : Naturists and other  
> > concerned citizens  
> >

> > Dear Naturist,  
> >  
> > This is an Action Alert from the Naturist Action  
> Committee.  
> > NAC is  
> > asking for your immediate involvement in an effort to  
> > prevent a  
> > citywide ban on nudity throughout San Francisco.  
> >  
> > ACTION SUMMARY  
> >  
> > 1. Contact the members of the San Francisco Board  
> of  
> > Supervisors  
> > in writing.  
> >  
> > 2. Attend a meeting of the City Operations &  
> > Neighborhood Services  
> > Committee on November 5, 2012 at 10  
> > AM.  
> >  
> > BRIEF HISTORY / BACKGROUND  
> >  
> > The San Francisco Park Code has prohibited nudity in  
> the  
> > city's parks  
> > for many years; however, non-sexual nudity is not  
> prohibited  
> > or  
> > restricted in other areas of the city. Nudity figures  
> > prominently in  
> > several widely known and heavily attended events, such  
> as  
> > the Bay to  
> > Breakers parade, the Folsom Street Fair, the World  
> Naked  
> > Bike Ride and  
> > the Critical Mass bike rides.  
> >  
> > Several years ago, a small group of San Francisco  
> nudists  
> > began to  
> > take regular walks in the city, focused principally in  
> the  
> > city's  
> > famed Castro district. After several attempts at  
> prosecution  
> > resulted  
> > in acquittals by juries, the city abandoned its efforts  
> and  
> > tacitly  
> > acknowledged that non-sexual nudity was legal. In the  
> last  
> > couple  
> > of years, what was initially a small group of nudists  
> has  
> > grown  
> > significantly and has concentrated in the Castro  
> District's  
> > Jane  
> > Warner Plaza, a small pedestrian area with limited

> seating  
> > in the  
> > heart of the Castro.  
> >  
> > As the number of nudists has increased, complaints  
> about the  
> > nudity  
> > have increased as well. In 2011, the Supervisor for  
> the  
> > Castro  
> > District, Scott Wiener, introduced an ordinance  
> requiring  
> > that nude  
> > persons sitting on public chairs or benches place a  
> covering  
> > between  
> > their bodies and the seats and prohibiting nudity in  
> > restaurants and  
> > other food establishments. This ordinance has not  
> diminished  
> > the  
> > number of nudists using the Plaza.  
> >  
> > Allegedly responding to increased complaints about the  
> > nudity in the  
> > Castro, Sup. Wiener on October 2 introduced a proposed  
> > ordinance which  
> > would add a new section to the Police Code prohibiting  
> > nudity in on  
> > public streets, sidewalks, parklets, and plazas, and  
> on  
> > public transit  
> > vehicles, stations, platforms, and stops, except as  
> part of  
> > permitted  
> > parades, fairs, and festivals. Violation of the  
> proposed  
> > ordinance  
> > would carry a fine of \$100 for the first violation and  
> > increased fines  
> > for subsequent violations, but would not be considered  
> a  
> > criminal  
> > offense, which would presumably mean that defendants  
> would  
> > not be  
> > entitled to trial by jury.  
> >  
> > NAC IS ASKING YOU TO TAKE ACTION  
> >  
> > ACTION 1: WRITE TO THE BOARD OF SUPERVISORS  
> >  
> > NAC asks that you write to the members of the San  
> Francisco  
> > Board  
> > of Supervisors (BOS). Send your comments by e-mail or  
> > surface mail.  
> > Those who will be at the meeting on November 5 are  
> also  
> > encouraged to  
> > write.

> >  
> > WHO SHOULD WRITE?  
> >  
> > NAC is requesting ALL NATURISTS and other concerned  
> > individuals to  
> > contact San Francisco supervisors on this important  
> matter,  
> > regardless  
> > of your place of residence. San Francisco understands  
> the  
> > importance  
> > of out-of-town and out-of-state visitors who come to  
> enjoy  
> > the city's  
> > unique atmosphere of diversity and its acceptance of a  
> broad  
> > range  
> > of individuality. The opportunity to experience those  
> > opportunities  
> > applies to those visitors, as well as to San Francisco  
> > residents.  
> > While all are encouraged to make their voices heard,  
> the  
> > participation  
> > of San Francisco residents is, of course, particularly  
> > important.  
> >  
> > Send a letter, a fax or an e-mail. Phone calls may be  
> less  
> > effective  
> > in this specific context, but if that's your best  
> option,  
> > make that  
> > call!  
> >  
> > WRITE AND SEND YOUR LETTERS / FAXES / EMAILS NOW!  
> >  
> > San Francisco Board of Supervisors:  
> > Paper mail address is the same for each Supervisor  
> >  
> > City and County of San Francisco  
> > 1 Dr. Carlton B. Goodlett Place  
> > San Francisco, CA 94102-4689  
> >  
> > Dist. 1 Eric Mar  
> > Eric.L.Mar@sfgov.org  
> > TEL (415) 554-7410 FAX (415) 554-7415  
> >  
> > Dist. 2 Mark Farrell Mark.Farrell@sfgov.org  
> > TEL (415) 554-7752 FAX (415) 554-7843  
> >  
> > Dist. 3 David Chiu  
> > David.Chiu@sfgov.org  
> > TEL (415) 554-7450 FAX (415) 554-7454  
> >  
> > Dist. 4 Carmen Chu  
> > Carmen.Chu@sfgov.org  
> > TEL (415) 554-7460 FAX (415) 554-7432  
> >  
> > Dist. 5 Christina Olague Christina.Olague@sfgov.org  
> > TEL (415) 554-7630 FAX (415) 554-7634



> >  
> > Dist. 6 Jane Kim  
> > Jane.Kim@sfgov.org  
> > TEL (415) 554-7970 FAX (415) 554-7974  
> >  
> > Dist. 7 Sean Elsbernd Sean.Elsbernd@sfgov.org  
> > TEL (415) 554-6516 FAX (415) 554-6546  
> >  
> > Dist. 8 Scott Wiener Scott.Wiener@sfgov.org  
> > TEL (415) 554-6968 FAX (415) 554-6909  
> >  
> > Dist. 9 David Campos David.Campos@sfgov.org  
> > TEL (415) 554-5144 FAX (415) 554-6255  
> >  
> > Dist. 10 Malia Cohen Malia.Cohen@sfgov.org  
> > TEL (415) 554-7670 FAX (415) 554-7674  
> >  
> > Dist. 11 John Avalos John.Avalos@sfgov.org  
> > TEL (415) 554-6975 FAX (415) 554-6979  
> >  
> > NAC encourages you to send copies of your faxes and  
> paper  
> > mail to:  
> > NAC, PO Box 132, Oshkosh, WI 54903.  
> >  
> > Send copies of your e-mails to: SF@naturistaction.org  
> >  
> > NOTES:  
> >  
> > 1. Supervisor Wiener is the author of the proposed  
> > anti-nudity  
> > ordinance.  
> >  
> > 2. Supervisors Chu, Olaque and Elsbernd are members of  
> the  
> > committee  
> > that will hear the proposed ordinance on  
> > November 5.  
> >  
> > 3. All supervisor positions in ODD-NUMBERED districts  
> are up  
> > for  
> > election in the polling scheduled for  
> > November 6, 2012. Incumbent  
> > supervisors will serve through the end of  
> > the year.  
> >  
> > 4. Supervisor Elsbernd is term limited and is not  
> eligible  
> > to run in  
> > the upcoming election.  
> >  
> > WHAT SHOULD YOU SAY?  
> >  
> > a) Be polite.  
> >  
> > b) Be known. Give your name and address.  
> > If you are a San  
> > Francisco resident, a California  
> > resident or a frequent visitor  
> > to San Francisco, be sure to point that

> > out. Anonymous letters  
> > have very little impact.  
> >  
> > c) Be focused. Keep your correspondence  
> > brief and on target.  
> >  
> > d) Be positive. Remember that we're trying  
> > to ENCOURAGE the  
> > Supervisors to respond positively to  
> > our concerns in this  
> > matter. Please do not take a scolding  
> > tone. By all means,  
> > be vigorous in the presentation of your  
> > ideas. For example,  
> > if you are among those who are  
> > disappointed that Supervisor  
> > Wiener has chosen to use dated  
> > pejoratives like "nudist  
> > colony" in his public comments, then  
> > you should say so.  
> > Regardless, you must not allow your  
> > correspondence to become a  
> > personal character assassination or an  
> > ad hominem attack.  
> >  
> > e) Be clear. Say that you SUPPORT  
> > diversity in San Francisco, and  
> > that regular clothing-optional public  
> > activities are an  
> > important part of that diversity.  
> >  
> > f) Be sure to make a request that your  
> > correspondence (letter,  
> > fax, e-mail) be included in the  
> > permanent public record of the  
> > San Francisco Board of Supervisors.  
> >  
> > IMPORTANT! OPINION SURVEY DATA  
> >  
> > Supervisor Wiener and others have suggested that the  
> > majority of San  
> > Franciscans are offended by non-sexual nudity. That's  
> > not  
> > true.  
> >  
> > In late 2009, the Naturist Education Foundation (NEF)  
> > commissioned  
> > a reputable polling organization, Zogby International,  
> > to  
> > conduct a  
> > statistically valid opinion survey of adult California  
> > residents. NEF  
> > asked for fairly tight geographical sampling within  
> > the  
> > state. The  
> > result is that we know what San Franciscans think  
> > about  
> > nudity.  
> >  
> > Zogby tells us that the statewide margin of error for  
> > any

> > question is  
> > +/-3.4 percentage points. Margins of error are higher  
> for  
> > geographical  
> > subgroups.  
> >  
> > Question number 5 in the 2009 NEF California Poll was:  
> > "Do you agree or disagree that you are personally  
> offended  
> > by the  
> > non-sexual nudity of others?"  
> >  
> > Here are the survey responses for SAN FRANCISCO  
> >  
> > Strongly agree 16.4%  
> > Somewhat agree 18.3%  
> > Somewhat disagree 17.0%  
> > Strongly disagree 46.1%  
> > Not sure  
> > 2.2%  
> >  
> > The numbers speak for themselves. Combining "somewhat"  
> and  
> > "strongly,"  
> > MORE THAN SIXTY-THREE PERCENT of San Francisco  
> residents say  
> > they are  
> > NOT personally offended by the non-sexual nudity of  
> others.  
> >  
> > View the statewide 2009 NEF California Poll:  
> > <http://www.naturisteducation.org/nef.ca.poll.2009/>  
> >  
> > Additional talking / writing points:  
> >  
> > 1) The author of the proposed ordinance  
> > makes a point of allowing  
> > nudity for certain events. It's  
> > clear from that context that  
> > nudity itself is not universally  
> > offensive. At the same time,  
> > personal freedoms are daily liberties.  
> > They are not things to  
> > be kept in a closet and trotted out  
> > only for special events.  
> >  
> > 2) Uncertainty about the legal status of  
> > public nudity deters  
> > attendance at major events and other,  
> > less widely known and  
> > attended events, creating a potentially  
> > significant loss of  
> > tourist revenues.  
> >  
> > 3) San Francisco's reputation for  
> > progressive ideas serve as a  
> > model to which other cities aspire,  
> > That model would be  
> > irreparably tarnished if San Francisco  
> > were to be just like  
> > any other city.

> >  
> > 4) The proposed ordinance ignores the  
> > opinion of a majority of  
> > the residents of San Francisco, as  
> > shown by the NEF-California  
> > Poll. (See discussion above.)  
> >  
> > 5) Officials have sometimes pointed to  
> > lewd behavior as a reason  
> > for prohibiting nudity. In doing  
> > so, they have confused simple  
> > nudity with lewd behavior. Police  
> > presently have the authority  
> > and responsibility to stop lewd  
> > activity, and naturists  
> > encourage them to exercise that  
> > responsibility appropriately.  
> >  
> > These suggestions are specifically for residents of  
> San  
> > Francisco:  
> >  
> > 6) The controversy over nudity at Jane  
> > Warner Plaza is local, not  
> > citywide. It does not require a drastic  
> > citywide solution which  
> > is out of proportion to the extent of  
> > the controversy.  
> >  
> > 7) Legislation should be designed to  
> > efficiently solve a specific  
> > problem, without creating potentially  
> > significant unpredictable  
> > side effects.  
> >  
> > 8) The proposed ordinance, by restricting  
> > the personal liberties  
> > which make San Francisco unique, would  
> > diminish rather than  
> > improve quality of life in the city.  
> >  
> > 9) Any ordinance restricting public nudity  
> > should ensure that the  
> > right of free speech and expression  
> > protected by the First  
> > Amendment to the Constitution is not in  
> > any way abridged.  
> > Limiting public nudity to permitted  
> > events would chill this  
> > right.  
> >  
> > ACTION 2: ATTEND THE COMMITTEE MEETING ON NOVEMBER 5  
> >  
> > If you're in the San Francisco area, or can be there  
> on  
> > November 5,  
> > NAC requests that you attend a public meeting of the  
> City  
> > Operations  
> > & Neighborhood Services Committee that is scheduled  
> to

> > be held on  
> > Monday, November 5, 2012.  
> >  
> > City Operations & Neighborhood Services  
> > Committee  
> > 1 Dr. Carlton B. Goodlett Place, Room 244  
> > San Francisco, CA 94102-4689  
> > Monday, November 5 - 10:00 AM  
> >  
> > If you're planning to attend the meeting, please  
> contact:  
> >  
> > NAC board member Charles Harris  
> > carlopianoforte@gmail.com  
> > (415) 492-1455  
> >  
> > or NAC executive director Bob Morton  
> > execdir@naturistaction.org  
> > (512) 282-6621  
> >  
> > WHAT IS NAC DOING?  
> >  
> > The Naturist Action Committee has been working on this  
> > matter with  
> > individual local residents of San Francisco, and  
> > especially  
> > in the  
> > Castro district, where much of the focus has been. NAC  
> > has  
> > been  
> > involved since before the time Supervisor Wiener  
> > introduced  
> > his  
> > proposed ordinance.  
> >  
> > NAC personnel have ridden in the San Francisco  
> > installment  
> > of the  
> > World Naked Bike Ride. NAC participated in the Nude-In  
> > on  
> > September  
> > 22, and along with Supervisor Wiener, NAC director  
> > Charles  
> > Harris was  
> > one of 27 people who attended the Castro/Eureka Valley  
> > Neighborhood  
> > Association meeting on September 26 to discuss the  
> > nudity  
> > issue.  
> > NAC alerted local naturists to that meeting and is  
> > working  
> > with Gay  
> > Naturists International to improve local awareness.  
> >  
> > MORE INFORMATION AND RESOURCES  
> >  
> > Additional information and links are available, along  
> > with  
> > this NAC  
> > Action Alert on the web site of the Naturist Action  
> > Committee.

> >  
> > <http://www.naturistaction.org>  
> >  
> > Select "Alerts" and find this NAC Action Alert under  
> Current  
> > Alerts.  
> >  
> > PLEASE HELP NAC TO CONTINUE HELPING NATURISTS!  
> >  
> > The Naturist Action Committee is the volunteer  
> nonprofit  
> > political  
> > adjunct to The Naturist Society. NAC exists to advance  
> and  
> > protect the  
> > rights and interests of naturists throughout North  
> > America. Fighting  
> > for clothing-optional freedoms in public places is  
> > expensive. To do  
> > its job, NAC relies entirely on the voluntary  
> generosity of  
> > supporters  
> > like you.  
> >  
> > After you've contacted the Supervisors and made your  
> plans  
> > to attend  
> > the Committee meeting on November 5, please take a  
> moment to  
> > send a  
> > donation to:  
> >  
> > NAC  
> > PO Box 132  
> > Oshkosh, WI 54903  
> >  
> > Or call toll free (800) 886-7230 to donate by phone  
> using  
> > your  
> > MasterCard, Visa or Discover Card. Or use your credit  
> card  
> > to make a  
> > convenient online donation:  
> [www.naturistaction.org/donate/](http://www.naturistaction.org/donate/)  
> >  
> > Thank you for choosing to make a difference!  
> >  
> > Naturally,  
> >  
> > Charles Harris  
> > Director  
> > Naturist Action Committee  
> >  
> >  
> -----  
> > Naturist Action Committee (NAC) - PO Box 132, Oshkosh,  
> WI  
> > 54903  
> > Executive Dir. Bob Morton -  
> > [execdir@naturistaction.org](mailto:execdir@naturistaction.org)  
> > Board Member Charles Harris - [carlopianoforte@gmail.com](mailto:carlopianoforte@gmail.com)

> > Board Member Allen Baylis -  
> > rab@baylislaw.com  
> > Online Rep. Dennis Kirkpatrick - naturist@sunclad.com  
> >  
> -----  
> >  
> >  
> >  
>



To: Malia Cohen/BOS/SFGOV, Victor Young/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120904: BOS Agenda Item 10 - Real Property Lease - 2650 Bayshore concerns

From: RMorine@aol.com  
To: John.Avalos@sfgov.org, David.Campos@sfgov.org, David.Chiu@sfgov.org,  
Carmen.Chu@sfgov.org, Sean.Elsbernd@sfgov.org, Mark.Farrell@sfgov.org,  
Jane.Kim@sfgov.org, Eric.L.Mar@sfgov.org, Christina.Olague@sfgov.org,  
Scott.Wiener@sfgov.org,  
Cc: Board.of.Supervisors@sfgov.org, mayoredwinlee@sfgov.org  
Date: 10/15/2012 12:35 AM  
Subject: BOS Agenda Item 10 - Real Property Lease - 2650 Bayshore concerns

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#### Supervisors

**Item 10. 120904 - Real Property Lease - 2650 Bayshore Boulevard - Towed Car Operations and Other Transit Related Uses** is schedule be heard at the Regular meeting of the Board of Supervisors on October 16, 2012. This lease would allow the MTA to move a needed, but arguably undesirable land use to a site that borders **Visitacion Valley**. Few, if any questions related to the impacts of this relocation were discussed when it was heard in the Budget and Finance Committee. The MTA stated their need to secure this particular location, but they did not provide adequate background information as to how they planned to integrate this intensive land use into an established neighborhood. Had MTA selected a site within San Francisco, I am certain that they would have provided the affected community some level of targeted outreach and responded to community feedback. I understand that the terms of the lease is the item under question. However, please query the MTA to your satisfaction regarding their commitment to ensure that one community does not endure years of undesirable land usage simple to facilitate their "Master Plan". Below are a few questions that my community would like to have addressed by the MTA:

**If the relocation occurs then it would be fair to say that while one community greatly benefits another community adds to its list of undesirable land usages. How does this fit San Francisco's environmental justice and sustainability goal?**

**Is the tow operation 24/7? How many tow trucks are currently deployed daily from Pier 70? How often do they return and then leave again during a typical shift? How will this effect traffic on Bayshore Blvd?**

**The tow yard has weekly public vehicle auctions. How many bidders routinely show up for these events? Will there be on-site parking? Will the vehicle sales tax go to Daly City? How many employees work on site (not driving tow trucks)?**

**Will vehicles be stored outdoors (it appears that hundreds are currently stored outdoors at Pier 70.)?**

**This relocation will move jobs out of San Francisco. How does this fit into the Mayor's efforts to keep/bring jobs to San Francisco?**

**Will there be expanded employment opportunities for residents of Visitacion Valley?**

**How much in sales/business taxes will San Francisco lose (to Daly City's gain)?**

**Who will regulate / respond to site specific complaints? For example, if tow back up alarms are heard at midnight, do residents call the MTA or Daly City police?**



**Thank you for your consideration.**

Russel Morine

Little Hollywood/Visitation Valley resident

64 Gillette Ave



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: Stop the demolition of a national eligible masterplanned community.

From: D Lindenbaum <mail@change.org>  
To: board.of.supervisors@sfgov.org,  
Date: 10/13/2012 06:09 PM  
Subject: Stop the demolition of a national eligible masterplanned community.

---

Greetings,

Please help to prevent the unnecessary destruction of housing, and a landscape designed by a master-class

landscape architect Thomas Dolliver Church. Help advocate for better infrastructural changes along 19th

Avenue and proper direct regional connection to transit hubs to reduce traffic and congestion that flows

along this arterial corridor from the north bay to silicon valley. Demand better housing to be built that

provides dense development that does not destroy the open-space that is critical in urban areas for

families. Require that alternatives that focus on "INFILL" and a more balanced development layout

that spreads the density into more than one neighborhood disproportionately. Ensure that the

ecological impacts, and carbon footprint of the development proposal is independently reviewed

and adequately assessed. Ensure that there will be housing that is affordable and meant to increase

the level of affordability and quality of housing constructed in urban areas and suburbs nationwide by

stopping the predatory equity lending that occurs in such large scale redevelopment projects and helps

refocus our building strategies towards re-engineering the suburban scale of sprawl outside our urban cores.

Thank you for your support and interest in housing, jobs, and the environment.

Sincerely

Aaron Goodman

All historic buildings should be preserved for future generations.

D Lindenbaum  
Ottawa, Illinois

Note: this email was sent as part of a petition started on Change.org, viewable at

<http://www.change.org/petitions/protect-and-preserve-parkmerced-as-essential-housing-from-un-sustainable-demolition>.

To respond, [click here](#)



The argument that ultimately it is the Board of Supervisors' decision ...

susan vaughan

to:

Eric Mar, mark farrell, david chiu, carmen chu, Christina Olague, jane kim, sean elsbernd, scott wiener, david campos, malia cohen, john avalos

10/09/2012 04:20 PM

Cc:

Angela Calvillo, Nickolas Pagoulatos, "catherine.rauschuber@sfgov.org", "andres.power@sfgov.org", Judson True

Hide Details

From: susan vaughan <susan\_e\_vaughan@yahoo.com> Sort List...

To: Eric Mar <Eric.L.Mar@sfgov.org>, mark farrell <mark.farrell@sfgov.org>, david chiu <david.chiu@sfgov.org>, carmen chu <carmen.chu@sfgov.org>, Christina Olague <christina.olague@sfgov.org>, jane kim <jane.kim@sfgov.org>, sean elsbernd <sean.elsbernd@sfgov.org>, scott wiener <scott.wiener@sfgov.org>, david campos <david.campos@sfgov.org>, malia cohen <malia.cohen@sfgov.org>, john avalos <john.avalos@sfgov.org>,

Cc: Angela Calvillo <board.of.supervisors@sfgov.org>, Nickolas Pagoulatos

<Nickolas.Pagoulatos@sfgov.org>, "catherine.rauschuber@sfgov.org"

<catherine.rauschuber@sfgov.org>, "andres.power@sfgov.org" <andres.power@sfgov.org>, Judson True <judson.true@sfgov.org>

Please respond to susan vaughan <susan\_e\_vaughan@yahoo.com>

... whether or not to uphold the suspension and remove the sheriff from office neglects that fact that is was the mayor who suspended the sheriff and initiated the proceedings against him in the first place. Those are not powers that the Board of Supervisors has to my knowledge. Ross Mirkarimi may not be our favorite local politician, to say the least, but on principle restoring him to his job and letting the voters decide his fate is the right thing to do. Even the Ethics Commission more or less ducked the matter.

Sue Vaughan



**To:** BOS Constituent Mail Distribution,  
**Cc:**  
**Bcc:**  
**Subject:** mirkarimi

**From:** "Didi Boring" <didibird@sbcglobal.net>  
**To:** "san francisco board of supervisors" <board.of.supervisors@sfgov.org>,  
**Date:** 10/09/2012 05:20 PM  
**Subject:** mirkarimi

---

**Do not allow him to serve as sheriff. San Franciscans should not have to endure any more insults because of the conduct of our elected officials. How can a sheriff lead an inmate and custodian population when he cannot even conduct himself in a gentlemanly manner. We need to have elected officials who are above reproach in their conduct.**



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: Sheriff Ross Mirkarimi

From: s b <dawgluvr1@sbcglobal.net>  
To: "Board.of.Supervisors@sfgov.org" <Board.of.Supervisors@sfgov.org>,  
Date: 10/09/2012 10:20 PM  
Subject: Sheriff Ross Mirkarimi

---

I like to send an email to the board of supervisors about Sheriff Mirkarimi.

PLEASE DO NOT LET HIM GO LET HIM STAY BECAUSE I THINK YOU NEED TO

UNDERSTAND THAT THIS IS A PRIVATE MATTER BETWEEN HUSBAND AND WIFE AND

I THINK THAT YOU ALL ARE TAKING THIS WAY OUT OF PROPORTION AND I THINK

THE SHERIFF AND HIS WIFE HAS HAD ENOUGH ABUSE BY YOU GUYS...

THINK ABOUT THE CRAP YOU ARE PUTTING THEM THROUGH AND THEIR LITTLE BOY...

DO NOT LET THIS MAN GO

YOU ARE TAKING SOMETHING OUT OF CONTROL SF BOARD OF SUPERVISORS

I THINK THE SHERIFF KNOWS BY NOW NOT TO DO WHAT HE DID IF HE DID IT...

YOU KNOW DO YOU KNOW IF SOMEONE HAS A MEDICAL CONDITION WHERE BRUISES

DO APPEAR IF TOUCHED? YOU NEVER THOUGHT ABOUT THAT PART DID YOU

THINK ABOUT THAT...WHAT IS A BRUISE CAN BE BRUISED BY TOUCHING THEM

THERE IS A SKIN DISEASE WHERE YOU CAN BRUISE EASY IF SLIGHT TOUCHED

SHARON IN SANTA ROSA CA



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: Sheriff Ross Mirkarimi

From: s b <dawgluvr1@sbcglobal.net>  
To: "Board.of.Supervisors@sfgov.org" <Board.of.Supervisors@sfgov.org>,  
Date: 10/09/2012 10:25 PM  
Subject: Sheriff Ross Mirkarimi

---

THIS IS WHERE I SAW THE ARTICLE ABOUT THE SHERIFF

<http://news.yahoo.com/calif-board-vote-suspended-sheriffs-fate-071830645.html>

SHARON IN SANTA ROSA CA



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: Mukarimi vote -

From: Steve Messer <smesser@interorealestate.com>  
To: "Board.of.Supervisors@sfgov.org" <Board.of.Supervisors@sfgov.org>,  
Date: 10/09/2012 11:13 PM  
Subject: Mukarimi vote -

---

I am absolutely appalled that Mr. Ross Mukarimi who was convicted of domestic violence is remaining as the "Sheriff" of SF. He has made a mockery of the office and the city.

San Francisco is looked to as a leader for the State of California. Tonight in a failure of law, and of women, the city's government confirmed that is okay for men to abuse women in the City of San Francisco with the "Sheriff" leading the way. Complete failure. I sincerely hope those who voted in favor of a convicted woman batterer being the Sheriff are voted out of office at the earliest opportunity.

I applaud Mayor Lee in his efforts to do the right thing.

Steve Messer





To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: Mirkarimi vote

From: FogtownSF1@aol.com  
To: Board.of.Supervisors@sfgov.org,  
Cc: sean@seanelsbernd.com  
Date: 10/10/2012 08:34 AM  
Subject: Mirkarimi vote

---

*Ross Mirkarimi should have been held responsible for his actions.*

*Supervisors Christina Olague, David Campos, John Avalos and Jan Kim  
have sent the wrong message about domestic violence in San Francisco.*

Susan Wilpitz  
District 7



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: reinstating Ross Mirkarimi

From: Donna Sharee <dsharee@earthlink.net>  
To: board.of.supervisors@sfgov.org,  
Date: 10/10/2012 12:17 PM  
Subject: reinstating Ross Mirkarimi

---

Dear Board of Supervisors,

I want to thank Supervisors John Avalos, Eric Mar, Jane Kim and Christina Olague for voting to reinstate Ross Mirkarimi. I am so proud of you for doing the brave, difficult but ultimately right thing. I am

sure that you will get a lot of flak for it—here is some profound praise!

Although I do not condone what Ross Mirkarimi did I agree with you that his behavior was not enough to

warrant official misconduct. I believe although Mirkarimi may be a flawed human being, aren't we all? The

ordeal that Ross and his family endured was horrific, dare I say the whole city endured. I think most people

know that Ross is brilliant, talented and dedicated but I believe he will prove himself to be a great Sheriff, as well.

With deep appreciation,

Donna Sharee

459 Naples Street  
San Francisco, CA 94112  
District 11



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: You should be ashamed of yourselves.

From: Paul Nisbett <pnisbett@hotmail.com>  
To: "board.of.supervisors@sfgov.org" <board.of.supervisors@sfgov.org>,  
Cc: ed lee <mayoredwinlee@sfgov.org>  
Date: 10/10/2012 01:04 PM  
Subject: You should be ashamed of yourselves.

---

Board of Supervisors;

You should collectively be ashamed of yourselves.

By voting against the Ethics Commission's recommendations, you are saying that ethics have no place in San Francisco government or its Sheriff's department.

If Ross Mirkarimi had a shred of integrity, he would have resigned from the Sheriff's department 9 months ago

rather than dragging it through the mud with his personal problems.

I actually feel bad for the cops that are trying to do a good job and that have to now report to this sleazebag.

Good luck convincing the general public that the Anarchists don't have a valid point about government corruption.

-Paul Nisbett



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: Ross

From: Roger Kat <rager4@sbcglobal.net>  
To: SF Board of Supervisors <Board.of.Supervisors@sfgov.org>,  
Date: 10/10/2012 01:48 PM  
Subject: Ross

---

Reinstate him,  
please.

Regards Roger



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: Sheriff Mirkarimi

From: Sharon Garner <sharonstrawhandgarner@yahoo.com>  
To: "Board.of.Supervisors@sfgov.org" <Board.of.Supervisors@sfgov.org>,  
Date: 10/10/2012 02:58 PM  
Subject: Sheriff Mirkarimi

---

Let's see. It's okay to bruise your spouse and be rewarded with one of the most powerful law enforcement jobs in the most beautiful

city in the world? Got it. Now, how about a scratch? You know, nothing bad, just a scratch worthy of a BandAid. Is that okay? All right. Good to know. What about a little twist of the arm? Is that okay? You know, not bad enough to break it but maybe it will be sore for a day or two. Oh, I know. What about a slap? No broken teeth or nose. Just a welt. So is that okay too? Let's get

it straight now because when law enforcement arrests future domestic

abuse violators in San Francisco, we must know whether or not they

have violated the laws against such behavior. *Certainly behavior that applies to Sheriff Mirkarimi applies to all; right?* I just want to know how far we are allowed to go when disciplining our significant others. I once worked with a woman whose husband poked

her in the chest with his forefinger when engaged in arguments with her. She showed me her chest once and it was loaded with bruises in various stages of healing. She'd called authorities and they scolded her husband and told her not to excite him. This

was years ago so perhaps today that would be more of an issue. Or

maybe not. At least, not in San Francisco. On another note, I recall the sheriff's wife has a volatile, emotional, and flighty nature. Is everyone comfortable that she no longer suffers from those conditions? Are we all comfortable that she has changed and

will not anger him again? How about his son? Children aren't perfect.

Could their little boy one day make dad angry? Maybe not. He may already be terrified of the large powerful man with anger issues

so maybe the boy will be safe. If not, one day his grandparents may own a portion of San Francisco. Finally, and this is directed to the four Supervisors who have given Mirkarimi this enormously powerful position in law enforcement, a position countless others in the country would love to have, what do you

get in return for giving him this job? You didn't do it out of the kindness of your forgiving hearts. Something is fishy and I can smell it from here. A promise to look the other way when you do something wrong? Perhaps you have already done something wrong

and he has promised not to bring it to the press? Money?

Overlooking

legal issues or other hanky panky regarding your private lives? Business lives? Ah, come on. It just had to be something because I can't believe it's because you possess black hearts or weak brains.

It can't be that; right?

<http://www.sharonlee123-alittlehelpformyfriends.blogspot.com/>

[http://www.amazon.com/Case-Files-Ronald-Barone-ebook/dp/B0089ZTZ7C/ref=sr\\_1\\_4?s=digital-text&ie=UTF8&qid=1339338265&sr=1-4](http://www.amazon.com/Case-Files-Ronald-Barone-ebook/dp/B0089ZTZ7C/ref=sr_1_4?s=digital-text&ie=UTF8&qid=1339338265&sr=1-4)



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: Ross Mirkarimi

From: Brandon Houghton <bshoughton@gmail.com>  
To: Board.of.Supervisors@sfgov.org,  
Date: 10/10/2012 06:24 PM  
Subject: Ross Mirkarimi

---

Is the Board of Governors serious?!

Let me make sure I understand the situation at hand. Ross Mirkarimi, the Sheriff of San Francisco,  
is being reinstated AND being given TAX PAYER MONEY for back-pay after physically assaulting his wife??  
He plead guilty to one crime, obviously committed another, and is THE SHERIFF, one who oversees the  
arrest of criminals?? THERE IS A CRIMINAL LEADING THE POLICE. Where is the logic in that?  
Whether it is legal or not to have a person charged with a potentially violent crime as sheriff, is that  
ETHICAL? Is that something a completely unbiased and lawful government would find ACCEPTABLE?  
I don't care if he is a Democrat or a Republican; I don't KNOW what my political affiliation is!  
He is a CONVICTED CRIMINAL. And he is in a major, authoritative position.

Please, give me some advice on how I should be more accepting or understanding of this situation; there must be a misunderstanding.

Brandon  
(510)-691-4525



To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: plastic bag ban

From: Karl Young <karlshak@sonic.net>  
To: Board.of.Supervisors@sfgov.org,  
Date: 10/10/2012 07:44 PM  
Subject: plastic bag ban

---

Hi,

I wanted to thank the Board for the plastic bag ban; I think that's a great thing. But I heard that it was to begin in October and I, somewhat disappointedly, have noticed that a number of retail outlets are still distributing things in plastic bags. Is there some kind of grandfather clause for remaining plastic bags or was the measure just an unenforceable feel good measure ? Thanks for any enlightenment,

-- Karl

--

Karl Young  
<http://karlshak.com>





To: BOS Constituent Mail Distribution,  
Cc:  
Bcc:  
Subject: Sheriff Mirkarimi--Good Job!

From: frank miceli <fsmiceli@gmail.com>  
To: Board.of.Supervisors@sfgov.org,  
Date: 10/10/2012 11:04 PM  
Subject: Sheriff Mirkarimi--Good Job!

---

**Congratulations to Supervisors Campos, Avlos, Kim and Olague for resisting what must have been intense pressure from the forces of political correctness and seeing to it that justice was done to Sheriff**

**Mirkarimi and his family. We have all too few examples of politicians biting the bullet, countering the conventional wisdom and doing what's right so your example is an inspiration.**

**Frank Miceli**

Bos-11

**Case Details**

<b>ID</b>	1535629
<b>Classification</b>	City Services >> General Requests >> Request for City Services
<b>Title</b>	complaint
<b>Description</b>	For Supervisor John Avalos, Davis Campos, Jane Kim, and Christina Olague --- Caller says that they are totally disappointed by decision of the board of supervisor. Caller does not like that fact that four of the supervisor allowed Ross to keep his job. Caller says that they were beaten for years by their husband and never spoke out because their husband would lose there job. Caller said back in the day it was unheard of for a woman to report her husband for domestic violence. Caller thinks that it's horrible that the four supervisor are supporting a wife beater for a top sheriff. Caller says that that Ross Mirkarimi seems proud of beating his wife, and an honorable man would of stepped down because the controversy. Caller feels Ross would of got away with this unnoticed and swept the domestic violence away like nothing happened because he proud of beating his wife. Caller says that they can't put there head around this that this guy would be so proud of what he did. Caller was beaten by her husband and wished they reported it. Caller says they were young but now they know better. Caller said that they suffered for year under a abusive husband even had a broken jaw. Caller upset with these super visor who did not vote Ross out.
<b>Created By</b>	eric.guajardo
<b>Created Date</b>	10/10/12 8:23 AM
<b>Priority</b>	Medium
<b>Severity</b>	Medium
<b>Status</b>	Open
<b>Allocated To</b>	Madeleine Licavoli
<b>Due Date</b>	10/17/12 8:30 AM
<b>Associated With</b>	Marie Cram

**Events**

Created On	Handled By	Queue	Title	Case events found:
10/10/12 8:23 AM	Eric Guajardo	Generic Eform Else Queue	Agent Created Case	-
10/10/12 8:39 AM	Eform WS	Board of Supervisors - Clerk of the Board - G	Agent Updated Case Details	Reallocated to queue: Board of Supervisors - Clerk of the Board - G

October 10, 2012

Dear Sir/Ma'am,

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2012 OCT 10 PM 4:25

RECEIVED  
MAYOR'S OFFICE

AK 12 OCT 10 PM 4:21

**CONGRATULATIONS** to Sheriff Ross Mirkarimi from the American-Egyptian Native Abdalla Megahed. The oldest community-advocate and homeless advocate from the City of San Francisco. I am proud to have spent 28 years of his life to support every grateful Supervisors and Mayor who work hard to protect our city and working hard making our city a success.

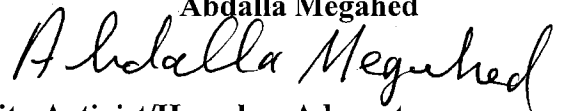
Abdalla Megahed would like to extend a warm welcome to our United States President Barrack Obama, who visited our city last Sunday October 7<sup>th</sup> to fundraise for the upcoming campaign, on behalf of the San Francisco government. I enjoyed seeing the arrival and chanting "4 more years" with my fellow San Franciscans.

I was also very proud to stand beside our city Sheriff Ross Mirkarimi on Tuesday October 9<sup>th</sup> supporting him on the winning vote from the City Supervisors' meeting for him to keep the office of Sheriff in San Francisco. Perhaps I know that our sheriff made a mistake to his own wife, Eliana Lopez, which he apologized for what he did to her; but our Mayor, Ed Lee, tried to use our Supervisors as puppets against the Sheriff to further punish him and remove him from office to be replaced by the Mayor's friend. Thank God from the 120 supporters who showed up yesterday during the meeting including our grateful former Mayor Art Agnus, to stand around us and to let him win his job back after the 10 month banishment. I hope and wish that the City Sheriff Ross Mirkarimi works with all of us in favor of our city's protection and controlling the crime in the city streets.

I appreciate that our Sheriff supports my attempt to establish a prisoner job training program, which will prepare and certify the prisoner for a job of their choice after release. I hope that after established in California prisons this will extend to other states around our great country and bring more jobs that were outsourced overseas back to the United States where jobs are disparately needed. I hope that in the future Assembly-woman Fiona Ma (my sister), former Mayor Art Agnus, Senators Mark Leno, Leland Yee and President Obama will support and protect my idea as well.

Very respectfully,

Abdalla Megahed



Community Activist/Homeless Advocate

Cell - (415) 374-4141

990 Polk Street Apt 418

San Francisco, Ca 94109

Copy to: Mayor Ed Lee, Former Mayor Art Agnus, Full Board of Supervisors, Assembly-woman Fiona Ma, Senators Mark Leno, Leland Yee and Governor Brown.

File 120949 cpage

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2012 OCT -9 AM 11:37

AK

SUPERVISORS:

ROSS MIRKIRIMI SHOULD HAVE  
REMEMBERED THE OLD ADAGE:

"IF YOU DO THE CRIME, YOU DO  
THE TIME"

I HOPE YOU, AS SUPERVISORS,  
REMEMBER IT.

A SHERIFF NEEDS TO BE CLEAN,  
ABOVE REPROACH AND RESPECTED.  
MIRKIRIMI IS NONE OF THOSE.

DO NOT VOTE TO LET MIRKIRIMI  
IN. SAN FRANCISCO NEEDS SOME  
DIGNITY.

LAW OFFICES OF  
**HALLINAN & HALLINAN**

345 FRANKLIN STREET  
SAN FRANCISCO, CA 94102  
TEL (415) 863-1430 FAX (415) 863-1519



October 9, 2012

File 120949  
BOS-11  
COB  
cpage

**An Open Letter To The Board of Supervisors In Support of the  
Reinstatement of Sheriff Ross Mirkarimi**

***"I believe there are more instances of the abridgement of freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations" ~James Madison***

Our founding fathers prescribed the supreme law of our land in the Constitution, which laid the framework for the separation of powers and system of checks and balances to prevent any one branch of government from encroaching upon another and becoming too powerful.

Hence, a law is unconstitutionally "void for vagueness" in violation of both the Fifth and Fourteenth amendments guaranteeing Due Process if it is both 1.) vague and 2.) has the potential to lead to absurd, unfair, arbitrary and capricious results as applied.

Here, Mayor Lee suspended Sheriff Ross Mirkarimi pursuant to the San Francisco City Charter that has been purportedly construed to amend the definition and remedy for "official misconduct" following a voter-approved referendum.

Despite the controlling case law (Mazzola) which held that a finding of "official misconduct" must carry a nexus between the conduct and one's official duties, and ***the fact that courts always construe voters' intent in the most narrow interpretation possible***, select members of the Ethics Commission **expanded** upon their determination of the voters' intent, in statements such as the ones below by Commissioners Renne and Studley:

"I think the voters would be shocked if we said a public official who had pleaded guilty to false imprisonment was not guilty of official misconduct," and a comment referring to the fact that voters surely would not have elected him if they had known of this incident beforehand.

The sole dissenting vote, chairman Benedict Hur, was the only Commissioner to correctly interpret the law when he warned that a stricter reading of the city's rarely used law giving the mayor power to seek removal of another elected official was needed to prevent future misuse of that authority. "Given the force of the tool, I think people wanted it interpreted narrowly," Hur said. •

The Black's Law Dictionary defines "official misconduct" as "[any] unlawful behavior by a public officer in relation to the duties of his office, willful in its character, including any willful or corrupt failure, refusal, or neglect of an officer to perform any duty enjoined on

him by law." (Black's Law Dict. (rev. 4th ed. 1968) p. 1236, col. 2.) The phrase includes any willful malfeasance, misfeasance or nonfeasance in office. (Coffey v. Superior Court(1905) 147 Cal. 525, 529.)

First, the (Mazzola) case held that there must be a nexus between one's official duties and the misconduct. The fact that Sheriff Mirkarimi was not even sworn in at the time of the alleged misconduct begs the question of how that nexus requirement could possibly be fulfilled.

However, most important is the issue of whether elected officials (and voters) can readily identify what constitutes "official misconduct" in the city charter. If the standard is vague and likely to result in unfair, arbitrary outcomes the requirement of notice does not pass constitutional muster. Mayor Lee himself testified "official misconduct" should be determined on a case by case basis, and stated that he would have to think about whether an offense such as drunk driving would constitute "official misconduct" pursuant to the charter amendment.

Moreover, the glaring discrepancy in the unequal application of this amendment is evident on it's face as there is ***no provision or protocol to charge the mayor with official misconduct.***

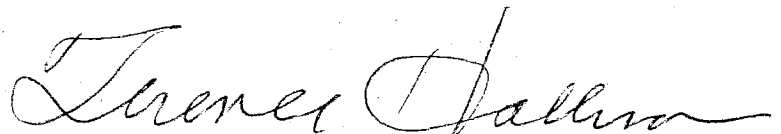
The unbridled power this tool bestows to the chief executive of city government violates the very spirit of our constitutional protections and is riddled with significant potential for abuse and uneven application. Additionally, the "so-called" built in layers of protection of the Ethics Commission and Board of Supervisors are a thin veil at best, because neither body can be deemed a neutral arbiter of justice as they are political appointees and elected officials swayed by public opinion, reelection and reappointment.

In a democracy, we place great faith and reliance on our expectation that the procedures instituted to remove elected officials (via recall and/or voting the official out of office) will be upheld.

When all is said and done, paramount to whether the voters of San Francisco ***intended*** to enact a provision which greatly expands the power of the Mayor to initiate "official misconduct" proceedings and remove a democratically elected government official pursuant to an unclear, ambiguous, and unfair standard are the State and Federal Constitutions.

After all, there have been innumerable instances throughout our nation's history where the voter's intended will has been deemed patently unconstitutional by the Judicial branch of government.

For the reasons stated above, I urge you to uphold the law and the interests of justice in voting to reinstate Ross Mirkarimi, the duly elected Sheriff of the City and County of San Francisco.

A handwritten signature in cursive script, reading "Terence Hallinan". The signature is written in dark ink and is positioned at the bottom right of the page.



To: BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120949: Public Comment for Mirkarimi hearing, 10/09/12

From: Jsyabumoto1@aol.com  
To: Board.of.Supervisors@sfgov.org,  
Date: 10/08/2012 05:53 PM  
Subject: Public Comment for Mirkarimi hearing, 10/09/12

---

To the San Francisco Board of Supervisors,

I will not be going to City Hall tomorrow to give my public comment. However, I have closely followed the Ethics Commission hearings on Ross Mirkarimi, weighed the testimonies, and read with great interest both the Mayor's and Sheriff's legal counsel's recommendations to the Board. And I strongly feel that my voice needs to be heard - along with many others who will not be physically present at the hearings and feel similarly.

I have to say that I find the Mayor's arguments more compelling.

To be clear, I did not vote for Mayor Lee and I did vote for Mirkarimi.

**I would not have voted for the Sheriff had I known at the time of election that he would commit/had committed domestic violence.**

(Mirkarimi's defenders keep referring to him as being "duly elected by the people", and therefore should not be removed. I think there are many who would not have voted for him had we known he's an abuser. Also, his defenders - mostly male - seem to have little knowledge about domestic violence, including the "cycle of violence" and his wife's recanting due to her fears of losing custody of the child.)

What is most appalling about this whole situation is that Mirkarimi and his supporters continue to feel that he's a victim of a "political witch hunt" and still blames others for this so-called (very costly) self-imposed "circus".

Mirkarimi hasn't taken responsibility for his own actions. Nor does he seem to care enough about the people of San Francisco so that the City can move on and focus on ways to help the real victims of crime and other social problems.

Judi S. Yabumoto



To: Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120949: Reinstate Ross Mirkarimi

From: Correspondent for Milk Club <correspondent@milkclub.org>  
To: John.Avalos@sfgov.org, david.campos@sfgov.org, David.Chiu@sfgov.org,  
Carmen.Chu@sfgov.org,  
Malia.Cohen@sfgov.org, Sean.Elsbernd@sfgov.org, Mark.Farrell@sfgov.org, jane.kim@sfgov.org,  
Eric.L.Mar@sfgov.org,  
Christina.Olague@sfgov.org, scott.wiener@sfgov.org, Board.of.Supervisors@sfgov.org,  
Date: 10/08/2012 06:12 PM  
Subject: Reinstate Ross Mirkarimi

---

Dear Members of the Board of Supervisors,

I have been asked by President Glendon Anna Conda Hyde to reinforce the message that we have already made plain. Tomorrow you will vote on Sheriff Ross Mirkarimi's future. The Harvey Milk LGBT Democratic Club has very strongly supported Sheriff Mirkarimi and Eliana Lopez through the Mayor's scurrilous campaign to unseat him, the misuse of domestic violence and the harm this does to all women and men who are subjected to violence within their homes, and the damage and divisiveness that this has brought to city government.

Our message to you is simple. Reinstate Ross Mirkarimi. End this silencing of Eliana Lopez. Don't steal the votes of those who elected the Sheriff last fall.

Best, Susan Englander for  
Glendon Anna Conda Hyde, President  
Harvey Milk LGBT Democratic Club

--

Sue Englander  
Harvey Milk LGBT Democratic Club  
E-Board Correspondent  
[correspondent@milkclub.org](mailto:correspondent@milkclub.org)  
[www.milkclub.org](http://www.milkclub.org)





**To:** BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
**Cc:**  
**Bcc:**  
**Subject:** File 120949: Ross Mirkarimi reinstatement

**From:** "lorobin@att.net" <lorobin@att.net>  
**To:** Board.of.Supervisors@sfgov.org,  
**Date:** 10/05/2012 07:20 PM  
**Subject:** re: Ross Mirkarimi reinstatement

---

To the San Francisco Board of Supervisors:

On Tuesday you will have the opportunity to reinstate Sheriff Mirkarimi. I have followed his career with interest noting that he has the energy, intelligence and creativity to make an outstanding contribution with whatever job he undertakes. I hope you will not fall into the political cabal against him, and will put his mistake into perspective. It was a mistake, not a character flaw, and he is more than fit for service in your City. He has undergone severe humiliation and attack and has managed to keep his balance, integrity and courage. That alone should reassure you that he is fit for the position he obtained legally and convincingly.

I have been deeply concerned about the unfair treatment of this man though I live in Santa Cruz.  
I trust you will turn it around at last.

Lois Robin  
4701 Nova Dr.  
Santa Cruz, CA 95062



To: BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120949: Communication to all Board Members and the Clerk of the Board Re: Sheriff

From: Kathy Perry <perrykathy8@gmail.com>  
To: Board.of.Supervisors@sfgov.org,  
Date: 10/06/2012 09:42 PM  
Subject: Communication to all Board Members and the Clerk of the Board Re: Sheriff

---

**The Mirkarimi family really needs support from the currently ELECTED LEADERS who because of VOTERS are now faced with either supporting their Democratically ELECTED choice for Sheriff or making their own decision about the matter.**

**Its ironic that ELECTED LEADERS now unwittingly hold in their hand the responsibility of honoring the voters choice who also ELECTED Ross Mirkarimi or making a personal judgement against**

**Ross Mirkarimi, their colleague.**

**It seems like a political mess and it is. In truth... everyone should stay away from mess. We have an electoral process. We also have a recall process. I wasn't aware that voters gave any elected official the right to make an ethical judgement call.**

**That said, the domestic issues which became humiliatingly public were resolved by the court and the family. To continue on this mistaken (and very punitive) path is folly for all of us. Elected leaders and the talented people who become them have a proper place and that place is in the jobs for which they were elected to serve.**

**Mr. Mirkarimi has been a very staunch advocate for his District (5) as a supervisor and as liberal leader he has always reached out to everyone. He also has had the vision to see San Francisco's place in the global community. His recent personal life problems in no way takes away from his far reaching policies to make San Francisco an ETHICAL LEADER in addressing global warming, respecting and supporting democracy all over the world. Sheriff Henessey will be missed for his sensitivity. Ross Mirkarimi had the endorsement of this very special Sheriff, I believe its because his policies will most likely support the end of recidivism creating a safer and more**

**productive community. The current "political lynching" approach should be shunned by the San Francisco Board of Supervisors. Let the voters recall him if they want to, but it is unfair**

**for a few individuals to overturn the vote of the people. We do live under the flag of a democracy.**

**Elected LEADERS, another wrong will not make a right. I count two so far... 1. Someone went against the honor of their promise, 2. The Sheriff has been suspended without pay... 3, LET's NOT Strike out... another wrong will just open the flood gates for dictatorial politics... and that path always leads to terrible times.**



## MIRKARIMI CASE & RESTORATIVE JUSTICE WongAIA

File 120949

to:

carmen.chu, sean.elsbernd, Eric.L.Mar, john.avalos, david.campos, David.Chiu,  
Board.of.Supervisors, Malia.Cohen, Mark.Farrell, Jane.Kim, Scott.Wiener,  
Christina.Olague

10/07/2012 03:26 AM

Hide Details

From: WongAIA@aol.com Sort List...

To: carmen.chu@sfgov.org, sean.elsbernd@sfgov.org, Eric.L.Mar@sfgov.org,  
john.avalos@sfgov.org, david.campos@sfgov.org, David.Chiu@sfgov.org,  
Board.of.Supervisors@sfgov.org, Malia.Cohen@sfgov.org,  
Mark.Farrell@sfgov.org, Jane.Kim@sfgov.org, Scott.Wiener@sfgov.org,  
Christina.Olague@sfgov.org,

TO: Honorable Board of Supervisors

RE: MIRKARIMI CASE & RESTORATIVE JUSTICE

**Restorative Justice (Definition):** A growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations of legal and human rights. These range from international peacemaking tribunals such as the "South Africa Truth and Reconciliation Commission" to innovations within the criminal and juvenile justice systems, schools, social services and communities. Rather than privileging the law, professionals and the state, restorative resolutions engage those who are harmed, wrongdoers and their affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships. Restorative justice seeks to build partnerships to reestablish mutual responsibility for constructive responses to wrongdoing within our communities. Restorative approaches seek a balanced approach to the needs of the victim, wrongdoer and community through processes that preserve the safety and dignity of all."<sup>1</sup>

### COMMUNITY COURTS AND NEIGHBORHOOD COURTS

Since 1998, the District Attorney's Office has been strengthening Community Courts. Residents have served as volunteer adjudicators for cases in a neighborhood setting, using restorative justice to repair the harm caused by the crimes.

The District Attorney's Office is expanding this successful program. More serious offenses will be referred to the new Neighborhood Courts---in lieu of normal prosecution. Twenty percent of minor offenses will be placed in the hands of volunteer adjudicators, doling out punishment in the form of restitution orders, payments, classes and/or community service. The offenses are then expunged from the offender's record.

<http://www.sfdistrictattorney.org/index.aspx?page=178>

<http://sanfrancisco.cbslocal.com/2011/10/12/san-francisco-neighborhood-courts-program-expands/>

### TYPES OF COMMUNITY COURT CASES

Earlier Community Courts have already adjudicated serious offenses:

- Bar fights, street fights, sucker punches, bloodied faces, cuts, gashes, biting, medical care....
- Family fights---physical blows with fists, kicking, clumps of hair pulled out of heads....
- Brawls, person being pushed down a flight of stairs...
- Tussles with police officers, resisting arrest....
- Breaking a police car's mirror, destruction of property....
- Possession of drug paraphernalia, public intoxication, disorderly conduct....
- Alcohol sales to minors, drinking in public, urinating in public...
- Vandalism, graffiti, prostitution...

### POLICE AND SOCIAL WORK---BEST PRACTICES

Professional law enforcement officers and social workers have always practiced de facto restorative justice by not punishing all offenses---but rather keeping the peace, building community and restoring relationships. Routinely, police help calm angry disputes, employing common sense solutions. Not all physical contact is treated in the same way---whether punches, biting, cutting, hair-pulling, spitting, tripping, slaps, grabs, touches, pokes, shoves, pushes.... Otherwise, our courts and jails would be overwhelmed. As city policy, the District Attorney's Office is adopting Restorative Justice through Neighborhood Courts.

Arguments come and go---whether between strangers, antagonists, colleagues, friends or family members. Society prefers to restore relationships because that's best for everyone. Ideally, society wants people to resolve their differences peaceably. It makes life easier.

In the Mirkarimi case, an argument led to a bruise, perhaps when the wife pulled away her arm. The wife wishes to restore a family and marriage. Society should assist this restoration.

#### CASE STUDIES OF PUBLIC OFFICIALS & CONDUCT IN OFFICE

Not all offenses are treated in the same way.

- Mayor's sexual affair with a subordinate employee. No charges are filed. <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/01/31/BAGM3NSFGQ7.DTL>
- Fire Chief's husband calls 911 after being assaulted with pint glass and endangerment of children. No charges are filed. <http://www.youtube.com/watch?v=o7zFRuwnUsE>
- Fire Chief--Deadbeat divorcee: <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2012/05/16/BA241OIBD4.DTL>
- Planning Director's domestic dispute and arson fire: <http://www.sfweekly.com/2008-03-05/news/new-planning-director-s-beau-lance-farber-sought-by-washington-health-officials/>
- Mayor's nudity in shower: <http://www.sfgate.com/examiner/elect95/jornud.html>
- Rec-Park General Manager and sexual harassment: [http://blogs.sfweekly.com/thesnitch/2009/10/former\\_city\\_spokeswoman\\_who\\_cl.php](http://blogs.sfweekly.com/thesnitch/2009/10/former_city_spokeswoman_who_cl.php)
- District Attorney in fist fight: <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/1996/05/08/MN32418.DTL>
- DPW official and sexual harassment: <http://www.citireport.com/2012/03/lee-vs-nuru-not-happening/>
- District Attorney's routinely drops domestic violence cases: <http://www.citireport.com/2012/02/da-gascon-dropped-hundreds-of-domestic-violence-cases-denies-records-exist/>

Regards,  
Howard Wong AIA

File 120949



**Ross Mirkarimi**

**Judith Hoyem** to: Christina Olague, Scott Wiener, John Avalos,  
Sean Elsbernd, David Campos, Scott Wiener,  
board of supervisors, Carmen Chu,

10/07/2012 02:05 PM

Dear Supervisors:

Please do not vote to remove former Supervisor Mirkarimi from his duly elected position as Sheriff. To do so would be to overturn the will of the voters for a act of personal misconduct that took place even before he assumed office.

To call Mr. Mirkarimi's offense an act of official misconduct is highly debatable and certainly not clear-cut. For the Supervisors to concur in this assessment would set a dangerous -- and undemocratic -- precedent. If voters are displeased with the conduct of someone who has been duly elected the recourse is, don't re-elect him or her, or more drastically, institute a recall election. In either case the voters' right to decide should not be abrogated.

If the mayor would assume the authority to try to oust another public official by invoking a power that hasn't been used since 1932, it should be for a clearly unlawful major crime that has no political overtones. In fact, the last time this power was invoked, according to the SF Chronicle, was 80 years ago, and the offense by Public Defender Frank Egan was MURDER. No disagreement there.

Ross Mirkarimi has already been punished for his unfortunate guilty plea to a misdemeanor that he did not commit and remains on probation for. His entire domestic and financial life has already been upended. He has already lost political standing. He has certainly been condemned in the court of public opinion for having behaved badly in his personal life.

He won a clear victory at the polls in his race for Sheriff. The voters had confidence that he was the best man for the job. If he has now lost the ability to carry out the duties of the office, it would only be because he has been put through nine months of unprecedented hounding. It would be unjust to deprive him now of the opportunity to take on the job and prove himself capable.

In brief, I urge you again not to take the extraordinary step of removing Ross Mirkarimi from the office of Sheriff when the offense that all agree on is simply that of having squeezed his wife's arm so hard as to have caused a bruise and for which he has already been severely punished.

Ross Mirkarimi is not deserving of an official censure that would have drastic consequences both for him and for City policy.

Sincerely yours,

Judith Hoyem  
4042 17th Street  
San Francisco, CA 94114  
415-552-1259

BOS-11

File 120949



Regarding judgment on Official Misconduct charges against Sheriff Mirkarimi by Mayor Ed Lee

Aurora Grajeda

to:

Malia Cohen, Scott Wiener, Sean Elsbernd, Jane Kim, Carmen Chu, Mark Farrell, John Avalos, Christina Oleague, David Chiu, Eric Mar, David Campos

10/08/2012 08:55 AM

Cc:

"Miss Angela Calvillo"

Hide Details

From: "Aurora Grajeda" <aurora-grajeda@comcast.net> Sort List...

To: "Malia Cohen" <Malia.Cohen@sfgov.org>, "Scott Wiener" <Scott.Wiener@sfgov.org>,

"Sean Elsbernd" <Sean.Elsbernd@sfgov.org>, "Jane Kim" <Jane.Kim@sfgov.org>,

"Carmen Chu" <Carmen.Chu@sfgov.org>, "Mark Farrell" <Mark.Farrell@sfgov.org>,

"John Avalos" <John.Avalos@sfgov.org>, "Christina Oleague"

<Christina.Oleague@sfgov.org>, "David Chiu" <David.Chiu@sfgov.org>, "Eric Mar"

<Eric.L.Mar@sfgov.org>, "David Campos" <David.Campos@sfgov.org>,

Cc: "Miss Angela Calvillo" <Board.of.Supervisors@sfgov.org>

Honorable Board of Supervisors, President Chiu, greetings!

Once more, I'm addressing you to speak in favor of reinstating Sheriff Mirkarimi, and once again I'll claim that I'm speaking on your behalf, based upon the fact that up to now, you have been prevented to do so under legal and ethical considerations / restrictions.

Though, difficult, if not impossible, to walk in your shoes and have a true sense of your situation as you move forward to discuss, debate, consider and render a judgment in this controversial and divisive issue, nevertheless I must engage in an exercise of reviewing the responsibility that has been entrusted upon you and the outcome in your decision.

Though controversial and divisive, this is an extremely uncomplicated issue once the fluff in Mayor Ed Lee's response to the Ethics Commission's Findings and Recommendations is removed, the issue at hand and the judgment is rendered very simple; it consists of a simple question: Did Sheriff Ross Mirkarimi commit Official Misconduct?

And the simple answer is a resounding NO for the following reasons:

Only by conflating any misconduct by a government officer and misconduct by a government officer while in the performance or discharge of his or her duties the answer could be yes. To achieve an answer in the affirmative, you will have to accept and apply in your judgment the newly minted standard created and set by the Ethics Commission - with the exception of the Ethics Commission President, Honorable Benedict Hur, who dissented and voted in the minority - to apply the widest possible interpretation and conflate any misconduct by a government officer in order to constitute Official Misconduct.

My initial questions to you are: Will you accept Mayor Ed Lee and the Ethics Commission's new standard? Or, will you base your judgment in the accepted legal standard norm?

Another question to you is: Does the stipulation by Sheriff Ross Mirkarimi that he committed misconduct on December 31, 2011 merits removal from office and a de facto invalidation of a duly conducted election?

My final questions for you are: Are you prepared and willing to institute a new standard and a dangerous precedent which will hover over the heads of any City Government Officer, including yourselves, at the discretion of this and any future Mayors? Could you realistically work and function in a fair and effective manner under it?

**Please vote NAY in item 2 in the Agenda, file 120950 [Determination - Sustaining the Charges of Official Misconduct Against Sheriff Ross Mirkarimi]**

Motion sustaining the charges of Official Misconduct against Sheriff Ross Mirkarimi presented by Mayor Edwin Lee. (Clerk of the Board)

**Please vote YEA in item 3 in the Agenda, file 120951** [Determination - Not Sustaining the Charges of Official Misconduct Against Sheriff Ross Mirkarimi]

Motion not sustaining the charges of Official Misconduct against Sheriff Ross Mirkarimi presented by Mayor Edwin Lee. (Clerk of the Board)

I'll argue that t is the only responsible and honorable course of action to follow.

Respectfully Submitted,

Aurora Grajeda,  
District 9  
San Francisco, California  
Monday October 8, 2012



To: BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120949: Suspended Sheriff Ross Mirkarimi

From: Mr Francis A Bayer <mrfrancisabayer@gmail.com>  
To: Board.of.Supervisors@sfgov.org,  
Date: 10/08/2012 01:33 PM  
Subject: Suspended Sheriff Ross Mirkarimi

---

To all members of the Board of Supervisors: I am fully disabled so it is extremely difficult for me to go to Board Meetings, but I wanted to

let you know how I feel about Sheriff Mirkarimi. In years past when I was able, I worked as a counselor to our cities homeless and

domestic violence populations, and I assure you that the behavior we all saw on the videotape when Ms. Eliana Lopez wanted to have

proof of what she had been enduring within her marriage. Her subsequent behavior has been to protect her husband and his future

career choices. Our city is recognized the world over for our love and respect for each other, however, anyone who looks at the

incidence of domestic violence in our city would find it hard to believe our love and respect for our partners. Therefore, I do not believe

that you all could consider overlooking what Mr. Mirkarimi has done to his wife, and I implore you all to take a stand against domestic

violence and all who practice this abhorrent behavior, and remove Mr. Mirkarimi from his post as the Sheriff in SF , because our City's

Sheriff should be above reproach considering his behavior or his respect for the laws.

Sincerely yours,  
Mr. Francis A. Bayer

1750 McAllister Street, apt: 106  
San Francisco, CA 94115-4363  
(home phone: (415) 440-6050)  
(mobile phone (415) 425-1819)





To: Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120949: "The Ross M. Story The Chron Won't Publish"

From: "Aurora Grajeda" <aurora-grajeda@comcast.net>  
To: "Malia Cohen" <Malia.Cohen@sfgov.org>, "Scott Wiener" <Scott.Wiener@sfgov.org>, "Sean Elsbernd" <Sean.Elsbernd@sfgov.org>, "Jane Kim" <Jane.Kim@sfgov.org>, "Carmen Chu" <Carmen.Chu@sfgov.org>, "Mark Farrell" <Mark.Farrell@sfgov.org>, "John Avalos" <John.Avalos@sfgov.org>, "Christina Oleague" <Christina.Olague@sfgov.org>, "David Chiu" <David.Chiu@sfgov.org>, "Eric Mar" <Eric.L.Mar@sfgov.org>, "David Campos" <David.Campos@sfgov.org>,  
Cc: "Miss Angela Calvillo" <Board.of.Supervisors@sfgov.org>  
Date: 10/08/2012 01:50 PM  
Subject: "The Ross M. Story The Chron Won't Publish"

---

Dear Honorable Board Of Supervisors,

in the utmost honesty and sincerity that I can muster, I declare again that I do not envy the position The Mayor and a small group of (Characterizations deliberately withheld) City Officials are placing you in regards to the Issue of Sheriff Ross Mirkarimi.

Sadly, by City Charter, you are entrusted to settle the issue with a judgment of Sustaining or not Sustaining the Charges of Official Misconduct Against Sheriff Ross Mirkarimi, I pray that whatever beliefs on something superior to us humans, can inspire a wisdom that I'm confident you all want to have.

I'll be sending good will and energy to the Honorable Body that you compose, to help you arrive at your individual decisions so that each particular choice has a corresponding feeling of having arrived at the correct conclusion by doing what in the hearts and mind of each one of you, will bring the satisfaction of an independent discharge of duties which will project a reflection of well being and the certainty of having done the Just and Right thing when looking in the mirror.

I just expressed how I would approach it and the expectations I would have of myself in order to live with myself for the rest of my life. In an spirit of disclosure, I'm literally a nobody, just one of the masses hence, my support and respect for government officials who fail to execute their duties in faithful adherence of their position, is negligible, but for what is worth...

Here is an article that you may have already read, but if you haven't, I hope you do for your considerations on how this matter has been handled from the beginning.

Respectfully,

Aurora Grajeda  
District 9 (Mission)  
San Francisco

## **The Ross M. Story The Chron Won't Publish**

by Larry Bush on 10/08/2012

in Busted

*(This is from Evelyn Nieves, a respected journalist whose work has appeared in The New York Times, Washington Post and other publications. She has just returned from on-site reporting from the fracking fields about the impact of the economic tsunami on local tribal life, funded through a foundation.*

*Evelyn Nieves was the romantic partner of Ross Mirkarimi and writes from her own knowledge of Ross about the current charges brought by Mayor Lee. Although she reached out to her colleagues in the reporting profession to correct the misinformation that marked coverage of the past several months, none of them responded.*

*This post was written to appear in tomorrow's Chronicle as an op-ed. The newspaper, however, informed her that they didn't need it and won't be running it.*

*CitiReport is posting it now in the hopes that more people will read what the papers declined to publish.)*

For months, I've watched as Ross Mirkarimi has been slandered as a "wife beater"—by the Mayor of San Francisco, no less—and vilified in the press based on lies, half-truths and innuendo. It has been heart-breaking, nauseating, to witness.

I know for a fact that Ross is no abuser. He and I were a couple for eight years. For most of that time, we lived together. Not once did Ross even come close to making me feel unsafe in his presence. He never threatened me. He would walk away or cry "uncle" rather than argue. He simply had no stomach for it.

When the news broke last January that Ross, newly elected as San Francisco's Sheriff but not yet sworn in, might be arrested on domestic violence charges, I was sure the accusation wouldn't stick. Not once people knew the facts.

I was naïve.

By now, everyone knows that Ross and his wife, Eliana Lopez, got in an argument in their car on New Year's Eve. She wanted to take their toddler to her native Venezuela, and Ross, bereft the last time a one-month trip to Venezuela stretched into several, balked. Eliana moved to exit the car and Ross held her, a second too long, causing a bruise. Eliana called a friend and made a videotape of the bruise the next day in case she and Ross ended up in a custody battle. Four days later, without Ross's wife knowing, the friend called police.

The hell that broke loose is worthy of an Errol Morris documentary. The San Francisco District Attorney, a political opponent, sent four investigators to interview all of Ross's neighbors. That never happens in a misdemeanor case—it costs too much time and money. Anti-domestic violence advocates began calling for Ross's head even before he was charged.

We all want to stop abusers in their tracks. But let's make sure we are properly identifying the

abuser.

Early on, in January, the Bay Citizen interviewed me. I expected the other local newspapers to contact me or pick up my quotes, which essentially said that Ross never, ever came close to abusing me. But no reporter from the local dailies that were splashing all kinds of hearsay on their front pages ever contacted me. This even after I contacted them to try to correct falsehoods being reported as fact.

I was fully prepared to testify had Ross's case gone to trial. I knew facts that would contradict lies made to condemn him. I still wish the case had gone to trial. But at the time that Ross pled guilty to "false imprisonment"—for turning his car around to go home when the argument threatened to spill out into a restaurant he and his wife planned to enter—his lawyer told me she believed that Ross could not get a fair trial. The last straw was when the judge refused a change of venue.

So Ross pleaded guilty so he could have his wife and son back, end the hysteria and try to go and do his job.

Instead, the Mayor used Ross's guilty plea as an excuse to suspend him without pay—without any due process—starting several more months' of investigation, interrogation and character assassination at Ethics Commission hearings. And for what? In the end, the five-member Ethics Commission, including one appointed by the mayor in the midst of the hearing, found Ross guilty of only one charge: grabbing his wife's arm. One member wondered what the people would say if they decided not to uphold the Mayor's rash suspension and declaration of "official misconduct." Well, in the few times that I've met with Ross in the last few months, he was stopped everywhere by people of every demographic group. Old, young, progressive, moderate, and of every ethnicity. All wanted to express their support and their contempt for what has happened to him. All blamed politics.

I had not seen Ross much in the years since we parted. I moved to another side of the city, moved in different circles. But, in essence, he has not changed much. The last time I saw him before this case exploded was before Christmas. On a Saturday morning, Ross was in his District Five Supervisor uniform—gray suit, white shirt, wingtips. He had already gone to one neighborhood meeting and was on his way to another, even though his official duties as supervisor were over and he was supposed to be on vacation. I kidded him about this, and he shrugged and said, "Well, you know me."

I do. And so I'll say with confidence that Ross does not deserve what he has endured. He deserves vindication, and the chance to do the job he was elected to do.



To: BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120949: Support Reinstatement of Ross Mirkarimi

From: "Kathy Howard" <kathyhoward@earthlink.net>  
To: <Board.of.Supervisors@sfgov.org>,  
Date: 10/08/2012 02:18 PM  
Subject: Support Reinstatement of Ross Mirkarimi

---

Supervisors,

I support the reinstatement of Ross Mirkarimi as Sheriff. I think that he will be a good sheriff. I am appalled at the journalistic witch hunt in the press over this matter.

Sincerely,  
Katherine Howard  
San Francisco, CA



**To:** Joy Lamug/BOS/SFGOV,  
**Cc:**  
**Bcc:**  
**Subject:** File 120949: Reinstate Sheriff Ross Mirkarimi!

**From:** Sue Englander <s3england4@igc.org>  
**To:** John.Avalos@sfgov.org, david.campos@sfgov.org, David.Chiu@sfgov.org,  
Carmen.Chu@sfgov.org, Malia.Cohen@sfgov.org, Sean.Elsbernd@sfgov.org,  
Mark.Farrell@sfgov.org,  
jane.kim@sfgov.org, Eric.L.Mar@sfgov.org, Christina.Olague@sfgov.org, scott.wiener@sfgov.org,  
Board.of.Supervisors@sfgov.org,  
**Date:** 10/08/2012 06:52 PM  
**Subject:** Reinstate Sheriff Ross Mirkarimi!

---

Dear Members of the Board of Supervisors,

As a member of the Harvey Milk LGBT Democratic Club, I demand that justice be done for the Mirkarimi-Lopez family. Simply put, reinstate Sheriff Ross Mirkarimi to his elected post. End the farce of a process that suspended the sheriff from his duly elected position in the first place. Stop the dis-empowerment of women like Eliana Lopez who are often not listened to and, in this case, was the last issue of concern, even though this whole process claimed to be carried out in her name. As a long-time feminist, I am appalled by the disregard for women during this charade and the maneuvering that has only resulted in a lose lose situation for the sheriff and the city.

Vote to reinstate Sheriff Mirkarimi!

Best, Susan Englander



To: BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120949: Please reject official misconduct charges against Sheriff Mirkarimi

From: SF League of Pissed Off Voters <theleaguesf@gmail.com>  
To: board.of.supervisors@sfgov.org,  
Date: 10/08/2012 08:37 PM  
Subject: Please reject official misconduct charges against Sheriff Mirkarimi

---

Dear Supervisors,

The San Francisco League of Pissed Off Voters asks you to reject the official misconduct charges against Sheriff Mirkarimi.

**Our criminal justice system is broken**

The main flaw in our criminal justice system is the ingrained idea that when someone commits a crime, we have to lock them up and throw away the key. It's this idea that has led to the U.S. having the highest incarceration rate in the world.

**We supported Sheriff Mirkarimi because he is committed to changing that**  
Sheriff Ross Mirkarimi has shown a commitment to reforming the criminal justice system to focus it on rehabilitating offenders and reintegrating them into society. That's the main reason we supported him for Sheriff.

So it's been a brutal irony to watch this flawed 'zero tolerance' idea being applied to Mirkarimi's domestic violence case and leading to his removal from office. We think the Mayor's attempt to remove Mirkarimi from office is misguided, and we're very uncomfortable with a democratically elected official being unilaterally ousted by his political opponents.

It's been a challenge for us to navigate the nuances of the issues raised by this case. We stand against domestic violence, yet we simultaneously believe in rehabilitation and in restorative justice. We abhor our society's failure to address violence against women, yet we believe that in this case, the punitive response was politically fueled. Neither an average resident in San Francisco nor a Sheriff aligned with the Mayor would have been targeted in the way Mirkarimi has been.

**The effect on Theo and Eliana**

The most painful part of this whole situation has been watching Mirkarimi's family be torn apart. Lost in all the drama is the fact that a little boy was kept away from his father for over six months. We think everyone who considers this issue should read Myrna Melgar's Op-Ed "[Domestic violence, a Latina feminist perspective](#)," which considers "the [implications] of the criminalization of low-level, first offenses of domestic violence on . . . immigrant women and other women of color."

Melgar concludes that "a more progressive approach . . . would be to work on emphasizing early, non-law enforcement intervention and the prevention of violence

against women in addition to the necessary work of extricating women from dangerous situations."

### **You can't ignore the politics of the situation**

It's impossible to separate Mirkarimi's removal from office from the dynamics of San Francisco politics. For as long as any of us have been involved, San Francisco politics has been sharply divided between 'progressive' and 'moderate' factions. For more than twenty years, Mirkarimi has been one of the strongest and most effective leaders of the opposition to the interconnected Willie Brown-Gavin Newsom-Ed Lee administrations. Mirkarimi strongly opposed the appointment of Ed Lee as Mayor.

On the Board of Supervisors, Mirkarimi was a vocal critic of then-police chief George Gascon on a number of issues. Mirkarimi led the fight against the Sit Lie Law; Gascon was one of the main supporters. Gascon opposed Mirkarimi's attempts to mandate police foot patrols and require the SFPD to disclose their budget for security for elected officials.

### **Mayor Lee needs to get off his high horse**

We're disturbed by the reports that Mayor Lee committed perjury in his testimony at the Ethics Commission (in denying that he spoke to Supervisor Christina Olague about the case and denying that he offered Mirkarimi a job if he would resign). And we're disappointed in the Mayor's borderline-belligerent reaction to these accusations. The Mayor acts like his word is unassailable and that we should all just "take his word for it" that he didn't commit perjury.

The only reason he is Mayor is because he broke his promise to the people of San Francisco that he wouldn't run for Mayor after he was appointed!

Lee came into office with serious trust issues, and his attempt to dismiss these accusations from respected San Franciscans only makes us less likely to trust him. Mirkarimi has done something that we're still waiting for Mayor Lee to do: apologize and take responsibility for his actions.

When we compare the severity of the response to Mirkarimi's case with the lack of any investigation into the accusations of the Mayor's perjury, as well as the lack of consequences for the apparent voter fraud committed by the Mayor's supporters last year, we're left with the impression that the Mayor and his allies are not held to the same standards as the rest of us.

### **The media fails us again**

The local media has been fascinated with the tornado of scandal that has surrounded these events. Instead of investigative, balanced reporting, we're left with storm chasing that reads more like gossip rags. We want to see more focus on testimony and context and less of the media assuming the role of judge and jury.

### **What we want**

So here's what we want to see happen:

- The Board of Supervisors to vote to reject the charges of official misconduct against Sheriff Mirkarimi. We don't believe Mirkarimi's misdemeanor rises to the level of official misconduct, and we're uncomfortable with him being removed from office by his political opponents.
- The District Attorney to fully investigate the allegations of the Mayor's perjury.
- The members of the Board of Supervisors to come clean about any conversations they had with the Mayor on this issue.
- And lastly, we want Mirkarimi to take advantage of this second chance. We're painfully disappointed in his actions, which set off this shit storm in the first place, but we're encouraged by how this ordeal has made him more humble and open. If he is reinstated as Sheriff, Mirkarimi needs to continue to own up to his actions and use his experience to lead the effort to reform how we treat domestic violence in San Francisco. The City voters elected Mirkarimi and they should have the final decision on whether he remains as Sheriff.

Sincerely,

The San Francisco League of Pissed Off Voters

<http://theleague.com/sf>

<http://facebook.com/theleaguesf>

<http://twitter.com/theleaguesf>

<http://theleaguesf.tumblr.com>

#### **About the League**

For the last fifteen elections, the San Francisco League of Pissed Off Voters has made a voter guide for young people in the City. We distribute our voter guides hand-to-hand all across the City: at bus stops, parks, bars, street festivals, etc. If there's another group that puts more election information directly into the hands of young San Franciscans, we'd like to buy them a drink!

We are an all-volunteer chapter of the national League of Young Voters. We empower young people to be players and winners in the political game. We're building a permanent, progressive, youth-driven campaign.





**To:** BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
**Cc:**  
**Bcc:**  
**Subject:** File 120949: Please Reinstate Ross Mirkarimi as Sheriff of San Francisco

**From:** ampicob@comcast.net  
**To:** SF Board of Supervisors <board\_of\_supervisors@ci.sf.ca.us>,  
**Date:** 10/08/2012 08:44 PM  
**Subject:** Please Reinstate Ross Mirkarimi as Sheriff of San Francisco

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**To All Eleven Members of the San Francisco Board of Supervisors:**

**Please Reinstate Ross Mirkarimi who was duly elected Sheriff, as Sheriff of the City and County of San Francisco!**

**Thanks, Sincerely**

**Alfred M. Lopez & Robert R, Perry**  
**877 Treat Avenue**  
**San Francisco, Ca 94110**

**415-826-6737**



**To:** BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
**Cc:**  
**Bcc:**  
**Subject:** File 120949: Personal appeal: PLEASE REINSTATE ROSS MIRKARIMI AS SHERIFF

**From:** Heike Hiss <heike@eh21.com>  
**To:** david.chiu@sfgov.org, scott.wiener@sfgov.org, carmen.chu@sfgov.org, jane.kim@sfgov.org,  
john.avalos@sfgov.org, eric.l.mar@sfgov.org, mark.farrell@sfgov.org, christine.olague@sfgov.org,  
**Cc:** sean.elsbernd@sfgov.org, malia.cohen@sfgov.org, david.campos@sfgov.org,  
board.of.supervisors@sfgov.org  
**Date:** 10/08/2012 09:31 PM  
**Subject:** Personal appeal: PLEASE REINSTATE ROSS MIRKARIMI AS SHERIFF

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Dear Board of Supervisors,

On the eve of your vote for or against Ross Mirkarimi's reinstatement as sheriff I wanted to send you a note as a very concerned citizen. I am concerned with the democratic process that has been eroding under Mayor Lee's "leadership" and the way this whole "incident" has been handled over the last 10 months. This has been a wasteful use of public resources and a mockery of justice.

We elected Ross as sheriff and we should be the only ones to determine who our sheriff is, not the Mayor, not the Ethics Commission, but the voters!

Many of you will probably feel compelled to vote in a way that will ensure your own success in the upcoming Board of Supervisor elections. My hope is that you will vote in a way that reflects your duty as representatives of the citizens of San Francisco and those citizens want Ross Mirkarimi to be their sheriff!!

Thank you very much!

Heike Hiss  
(District 5)



To: Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120949: Special Meeting October 9, 2012, Agenda Items 1-3: Ross Mirkarimi

From: Barbara Beth <babethsemail@yahoo.com>  
To: "Board.of.Supervisors@sfgov.org" <Board.of.Supervisors@sfgov.org>, "John.Avalos@sfgov.org" <John.Avalos@sfgov.org>, "David.Campos@sfgov.org" <David.Campos@sfgov.org>, "David.Chiu@sfgov.org" <David.Chiu@sfgov.org>, "Carmen.Chu@sfgov.org" <Carmen.Chu@sfgov.org>, "Malia.Cohen@sfgov.org" <Malia.Cohen@sfgov.org>, "Sean.Elsbernd@sfgov.org" <Sean.Elsbernd@sfgov.org>, "Mark.Farrell@sfgov.org" <Mark.Farrell@sfgov.org>, "Jane.Kim@sfgov.org" <Jane.Kim@sfgov.org>, "Eric.L.Mar@sfgov.org" <Eric.L.Mar@sfgov.org>, "Christina.Olague@sfgov.org" <Christina.Olague@sfgov.org>, "Scott.Wiener@sfgov.org" <Scott.Wiener@sfgov.org>,  
Date: 10/09/2012 07:23 AM  
Subject: Special Meeting October 9, 2012, Agenda Items 1-3: Ross Mirkarimi

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San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102

Dear Supervisors:

I am emailing you because I am not able to attend and speak during public comment for the special meeting, scheduled on October 9, 2012, Agenda Items 1-3, regarding charges of misconduct and the suspension of Sheriff Ross Mirkarimi.

I ask that the Board of Supervisors vote to NOT sustain the charges of misconduct and allow Ross Mirkarimi to return to his position as Sherrieff. Ross Mirkarimi is a good moral person and an ethical politician who works for the people of San Francisco and like the rest of us makes and learns from mistakes.

I was once a victim of domestic violence and grabbing someone's arm too hard in the heat of an argument is, in my book, extremely minor, legally NOT "official" misconduct and definitely not cause for what Sheriff Ross Mirkarimi and his family is being put through.

We must put Ross Mirkarimi's actions in the appropriate context and I believe based on Mirkarimi's actions, the suspension from

the office of Sheriff and separation from his family is extremely severe and unjust. I must say that what is happening to Mirkarimi and his family is political and unethical. I voted for Ross Mirkarimi to become Sheriff and want him to remain as the Sheriff of San Francisco.

Thank you for your time,

Barbara Beth  
PO Box 191443  
San Francisco, CA 94119  
[babethsemail@yahoo.com](mailto:babethsemail@yahoo.com)  
510-717-4573



To: BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120949: R Mirakami

From: Carol Brown <1cbsfgo@gmail.com>  
To: board.of.supervisors@sfgov.org,  
Date: 10/09/2012 11:10 AM  
Subject: R Mirakami

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PLEASE do NOT allow this person to represent law enforcement or the  
City and County of SF.

From a 30 year resident of Noe Valley



To: BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120949: Ross Mirkarimi..... did a bad, bad thing....., but NOT a thing that was "Official Misconduct"

From: john barry <jack@barryhillrealtors.com>  
To: Board of Supervisors Board <Board.of.Supervisors@sfgov.org>,  
Date: 10/09/2012 10:49 AM  
Subject: Ross Mirkarimi..... did a bad, bad thing....., but NOT a thing that was "Official Misconduct"  
Sent by: Jack Barry <jackbarry99@gmail.com>

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Dear Board Members:

Of course what Ross did, in twisting his wife's arm....was wrong...

It COULD NOT BE "Official Misconduct" as he was not "in the course and scope of his City job...at the time....AND ...he was not yet the Sheriff.

No matter what words you would use to justify his dismissal..... the public will read it as just "the usual shenanigans of politics.: "Get 'Em If You Can, no matter what."..... San Francisco will not add a whit of luster to its reputation... if you indulge in "good old payback".

john barry

[BarryHillRealtors.com](http://BarryHillRealtors.com)

[jackbarry99@gmail.com](mailto:jackbarry99@gmail.com)



To: Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120949: Sheriff Ross Mirkarimi

From: terrie frye <grannygear1@yahoo.com>  
To: "Board.of.Supervisors@sfgov.org" <Board.of.Supervisors@sfgov.org>, "carmen.chu@sfgov.org" <carmen.chu@sfgov.org>,  
"Christina.Olague@sfgov.org" <Christina.Olague@sfgov.org>, "david.campos@sfgov.org" <david.campos@sfgov.org>, "david.chiu@sfgov.org" <david.chiu@sfgov.org>,  
<david.chiu@sfgov.org>, "Eric.L.Mar@sfgov.org" <Eric.L.Mar@sfgov.org>, "Jane.Kim@sfgov.org" <Jane.Kim@sfgov.org>,  
"John.Avalos@sfgov.org" <John.Avalos@sfgov.org>, "Malia.Cohen@sfgov.org" <Malia.Cohen@sfgov.org>,  
"Mark.Farrell@sfgov.org" <Mark.Farrell@sfgov.org>, "Scott.Wiener@sfgov.org" <Scott.Wiener@sfgov.org>,  
"sean.elsbernd@sfgov.org" <sean.elsbernd@sfgov.org>,  
Date: 10/09/2012 11:20 AM  
Subject: Sheriff Ross Mirkarimi

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Dear Supervisors,

Though I have emailed you before about this, I thought I'd take this moment before the meeting today to again express my views on the subject.

You have a chance to do the right thing and let Ross do the job he was elected to do.

Ethics should trump politics, and it's too bad that only one Ethics Commissioner understands this.

You know in your hearts that this was not official misconduct.

Please reinstate our sheriff.

Sincerely,

Terrie Frye

The light at the end of the tunnel may be an oncoming train.



**To:** Joy Lamug/BOS/SFGOV,  
**Cc:**  
**Bcc:**  
**Subject:** File 120949: Democracy

**From:** susan vaughan <susan\_e\_vaughan@yahoo.com>  
**To:** Eric Mar <Eric.L.Mar@sfgov.org>, mark farrell <mark.farrell@sfgov.org>, david chiu <david.chiu@sfgov.org>, carmen chu <carmen.chu@sfgov.org>, Christina Olague <christina.olague@sfgov.org>, jane kim <jane.kim@sfgov.org>, sean elsbernd <sean.elsbernd@sfgov.org>, david campos <david.campos@sfgov.org>, malia cohen <malia.cohen@sfgov.org>, john avalos <john.avalos@sfgov.org>, scott wiener <scott.wiener@sfgov.org>,  
**Cc:** "angela.calvillo@sfgov.org" <angela.calvillo@sfgov.org>, Angela Calvillo <board.of.supervisors@sfgov.org>, Nickolas Pagoulatos <Nickolas.Pagoulatos@sfgov.org>, "andres.power@sfgov.org" <andres.power@sfgov.org>, "Peter.Lauterborn@sfgov.org" <Peter.Lauterborn@sfgov.org>, "catherine.rauschuber@sfgov.org" <catherine.rauschuber@sfgov.org>, Raquel Redondiez <Raquel.Redondiez@sfgov.org>, jeremy pollock <jeremy.pollock@sfgov.org>, Frances Hsieh <Frances.Hsieh@sfgov.org>  
**Date:** 10/09/2012 11:13 AM  
**Subject:** Democracy

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Dear Supervisors,

Today you will vote on one of the most contentious issues before you, whether or not to uphold the suspension of Sheriff Ross Mirkarimi. I know that some of you think that your re-elections could be decided based on how you vote, but I urge you to do the right thing.

Ross Mirkarimi is not an easy man to like or to work with. I know this well from my interactions with him. However, I know that you know that the matter before you today is not a popularity contest. It is question of two things:

- 1) Does the punishment fit the misdemeanor?; and,
- 2) Has the mayor, in taking the extraordinary step of suspending the mayor, set a very dangerous precedent that threatens the democratic process in undermining the will of the voters?

On the first matter, I am not a lawyer and can only offer anecdotal evidence that the loss of a job and a source of income to support a family are out of proportion to the incident to which Ross Mirkarimi pled. I do not excuse physical violence . or verbal battery . however, none of us are perfect. I have talked to many women about the incident, many of whom women grew up in violent households or escaped from violent relationships or lost children to street violence. Together when we talk, we are uniform in our visceral reaction to rumors of violence toward women and children. And yet, we all wonder: does the punishment fit this misdemeanor?

Also, are you really ready to tell Eliana Lopez that you know more about how she should fix her family matters than she does? Her side of the story has been completely disrespected in this process. It should be clear to all of us now that the video was made



so that she could use it in the event of a custody battle . she did not let her neighbor make it in the hopes that it would lead to Ross's job loss. No wonder she has come out swinging in defense of her husband.

On the second matter, I am concerned about the radical precedent that Mayor Ed Lee created in moving to suspend Ross Mirkarimi without pay. Ross won his race for sheriff by a wider margin than did Ed Lee in his race for mayor. Mirkarimi was right when he said once in the past few months, .If they can do this to me, they can do it to anyone.. The matter of removing an elected official from office for pleading guilty to a misdemeanor should be left up to the voters.

This is a crucial matter, as the right of the voters has been under attack since 2000 when the Supreme Court peremptorily ended the vote count in Florida and selected George W. Bush as the winner and made him president of the United States. We now see Republican state legislatures passing laws wherever they can to make voting more difficult . especially poor and minority voters who are more likely to vote Democratic. But here in San Francisco, we see the mayor invalidating the will of the voters and snatching one electoral victory away in its entirety. This is a dangerous precedent. I ask you: do you think this punishment, this invalidation of the voters' will, fits the misdemeanor?

Sue Vaughan  
District 1



To: BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: F120949: Please reinstate Sheriff Mirkarimi

From: Alex Lantsberg <lantsberg@gmail.com>  
To: Sfbos <board.of.supervisors@sfgov.org>,  
Date: 10/09/2012 11:29 AM  
Subject: Please reinstate Sheriff Mirkarimi

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Supervisors,

Please add my name as one more individual in support of reinstating  
Ross Mirkarimi to his position as Elected Sheriff

I believe the record has shown conclusively that this entire case is the product  
of marital gamesmanship, deception, and ugly politics.

There is no excuse for domestic violence and Sheriff Mirkarimi's acceptance  
of a plea deal certainly provides significant reason for concern. However  
as this entire drama has unfolded it has become quite clear that the incident  
that has brought us here bears no resemblance to the charges leveled against  
Mr. Mirkarimi.

Whatever your political orientation and regardless of whom you voted for  
in the election, please uphold the will of the voters and reinstate Mr. Mirkarimi  
to the position to which he was elected.

Alex Lantsberg  
San Francisco

Mosccone  
Emblidge  
Sater  
& Otis

220 Montgomery St  
Suite 2100  
San Francisco  
California 94104

Ph: (415) 362-3599  
Fx: (415) 362-2006

mosconelaw.com

October 6, 2012

*Via Hand Delivery*

Hon. David Chiu  
President, Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

Re: Official Misconduct Proceedings

Dear President Chiu:

Because of numerous requests and questions raised by the public and other members of the Board of Supervisors, you have asked me to put in writing the advice I have provided to you and other Board members on the following question: "Given the request from counsel for Sheriff Mirkarimi that the Board of Supervisors issue subpoenas related to testimony by Mayor Lee at the Ethics Commission, what legal considerations inform the Board's response, if any?" I understand that you would like this advice to be public rather than confidential. Accordingly, I will provide a copy of this letter directly to counsel for the Mayor and for Sheriff Mirkarimi, as well as each member of the Board.

The Board has the power to issue subpoenas. Under Board Rule 6.14, subpoenas relating to proceedings such as this one "shall be issued upon a motion duly seconded, with an affirmative vote of a majority of the Supervisors present."

In my view, the Board should use its subpoena power cautiously in a proceeding like this one, because the Charter contemplates that the Ethics Commission (rather than the Board) as the body holding an evidentiary hearing. That being said, I am not aware of any legal bar to the Board issuing subpoenas or otherwise seeking to hear from witnesses.

The Sheriff has asked that three witnesses be subpoenaed: Debra Walker, Aaron Peskin and Walter Wong. As I understand the Sheriff's request, he seeks to question these witnesses about certain conversations they had in order to determine if the Mayor testified truthfully before the Ethics Commission. The Sheriff alleges that the Mayor may not have testified truthfully and may therefore be guilty of perjury.

File 120949  
BOS-11, COB  
cpage

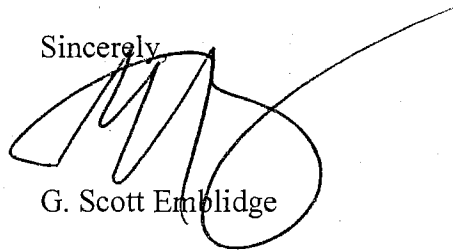
RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2012 OCT -9 PM 12:00  
PN

Of course, these are serious allegations.<sup>1</sup> "Perjury is itself a serious crime, a [m]anipulative defiance of the law." (*Roberts v. United States* (1980) 445 U.S. 552, 567, n.6 [internal quotations omitted].) But investigating whether the Mayor committed such a crime seems best left to law enforcement.

In this proceeding, the question before the Board is whether the Sheriff committed official misconduct. The Mayor is accused of testifying untruthfully about two things: (1) whether the Mayor attempted to find out whether the Sheriff "would be willing to resign as Sheriff if he was provided with another job" (see Peskin Declaration, ¶¶ 2-5), and (2) whether the Mayor had a conversation with Supervisor Olague in which the Supervisor "told Mayor Lee she thought he should ask for the Sheriff's resignation, but if he didn't resign, that he should let the Sheriff remain in office." (Walker Declaration, ¶ 21.) Whether the Mayor attempted to offer, through an intermediary, the Sheriff a job if the Sheriff resigned, has no relevance to whether the Sheriff's actions constituted official misconduct. Similarly, whether the Mayor and Supervisor Olague had the alleged conversation, is not relevant to the issue before the Board.

In sum, the Board has the power to issue the requested subpoenas. However, in my view, the Board should not exercise that power because (1) the evidentiary portion of this process took place at the Ethics Commission; (2) the issue of the Mayor's alleged perjury is better addressed by law enforcement authorities, and (3) perhaps most importantly, the perjury, as alleged, is not relevant to whether the Sheriff committed official misconduct.

Sincerely,



G. Scott Emblidge

cc: Members of the Board of Supervisors  
Clerk to the Board of Supervisors  
Counsel to Sheriff Ross Mirkarimi  
Counsel to Mayor Edwin Lee

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<sup>1</sup> I am expressing no view on whether the Mayor's testimony before the Ethics Commission, when contrasted with the allegations in the Walker and Peskin Declarations, actually constitutes perjury.



To: BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120949: Supporting Ross Mirkarimi

From: Library Users Association <libraryusers2004@yahoo.com>  
To: Christina.Olague@sfgov.org, board.of.supervisors@sfgov.org,  
Date: 10/09/2012 01:01 PM  
Subject: Supporting Ross Mirkarimi

---

Dear Supervisor Olague, and other Members of the Board of Supervisors:

We support the reinstatement of Sheriff Ross Mirkarimi, and ask you to vote for reinstatement.

We are concerned that the removal of the elected sheriff would be a dangerous precedent.

We also understand the hypocrisy of the Mayor in using the Ethics Commission to bludgeon Ross Mirkarimi while doing nothing at all in a previous matter in which the Ethics Commission recommended to the Mayor to remove Mayoral appointee Jewelle Gomez, the Library Commission President, following the unanimous vote of the Sunshine Ordinance Task Force that she had willfully violated the law by silencing a member of the public during a Library Commission meeting.

Not only did Mayor Lee do nothing about the Ethics Commission recommendation -- he didn't even answer their letter -- but the Library Commission re-elected Ms. Gomez President of the Commission earlier this year. Of course, as you know, all of the Commissioners are appointees of the Mayor's office.

We are also concerned that the attempted removal represents Mayor Ed Lee's effort, along with his enablers, to politically and culturally cleanse San Francisco -- an effort that includes the attempted removal of the sheriff, as well as the removal of the political, multi-cultural, Victor Jara Mural on the Bernal Heights Branch Library, which had two sides painted out last week.

Thank you for your attention to this.

Peter Warfield  
Executive Director  
Library Users Association  
415/753-2180



**To:** BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
**Cc:**  
**Bcc:**  
**Subject:** File 120949: R. Mirkarimi

**From:** <Board.of.Supervisors@sfgov.org>  
**To:** <Board.of.Supervisors@sfgov.org>,  
**Date:** 10/09/2012 10:20 AM  
**Subject:** Clerk of the Board Customer Satisfaction Form

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To:Board.of.Supervisors@sfgov.org  
Email:Board.of.Supervisors@sfgov.org  
DIVISION\_AGENCY:COB  
TREATED\_YOU:Neutral  
VOICEMAIL:Neutral  
EMAIL\_RESPONSE:Neutral  
QUESTIONS:Neutral  
ACCURATE\_INFORMATION:Neutral  
BEHAVED\_ETHICALLY:Neutral  
ANSWER\_RESPONSE:Neutral  
COMFORT\_LEVEL:Average  
ADDITIONAL\_COMMENTS:Do not reinstate Ross Mirkarimi as Sheriff. We do not need a Sheriff with a criminal record!!. I will not support the decision to reinstate. I live and vote in the City and have for the past forty years  
NUMBER:  
MAILING\_ADDRESS:  
CONTACT\_EMAIL:



To: BOS Constituent Mail Distribution, Joy Lamug/BOS/SFGOV,  
Cc:  
Bcc:  
Subject: File 120949: New on StopLHHDownsize.com: Swimming in 'Official Misconduct' – Misconduct by Board of Supervisors and Ethics Commission Goes Unreported

From: pmonette-shaw <Pmonette-shaw@earthlink.net>  
To: undisclosed-recipients:;  
Date: 10/08/2012 02:30 PM  
Subject: New on StopLHHDownsize.com: Swimming in 'Official Misconduct' – Misconduct by Board of Supervisors and Ethics Commission Goes Unreported

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A condensed version of my new article "Swimming in 'Official Misconduct' " is in October's *Westside Observer* . The full version is now posted on [www.stopLHHdownsize.com](http://www.stopLHHdownsize.com):

### "Swimming in 'Official Misconduct' "

While the Board of Supervisors is swimming in official misconduct of its own in the Park Merced development deal, and while the Ethics Commission appears to have engaged in official misconduct by exercising authority beyond what it is granted in the City Charter, the Board of Supervisors wrongly claimed the Sunshine Ordinance Task Force had engaged in official misconduct, and Mayor Ed Lee's appointees to the Ethics Commission literally made up new charges at the last against Sheriff Ross Mirkarimi after failing to find Mirkarimi guilty of official misconduct.

Why is the focus on Mirkarimi and the Sunshine Task Force, but there's no focus — and next to no media coverage — on the official misconduct allegations against the Board of Supervisors or the exceeding authority charges against the Ethics Commission?

The hypocrisy of San Francisco's Board of Supervisors and its Ethics Commission no longer comes as a surprise to most open government observers, hypocrisy clearly visible in two cases currently shedding light on the death of democracy in San Francisco.

It will now be up to the Board of Supervisors to explain how the Ethics Commission could be permitted to violate the City Charter in the Mirkarimi matter, while the Supervisors make false claims against the Task Force, which had not violated the Charter.

Any claim the SOTF had engaged in a "brazen violation of the Charter" is both pretext and an elephantine canard. Indeed, there was a difference of opinion in whether Charter Section 4.104, "Boards and commissions – Rules and Regulations," applies to the Sunshine Task Force. Ambiguities between Sections 4.104 (a) and 4.104 (b) cloud the issue, according to knowledgeable observers. So reasonable people can and have disagreed whether sub-paragraph (b) applies to the Task Force, since sub-paragraph (a) clearly does not. And notably, members of the Task Force appear to have believed at the time of their vote over a year ago, that "of the executive branch" refers to the entire section of Charter Section 4.104.

Reportedly, the Board of Supervisors were not as annoyed so much by the SOTF's referral to Ethics as they were by the Task Force's additional referral of the Park Merced violation to the District Attorney.

### **Ethics Commission Violates City Charter**

San Francisco's mainstream daily news media have reported only the most superficial information about the issues underlying Mayor Ed Lee's official misconduct charges against Sheriff Ross Mirkarimi. In stark contrast, a detailed, dispassionate legal analysis was posted anonymously on September 9 in a blog article titled "*San Francisco Ethics Commission Official Misconduct Proceeding Against Sheriff Ross Mirkarimi — Thoughts on Final Hearing — August 16, 2012 .*" The anonymous author thoughtfully lays out — point after point — successive observations about the deliberations of the Ethics Commission, raising about 90 well-reasoned arguments of how the Ethics Commission went astray.

Instead, the Ethics Commission made up its own rules. The author notes, "Voters never granted the unelected five-member Ethics Commission the authority to make recall decisions for them.

Its authority is strictly limited to a legal question. ... The Ethics Commission may not exercise authority it has never been granted by 'upgrading' non-official misconduct to 'official misconduct' merely because the Ethics Commission is confident — even certain — that voters would not have elected the official had they known what the Ethics Commission has since learned."

By making up the rules of the misconduct proceedings against Mirkarimi as they went along, the Ethics Commission appears to have violated the City Charter themselves by exercising authority it has not been granted by the Charter, let alone by the voters.

Patrick Monette-Shaw

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BOS-11  
CPAQC

File 120949

October 8, 2012

**San Francisco Board of Supervisors**

The Honorable David Chiu, President, San Francisco Board of Supervisors, District 3  
The Honorable Eric Mar, Supervisor, San Francisco Board of Supervisors, District 1  
The Honorable Mark Farrell, Supervisor, San Francisco Board of Supervisors, District 2  
The Honorable Carmen Chu, Supervisor, San Francisco Board of Supervisors, District 4  
The Honorable Christina Olague, Supervisor, San Francisco Board of Supervisors, District 5  
The Honorable Jane Kim, Supervisor, San Francisco Board of Supervisors, District 6  
The Honorable Sean Elsbernd, Supervisor, San Francisco Board of Supervisors, District 7  
The Honorable Scott Wiener, Supervisor, San Francisco Board of Supervisors, District 8  
The Honorable David Campos, Supervisor, San Francisco Board of Supervisors, District 9  
The Honorable Malia Cohen, Supervisor, San Francisco Board of Supervisors, District 10  
The Honorable John Avalos, Supervisor, San Francisco Board of Supervisors, District 11

1 Dr. Carlton B. Goodlett Place

San Francisco, CA 94102

**Re: Reject the Ethics Commission's Charges Against Sheriff Ross Mirkarimi**

Dear Board of Supervisors,

Surely you must be aware of a non-looney analysis of the Ethics Commission's August 16 hearing thought to have been written by a Bay Area legal scholar. The clear-headed legal analysis is available on the Internet at <http://rjemirkarimi.blogspot.com/2012/09/ethics-commission-proceeding-against.html>.

Rather than wading through three or four three-ring binders of materials presented to you by the Ethics Commission, all you need to do is read the 16-page analysis, which I have attached for your convenience.

The Ethics Commission — limited to the single legal question “Did Mirkarimi commit ‘official misconduct’ defined in Charter Section 15.105(e)?” — failed answering this question. This well-researched legal analysis concludes Ethics Commissioners can’t exercise authority they’ve never been granted by “upgrading” non-official misconduct to “official misconduct,” and predicts a court will eventually reject the Commission’s blatantly unconstitutional definition of official misconduct.

The Board of Supervisors should reject it, too, if only for your own self-interest.

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**“ This well-researched legal analysis ... predicts a court will eventually reject outright the Ethics Commission’s blatantly unconstitutional definition of official misconduct. ”**

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The author notes, “Voters never granted the unelected five-member Ethics Commission the authority to make recall decisions for them. The only way the Ethics Commission could do that would be by substituting their own political judgment for the judgment of voters, but they have no authority to do that, either.”

Of note, the analysis reports:

- In an ironic close to this five-month proceeding, after having explicitly rejected Mayor Lee’s disputed fact allegations — one by one, unanimously in each case — the Ethics Commission nevertheless ruled for Mayor Lee, 4 to 1, on two of his six Counts against Mirkarimi (Counts 4 and 5). Their ruling was narrowly based on the only facts the Ethics Commission did find were established — facts that had been accepted by nearly everyone before this proceeding even began: Ross Mirkarimi had physically abused his wife during an argument on December 31, 2011 (New Year’s Eve), eight days before he became Sheriff, and had been convicted of misdemeanor false imprisonment in March 2012. The Ethics Commission did not find that Mirkarimi committed any misconduct while he was actually Sheriff — or on any day other than New Year’s Eve.

October 8, 2012

Re : Reject the Ethics Commission's Charges Against Sheriff Ross Mirkarimi

Page 2

- One may fairly question whether such "relationships" adequately apprise an official of what conduct is prohibited under San Francisco's "official misconduct" law — at least if the official has limited experience playing "The Six Degrees of Kevin Bacon." Does Mayor Lee really argue, for example, that "official misconduct" may include any and all conduct that might result in someone being put on probation, even purely personal conduct totally unrelated to the performance of any official duties? If so, are Commissioners Liu, Studley and Hayon saying anything different from what Mr. Renne said? Is their new "relationship" requirement so diluted that it amounts to no requirement at all — exactly what Mr. Renne insists? And if that is correct, does it not follow that all four Commissioners are interpreting San Francisco's "official misconduct" statute in a way that leaves it unconstitutionally vague?
- I am confident a court will conclude just that. It will reject out of hand Mr. Renne's blatantly unconstitutional interpretation of the "official misconduct" definition. With just a bit more effort, it will reject also the "backwards reasoning" that led Commissioners Liu, Studley and Hayon, albeit less obviously, to the same unconstitutional conclusion.

How far back in time can a Mayor or Ethics Commission look to uncover evidence of former improper misconduct in misguided attempts to find relationships to previous conduct and an elected or appointed office held? Eight months? Two years? An entire lifetime?

If this new "standard" is upheld, every City employee could face removal by a vindictive Mayor. Who would ever choose to become a public servant or public employee with rules like that in place? If Mayor Lee is allowed to make up these rules as he goes along, what's to stop him from fabricating charges against, say, Supervisor Sean Elsbernd or Supervisor Scott Wiener? Is any employee safe with this sort of a precedent, and do the Board of Supervisors really want to hand such open-ended authority to the Mayor in perpetuity? How would that work under a really rotten mayor?

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**"By making up the rules of the misconduct proceedings against Mirkarimi as they went along, the Ethics Commission appears to have violated the City Charter themselves by exercising authority it has not been granted by the Charter."**

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***By making up the rules of the misconduct proceedings against Mirkarimi as they went along, the Ethics Commission appears to have violated the City Charter themselves*** by exercising authority it has not been granted by the Charter.

One of you should find the ethical integrity to introduce a motion during your hearing on October 9 to dismiss the charges against Mr. Mirkarimi.

After all, the Mayor's initial charges against the Sheriff were rejected outright by the Ethics Commission, and then the Commission rejected all six of the revised charges the Mayor substituted. Then, and at the last second, the Ethics Commission dreamt up a new hybrid charge by combining portions of two other charges into a brand new charge that Mr. Mirkarimi wasn't informed of in order to provide an adequate defense until just seconds before the Ethics Commission's hearing ended abruptly on August 16. Talk about a Kangaroo Court!

Don't let this case head to Superior Court; if you do, a court may well eventually rule that the Board of Supervisors also acted without authority in wrongly removing Sheriff Mirkarimi. If that happens, the City will more than likely be held liable for millions in a wrongful termination lawsuit.

Send the Mayor an unmistakable message that the Board of Supervisors will not allow the City to be run by the Law of Its Rulers, and that our democracy hinges of the Rule of Law, not the Wild West's *Law of Its Rulers*.

Respectfully submitted,

[signed]

Patrick Monette-Shaw

Columnist, *Westside Observer* Newspaper

cc: Angela Calvillo, Clerk of the Board, San Francisco Board of Supervisors

**Sunday, September 9, 2012**

**San Francisco Ethics Commission  
Official Misconduct Proceeding against Sheriff Ross Mirkarimi  
Thoughts on Final Hearing — August 16, 2012**

(September 9, 2012)

**Introduction**

Law professors like to say it: “Hard cases make bad law.” This is one. But hard cases are what law students typically read and discuss in class. Sometimes the discussions feature well-reasoned views, clearly presented. More often, they expose views that have not been well thought out and are presented even less clearly than they are understood. A little of both happened at the Ethics Commission’s final hearing on August 16 — but mostly the latter. The brief afternoon deliberations resembled nothing so much as a rambling class discussion, and they succeeded about as well in resolving important legal questions. The reasons seem clear now.

Throughout this proceeding, the Commissioners appeared so determined not to signal their leanings that they declined to do what a good judge typically does: decide scope-defining legal questions along the way so that evidence and arguments will be restricted to relevant matters under the applicable law. Had the Ethics Commission done so, this proceeding would have focused properly on Mirkarimi’s official conduct while he was Sheriff, not wallowed in his personal conduct eight days, ten months and four years before he took office.

The Ethics Commission neglected to do this, and the proceeding degenerated into what most of the audience preferred to see anyway: the sensational trial of the criminal case that was denied to them when that case was abruptly settled. Hell hath no fury like a news-starved city that has a high-profile case snatched away from it, and nothing is so tempting as an opportunity to snatch it back. By the end, what happened on December 31, 2011, and four days later when Ivory Madison reported the incident to police, seemed to be all that mattered, even though all of that happened before Mirkarimi became Sheriff and none of it related to his duties as an outgoing Supervisor (as the Ethics Commission itself agreed). What little time was spent on Mirkarimi’s actual tenure as Sheriff was devoted largely to (1) fruitless efforts to show he’d interfered with the investigation of the New Year’s Eve incident; and (2) trotting out city employees, expert witnesses and even Mayor Lee to predict irrelevantly that Mirkarimi would be an ineffective Sheriff because of personal misconduct that occurred before he took office.

Some will disagree that Mirkarimi’s misconduct must have occurred while he was Sheriff. I am confident a court will tell them otherwise some day, and I hope what I write below will make that even more likely. But the immediate point is narrower: simply that the Ethics Commission should have decided the key process-shaping question — May an elected Sheriff be removed from office without voter approval based on misconduct that occurred before he became Sheriff? — before, not after, admitting testimony from a parade of witnesses who said little or nothing about Mirkarimi’s actual conduct as Sheriff.

In the end, the Ethics Commission did not find Mirkarimi had engaged in any misconduct at all while he was Sheriff — official or unofficial — but hardly anyone noticed. By then, nearly everyone involved in this proceeding, or watching it, mistakenly believed that the question to be decided was much different from what it really was. Even the Ethics Commission appeared to believe this, and so it answered a question that most of its members found more fascinating: Did Mirkarimi commit misconduct before he became Sheriff? Once they decided the answer was “yes,” four of them turned their attention to persuading others, and themselves, that they

had answered the question actually presented to them. That hopeless effort culminated in the muddled “law school class discussion” that occurred on the afternoon of August 16.

Pointed questions, asked early, could have focused this proceeding properly. For example, the Ethics Commission should have given the parties essentially these marching orders before sending them off to write one of their early briefs:

So far, no one has pointed us to a case where a public official was charged with official misconduct for something he’d done before he took office — except where the official was convicted of a felony while he was in office, but that didn’t happen here. Has this been mere coincidence, or have officials been removed only for misconduct that occurred while they were in office? Most misconduct cases don’t address this question. Is that because it doesn’t matter when the misconduct occurred, or simply because it wasn’t an issue in the case? Are there other removal cases involving misconduct, short of a felony, that occurred before the official took office? If so, we’d appreciate citations. If it turns out that non-felony misconduct committed by Mr. Mirkarimi before he became Sheriff can’t be considered official misconduct, it may be appropriate to focus this proceeding on the time period when he actually was Sheriff.

Possibly Mayor Lee’s attorneys would have come up with something, but I doubt it. More likely they would have been boxed into a corner, left with nothing but their specious argument that Mirkarimi was an “elected but unsworn” Sheriff on New Year’s Eve, obliged to perform “official duties” he did not have. If the Ethics Commission had examined this argument thoroughly and decided it once and for all, early in the proceeding, almost certainly it would have rejected it (someone elected as Sheriff has no “duties of office” until he becomes Sheriff). This would have left Mayor Lee with no basis for presenting his “pre-Sheriff” evidence and related arguments that dominated the proceeding. He’d have been left with allegations of Mirkarimi’s witness dissuasion, abuse of power, improper turnover of guns, and failure to cooperate with the prosecution of the criminal case against him — all of which were unanimously rejected by the Ethics Commission on August 16. The proceeding would have moved along more quickly, almost certainly with the opposite outcome.

Instead, four of the five Commissioners persuaded themselves that the New Year’s Eve incident was what mattered, set themselves firmly against Mirkarimi on that basis, and then searched for a legal rationale (or rationales) to support the non-legal conclusion they’d already reached. Probably not one of them would acknowledge that happened, or even recognize that it did. But it did.

Now it falls to the Board of Supervisors to squeeze through the narrow passage the Ethics Commission has left it — to remove Mirkarimi from office, as Mayor Lee demands, without handing the present and all future San Francisco mayors a powerful political weapon they have never had before — the ability to rid themselves quickly of a political opponent by removing him from office for personal misconduct that occurred before he took office.

Almost certainly the Supervisors cannot navigate this narrow passage without achieving this unintended result, even though the zeal of some of them, and political pressure being applied to all of them, may persuade them that they can. If the Board accepts the Ethics Commission’s recommendation and removes Mirkarimi, some Supervisors may never recognize the long-term mistake they will have made. Others may understand but not care because they expect to be gone when their mistake becomes clear, or because they are confident or naïve enough to believe no mayor will ever use this new power against them. Only a small handful of Supervisors seem capable of appreciating what is at stake here. Unfortunately for Mirkarimi, there may be too few to save him from becoming the first of many officials who fall to this powerful new weapon of San Francisco’s mayors.

Hard cases make bad law, but they nonetheless make law. The Supervisors should remember this clearly when they decide whether to approve what the Ethics Commission did on August 16.

### Analysis

In an ironic close to this five-month proceeding, after having explicitly rejected Mayor Lee's disputed fact allegations — one by one, unanimously in each case — the Ethics Commission nevertheless ruled for Mayor Lee, 4 to 1, on two of his six Counts against Mirkarimi (Counts 4 and 5). Their ruling was narrowly based on the only facts the Ethics Commission did find were established — facts that had been accepted by nearly everyone before this proceeding even began: Ross Mirkarimi had physically abused his wife during an argument on December 31, 2011 (New Year's Eve), eight days before he became Sheriff, and had been convicted of misdemeanor false imprisonment in March 2012. The Ethics Commission did not find that Mirkarimi committed any misconduct while he was actually Sheriff — or on any day other than New Year's Eve.

This table shows the Ethics Commission's rulings on each of Mayor Lee's six Counts:

Count Number	Count Title	Charge Sustained?
Count 1	Wrongful Behavior by a Public Officer — Domestic Violence	No
Count 2	Wrongful Behavior by a Public Officer — Abuse of Power	No
Count 3	Wrongful Behavior by a Public Officer — Impeding a Police Investigation	No
Count 4	Crime, Conviction and Sentence	Yes, to the extent based on NYE physical abuse
Count 5	Breach of Required Conduct — Sheriff and Sheriff-Elect	Yes, to the extent based on NYE physical abuse
Count 6	Breach of Required Conduct — Supervisor	No

What had the physical abuse consisted of?

The Ethics Commission made no specific finding — other than to reject Mayor Lee's "domestic violence" charge (Count 1). It appeared that all five Commissioners agreed at least that Mirkarimi had grabbed and bruised the arm of his wife (Eliana Lopez) during a heated argument in the family van on the way to lunch at a pizza restaurant on New Year's Eve, as both Mirkarimi and Ms. Lopez acknowledged. Some Commissioners may have suspected something worse happened after the couple arrived home, as Ivory Madison (a neighbor) claimed she was later told by Ms. Lopez, though both Mirkarimi and Ms. Lopez testified that their argument had not continued after they arrived home. (Neither Ms. Madison nor anyone else besides Mirkarimi and his wife ever claimed to have seen or heard any part of the incident.) For example, Ms. Lopez later may have run out of their house into the four-lane street on which they live, followed by her two-year old son, as Ms. Madison also claimed, though neither Ms. Madison nor anyone else claimed to have seen this and none of the Commissioners claimed to have believed it happened. Mirkarimi may have imprisoned Ms. Lopez in their home until the next day, as Ms. Madison also claimed, though Mirkarimi and Ms. Lopez denied this, no Commissioner claimed to have believed it, and an independent witness claimed that Ms. Lopez purchased food at his restaurant later that day and produced a sales receipt signed by her, showing the date and time. Two Commissioners (Liu and Studley) said they were relying also on unspecified abuse that allegedly had occurred eight months before Mirkarimi was elected (March 2011), though this alleged abuse was never described and Ms. Lopez testified that it had been a bitter verbal argument, not physical abuse. Perhaps some Commissioners also credited the testimony of Christina Flores, Mirkarimi's girlfriend when he met Eliana Lopez, about an alleged arm grab in 2008, though no Commissioner claimed to have believed Ms. Flores. In any event, the Ethics Commission

made no specific finding about what had happened — only that some type of physical abuse had occurred on New Year's Eve.

It also will be important down the road to keep in mind what other facts were not established. The Ethics Commission did not find that Mayor Lee had established any wrongdoing other than the New Year's Eve incident. One by one, unanimously in each case, the Ethics Commission declined to sustain Mayor Lee's "witness dissuasion" allegations, his "abuse of power" allegations (the "powerful man" argument), his "turnover of guns" allegations, and his allegations that Mirkarimi had committed misconduct by not encouraging his wife and Ivory Madison to testify against him, and by not thanking Ms. Madison sincerely for doing so.

This table summarizes the Ethics Commission's findings of fact:

<b>Alleged Fact</b>	<b>Truth Established?</b>	<b>Relied on by Commissioner(s) Who Voted Against Mirkarimi?</b>
Physical abuse on New Year's Eve	Yes	Yes (all four)
Witness dissuasion — Eliana Lopez	No	No
Witness dissuasion — Ivory Madison	No	No
Abuse of power ("powerful man" argument)	No	No
Misconduct in turnover of guns	No	No
Failure to cooperate in criminal prosecution against him	No	No
Alleged misconduct (unspecified) in March 2011 (Lopez videotape)	No (no finding requested)	Yes (Liu, Studley)
Alleged arm grab in 2008 (Christina Flores' testimony)	No (no finding requested)	Not explicitly cited by any Commissioner

Fortunately for Mayor Lee, his failure to establish any post-New Year's Eve misconduct did not hurt him on August 16. All by itself, the New Year's Eve physical abuse finding underpinned a 4-1 vote against Mirkarimi on Counts 4 and 5 — or at least it appeared to. In Count 4, Mayor Lee had charged that "Mirkarimi engaged in wrongful behavior by committing the crime of falsely imprisoning his wife [and by being convicted and sentenced for having done so]." In Count 5, he had charged that "Mirkarimi's acts of wrongful conduct [in Count 4] constitute conduct that falls below the standard of decency, good faith and right action impliedly required of a Sheriff and Sheriff-Elect."

The Ethics Commission sustained none of the other four Counts — notably including Count 6, which was essentially identical to Count 5 but relied on Mirkarimi's official status as a Supervisor rather than as a "Sheriff and Sheriff-Elect." Even Counts 4 and 5 were not sustained to the extent they relied on Mirkarimi's conduct after New Year's Eve, since the Ethics Commission did not find that any misconduct had occurred after New Year's Eve.

Narrow though it was, the Ethics Commission ruling may persuade the Board of Supervisors to remove Mirkarimi from office. The outcome plainly surprised Commissioner Hur (the Ethics Commission's chair, and its sole dissenter) and, undoubtedly, Mirkarimi and his attorneys. It surprised me too, given the Ethics Commission's clearly mistaken legal conclusion on Count 4 (conviction of a misdemeanor does not amount to "official misconduct") and its failure to find facts necessary to support its legal conclusion on Count 5. Probably it will surprise the court that some day is asked to decide whether the Ethics Commission got it right.

This case may never reach a court, of course, if the Board of Supervisors declines to remove Mirkarimi. But the Supervisors probably are less capable than the Ethics Commission of analyzing legal questions, and more likely to let political considerations trump analysis. After the dust clears, a court will probably get it right. Unfortunately for Mirkarimi, that may happen too late to resurrect his political career.

How did Mayor Lee fail to establish any of the key disputed facts, after five months of trying, and yet triumph at the very end? The answer lies in the Ethics Commission's handling of two related questions:

**Question 1:** If an official's conduct falls "below the standard of decency, good faith and right action impliedly required of all public officers," must the conduct also relate to his duties of office in order to be official misconduct?

**Question 2:** If the answer to Question 1 is "yes," did Mirkarimi's physical abuse of his wife on New Year's Eve relate to his duties of office?

Commissioner Renne emphatically answered "no" to Question 1 shortly after the hearing began, plainly surprising the other four Commissioners and probably most other people in the hearing room. Despite Chairman Hur's countless repetitions of "I welcome the views of my fellow Commissioners" over the preceding several months, Mr. Renne thought it best to keep this particular view to himself until the very last day. The deliberations quickly lost clarity, and nearly even direction, after the other four Commissioners instead answered "yes" to Question 1 and tried (unsuccessfully) to persuade Mr. Renne that he was incorrect. Both parties agreed that Mr. Renne was incorrect. Mayor Lee's attorneys even volunteered that San Francisco's "official misconduct" statute would be unconstitutional if interpreted as Mr. Renne insisted it should be.

Mr. Renne acknowledged that he was alone in his view, but he stuck to it. He endorsed what Mr. Hur had labeled the "Option 1" definition of official misconduct at the preceding hearing a month earlier. The other four Commissioners and both parties endorsed "Option 2." Here is the relevant portion of the official misconduct definition (City Charter Section 15.105(e)), reformatted first as Option 1, and then as Option 2, to highlight their one important difference. The words are identical in both Options — only the formatting is different:

#### **OPTION 1**

(Commissioner Renne)

Official misconduct means:

- (1) *any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law; or*
- (2) conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers...

#### **OPTION 2**

(Commissioners Studley, Liu, Hayon and Hur, and both parties)

Official misconduct means *any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including:*

- (1) any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law; or
- (2) conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers....

There is one important difference between the two Options, resulting from the different placement of the italicized words. Under Option 1 (Mr. Renne's view), the individual's misconduct must relate to his duties of office only if the misconduct was "inaction" (paragraph 1), not if it was "action" (paragraph 2). Under Option 2 (the view of the other four Commissioners and both parties), the individual's misconduct must relate to his duties of office whether it involved inaction (paragraph 1) or action (paragraph 2).

Mr. Renne's "no" to Question 1 made it unnecessary for him to answer Question 2 (though he insisted he'd answer it "yes" in any case). In his view, it made no difference whether Mirkarimi's conduct on New Year's Eve related to his official duties or not: any and all misconduct may be "official misconduct," even conduct that is entirely personal and has nothing at all to do with the individual's duties of office. All that mattered to Mr. Renne was whether Mirkarimi's conduct had fallen "below the standard of decency, good faith and right action impliedly required of all public officers." And so he sided with Mayor Lee.

As Ms. Studley soon would do too, Mr. Renne added that San Francisco's voters would be appalled if the Ethics Commission did not rule that a Sheriff who'd pled guilty to false imprisonment was guilty of official misconduct. Neither he nor Ms. Studley explained why their assessment of the voters' will, even if correct, was relevant to the strictly legal question the Ethics Commission has authority to decide — whether Mirkarimi had committed "official misconduct" as defined in City Charter Section 15.105(e). Nor did they explain why the voters' will should be determined by the unelected Ethics Commission rather than declared by the voters themselves in the political process established precisely for that purpose: a recall election.

As noted, the other four Commissioners disagreed with Mr. Renne on Question 1. Three of them (Mss. Studley, Liu and Hayon) nevertheless sided with Mayor Lee because they answered "yes" to Question 2: They concluded that Mirkarimi's physical abuse of his wife on New Year's Eve had related to his duties of office as "Sheriff and Sheriff-Elect" (though not to his duties of office as Supervisor — Count 6 was not sustained).

Against the backdrop of this five-month proceeding, the 4 to 1 vote in favor of Mayor Lee and the brief debate that preceded it happened in a veritable blink of the eye on the afternoon of August 16. It exposed either a disturbing shallowness of thought by the Commissioners in preparation for this important deliberation, or an inherent flaw in the mandated fully-public process, which evidently discourages Commissioners from engaging in a frank and clarifying exchange of views until the very end. Or a bit of both.

Commissioner Hur was the only dissenter, though a court probably will rule some day that he alone reached the correct conclusion. Like Commissioners Studley and Liu (and Ms. Hayon, who followed their lead), Mr. Hur answered "yes" to Question 1: Official misconduct must relate to the official's duties of office, regardless of whether it involves action or inaction. But unlike the other Commissioners, Mr. Hur answered "no" to Question 2. He strongly disapproved of Mirkarimi's conduct on New Year's Eve and was pleased that Mirkarimi had been convicted and punished like other men who do the same thing. But in his view, Mirkarimi's misconduct had not been "official" misconduct because it had not occurred "in relation to the duties of [Mirkarimi's] office." In Mr. Hur's view, this phrase means that the misconduct must have occurred in connection with the official's performance of his official duties. Plainly that had not occurred in this case, and so Mirkarimi could not be guilty of official misconduct.

Mr. Hur agreed with Mirkarimi's attorneys that Mazzola v. City and County of San Francisco (1980) 112 Cal. App. 3d 141, dictated a decision for Mirkarimi. Some background on that case:

During a six-week strike by 17 craft unions against the City and County of San Francisco in the spring of 1976, Joseph Mazzola had occupied two high-level positions. He was the long-time head of Local 38 of the Plumber's Union, one of the striking unions, and a six-year member of San Francisco's Airport Commission. Although the striking unions had agreed not to interfere with fire protection at the airport, the strike nevertheless caused considerable damage, lost revenue and inconvenience, both at the airport and in the city generally. There were allegations that members of Mazzola's union, including his own



son, had made matters worse by breaking the law — tampering with air valves at the airport, firebombing trucks, and sabotaging water mains, for example — and that Mazzola himself had been involved in some of this wrongdoing.

As the court later noted, Mazzola kept his distance from the Airport Commission during the strike. He attended no Airport Commission meetings nor otherwise involved himself in its affairs. The court determined that the Airport Commission had only policy-making functions and was not involved in labor matters. According to several other Airport Commissioners, nothing that ever came up for a vote — before, during or after the strike — involved any potential benefit or detriment to Mazzola in his status as a union official.

Five months after the strike ended, Mayor George Moscone suspended Mazzola from the Airport Commission for his conduct during the strike, and filed charges with the Board of Supervisors to remove him permanently. The Supervisors complied and Mazzola was removed. He filed a lawsuit to challenge his removal. The lower court ruled against him. In the reported case, the appellate court reversed, ruling in favor of Mazzola.

Although “official misconduct” was not defined in San Francisco’s “removal” statute at the time, the court rejected Mazzola’s argument that the statute was unconstitutionally vague. The statutory language made two key points clear enough, the court said: (1) what conduct was prohibited; and (2) that a direct “nexus” between the misconduct and the official’s duties of office must be shown.

Having rejected Mazzola’s constitutional challenge, the court next considered whether he could possibly be held to have committed official misconduct. Significantly, the court did not even examine Mazzola’s conduct. It was unnecessary to do so because the court concluded that his strike-related conduct, wrongful or not, had been unrelated to his duties of office as an Airport Commissioner. Absent such a “nexus,” Mazzola could not be guilty of “official” misconduct:

Mazzola cannot be legally guilty of official misconduct. Quite clearly, official misconduct requires a direct relationship of the alleged wrongdoing to the office held. ... [The] charges against appellant had nothing to do with his official capacity as airports commissioner nor to the performance of his duties as such.

As the court added, not to require that “official” misconduct be directly related to an official’s duties would effectively prevent Mazzola from serving as both a union official and an Airport Commissioner:

[It] was well known to both the mayor and the board of supervisors of San Francisco that Mazzola was and would continue to be a union official. To accept [the mayor’s] theory [that the alleged misconduct need not relate to the official’s duties] would be tantamount to stating that union officials may serve as city officials only so long as they do not discharge their duties to their local unions.

Not surprisingly, Mayor Lee’s attorneys disagreed that Mazzola was controlling. They pointed out that the phrase “conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers” had not been added to the definition of “official misconduct” until 1995, 15 years after Mazzola. It was not clear, therefore, that Mazzola would be decided the same way under the amended definition.

If the 1995 amendment would have changed the result in Mazzola, this probably would come as a surprise to the Mazzola family, and many others. Just like Joseph Mazzola in 1976, his son Larry has for many years been the head of Plumbers Union Local 38. Also like his father, Larry Mazzola is a long-time member of San Francisco’s Airport Commission. He was first appointed in 1994, and his current term expires in 2014. Larry Mazzola probably would be quite disturbed to learn that, ever since 1995, the year after he took office, his father’s strike-related activities in 1976 — and his own strike-related activities today, should his union ever

again go on strike — could be considered “official misconduct” for which he could be removed from office. Probably Mr. Mazzola’s union members would be surprised to learn their leader has this conflict of interest. So would former mayors Frank Jordan, Willie Brown and Gavin Newsom, who appointed and re-appointed Larry Mazzola to the Airport Commission over the years, probably without believing they had compromised his ability to carry out his union duties.

Mayor Lee’s attorneys may not have known that Larry Mazzola had followed in his father’s footsteps quite this closely. Even so, they believed their argument left them a way out. Even if Mazzola might be decided the same way today, they argued, that would not mean this case should have the same outcome. Nonetheless, it was troubling for them even to consider that the “standard of decency [etc.]” phrase added in 1995 might have made no difference in Mazzola. After all, as Mr. Renne asked, if this “decency” phrase did not eliminate the “direct relationship” requirement in Mazzola, why had it been added? Why bother if Mazzola would be decided the same way with or without it? Commissioners Liu and Studley asked essentially the same question later. Unable to answer their own question, each acknowledged her agreement with Mr. Renne that the 1995 amendment to the “official misconduct” definition somehow had undercut Mazzola, even if they could not explain exactly how.

Could this be — Commissioners Liu and Studley agreed with Mr. Renne after all? Not even an hour earlier, they had carefully distanced themselves from him, agreeing with Commissioners Hur and Hayon, and both parties, that Mr. Renne’s interpretation of “official misconduct” would make the statute unconstitutionally vague. And they had been right to do so. We live under the rule of law in this country. To be constitutional, a law must be sufficiently clear that people who are required to obey it can determine what conduct is prohibited. Even Mayor Lee’s attorneys conceded that Mr. Renne’s argument — that any and all misconduct is official misconduct, whether it relates to official duties or not — would cause San Francisco’s “official misconduct” law to fail this constitutional test. It would be an example of the precise opposite of the rule of law — what might be called the “law of rulers,” which boils down to just one law: “Don’t do anything bad,” where “bad” is subjectively defined case-by-case, after the fact, by men who work for the ruler. True, the language Mr. Renne cites — “conduct that falls below the standard of decency, etc.” — sounds more refined than “Don’t do anything bad.” But does it really set clear limits on those who enforce it?

No, everyone agreed (except, of course, Mr. Renne). It would not make clear what conduct is prohibited, and a law that does not make this clear must be declared unconstitutional.

The Mazzola court was asked to do just that, but it declined. San Francisco’s “official misconduct” law was not unconstitutionally vague, it said, because the word “official” makes sufficiently clear that there must be a “nexus” between the official’s conduct and his duties of office:

[We] find the term “official misconduct” sufficiently specific to provide fair warning of that conduct which is prohibited. Additionally, by its very definition, there exists the requisite nexus between the act or omission and the position held.

If no “nexus” were required, the law would be unconstitutional. If a nexus is required but it does not exist in a particular case, the law is constitutional but the official has not violated it. The Mazzola court held the latter was true in that case.

What sort of “relationship” between conduct and official duties is required? The Mazzola court gave a clear answer to that question, one that was cited by Mirkarimi’s lawyers and with which Commissioner Hur agreed:

Mazzola cannot be legally guilty of official misconduct. Quite clearly, official misconduct requires a direct relationship of the alleged wrongdoing to the office held. ... [The] charges against appellant had nothing to do with his official capacity as airports commissioner nor to the performance of his duties as such.

Absent the required “direct relationship” between his conduct and his official duties, in other words, Mazzola’s conduct, wrongful or not, could not be considered “official misconduct” — even though he’d allegedly been involved in illegal activities that included tampering with air valves at San Francisco’s airport.

Mirkarimi’s lawyers argued that the same “direct relationship” requirement applies in this case, and Commissioner Hur agreed. Mirkarimi’s lawyers pointed out that Mirkarimi’s physical abuse of his wife had nothing to do with the performance of any official duties. Clearly he’d engaged in misconduct, for which he’d already been prosecuted, convicted and punished — but not “official misconduct” for which he also could be removed from office. Commissioner Hur agreed with this too.

Mr. Renne, of course, considered it pointless to discuss “relationships” at all. The other three Commissioners disagreed with Mr. Renne about this, but they nonetheless reached the same conclusion in the case. Unlike the court in Mazzola, which first considered whether the required “direct relationship” between Mazzola’s conduct and official duties had existed, and declined to evaluate Mazzola’s conduct once it determined such a relationship had not existed, Commissioners Liu, Studley and Hayon reasoned in the opposite direction. They started with Mirkarimi’s misconduct on New Year’s Eve — indeed, that was the principal focus of this entire proceeding — and determined that it had been sufficiently bad that Mirkarimi must be found guilty of official misconduct. Having reached this conclusion, they needed a legal rationale to support it. And so they reasoned backward from their conclusion to find what they considered a sufficient “relationship” between Mirkarimi’s conduct and his official duties.

Mazzola appeared to stand squarely in their path, since Mirkarimi’s New Year’s Eve misconduct plainly had no relationship to his performance of any official duties. But there must be a way around Mazzola. Since they were confident their conclusion was correct — that Mirkarimi was guilty of “official misconduct” — and Mazzola made it impossible to reach that conclusion, it necessarily followed, as night follows day, that Mazzola must no longer be good law.

But since Mazzola had never been overruled, or even questioned, in any later case, how could it no longer be “good law?” Only one possible explanation remained: The law interpreted in Mazzola had since been changed, and that change must have undercut what the Mazzola court said about the required “relationship” between conduct and official duties.

The only relevant change in the law had been the addition of “falls below the standard of decency [etc.]” in 1995. But did that phrase really mean that “official misconduct” no longer requires any relationship between conduct and official duties? It certainly does not say so — everyone agreed on that. Although Mr. Renne interpreted this statutory silence to mean that no relationship was required, no one else agreed with him, not even Mayor Lee’s attorneys. Nor did the legislative history shed any light. It had consisted solely of the 1995 voter pamphlet, which included no discussion at all, nor even a mention of Mazzola.

Commissioners Liu, Studley and Hayon nevertheless remained certain that Mr. Renne was right about this: The 1995 amendment had undercut Mazzola, even if they still could not explain how. Having run out of conventional legal arguments, they set out to prove their point in much the same way that physicists prove the existence of sub-atomic particles. No one has ever seen a Higgs boson particle, but we know they exist because some indisputable scientific observation — a disturbance in an electro-magnetic field, for example — cannot be explained in any other way. Commissioners Liu, Studley and Hayon had no indisputable scientific observation, of course, but they felt they had something nearly as good: their moral certainty that Mirkarimi was guilty of official misconduct. Since this conclusion cannot be justified under Mazzola, and since Mazzola had never been overruled or even questioned in any later case, it followed — in their “backwards” reasoning — that the 1995 amendment of San Francisco’s “official misconduct” statute must have eliminated the “direct relationship” requirement described in Mazzola, just as Mr. Renne had said.

Did this mean Mr. Renne had been entirely correct? Not quite. He had pressed his conclusion too far, to the point of unconstitutional vagueness. Commissioners Liu, Studley and Hayon knew they must stop short of that.

They must acknowledge that some “relationship” between conduct and official duties is still required, yet insist that this relationship need not be so clear and direct as the Mazzola court had said is necessary. After all, to move too far away from Mr. Renne would be to concede that Mirkarimi’s attorneys and Mr. Hur were correct, and Commissioners Liu, Studley and Hayon were certain they were not.

What they needed, therefore, was some middle ground between Mr. Hur and Mr. Renne, a “relationship” test that could pass constitutional muster but was not so “performance-related” that Mirkarimi’s New Year’s Eve misconduct would fail to satisfy it. Finding no basis for such a “middle-ground” relationship in the statute, its legislative history, or case law, they simply made one up — a brand new “relationship” test that struck them as sound and lay just where it needed to lie on the Renne-Hur spectrum: It is sufficient, they argued, that the conduct relate merely to the subject matter of one’s official duties, even if it has nothing to do with the performance of those duties.

Having whisked away Mazzola’s troubling “direct relationship” requirement and replaced it with their more promising “subject matter” test, Commissioners Liu, Studley and Hayon proceeded to examine three “relationships” between Mirkarimi’s New Year’s Eve conduct and his official duties that Mayor Lee’s attorneys had insisted were sufficient to apprise city officials of what conduct was prohibited. The three Commissioners agreed, and so did Mr. Renne — hardly surprising, since he considered “relationships” unnecessary in the first place.

First, even though the Ethics Commission rejected Mayor Lee’s “domestic violence” charge (Count 1), Mirkarimi’s misconduct indisputably had occurred during a domestic dispute and it had involved violence. While the Police Department, not the Sheriff’s Department, enforces domestic violence laws, a Sheriff’s duties nevertheless include some domestic violence matters: The Sheriff meets periodically with other city officials and members of the anti-domestic violence community to discuss changes in San Francisco’s domestic violence policies. Thus, Mayor Lee’s attorneys argued, Mirkarimi’s New Year’s Eve misconduct “related” to the domestic-violence-related duties of a Sheriff.

Policy-making duties? That is precisely how the court described the Airport Commission’s duties in Mazzola, and it held that policy-making duties were not sufficiently related to Mr. Mazzola’s alleged misconduct. If Mazzola remains “good law,” it is difficult to imagine that a court would reach a different conclusion in this case. Commissioners Liu, Studley and Hayon were even more firmly committed to their position that Mazzola’s “direct relationship” test no longer applied.

If this first “relationship” may be questionable, a second “relationship” nevertheless exists, Mayor Lee’s attorneys argued. Though the Sheriff’s Department does not enforce the criminal laws (the Police Department does that), or prosecute those who are arrested (the District Attorney does that), the Sheriff’s Department does operate the city’s jails. While Mirkarimi has never spent any time in jail (unlike many other Sheriff’s Department officials over the years, including even a convicted murderer), he nonetheless was convicted of a crime for what he did on New Year’s Eve. Many other people who have been convicted of a crime do spend time in the city’s jails. Thus, Mayor Lee’s attorneys argued, because Mirkarimi’s New Year’s Eve misconduct was a crime, it “related” to the jail-operating duties of a Sheriff.

(On this point, it is worth noting Mayor Lee’s attorneys’ argument that the mere conviction of a misdemeanor constitutes “official misconduct,” jail time or not. The Ethics Commission itself accepted this argument when it sustained Count 4, even though nothing in the statute or case law even hints at support for it. City Charter Section 15.105(c) does say that “conviction of a felony crime involving moral turpitude” is a ground for removal, and the felony need not have been committed while the official was in office. But that section is limited to serious felonies, not misdemeanors. Mirkarimi was convicted of a misdemeanor. He was never even charged with a felony.)

Yet another “relationship” existed, Mayor Lee’s attorneys argued, between Mirkarimi’s New Year’s Eve misconduct and a Sheriff’s official duties. Mirkarimi was sentenced to three years’ probation. While the

Sheriff's Department does not handle probation matters, sometimes it interacts with the Adult Probation Department, which does. For example, when a court orders that someone be jailed because he has violated the terms of his probation, the Adult Probation Department must work with the Sheriff's Department to transfer custody of the violator. Although such decisions are made exclusively by courts, not the Sheriff's Department, the subject matter nevertheless involves people who have been sentenced to probation. Mirkarimi too has been sentenced to probation. Thus, Mayor Lee's attorneys argued, his New Year's Eve misconduct "related" to the probation-related duties of a Sheriff.

One may fairly question whether such "relationships" adequately apprise an official of what conduct is prohibited under San Francisco's "official misconduct" law — at least if the official has limited experience playing "The Six Degrees of Kevin Bacon." Does Mayor Lee really argue, for example, that "official misconduct" may include any and all conduct that might result in someone being put on probation, even purely personal conduct totally unrelated to the performance of any official duties? If so, are Commissioners Liu, Studley and Hayon saying anything different from what Mr. Renne said? Is their new "relationship" requirement so diluted that it amounts to no requirement at all — exactly what Mr. Renne insists? And if that is correct, does it not follow that all four Commissioners are interpreting San Francisco's "official misconduct" statute in a way that leaves it unconstitutionally vague?

I am confident a court will conclude just that. It will reject out of hand Mr. Renne's blatantly unconstitutional interpretation of the "official misconduct" definition. With just a bit more effort, it will reject also the "backwards reasoning" that led Commissioners Liu, Studley and Hayon, albeit less obviously, to the same unconstitutional conclusion.

But even in the unlikely event that a court agrees with Commissioners Renne, Liu, Studley and Hayon that Mazzola's "direct relationship" requirement no longer applies, and that their relaxed new "relationship" test adequately appraises officials of what conduct is prohibited, Mirkarimi has a distinct argument that appears bullet-proof.

Whether one applies Mazzola's "direct relationship" test or the watered-down "relationship" test that Commissioners Liu, Studley and Hayon created to replace it, the test inevitably requires a comparison between (1) conduct, and (2) duties of office. That requires both that the individual have "duties of office" and that his misconduct relate to those duties. Both elements must be present. In Mazzola, only the second part of this two-part test was at issue, since Mazzola indisputably had "duties of office" as an Airport Commissioner. The court needed only to determine whether his strike-related conduct had related to those duties. (The court concluded it had not.)

In this case, the first part of the two-part test is principally at issue, at least with respect to Mirkarimi's status on New Year's Eve as "Sheriff" or "Sheriff-elect." For each "office," the question is whether Mirkarimi had any "duties of office" to which his New Year's Eve conduct "related." The answer is "no" for both "offices." Mirkarimi had no "duties of office" on New Year's Eve as Sheriff, since he would not become Sheriff until eight days later. Nor did he have any "duties of office" as Sheriff-elect, since a Sheriff-elect has no "duties of office."

To a limited extent, the second part of Mazzola's two-part test is also at issue in this case, just as it was in Mazzola. Just as Mazzola had "duties of office" as an Airport Commissioner, Mirkarimi had "duties of office" as a Supervisor on New Year's Eve. He still had eight days left on his Supervisor term. But the Ethics Commission rejected Mayor Lee's charge based on Mirkarimi's Supervisor status (Count 6), which implies that Mirkarimi's New Year's Eve misconduct was not deemed to be "related" to his Supervisor duties of office.

To summarize, neither the performance-related "direct relationship" requirement laid out in Mazzola, nor the "subject matter" replacement proposed by Commissioners Liu, Studley and Hayon, was satisfied for any of the three "offices" that Mirkarimi held on New Year's Eve:

1. Sheriff: no “relationship” existed because Mirkarimi had no “duties of office” as Sheriff on New Year’s Eve, since he did not become Sheriff until eight days later.
2. Sheriff-elect: no “relationship” existed because a Sheriff-elect has no “duties of office.”
3. Supervisor: no “relationship” existed because the Ethics Commission’s failure to sustain Count 6 implies that Mirkarimi’s New Year’s Eve misconduct was not deemed to be “related” to his duties of office as Supervisor.

More detail now. This table lists each “office” held by Mirkarimi on New Year’s Eve (the only day on which misconduct was found to have occurred), and the Ethics Commission’s related rulings on Mayor Lee’s charges and the disputed facts:

Office Held	Mayor’s Related Charge/Sustained?	If Sustained, Supporting Facts	Related Duties of Office
<i>Supervisor</i> (until Jan. 8)	Count 6 (“Breach of Conduct — Supervisor”). Not sustained.	N/A	N/A
<i>Sheriff</i> (from Jan. 8 on)	Count 5 (“Breach of Conduct — Sheriff and Sheriff-Elect”). Sustained to extent based on NYE physical abuse.	Physical abuse on NYE.	None (Mirkarimi did not become Sheriff until January 8).
<i>Sheriff-elect</i> (Nov. 8 to Jan. 8)	Count 5 (“Breach of Conduct — Sheriff and Sheriff-Elect”). Sustained to extent based on NYE physical abuse.	Physical abuse on NYE.	None (a Sheriff-elect has no duties of office).

Starting with “Supervisor,” unquestionably Mirkarimi was a Supervisor on New Year’s Eve, and Mayor Lee charged in Count 6 that his misconduct that day related to his Supervisor duties. But the Ethics Commission did not sustain Count 6, even though it was substantially the same as Count 5, which the Ethics Commission did sustain. Counts 5 and 6 differed in only one significant respect: Count 6 (not sustained) was based on Mirkarimi’s status as Supervisor on New Year’s Eve, while Count 5 (sustained) was based on his status as Sheriff and Sheriff-elect.

Turning to “Sheriff,” unquestionably Mirkarimi was not Sheriff on New Year’s Eve. He took office eight days later, on January 8. Nor did the Ethics Commission find that Mirkarimi committed any misconduct while he was Sheriff — or on any day other than New Year’s Eve.

Necessarily, then, a great deal of weight must fall on Mayor Lee’s argument that Mirkarimi’s New Year’s Eve misconduct related to his “duties of office” as “Sheriff-elect.” This argument cannot bear that heavy weight, or any weight at all, for a simple reason: Someone who is elected Sheriff has no “duties of office” until he actually becomes the Sheriff.

Anyone who is elected Sheriff would be well-advised to prepare for his new job between election day and inauguration day (as Mirkarimi did, by all accounts). But he has no legal “duty” to do this. If he prefers, he may spend those two months sitting on the beach, or climbing Mt. Everest, or watching reruns of “I Love Lucy,” as long as he shows up on time for his swearing-in ceremony two months later. Most of us would think poorly of him for not preparing. But no one would seriously suggest he’d committed “official misconduct,” since he will have no “duties of office” until he actually takes office. Nor does such a person possess any authority until he takes office. If an impatient “elected but unsworn” Sheriff starts issuing orders to his future employees, for example, they may respond politely but will continue to take orders exclusively from their boss,

the incumbent Sheriff — who probably will be annoyed at his successor for jumping the gun. In short, while Mayor Lee labeled Mirkarimi an “elected but unsworn” Sheriff on New Year’s Eve, Mirkarimi in fact had no title, no duties, and no authority as Sheriff until his predecessor’s term ended on January 8 and Mirkarimi was sworn in to replace him.

Mayor Lee gave an additional reason why the “official misconduct” law should apply before an elected official actually takes office: Voters need protection against misconduct from election day forward, not merely from inauguration day forward. If a candidate misbehaves before election day, voters may (or may not) choose to elect him anyway. But the voters’ choice disappears once election day has passed, and so someone elected to office must be subject to removal for “official misconduct” committed at any time after election day, not merely after he has taken office. That is the argument, but it has several fatal flaws.

First, the voters are entirely free to recall an official based on his misconduct between election day and inauguration day — or for any other reason, or for no reason at all. The voters never granted the unelected five-member Ethics Commission authority to make recall decisions for them. Its authority is strictly limited to a legal question: Did a public officer commit “official misconduct” as defined in City Charter Section 15.105(e), or didn’t he? The Ethics Commission may not exercise authority it has never been granted by “upgrading” non-official misconduct to “official misconduct” merely because the Ethics Commission is confident — even certain — that voters would not have elected the official had they known what the Ethics Commission has since learned. That remains a political judgment for the voters alone to make, no matter how confident (and correct) the Ethics Commission may be about what the voters would decide if asked again. When an Ethics Commission member says — as Commissioners Renne and Studley said on August 16 — that they must declare Mirkarimi’s New Year’s Eve behavior to be “official misconduct” because they are certain that voters are outraged and would not have elected Mirkarimi had they known about this beforehand, their motive may be pure: to spare voters the muss and fuss of a recall election. But they nonetheless are substituting their own political judgment for that of the voters. They have no authority to do that. That is what recall elections are for.

Another distinction is worth noting here. Not all public officers subject to removal for “official misconduct” are elected like the Sheriff. Many are appointed officials. Some are appointed by the very same person — the mayor — who has authority to seek their removal for “official misconduct.” An Airport Commissioner falls into this category, for example. The removal process for an appointed official differs in two important ways from the removal process for an elected official. First, an “official misconduct” charge is the one and only way to remove an appointed official. The voters have no right to recall him. If he cannot be found guilty of “official misconduct,” he must be allowed to serve out his term. Given the exclusivity of this removal process for an appointed official, one may understand why the Ethics Commission might be tempted to define “official misconduct” broadly when an appointed official is involved. There is no reason to be so “understanding,” however, when an elected official is involved and an alternative removal process is available — a democratic process that enables the very same people who chose the official (the voters) to remove him at will. Second, when a mayor seeks to remove an appointed official he himself has appointed, obviously no one can accuse the Ethics Commission of substituting its own political judgment for that of the official-chooser. In such a situation, it is beyond question that the official-chooser no longer wants the official to be in office. In short, if it were ever understandable why the Ethics Commission might define “official misconduct” broadly with an eye to the preferences of the official-chooser (though, frankly, it is never permissible), it would be when an appointed official is involved. When an elected official instead is involved and a democratic alternative is available (a recall election) through which the people who chose the official in the first place (the voters) can declare their current political preference, there is no justification for Ethics Commissioners to stretch the definition of “official misconduct” based on their claimed certainty about the political preferences of the people who put that official in office.

Second, if the Ethics Commission may find “official” misconduct based on conduct dating back to election day, what logically prevents it from reaching even farther back in time? What if the New Year’s Eve incident had occurred instead on the day before the election, but the voters were unaware of it when they elected Mirkarimi?

Would they be stuck with their decision? Based on Mayor Lee's "elected but unsworn" argument, the answer would appear to be "yes." One nonetheless wonders whether Mayor Lee would accept that, or instead would argue that the important question is not when the misconduct occurred, but whether the voters knew about it when they cast their ballots. If voter awareness is what really matters, is there any sound basis for requiring the Ethics Commission to stop its look-back at election day?

Whether or not it properly may look back beyond election day, we know for certain that the Ethics Commission did so this time. Commissioners Studley and Liu freely admitted it. Each of them said her vote against Mirkarimi was based in part on her belief that other physical abuse had occurred eight months before he was elected. They cited Eliana Lopez' videotaped statement that "this is the second time," and her neighbors' declarations that Ms. Lopez told them she'd been referring to an incident in March 2011. Mss. Studley and Liu, and possibly other Commissioners, may have looked even farther back in time. For example, they may also have relied on the testimony of Christina Flores, Mirkarimi's girlfriend just before he met Eliana Lopez, who swore that Mirkarimi bruised her arm back in 2008. No Commissioner explicitly acknowledged having been influenced by Ms. Flores' testimony. But all of them were well aware of her allegation and authorized Mayor Lee's attorneys to post her testimony on the Ethics Commission's own website.

If a mayor may introduce evidence of conduct from eight months before an official is elected, and from four years before, is there any rationale for limiting how far back in time he may go? Suppose Mirkarimi had offered testimony from an even earlier girlfriend (as he reportedly considered: Evelyn Nieves) who would testify that he never exhibited violent tendencies during their seven years together. Should that be admitted to counter Ms. Flores' testimony? If so, what if Mayor Lee had then located an even earlier Mirkarimi girlfriend, perhaps from his high school days, who offered to testify that he'd bruised her arm too? Would there be any sound basis for excluding her testimony — or, for that matter, any other evidence dating back to Mirkarimi's birth?

One hopes the fatal weaknesses of this "elected but unsworn" argument are now evident. If so, since the Ethics Commission rejected Mayor Lee's Count 6 (based on Mirkarimi's Supervisor status) and Mirkarimi was not the Sheriff on New Year's Eve and was not found to have committed any misconduct after that day, what is left? How can the Ethics Commission justify its conclusion that the New Year's Eve incident was official misconduct?

The answer is different for each Commissioner who voted against Mirkarimi. Three of them — Mr. Renne and Mss. Hayon and Liu — did not address the critical "timing" question at all. It was enough for Mr. Renne that Mirkarimi's New Year's Eve conduct fell below the "standard of decency [etc.]." He never addressed the fact that it happened before Mirkarimi had become Sheriff, which suggests he considered the timing to be irrelevant. Ms. Hayon, the only non-lawyer Commissioner, didn't address legal issues at all. Ms. Liu did, but not this one. She claimed to find a sufficient relationship between Mirkarimi's New Year's Eve misconduct and a Sheriff's domestic-violence activities, and between his misdemeanor conviction and the Sheriff's duty to operate the city's jails. She did not mention, nor apparently believe it mattered, that Mirkarimi was not yet Sheriff on New Year's Eve — much less in March 2011, the date of another alleged incident that Ms. Liu expressly cited as a basis for her decision.

Alone among the four Commissioners who voted against Mirkarimi, Ms. Studley appears to have thought seriously about the "timing" issue. She offered an imaginative solution. During an earlier hearing, Ms. Studley had expressed tentative agreement with an observation that Commissioner Hur made then and made again on August 16 (though Ms. Studley apparently had changed her mind about it in the meantime). Mr. Hur acknowledged that Mirkarimi would have a difficult time performing his job effectively because so many city employees and others were understandably upset about his New Year's Eve misconduct. Nonetheless, Mr. Hur rhetorically asked, even if these predictions come true, where would his "misconduct" be found? Under any definition, "official misconduct" requires wrongful "conduct," not merely a reduced level of performance — even if that reduced performance results from the official's own misconduct before taking office.



Ms. Studley claimed to have an answer for Mr. Hur. When determining whether conduct amounts to “official” misconduct, she argued, it is fair to insist that the actor consider whether his conduct will adversely affect the performance of his official duties in the future. If so, the official can fairly be held to have committed official misconduct when he engages in that conduct, even if the conduct does not violate any actual “duties of office” when he engages in it. Ms. Studley referred to this as a “going forward element” in the analysis of conduct. Thus, even though Mirkarimi had no “duties of office” as Sheriff on New Year’s Eve, he should have predicted that his misconduct that day would adversely affect the performance of his official duties after he became Sheriff eight days later. Therefore, his New Year’s Eve conduct was “official misconduct” on New Year’s Eve, even though he was not actually Sheriff on New Year’s Eve and had no actual “duties of office.”

Ms. Studley gave an example: Suppose San Francisco’s District Attorney testifies falsely in an unrelated family lawsuit in another jurisdiction. This would not prevent him from performing his duties in San Francisco. But he might be a less effective District Attorney because witnesses in his cases might be less inclined to tell the truth if they learn he has lied under oath. While testifying falsely might not be “official misconduct” for, say, a Recreation and Parks Commissioner, it should be considered “official misconduct” for a District Attorney, no matter where or when it occurs, because truthful testimony is germane to a District Attorney’s official duties. Therefore, in this example, the District Attorney committed “official misconduct” when he testified falsely in that unrelated family lawsuit in another jurisdiction.

Ms. Studley’s example ignores a key difference from this case that highlights the “timing” issue. Her hypothetical District Attorney is actually the District Attorney when he testifies falsely. Suppose instead that he was not due to be sworn in for another week and thus had no “duties of office” when he testified falsely. Would Ms. Studley say he was guilty of “official misconduct” on the day he testified falsely because he knew then that he would soon become San Francisco’s District Attorney, even though he held no actual office on that day? Or would he be innocent when he testified falsely, but later become guilty of “official misconduct” retroactively when he was sworn in, based on what he’d done before taking office? I do not know which answer Ms. Studley would give, or whether there is a third possibility. Whatever her answer might be, however, her hapless District Attorney would end up being punished for conduct that occurred before he had any “duties of office” at all — the same unsupportable conclusion reached by Commissioners Renne, Hayon and Liu without having devoted any thought at all to the “timing” issue.

There are additional flaws in Ms. Studley’s proposed “going forward element” analysis. Because she insists that determining the legality of an official’s conduct requires us to consider what his official duties might be in the future, this possibility follows: If two individuals hold exactly the same office and engage in exactly the same conduct, one of them might be guilty of official misconduct while the other is not. Suppose, for example, that two Supervisors are out drinking together one evening and each of them is arrested for driving home (separately) while intoxicated. The first Supervisor has recently been re-elected. The second Supervisor has just been appointed Chief of Police. Each of them will be sworn in next week. Which Supervisor is guilty of official misconduct under Ms. Studley’s analysis? Both, since they did the same thing? Or just the new Police Chief, since an important duty of the Police Department (but not the Board of Supervisors) is to arrest drunk drivers? If only the second Supervisor is guilty, what happens if he resigns as Police Chief after three months in office and the mayor appoints the first Supervisor to replace him? Will the first Supervisor retroactively become guilty of official misconduct, even though he’d been innocent until then? What if the resigning Police Chief runs for Supervisor again and wins — will he retroactively become innocent?

It should be clear from these hypotheticals — and many more could be added — that it is inappropriate to judge an official’s conduct based on his anticipated future duties. He may fairly be judged based solely on the relationship between his conduct and his “duties of office” at the time he engages in the conduct. If he has no “duties of office” at the time, no such “relationship” possibly can exist. He may be guilty of misconduct for which he should be punished criminally (as Mirkarimi was) or in some other way, but he cannot possibly be guilty of official misconduct for which he may be removed from office.

## Conclusion

Ross Mirkarimi was prosecuted, convicted, sentenced and punished for what he did on New Year's Eve, and very few people disagree that he deserved that punishment. On the surface, the question here is merely whether he should be punished further by being removed from office. But the real question involves more than the fate of Ross Mirkarimi. If the Supervisors approve what the Ethics Commission did on August 16, they will be handing a powerful new political weapon to all mayors, present and future. Good mayors may never misuse it, but other mayors might. No longer will such a mayor be limited to examining an opponent's conduct while in office. He will have *carte blanche* and a strong motive to look farther back in time for personal misconduct that occurred before his opponent took office, and to use what he finds to suspend his opponent without pay and remove him from office — all while claiming (as undoubtedly he will) to be engaged in a noble pursuit of truth and justice.

The Supervisors understandably may feel that Ross Mirkarimi deserves to be removed from office. This proceeding may strike them as a convenient way to accomplish that. And there may be no practical downside: it is possible, after all, that Ross Mirkarimi will be the first and last elected official who is ever removed for misconduct that occurred before he took office. But it is far from clear why the Supervisors would choose to take that chance — especially since there is a straightforward and democratic alternative for which they can never be second-guessed: a recall election, which no court can nullify.

The Supervisors should make that choice here: Let the people who put Mirkarimi in office decide whether they want to remove him or keep him. Ask them — don't decide for them.