

FILE NO. 130316

Petitions and Communications received from April 1, 2013, through April 8, 2013, for reference by the President to Committee considering related matters, or to be ordered filed by the Clerk on April 16, 2013.

**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 Clerk of the Board, reporting the following individuals have submitted a Form 700 Statement: (1)

Michael Lee - Legislative Aide - Assuming  
Judy Pietrzak - Business Analyst - Assuming  
Leah Pimentel - LAFCo - Annual

From Controller, submitting Condominium Conversion Impact Fee: Economic Impact Report. File No. 120669. Copy: Each Supervisor. (2)

From Controller, submitting Recreation and Park Department: Chinese Recreation Center and Mission Clubhouse and Playground Construction Management – The Change Management Process Requires Some Improvements report. Copy: Each Supervisor. (3)

From Department of the Environment, submitting 2012 Annual Report. Copy: Each Supervisor. (4)

From Assessor-Recorder, submitting the Annual Real Estate Watchdog Cases report for 2012. Copy: Each Supervisor. (5)

From Department of Public Health, regarding proposed amendments to the Weights and Measures Ordinances in the California Government Code. Copy: Each Supervisor. (6)

From Dorothy S. Liu, submitting letter of resignation from the Ethics Commission. Copy: Each Supervisor. (7)

From Association of Bay Area Governments and the Metropolitan Transportation Commission, submitting Draft Environmental Impact Report companion for the Draft Plan Bay Area. (8)

From concerned citizens, regarding the Law Library. File No. 130227. 2 Letters. Copy: Each Supervisor. (9)

From Charles Marsteller, regarding the Office of the District Attorney. File No. 130274. Copy: Each Supervisor. (10)

From Charles Marsteller, regarding the Mayor's trip to China. Copy: Each Supervisor. (11)

From Howard Wong, regarding the Central Subway. Copy: Each Supervisor. (12)

From concerned citizens, regarding the Seismic Retrofit Ordinance. File No. 130119. 2 letters. Copy: Each Supervisor. (13)

From concerned citizens, regarding the Ordinance to revise the Administrative Code to reflect CEQA changes. File No. 121019. 19 letters. Copy: Each Supervisor. (14)

From Andrea Lara, regarding the plastic bag ban. (15)

From Roni McKinley, regarding the Masonic Avenue Streetscape Improvement Project. Copy: Each Supervisor. (16)

From concerned citizens, regarding the 611 Buena Vista Avenue West project. File No. 130213. 3 letters. Copy: Each Supervisor. (17)

From Patrick Monette-Shaw, regarding the Open Data Policy Ordinance. File No. 121017. Copy: Each Supervisor. (18)

From Patrick Monette-Shaw, regarding the Equal Pay Day Resolution. File No. 130305. Copy: Each Supervisor. (19)

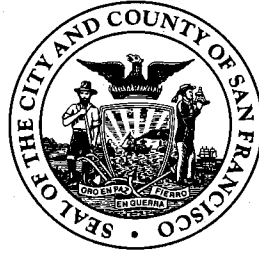
From Cathy Bellin, regarding condo conversions. File No. 120669. Copy: Each Supervisor. (20)

From concerned citizen, regarding lawn trimming. Copy: Each Supervisor. (21)

From Ivan Edgar Pratt, concerning issues facing the Tenderloin. Copy: Each Supervisor. (22)

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

**BOARD of SUPERVISORS**



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Date: April 8, 2013  
To: Honorable Members, Board of Supervisors  
From: Angela Calvillo, Clerk of the Board  
Subject: Form 700

Michael Lee - Legislative Aide-Assuming  
Judy Pietrzak - Business Analyst - Assuming  
Leah Pimentel - LAFCo-Annual

File 120669

orig: Comm Clerk

**From:** Toy, Debbie [debbie.toy@sfgov.org]  
**Sent:** Tuesday, April 02, 2013 1:57 PM  
**To:** Calvillo, Angela; BOS-Supervisors; BOS-Legislative Aides; Kawa, Steve; Howard, Kate; Falvey, Christine; Elliott, Jason; Campbell, Severin; Newman, Debra; Rose, Harvey; sfdocs@sfpl.info; gmetcalf@spur.org; jlazarus@sfchamber.com; dconaghan@sfchamber.com; Matz, Jennifer; joe@sanfrancisco.travel; CON-EVERYONE  
**Subject:** Controller's Office Report: Condominium Conversion Impact Fee: Economic Impact Report

This report analyzes the economic impact of proposed legislation that would modify the way tenancies-in-common may be converted to condominiums in San Francisco. Currently, 200 condominium conversions per year are permitted, and are selected by lottery. Approximately 700 TIC buildings, containing 2,269 housing units, have registered for the 2013 lottery. The proposed legislation would allow property owners of housing units that were registered for the 2012 or 2013 lotteries to bypass the lottery, and convert their buildings to condominiums by paying a fee. The fee was designed after a nexus analysis to offset expected increases in the demand for affordable housing in the city associated with condominium conversion.

Condominium conversion creates clear financial advantages for owners of tenancies-in-common (TIC) buildings. Property owners gain from the fact that financing costs are significantly lower for condominiums than for TIC units (with rates currently at 4.75% for TIC loans vs. 2.25% for comparable condominium mortgages). Under the State Costa-Hawkins Act, condominiums cannot be subject to rent limitations under most circumstances, so owners of condominiums also have the opportunity for greater rental income than owners of TIC units, the vast majority of which are subject to rent control.

The OEA projects that approximately 1,730 participants in the 2013 lottery would elect to utilize the fee option if the legislation were adopted, generating \$25 million in one-time fee revenue for the City. The City and other agencies that receive local property tax revenue also stand to receive an additional \$1.0 - \$1.7 as converted condominiums are sold and reassessed at a higher level. Tenants of these converted properties would likely spend between \$0.8 and \$1.1 million annually in higher rent.

The City may wish to explore the legalities of strengthening the tenant protections in the legislation. The financial analysis in this report suggests that the bulk of the benefit to property owners is associated with reduced financing costs, and the condominium conversion fee would still be attractive to TIC owners, even if any future rent increase in converted condominiums were limited in exactly the same way, and to the same extent, as rent-controlled apartments are.

<http://sfcontroller.org/Modules/ShowDocument.aspx?documentid=4101>

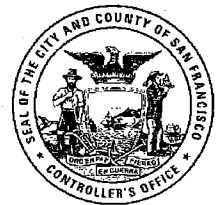
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# City and County of San Francisco

Office of the Controller - Office of Economic Analysis

## Condominium Conversion Fee: Economic Impact Report

File #120669



April 2, 2013



# City and County of San Francisco

Office of the Controller - Office of Economic Analysis

Condominium Conversion Fee: Economic Impact Report

April 2, 2013

## Main Conclusions

This report analyzes the economic impact of proposed legislation that would modify the way tenancies-in-common may be converted to condominiums in San Francisco. Currently, 200 condominium conversions per year are permitted, and are selected by lottery. Approximately 700 TIC buildings, containing 2,269 housing units, have registered for the 2013 lottery. The proposed legislation would allow property owners of housing units that were registered for the 2012 or 2013 lotteries to bypass the lottery, and convert their buildings to condominiums by paying a fee. The fee was designed after a nexus analysis to offset expected increases in the demand for affordable housing in the city associated with condominium conversion.

Condominium conversion creates clear financial advantages for owners of tenancies-in-common (TIC) buildings. Property owners gain from the fact that financing costs are significantly lower for condominiums than for TIC units (with rates currently at 4.75% for TIC loans vs. 2.25% for comparable condominium mortgages). Under the State Costa-Hawkins Act, condominiums cannot be subject to rent limitations under most circumstances, so owners of condominiums also have the opportunity for greater rental income than owners of TIC units, the vast majority of which are subject to rent control.

The OEA projects that approximately 1,730 participants in the 2013 lottery would elect to utilize the fee option if the legislation were adopted, generating \$25 million in one-time fee revenue for the City. The City and other agencies that receive local property tax revenue also stand to receive an additional \$1.0 - \$1.7 as converted condominiums are sold and reassessed at a higher level. Tenants of these converted properties would likely spend between \$0.8 and \$1.1 million annually in higher rent.

The City may wish to explore the legalities of strengthening the tenant protections in the legislation. The financial analysis in this report suggests that the bulk of the benefit to property owners is associated with reduced financing costs, and the condominium conversion fee would still be attractive to TIC owners, even if any future rent increase in converted condominiums were limited in exactly the same way, and to the same extent, as rent-controlled apartments are.

# INTRODUCTION

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## Background

Many multi-family residences in San Francisco are legally owned as entire buildings, in which the individual apartment units cannot be bought and sold separately. Condominiums, on the other hand, while often physically part of a larger multi-family residence, may be legally owned by an individual owner, and may be bought and sold separately from the remainder of the building.

For the most part, apartments are occupied by renters, although owners of apartment buildings may occupy units within their buildings. When units in a multi-family residence are occupied by more than one owner, it is referred to as a tenancy-in-common (TIC). Such buildings are often owned by a legal partnership.

TIC owners may buy and sell shares that are equivalent to the ownership of a single unit in the building—for example, a 20% share in a 5-unit building—but this does not make TIC ownership as straightforward as a condominium, as the TIC owner does not actually own his or her unit. Buying, selling, and making investments in a TIC can be significantly more complex, and risky, than it is with a condominium.

Because of this, financing and transaction costs associated with purchasing a TIC share are significantly higher than they are with a condominium, and most investors place a value on the condominium form of ownership. This value appears in the market as a price premium for condominiums over TIC shares.

TIC owners therefore have a clear financial incentive to convert their jointly-owned multi-family property into individually-owned condominiums. The City has a process to allow this conversion. 200 TIC units may be converted to condominiums each year, chosen by lottery.

## The Proposed Legislation and Nexus Study

The proposed legislation would create a one-time opportunity for TIC owners to bypass the lottery, and convert their TICs to condominiums by paying a fee to the City.

The legislation would only apply to TICs that were enrolled in the 2012 or the 2013 lottery.

In addition, the legislation would require any tenant remaining in a TIC unit at the time of conversion (a “non-purchasing tenant”) to be granted a lifetime lease, with rent increases that are controlled by the Bay Area average rate of inflation in residential rent. The lease could not be modified by any future owner of the condominium.

The legislation establishes a conversion fee of \$20,000

per unit, which decreases the longer the TIC has participated in the lottery, according to the schedule in Table 1.

TABLE 1	<b>Condominium Conversion Fee Discount, by Length of Time in the Lottery</b>	
	0 – 1 years	\$20,000
	2 Years	\$16,000
	3 Years	\$12,000
	4 Years	\$8,000
	5+ Years	\$4,000

The fee is based on a nexus study conducted in 2011 by Keyser Marston Associates (KMA)<sup>1</sup>. The nexus study determined that the conversion of a TIC unit into a condominium would result in a net increase in personal income in San Francisco, through the net replacement of a household able to afford a TIC unit with a household able to afford a condominium. The resulting increase in personal income will lead to higher consumer spending, which is presumed to create employment and population growth. The maximum fee level identified in the nexus study is equal to the amount necessary to offset the housing affordability gap for the new households having income under 120% of the area median.

The nexus study did not consider any potential impacts related to rent control, or to the effect of conversion on housing construction levels and market rents. It also did not consider the effect of condominium conversion on the assessed value of property in San Francisco, and on property tax revenue.

Based on discussions with brokers, KMA estimated the condominium premium to be 15%, equivalent to a \$45,000 to \$75,000 gain from conversion (less City conversion fees). The proposed maximum fees identified in the nexus study range from \$21,600 to \$34,900.

Each year the City allows qualified TIC buildings with two to six units to convert to condominiums through a lottery system. Two-unit buildings in which separate owners of each unit have occupied the building for at least one year are allowed to by-pass the lottery. Buildings with seven or more units are not permitted to convert to condominiums.

TIC buildings must meet certain owner occupancy requirements in order to enter the lottery and qualify for conversion. Each owner of the TIC must have at least 10% ownership interest. At least one owner must be an occupant of his or her unit for at least three consecutive

**Condominium Conversion Qualification**

<sup>1</sup> *Condominium Conversion Nexus Analysis San Francisco*, Keyser Marston Associates, January 2011



**Condominium  
Conversion and Rent  
Control**

years for buildings with 2-4 units. At least three separate owners must be occupants of their separate units for at least three consecutive years for buildings with 5-6 units.

TIC owners can initially occupy units in the building they own through a variety of ways. Tenants may voluntarily leave, or they may be induced to leave through payments. They can also be evicted through an owner-occupancy eviction or an Ellis Act eviction. An owner-occupancy eviction can occur if the owner owns at least 25% of the property (10% if ownership began before February 21, 1991) and no other unit in the building has been subject to an owner-occupancy eviction. An Ellis Act eviction occurs when the owner withdraws all units in a building from the rental market. However, the City prohibits buildings that have had two or more evictions occurring in separate units after May 1, 2005 from qualifying for conversion for ten years.

TICs that do not win the lottery may remain in it in subsequent years with a higher probability of winning, provided they remain qualified. Based on lottery results from the past several years, conversion has generally been assured by the 7<sup>th</sup> or 8<sup>th</sup> year. However, this is not guaranteed by the lottery process, and the actual timing depends on the number of units in the lottery.

Dwelling units constructed before 1980 and offered for rent are subject to rent control under San Francisco's Rent Ordinance. This ordinance allows landlords to establish any initial rent, but limits future increases in rent to 60% of the rate of inflation in the San Francisco Bay Area.

However, the State's Costa-Hawkins Act (1995) prevents local rent control from applying to condominiums in California, in most circumstances. Because of Costa-Hawkins, a conversion of a pre-1980 rental unit to a condominium results in the loss of a rent-controlled unit. Even if the condominium is not owner-occupied, and is instead subsequently rented to a new tenant, that tenancy is not subject by rent control.

The Act does provide for an exception, when a condominium agrees to accept limitations on future rent increases as part of a contract with a public agency, and in exchange for a financial consideration. The proposed legislation utilizes this provision in Costa-Hawkins to require a lifetime lease for non-purchasing tenants; in exchange for this provision, the legislation provides for a fee reduction for affected TIC owners.

# **ECONOMIC AND FISCAL IMPACTS**

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## **Introduction**

By changing the process through which apartment units may be converted to condominiums, the proposed legislation will have some near-term, and potentially long-term, impacts on the city's housing market, economy, and tax revenues.

The proposed legislation would not affect the number of units that may be converted under the lottery. The conversion fee, therefore, would result in a net increase in the number of condominiums in the city: from 200 per year under the lottery, to 200 per year under the lottery, plus any that converted in 2013 utilizing the fee option. Assessing the impacts of the fee option therefore involves a comparison a condominium with an equivalent TIC unit.

As stated earlier, condominiums and TIC units differ in two primary respects:

- The financing cost for condominiums is lower than it is for TIC units, because of the greater ease of buying and selling the unit.
- Only TIC units may be subject to rent control.

Consequently, when owners convert a TIC building to condominiums, they stand to benefit from lower financing costs, as well as higher rental income, if the condominiums are rented to tenants. While many condominiums are intended to be owner-occupied after conversion, some are rented,<sup>2</sup> and the comparison between TIC units and condominiums is clearest if differences in financing costs and rental income are considered. The lower financing costs and higher potential income of condominiums also raises the value of the property, and ultimately its assessed value and the City's property tax revenue.

Once per-unit estimates of these impacts are made, an estimate of the likely utilization of the fee, and an aggregate economic impact estimate, can be made.

## **Impact on Unit Financing Costs**

A comparison of condominium mortgage and TIC loan offerings that are similar in their payment terms suggests that there is currently about a 2.5% gap in interest rates paid between the two types of products. For a 30 adjustable rate loan, fixed for the first seven years, paying 1.25 points with excellent borrower credit, current TIC loan rates are 4.75%, while current mortgage rates are 2.25%.

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<sup>2</sup> According to data from the U.S. Census, the percentage of San Francisco housing units that are renter-occupied increased after the housing market downturn. In 2011, 63.9% of housing units were renter-occupied; in 2006, 60.7% were.

Every property will be different, but the impact of less expensive financing on owner income can be illustrated by reference to two of the "prototype" TIC units referred to in the KMA nexus study. In this illustration, a TIC share costing \$300,000, needing to finance 70% of the original TIC purchase price, can potentially save \$3,572 in financing costs through conversion, over a thirty-year financing period. Financing costs could potentially be reduced by \$5,954 per year for a similar \$500,000 TIC unit.

TABLE 2		Potential Annual Finance Savings from Condominium Conversion: Two Sample TIC units					
TIC Sales Price	Assumed Loan-to-Value	Amount to Finance	TIC rate	Condo Rate	Annual Finance Cost-TIC	Annual Finance Cost-Condo	Annual Finance Savings from Conversion
\$300,000	70%	\$210,000	4.75%	2.25%	\$13,274	\$9,702	\$3,572
\$500,000	70%	\$350,000	4.75%	2.25%	\$22,123	\$16,170	\$5,954

Sources: for TIC rates, GordonFriedman.com (retrieved 3/18/13). For condominium mortgage rates, AmericanInterbanc.com (retrieved 3/18/13).

**Impact on Future Rental Income**

The fact that condominiums cannot be subject to rent control, but most TIC units are, creates the potential for future rent payments to increase in converted condominiums. This increase can be estimated by comparing increases in market-rate rent payments in the past, with allowable rent increases for rent-controlled units over the same time period.

As stated earlier, existing tenants in units converted using the fee may remain in their units, with future rent increases limited by the legislation. However, the index by which rent may increase under the legislation is different than the one used for rent-controlled units. Under the Rent Ordinance, annual increases in rent are limited to 60% of the overall rate of inflation in the Bay Area. For converted condominiums, rent increases are limited by the Bay Area rate of inflation in residential rents, one component of the overall rate of inflation.

This latter index captures the trend in actual rent paid across the Bay Area, and is in fact the best available estimate of future price increases in non-rent-controlled units. This suggests that there will only be a small difference in the increases in rent that current tenants utilizing the lifetime lease provision will face, from those faced by later tenants whose rent increases would be unregulated.

Over the 1980-2012 period, the average annual increase in this residential rent index was 4.9% per year. The

average allowable rent increase over the same period was 2.3%. If this difference extends in the future, then, on average, rental income associated with the property will increase by an average of 2.6% per year (4.9% - 2.3%). As Table 3 below indicates, this would translate into an annual increase in rent of \$437 per year for the \$300,000 TIC example from the nexus study which rents at \$1,400 per month, and \$624 for the \$500,000 example which rents at \$2,000 per month.

**TABLE 3** Potential Annual Rent Increases from Condominium Conversion: Two Sample TIC Units

TIC Sales Price	Current Rent	Rent increase - TIC	Rent Increase - Condo	Annual Rent Increase
\$300,000	\$1,400	2.3%	4.9%	\$437
\$500,000	\$2,000	2.3%	4.9%	\$624

Source: For current rent, KMA nexus study. TIC and Condo rent increases based on 60% of annual change in the CPI-U inflation index for the San Francisco Bay Area, and annual change in the residential rent component of the Bay Area CPI-U, respectively.

Together, the reduction in financing costs and the increase in rent combine to increase annual property income by about \$4,000-\$6,500 per unit. Table 4 suggests that, given a typical capitalization rate of 7%, this increase in property income would translate into an increase in property value of \$57,270 for the \$300,000 TIC, and \$93,965 for the \$500,000 TIC unit. When the condominium is sold, its 1% base annual property tax payment will increase by \$573 and \$940 respectively.

Although actual financing savings and rent increases will differ from these examples, it appears likely that property owners will benefit far more from the financing savings than from the rent increases. In both examples, finance savings make up 90% of the gain in property income and value.

**TABLE 4** Potential Annual Rent Increases from Condominium Conversion: Two Sample TIC Units

TIC Sales Price	Annual Finance Savings from Conversion	Annual Rent Increase	Annual Increase in Property Income	Capitalization Rate	Increase in Property Value	1% Annual Property Tax Payment
\$300,000	\$3,572	\$437	\$4,009	7%	\$57,270	\$573
\$500,000	\$5,954	\$624	\$6,578	7%	\$93,965	\$940

## **Fee Utilization and Revenue**

As Table 1 indicated, the fee for TIC buildings in their first or second year in the lottery is \$20,000, with the fee declining with

According to the Department of Public Works, 2,269 eligible housing units are in the 2013 lottery. It is unlikely that all of them will elect to use the fee, because properties which have been in the lottery for six, seven, or eight years have a high probability of winning without needing to pay a fee.

Based on past winning probabilities for properties at different stages of the lottery, the OEA estimates that approximately 1,730 housing units would elect to convert using the fee. As it would mainly be more recent lottery entrants that would elect to pay the fee, the per-unit fee paid would be relatively high. The OEA further estimates that fee revenue would approximate \$25 million.

## **Aggregate Economic and Revenue Impacts**

Given an estimate of the number of units that might be converted under the fee option, and the per-unit impacts discussed in earlier sections, a range of estimates of the aggregate impact of the proposed legislation on the City's economy and property tax revenue can be developed. Using the estimate of the number of housing units utilizing the fee, and the range of per-unit impacts discussed above

- An aggregate annual reduction of housing finance expenditure of between \$6.2 and \$11.4 million annually, benefitting the owners of the converted properties.
- An annual increase in rent payments of between \$0.8 million and \$1.1 million annually, due to the loss of rent-controlled housing units and the expected difference, based on past trends, between annual increases in market rents and allowable increases under the Rent Ordinance.
- A one-time increase in local government revenue of \$25 million, from the fee.
- An annual increase in property tax revenue of between \$1.0 million and \$1.6 million.

## **CONCLUSIONS AND RECOMMENDATIONS**

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The analysis in the preceding section suggests that the proposed legislation would create clear advantages for owners of tenancies-in-common. Their costs of financing their units would decline, and they would likely earn higher rental income from them, if they wish to put them up for rent, as many condominium owners do. This is both because condominiums are not subject to rent control, and because the rent index used by the lifetime lease provision of the legislation is equivalent to market-rate rent in the Bay Area.

The City stands to benefit from approximately \$25 million in one-time fee revenue, and, over time, approximately \$1.0 - \$1.7 million in higher property tax revenue, because the condominiums will, upon sale, have a higher assessed value.

At the same time, utilization of the fee option would reduce the number of rent-controlled housing units in the city, leading to higher rent payments from current and future tenants.

Despite the fact that property owners stand to increase their property income and value, while some renters face higher rents, condominium conversion is not a zero-sum game for the city.

Financial analysis of some typical TIC cases suggests that the benefits to property owners do not come primarily from higher rents, and that higher rents account for only about 10% of the gain to property owners. The reduction in financing costs is likely to be a much greater source of property income than higher rents. Fundamentally the financing savings is due to the greater efficiency of condominium ownership, compared with TICs, and those particular savings do not come at the expense of other stakeholders in the city.

This suggests that the legislation could be changed to eliminate the costs to future tenants without substantially reducing the incentive for property owners. Specifically, the City may consider if it is legally acceptable to modify the legislation in two ways:

1. Applying the same allowable rent increases to lifetime leases that apply to rent-controlled units;
2. Applying this level of rent limitation to every post-conversion tenancy, in perpetuity, and not only to tenancies of current non-purchasing tenants. As TIC owners would only be voluntarily accepting this control, in exchange for realizing the other benefits of conversion, it may be deemed to fit under the Costa-Hawkins exception that rent control may

only be applied to condominiums when the owner signs a contract with a public agency. As mentioned earlier, the lifetime lease requirement that is currently in the legislation already utilizes this exception.

## **STAFF CONTACTS**

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**From:** Toy, Debbie  
**Sent:** Tuesday, April 02, 2013 2:21 PM  
**To:** Calvillo, Angela; Nevin, Peggy; BOS-Supervisors; BOS-Legislative Aides; Kawa, Steve; Howard, Kate; Falvey, Christine; Elliott, Jason; Campbell, Severin; Rose, Harvey; sfdocs@sfpl.info; gmetcalf@spur.org; CON-EVERYONE; CON-CCSF Dept Heads; CON-Finance Officers  
**Subject:** Report Issued: Recreation and Park Department: Chinese Recreation Center and Mission Clubhouse and Playground Construction Management — The Change Management Process Requires Some Improvements

The Office of the Controller's City Services Auditor Division (CSA) today issued a report on its audit of the Chinese Recreation Center and Mission Clubhouse and Playground contracts funded by the 2008 Clean and Safe Neighborhood Parks Bond. The contracts were administered by the Department of Public Works to renovate facilities of the Recreation and Park Department. CSA engaged SF Delaney Consulting (SF Delaney) to perform the audit, which found that, although the contractual provisions for each project were sufficient, change management procedures and processes, including those for evaluation of change orders and recording of supporting documentation, need some improvement.

To view the full report, please visit our website at: <http://co.sfgov.org/webreports/details.aspx?id=1553>

This is a send-only e-mail address.

For questions about the report, please contact Director of City Audits Tonia Lediju at [Tonia.Lediju@sfgov.org](mailto:Tonia.Lediju@sfgov.org) or 415-554-5393, or the CSA Audits Unit at 415-554-7469.

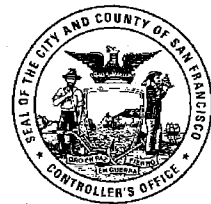
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# City and County of San Francisco

Office of the Controller – City Services Auditor

## **RECREATION AND PARK DEPARTMENT:**

**Chinese Recreation Center and  
Mission Clubhouse and Playground  
Construction Management — The  
Change Management Process  
Requires Some Improvements**



*April 2, 2013*

**OFFICE OF THE CONTROLLER  
CITY SERVICES AUDITOR**

The City Services Auditor Division (CSA) was created in the Office of the Controller through an amendment to the Charter of the City and County of San Francisco (City) that was approved by voters in November 2003. Charter Appendix F grants CSA broad authority to:

- Report on the level and effectiveness of San Francisco's public services and benchmark the City to other public agencies and jurisdictions.
- Conduct financial and performance audits of city departments, contractors, and functions to assess efficiency and effectiveness of processes and services.
- Operate a whistleblower hotline and website and investigate reports of waste, fraud, and abuse of city resources.
- Ensure the financial integrity and improve the overall performance and efficiency of city government.

CSA may conduct financial audits, attestation engagements, and performance audits. Financial audits address the financial integrity of both city departments and contractors and provide reasonable assurance about whether financial statements are presented fairly in all material aspects in conformity with generally accepted accounting principles. Attestation engagements examine, review, or perform procedures on a broad range of subjects such as internal controls; compliance with requirements of specified laws, regulations, rules, contracts, or grants; and the reliability of performance measures. Performance audits focus primarily on assessment of city services and processes, providing recommendations to improve department operations.

CSA conducts audits in accordance with the Government Auditing Standards published by the U.S. Government Accountability Office. These standards require:

- Independence of audit staff and the audit organization.
- Objectivity of the auditors performing the work.
- Competent staff, including continuing professional education.
- Quality control procedures to provide reasonable assurance of compliance with the auditing standards.

For questions about the report, please contact Director of City Audits Tonia Lediju at [Tonia.Lediju@sfgov.org](mailto:Tonia.Lediju@sfgov.org) or 415-554-5393, or CSA at 415-554-7469.

CSA Audits Team:     Mark de la Rosa, Audit Manager  
                              Nicholas Delgado, Audit Manager

Consultants:             SF Delaney Consulting



CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF THE CONTROLLER

Ben Rosenfield  
Controller

Monique Zmuda  
Deputy Controller

April 2, 2013

Recreation and Park Commission  
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501 Stanyan Street  
San Francisco, CA 94102

Mr. Phil Ginsburg  
General Manager  
Recreation and Park Department  
McLaren Lodge, Golden Gate Park  
501 Stanyan Street  
San Francisco, CA 94117

Dear President, Commissioners, and Mr. Ginsburg:

The Office of the Controller's City Services Auditor Division (CSA) audited the Recreation and Park Department's (Rec and Park) Chinese Recreation Center and Mission Clubhouse and Playground contracts funded by the 2008 Clean and Safe Neighborhood Parks General Obligation Bond and administered by the Department of Public Works (Public Works). CSA engaged SF Delaney Consulting (SF Delaney) as a specialist to assist in performing the audit, which determined whether the construction contractors complied with cost and certain other provisions of the contracts. The audit determined whether the construction management teams followed the appropriate change management process and whether the process was consistent with industry best practices.

The audit was conducted in accordance with generally accepted government auditing standards issued by the U.S. Government Accountability Office.

**The audit found that, although the contractual provisions for each project appear to be sufficient, the change management procedures and processes, including those for evaluation of change orders and recording of supporting documentation, require some improvements.**

Specifically, the audit found that:

- Rec and Park has no published change order processes or procedures.
- Public Works did not adequately record pertinent information on all change orders.
- Public Works did not obtain independent estimates for change orders of more than \$20,000 as required by written procedures.
- Both Rec and Park and Public Works allowed an increase to contractor markups without a contract modification.
- A majority of contractor change order requests that included a project time extension did not meet contract requirements, and some change order requests were submitted late.
- In some instances, contractors did not adhere to change order pricing requirements.

Rec and Park and Public Works' joint response to the audit report is attached as Appendix C.

CSA and SF Delaney appreciate the cooperation of Rec and Park and Public Works staff during the audit. For questions about the report, please contact me at [Tonia.Lediju@sfgov.org](mailto:Tonia.Lediju@sfgov.org) or 415-554-5393, or CSA at 415-554-7469.

Respectfully,

A handwritten signature in black ink, appearing to be 'Tonia Lediju', written in a cursive style.

Tonia Lediju  
Director of City Audits

Attachment

cc: Mayor  
Board of Supervisors  
Civil Grand Jury  
Budget Analyst  
Public Library

sf Delaney Consulting

**City and County of San Francisco  
Office of the Controller – City Services Auditor**

**Recreation and Park Department:  
Change Orders in 2008 Clean and Safe Neighborhood  
Parks Bond Funded Projects**

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**Performance and  
Contract Compliance Audit**

March 7, 2013

**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

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**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

**I. Executive Summary**

This report summarizes the results of the change order cost and compliance audit of two projects funded by the 2008 Clean and Safe Neighborhood Parks (CSNP) Bond of the City and County of San Francisco (City). The purpose of the audit was to provide a measure of oversight and accountability of the CSNP Bond funds administered by the City’s Recreation and Park Department (RPD) and Department of Public Works (DPW).

SF Delaney Consulting (the auditor) worked with the City’s Office of the Controller to perform a performance and contract compliance audit of contract change orders on two CSNP Bond projects to assess the contractors’ compliance with contractual requirements. The work included an evaluation of RPD and DPW processes and procedures related to their review, evaluation, and approval of contract changes and adherence to them. The auditor researched change order management leading practices and this report recommends improvements to RPD’s change order management practices.

The auditor selected two projects for evaluation: the \$4.6 million Mission Clubhouse and Playground renovation project and the \$10.8 million Chinese Recreation Center project. A sample set of Change Orders (COs) and their underlying Proposed Change Orders (PCOs) were selected for a high-level review. The audit evaluated a subset of the higher dollar PCOs in more detail.

Based on the audit’s review of the contractual provisions and RPD and DPW’s procedures and practices, and research into leading industry practices related to change order review, evaluation, and management, it found the contractual provisions to be sufficient, but found that procedural processes for evaluation of changes and recording of supporting information require some improvements.

The audit findings related to RPD change order management processes and procedures and actual practices are summarized in the following table. Recommendations related to each finding appear in the body of the report.

<b>Findings Related to RPD and DPW</b>	
Finding 1	RPD has no published change order processes or procedures.
Finding 2	DPW did not adequately record pertinent change order information.
Finding 3	DPW did not comply with procedural requirements for change orders exceeding \$20,000.
Finding 4	RPD/DPW and contractor agreed to increase allowable markups without modifying the contract.

The audit findings related to the contractors’ adherence to change order contractual requirements are summarized in the following table. Recommendations related to each finding appear in the body of the report.

<b>Findings Related to Contractors</b>	
Finding 5	The contractors did not fully comply with time adjustment proposal requirements.
Finding 6	The contractors did not consistently adhere to the change order pricing provisions of the general conditions.
Finding 7	The contractors did not submit timely Change Order Requests per the contract provisions.



**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

In general, the audit's findings identify areas where RPD and DPW can make operational changes to improve their change order management processes to limit payment of undue sums on change order work, and the audit's recommendations are intended to create a more systematic change order review process and standardization of supporting documentation.

**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

**II. List of Acronyms**

CO	Change Order
COR	Change Order Request
CP	Cost Proposal
CSA	City Services Auditor Division (Office of the Controller, City and County of San Francisco)
CSNP	Clean and Safe Neighborhood Parks
DPW	Department of Public Works (City and County of San Francisco)
IMPACT	The IMPACT system, a project management tool
PCO	Proposed Change Order
PM	Project Manager (a Recreation and Park Department employee)
RE	Resident Engineer (a Department of Public Works employee)
RPD	Recreation and Park Department (City and County of San Francisco)

**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

## **Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

### **III. Overview**

The City and County of San Francisco (City) 2008 Clean and Safe Neighborhood Parks (CSNP) Bond was approved by voters to provide \$185 million of funding for the basic critical needs of the park system, eliminating earthquake safety risks and renovating rundown parks and playgrounds. To ensure continued voter confidence, the 2008 CSNP Bond measure also included funds set aside for public oversight and accountability measures.

The purpose of this performance and contract compliance audit is to provide a measure of oversight and accountability over the 2008 CSNP Bond funds.

The projects selected for audit were the Recreation and Park Department (RPD) Mission Clubhouse and Playground (Mission Playground) renovation and the Chinese Recreation Center project. Physical construction was complete and closeout of the projects was ongoing for both projects when the audit was undertaken.

SF Delaney Consulting (the auditor) performed the field work and analysis for this audit with guidance from, and at the direction of, the City Services Auditor Division (CSA) of the City's Office of the Controller. The field work was performed from November 2012 through January 2013 at the offices of the Department of Public Works (DPW) at 30 Van Ness Avenue in San Francisco.

### **IV. Objectives**

The objective of this performance and contract compliance audit was to determine whether, for the selected projects, construction contractors complied with cost and certain other provisions of their contracts with the City, and included a review of change order applicability, processing, oversight, and approval. The purpose of the audit was to provide findings and recommendations to RPD and DPW management for improving controls and operational efficiencies.

### **V. Scope and Methodology**

The auditor reviewed and evaluated contract change order costs for two RPD CSNP Bond projects to assess the contractors' compliance with the contractual requirements. The work included an evaluation of RPD's and DPW's processes and procedures related to its review, evaluation and approval of contract changes and adherence to them. Also, research on change order management leading practices was performed and recommendations are made for improvements to RPD's change order management practices.

The contract provisions and process requirements put forth as governing controls and reviewed for compliance in whole or in part are as follows:

Contract Provisions – Project Manual, Document 00700, General Conditions

RPD and DPW Requirements – DPW Procedures Manual, dated February 2010, Volume 9 – Project Delivery, Procedure 9.11.13, Construction Change Orders and the revised DPW Procedures Manual,

## Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects

dated March 2012, Volume 11 – Construction Manual, Chapter 4, Construction Management – Cost Control, Procedure 11.04.03, Construction Change Orders.

### Overview of Projects Selected for Audit

Mission Clubhouse and Playground (Mission Playground), Job No. 3030V – Renovation of existing clubhouse and pool building to include ADA accessibility and seismic upgrades and site improvements including playground renovation, sport court and paving upgrades, new fencing, lighting and site furnishings, and planting and irrigation. The original contract value was \$4,626,801. The notice to proceed date was May 16, 2011, and the original contract duration through substantial completion was 390 calendar days. Contract changes as of September 2012<sup>1</sup> totaled \$642,103, or 14 percent of the original contract value.

Chinese Recreation Center, Job No. 3024 – Demolition of existing facility and construction of a new 21,680 square foot facility with 12,500 square feet of outdoor recreation space. The new facility includes an expanded gymnasium, 3 large multipurpose rooms, children's playground and outside basketball court, and miscellaneous support spaces. The original contract value was \$10,830,665. The notice to proceed date was September 1, 2010, and the original contract duration through substantial completion was 504 calendar days. Contract changes as of October 2012<sup>2</sup> totaled \$1,587,540, or 15 percent of the original contract value.

RPD used DPW to perform construction management services on its behalf.

### Audit Plan

Based on a preliminary review of the project records and interviews of RPD and DPW project management personnel, the auditor developed a detailed audit plan. The detailed audit plan set forth the following tasks, which were used as a guide for the collection and evaluation of data to achieve the audit objectives.

Evaluate a select sample of contract change orders for adherence to contractual provisions and RPD and DPW requirements to include:

- a. Assess reasonableness of cause for change
- b. Evaluate change order costs and time extensions
- c. Assess timeliness of the identification and resolution of potential change order items and related impact on project schedules
- d. Assess proper review, price negotiation, and approval before commencement of work
- e. Evaluate whether potential fraud, waste, and/or abuse indicators were considered and procedures modified as required
- f. Where testing reveals contractor noncompliance with contractual provisions, identify procedural weakness or policy violation

<sup>1</sup> The Mission Playground PCO log provided at the outset of the audit included changes through September 2012, and was used as the basis to select change orders for review and evaluation.

<sup>2</sup> The Chinese Recreation Center PCO log provided at the outset of the audit included changes through October 2012, and was used as the basis to select change orders for review and evaluation.

**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

- g. Assess change order written policies and procedures, and actual practices observed, to determine if they are in accordance with recommended industry practices

The sample change order selection process was a judgmental, stratified, nonrandom sampling based on the information provided in the change order log for each project. The auditor reviewed the information provided to identify a subset of the Proposed Change Orders (PCOs) that would allow for the testing of a broad set of change order contractual provisions and DPW requirements. The criteria for selection included an evaluation of the dollar amount of the change, whether time was granted, and the method of pricing. The subset selected for analysis was intended to encompass a significant portion of the PCOs while keeping within the intended scope, timeline, and budget.

The selection method provided 12 Mission Playground and 12 Chinese Recreation Center PCOs of significance representing over 40 percent of the change order dollars on each project. Using the method described above, the change orders selected for audit on each project were as follows:

Chinese Recreation Center: Change Orders No. 1, 3, 4, 5, and 8, representing 27 PCOs totaling \$712,560, or 45 percent of the executed change order dollars and approximately 14 percent of the total number of approved PCOs.

Mission Clubhouse and Playground Renovation: Change Orders No. 2, 3, 7, and 9, representing 52 PCOs totaling \$354,089, or 55 percent of the executed change order dollars and approximately 34 percent of the total number of approved PCOs.

**Statement of Auditing Standards**

The auditor conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that the auditor plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the audit objectives. The auditor believes that the evidence obtained provides a reasonable basis for its findings and conclusions based on the audit objectives.

**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

**VI. Findings and Recommendations**

**General Background**

The following provides the reader with background information that will be useful to understand the context of the findings and recommendations in this report.

**RPD Contracts With DPW for Project Management Services**

Funding for RPD resulting from the CSNP Bond allowed RPD to hire a number of Project Managers (PMs) to manage the ensuing capital projects. RPD's PMs are responsible for CSNP Bond capital projects from their inception through completion with each PM responsible for several ongoing projects at any time. RPD often contracts with DPW to perform construction management services on its projects, as was done with the projects that are the focus of this audit. DPW Resident Engineers<sup>3</sup> (REs) provided project management and oversight services including evaluation of and management of change orders on the two projects evaluated.

**RPD's Use of the IMPACT Project Management Tool**

RPD began using a project management tool called IMPACT in late 2010.<sup>4</sup> The IMPACT system (IMPACT) is used for document control, to manage project communications, and for retention of project records. IMPACT provides a mechanism for the transfer of proposed changes to the PM, RE, and to engineers and architects to obtain input, or to transfer the proposed changes to the contractor for clarification and revision. It was used on both projects for reviewing and approving PCOs.

On both projects, the change order process was typically initiated by the contractor in the form of a Change Order Request (COR). The contractor would initiate the proposed change by entering a description of the change into IMPACT and upload the corresponding COR and Cost Proposal (CP) for review by the RE. The RE would evaluate the COR and CP, discuss with RPD's PM and obtain input from DPW's engineers, architects, estimators and schedulers as necessary to evaluate the need, scope, and cost of the PCO. Discussions and negotiations were held with the contractor as necessary. Once the PCOs were reviewed and an agreement was reached on the merit of the change, including the need, scope, and cost, the PCO was then approved. The RE would note it as approved in IMPACT and forward it to the contractor. The PCO initiation and transfer information was recorded in IMPACT and was printable for each PCO.

The auditor was not provided access to the IMPACT system, which limited its ability to follow up on items of interest and to ascertain the completeness of the PCO records. The auditor was provided paper records that were input in IMPACT related to the PCOs under review, and was given a demonstration on how IMPACT functioned.

**Contract Change Orders**

After approval by the RE and PM, the PCOs were typically combined with other proposed changes into a contract Change Order (CO) and input into DPW's eChange Order System. A typical CO would list the

<sup>3</sup> DPWs resident engineers were in some instances referred to as construction managers.

<sup>4</sup> Based on discussions with RPD and DPW personnel, late 2010 is the auditor's best estimate of when IMPACT was implemented.



### Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects

included PCO numbers with a description and the dollar amount. Once the CO information was entered into the system, it was then passed to the appropriate city personnel and contractor for approval. It appears that the evaluation and detailed analysis of a change that results in approval or rejection is performed on individual PCOs before input into the eChange system. The CO itself, which typically combined a number of PCOs into one CO, is used as mechanism for final approvals and authorization for payment.

#### Contract General Conditions

The Contract General Conditions, Section 00700, Article 6, Clarifications and Changes in the Work, were not the same on the two projects reviewed. The differences relevant to the audit pertain to the allowable markups for labor, equipment and materials, and overhead and profit. The Mission Playground project general conditions contain the more current version of the provisions.

The Mission Playground markups for change order work were as follows:

Labor – Actual wages<sup>5</sup> plus a labor surcharge of 11 percent<sup>6</sup> for federal and local taxes, workers compensation, liability insurance etc., plus a markup of 33 percent for indirect overhead costs and profit.

Materials and Equipment – Materials at actual costs and equipment at published rental rates, plus a markup of 15 percent for overhead and profit.

Bond and Insurance – Actual costs of bond and insurance premiums; no markup for overhead and profit is allowed.<sup>7</sup>

Lower-Tier Subcontracts – A markup of 5 percent on lower tier subcontractors is allowed to cover additional overhead and administrative costs

The Chinese Recreation Center markups for change order work were as follows:

Labor – Actual wages<sup>8</sup> plus a labor surcharge of 11 percent<sup>9</sup> for federal and local taxes, workers compensation, liability insurance etc.

Materials and Equipment – No specific markup provided (see markup for overhead and profit).

Bond and Insurance – Actual costs of bond and insurance premiums; no markup for overhead and profit is allowed.<sup>10</sup>

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<sup>5</sup> Inclusive of actual payments for health and welfare, pension, vacation, and similar purposes.

<sup>6</sup> Surcharge is based on California Department of Transportation publication, *Labor Surcharge and Equipment Rental Rates*. The standard allowable labor surcharge in 2010 was 11 percent, with labor related to drilling work noted as an exception at 16 percent. In 2011 the standard rate was 11 percent and labor related to drilling was 14 percent. In 2012 the standard rate was 13 percent and labor related to drilling was 17 percent.

<sup>7</sup> DPW typically allows for markups of 1 percent for bond and 3 percent for insurance, which is based on historical benchmarks.

<sup>8</sup> Inclusive of actual payments for health and welfare, pension, vacation, and similar purposes.

<sup>9</sup> Surcharge is based on California Department of Transportation publication, *Labor Surcharge and Equipment Rental Rates*. The standard allowable surcharge was 11 percent in 2010, 11 percent in 2011, and 13 percent in 2012.

**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

Markup for Overhead and Profit – For work performed by the contractor or a subcontractor, the markup for overhead and profit on direct costs is 15 percent and 5 percent on work performed by a lower-tier subcontractor.

On the Chinese Recreation Center project, after contract award, the contractor and RPD/DPW came to an agreement to modify the contract to allow for markups similar to those on the Mission Playground project. See Finding 4 for further explanation.

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<sup>10</sup> DPW typically allows markups of 1 percent for bond and 3 percent for insurance.

**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

**Findings Related to RPD and DPW**

**Finding 1: RPD has no published change order processes or procedures.<sup>11</sup>**

RPD's change order evaluation process relies on DPW's change order procedures and the project contract general conditions for how it evaluates, manages, and records contractual changes.

On the surface this appears to be a reasonable approach since RPD contracted with DPW to manage the two projects under review. However, a problem arises when RPD and DPW's actual process differs from that outlined in DPW's procedures, as the audit found.

DPW's procedures do not fit well with RPD's process or the IMPACT system, and RPD has no published contract change order procedures or guidelines for using IMPACT for PCO or change order management and approval.

The result is an inconsistent approach to managing PCOs in IMPACT. The inconsistencies included:

- How and where to record the dollar amount of the PCO.
- Where to record PCO approvals by various RPD and DPW personnel.
- How to effectively approve the PCO so that it appears as approved in IMPACT.
- What information is to be provided in the description of the PCO.
- What information is to be provided as the reason for the PCO.
- What the PCO category types are.

RPD and DPW's process of reviewing and documenting contract changes was inconsistent between the two projects. RPD uses IMPACT to manage project communications and for retention of PCO records. RPD has no guidelines or procedures for RPD or DPW staff on how to use IMPACT effectively and efficiently.

On both projects IMPACT was used to manage CORs and PCOs, but where and how the information was recorded differed.

For example, the Chinese Recreation Center project recorded the change order dollar amount and RE approval in the discussion section, under the subheading message with file(s)<sup>12</sup>, while the Mission Playground project PCOs typically did not record the dollar amount and the RE approval was recorded in the approval status section. Neither project noted the RPD project manager's approval. The auditor also noted during the RE's demonstration of IMPACT that nearly all of the PCOs approved for the Chinese Recreation Center project were displayed as "Not Approved."

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<sup>11</sup> Inquiries and interviews conducted around RPD processes and procedures found no formal written RPD change order procedures.

<sup>12</sup> In the IMPACT system, the PCO form contains a section titled "Discussion" where the transfer of the PCO file is recorded. This section contains a subheading "Message with File(s)," where communications or messages related to the transfer are recorded.

## Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects

RPD and DPW appear to rely on the contractor's CORs to provide the details of a potential change. DPW's procedures are unclear as to whether reliance on a contractor document to support a change is sufficient, as DPW's procedures make no mention of a COR. They do, however, state that a PCO will be originated by the RE or engineering design group.

RPD relies on DPW's Project Manual Change Order procedures<sup>13</sup> and the Contract General Conditions, Section 0700, Paragraph 6.00<sup>14</sup> as guides for how it manages contract changes on projects. Neither provides guidelines or instruction for managing contract changes through RPD's IMPACT system.

Change order management procedures often include samples of approved PCOs that show the proper location of specific information as well as the expected level of detail sufficient to enable someone unfamiliar with the change to understand why this is a legitimate change to the contract. See Appendix A, Leading Industry Practices, item 5. Also relevant to development of change order procedures are items 2 and 4 in Appendix A.

### Recommendation

1. The Recreation and Park Department should develop its own set of change order procedures to provide direction and guidelines for management of contract changes on Recreation and Park Department projects. In doing so, the Recreation and Park Department should ensure that each Change Order Request/Proposed Change Order is fully evaluated and the change and decisions related to the change are fully documented, are easily retrievable, and the practice is consistently applied.

### Finding 2: DPW did not adequately record pertinent change order information.<sup>15</sup>

The DPW Procedures Manual provides, as an attachment, a template for a PCO Memorandum to record certain change order information. Although no specific instructions are provided for its use, the template is to be used in the PCO evaluation process to record the details of the change and to justify the need for the change. A PCO memorandum was not created for any of the change orders reviewed by the audit in either project.

The information provided in the PCOs as recorded in the IMPACT system was insufficient to explain the reason for the change and did not provide the information required of the PCO Memorandum. Instead, it appears that RPD/DPW relied on the initiating Request for Information or Architects Supplemental Instructions and the contractor's COR and CP to provide the details of each PCO.

The PCO Memorandum is an important change order document that can be used as a short form to convey the background and details of the change, including the reason for the change, scope of the change, and justification for the change, along with other pertinent details such as timing and pricing of

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<sup>13</sup> DPW Procedures Manual, February 2010, Volume 9 – Project Delivery, Procedure 9.11.13, Construction Change Orders and revised DPW Procedures Manual, March 2012, Volume 11, Construction Manual, Chapter 4 Construction Management – Cost Control, Procedure 11.04.03, Construction Change Orders.

<sup>14</sup> RPD used standard DPW contracts on both projects audited.

<sup>15</sup> This is a general finding based on the totality of the change orders records reviewed, interviews conducted, and recording of data and subsequent analysis.

### **Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

the change. It is also an important project record to memorialize specifics of the change and justify the need for the change in case of an audit or dispute.

As used, the IMPACT system did not record important PCO information such as the cost or reason for the change.<sup>16</sup> To determine the costs or the reason for the change, a review of other change order related documents was required. IMPACT's printable PCO output provides insufficient detail to replace the need for a PCO Memorandum, which is intended to document specific change order information and justify the proposed change. IMPACT's PCO data entry fields do not provide for the information that is to be included in the PCO Memorandum.

With limited information recorded in the actual PCO and no PCO Memorandum, the auditor was challenged to obtain the most basic change order information. Examples of these challenges include the following:

- To understand the reason for the change, and determine the date the change was initiated, the auditor had to review the architect's supplemental instructions and request for information documentation, and the contractor's COR.
- To understand the scope of the change, the auditor had to review the architect's supplemental instructions, requests for information, and the contractor's CORs and CPs.
- To determine the amount of the change, the auditor had to review the CO log, the CO document, and the contractor's CORs and CPs, and the often numerous revisions thereto.

As a result, obtaining and verifying basic change order information was laborious. Change order procedures should provide standards for recording change order information. See Recommendation 1, and Appendix A, Leading Industry Practices, items 2 and 4.

#### **Recommendations**

2. The Recreation and Park Department should require the Resident Engineer to complete the Proposed Change Order Memorandum template as part of the evaluation process for each Proposed Change Order. A Change Order Memorandum should explain the change and why the work is not covered in the original contract. It should discuss other options considered, substantiate the costs and any project time extensions, and note any related issues that are not resolved. The memorandum should be sufficiently complete to enable a person unfamiliar with the details of the project to review the Proposed Change Order and determine the justification for the work.<sup>17</sup>
3. The Recreation and Park Department should require that each completed Proposed Change Order Memorandum be uploaded into the IMPACT system and attached to the related Proposed Change Order.

### **Finding 3: DPW did not comply with procedural requirements for change orders exceeding \$20,000.**

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<sup>16</sup> Based on interviews and discussions with the DPW REs, there appears to be a problem with entering the amount of the PCO in the designated location in the IMPACT system.

<sup>17</sup> See Appendix A, Leading Industry Practices item 4

## **Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

The DPW change order procedures in effect during construction of the two projects required that an independent estimate be prepared for the purpose of negotiations and that a record of negotiations be prepared on contract change orders exceeding \$20,000.<sup>18</sup> The audit found that this procedural requirement was not adhered to.

The Mission Clubhouse and Playground project had 4 PCOs in the sample set that exceeded the \$20,000 threshold. For these 4 PCOs, there were no independent estimates or record of negotiations prepared.

The Chinese Recreation Center project had 6 PCOs in the sample set that exceeded the \$20,000 threshold. For these 6 PCOs, there were no independent estimates and one record of negotiations prepared.

While no formal records were found, the audit did find evidence that the contractor's CORs and accompanying Cost Proposals were evaluated by DPW REs and in most cases there was evidence that negotiations did occur. However, the extent of the evaluation and the negotiations was often not made clear in the records.

Development of an independent estimate on a proposed change can provide the means to systematically evaluate a contractor's cost proposal and validate the pricing. If the Contractor's cost proposal is higher than the independent estimate, the detailed analysis contained in the estimate can be used to counter the contractor's proposed costs potentially providing greater leverage in negotiating the final cost of the change. See Appendix A, Leading Industry Practices item 3.

### **Recommendations**

4. The Department of Public Works should follow its procedure<sup>19</sup> requiring independent estimates and record of negotiations on contract changes exceeding \$20,000 to prevent overpayment and to support the justification for payment of a change order of significant value. The engineer's estimate should be prepared independent of the contractor's estimate or Cost Proposal and should be done before any negotiation with the contractor.<sup>20</sup>
5. Alternatively, if the Department of Public Works deems the preparation of independent estimates and records of negotiations as overly burdensome and of limited value, the Department of Public Works should consider raising the requirement threshold and/or modify its procedures to reflect actual practices.

### **Finding 4: RPD/DPW and contractor agreed to increase allowable markups without modifying the contract.**

The Chinese Recreation Center contract change order provisions provided certain markups on labor used to perform change order work. It appears that a verbal agreement was made between RPD/DPW

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<sup>18</sup> RPD typically approves a PCO and then rolls up several PCOs into one Change Order for the purpose of payment; therefore the \$20,000 threshold is viewed by the auditor as applicable at the PCO level.

<sup>19</sup> DPW Procedures Manual, Procedure 11.04.03, Construction Change Orders.

<sup>20</sup> See Appendix A, Leading Industry Practices item 3.

## **Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

and the contractor to modify the allowable markup for change order work, but no contract change was initiated or executed.<sup>21</sup>

The contract allowed for the contractor to apply to its labor actual wages a Surcharge as provided in the California Department of Transportation Equipment Rental Rates and Surcharge publication. In addition, the contractor and its subcontractors were allowed a 15 percent markup on all self performed work and 5 percent on work performed by lower-tier subcontractors and vendors.

According to the RE the contractor was not willing to perform change order work without an adjustment to the allowable contractual markups.<sup>22</sup> The contractor asserted that the use of the Caltrans surcharge rate requires the use of Caltrans markups for overhead and profit on labor, equipment and materials to fully compensate the contractor for its change related costs. The Caltrans standard markup for overhead and profit on Labor is 33 percent and on Equipment and Materials is 15 percent. It appears that the contractor was allowed to submit for change order work at the higher Caltrans standard markup for overhead and profit on its Labor.<sup>23</sup> Some of the approved PCOs did not include the higher 33 percent markup on labor rates. The costs related to the higher labor markup total \$6,239, or 95 percent of the value of the 12 Chinese Recreation Center PCOs evaluated in detail. By extrapolating the total percentage of the unallowable costs in the 12 Chinese Recreation Center PCOs, the auditor estimates the total unallowable costs inclusive of all changes for labor markups that exceed the contractual amount through October 2012 to be around \$15,000.<sup>24</sup>

While not true of all PCOs, in this instance the Office of the City Attorney should have been consulted before agreeing to allow the increased markup on labor rates as the agreement changes the contractual terms on which the contract was bid. In addition, since the contract requires that any change to contractual terms requires a modification to the contract, a formal change order to adjust the allowable markups should have been executed.

### **Recommendations**

6. The Department of Public Works should consult with the Office of the City Attorney to evaluate current options for executing a contract change order to adjust the allowable markups on change order work.
7. The Department of Public Works and Recreation and Park Department should discontinue use of verbal agreements and follow all contract provisions related to contract modifications.

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<sup>21</sup> Based on interview of project RE.

<sup>22</sup> Based on interview of project RE.

<sup>23</sup> The Chinese Recreation Center contract change order provision limits the contractor's markup for overhead and profit on labor rates to 15 percent, but the Mission Playground contract allowed for the higher 33 percent markup.

<sup>24</sup> These costs are included in the evaluation of the contractor's change order pricing in Finding 6.



**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects

**Findings Related to Contractors**

**Finding 5: The contractors did not fully comply with time adjustment proposal requirements.**

The contract general conditions on both projects state that if the contractor asserts entitlement to an adjustment of contract time (a project time extension) due to proposed change order work, the contractor is to provide a time impact evaluation using a schedule subnetwork<sup>25</sup> and accompanying narrative to demonstrate the critical path impact.<sup>26</sup> The auditor was challenged to locate the contractor's submittals and found that in most instances the CORs prepared by the contractor that discussed time did not meet the requirements of the contract. While evidence of other contractor-prepared narratives and subnetwork submittals were found relative to some of the time adjustment negotiations, the auditor could not confirm that the contractors on each project consistently prepared Time Adjustment Proposals as defined in the contract. The auditor also reviewed written communications from the City's scheduler assigned to the Chinese Recreation Center project which indicated that the contractor's time request submissions were not adequate.

On the Mission Clubhouse and Playground project, there were 2 PCOs in the sample set that granted the contractor additional time.<sup>27</sup> Based on our review, the contractor did not provide a Time Adjustment Proposal or equivalent to justify its claims for additional time.

On the Chinese Recreation Center project, there were 9 PCOs in the sample set that either granted the contractor additional time or paid time related general conditions costs for delay.<sup>28</sup> Based on our review of the project records, in general, the contractor did not provide a timely Time Adjustment Proposal or equivalent to justify its claims for additional time. However, when time related issues came to the forefront, or when pressed by the RE, the contractor did provide a Time Adjustment Proposal or equivalent.

The REs on both projects stated that DPW evaluated the contractor's time extension requests. The audit found some evidence that this was the case, but the RPD/DPW had difficulty providing the related records, which suggests that they were not always uploaded to their corresponding PCO folder in the IMPACT system.

While it may be argued that in some circumstances the critical path and the impact of the change on the project completion date was obvious at the time and, therefore, a Time Adjustment Proposal as described in the contract was not warranted. The impact of a change on the critical path and project completion is rarely simple and straightforward as to not require a detailed evaluation of the schedule and ongoing work. Without a detailed roadmap of the time related impact from the contractor as

<sup>25</sup> A subnetwork is a select portion or fragment of the current schedule, which highlights the delayed activities and related work scopes as well as the critical path. The subnetwork is used to demonstrate the resultant delay to project completion.

<sup>26</sup> See Mission Playground and Chinese Recreation Center Contract General Conditions, Section 00700, Paragraphs 6.03F and 6.03F.1.

<sup>27</sup> PCOs 115.2 and 180.1.

<sup>28</sup> PCOs 1, 11, 19, 20, 23, 25, 104,103 and 111.

**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

required by the contract, the burden appears to have shifted to RPD and its RE and scheduler to justify the contractor's claims for additional time.

**Recommendations**

8. The Recreation and Park Department and Department of Public Works should require its contractors to fulfill their contractual requirement to provide a Time Adjustment Proposal, which provides sufficient support for its claims that a time extension is warranted.
9. The Department of Public Works should require that its Resident Engineers upload to the IMPACT system and attach to the appropriate Proposed Change Order any contractor-submitted Time Adjustment Proposals and its evaluation thereof or independent analysis performed.

**Finding 6: The contractors did not consistently adhere to the change order pricing provisions of the general conditions.**

The contract general conditions require the contractor to adhere to certain pricing requirements, which include providing an itemized breakdown of labor and materials, and limitations on markups for labor, materials, equipment, overhead and profit, taxes, bond, and insurance.<sup>29</sup>

The audit evaluated the detailed pricing of 12 Mission Playground and 12 Chinese Recreation Center PCOs and found that in some instances the contractors did not fully comply with the contractual provisions of their respective contracts.

On the Mission Clubhouse and Playground project, the audit found one PCO without an itemized breakdown of labor and material costs, and three PCOs with labor and materials markups exceeding the allowable rates. The markups on labor and materials that exceeded allowable rates totaled \$1,141. See schedule below for a summary table of the MPC contractor's adherence to pricing provisions.

**Mission Clubhouse and Playground**

CO	PCO	Final PCO Amount	Final TIME (DAYS)	Labor Breakdown Provided	Equipment Rates (Reasonable)	Markups Labor/ Mat./ Equip Exceed Allowable	Markups (Overhead/ Profit) Exceed Allowable	Taxes (Exceed Allowable)	Insurance (Exceeds Allowable)	Bond (Exceeds Allowable)
2	3	\$4,415.12		Yes	-	No	No	No	No	No
	5	\$8,239.52		Yes	Yes	No	No	No	No	No
3	12	\$8,321.77		Yes	-	No	No	No	No	No
	15.2	\$6,808.51		Yes	-	No	No	No	No	No
	26.7	\$52,169.00		Yes	Yes	Yes	No	No	No	No
	35.1	\$15,513.44		Yes	-	No	No	No	No	No
7	106	\$38,316.60		Yes	-	No	No	No	No	No
	115.2	\$12,131.97	9	Yes	-	No	No	No	No	No
	148	\$7,783.77		Yes	-	No	No	No	No	No
9	82.3	\$7,922.29		Yes	-	Yes	No	No	No	No
	180.1	\$25,845.96	28	-	-	-	No	No	No	No
	194	\$91,697.47		No	-	Yes	No	No	No	No
		\$279,165.42	37							

<sup>29</sup> See Section IV Findings and Recommendations, General Background, General Conditions for detailed breakdown of allowable markups for each contract.

**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

On the Chinese Recreation Center project, the audit found the following:

- Six PCOs without an itemized breakdown of labor and material costs
- Eight with unsupported labor rates
- Two PCOs with equipment rates exceeding supportable rates
- Seven PCOs with labor and materials markups exceeding the allowable rates
- One PCO where the lower-tier markup exceeded allowable rate
- One PCO where taxes exceeded the allowable rate

See table below for findings specific to the 12 PCOs evaluated.

**Chinese Recreation Center**

CO	COR	PCO	Final PCO Amount	Final TIME (DAYS)	Labor Breakdown Provided	Labor Rates Supported	Equipment Rates (Reasonable/Accurate)	Markups Labor/Mat./Equip Exceed Allowable	Markups (Overhead/Profit) Exceed Allowable	Taxes (Exceed Allowable)	Insurance (Exceeds Allowable)	Bond (Exceeds Allowable)
1	1	1	\$246,571.66	48	No	No	-	? (1)	No	No	No	No
	2	2	\$20,708.50		No	No	-	? (1)	No	No	No	No
3	7	11	\$19,935.00		Yes	Yes	-	Yes	No	No	No	No
	14	14	\$9,078.00		No	No	-	Yes	No	No	No	No
4	9	19	\$17,835.00		Yes	Yes	-	No	No	No	No	No
	10	20	\$48,961.00	3	Yes	No	-	No	No	No	No	No
	26	24	(\$77,315.00)		Yes	No	No	Yes	No	-	-	-
	-	25	\$0.00	23	-	-	-	-	-	-	-	-
5	23	26	\$299,901.00		Yes	No	No	Yes	Yes	No	No	No
8	108	100	\$15,284.00		No	No	-	Yes	No	No	No	No
	105	101	\$22,757.00		No	No	-	Yes	No	Yes	No	No
	30 R1	103	\$33,726.00		No	No	-	Yes	No	No	No	No
			\$657,442.16	74								

Note: (1) Itemized breakdown of labor and materials was not provided.

The auditor estimated the unallowable costs identified in the detailed review of the 12 PCOs on the Chinese Recreation Center project, as follows:

- The equipment rates exceeding supportable rates totaled \$1,713.
- The labor and materials markups exceeding the allowable rates totaled \$6,239.
- The lower-tier subcontractor markups exceeding the allowable rate totaled \$2,777.
- The taxes that exceeded the allowable amounts totaled \$107.
- A noted credit was not applied which totaled \$1,152.

The unallowable costs presented above total \$11,989, or 1.8 percent of the value of the 12 Chinese Recreation Center PCOs evaluated. By extrapolating the total percentage of unallowable costs of the 12 Chinese Recreation Center PCOs reviewed in detail, the auditor estimates the total unallowable costs inclusive of all changes through October 2012 to be around \$29,000.<sup>30</sup>

Also of note, is that the auditor also found instances of allowable costs that were not claimed by the contractor and that most of the examples of noncompliance occurred at the subcontractor level.

<sup>30</sup> The \$29,000 estimate equals 1.8 percent of the total value of all change orders in the Chinese Recreation Center change order log of October 2012.

## **Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

A checklist of change order pricing criteria to be used as a tool by the RE to evaluate cost proposals would be of benefit to DPW to help ensure that the contractors and subcontractors are adhering to the contractual requirements and limit the instances of overpayment.

### **Recommendations**

10. The Department of Public Works should perform a more rigorous review of the contractors' change order cost proposals. To ensure a more rigorous review process the Department of Public Works should create a change order pricing checklist specific to the contract requirements for each project to be used as a tool to more effectively evaluate contractor cost proposals.
11. The Department of Public Works should provide the contractor the same change order pricing checklist used by the Department of Public Works to facilitate the contractor's adherence to change order pricing provisions.

### **Finding 7: The contractors did not submit timely Change Order Requests per the contract provisions.**

The audit's review of the timing and execution of PCOs found the late submission or initiation of CORs by the contractor on 7 of the 54 PCOs, or 13 percent of PCOs reviewed on the Mission Playground project, and 7 of the 27 PCOs, or 26 percent of the PCOs reviewed on the Chinese Recreation Center project.

On the Chinese Recreation Center, late CORs can be grouped as follows:

- 1 was over 35 days late
- 3 were over 50 days late
- 3 were over 80 days late

On the Mission Clubhouse and Playground project, late CORs can be grouped as follows:

- 1 was over 45 days late
- 2 were over 60 days late
- 4 were over 90 days late

The contract requires that the contractor submit a COR within 7 days of receipt of clarification or other written directive that results in additional costs or time needed to complete the work. The late COR submissions observed were not for significant dollars and the changes did not appear to lend themselves to alternative less expensive options. As such, the late submission did not result in additional costs that could have been avoided. However, RPD is entitled to know when additional costs or time is required to implement a change so that it can identify potential workarounds, minimize costs, adjust budgets and ensure adequate funds are available for payment.

RPD/DPW can make more informed and timely decisions related to contract changes by enforcing the contractual provision requiring the contractor to provide notice of a change through initiation or submission of a COR. A late submission can result in a more costly change or possible dispute because

**Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects**

the owner is unable to react in a timely manner to the potential change. While late notice on a specific change may not result in additional costs or a delay, allowing the late submission of a COR to result in a change can be viewed as setting a precedence, and limit RPD/DPWs ability to enforce the provision when the late submission does result in additional costs or delays.

**Recommendation**

12. The Recreation and Park Department and Department of Public Works should enforce the contractual provisions related to timely submission of Change Order Requests at the outset, with the first late Change Order Request submission, to set the stage for timely submission in the future.

Audit of Changes Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects

Appendix A

Leading Industry Practices

Policies, Procedures and Actual Practices In Accordance with Industry Recommended Practices			
1		2	
Policy, Procedures and Actual Practices		Industry Recommended Practices	
a	b	c	
Policy and Procedure	Actual Practice	Industry Recommended Practice	Source
1	General Conditions Article 6.03 Change Order Requests and Proposed Change Orders, Item A. Requires the Contractor to submit a COR within 7 days of receipt of clarification or other written directive.	Contractor did not comply on all CORs and the requirement was not enforced by RPD/DPW.	The notice clause provides the owner with an opportunity to decide on the appropriate course of action before any work is performed or additional cost incurred and to document the changed work as it is performed. Notice clauses are often enforceable, and the contractor's failure to notify the owner within the specified timeframe could result in the forfeiture of all rights for additional compensation or time.  Trauner Consulting Services, Inc., Change Management Best Practices for Architecture, Engineering and Construction; An Executive White Paper, June 2008.
2	DPW Procedures Manual, Procedure 11.04.03 Construction Change Orders. Requires certain documents be prepared to support the change but does not provide a detailed list or require some items noted in industry leading practices.	RPD/DPW used IMPACT to retain PCO related documentation. Common records retained in the PCO folder included, RFIs and ASIs, the Contractor's COR and CP, and limited PCO initiation data and transfer messages. The IMPACT PCO folders, generally, did not contain related correspondence, authorizations to proceed, or any RPD/DPWs analysis of costs or time. [The auditor was not provided full access to the IMPACT system].	A Potential Change Order (PCO) File should be created either in electronic form (IMPACT) or in hard copy to track any potential change issue. Creation of the PCO File should be performed before entitlement for the potential change is determined. The PCO File should contain all records related to the change. Including related correspondence, phone conversations, and meeting minutes related to the change. It should be as complete as possible and support the reason the change is needed and justify any costs or time granted. The PCO file should be sufficient to allow an independent reviewer to evaluate the potential change and understand why the change order was justified.  WSDOT Construction Office; WSDOT Construction Change Order Process Guide, October 2012, pg 7, pg 11 (5.8 Back-up File), pg 20 (8.9 Insufficient Detail).  AIA Best Practices - Administering Changes and Change Orders, February 2007.  Trauner Consulting Services, Inc., Change Management Best Practices for Architecture, Engineering and Construction; An Executive White Paper, June 2008; pg 4 -6.
3	DPW Procedures Manual, Procedure 11.04.03 Construction Change Orders. Requires Estimates on Contract Changes that exceed \$20,000.00.	RPD/DPW did not adhere to this procedure. RPD/DPW relied upon the REs and others to evaluate the Contractor's Cost Proposals.	The Engineers estimate should be prepared independent of the Contractor's estimate or Cost Proposal and should be done prior to any negotiation with the Contractor.  WSDOT Construction Office; WSDOT Construction Change Order Process Guide, October 2012 pg 6, 3.6 Estimate the Cost.
4	DPW Procedures Manual, Procedure 11.04.03. Provides a Change Order Memorandum template to be used to document the Change.	RPD/DPW did not use the Change Order Memorandum template or prepare a document that provides similar PCO or change order information.	A Change Order Memorandum should be prepared to explain what the change does and why the work is not covered in the original contract. It should also discuss other options considered, substantiate the costs and any adjustments to the contract time, and note any related issues that are not resolved. The memorandum should be sufficiently complete to enable a person unfamiliar with the details of the project to review the change order and determine the justification for the work.  California Department of Transportation - Construction Manual December 2006, Chapter 5, Section 3 Contract Change Orders pg 5-3.17 (5.307 Contract Change Order Memorandum)  WSDOT Construction Office; WSDOT Construction Change Order Process Guide, October 2012 pg 13 and pg 27
5	DPW Procedures Manual, Procedure 11.04.03 Construction Change Orders, does not provide samples of completed change orders.	Sample completed PCOs are not provided to guide Resident Engineers as to the proper information to be included in the PCO form.	The change order management procedures should include sample completed change orders to provide guidance the management as to the proper information to be included in the PCO document. The procedures should include several examples to illustrate some common change order scenarios.  California Department of Transportation - Construction Manual December 2006, Chapter 5, Section 3 Contract Change Orders.  Oregon DOT Construction Manual, Chapter 15, Contract Change Orders/Force Account/Work by Public Forces. Updated January 2012.  WSDOT Construction Office; WSDOT Construction Change Order Process Guide, October 2012 pg 13 and pg 27.

Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects

Appendix B

**Contractor Noncompliance (Mission Playground Project)**

**Mission Clubhouse and Playground**

Noncompliance with Contractual Provision				
	Contractor Noncompliance	Requirement	Contract Provision	Occurrences
1	Untimely Issuance of Change Order Requests (COR)	The Contractor is required to submit a COR within 7 days of receipt of clarification or other written directive	General Conditions Article 6.03 Change Order Requests and Proposed Change Orders, Item A.	7 of 52 PCOs
2	Exceeded allowable surcharge on labor rates	Surcharge on labor is limited to the CT Surcharge Rate of 11% for 2010, and 2011, and 12% in 2012	General Conditions Article 6.06 Cost of the Change Order Work, Item A.1.b.	1 of 12 PCOs
3	Exceeded allowable markup for overhead and profit on labor rates	Contractor markup for overhead and profit on direct labor costs is 33%	General Conditions Article 6.06 Cost of the Change Order Work, Item C.	2 of 12 PCOs
4	Exceeded allowable markup for overhead and profit on materials costs	Contractor markup for overhead and profit on direct materials costs is 15%	General Conditions Article 6.06 Cost of the Change Order Work, Item C.	3 of 12 PCOs
5	Time Adjustment Proposals did not meet contractual requirements	Contractor did not comply with requirement to provide a "Time Adjustment Proposal" with CORs that included a request for time extension	General Conditions Article 6.03 Change Order Requests and Proposed Change Orders, Item F and F.1 and F.2.	2 of 2 PCOs
6	Did not provide an itemized breakdown of materials and labor costs	The Contractor is required to provide a labor breakdown by trade classification, wage rates, and estimated hours	General Conditions Article 6.03 Cost of the Change Order Work, Item E.1.b.	1 of 12 PCOs



Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects

Appendix B

**Contractor Noncompliance (Chinese Recreation Center Project)**

Chinese Recreation Center

Noncompliance with Contractual Provision				
	Contractor Noncompliance	Requirement	Contract Provision	Occurrences
1	Untimely issuance of Change Order Requests (COR)	The Contractor is required to submit a COR within 7 days of receipt of clarification or other written directive	General Conditions Article 6.03 Change Order Requests and Proposed Change Orders, Item A.	7 of 27 PCOs
2	Did not provide support for labor rates - missing and inaccurate labor rate support	The Contractor is required to provide a breakdown of Contractor's and Subcontractors' hourly payroll rates and labor burden for each trade used on the project	General Conditions 6.06 Cost of Change Order Work, Item A.1.	6 of 12 PCOs
3	Exceeded allowable surcharge on labor rates	Surcharge on labor is limited to the CT Surcharge Standard Rate of 11% for 2010, and 2011, and 12% in 2012, and Drilling Rate of 14% for 2010 and 2011 and 16% for 2012.	General Conditions Article 6.06 Cost of the Change Order Work, Item A.1.b.	3 of 12 PCOs
4	Exceeded allowable markup for overhead and profit on labor rates	Contractor markup for overhead and profit on direct labor costs is 33%	General Conditions Article 6.06 Cost of the Change Order Work, Item C.	5 of 12 PCOs
5	Exceeded allowable markup for overhead and profit on Material Costs	Contractor markup for overhead and profit on direct materials costs is 15%	General Conditions Article 6.06 Cost of the Change Order Work, Item C.	4 of 12 PCOs
6	Time Adjustment Proposals did not meet contractual requirements	Contractor did not comply with requirement to provide a "Time Adjustment Proposal" with CORs that included a request for time extension	General Conditions Article 6.03 Change Order Requests and Proposed Change Orders, Item F and F.1 and F.2.	9 of 12 PCOs
7	Did not provide an itemized breakdown of materials and labor costs	The Contractor is required to provide a labor breakdown by trade classification, wage rates, and estimated hours	General Conditions Article 6.03 Cost of the Change Order Work, Item E.1.b.	4 of 12 PCOs

Audit of Change Orders in 2008 Clean and Safe Neighborhood Parks Bond Funded Projects

Appendix C

Department's Response



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

March 22, 2013

Tonia Lediju, Director of Audits  
City Hall, Room 477  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Dear Ms. Lediju,

This letter is in response to the construction audit report prepared by the Controller's Office for the Chinese Recreation Center and Mission Playground which includes comments from both the Recreation and Park Department (RPD) and the Department of Public Works Bureau of Construction Management Division (DPW).

We would like to thank the Controller's Office for the opportunity to respond to the report regarding change management procedures and processes for the evaluation of change orders and recording of supporting documentation. RPD and DPW are committed to providing quality projects for the City and County of San Francisco. As the specific recommendations indicate, RPD is already embarking on developing additional and clear procedures for the management of contract changes in consort with our Project Management Software; our goal is to roll these procedures out in the next few months.

In response to the specific recommendations attached to this letter are the twelve audit recommendations by the Controller's Office and responses by RPD & DPW addressing construction management practices.

Sincerely,

  
Philip A. Ginsburg  
General Manager

CC: Dawn Kamalanathan, RPD Director of Capital & Planning  
Toks Ajike, RPD Project Manager  
Albert Ko, DPW-BCM

## City Services Auditor Division Recommendation and Response Form

For each recommendation, the responsible agency should indicate whether it concurs, does not concur, or partially concurs. If it concurs with the recommendation, it should indicate the expected implementation date and implementation plan. If the responsible agency does not concur or partially concurs, it should provide an explanation and an alternate plan of action to address the identified issue.

Recommendation	Responsible Agency	Response
<p>1. Develop its own change order procedures to provide direction and guidelines for management of contract changes.</p>	<p>Recreation and Park Department</p>	<p>Concur.</p> <p>Recreation and Park Department is currently embarking on developing clear procedures and guidelines for the management of contract changes in consort with the Impact Project Management Software. The goal is to roll out and implement these changes in the next few months.</p>
<p>2. Require the project Resident Engineer to complete the Proposed Change Order Memorandum template for all proposed change orders as part of the evaluation process. A change order memorandum should:</p> <ul style="list-style-type: none"> <li>a. Explain the change and why the work is not covered in the original contract.</li> <li>b. Discuss other options considered, substantiate the costs and any adjustments to the contract time, and note any related issues that are not resolved.</li> <li>c. Be sufficiently complete to enable a person unfamiliar with the details of the project to review the change order and determine the justification for the work.</li> </ul>	<p>Recreation and Park Department</p>	<p>Partially concur.</p> <p>DPW/Rec Park partially concurs with the finding to issue a memo. All pertinent information that includes RFI, ASI are uploaded in each individual COR and is available; however not in the format requested.</p> <p>Moving forward, a more detailed memo will be prepare to summarize each PCO, and DPW can prepare memo/record of negotiation for each change order</p>

**City Services Auditor Division  
Recommendation and Response Form**

Recommendation	Responsible Agency	Response
3. Require each completed Proposed Change Order Memorandum be uploaded into the IMPACT system and attached to the related proposed change order when complete.	Recreation and Park Department	Partially Concur.  See above response to recommendation 2.
4. Follow department procedure 11.04.03 requiring an independent estimate and record of negotiations for contract changes exceeding \$20,000. The estimates should be prepared independent of the contractor's estimate or cost proposal and completed before any negotiation with the contractor.	Department of Public Works	Partially concur.  DPW will review the change order threshold amount and revise as required to reflect more accurately today's market prices. Due to the fast track nature of these projects, this added layer of review might impact response time and delivery of the projects.
5. If independent estimates and records of negotiations are determined to be overly burdensome or of limited value, consider raising the requirement threshold for independent estimates and/or modify its procedures to reflect actual practices.	Department of Public Works	Concur.  DPW will consider raising the requirement threshold for independent estimates during the next specification modification. See above response to recommendation 4.
6. Consult with the Office of the City Attorney to evaluate options for executing a contact change order to adjust the allowable markups on change order work performed by the contractor.	Department of Public Works	Concur.  Revision to the Standard Contract specifications have already been implemented to reflect current mark up rates since the printing of the subject project.
7. Discontinue the use of verbal agreements and follow all contract provisions related to contract modifications.	Department of Public Works	Concur.  This is not standard practice by the Project Team and rarely occurs. All agreements shall be documented and filed.

**City Services Auditor Division  
Recommendation and Response Form**

Recommendation	Responsible Agency	Response
	Recreation and Park Department	Concur.  See above response.
8. Require its contractors to fulfill their contractual requirement to provide a Time Adjustment Proposal, which provides sufficient support for its claims that a time extension is warranted.	Department of Public Works	Concur.  It is standard practice for DPW to request time adjustment proposal from the contractors. Moving forward, DPW will continue to enforce the contractor to submit the time adjustments and supporting documents.
	Recreation and Park Department	Concur.  See above response.
9. Require its Resident Engineers to upload all Time Adjustment Proposals and any evaluation thereof, or independent analysis, to the IMPACT system, attached to the appropriate proposed change order.	Department of Public Works	Concur.
10. More rigorously review the contractors' change order cost proposals. To ensure a more rigorous review process, create a change order pricing checklist specific to the contract requirements for each project, which can be used as a tool to more effectively evaluate contractor cost proposals.	Department of Public Works	Concur.  The project team that includes RE, Project manager architects and engineers already reviews each change order thoroughly. As an improvement and refinement to our procedures already in place, a checklist will be created to document the evaluation of contractor's change order.

**City Services Auditor Division  
Recommendation and Response Form**

<b>Recommendation</b>	<b>Responsible Agency</b>	<b>Response</b>
11. Provide the contractor the same change order pricing checklist used by the department to facilitate the contractor's adherence to change order pricing provisions.	Department of Public Works	Concur.
12. Enforce the contractual provisions related to timely submission of change order requests.	Department of Public Works	Concur.  Henceforth, DPW will require Contractor notify to the City of upcoming change order during weekly progress meeting. DPW will continue to enforce this contract requirement.
	Recreation and Park Department	Concur.  See above response.

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**From:** Board of Supervisors  
**To:** BOS-Supervisors  
**Subject:** Department of the Environment Annual Report

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**From:** Nutter, Melanie  
**Sent:** Monday, April 01, 2013 5:16 PM  
**To:** Board of Supervisors  
**Subject:** Department of the Environment Annual Report

Dear Supervisors:

In SF Environment's Annual Report ([accessible here](#)), you will find a summary of the Department's accomplishments from 2012. Thanks to all of you, Mayor Lee and the Environment Commission, along with collaboration from City departments, residents, and businesses, San Francisco continues to pave the way on sustainability.

Please also save the date for the 2013 Mayor's Earth Day Breakfast, to be held on **April 24<sup>th</sup>, at 8 AM, in City Hall's North Light Court**, where we'll be celebrating these achievements.

I look forward to continuing to work together on implement cutting-edge policies and innovative programs that keep San Francisco on the forefront of being a thriving sustainable city.

Sincerely,  
Melanie

**Melanie Nutter | Director**  
San Francisco Department of the Environment

*Our NEW address, as of March 2013:*

1455 Market Street, Suite 1200, San Francisco, CA 94103

[Melanie.Nutter@SFGov.org](mailto:Melanie.Nutter@SFGov.org) T: (415) 355-3701 F: (415) 554-6393



**SF Environment**

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The Department of the Environment  
City and County of San Francisco

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# Annual Report 2012



**SF Environment**

Our home. Our city. Our planet.

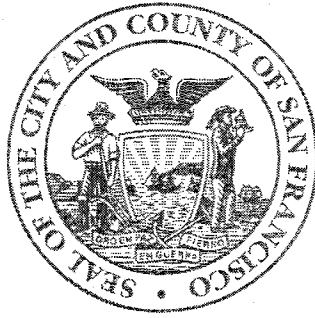
A Department of the City and County of San Francisco

SF Environment

1455 Market Street, Suite 1200, San Francisco, CA 94103

SFEnvironment.org • (415) 355-3700





## Message from the Director



The San Francisco Department of the Environment is pleased to present its 2012 annual report. This report highlights the accomplishments and programming that made 2012 another exciting and innovative year here at the department.

Thanks to leadership from Mayor Lee and the Board of Supervisors, and support from San Francisco businesses and residents, we continued to make great strides this year. In addition to being named the Cleantech Capital of North America and a top city for green jobs, San Francisco celebrated an 80 percent waste diversion rate, the highest of any city in North America. We continue to be a leader in the sustainability movement, having successfully banned single use plastic bags, published the nation's first *Pest Prevention by Design Guidelines*, while being recognized for the world's best green building policy. These achievements are made possible through partnerships with our fellow city agencies. The city's greenhouse gas emissions are 14.5% lower than 1990 levels; another key indicator that our work is having an impact.

And that's not the only indicator; sustainability is good for our economy. Our programs and policies continued to prove it in 2012. The EnergyWatch and Boiler Replacement programs helped drive the energy efficiency market, while our zero waste polices continue to spur emerging, waste reduction businesses. In total our department has supported 2198 jobs in San Francisco and this number will continue to grow as we create demand for new businesses and continue to help existing businesses become more energy efficient, reduce waste and generate renewable energy.

Together, we are creating a city that allows our residents to thrive while ensuring there will be a prosperous future. The Department of the Environment looks forward to working with our local elected leaders, businesses, and residents to continue creating the policies and programs that have earned us the title of Greenest City in North America.

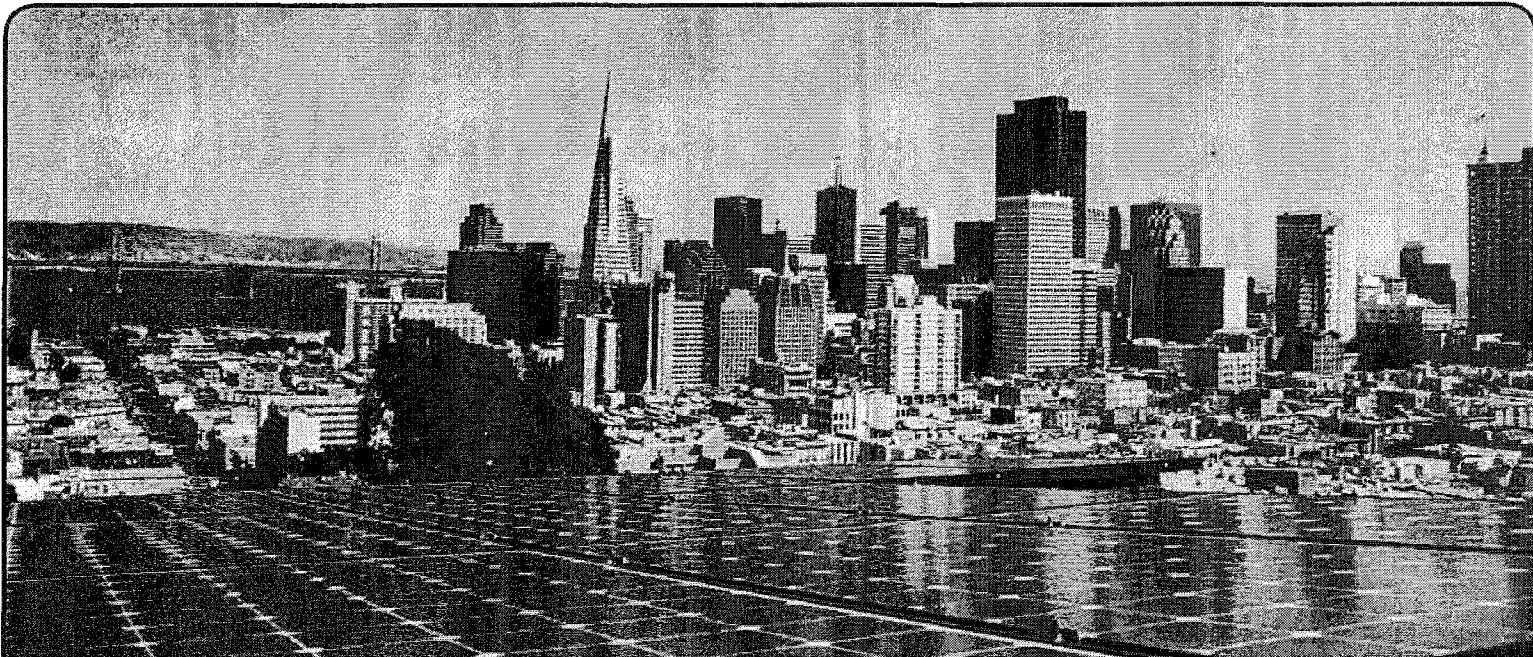
Sincerely,

A handwritten signature in cursive script that reads "Melanie Nutter".

Melanie Nutter

Director, San Francisco Department of the Environment





## Our Mission

The San Francisco Department of the Environment creates visionary policies and innovative programs that promote social equity and the green economy, protect human health, and lead the way toward a sustainable future. We put our mission into action by mobilizing communities and providing the resources needed to safeguard our homes, our city, and ultimately our planet.

## What We Do

The San Francisco Department of the Environment (SF Environment) creates visionary policies and innovative programs to improve, enhance, and preserve San Francisco's urban and natural environment and ensure our city's long-term sustainability. By developing cutting edge yet practical wide-ranging environmental programs, fostering ground-breaking legislation, working collaboratively with key partners and educating the public on comprehensive sustainability practices, SF Environment makes it easy for everyone in San Francisco to protect their environment.

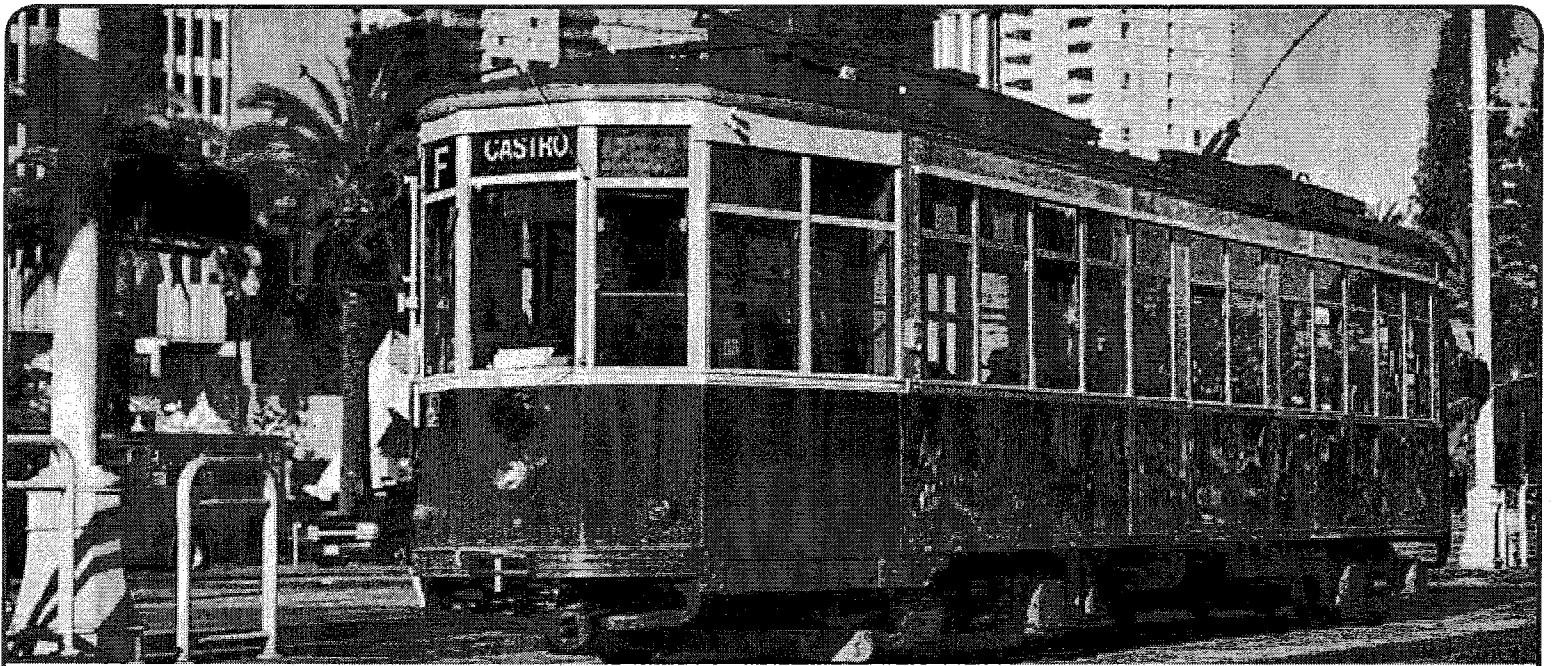
SF Environment is a one-stop resource for people who want to learn about how they can access resources to protect the environment locally. Each year, SF Environment handles inquiries from elected officials, other city departments, businesses, and the public. SF Environment is responsible for providing expert information about environmental initiatives, programs, policies and incentives to the media,

City agencies, the Board of Supervisors and the public.

SF Environment's EcoCenter and website—[www.sfenvironment.org](http://www.sfenvironment.org)—have the latest departmental and Environment Commission news and archives as well as easy-to-read fact sheets about a wealth of environmental topics, many of which are in multiple languages including Spanish, Chinese, Russian and Tagalog. The website serves as a portal to a range of environmental issues and contains links to other city agencies and environmental non-profit organizations.

Understanding that real change comes from face-to-face conversations and engagement, we work in every neighborhood in San Francisco going door to door and participating in street fairs, farmer's markets, concerts and other events, in an effort to get information on environmental protection out to the people who want and need it most.





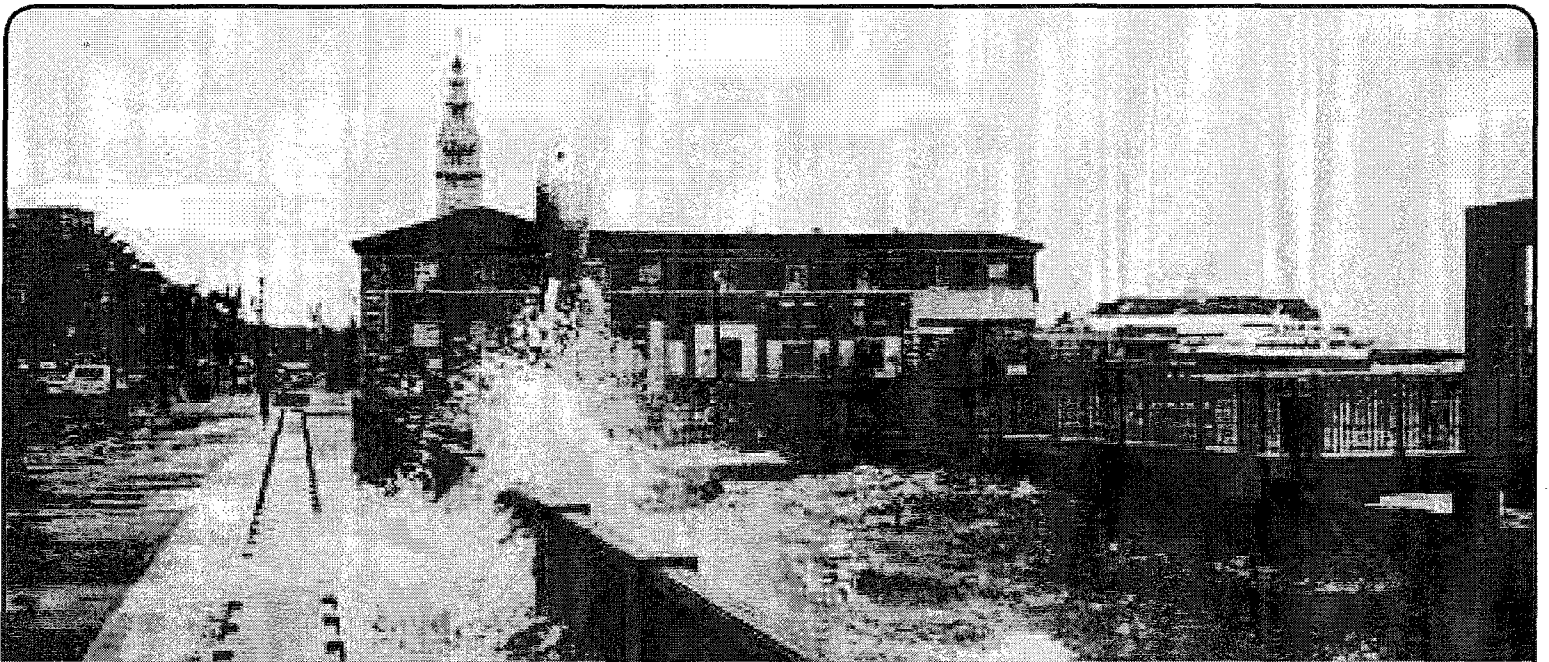
## Clean Transportation

The Clean Transportation Program envisions a San Francisco where car ownership is the exception rather than the rule, and where convenient, carbon-free mobility options are readily available and highly used by residents, commuters and visitors. As a step toward that vision, the city has set a goal to reduce greenhouse gas emissions from the transportation sector in San Francisco to 20%

below 1990 levels. Additionally, we aim to enhance the City's livability by improving the environmental conditions and experience of all modes of mobility for every San Francisco resident and visitor. We achieve this by promoting clean transportation programs that reduce congestion, improve safety for all modes of mobility, enhance air quality and encourage healthy travel.

## Accomplishments

- Worked with 3,000 businesses that have a commuter benefits program for employees, 40% of which implemented a program due to the Commuter Benefits Ordinance
- Assisted 3,600 City and County of San Francisco employees who are utilizing the Pre-Tax Commuter Benefits program Commuter Benefits program monthly.
- Supported enrollment of 500 businesses in the Emergency Ride Home Program, representing 90,000 commuters.
- Registered over 350 San Francisco Unified School District families in SchoolPool to walk-, bike-, transit- and car-pool to school
- Installed 75 public electric vehicle charging stations in 20 city-owned garages and parking lots
- Assisted with the installation of 89 electric vehicle charging stations for residents at 36 multifamily buildings in San Francisco as a demonstration project with California Energy Commission
- Spearheaded effort, in collaboration with Charge Across Town, to host EV Week, a community event engaging consumers, local businesses and employers in an educational expo on electric vehicles in September 2012.
- Accepted the Most EV-Ready Community award on behalf of the City of San Francisco from the Bay Area Climate Collaborative.
- Received San Francisco's Clean Cities Coalition recognition for reducing petroleum consumption in the city's transportation sector.
  - Top Award for Per-Capita Petroleum Displacement
  - Top Award for Greatest Displacement of Petroleum Using Electricity



## Climate Change

Climate change is the most pressing environmental issue of the 21st century. SF Environment is committed to developing and implementing policies and practices that protect our residents, businesses and visitors from the worst impacts of climate change. Since climate change is a complex issue, SF Environment works with experts and other city agencies to develop effective strategies to reduce emissions.

Consistent with the scientific community's recommendations to reduce emissions to 80% below 1990 levels by 2050 to stabilize our climate system, San Francisco has officially adopted ambitious emission reduction goals, including 20% reduction below 1990 levels for 2012, 25% by 2017, 40% by 2025 and 80% by 2050.

## Accomplishments

- Managed the Department Climate Action Plan process for all agencies and departments of the City and County of San Francisco. 54 agencies and departments reported their carbon footprint and sustainability metrics and will continue to on an annual basis. The city's operational carbon footprint was reduced by 12% in 2012 from the baseline year of 2005.
- Awarded \$30,000 through the San Francisco Carbon Fund to Friends of the Urban Forest for being a tree planting partner for the Urban Orchard Program. An additional \$70,000 will be granted for projects in 2013
- Produced an *Energy Efficient Events Guide* to promote carbon neutral events in partnership with the Environmental Defense Fund's Climate Core Program and the 34th America's Cup.
- Convened five Community Climate Action Advisory Panels with key city stakeholders to gather feedback to support our citywide Climate Action Strategy Update. Panels included:
  - Gray to Green, Urban Greening and Climate Change
  - New Century Transportation, Moving the Future Forward
  - Energy Independence, Global Technologies and Local Solutions
  - The Business Council
  - Economic Prosperity, Jobs, & Environmental Justice
- Initiated citywide climate adaptation collaboration production to design a city plan.

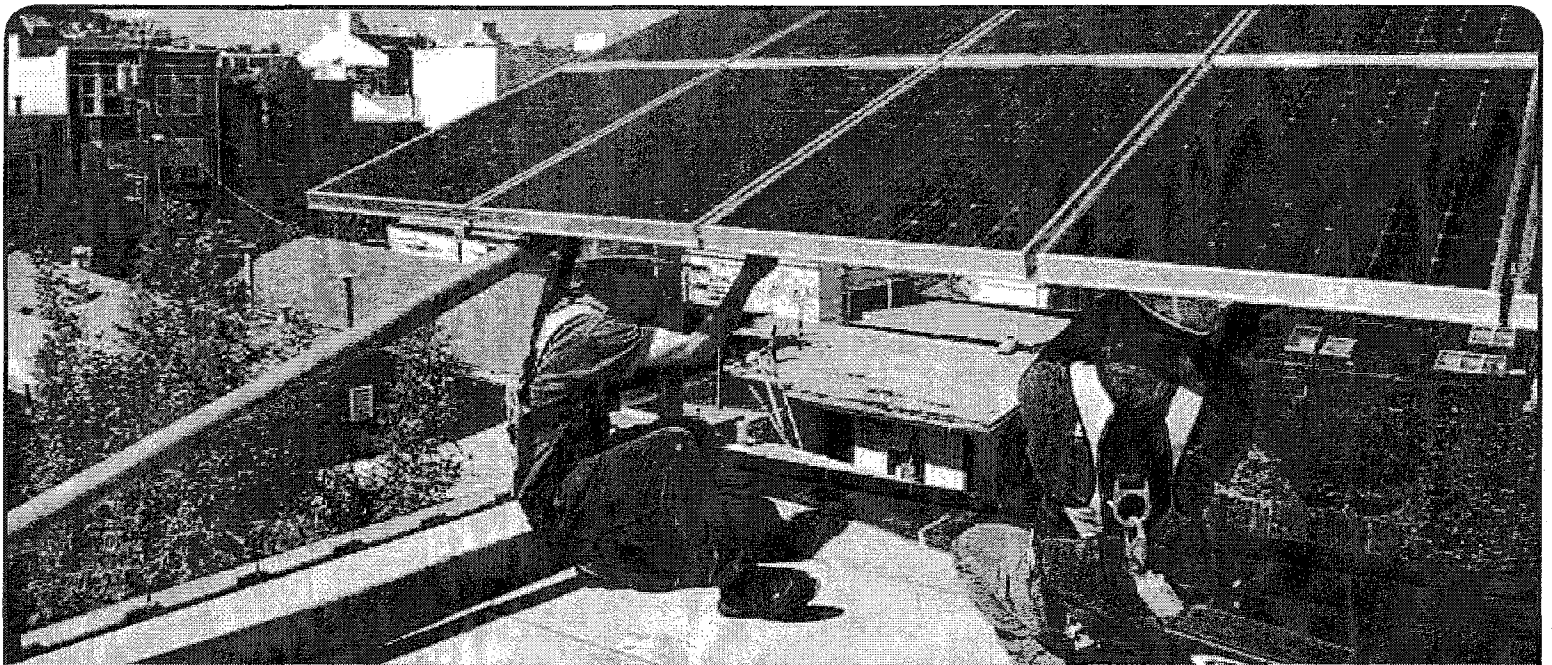


Photo by Luminall

## Energy

Since over 50% of the City's greenhouse gas emissions come from buildings, SF Environment's Energy program targets energy use in private sector buildings; both commercial and residential. The primary goal is to reduce energy use in these buildings through efficiency, and to install renewable resources, all in an effort to achieve as close to zero net energy buildings as possible.

SF Environment has made great strides establishing Energy Watch, one of the largest city-run energy efficiency programs in California, funded by PG&E ratepayers.

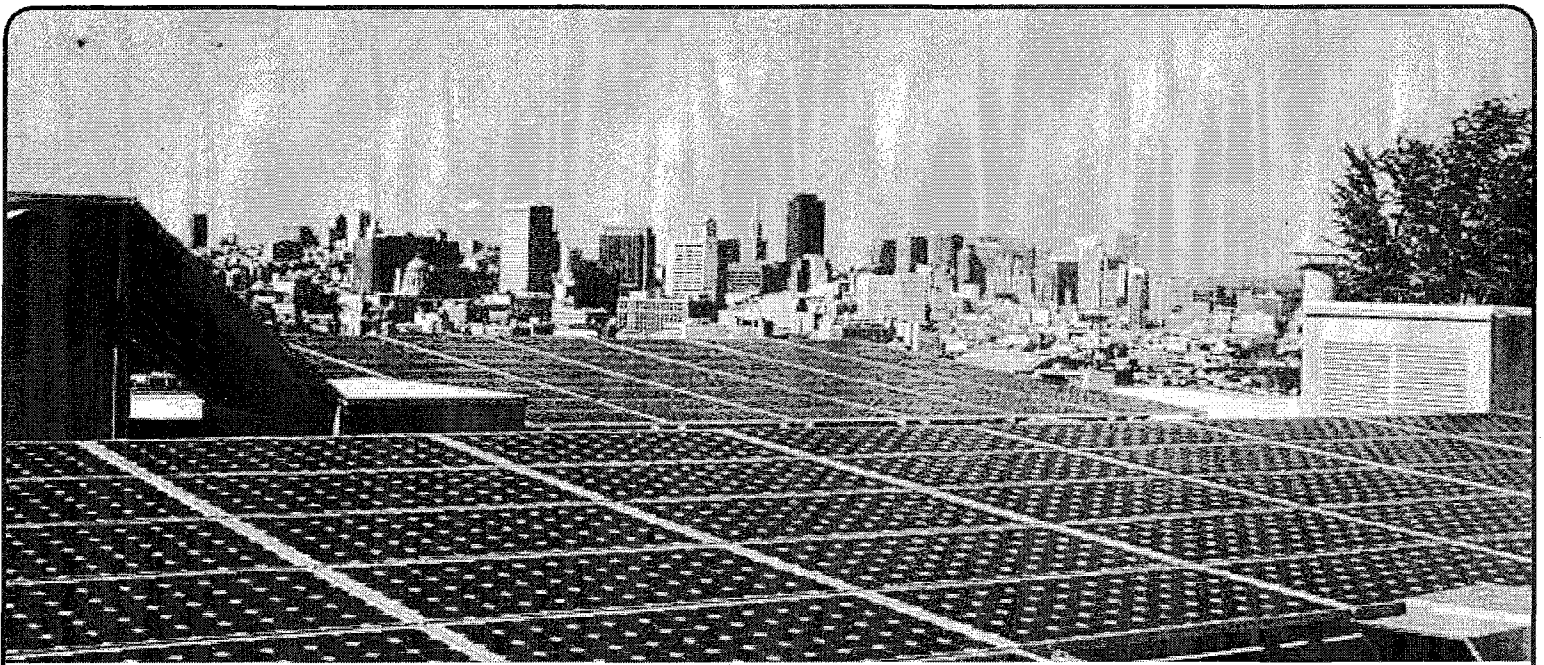
### Zero Net Building

A zero net energy building will use energy from the local grid. But unlike typical homes, a zero net energy building will incorporate both passive and active building design principles (using currently available technology), be highly efficient, and draw enough power from onsite or near site renewable energy installations to cover all its energy needs, resulting in net zero annual energy use.

## Accomplishments

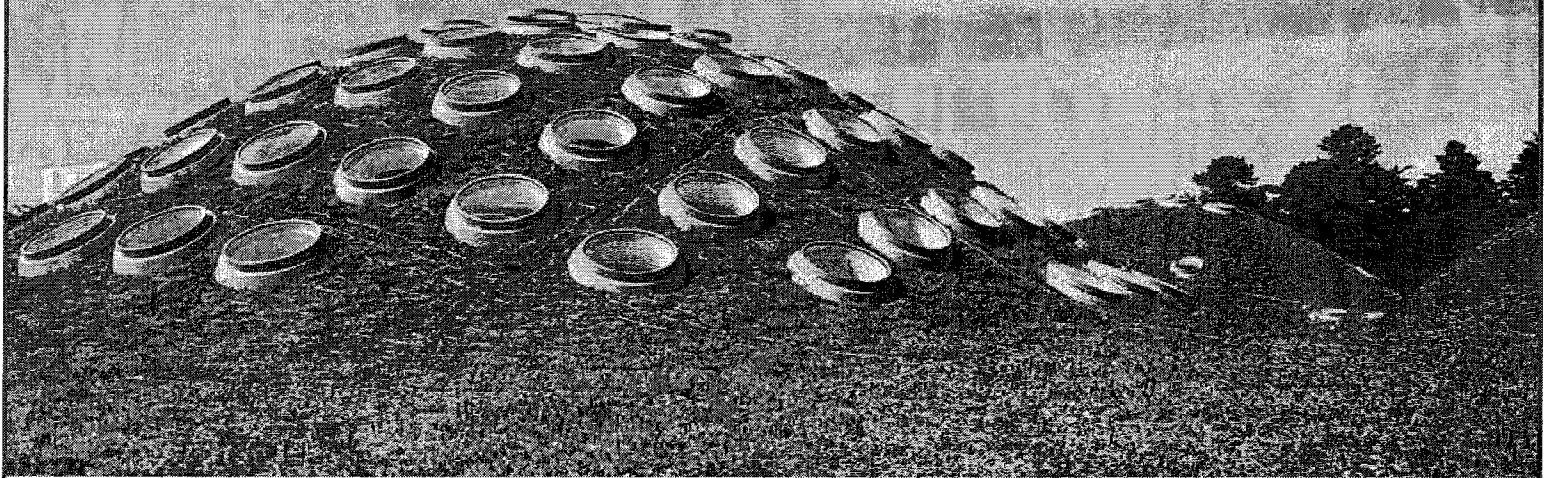
- Published the Zero Net Energy Homes Report which lays out a pathway to maximize energy efficiency in San Francisco.
- Established the EnergySavvy web portal, which allows residents to assess their home inefficiencies and identify potential savings with upgrades.
- Cosponsored the report, "The Value of Green Labels in the CA Housing Market" which found that homes with green labels are worth 9% more than those without.
- Assisted 1,527 businesses and multifamily properties with through the EnergyWatch program resulting in over \$6 million in utility savings and over 15,000 tons of carbon dioxide reduction. \$6 million dollars of incentives were given out in 2012.
- Launched the San Francisco Home Improvement & Performance program I which has provided energy retrofits to 225 residential homes making them an average of 35% more energy efficient.

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## Energy Accomplishments, continued

- Completed the Boiler Replacement program, providing \$1.7 million in incentives to replace outdated and inefficient boilers on 261 projects resulting in a savings of 240,000 therms a year and 1,200 tons of carbon dioxide annually.
- Supported the installation of nearly 3,500 solar projects with a capacity of over 21 Megawatts through our SF Energy Map
- Completed US Department of Energy "Solar America Cities" grant by implementing innovative financing mechanisms including solar group buys with local businesses (Solar@Work) and schools (Solar@School).
- Joined a regional consortium that was awarded a US Department of Energy "SunShot" grant to reduce the soft costs of solar installations through adoption of best practices for permitting, interconnection, and financing.
- Provided funding support for two solar water heating installations at Tenderloin Neighborhood Development Corporation affordable housing properties.
- Worked with PG&E to help market the CSI-Thermal program to multi-family and commercial properties in San Francisco. As a result 56 solar water heating systems (26,305 sq ft of solar collectors) in San Francisco have been installed or began development since the California Solar Initiative (CSI) – Thermal incentive went into effect in 2010. These installations represent \$3.88 million in private investment in local renewable energy, including \$1.3 million in CSI-Thermal incentives, and will save 90,300 therms of natural gas every year, and 480 metric tons of CO2 emissions per year.
- Lead the Mayor's Renewable Energy Taskforce to complete and finalize its recommendations report for how San Francisco can meet its 100% renewable energy goal.
- Participated in the launch of the Bay Area Regional Energy Network, of which San Francisco will receive a portion of a \$26 million grant approved by the California Public Utility Commission.
- Developed the What's-Your-Watt program launched in January 2013 to allow residents the ability to check out a watt meter at the library and learn how to reduce their energy use at home. The program was funded by PG&E and Wells Fargo Bank and the implementation partner is the San Francisco Public Library.



## Green Building

The over-arching goal of our Green Building program is to ensure that all new and existing buildings in San Francisco are built and operated according to third-party verified standards such as LEED (Leadership in Energy and Environmental Design) GreenPoint Rated, or EnergyStar. Our role in this far-reaching goal is to serve as the technical resource for

standards setting and project development, to facilitate and stimulate on-going training for a wide range of building professionals, and to educate and build support for green building policies with the public, tenants, and building owners.

## Accomplishments

- Issued bond financing for the first GreenFinanceSF project, the city's commercial PACE (Property Assessed Clean Energy) program at historic Pier 1.
- Completed and tracked energy benchmarking for 611 private sector buildings, totaling 111 million sq ft (65% of affected stock) and 350 municipal buildings, through the Existing Commercial Buildings Energy Ordinance. Of which one outcome was that municipal buildings used 1.1% less energy in 2011 than in 2009 saving ratepayers \$1 million per year.
- Partnered with the Assessor-Recorder's office to launch the first program to record green labels in county property records
- Partnered with the US Green Building Council to host the International GreenBuild 2012 conference, attended by more than 35,000 green building stakeholders. SF Environment's staff were featured in 6 conference sessions, highlighting the city's leadership in green building codes, environmental policy, and sustainable facilities.





## Environmental Justice

SF Environment's Environmental Justice program works to promote environmental sustainability and economic opportunities in the city's low-income neighborhoods. We provide grant assistance and technical support to non-profit groups to help prepare workers for employment in the city's green economy. Since 2001 the Environmental Justice Program has granted more than \$11 million to community-based organizations and non-profit groups dedicated to promoting renewable energy, energy conservation and efficiency, food security, air quality and environmental justice in San Francisco's Bayview Hunters Point and Potrero neighborhoods.

## Driving Demand in the Green Economy

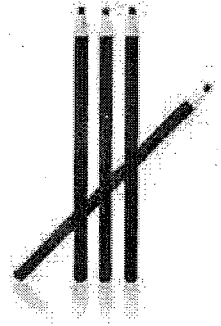
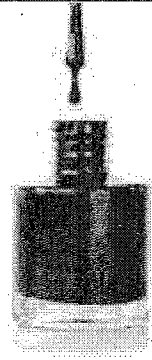
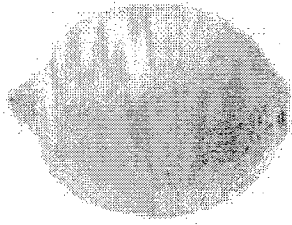
SF Environment programs and policies support emerging green economies in San Francisco while providing new opportunities for San Francisco workers. This past year **Forbes Magazine** recognized San Francisco as the top city in the U.S for green jobs, and city policies and initiatives are leading the way. Workers in the residential energy efficiency upgrade sector took advantage of our Home Improvement and Performance Program as they saw an increase in projects and labor hours. Our zero waste policies continue to drive reuse and recycling

industries, as more businesses and special events need waste reduction services. The City's support of job growth in the sustainability sector continues to transform our local economy and helps meet our greenhouse gas reduction targets to provide healthier places to live and work. Workers across the City—from Bayview Hunters Point to the Financial District—benefit from new jobs that utilize a range of skill and education levels.

## Accomplishments

- Launched the Healthy Homes Project working with over 400 residents in southeast San Francisco to assess and address health inequalities for families. This program is working with families to identify opportunities for integrated pest management and healthy cleaning supplies.
- Received a \$400,000 grant from the U.S. Environmental Protection Agency to support brownfield site assessments in Bayview Hunters Point with the goal of developing the Blue Greenway, a 13-mile waterfront corridor that will improve access to green space in this underserved community.





## Toxics Reduction

San Francisco was the first city in the country to adopt the Precautionary Principle as a foundation for its environmental and public health policies, requiring city government to seek out the safest alternatives when making choices ranging from products and services to building designs and landscape management. The Toxics Reduction Program implements the Precautionary Principle most directly through its programs in green purchasing, green business, and integrated pest management. Program staff are also actively involved in regional, national and international policy efforts to reduce toxic pollution and exposures in the San Francisco area.

In addition, the program coordinates a wide-range of hazardous waste collection and

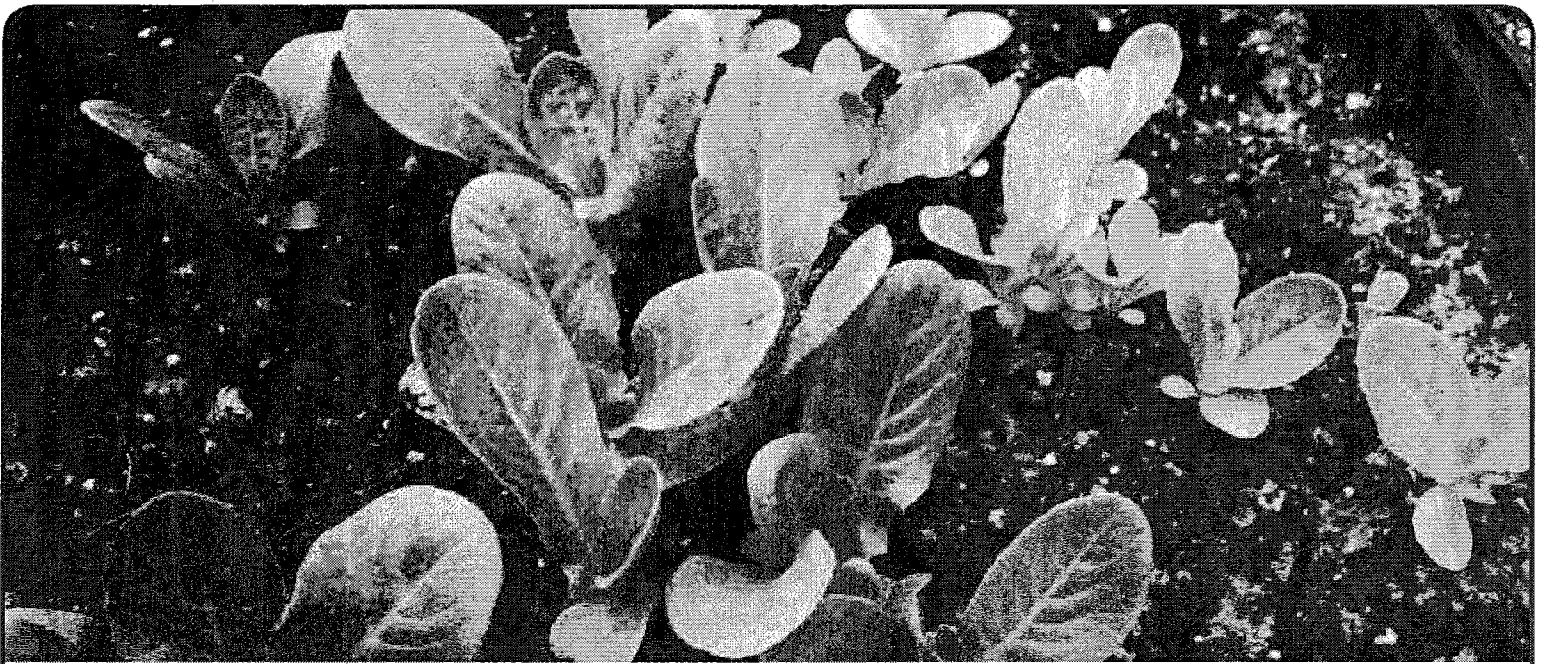
recycling services for unwanted or expired hazardous household products. The program advocates producer responsibility, requiring manufacturers to become financially responsible for collection and recycling of their products, through supporting product stewardship legislation at the local, state and federal level.

### Precautionary Principle

The Precautionary Principle states that if an activity raises threats of harm, precautionary measures should be taken even if cause and effect relationships are not fully established scientifically.

## Accomplishments

- Launched and completed the "Don't Take the Bait" program during which 87 of the 130 local San Francisco stores selling this type of product pledged to eliminate the sale of dangerous rodenticide pellets.
- Assisted in the tracking and collection of almost 3 million pounds of hazardous waste from residences since 2010.
- Conducted outreach to shade tree mechanics and facilitated the collection of nearly 110,000 gallons of used oil recycled since 2010.
- Assisted in the tracking and collection of over 315,000 pounds of hazardous waste from businesses since 2010.
- Launched the Healthy Nail Salon program by conducting outreach to all 223 salons in San Francisco. Nine salons have completed the program and 14 more on track to complete the program by the end of 2013.
- Produced and released the Janitorial Green Cleaning curriculum to support best greening practices for janitorial services in San Francisco. The curriculum was created with U.S Environmental Protection Agency funding and will be disseminated across by the agency to other jurisdictions
- Launched the first ever industry sponsored Safe Medicine Disposal program and collected over 10,000 pounds of medicine through 13 independent pharmacies and 5 police stations.
- Published the Pest Prevention by Design manual; the first of its kind in the country. The manual outlines opportunities for pest prevention in building design.



## Urban Forestry

SF Environment's Urban Forest program promotes a healthier, sustainable urban forest in San Francisco by implementing the Urban Forestry Council Ordinance, providing education programs and information on tree management, and developing innovative funding strategies for the City's urban forest. Additionally, the program drives legislation and serves as an information hub to other agencies and the general public to improve the health of the urban forest and increase its benefits to urban residents.

The Urban Agriculture program facilitates and encourages increasing local food production and opportunities for urban gardening throughout San Francisco.

## Accomplishments

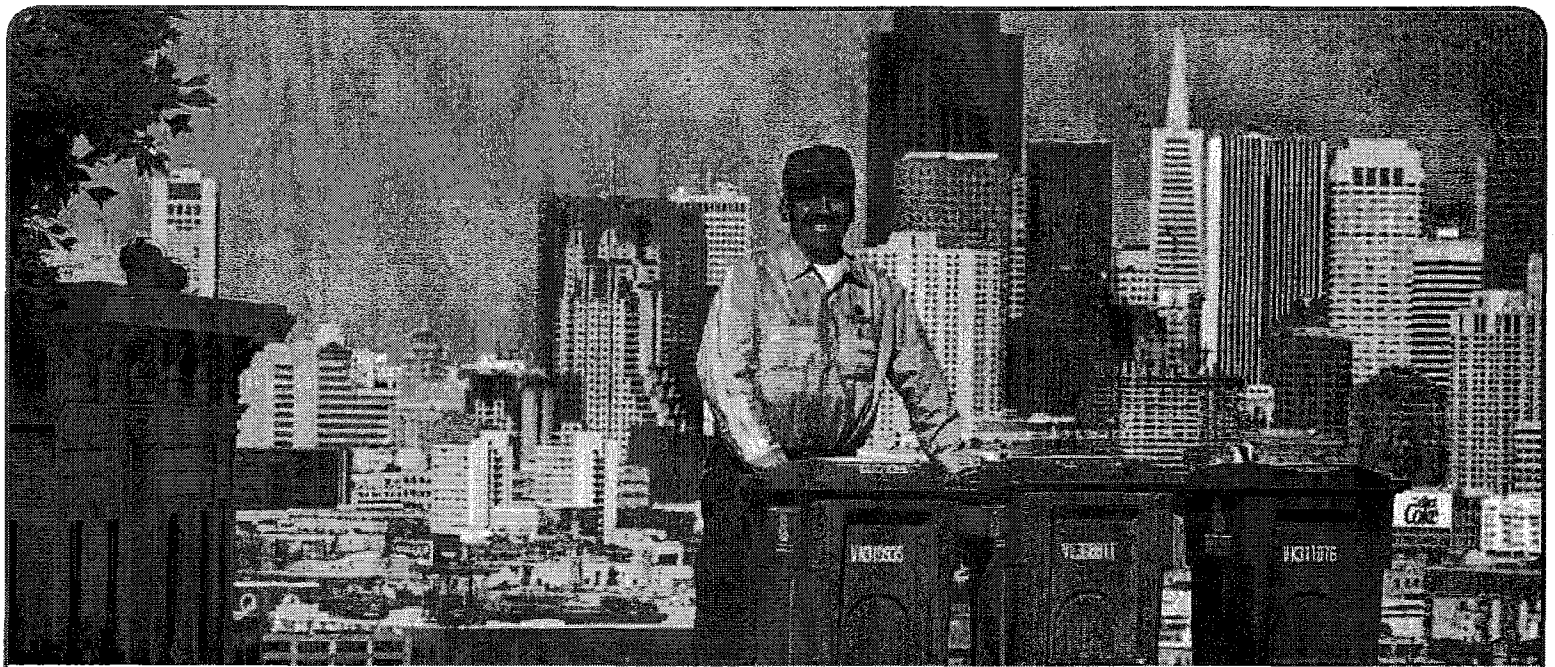
### Urban Forestry

- Provided data and information on existing policy to the Planning Department to support the development of the Urban Forest Master Plan.
- Assisted in the publication of the Annual Urban Forest report.
- Expanded the Urban Orchards program and developed a program partnership with Friends of the Urban Forest to plant 200 publicly accessible fruit trees as part of the SF Carbon Fund grant.

### Urban Agriculture

- Led the development of the Alemany Farm Management Plan, which was adopted by the Parks & Recreation Department and creates a new management model for communal urban farms on public land.
- Participated in the City Administrator's office Urban Agriculture working group, which developed key policy area.





## Zero Waste

The Zero Waste program has instituted a wide array of policies and convenient services to achieve the City's goal of achieving zero waste by 2020. The Zero Waste program encourages all sectors (municipal, commercial and residential) to comply with the city's waste policies and use services properly. The program's primary focus is securing city-wide compliance with the Mandatory Recycling and Composting Ordinance. Financial incentives for generators and service providers are continually updated to enhance waste diversion opportunities. The program promotes waste prevention and environmentally preferable purchasing. Zero Waste Program staff also continue to advocate for local and state legislation increasing consumer and producer responsibility.

## Accomplishments

- Began implementation of the Checkout Bag Ordinance on October 1, 2012, an amendment to 2009's plastic bag ban, which affects all retailers with the exception of restaurants.
- Achieved compliance with State Assembly Bill 341, which requires multi-family buildings and businesses achieve a landfill diversion rate of 75% by 2020.
- Achieved the milestone diversion rate of 80%.
- Established composting in 1,500 and recycling in 1,000 apartment buildings in accordance with the Mandatory Recycling and Composting Ordinance.
- Registered 75 new debris transporters and 3 new facilities under Construction Demolition Recycling Ordinance.
- Provided technical assistance to 34th Annual America's Cup's to develop and implement a Zero Waste plan which achieved 98% waste diversion.

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## Zero Waste Accomplishments, continued

Awarded Zero Waste community grants to:

- The Supportive Housing Employment Collaborative (\$25,000) will offer formerly homeless adults the opportunity to participate in a paid Recycling and Environmental Awareness Internship Program which will train interns in environmental, waste management and community outreach practices. This program will divert waste by implementing recycling and composting programs in supportive housing sites where the interns reside and from events within San Francisco. <http://www.chp-sf.org/>
- San Francisco Clean City Coalition (\$38,000) will continue to operate a wood furniture refurbishing and pallet repair program that will divert waste from landfill. This program will develop a free standing new green business that hires from populations with multiple barriers to employment. <http://www.sfcleancity.com/>
- Garden for the Environment (\$38,000) will offer free backyard composting and vermicomposting workshops for residents of San Francisco, conduct the Gardening Composting Educator Training Program and a school field trip program, while ensuring that San Francisco residents continue to divert organic material from landfill through backyard composting. <http://www.gardenfortheenvironment.org/>
- San Francisco Conservation Corp (\$24,000) will provide greening services for events in San Francisco to increase awareness of recycling and composting practices amongst attendees, producers and corps members; helping events in San Francisco get closer to zero waste and comply with the Mandatory Recycling and Composting Ordinance. <http://www.sfcc.org/>
- Scroungers for Reuseable Art Parts (\$15,000) will increase the diversion of materials suitable for arts and educational purposes while promoting creative reuse - through outreach to businesses and residents, providing free pick-ups, maintaining a materials depot for the public, and education to school children and adults at field trips, workshops and community events. <http://www.scrap-sf.org/>
- Loved Twice (\$10,000) will establish donation collection sites and clothing drives for baby clothes throughout San Francisco in order to both divert textiles from landfill and clothe newborns in need with quality recycled baby clothing for the first year of life. Loved Twice works with social workers to identify new mothers who are in need, particularly at risk mothers experiencing extreme challenges including homelessness, poverty, violence and teen pregnancy. Through this program Loved Twice intends to divert 5 tons of baby clothes from landfill. <http://lovedtwice.org/>



## Outreach and Education

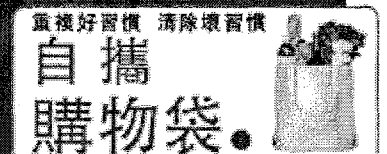
SF Environment's outreach and communications program supports the goals and services of all department programs by providing clear, concise, and objective information about policies and initiatives. SF Environment provides environmental educational resources to a wide variety of San Francisco constituencies, and strives to reach the diverse communities of San Francisco in strategic and thoughtful ways.

### **Cultural Competency and Multi-Lingual Communications**

SF Environment engages all communities throughout the city to ensure that residents and businesses are receiving relevant information about our programs and the environment. At the core of this commitment is an effort to reduce the disparities gap in environmental awareness through multi-lingual education and an understanding of cultural and behavioral diversity in the city. To that end, SF Environment relies on a diverse communications team as well as tactics to reach as many people, in as many languages as possible. Further, we strive to partner with community organizations to increase the reach of our messaging while developing a better understanding of what matters to our audiences.

Some highlights from 2012:

- Translated all of our press releases, education and outreach handouts in multiple languages.
- Launched neighborhood specific outreach campaigns for zero waste and energy efficiency.
- Developed a multi-lingual and culturally relevant outreach campaign for the Checkout Bag Ordinance.
- Participated in over 100 community events throughout the city, all with multi-lingual speakers.
- Created all student factsheets in Spanish and Chinese for our school education program.
- Continued to hire multi-lingual SF residents from underserved neighborhoods for the Environment Now program.



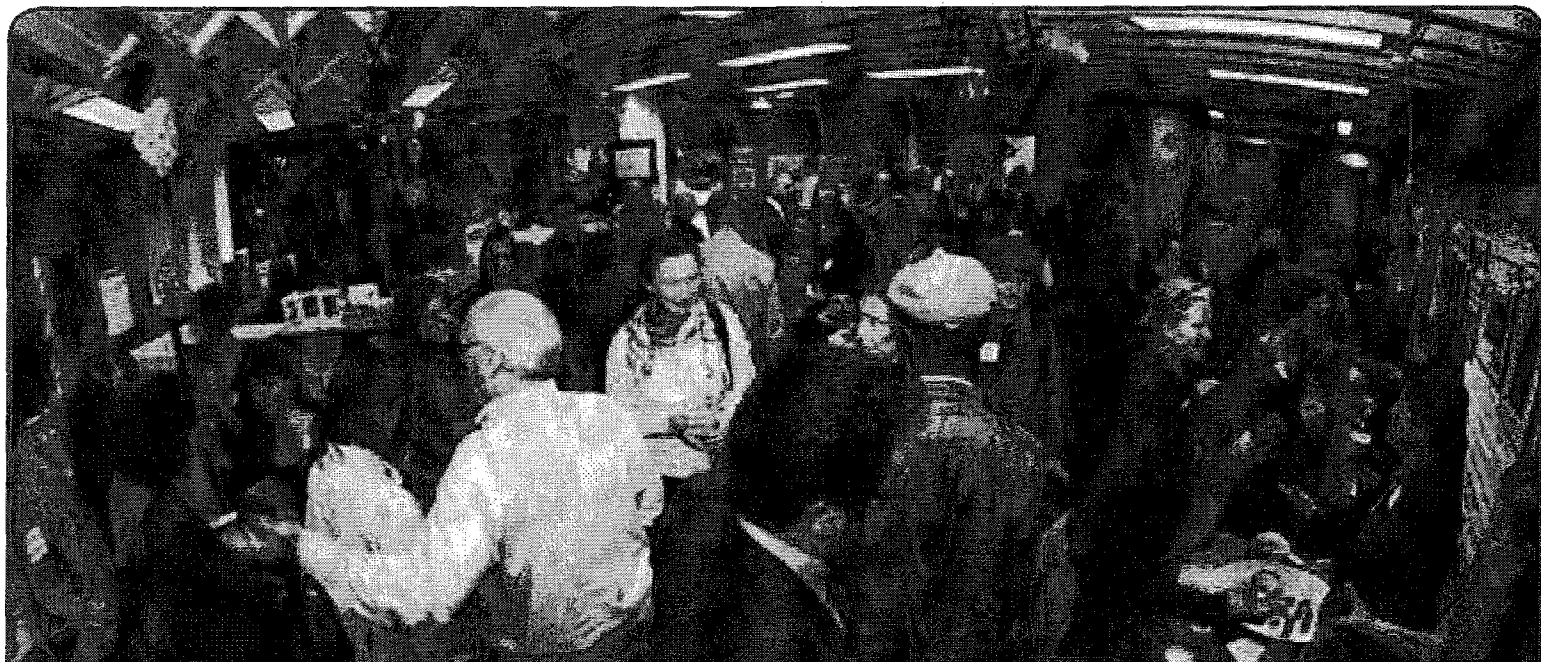


## Online

The SF Environment digital team launched a completely redesigned website featuring ten times more content than the previous website. This robust and scalable platform is also user friendly for staff, meaning we can update content rapidly as needed. The dynamic site allows SF Environment to leverage all of our social media platforms for cohesive communication that is both timely and responsive. Finally, the new site allows for multi-media as well as multi-language content.

**RecycleWhere?** a state of the art digital online tool, was launched to help all Bay Area residents learn how to safely dispose of their waste items, from old sneakers to dead batteries and chicken bones. The tool is set up to not only provide information to its users, but also to inform SF Environment about items people are trying to dispose. This tool will optimize our collection programs in 2013. In its first month the tool, has received 800 unique visitors, 50% of whom are here in San Francisco with another 50% from across the Bay Area and around the world.





### **EcoCenter**

SF Environment's EcoCenter at 11 Grove is the City's one-stop shop for information on its environmental policies, programs and services. The EcoCenter is a community meeting space, an art gallery, movie house, environmental lecture hall and recently, even a performance venue.

Over the past 4 years the EcoCenter has presented more than 18 art installations including SCRAP's annual art show and work by artists from Recology's Artist-in-Residence program. Guest curators from UC Davis, Altered Barbie and the African American Cultural Center have produced a range of exhibits from photography to sculpture. Quarterly art openings have a dedicated following and include good food and great music. In 2011, SF Environment was proud to host Epiphany Productions Trolley Dances, which drew more than 1,200 people to 15 performances over the course of three days.

In addition to a range of art events, the EcoCenter hosts community groups as varied as the Women's Initiative for Self Employment, the Mongolian Cultural Club and the Alliance for Climate Education.

The Third Thursday film series and monthly brown bags are popular community events, and the annual celebration of Park(ing) Day has become a renowned neighborhood event over the years.

### **Education**

SF Environment's Environmental Education program serves as catalyst for change in the community, by offering award-winning projects that serve over 225 public and private schools in San Francisco, annually reaching 20,000 students and 1,000 teachers. The Environmental Education staff promotes positive behavior change that increases composting and recycling at schools, protects our water from pollution, inspires sound environmental stewardship and helps stop litter.





### **Environment Now**

Environment Now's primary goal is to promote workforce readiness and eco-literacy through a combination of classroom workshops and practical, hands-on, project-focused work experiences. Participants work closely with SF Environment staff and engage in a variety of projects and outreach campaigns. Environment Now projects effectively support SF Environment's programs to reach multicultural, multilingual neighborhoods in the City, and help to promote SF Environment's programs in energy conservation, zero waste, urban forestry, toxics reduction, clean air transportation and environmental justice. In 2012 SF Environment's first two-year cohort of eight participants graduated the program.

### **Events**

Each year, SF Environment outreach and Environment Now staff, interns and volunteers engage residents, businesses and community organizations at events and in high traffic

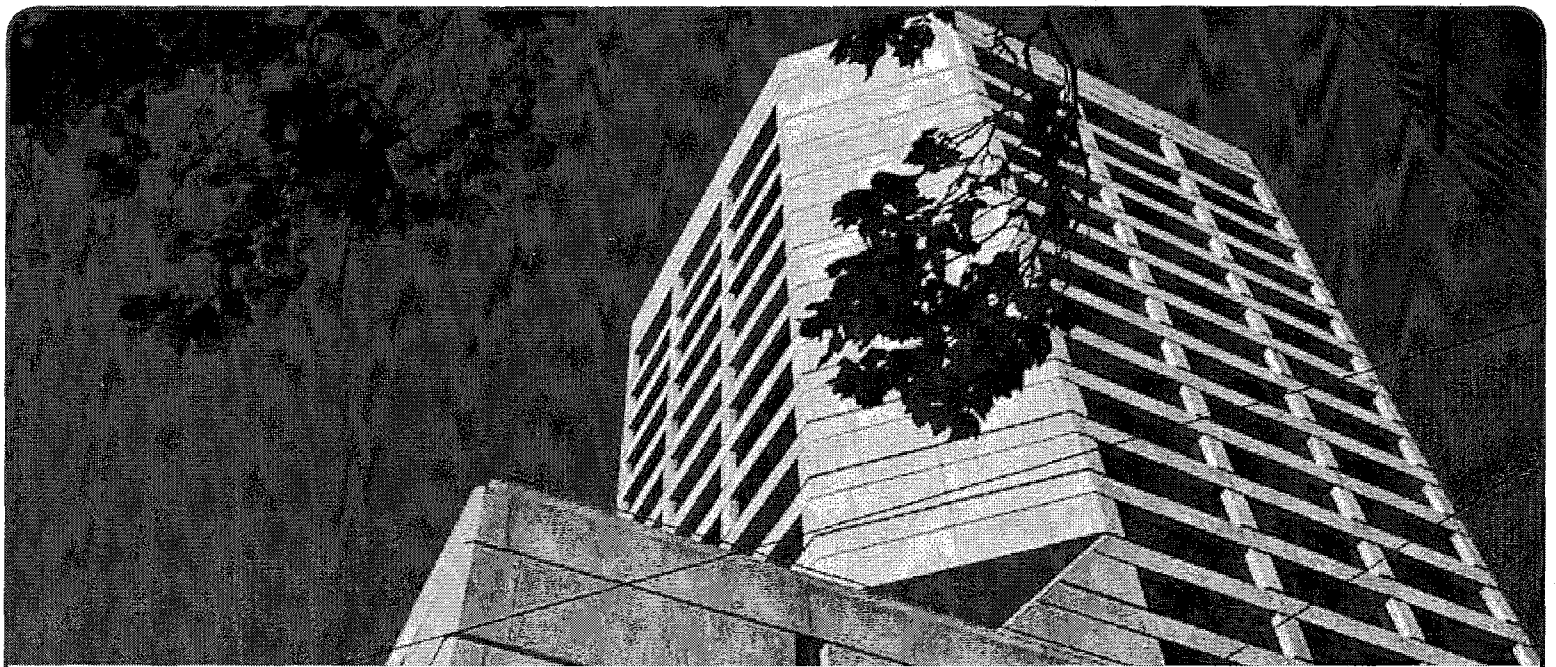
areas such as parks and transit hubs. In 2012, our staff developed innovative and interactive strategies, such as transporting our materials for events on an electric cargo bike and using it to power press conferences and even harnessing the power of Karaoke to engage constituents.

### **Volunteers**

The SF Environment volunteer team, now totaling 518 active members, participated in 75 community events in 2012 and supported several other special projects. Projects included supporting the International Green Building Conference, distributing canvass bags at several events as part of the "Ban Bag Campaign" as well as organizing outreach booths and giving presentations at the Mexican Consulate. In the upcoming year, the volunteer team will take part in expanding outreach efforts at additional Latin American consulates, work with the Department of Public Work's Community Clean Team, and partner with Friends of the Urban Forest to plant over 200 fruit trees.







## Moving Forward

### **Friends of Launch**

Friends of SF Environment, a non-profit dedicated to promoting our work, was launched in 2012. Friends will conduct advocacy, education and fundraising efforts to support SF Environment's programs, policies and alliances and help ensure that San Francisco is the greenest city in the world.

Friends shares SF Environment's vision of a City where businesses, residents, and municipal departments work together to ensure a carbon neutral environment where all citizens have access to clean air, clean water, and green space.

### **1455 Market**

Preparation and planning began in 2012 for our move from 11 Grove St. to the 12th floor of 1455 Market. With 24,000 ft<sup>2</sup> of office space, we will be able to showcase the latest materials and technologies in energy efficiency and green building, while creating more collaborative space for our staff and community. Our new location will provide new opportunities to engage policy makers, residents, businesses, and visiting delegations from around the world.

### **Biodiversity Program**

Following the adoption of a biodiversity resolution by the Commission on the Environment, SF Environment updated portions of our website to include an expanded description of San Francisco's biodiversity heritage and habitats. We secured a limited amount of funding to hire a temporary biodiversity coordinator, with the goal of initiating a biodiversity program and developing a biodiversity plan for the City.





## Commission on the Environment

The mission of the Commission on the Environment is to improve, enhance, and preserve the environment and to promote San Francisco's long-term environmental sustainability as set forth in Section 4.118 of the City Charter. The Commission on the Environment sets policy for the Department of the Environment and advises the Mayor, Board of Supervisors, and other City departments on environmental matters. Appointed by the Mayor, the seven-member commission develops policies and programs on a wide range of environmental topics including zero waste, toxics reduction, environmental justice, clean air, energy efficiency, green building, habitat restoration, commute alternatives, greenhouse gas reduction, green jobs, and the city's urban forest. The Commission's office is located at 11 Grove Street, San Francisco, California, 94102. In March 2013, the Commission's office will be located at 1455 Market Street, 12th Floor.

### **Commission Membership**

Matt Tuchow, President; Ruth Gravanis, Vice President; Joshua Arce, Angelo King, Operations Committee Chair; Alan Mok, Heather Stephenson; Johanna Wald, Policy Committee Chair.

### **Commissioners Leaving Office in 2012**

Special thanks to Commission President Emeritus Matt Tuchow who served on the Commission from January 15, 2008 to December 5, 2012 and on the Commission Operations Committee from January 22, 2008 to July 21, 2010 and to Commissioner Emeritus Rahul Prakash who served on the Commission from August 3, 2010 to January 3, 2012 and on the Commission Policy Committee from October 8, 2010 to January 3, 2012.



## Meetings

All meetings of the Commission on the Environment and its committees are open to the public. The full Commission meets bimonthly on the fourth Tuesday at 5:00 p.m. in January, March, May, July, September and November. Meetings are held at City Hall, 1 Dr. Carlton B. Goodlett Jr. Place, Room 416, in the City and County of San Francisco unless otherwise noted.

The Commission's Policy Committee meets monthly on the second Monday at 5:00 p.m. with the exception of the fourth Monday in October. Meetings are held at City Hall, 1 Dr. Carlton B. Goodlett Jr. Place, Room 421 in the City and County of San Francisco unless otherwise noted.

As of September 2012, The Commission's Operations Committee meets quarterly on the first Wednesday in November and the second Wednesday in February, May, and August at 5:00 p.m. Meetings are held at 1455 Market Street in the City and County of San Francisco unless otherwise noted.

## Background on the Commission

In carrying out its mission, the Commission and its two committees engage in three general types of activities:

1. providing oversight of and strategic advice on the work of the Department of the Environment and its staff;
2. generating and reviewing new policies, practices and ideas relating to sustainability for consideration by the staff, the Mayor, the Board of Supervisors and by other city agencies as relevant; and
3. providing public outreach and education.

The Commission carries out its responsibilities principally by reviewing and commenting on oral and written presentations from the staff at both full Commission meetings and at committee meetings.

The Commission is directly responsible for a number of San Francisco's most well known environmental initiatives including its ban on City purchase of single-serve water bottles and its groundbreaking ordinance on check-out bags. Other major initiatives that the Commission has spearheaded include the Department's green jobs program, its Climate Action Plan, and the City's mandatory composting requirement. As the result of these initiatives, in 2012:

- 2198 jobs were supported by San Francisco Department of the Environment's policies and programs in areas such as zero waste, energy efficiency and renewable energy.
- 1.6 million tons of waste were diverted from landfill and San Francisco achieved an 80% landfill diversion, making it #1 in the country for a city our size and saving the equivalent of almost two Golden Gate Bridges worth of trash.
- Over 50 cities around the country have adopted plastic bag bans of their own.
- 267 San Francisco homeowners, including 194 low-income families as well as 6 businesses and non-profits were able to install solar panels thanks to the GoSolarSF program, providing 567 kilowatts of new solar capacity in the City.
- San Francisco's greenhouse gas emissions are nearly 14.5% below 1990 levels. We are very close to meeting the City's goal of reducing emissions 20% below those levels by 2012 and have exceeded emission reduction goals set by both the United Nations and the State of California, even as our population has grown substantially.
- Providing suggestions and input to Department staff and to staff of the America's Cup Event Authority regarding the latter's efforts to make the America's Cup events of 2012 and 2013 models of environmental sustainability.



## Major accomplishments of the Commission in 2012

In 2012, the Commission's major accomplishments included:

- Supporting the endangered Pacific Leatherback as the Official Marine Reptile of California. The California State Assembly voted unanimously to pass the Bill (AB 1776) to designate the endangered Pacific Leatherback as California's official state marine reptile and to declare October 15 every year as Leatherback Conservation Day.
- Adopting a Resolution urging Congress to permanently establish parity between the parking and mass transit/vanpool portions of the Employee Transportation Benefit.
- Adopting a Resolution commending the Port of San Francisco for passage of their Zero Waste Events and Activities Policy.
- Adopting a Resolution supporting the U.S. Environmental Protection Agency's use of the Clean Air Act to reduce carbon in our atmosphere. The San Francisco Board of Supervisors adopted a Resolution in support of reducing greenhouse gas pollution under the Clean Air Act.
- Adopting a Resolution supporting the proposed expansion of the Monterey Bay National Marine Sanctuary to the Golden Gate Bridge and into San Francisco Bay.
- Providing feedback to the America's Cup Event Authority, particularly on its Sustainability and Zero Waste Plans. Both the Policy Committee and the Commission provided this feedback, and in addition, provided opportunities for members of the public to provide comments on these plans and other actions that need to be taken to ensure that the America's Cup events held in San Francisco in 2012 and 2013 are

truly environmentally responsible.

- Adopting a Resolution in support of Board of Supervisors Resolution and Ordinance Approving the CleanPowerSF Program. The San Francisco Board of Supervisors adopted a Resolution in support of reducing greenhouse gas pollution under the Clean Air Act.
- Adopting a Resolution endorsing Department of the Environment grant funding recommendations for the Urban Orchards Program and San Francisco Carbon Fund program to plant trees.

## Awards

Most Walkable City, WalkScore, November 7, 2012

Top City for Green Jobs, Forbes Magazine, May 7, 2012

VERGE 25 Award for Cities 2.0

"Best Role Model" in green building policy for the California Top-10 Award, U.S. Green Building Council.

Bay Area's "Most EV-Ready Community" (along with Sonoma County) for 2012, presented at Silicon Valley Leadership Group's annual conference on electric vehicles.

SF Clean Cities Coalition, coordinated by Department of the Environment, received two national awards from U.S. Department of Energy for top ranking among all Clean Cities Coalitions: Per Capita Petroleum Displacement and Greatest Displacement of Petroleum Using Electricity.



### **Oversight activities of the Commission in 2012 included:**

- Approving the Department of the Environment's Fiscal Year 2012-2013 Budget on January 24, 2012.
- Adopting a Revised Reduced Risk Pesticides list for 2012. On January 24, 2012, the Commission approved this list as required by Environment Code Chapter 2, Section 203, Ordinance 115-05. In so doing, the Commission and the Department help the City protect residents, visitors, City staff and the City's biodiversity from the effects of unnecessary and avoidable pesticide use.

Reviewing and providing recommendations on the San Francisco Department of the Environment's Strategic Plan Assessment and new format.

### **Accomplishments of Environment Commission Committee**

In addition to the accomplishments referenced above, 2012 activities of the Operations Committee included:

- Reviewing and making recommendations on the Department of the Environment's office move. Office move discussions were held on location, design, process, and Eco Center priorities.
- Reviewing and providing input into funding recommendations of the Department of the Environment's staff for 2012-13 Zero Waste grants that were provided to the Commission on the Environment.
- Reviewing and providing input into the Department of the Environment's Budget for 2012-13 and 2013-14.
- Reviewing strategies and structure for the Department of the Environment's Public Outreach and Education program area and making recommendations on outreach for San Francisco's Expanded Checkout Bag Reduction Ordinance.

- Providing feedback on the importance of social media outreach and requesting ongoing updates on performance.

In addition to the accomplishments referenced above, 2012 activities of the Policy Committee included:

- Establishing Committee work priorities in the areas of the Sustainability Plan, Metrics, Climate/Renewable Energy, and Biodiversity.
- Adopting a Committee Resolution supporting the U.S. Environmental Protection Agency's use of the Clean Air Act to reduce carbon in our atmosphere and recommending that the Commission adopt such a Resolution.
- Recommending that the Commission adopt a Resolution to restore parity between the parking and mass transit/vanpool portions of the Employee Transportation Benefit.
- Recommending that the Commission adopt a Resolution supporting the proposed expansion of the Monterey Bay National Marine Sanctuary to the Golden Gate Bridge and into San Francisco Bay.
- Receiving updates and providing input to staff regarding the need for the City to increase its efforts to provide alternatives to single-use plastic bottles at events throughout San Francisco. The Committee also emphasized the need to restrict the sale of plastic water bottles at America's Cup events.

### **Other Work of the Commission in 2012**

In 2012, the full Commission passed a resolution commending the service and contribution of former Commissioner Rahul Prakash.



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**To:** BOS-Supervisors  
**Subject:** Annual Watchdog Report  
**Attachments:** Annual\_Watchdog\_Report.xps

Dear Supervisors:

The Office of the clerk of the Board has received the attached report from the Assessor-Recorder.

Best Regards,

Peggy Nevin  
Executive Assistant  
Clerk of the Board of Supervisors  
415-554-7703  
[peggy.nevin@sfgov.org](mailto:peggy.nevin@sfgov.org)

**From:** Chu, Carmen  
**Sent:** Wednesday, April 03, 2013 02:03  
**To:** Calvillo, Angela  
**Cc:** Jine, Michael  
**Subject:** Annual Watchdog Report

Madam Clerk,

Per Chapter 10, Section 10.177-2(f) of the San Francisco Administrative Code, I am transmitting to you the Office of the Assessor-Recorder's Annual Watchdog Report. The report provides a status for reported items and covers the period beginning January 1, 2012 through December 31, 2012.

Please let me know if you have any difficulties viewing the report.

Thank you,

Carmen Chu  
Assessor-Recorder  
1 Dr. Carlton B. Goodlett Place, Room 190  
San Francisco, CA 94102

CARMEN CHU  
ASSESSOR-RECORDER



SAN FRANCISCO  
OFFICE OF THE ASSESSOR-RECORDER

April 3, 2013

Ms. Angela Calvillo  
Clerk of the Board  
1 Dr. Carlton B. Goodlett Place  
City Hall – Room 244  
San Francisco, CA 94102-4689S

**RE: 2012 Annual Report of Real Estate Watchdog Cases  
Chapter 10, Section 10.177-2(f) of the San Francisco Administrative Code**

Dear Ms. Calvillo:

For the period January 1, 2012 to December 31, 2012, the Office of the Assessor-Recorder received seven (7) complaints through the Assessor's Real Estate Watchdog Program. The status of each complaint is summarized below.

1. Complaint #3755 – Open. Investigation pending. Informant alleges a change in ownership has occurred.<sup>1</sup>
2. Complaint #3766 – Closed. Complainant is requesting interest on a refund she received. Ineligible for an award.
3. Complaint #3767 – Closed. Informant's report of new construction is not eligible for an award.
4. Complaint #3797 – Closed. Informant's report of new construction is not eligible for an award.
5. Complaint #VZF96Z9F – Closed. Informant's report of new construction is not eligible for an award.
6. 311 Service Request #1480487 – Open. Investigation pending. Informant alleges a change in ownership has occurred.
7. Complaint #A0007 – Open. Investigation pending. Informant alleges a change in ownership has occurred.

For this reporting period, there was no increase in property tax assessments as a result of the above referenced eligible and closed claims.

Sincerely,

Carmen Chu  
Assessor-Recorder

---

<sup>1</sup> 311 service request numbers #1069925 and 1156914 to 1158000 (non-consecutive) will be investigated under Complaint #3755.

---

**To:** BOS-Supervisors  
**Cc:** Young, Victor  
**Subject:** Proposed Amendments to W & M Ordinances  
**Attachments:** Proposed W & M Amendments.pdf

Dear Supervisors:

Attached is a memo regarding proposed amendments to the Weights & Measures Ordinances in the California Government Code which was received in the Office of the Clerk of the Board.

Best Regards,

Peggy Nevin  
Executive Assistant  
Clerk of the Board of Supervisors  
415-554-7703  
[peggy.nevin@sfgov.org](mailto:peggy.nevin@sfgov.org)



Edwin M. Lee  
*Mayor*

Barbara Garcia MPA  
*Director of Health*

Rajiv Bhatia MD, MPH  
*Director of Environmental Health*

## MEMO

April 3, 2013

To: Angela Calvillo, Clerk of the Board

From: Miguel Monroy, Agricultural Commissioner/Sealer of Weights & Measures

Re: Proposed Amendments to W & M Ordinances in the CA Government Code

I am forwarding the information required to address Section 54986 of the California Government Code. This information pertains to the following proposed legislation:

Ordinance amending Administrative Code Section 1.10 revising inspection fees for the inspection and certification of agricultural products.

- The proposed fee will generate approximately \$22,200.00 in FY 12-13
- Estimated FY 12-13 program costs are approximately \$23,761.00
- In FY 11-12 the program cost was \$28,416.00. The FY 11-12 revenue was \$20,887.00

Ordinance amending Administrative Code Section 1.13-5 revising registration fees for inspecting and testing weighing and measuring devices as provided by state law.

- The proposed fee will generate approximately \$517,695.00 in FY 12-13
- The estimated cost of the program for FY 12-13 is \$713,511.00
- In FY 11-12 the program cost was \$713,511.00. The FY 11-12 revenues were \$488,122.00



### Weights and Measures Program

1390 Market Street  
Suite 210

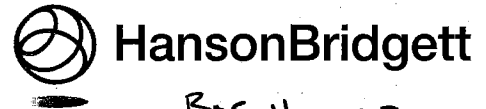
San Francisco, CA 94102

Phone 415.252.3884

Fax 415.252.3869

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

DOROTHY S. LIU  
PARTNER  
DIRECT DIAL (415) 995-5046  
DIRECT FAX (415) 995-3506  
E-MAIL dliu@hansonbridgett.com



BOS-11, COR,  
RULES,  
C-PAGES

April 3, 2013

VIA E-MAIL Board.of.Supervisors@sfgov.org  
AND U.S. MAIL

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

Re: Ethics Commission

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2013 APR -4 PM 3:39

Dear Ms. Calvillo:

It has been an honor and a privilege to serve as a member of the San Francisco Ethics Commission for the past two years. Unfortunately, due to family demands in caring for a newborn infant, I regret that I need to resign from the Commission effective as of receipt of this letter.

Please feel free to call me at (415) 995-5046 with any questions or if you need additional information. Thank you.

Very truly yours,

*Dorothy S. Liu / TAM*

Dorothy S. Liu

DSL:tam

cc: John St. Croix, Executive Director  
San Francisco Ethics Commission

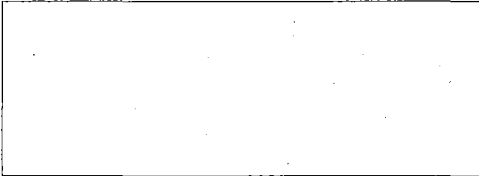
**Subject:** Draft Plan Bay Area EIR Released

**From:** MTC Public Information [<mailto:info@mtc.ca.gov>]

**Sent:** Tuesday, April 02, 2013 05:53

**To:** Calvillo, Angela

**Subject:** Draft Plan Bay Area EIR Released



**April 2, 2013**

## **Release of Draft Plan Bay Area Environmental Impact Report (EIR)**

The Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) today released for public review and comment a Draft Environmental Impact Report (DEIR) as a companion environmental analysis to the Draft Plan Bay Area, which is also out for public review.

Three public hearings are scheduled as an opportunity to provide oral comments specifically on the EIR. Oral comments on the Draft EIR also can be made at one of nine public hearings scheduled for the Draft Plan Bay Area.

**Tuesday  
April 16, 2013**

**10 a.m. to 12 p.m.**

Embassy Suites Hotel,  
Novato/Larkspur Room  
101 McInnis Parkway  
San Rafael

**Tuesday  
April 16, 2013**

**7 p.m. to 9 p.m.**

Joseph P. Bort MetroCenter  
Auditorium  
101 8<sup>th</sup> Street  
Oakland

**Wednesday  
April 17, 2013**

**1 p.m. to 3 p.m.**

Dr. Martin Luther King, Jr.  
Library, Rooms 225/229  
150 E. San Fernando St.  
San Jose

Written comments may be mailed to:  
MTC-ABAG Public Comment  
Draft EIR - Plan Bay Area  
101 8th Street, Oakland, CA 94607

Or email your comments to:  
[eircomments@mtc.ca.gov](mailto:eircomments@mtc.ca.gov)



The Draft Plan Bay Area is the region's long-range transportation and land-use/housing blueprint, which charts a course for accommodating needed housing growth within our nine counties while at the same time decreasing greenhouse gas emissions from cars and light trucks.

The public comment period for both the Draft EIR and Draft Plan Bay Area extends until 4 p.m., Thursday, May 16, 2013. The Draft EIR and Draft Plan Bay Area are slated for adoption by MTC and ABAG in summer 2013.

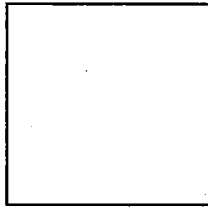
An errata sheet for the Draft Plan Bay Area has been posted on the Plan's website.

For more information on the Draft EIR or Draft Plan Bay Area, please visit [onebayarea.org](http://onebayarea.org).

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Association of Bay Area Governments and the Metropolitan Transportation Commission  
101 Eighth Street, Oakland, CA 94607  
Phone: 510.817.5700  
Fax: 510.817.5848  
Email: [info@onebayarea.org](mailto:info@onebayarea.org)

**Forward email**



This email was sent to [angela.calvillo@sfgov.org](mailto:angela.calvillo@sfgov.org) by [info@mtc.ca.gov](mailto:info@mtc.ca.gov) | [Update Profile/Email Address](#) | Instant removal with [SafeUnsubscribe™](#) | [Privacy Policy](#).  
Metropolitan Transportation Commission | MTC/BATA Public Information | MetroCenter | 101 Eighth Street | Oakland | CA | 94607

BOS-11  
cpage

File 130227

KURT W. MELCHIOR  
50 California Street  
San Francisco CA, 94111

April 1, 2013

Board of Supervisors  
City and County of San Francisco

Re: The San Francisco Law Library

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2013 APR -2 PM 12:54

Dear Supervisors:

I am the President of The San Francisco Law Library. From 1914 until 1995, the Library shared the fourth floor of City Hall with the San Francisco Superior Court. When City Hall closed for seismic repairs in 1995, the City moved the Library to the War Memorial Veterans Building as a "temporary" location until it could return to City Hall. But in 1997 the City first informed the Library that it would not be able to return to City Hall. Since then, we have continually sought the City's support in finding suitable and adequate space. Although in 2004 the Board of Supervisors adopted a resolution recognizing its obligations under State law and the City Charter to provide such adequate and suitable space, no steps were ever taken to remedy the situation. Our board, which includes several of the Superior Court judges, has met with City officials many times over the years without avail. Instead, we have been repeatedly rebuffed by City Staff in efforts to find suitable and adequate space.

Finally, facing in view of impending plans for seismic upgrades to the Veterans Building, our Board itself found potential space at 1200 Van Ness Avenue through a real estate broker we had engaged in desperation. We then engaged in negotiations with the landlord of 1200 Van Ness through his real estate broker. There were two spaces available; one of 22,000 gross square feet and another for around 8,000 gross square feet, with options for additional space. But when we asked the cooperation of City staff, the staff, presumably at the direction of the City Attorney, instead seized control of the negotiations and excluded the Board of Trustees from participating further. City staff then informed us the City would provide no more than 22,000 gross square feet (and, further, that the Board of Supervisors might approve even less). When it became clear that the staff was unwilling to bend, we were forced to file a suit to prevent the public from being without a Law Library.

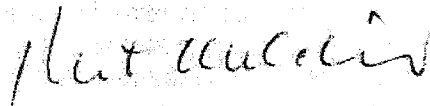
After this suit was filed, the City felt compelled to propose a resolution to the Supervisors authorizing not even the 22,000 gross square feet, but 17,600 square feet "with a right of first offer for an additional 6,500 square feet on the ground floor." It should be noted that the Library did not first learn of the Mayor's resolution to approve 20,000 rentable square feet from the City directly, but only from the Library's public relations consultant after it had been presented to the Board of Supervisors.

The Library had informed the City in 2010 a move from the Veterans Building would require at least a year of preparation. In fact, moving a library typically requires two to three years of advance planning. Even assuming the Library will be able to move into some amount of space at 1200 Van Ness, tenant improvements will take months and will not be completed prior to the noticed move-out date of May 31, 2013.

The City Attorney concedes the duty to find a suitable and adequate location for the Library falls squarely on the City, pursuant to State law and the City Charter. The Library's mission is to provide the judiciary, the public, the bar, and city, county, and state officials free access and use of legal reference materials in order that they may conduct their legal affairs and preserve their legal rights. I re-emphasize that it was the *Library*, not the City Staff which located the 1200 Van Ness property and asked the City to support for that site. The Library remains willing to work with the City to relocate to a temporary location, but such a location has not yet been even identified.

I should also note that the Library has filed with the Court the expert opinions of multiple experts refuting the flawed opinion of Charles Dyer regarding the "Space Needs of the San Francisco Library". I am sure that the City Attorney has taken care to furnish you all information we filed with the Court, including in particular the Supplemental Declaration of John W. Adkins. The Library urges you to reject the proposed resolution and direct the staff to take immediate action to come up with a suitable plan.

Sincerely,



Kurt Mechior

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File # 130227

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ARNOLD & PORTER LLP  
DENIS T. RICE (29937)  
Denis.Rice@aporter.com  
DIANA D. DiGENNARO (248471)  
Diana.DiGennaro@aporter.com  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111-4024  
Telephone: 415.471.3100  
Facsimile: 415.471.3400

Attorneys for Petitioner and Plaintiff  
SAN FRANCISCO LAW LIBRARY

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

MAR 28 2013

CLERK OF THE COURT  
BY: WESLEY RAMIREZ  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

THE SAN FRANCISCO LAW LIBRARY,  
Petitioner and Plaintiff,

v.

CITY AND COUNTY OF SAN  
FRANCISCO; NAOMI KELLY, IN HER  
CAPACITY AS CITY ADMINISTRATOR;  
THE SAN FRANCISCO WAR MEMORIAL  
AND PERFORMING ARTS CENTER; THE  
SAN FRANCISCO WAR MEMORIAL AND  
PERFORMING ARTS CENTER BOARD OF  
TRUSTEES AND EACH INDIVIDUAL  
TRUSTEE IN HIS OR HER CAPACITY AS  
TRUSTEE, NAMELY, THE HONORABLE  
EDWIN M. LEE, MAYOR; MAJOR  
GENERAL J. MICHAEL MYATT (RET.);  
WILKES BASHFORD; NANCY H.  
BECHTLE; BELVA DAVIS; THOMAS E.  
HORN; CLAUDE M. JARMAN, JR.; MRS.  
GEORGE R. MOSCONE; PAUL F. PELOSI;  
CHARLOTTE MAILLIARD SHULTZ;  
JAMES W. STAFFORD; DIANE B.  
WILSEY; and DOES 1 THROUGH 15,

Respondents and Defendants.

Case No.: CPF-13-512769

**SUPPLEMENTAL DECLARATION OF  
JOHN W. ADKINS IN SUPPORT OF  
MOTION FOR ISSUANCE OF  
PEREMPTORY WRIT OF MANDATE  
AND FOR PRELIMINARY INJUNCTION**

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I, John W. Adkins, declare as follows:

1. I submit this supplemental declaration in response to the "Space Needs of the San Francisco Law Library" report authored by Charles R. Dyer. Except as otherwise stated, the statements made in this declaration are based on my personal knowledge and, if called upon to do so, I could and would testify competently to the truth of the matters stated.

2. My education, relevant experience and credentials are set forth in the Expert Witness Declaration of John W. Adkins in Support of Motion for Peremptory Writ of Mandate and for Preliminary Injunction, which was filed in this case on March 13, 2013.

3. I reviewed the March 2013 report to the City and County of San Francisco authored by Charles R. Dyer entitled "Space Needs of the San Francisco Law Library" and the exhibits attached thereto.

4. In my opinion and as discussed below, Mr. Dyer's report is based on erroneous assumptions and fails to take into account material facts and circumstances. As a result, his conclusions are inherently flawed and unreliable. For the reasons discussed below, it is my opinion that his conclusion that 22,000 gross square feet is suitable and sufficient for the San Francisco Law Library (the "Library") is baseless and arbitrary. Less than 30,000 gross square feet would compromise the Library's ability to function as a full service public law library.

5. ***The Library's Weeding Policy and Print Collection.*** Mr. Dyer's report is flawed because of its reliance on weeding and its inaccurate assumptions and conclusions about the Library. In fact, the Library has an active weeding program, and its weeding and retention policies are consistent with comparable county public law libraries and with the standards outlined by the American Association of Law Libraries ("AALL") and the California Council of County Law Librarians ("CCCLL"). The Library intends to discard 75% of the collection currently stored at Brooks Hall, resulting in a moderately sized, but by no means large or excessive, print collection of 138,000 volumes. The Library's print collection is reasonable, appropriate and necessary for a county public law library serving a major business and financial center like San Francisco. Cf. Dyer Report at 6 (Finding No. 6), 28-29.



1           6.       Mr. Dyer's reliance on Brooks Hall is also flawed. Continuing to store part of the  
2       Library's collection in the basement at Brooks Hall is not an adequate solution because the  
3       materials would not be readily accessible. A paging system would require the funding of additional  
4       staff salaries and, in any event, would not be adequate to meet the needs of the public, who  
5       frequently need resources quickly with little or no turnaround time. Cf. Dyer Report at 25, 29.

6           7.       Furthermore, judgments about which materials, if any, are "not of very high use" is  
7       not a rational basis for "weeding" because the Library, like every library, often can only guess how  
8       often any given resource was used in the past based on shelving statistics (if kept) for in-library use,  
9       or circulation statistics. The great majority of materials are important to have for users' needs that  
10      are not predictable. If weeding depended upon use, a public library might discard its only copy (or  
11      multiple copies) of *Jane Eyre* because it has not been checked out for six months. And yet the  
12      value of its information, and the potential need for its use, is not extinguished by its non-use.

13          8.       Compact shelving is similarly an unrealistic solution because it is extremely  
14      expensive and requires floor loads up to 300 pounds per square foot--triple the amount of floor  
15      loading required for regular stacks. If retrofitting is required, the cost of the compact shelving  
16      combined with the cost of the retrofitting likely would far exceed the cost of renting additional  
17      space. Cf. Dyer Report 5 (Finding No. 5), 22, 28.

18          9.       The Library's rare book collection continues to be a valuable asset to the San  
19      Francisco community. Moreover, it requires a relatively small amount of space (only 835 square  
20      feet according to the architect's test fit), so Mr. Dyer's focus on this aspect of the Library's  
21      collection is misplaced. Eliminating the Library's rare book collection would not significantly  
22      reduce the Library's space needs. Cf. Dyer Report at 14-15.

23          10.      The Library's historical and archival materials are also an important resource. Mr.  
24      Dyer's suggests, without any factual basis, that "other" libraries can house these types of materials.  
25      This assumption is flawed and plainly skewed toward space savings. Very few other libraries have  
26      the space and expertise to house and use these rare *legal* materials. They are necessary and valuable  
27      because the law is based on precedent; historical research is a lynchpin of modern law and our legal  
28      system. The Library also cannot predict who is going to need or use a historical collection; the law

1 is based on precedent and the need to know the state of the law at a given time is often crucial. *Cf.*  
2 Dyer Report at 18. While Mr. Dyer dismisses out-of-date treatises, these materials illustrate the  
3 very reason a print collection is so important: older treatises explain the law and legal standards of  
4 that time, while online resources often wipe out the old text and provide only current information;  
5 when the prior law and its analysis is lost because print is tossed away, the ability to practice is  
6 compromised.

7 11. *Technology and electronic resources.* Contrary to Mr. Dyer's report, technology  
8 does not solve all space problems. Computer-accessed legal information cannot replace print  
9 materials in their entirety. Mr. Dyer's suppositions are based on a fantasy—albeit a wonderful  
10 fantasy—of steady and growing law library funding to support advanced technology from now on.  
11 As a former director of the San Diego County Public Law Library, Mr. Dyer will undoubtedly  
12 concur that public law library funding in California is regularly compromised by major (and  
13 perilous) dips in filing fee revenues, and that *not one public law library in this state* is without  
14 numerous challenges to make ends meet for personnel, equipment, technology, and outreach. Still,  
15 Mr. Dyer supposes an exciting world relying on digital technology to support the City and County  
16 of San Francisco's legal research needs. If only that were true. New technology is expensive,  
17 continually updating that technology is expensive, support personnel is expensive, and training is  
18 expensive. When the filing funds dry up again (and they will), what will remain for the patrons and  
19 staff? Quickly aging computer equipment with outmoded data. The old saw of the average  
20 Luddite—what happens when the power goes off?—still holds water in public libraries everywhere.  
21 We must admit the reality of how public law libraries contend with never-ending funding and  
22 facilities issues. Even with a newly renovated building with all-new infrastructure, San Diego's  
23 public law library battles loss of electrical power and blown fuses. Electronic technology requires  
24 large amounts of reliable power to sustain its constant use. Without a solid print collection, the staff  
25 and user will be out of luck. Print remains the basis for any authoritative and reliable public law  
26 library collection, and will so for another generation of users, at least.

27 12. There are a number of difficulties with complete reliance online and computer-  
28 accessed materials, and while a shift from books to computers might save some space, it also would

1 significantly increase the *Library's* costs. A truly accessible, comprehensive electronic collection  
2 supported by qualified staff--that is, the electronic collection that Mr. Dyer envisions--is  
3 prohibitively expensive for most public county law libraries, including the San Francisco Law  
4 Library. The statewide moratorium on filing fee revenue adjustments since 2007 has resulted in six  
5 years of frozen income, while price hikes in the costs of materials, technology and personnel costs  
6 for county law libraries have risen. Imagining all these online resources does not matter if the  
7 Library cannot pay for them.

8 13. The proposals to equip user workspaces with electrical outlets and wireless internet  
9 access similarly make sense in an ideal world with unlimited funds, but in reality may be too  
10 expensive. The same is true with respect to adequate high speed internet in sufficient quantity, and  
11 sufficient HVAC capacity for increased computer and electronic use. As Mr. Dyer notes, if space is  
12 reduced in reliance on electronic resources, these expensive improvements are necessary, along  
13 with additional computer terminals, additional printers, and specialized staff to support the  
14 technology, trouble shoot and assist patrons. *Cf.* Dyer Report at 5 (Findings Nos. 2-4), 22, 24, 28.  
15 If internet access is faulty or too slow, access to information will be impaired and patrons will not  
16 be well served. For example, the need for high speed T1 lines is a given for providing information  
17 for any modern library, but is very expensive. Reduced space needs are contemplated because Mr.  
18 Dyer ignores any role beyond providing the law itself in the *least* space possible. Further, Mr. Dyer  
19 fails to consider who will supply the Library with the laptops, new computers, and wireless printers  
20 needed for his vision. He also fails to consider how the public will fare in trying to access the law  
21 on equipment they have never seen or touched before. The average litigant does not have two extra  
22 hours to figure out how to use a database and print the resources she needs, particularly when the  
23 print version could be accessed in a matter of minutes. The Library's mission is certainly not to  
24 force patrons to "adapt or die;" it is to provide access to the law in the best format for the needs of  
25 that individual.

26 14. While it is true that electronic resources have expanded, it is necessary to recognize  
27 that technology and electronic resources have limitations. While the Library should and does  
28 provide the basic legal databases, basic is a relative term. Legal databases are not easy to use and

1 require expert instruction. Subscriptions to *comprehensive* online databases are also expensive. For  
2 example, most public law libraries provide a basic version of HeinOnline; the more comprehensive  
3 product components, including foreign law, are likely prohibitively expensive and therefore not a  
4 realistic solution. An increased reliance on these online resources requires more user licenses,  
5 which further increases the cost. Limits on the number of contemporaneous users for database  
6 access is a big issue in libraries today, and the costs can be enormous.

7 15. E-books and websites are under careful scrutiny by the library industry (if not  
8 complete suspicion and disregard in the legal field) because of the lack of data ownership. Public  
9 Law libraries have great value *because* they own both the print and electronic versions of the most  
10 current, and accurate and reliable law and commentary. Every other repository for legal print  
11 materials is quickly phasing them out—law schools, law firms, and public libraries. Without print,  
12 reliance on electronic formats provide licensing options akin to a lease agreement. Law librarians  
13 have nightmares of vendors having would have the power to “cut off” users from valuable  
14 information at the flip of a switch if the law library failed to pay a bill. Nothing replaces the  
15 commanding reliability of purchasing a print resource for permanence and reliability. And very  
16 quickly, we are seeing that the public law library will be the last bastion for supplying this format to  
17 its users—as it should be.

18 16. Google Scholar and other free information available on the internet are difficult to  
19 search and do not indicate whether a source, such as a statute or case, is current and/or still good  
20 law. And for a large portion of the population, print materials remain more user-friendly and  
21 intuitive than online resources. As Mr. Dyer himself notes, “most of the population is not skilled in  
22 discerning good material from misinformation and not experienced in recognizing out of date  
23 material.” Dyer Report at 12. The “principle” that treatises are more usable in book form (*see id.* at  
24 23) is based on user-input and just the plain fact that print versions are indeed easier to use in terms  
25 of accessing the information you seek. Moreover, not all pertinent information is available online.  
26 One of the Library’s most valuable roles is the provision of materials that are not available  
27 elsewhere. Thus, over reliance on technology and electronic resources can actually *limit* access to  
28 information and defeat the very purpose of a public law library. Mr. Dyer’s conclusions regarding

1 technology and electronic resources fail to take into consideration these realities, leaving the  
2 Library with less space, higher costs and reduced access. Cf. Dyer Report at 6 (Finding Nos. 7-8).

3 17. Legal research is complex, requires multiple resources, time, expenditure of effort  
4 and assistance of experts. Electronic resources also do not necessarily require less space than print  
5 materials; the space is simply used differently. More computer terminals are required, with  
6 sufficient space between them for privacy. More printers are also required, along with an increased  
7 need for an electronic classroom. The spaces needed by patrons and staff, such as patron work  
8 spaces, small conference rooms for meetings and consultation, larger rooms for computer database  
9 training and instruction, and staff work space and offices, remain the same.

10 18. In sum, Mr. Dyer's focus on electronic resources is misplaced and lacks factual  
11 support. A transition to increased electronic resources does not actually save space, it just requires  
12 a different use of the space. Moreover, Mr. Dyer's proposals in this area do not reduce costs, but  
13 instead shift the costs from the City (which is required to pay for the space) to the Library, which is  
14 required to fund nearly everything else. The relative expense of space should be balanced against  
15 the potential disservice to the public in continuing to provide space that is unsuitable for the  
16 provision of services allowing for true access to justice for the people of San Francisco.

17 19. *Patrons and Usage.* Mr. Dyer's report fails to take into account that Library usage  
18 will likely increase once it moves to a suitable location with adequate space. Mr. Dyer's  
19 speculation about usage (Dyer Report at 18) are questionable and conclusory, given that a better  
20 space and improved facility would attract more attorneys and other users back to the law library.  
21 As Mr. Dyer himself notes, "[i]nstitutions that have no street presence are hard to find, which may  
22 frustrate potential users. . . . It is entirely possible that some pro per litigants go to court less  
23 prepared because they could not find the Law Library at its current location." Dyer Report at 22.  
24 While Mr. Dyer admits that location is extremely important, his assumptions about the Library's  
25 space needs, including the types of materials it should provide and usage, are erroneously based on  
26 the Library's current location. The "uses" described by Mr. Dyer are similarly based on the very  
27 limited space, technology and staffing at the Library's current location. The Library's current  
28 location, which is indisputably inadequate, is not a proper baseline or starting point for analysis of

1 the Library's space needs. The Library's current location in the Veterans Memorial Building has  
2 been unsuitable from the start and remains so today. It was acknowledged by both the City and the  
3 Law Library to be only a temporary measure, and having remained in that cramped space for so  
4 long has crippled the Library's ability to provide true access to justice for the public and legal  
5 practitioners. Mr. Dyer's reliance on the Library's current location makes his findings and  
6 conclusions inherently flawed and unreliable. *Cf.* Dyer Report at 24-25.

7 20. Further, the summaries contained on the Library's website are not a proper or  
8 reliable basis for determining its user population. For example, Mr. Dyer dismisses students  
9 because they are "barely mentioned" on the website. Dyer Report at 9. But the mission of all  
10 public law libraries is to bring the law to people; students are people and, more importantly, they are  
11 our future. Mr. Dyer similarly dismisses those who have "only a general interest in the law." Dyer  
12 Report at 10. This belies Mr. Dyer's many years of exhorting the principle that public law libraries  
13 have a much greater scope and mission than merely giving cost-saving lawyers a nice place to  
14 research the law; and furthermore, this thinking is contrary industry trends and standards that Mr.  
15 Dyer himself helped to create. County law libraries no longer have such a narrow customer base as  
16 Dyer presumes in his report; the public's needs are greater, not less.

17 21. Mr. Dyer also assumes, without any reliable basis, that transactional attorneys do not  
18 need law libraries. *See* Dyer Report at 18. This assumption is plainly incorrect. Transactional  
19 attorneys, like litigators, are charged with knowing the law and must have the resources available to  
20 *avoid* litigation by careful planning and drafting. Transactional attorneys also "go to court," interact  
21 with government entities, and research and write memoranda for clients. This is just one example  
22 of the baseless assumptions and reasoning underlying Mr. Dyer's conclusions.

23 22. The sufficiency of a standard public law library collection--even the very best--will  
24 never be comparable to that of a regular public library collection, a law firm library collection, or a  
25 law school library collection. This is because of the very fact that public law libraries are both  
26 *public* and focus on the *law*. The law is a special type of information that cannot be denied any  
27 person who seeks it out. It cannot be hidden, nor boxed, nor cloaked in a package of technology  
28 that is too complex for the least among us. And it must be ready to be used. We are not a

1 meritocracy that gives access to the law only to those fortunate enough to afford law school. As an  
2 egalitarian democracy, the public law library should always strive to provide alternate resources of  
3 access that are suitable for *all* patrons--the poorest to the richest, the illiterate to the university  
4 graduate, the mentally and physically challenged--and that means long after the paperless revolution  
5 makes its mark in most areas of society, the public law library will always provide access to the law  
6 in print for those who need it. And that means public law libraries *need shelves*.

7       23. **Conclusion.** Mr. Dyer's recommendations do not comport with industry standards  
8 and nearly every paragraph in his report contains inaccurate assumptions and conclusions. His  
9 report is wonderfully skewed toward the goal of keeping the City's real estate costs to the very  
10 minimum; doing so has created a woefully short-sighted guess at the minimum amount of space the  
11 City could possibly provide. Even taking into consideration increased reliance on electronic  
12 resources, the amount of linear shelving (8,000-14,000 linear feet) is inadequate for a public county  
13 law library serving a major metropolitan area like San Francisco that has a high attorney population.  
14 Mr. Dyer's recommendations also fail to include small conference rooms, which are necessary for  
15 meetings and regularly used by attorneys and the public; solos and small firms continue to use the  
16 county public law libraries as their "offices." Perhaps most notably, Mr. Dyer failed to include a  
17 proper electronic classroom, which is essential to making electronic resources available to the  
18 public. He similarly does not specifically provide for computer terminals or account for the amount  
19 of space needed between user work seats and computers to account for both privacy and group  
20 work. The amount of space he allocates for staff is also inadequate, as is the combined reference  
21 space and reception area. Locating and understanding the materials, whether online or in print, is  
22 key: law-trained reference librarians needed basic research and more complex research alike. *Cf.*  
23 Dyer Report at 11, 26-27. For example, Mr. Dyer relies on the fact that tax forms are available  
24 online. Dyer Report at 9. This reliance is flawed. Although the forms may be available online, it  
25 can be extremely difficult to determine which form is needed or to understand what it is for. This is  
26 why the Library's expertise and experienced reference staff is so valuable.

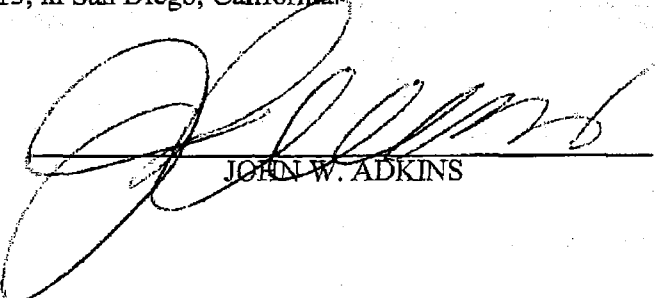
27       24. Mr. Dyer's assumptions about other sources of funding are also baseless. His report  
28 mentions the San Diego Law Library as having a separate charitable board that raises funds for its

1 maintenance and exhorts the San Francisco Law Library do the same. Requiring a public law  
2 library to create its own nonprofit foundation clearly falls outside the statutory requirements of its  
3 mission. Adequate funding is implied by the court fees, and adequate space to house legal materials  
4 and serve the public are the responsibility of each county. The San Diego County Public Law  
5 Library does have a foundation, but it has never been a reliable source of income. Enormous  
6 amounts of staff time have been devoted to yearly fund raisers that barely break even; the  
7 foundation has not been a relevant source of income for the past decade as law firm and vendor  
8 donations have virtually ceased in the current economy. Cf. Dyer Report at 15. This is not a  
9 plausible solution.

10 25. Suitable and sufficient does not mean "the least possible adequate space." Dyer's  
11 recommendations would cram computers into a space without proper electronic classrooms, event  
12 spaces and conference areas, and confine what should be California's grandest law library into a  
13 shoebox. Mr. Dyer's report views the space needs of a public law library as nothing more than a  
14 place for people to log on and off computers; this has no support in industry standards or factual  
15 realities. With 30,000 square feet of space, it is possible that the Library could function as a center  
16 for both the legal community and the public, demonstrate the importance of the rule of law, and  
17 create an environment for expressing and expanding people's rights. After more than a decade in an  
18 inadequate location, to further shoe-horn the Library into another small space will forever inhibit its  
19 ability to give service, to maintain growth of its collection and support technology, and ability to  
20 carry out the vision of the modern day law library.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing  
22 is true and correct.

23 Executed this 27<sup>th</sup> day of March, 2013, in San Diego, California.

24  
25  
26   
27 JOHN W. ADKINS  
28



BOS 11  
1st page

FILE # 130274

To: Hon. Board of Supervisors  
From: Charles Marsteller  
Date: April 1, 2013  
Re: FPPC Complaint against Hon. Geo. Gascon

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2013 APR -1 PM 4:34  
6

Please be advised that I have filed a complaint with the FPPC regarding the acceptance of \$26,000 in funds used to purchase office furniture - an action taken by the Hon. Geo Gascon.

SF Friends of Ethics joins me in support of this complaint.

If you have any questions, please feel free to contact me, 415/292.3441.

## SWORN COMPLAINT FORM

(Form May Be Subject to Public Disclosure)\*

AS REQUIRED BY GOVERNMENT CODE SECTION 83115, please complete the form below to file a sworn complaint with the Fair Political Practices Commission. This form must be completed in its entirety and all pertinent information must be stated on this form, not as an attachment.

Mail the complaint to:       **Enforcement Division**  
  **Fair Political Practices Commission**  
  **428 J Street, Suite 620**  
  **Sacramento, California 95814**

### Person Making Complaint

Last name: Marsteller MARSTELLER

First Name: Charles

Street Address:  
835 Turk St. #608

City: San Francisco State: CA

Zip: 94102

Telephone: ( 415 ) 292 587 - 3441 8110

Fax: (     )     -     

E-mail: cm\_marsteller@hotmail.com

### **\*IMPORTANT NOTICE**

Under the California Public Records Act (Gov. Code Section 6250 and following), this sworn complaint and your identity as the complainant may be subject to public disclosure. Unless the Chief of Enforcement deems otherwise, within three business days of receiving your sworn complaint we will send a copy of it to the persons(s) you allege violated the law.

In some circumstances, the FPPC may claim your identity is confidential, and therefore not subject to disclosure. A court of law could ultimately make the determination of confidentiality. If you wish the FPPC to consider your identity confidential, do not file the complaint before you contact the FPPC (916-322-5660 or toll free at 866-ASK-FPPC) and discuss the complaint with an Enforcement Division attorney.



**Description, With as Much Particularity as Possible, of Facts Constituting Alleged Violation and how you have personal knowledge that it occurred\*\***

See attached statement.

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**\*\*Please attach copies of any available documentation that is evidence of the violation, (for example, checks, campaign materials, etc., if applicable to the complaint). Note that a newspaper article is NOT considered evidence of a violation.**

**Name and Addresses of Potential Witnesses, in addition to yourself, if Known:**

Last Name: \_\_\_\_\_

First Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Fax: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

E-mail: \_\_\_\_\_

Last Name: \_\_\_\_\_

First Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip: \_\_\_\_\_ - \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

E-mail: \_\_\_\_\_

Last Name: \_\_\_\_\_

First Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

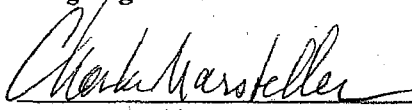
Zip: \_\_\_\_\_ - \_\_\_\_\_

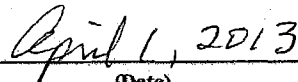
Telephone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

E-mail: \_\_\_\_\_

**I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

  
\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
(Date)

Charles Marsteller  
\_\_\_\_\_  
(Please print your name)

Statement of FPPC Complaint filed by Charles Marsteller against George Gascón

This complaint filed by Charles Marsteller<sup>o</sup> is endorsed by the Friends of Ethics group in San Francisco. Due to circumstances explained below (see header below regarding “Upcoming Board of Supervisors meeting”), this complaint presents an urgent matter. The complainant requests that the Fair Political Practices Commission (FPPC) swiftly act on this complaint to prevent additional violations from occurring.

Respondent George Gascón is the District Attorney of San Francisco. A March 31<sup>st</sup> article in the Matier & Ross column of the San Francisco Chronicle (*available online*: “DA shrugs off furniture fuss”) and a Form 803 (*see Attached*) filed by Gascón on March 12, 2013 with the San Francisco Ethics Commission both indicate that \$22,000 in payments from multiple persons were made for office furniture for Gascón and the DA’s office. The payments occurred between 10/15/12 and 1/14/13. In addition, the 803 states that \$4,446.43 in “In-Kind Services” was provided on 1/4/13 by Martin Richards interiors. According to the Chronicle article, for which Gascón was interviewed, the furniture included a glass-top desk, bookshelf, credenza, and chrome-framed chairs for Gascón’s own office as well as sofa for the domestic-violence victims’ waiting room across the hall from Gascón’s office.

Though the furniture payments were clearly made “at the behest of” the District Attorney, Gascón’s filing of a Form 803 was inappropriate for these amounts. Behested payments required to be disclosed on a Form 803 do not include payments for personal or campaign purposes (see Government Code Section 82015). Since the furniture payments at issue were made for the benefit of Gascón’s own use, they would not constitute a behested payment that must be reported on Form 803.

Consequently, the payments were either gifts or campaign contributions. Pursuant to Government Code Sections 82015 and 82028, the primary distinction between contributions and gifts is that contributions are made for “political purposes” while a gift “confers a personal benefit on the recipient.” This complaint considers the applicability of both scenarios.

The furniture payments as contributions

Pursuant to Government Code section 82015(a), a contribution includes “a payment ... except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.” Review of the known surrounding circumstances regarding the furniture payments suggests that they were made for political purposes, including the following:

1. The number of monetary donors involved (10 individuals and 2 businesses), the time frame of their payments, and that the furniture appears to have been purchased using the combination of the payments suggests a coordinated fundraising and purchasing effort, akin to campaign activity.
2. Some if not most of the furniture donors are involved in San Francisco politics. For example, six of the individual donors of the furniture payments (Ronald Conway, Farah & Victor Makras, Jim Reuben, William Breall, & Benny Yee) were also campaign

contributors to Gascón's campaign committee, each having donated the maximum allowed under local law. Victor Makras is also the principal of Makras Real Estate, one of the two business donors of the furniture payments. As for the other business donor of the furniture (Nibbi Brothers), various individual members of the Nibbi family were also maximum campaign contributors to Gascón's campaign committee. In addition, Ron Conway, who made the largest donation for the furniture, is a regular Major Donor filer and gave \$25,000 in 2011 to a committee (San Francisco Alliance for Jobs and Sustainable Growth PAC) that made thousands of dollars in independent expenditures in support of Gascón, as well as also utilized the same Treasurer (Jim Sutton) as Gascón. (Source: Online database of San Francisco Ethics Commission)

3. San Francisco Campaign & Governmental Conduct Code Section 1.108(a)(2) ("Prohibition on Multiple Officeholder Accounts") provides, in part: "All funds, services or in-kind contributions received by a candidate committee for expenses incurred directly in connection with carrying out the candidate's usual and necessary duties of holding office shall be deposited, credited or otherwise reported to the candidate committee's Campaign Contribution Trust Account. Such contributions shall be subject to the contribution limits in Section 1.114 of this Chapter. An elected officeholder may not establish or control any other committees or accounts for the purpose of making officeholder expenses." While local law does not directly bear on the meaning of state law in terms of whether a payment was a contribution or gift, this local statute indicates the climate in which the furniture payments were made. In San Francisco, payments received by an officeholder's committee, or, by extension, an officeholder, for officeholder expenses are campaign contributions. Obviously, use of furniture in Gascón's own office is directly connected to his usual and necessary duties of holding office. Gascón could presumably avoid automatic application of this statute only if staff of the District Attorney office unconnected to his committee received the furniture payments and/or in-kind donation.

Additional investigation into the circumstances surrounding the payments may further confirm their character as contributions.

In the event that the payments were in fact contributions to Gascón, the following violations occurred:

- Gascón's committee failed to disclose the receipt of multiple monetary contributions (as well potentially various furniture expenditures) or in-kind contributions, depending upon the facts of the fundraising (a violation related to the account used for deposit of the funds may also have been committed);
- Any of the donors regarding the furniture who qualified as Major Donors, such as Ron Conway, may have failed to disclose their contribution made.

#### The furniture payments as gifts

In the event that the furniture payments did not qualify as contributions, they would qualify as gifts because they conferred a personal benefit on Gascón. As the photo accompanying the Chronicle article shows, Gascón is personally using most of the purchased furniture. As gifts,

the violations committed by Gascón turn on whether the gifts were gifts to an agency or gifts to an individual official.

FPPC Regulation 18944 “sets forth circumstances under which a payment made to a state or local government agency, that is controlled by the agency and used for official agency business, is not considered a reportable or limited gift to an individual public official, although the official receives a personal benefit from the payment.” Regulation 18944 provides that a gift qualifies as a gift to an agency rather than a gift to an official if the qualifying terms are met:

- (1) “The agency head, or his or her designee, determines and controls the agency's use of the payment.”
- (2) “The payment must be used for official agency business.”
- (3) “Within 30 days after use of the payment, the agency reports the payment on” a Form 801, which must be filed with the same filing officer that maintains the agency’s employees Statements of Economic Interest [In this instance, the filing officer would be unclear, since Gascón must file his SEI with the San Francisco Ethics Commission while designated SEI filers of the DA’s office must file their SEIs with the DA’s office]. In addition, the applicable filing officer must post the Form 801, or the information contained on it, on its website.

After searching the websites of both the San Francisco Ethics Commission and the District Attorney’s office, it appears that neither website posts information regarding gifts to the District Attorney’s office, including regarding the furniture payments. Presumably, no Form 801s were filed by the DA regarding the furniture payments. Based on the website omission if not the failure to file various Form 801s as well, the full requirements for qualifying these gifts as gifts to an agency were not met. Consequently, any gifts resulting from the furniture payments would be personal gifts to Gascón.

In the event that the payments were in fact gifts to Gascón, the following violations occurred:

- Gascón has received multiple gifts in violation of the \$440 annual gift limit from a single source;
- Gascón may have failed to report multiple gifts received in 2012 on his Annual Statement of Economic Interest due on April 2, 2012 (the day after this complaint was mailed to the FPPC).

Upcoming Board of Supervisors meeting and other circumstances indicating the District Attorney is disregarding the law

This complaint presents an urgent matter because the District Attorney appears to be actively disregarding the applicable state law regarding the furniture payments.

First of all, the amount of payments create some appearance of an attempt to evade requirements. The largest donor of the furniture payments, Ron Conway, was also the first donor of the payments, paying \$9,999 on October 15, 2012. The \$9,999 amount is curious figure. The amount appears to be selected because it falls short of a threshold provided by the San Francisco Charter which requires approval of the San Francisco Board of Supervisors before a department



may accept a gift of \$10,000 or more. This suggests that at least Conway believed that his payment constituted a gift.

Second, the District Attorney moved to March of 2013 to characterize that payments as behested payments required to be disclosed on a Form 803. While such a form (if due) would have been filed late, this act appears to have been motivated by a reluctance to characterize the payments as contributions (the amounts in question would severely violated San Francisco's applicable contribution limits) or gifts (since Regulation 18944 was not complied with, the amount in question would severely violate the state gift limit).

Third, the March 31<sup>st</sup> Chronicle article gives the impression that the DA is defiant regarding the ethics rules, stating "Gascón, whose staff had run the idea past the city attorney's office, is offering no apologies. "I won't even bother to defend it," he told us." The article further states: "As for those raising questions about the propriety of insiders passing the hat for law enforcement furniture? "People have way too much time on their hands," Gascón said."

Fourth, the Agenda for the April 2, 2012 meeting of the Board of Supervisors (*available online*) provides the following information regarding a proposed resolution on p. 13:

"[Accept Gift - Design Services and Furniture - \$26,445.43]

Resolution authorizing the Office of the District Attorney to retroactively accept a gift of design services and furniture, valued at a total of \$26,445.43 from various donors.

(District Attorney)

03/25/2013; RECEIVED FROM DEPARTMENT.

04/02/2013; RECEIVED AND ASSIGNED to the Budget and Finance Sub-Committee."

Apparently, Gascón decided that he should seek to sanitize any violation of San Francisco's Charter provision regarding acceptance of gifts by requesting retroactive approval from the Board of Supervisors. Despite apparently considering the furniture payments to be gifts as of submitting this resolution request on March 25, 2013, Gascón does not appear to have moved to withdraw or amend his Form 803 filed on March 12, 2013 which incorrectly characterized the payments as behested payments. Thus, Gascón has on one hand stated the payments on not gifts and then on the other hand treated them as if they were gifts.

Collectively, the above circumstances give the appearance of a disregard for the law, if not evidencing the active intent of attempts to evade requirements.

Some pertinent unknown facts:

- Who fundraised or coordinated the payments used for the office furniture?
- How where the payments deposited?

Behested Payment Report

A Public Document

FILED Behested Payment Report

1. Elected Officer or CPUC Member (Last name, First name) George Gascon		Date Stamp 13 MAR 1	California Form 803 For Official Use Only SAN FRANCISCO COMMISSION
Agency Name District Attorney, City and County of San Francisco		2013 MAR 13 11:51 AM DISTRICT ATTORNEY'S OFFICE BY _____	
Agency Street Address Hall of Justice- 850 Bryant Street, Room 322, SF CA 94103		<input type="checkbox"/> Amendment (See Part 5) Date of Original Filing: _____ <small>(month, day, year)</small>	
Designated Contact Person (Name and title, if different) Eugene Cleninden, CFO			
Area Code/Phone Number 415-553-1895	E-mail (Optional)		

2. Payor Information (For additional payors, include an attachment with the names and addresses.)

See attached.

Name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

3. Payee Information (For additional payees, include an attachment with the names and addresses.)

See attached.

Name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

4. Payment Information (Complete all information.)

Date of Payment: See attached. Amount of Payment: (In-Kind FMV) \$ \_\_\_\_\_  
(month, day, year) (Round to whole dollars.)

Payment Type:  Monetary Donation or  In-Kind Goods or Services (Provide description below.)

Brief Description of In-Kind Payment: \_\_\_\_\_

Purpose: (Check one and provide description below.)  Legislative  Governmental  Charitable

Describe the legislative, governmental, charitable purpose, or event: Furniture for District Attorney's Executive Office and Victim Services Lounge

5. Amendment Description or Comments


\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Verification

I certify, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information contained herein is true and complete.

Executed on 2-11-2013 By  \_\_\_\_\_  
DATE ED OFFICER OR CPUC MEMBER

DISTRICT ATTORNEY GEORGE GASCON - FORM 803 - PAYOR INFORMATION

Date Rec'd	Payor	Amount	Payment Type	Address	City	State	Zip
10/15/12	Ron Conway	\$ 9,999.00	Monetary Donation		San Francisco	CA	94109
11/8/2012	Charlotte Malliard Schultz	\$ 2,000.00	Monetary Donation		San Francisco	CA	94133
11/30/12	Ryan Brooks	\$ 1,000.00	Monetary Donation		San Francisco	CA	94118
11/30/12	Farah and Viktor Makras	\$ 500.00	Monetary Donation		San Francisco	CA	94123
11/30/12	Nibbi Brothers Contractors	\$ 1,000.00	Monetary Donation		San Francisco	CA	94107
11/30/12	Jim Reuben	\$ 500.00	Monetary Donation		San Francisco	CA	94121
12/11/12	William Brealf	\$ 2,000.00	Monetary Donation		San Francisco	CA	94117
12/11/12	Pius Lee	\$ 2,000.00	Monetary Donation		San Francisco	CA	94108
12/27/2012	Benny Yee	\$ 1,000.00	Monetary Donation		San Francisco	CA	94122
12/27/12	Joseph Tsang	\$ 1,000.00	Monetary Donation		San Francisco	CA	94131
1/4/13	Martin Richards Interiors	\$ 4,446.43	In-kind Services		San Francisco	CA	94109
1/14/13	Makias Real Estate	\$ 1,000.00	Monetary Donation		San Francisco	CA	94114

Board Copy  
BOS-11  
C-13  
C-14

## Request for Ethics Investigation and Enforcement Action

April 3, 2013

John St. Croix  
Executive Director  
San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

By email to: [ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org)

Dear Mr. St. Croix:

I write to request that you commence an immediate investigation and enforcement action regarding the failure of San Francisco Mayor Ed Lee to report gifts of travel in advance of a foreign trip to China in apparent violation of Section 3.216(d) of the San Francisco Campaign and Governmental Conduct Code. The people of San Francisco enacted a set of laws to reduce the potential for the corruption of our elected officials and it is vital that those laws be enforced.

### Law

San Francisco local law requires that gifts of travel to city elected officials in excess of the \$420 gift limit imposed by state law be publicly disclosed for public review **before** any such trips are taken.<sup>1</sup> Section 3.216(d) of the San Francisco Campaign and Governmental Conduct Code requires city elected officials to file a special "Gifts of Travel Disclosure Form" about these trips with the San Francisco Ethics Commission before the officials begin the trips. Once filed, these disclosure forms are made available for public review on the SF Ethics Commission website.<sup>2</sup>

<sup>1</sup> Under Section 3.216(d) of the San Francisco Campaign and Governmental Conduct Code, "no elected officer may accept a gift of transportation, lodging, or subsistence for any out-of-state trip paid for in part by an individual or entity other than the City and County of San Francisco, another governmental body, or a bona fide educational institution, defined in Section 203 of the Revenue and Taxation Code, unless the officer has first disclosed on a form filed with the Ethics Commission:

(A) the name of the individual or entity and the total amount that will be paid by the individual or entity to fund the trip, including but not limited to the amount directly related to the cost of the elected officer's transportation, lodging, and subsistence;

(B) the name, occupation and employer of any contributor who has contributed more than \$500 to the individual or entity funding the trip and whose contributions were used in whole or in part to fund the trip;

(C) a description of the purpose of the trip and the itinerary; and

(D) the name of any individual accompanying the official on the trip who is:

(i) a City employee required to file a Statement of Economic Interests,

(ii) a lobbyist or campaign consultant registered with the Ethics Commission,

(iii) an employee of or individual who has any ownership interest in a lobbyist or campaign consultant registered with the Ethics Commission, or

(iv) the individual funding the trip, or an employee or officer of the entity funding the trip.

<http://www.sfethics.org/ethics/2009/05/gift-disclosure.html>

<sup>2</sup> See SF Ethics Commission website: [http://www.sfethics.org/ethics/Gifts\\_of\\_Travel/](http://www.sfethics.org/ethics/Gifts_of_Travel/)

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2013 APR -4 AM 11:48  
AK



Violations of the San Francisco Campaign and Governmental Conduct Code are punishable by criminal penalties for knowing or willful violations of the law, punishable by a fine of up to \$10,000 per violation or imprisonment for up to a year, or by civil penalties for negligent violations of the law, punishable by fines of up to \$5,000 per violation.<sup>3</sup>

Facts

On Friday, March 29, 2013, the San Francisco Examiner reported that San Francisco Mayor “Ed Lee’s first trip to China as Mayor . . . begins today.”<sup>4</sup>

The San Francisco Examiner story on March 29, 2013 also reported that the leader of Mayor Lee’s current China trip is Ms. Rose Pak of the Chinese Chamber of Commerce and Chinese New Year Festival Committee. Ms. Pak and her organization were admonished by the Fair Political Practices Commission for making illegal gifts to city elected officials after previous trips to China in which her organization paid \$19,506 – vastly exceeding state gifts limits of \$420 per official per year – to cover travel costs for three San Francisco Supervisors. In a letter to Ms. Pak dated August 22, 2011, FPPC Commission Legal Counsel Zachary Norton wrote, “Please be advised that since the Chinese New Year Festival Committee is not an organization that falls under Section 501(c)(3) of the Internal Revenue Code, no public official may accept gifts of any type from this organization valued in excess of the applicable limit [of \$420].”<sup>5</sup>

On Sunday, March 31, 2013, former Mayor Willie Brown wrote in his column in the San Francisco Chronicle that he was presently in Hong Kong and “I’m here with Mayor Ed Lee . . .”<sup>6</sup>

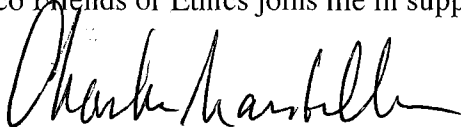
According to the San Francisco Ethics Commission website, as of Wednesday, April 3, 2013 at 2:00 p.m., no gift of travel disclosure form for the China trip had been filed by Mayor Ed Lee.

Request for Investigation and Enforcement

In recognition of the above facts and in accordance with the requirements of the San Francisco Campaign and Governmental Conduct Code, I hereby request that you commence an immediate investigation into this matter and impose the requisite penalties for violation of the law.

San Francisco Friends of Ethics joins me in support of this complaint.

Sincerely,



Charles M. Marsteller

*Cited Ethics 11:35 AM  
4/4/13*

835 Turk #608  
San Francisco, CA 94102  
415/292.3441

Cc: California FPPC, SF District Atty, *SF Board of Supervisors*

<sup>3</sup> SF Campaign and Governmental Conduct Code, Section 3.242: Penalties and Enforcement.

<sup>4</sup> *Mayor Ed Lee to seek housing project funds in first trip to China*, San Francisco Examiner, May 29, 2013.

<sup>5</sup> Letter to Ms. Rose Pak from Fair Political Practices Commission, August 22, 2011

<sup>6</sup> *A great leap forward from Peking to Beijing*, Willie’s World, SF Chronicle, May 31, 2013.

**From:** WongAIA@aol.com  
**Sent:** Wednesday, April 03, 2013 2:45 AM  
**To:** Mar, Eric (BOS); Avalos, John; Campos, David; Chiu, David; Board of Supervisors; Cohen, Malia; Farrell, Mark; Kim, Jane; Wiener, Scott; Breed, London; Yee, Norman (BOS); Tang, Katy  
**Subject:** CENTRAL SUBWAY: LIABILITY & HIGH CONSTRUCTION RISKS

TO: Honorable Board of Supervisors

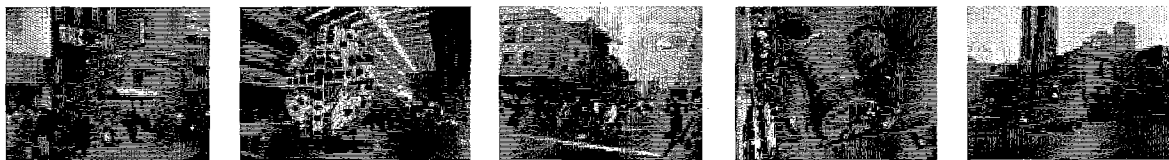
When alerted to the lack of prudent technical study, testing and due diligence, city officials and commissioners may assume legal liability---when bad consequences result from disregard of known dangers and available technical mitigations.

\* \* \* \* \*

**SAVEMUNI.COM**  
**DUE DILIGENCE AND QUESTIONS YET TO BE ANSWERED**

## **CENTRAL SUBWAY: LIABILITY AND HIGH CONSTRUCTION RISKS**

### **THE SHIFTING OF UNFORSEEN COSTS TO CONTRACTORS AND TAXPAYERS**



If the Central Subway Project is completed in 2019, most of today's politicians will be out of office---"immune" from any fiscal crisis left behind. The Board and staff of the San Francisco Municipal Transportation Agency (SFMTA) will avert personal liability. Legally-crafted construction specifications will shift blame to general contractors, subcontractors and suppliers---and cost overruns will fall to taxpayers. However, in matters of life-safety, political immunity from construction failures should not be so easily granted, particularly when basic engineering and physics have known consequences.

### **Are high risks known?**

Yes. In the Federal Transit Administration (FTA) letter of 1-10-10 to the SFMTA:

***"The Central Subway Project is a high risk project located in a densely populated urban center. It is the largest, most complex project ever undertaken by SFMTA."***

The FTA has knowledge of past construction accidents (See "History of Accidents" below) and risky excavation in older areas of Downtown, Chinatown and North Beach. Unlike Hollywood Boulevard's sinkhole or Cologne's building collapse, the Central Subway is digging in narrower streets and in closer proximity to old buildings and shallow foundations---exacerbated by hilly terrain, underground water and saturated/ inconsistent soils.

### **What is the likelihood of construction cost overruns?**

In the SF Weekly, 2-27-13, "Central Subway: Muni's Drilling Plan Strains Credulity"

<http://www.sfweekly.com/2013-02-27/news/muni-central-subway-plan-strains-credulity/>

***"An audit by the firm CGR Management Consultants pegged the likelihood of the Central Subway coming in on budget at 30 percent."***

Even highly-developed countries with the best engineers have been stunned by construction accidents involving deep excavations and tunneling (See "History of Accidents" below). If the Central Subway goes over budget, the additional dollars will be taken from local Muni sources.

### **Have construction risks and liability been mitigated?**

Not to the highest degree. Like the proposed Pagoda Theater excavation (See "A Case in Point" below), rudimentary assumptions have been made regarding geotechnical and building conditions. Nearby buildings have not had full structural analysis---only condition assessments. More pre-testing would reveal hidden aboveground and underground conditions. Standard construction procedures are insufficient, given the inconsistent soil conditions.

- For excavations underneath 100-year old buildings, into inconsistent soils with high water tables, basic physics can predict the immense forces that can stress structures, streets and utilities.
- The excavations' lateral proximity to existing structures increases the odds of soil subsidence and cavity formations, especially with sloping hills, intervening alluvial-filled valleys and fractured rock.

- Excavating to depths from 40-120 feet, the structural loading of saturated soils, combined with the dead loads of buildings and their contents, is large—prone to increased hydrostatic pressures, collapse of voids and soil subsidence.
- The 1906 Earthquake and Fire affected the narrow streets along the route of the Central Subway, leaving remnants of rushed demolitions, underground rubble, artificial fill and voids.
- Hilly terrain and alluvial valleys propel rainfall and underground water, saturating sandy soils, creating instability, vertical displacements.....
- Inconsistent soils are difficult to stabilize by compensation grouting alone, likely requiring expensive shoring, underpinning, slurry piles, tremie concrete construction.....
- Even in recent American tunneling projects, property owners have complained of noise, sewage floods, cracked foundations and other problems—much less catastrophic collapses.



### Who will bear the risks, costs and liability?

The Central Subway's soft costs are over 23% of the project budget. While SFMTA staff use project funds for wages, a parallel consultant has been retained for project management (PM)—further shielding the City from liability. The PM consultant's contract minimizes its own liability. In a crisis, the City and its PM consultant will shift blame to design professionals and construction contractors.

The City's construction specifications, general conditions and contracts are crafted by City Attorneys to absolve the City of liability—loading liability on design professionals, general contractors, subcontractors and suppliers. Taxpayers will pay for cost overruns, resulting in decreased Muni operating budgets and transit service.

### A Case in Point: The Pagoda Theater TBM Extraction

The SFMTA recently proposed extraction of Tunnel Boring Machines (TBMs) at the Pagoda Theater site. The Pagoda Project's public process and fragile geotechnical conditions are systemic of the Central Subway's overall approach. Much of hilly San Francisco has underground water/ streams, subsurface voids, rubble and inconsistent geological conditions—in addition to older buildings, brick foundations, shallow footings, seismic vulnerabilities and hidden conditions. Not all conditions have been studied.

- Merchants and property owners, adjacent to the Pagoda, have not been consulted on engineering plans—in order for their vetting of design adequacy, risks, rights and compensation for damages (operational and structural).
- The SFMTA's initial design includes an approximately 50'x50'x46' deep concrete TBM Retrieval Box, with 66' deep perimeter secant pile walls. The concrete box is within 18'-7" of the adjacent 1907 brick warehouse building.
- An independent geotechnical engineer submitted three letters, questioning the design's efficacy and warning of likely damage to adjacent buildings due to subsidence.
- In a Fee Proposal, the SFMTA's own engineering consultant confirmed that potentially adverse effects to adjacent structures, historic buildings and park properties due to ground movement, groundwater inflows, ground loss and settlement had not yet been analyzed—necessitating new geotechnical investigations.
- No nearby building has foundations or basements deeper than 10 feet below grade.
- No part of the 46-foot excavation will likely be in competent bedrock, digging 36 feet below the groundwater table.
- There are inadequate geological/ structural studies of adjacent properties and historical studies of the region.
- Underground springs flow from Russian Hill under the Pagoda Theater and adjacent buildings. Before 1906, on Filbert near Columbus, there once stood the "Palace Baths", which tapped into underground springs. In the past, neighbors could hear rushing water underground.
- The previous Muriel's Theater project at the Pagoda encountered underground water, increasing construction costs. Also, removal of gas tanks at the old corner gas station hit underground water.
- On Stockton Street at Washington Square, construction for Moose's Restaurant encountered underground springs from Telegraph Hill, which flooded neighborhood basements periodically. A workman in the dark basement dropped a tool and heard a splash. His light revealed that he had just missed falling 20 feet into a well.
- The nearby North Beach Pool subsided because of an underground stream, leading to a 2005 structural retrofit.

### History of Accidents: Deep Excavation and Tunneling

Relative to other construction techniques, deep excavation and tunneling have extensive failures—especially at sites with older buildings, fragile geological conditions, soil inconsistency, underground water and seismic vulnerabilities. As required by the Federal Transit Administration, all cost overruns are the responsibility of the City & County of San Francisco and its contractors and subcontractors.

LOS ANGELES: Subway sinkhole collapses Hollywood Boulevard.  
[http://articles.latimes.com/1995-06-23/local/me-16226\\_1\\_hollywood-boulevard](http://articles.latimes.com/1995-06-23/local/me-16226_1_hollywood-boulevard)  
[http://articles.latimes.com/1995-10-20/news/mn-59073\\_1\\_tunnel-collapse](http://articles.latimes.com/1995-10-20/news/mn-59073_1_tunnel-collapse)

COLOGNE: Historical Archives Building collapse with two dead:

<http://www.spiegel.de/international/germany/cologne-archive-catastrophe-were-subway-builders-cautious-enough-a-612129.html>

<http://www.theage.com.au/world/fears-for-missing-three-after-building-collapse-in-germany-20090304-8ogm.html>

SEATTLE: Large sinkholes above TBM sewer tunnel.

[http://seattletimes.com/html/localnews/2014623934\\_sinkhole29m.html](http://seattletimes.com/html/localnews/2014623934_sinkhole29m.html)

[http://o.seattletimes.nwsourc.com/html/localnews/2008829998\\_sinkhole09m.html](http://o.seattletimes.nwsourc.com/html/localnews/2008829998_sinkhole09m.html)

SAO PAULO: Subway's deadly collapse with seven dead.

<http://enr.construction.com/news/transportation/archives/070129a.asp>

CAIRO: Downtown TBM Tunnel Collapse:

<http://tunneltalk.com/Cairo-Metro-Sep09-tunnel-collapse.php>

KOREA: Incheon Subway tunnel collapse with one dead.

<http://kojects.com/2012/02/20/subway-construction-suspected-in-incheon-street-collapse/>

GUANGZHOU: Video—Subway construction sinkhole swallows entire building complex.

<http://www.telegraph.co.uk/news/worldnews/asia/china/9833738/Sinkhole-swallows-whole-building-complex-in-China.html>

<http://hungeree.com/news/sinkhole-yawns-open-in-quangzhou/>

BUDAPEST: TBM hits unknown water pipe, causing shaft collapse.

<http://www.skyscrapercity.com/showthread.php?t=446547&page=14>

BUDAPEST: Highway tunnel collapse and scandal.

<http://www.budapesttimes.hu/2010/04/07/motorway-complete-with-scandals/>

TAIWAN: Taipei Expressway tunneling had eleven collapses with twenty-five deaths.

[http://en.wikipedia.org/wiki/Hsuehshan\\_Tunnel](http://en.wikipedia.org/wiki/Hsuehshan_Tunnel)

STUTTGART: Tunnel sinkhole and nine dead.

TORONTO: TBM tunnel collapse.

PORTO, PORTUGAL: Three TBM tunnel collapses with one death in house collapse.

[http://www.ita-aites.org/fileadmin/filemounts/general/pdf/ItaAssociation/ProductAndPublication/Training/Seminars/2006-lisbon/Cunha\\_abstract.pdf](http://www.ita-aites.org/fileadmin/filemounts/general/pdf/ItaAssociation/ProductAndPublication/Training/Seminars/2006-lisbon/Cunha_abstract.pdf)

### **Are there fiscally prudent alternatives?**

Taxpayers, designers and builders need to assure due diligence to protect their own interests. Existing and hidden conditions require thorough analysis. Project contingencies must cover cost overruns. The City's underlying politics is to construct 2,000 foot tunnels for the northerly subway extension—without environmental reviews. Business associations and real estate interests want to escalate land values and large development prospects. But fiscally prudent alternatives exist to conserve funds. The SFMTA plans to spend \$9.15 million from its operating funds for the Pagoda Theater Project, in order to retrieve two TBMs valued at \$4.4 million. Moreover, the twin 2,000 foot tunnels from Chinatown to North Beach will cost up to \$70 million. If the TBMs are extracted or buried at the Chinatown Station, SFMTA can save \$79 million—better spent on construction contingency and Muni service enhancements.

For Further Information:

Howard Wong, AIA



**From:** rersf [rersf@comcast.net]  
**Sent:** Thursday, April 04, 2013 3:55 PM  
**To:** Board of Supervisors  
**Subject:** TO ALL SAN FRANCISCO SUPERVISORS - RE Seismic Repair Rent Hikes

4/4/13

To All San Francisco Supervisors,

Why do tenants have to pay for seismic upgrades for apartments they rent, not own? This cost should be directed solely at building owners, those who ultimately profit from any seismic upgrade when they decide to sell their property. I thought it unfair that tenants have to pay half the cost of roof repairs, but this is really going too far. It is especially comforting to know, too, that if my apartment building collapses in an earthquake and I'm lucky enough to survive, the new building built on this site would no longer be subject to rent control laws - one wonders if you supervisors are working for the people or the rental-owning class.

Here's what I'm talking about re seismic repair rate hikes, from the SF Examiner:

## **San Francisco Aiming to Ease Rent-Hike Jolts from Seismic Upgrades**

by Joshua Sabatini | 4/2/13

SF Examiner Staff Writer

Building owners are allowed to pass the cost of required seismic upgrades on to renters, but city officials are working to make it easier to apply for hardship assistance.

Owners of San Francisco buildings most likely to collapse during a major earthquake are now required to make seismic upgrades in coming years, but can pass all costs to tenants.

While tenant advocates had initially fought for a cost reduction for renters, they supported the proposal after city officials agreed to reform a tenant financial hardship program overseen by the Rent Board.

Under the legislation approved unanimously Tuesday by the Board of Supervisors, such buildings must undergo seismic upgrades by 2020. The work takes up to 90 days and costs up to \$130,000. Under existing law, property owners can pass through 100 percent of the cost; that means renters will pay an extra \$38 to \$83 a month.

Supervisor Jane Kim, who said she would have preferred that only 50 percent of the costs go to tenants, said it was important to fix the financial hardship program to ensure "our most vulnerable tenants won't be priced out of our rental market and priced out of San Francisco because of the work that we are doing to save affordable rental stock."

Currently, tenants can apply for financial hardship assistance to avoid paying some or all of various allowable pass-through costs.

Tenant advocates said this process is flawed in that it is cumbersome and intrusive, and decisions are rendered somewhat arbitrarily.

The new law approved Tuesday requires that a hardship proposal be made within 12 months.

Board of Supervisors President David Chiu is working on the changes with Mayor Ed Lee and promised to introduce legislation sooner than that time frame.

While the details are unknown, Chiu said the changes will simplify the documentation needed for tenants to demonstrate a hardship, specify the income levels under which applications would be approved, and make clear on what grounds a property owner can appeal a granted hardship.

Chiu noted that the law that allows the pass-through of all the costs was the result of legislation introduced by Tom Ammiano when he was a supervisor.

“The reason he agreed to it, it was in the context of a very intense lawsuit over these requirements,” Chiu said, adding that it was ill-advised to start “tinkering” with those requirements now.

Some 58,000 residents and 7,000 workers occupy the 3,000 buildings that will be retrofitted under the mandate, Chiu said.

The buildings are largely rent-controlled units. Were they to collapse in an earthquake, those rebuilt would not be held to rent-control laws.

Sincerely

Richard Rhodes  
3909 17th ST, #9  
San Francisco, CA 94114  
Tel: 415/518-1797  
Email: [rersf@comcast.net](mailto:rersf@comcast.net)

BOS-11, LAND USE  
C-PAGES  
FILE # 130119

April 5, 2013

SF Board of Supervisors  
City and County of San Francisco  
City Hall  
1 Dr. Carlton Goodlett Place  
San Francisco, CA. 94102

RE: April 9<sup>th</sup> Full Board of Supervisors Meeting; Proposed Soft Story Building  
Legislation

Dear Supervisors

In reading the latest version of the subject proposed legislation I noticed that in Section 3406B.2. Engineering Criteria, part 1, that the spectral demand is written as SMS, which I don't believe is what is typically found in technical publications. It should be written more like what was in the previous version of the proposed legislation or where MS is written as a subscript and in smaller type after S: S

Sincerely,

Bill Quan.  
2526 Van Ness Ave., #10  
San Francisco, CA. 94109

SoftStoryLegislation-April2013CommentsToSFBdOfS

BOS-11

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**From:** mike@sfbctc.org  
**Sent:** Friday, April 05, 2013 2:03 PM  
**To:** Board of Supervisors  
**Subject:** Wiener CEQA procedures legislation  
**Attachments:** Wiener CEQA procedures legislation.pdf

File *page*  
121019

Angela, others,

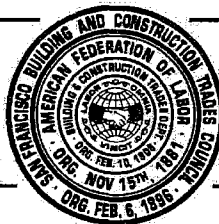
Attached is a letter germane to next Monday's (8 April) Land Use and Economic Development Committee meeting. I have already distributed pdf copies by email to all Supervisors.

Respectfully,

Michael Theriault  
Secretary-Treasurer  
San Francisco Building and Construction Trades Council

*San Francisco Building and*

1188 FRANKLIN STREET • SUITE 203  
SAN FRANCISCO, CA 94109  
EMAIL: mike@sfbctc.org



*Construction Trades Council*

TEL. (415) 345-9333

www.sfbuildingtradescouncil.org

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Secretary - Treasurer

TIM DONOVAN  
VICTOR PARRA  
Vice Presidents

5 April 2013

Scott Wiener  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, Ca 94102-4689

Dear Supervisor Wiener:

At their meeting of 21 March 2013, the Delegates of the San Francisco Building and Construction Trades Council voted unanimously to endorse your legislation clarifying the procedures for appeals in San Francisco under the California Environmental Quality Act (CEQA). We did so after first consulting with our statewide organization, the California State Building and Construction Trades Council (CA BCTC), and receiving their preliminary opinion that your legislation did not conflict with their very vigorous efforts in alliance with environmental organizations against changes in CEQA itself.

Subsequently the CA BCTC did raise concerns about some provisions in the legislation. Additionally, at least one business group explicitly linked your legislation to the statewide reforms the CA BCTC is opposing.

I commend you for responding immediately to these concerns. Under your assurance that the concerns about specific provisions in your legislation will be addressed to the CA BCTC's satisfaction, and with the understanding that you will continue working with the CA BCTC to draw the strongest possible distinction between your legislation and the statewide changes in CEQA the CA BCTC opposes, our endorsement stands.

Respectfully,

Michael Thériault  
Secretary-Treasurer

cc: CA BCTC  
Board of Supervisors  
Affiliates

---

**From:** Michael Milenski [vmmilenski@yahoo.com]  
**Sent:** Friday, April 05, 2013 7:50 AM  
**To:** Board of Supervisors  
**Subject:** Changes to CEQA

To whom it may concern:

I oppose Supervisor Wiener's changes to CEQA. I ask that his draft legislation be held so that Supervisor Kim's changes to CEQA may be considered at the same time.

Two pieces of legislation regarding local implementation of the California Environmental Quality Act are now making their way through the legislative process at San Francisco City Hall. Representatives of the Community CEQA Improvement Team are supporting the legislation sponsored by Supervisor Jane Kim and hope this legislation serves as the basis for improving local application of CEQA.

It is important to remember that CEQA was first passed four decades ago, in 1970, to:

- mandate environmental analysis of projects that may have environmental impacts;
- require alternatives to and/or mitigation of those projects that do have environmental impacts;
- mandate public disclosure of the environmental findings;
- and empower the public and allow the public ample time to appeal those findings.

Please protect San Francisco's implementation of our state CEQA law.

Sincerely,

Victor Milenski  
2049 Oak St. #2  
San Francisco, CA 94117

---

**From:** tesw@aol.com  
**Sent:** Friday, April 05, 2013 7:41 AM  
**To:** Board of Supervisors  
**Cc:** Wiener, Scott; Kim, Jane; Chiu, David; Breed, London  
**Subject:** CEQA legislation

I oppose Supervisor Wiener's changes to CEQA. I ask that his draft legislation be held so that Supervisor Kim's changes to CEQA may be considered at the same time.

Two pieces of legislation regarding local implementation of the California Environmental Quality Act are now making their way through the legislative process at San Francisco City Hall. Representatives of the Community CEQA Improvement Team are supporting the legislation sponsored by Supervisor Jane Kim and hope this legislation serves as the basis for improving local application of CEQA.

It is important to remember that CEQA was first passed four decades ago, in 1970, to:

- mandate environmental analysis of projects that may have environmental impacts;
- require alternatives to and/or mitigation of those projects that do have environmental impacts;
- mandate public disclosure of the environmental findings;
- and empower the public and allow the public ample time to appeal those findings.

Please protect San Francisco's implementation of our state CEQA law.

Sincerely,

Glen L. Van Lehn

---

**From:** DG [dgrayhello@yahoo.com]  
**Sent:** Thursday, April 04, 2013 9:40 PM  
**To:** Board of Supervisors  
**Subject:** oppose Supervisor Wiener's changes to CEQA

I oppose Supervisor Wiener's changes to CEQA. I ask that his draft legislation be held so that Supervisor Kim's changes to CEQA may be considered at the same time.

Two pieces of legislation regarding local implementation of the California Environmental Quality Act are now making their way through the legislative process at San Francisco City Hall. Representatives of the Community CEQA Improvement Team are supporting the legislation sponsored by Supervisor Jane Kim and hope this legislation serves as the basis for improving local application of CEQA.

It is important to remember that CEQA was first passed four decades ago, in 1970, to:

- mandate environmental analysis of projects that may have environmental impacts;
- require alternatives to and/or mitigation of those projects that do have environmental impacts;
- mandate public disclosure of the environmental findings;
- and empower the public and allow the public ample time to appeal those findings.

Please protect San Francisco's implementation of our state CEQA law.

Sincerely,

Diana.....

"Spiritual practices help us move from identifying with the ego to identifying with the soul. Old age does that for you too. It spiritualizes people naturally." Ram Dass



---

**From:** Johanna Ward [jwar1811@yahoo.com]  
**Sent:** Thursday, April 04, 2013 8:08 PM  
**To:** Board of Supervisors  
**Subject:** CEQA Changes- Scott Wiener's Proposal

Dear Board Member of SF Board of Supervisors:

I oppose Supervisor Wiener's changes to CEQA. I ask that his draft legislation be held so that Supervisor Kim's changes to CEQA may be considered at the same time.

Two pieces of legislation regarding local implementation of the California Environmental Quality Act are now making their way through the legislative process at San Francisco City Hall. Representatives of the Community CEQA Improvement Team are supporting the legislation sponsored by Supervisor Jane Kim and hope this legislation serves as the basis for improving local application of CEQA.

It is important to remember that CEQA was first passed four decades ago, in 1970, to:

- mandate environmental analysis of projects that may have environmental impacts;
- require alternatives to and/or mitigation of those projects that do have environmental impacts;
- mandate public disclosure of the environmental findings;
- and empower the public and allow the public ample time to appeal those findings.

Please protect San Francisco's implementation of our state CEQA law.

Sincerely,

Johanna Ward  
*Concerned SF Resident*

---

**From:** Michelle Welch [meeshell1943@gmail.com]  
**Sent:** Thursday, April 04, 2013 2:15 PM  
**To:** Board of Supervisors  
**Subject:** Hold Supervisor Weiner's CEQA legislation

I oppose Supervisor Wiener's changes to CEQA. I ask that his draft legislation be held so that Supervisor Kim's changes to CEQA may be considered at the same time.

Two pieces of legislation regarding local implementation of the California Environmental Quality Act are now making their way through the legislative process at San Francisco City Hall. Representatives of the Community CEQA Improvement Team are supporting the legislation sponsored by Supervisor Jane Kim and hope this legislation serves as the basis for improving local application of CEQA.

It is important to remember that CEQA was first passed four decades ago, in 1970, to:

- mandate environmental analysis of projects that may have environmental impacts;
- require alternatives to and/or mitigation of those projects that do have environmental impacts;
- mandate public disclosure of the environmental findings;
- and empower the public and allow the public ample time to appeal those findings.

Please protect San Francisco's implementation of our state CEQA law.

Sincerely,

Michelle Welch  
519 Ashbury Street  
San Francisco, CA 94117

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**From:** Vincent Pietromartire [vpietromartire@gmail.com]  
**Sent:** Thursday, April 04, 2013 11:19 PM  
**To:** Board of Supervisors  
**Subject:** SF resident in opposition to Supervisors Scott Weiner's legislation

To the San Francisco Board of Supervisors

As a long time resident of the city, I am opposed to Supervisor Wiener's changes to CEQA.

I ask that his draft legislation be held so that Supervisor Kim's changes to CEQA may be considered at the same time. This request seems more than reasonable.

Two pieces of legislation regarding local implementation of the California Environmental Quality Act are now making their way through the legislative process at San Francisco City Hall. Representatives of the Community CEQA Improvement Team are supporting the legislation sponsored by Supervisor Jane Kim and hope this legislation serves as the basis for improving local application of CEQA.

I believe it is important to remember that CEQA was first passed four decades ago, in 1970, to:

- \* mandate environmental analysis of projects that may have environmental impacts;
- \* require alternatives to and/or mitigation of those projects that do have environmental impacts;
- \*mandate public disclosure of the environmental findings;
- \*and empower the public and allow the public ample time to appeal those findings.

Please protect San Francisco's implementation of our state CEQA law.

Sincerely,

Vincent Pietromartire  
837 Central Ave.  
[vpietromartire@gmail.com](mailto:vpietromartire@gmail.com)

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**From:** tesw@aol.com  
**Sent:** Friday, April 05, 2013 7:44 AM  
**To:** Board of Supervisors  
**Cc:** Wiener, Scott; Kim, Jane; Chiu, David; Breed, London  
**Subject:** CEQA legislation

I oppose Supervisor Wiener's changes to CEQA. I ask that his draft legislation be held so that Supervisor Kim's changes to CEQA may be considered at the same time.

Two pieces of legislation regarding local implementation of the California Environmental Quality Act are now making their way through the legislative process at San Francisco City Hall. Representatives of the Community CEQA Improvement Team are supporting the legislation sponsored by Supervisor Jane Kim and hope this legislation serves as the basis for improving local application of CEQA.

In San Francisco, the Planning Department can require projects to undergo a full environmental impact report (EIR). Alternatively, projects can receive a designation of negative declaration or mitigated negative declaration (neg decs), or be declared categorically exempt (cat exes) from undergoing EIRs.

Supervisor Scott Wiener is the sponsor of legislation that was first drafted in 2012. No one knows who has backed Supervisor Wiener's legislation or who was involved in crafting that legislation. Since then, community and environmental groups were invited to speak with Supervisor Wiener, but no substantial changes were made to his legislation. Instead, it continues to favor developers and exclude the public.

It is important to remember that CEQA was first passed four decades ago, in 1970, to:

- mandate environmental analysis of projects that may have environmental impacts;
- require alternatives to and/or mitigation of those projects that do have environmental impacts;
- mandate public disclosure of the environmental findings;
- and empower the public and allow the public ample time to appeal those findings.

Please protect San Francisco's implementation of our state CEQA law.

Sincerely,

Teresa Welborn

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**From:** NINERSAM@aol.com  
**Sent:** Thursday, April 04, 2013 11:06 PM  
**To:** Avalos, John; Breed, London; Campos, David; Chiu, David; Tang, Katy; Cohen, Malia; Elsbernd, Sean; Farrell, Mark; Kim, Jane; Mar, Eric (BOS); Wiener, Scott; Yee, Norman (BOS)  
**Cc:** Board of Supervisors  
**Subject:** Supervisor Weiner's CEQA Amendentstw

Richmond Community Association 146 18<sup>th</sup> Avenue San Francisco, CA 94121

Board of Supervisors  
1 Dr. Carton Goodlett Pl Rm 224  
San Francisco, Ca 94102

Subject: Oppose Supervisor Weiner's CEQA Amendments

Dear Supervisors,

The Richmond Community Association (RCA) urges you to oppose Supervisor Weiner's CEQA Amendments because it weakens CEQA protection for San Franciscans. RCA understands that there needs to be changes in the current San Francisco procedures to process appeals for categorical exemptions and negative declarations. Supervisor Weiner's amendments go much further and drastically guts the CEQA protection that San Franciscans have had for decades.

The most important changes are as follows:

1. It changes the trigger which begins the appeal timeline from the final discretionary approval to the first discretionary approval. Developers must be overjoyed; it is bad news for the residents who don't closely follow Planning Department and Planning Commission meeting. Many people don't get involved in a project initially because there is very little interest until they become familiar with a project. The appeals process is extremely important because many changes can and do occur during the appeal process. If the trigger is changed to the first discretionary approval, the public will miss their opportunity to protect the environment.
2. It allows the San Francisco Board of Supervisors to avoid hearing any CEQA appeals, including appeals of Environmental Impact Reports (EIRs), under its State mandated responsibility as a full 11 member judicial body to consider such appeals in formal appeal proceedings, and to instead relegate consideration of objections to CEQA determinations to a three member committee of the Board which would not be required to hold full formal appeal hearings to consider such objections.
3. It allows the Planning Department to determine if a new EIR is required if there are significant changes in the initial plan. Almost everyone agrees that there are changes after a plan is approved. Can we depend on the Planning Department to make sound decisions when they decided to Neg Dec the 2004 Housing Element and the Bike Plan. The District Appeals Court ruled against the City in both of those cases. The consensus of most neighborhood organizations is that the Planning Department is too pro-development and cannot be dependent on the protect the environment without community input.

Allow Supervisor Kim's CEQA Amendments to be hear along with Supervisor Weiner's CEQA Amendments. Do not approve CEQA Amendments April 8, 2013.

Yours truly,  
Hiroshi Fukuda,  
President, Richmond Community Association

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**From:** Peter Nasatir [merko@att.net]  
**Sent:** Thursday, April 04, 2013 4:15 PM  
**To:** Board of Supervisors  
**Subject:** Supv. Wiener's changes to CEQA

Dear Supervisors,

I am deeply concerned with Supervisor Wiener's changes to CEQA, and urge you to oppose those changes until Supervisor Kim's changes to CEQA may be considered at the same time.

There is a reason the CEQA has been in place for 40 years. Don't let Supervisor Wiener's short-sighted proposal pass without considering Supervisor Kim's changes at the same time.

Thank you for your consideration of this matter.

Sincerely,

Peter Nasatir,  
Western Addition

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**From:** Roger Kat [rager4@sbcglobal.net]  
**Sent:** Thursday, April 04, 2013 3:16 PM  
**To:** Board of Supervisors  
**Subject:** CEQA

I oppose Scott Wiener's CEQA legislation. It would harm a lot of good people.

Regards Roger



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**From:** Roger Kat [rager4@sbcglobal.net]  
**Sent:** Thursday, April 04, 2013 3:36 PM  
**To:** Board of Supervisors  
**Subject:** CEQA amendment

What I meant to say in my previous email is that I oppose Scott Wiener's changes to CEQA.

Regards Roger

## Board of Supervisors

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To: Miller, Alisa  
Subject: ~~F121019~~: Please Vote NO on Supervisor Wiener's Proposed Changes to SF CEQA. BOS File No.121019

From: Jensen, Lisa [<mailto:LJensen@sflaw.com>]

Sent: Monday, April 08, 2013 10:40 AM

To: Avalos, John; Breed, London; Campos, David; Chiu, David; Cohen, Malia; Farrell, Mark; Kim, Jane; Mar, Eric (BOS); Tang, Katy; Yee, Norman (BOS); Board of Supervisors  
Subject: Please Vote NO on Supervisor Wiener's Proposed Changes to SF CEQA. BOS File No.121019

Supervisor,

Please vote No on Supervisor Wiener's proposed changes to SF CEQA, BOS File No.121019.

- Supervisor Wiener's legislation will severely constrain environmental protection in San Francisco;

In the guise of fixing inefficiencies in CEQA procedures, it would:

- \* Make it very difficult to get the facts about development projects by forcing appeals to be filed far too early, before final project plans and impacts are known;
- \* Let appeals be considered solely by a three-member panel of the Board of Supervisors; not the Full Board as it is now;
- \* Allow many significant projects to avoid the requirement to prepare an Environmental Impact Report (EIR);
- \* Set onerous requirements for any person or group filing an environmental appeal.

- We welcome sensible reform and real clarifications of the process;

- This is coming in Supervisor Jane Kim's legislation; and,

- Please continue Supervisor Wiener's legislation until Supervisor Kim's legislation catches up.

Please vote No on Supervisor Wiener's proposed changes to SF CEQA, BOS File No.121019.

Thank you,

Bob

Robert Charles Friese  
One Maritime Plaza, 18th Floor  
San Francisco, CA 94111  
Tel: (415) 421-6500  
Fax: (415) 421-2922  
E-mail: [rfriese@sflaw.com](mailto:rfriese@sflaw.com)

## Board of Supervisors

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**To:** Miller, Alisa  
**Subject:** File 121019: CEQA Legislation - Supervisor Wiener (SF Land-Use) memo vs. Supervisors Wiener's Legislation!

**From:** Aaron Goodman [<mailto:amgodman@yahoo.com>]

**Sent:** Sunday, April 07, 2013 9:41 PM

**To:** Avalos, John; Breed, London; Campos, David; Chiu, David; Cohen, Malia; Farrell, Mark; Kim, Jane; Mar, Eric (BOS); Tang, Katy; Yee, Norman (BOS); Board of Supervisors

**Subject:** CEQA Legislation - Supervisor Wiener (SF Land-Use) memo vs. Supervisors Wiener's Legislation!

**To: SF Board of Supervisors**

**RE:** Please Vote NO on Supervisor Wiener's Proposed Changes to SF CEQA. BOS File No.121019

Supervisors,

Please vote No on Supervisor Wiener's proposed changes to SF CEQA, BOS File No.121019. Supervisor Wiener's legislation will severely constrain environmental protection in San Francisco; In the guise of fixing inefficiencies in CEQA procedures, it would:

- Make it very difficult to get the facts about development projects by forcing appeals to be filed far too early, before final project plans and impacts are known;
  - Let appeals be considered solely by a three-member panel of the Board of Supervisors; not the Full Board as it is now;
  - Allow many significant projects to avoid the requirement to prepare an Environmental Impact Report (EIR);
  - Set onerous requirements for any person or group filing an environmental appeal.
- We welcome sensible reform and real clarifications of the process;  
- This is coming in Supervisor Jane Kim's legislation; and,  
- Please continue Supervisor Wiener's legislation until Supervisor Kim's legislation catches up.

Please vote No on Supervisor Wiener's proposed changes to SF CEQA, BOS File No.121019.

Thank you,

We have seen clearly the concerns on how CEQA needs to be enforced and alternatives significantly looked at with the Parkmerced project, BVHP, Treasure Island, North Beach and Merced Branch Libraries, Golden Gate Soccer Fields, and many other sites and issues.

We feel the public needs to have a significant say, when developers keep paying money and lobbyists to change the future of our city without public input. Protect the public's rights, not the developers interests.

Sincerely

Aaron Goodman  
25 Lisbon St.  
San Francisco, CA 94112

## Board of Supervisors

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**To:** Miller, Alisa  
**Subject:** Please Vote NO on Supervisor Wiener's Proposed Changes to SF CEQA. BOS File No.121019

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**From:** Jean Barish [mailto:jeanbbarish@hotmail.com]

**Sent:** Sunday, April 07, 2013 8:21 PM

**To:** Avalos, John; Breed, London; Campos, David; Chiu, David; Cohen, Malia; Farrell, Mark; Kim, Jane; Mar, Eric (BOS); Tang, Katy; Yee, Norman (BOS); Board of Supervisors

**Subject:** Please Vote NO on Supervisor Wiener's Proposed Changes to SF CEQA. BOS File No.121019

Supervisor,

Please vote No on Supervisor Wiener's proposed changes to SF CEQA, BOS File No.121019.

- Supervisor Wiener's legislation will severely constrain environmental protection in San Francisco; In the guise of fixing inefficiencies in CEQA procedures, it would:

- Make it very difficult to get the facts about development projects by forcing appeals to be filed far too early, before final project plans and impacts are known;
- Let appeals be considered solely by a three-member panel of the Board of Supervisors; not the Full Board as it is now;
- Allow many significant projects to avoid the requirement to prepare an Environmental Impact Report (EIR);
- Set onerous requirements for any person or group filing an environmental appeal.

- We welcome sensible reform and real clarifications of the process;

- This is coming in Supervisor Jane Kim's legislation; and,

- Please continue Supervisor Wiener's legislation until Supervisor Kim's legislation catches up.

Please vote No on Supervisor Wiener's proposed changes to SF CEQA, BOS File No.121019.

Thank you,

*Jean B Barish*

[jeanbbarish@hotmail.com](mailto:jeanbbarish@hotmail.com)

*Member, Planning Association for the Richmond*

## Board of Supervisors

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**To:** Miller, Alisa  
**Subject:** File 121019 Vote NO on the changes to CEQA proposed by Supervisor Wiener

**From:** Kathy Howard [<mailto:kathyhoward@earthlink.net>]

**Sent:** Sunday, April 07, 2013 6:50 PM

**To:** Avalos, John; Breed, London; Campos, David; Chiu, David; Cohen, Malia; Farrell, Mark; Kim, Jane; Mar, Eric (BOS); Tang, Katy; Yee, Norman (BOS); Board of Supervisors

**Subject:** BOS file 121019 Vote NO on the changes to CEQA proposed by Supervisor Wiener

Supervisor,

I urge you to vote NO on Supervisor Wiener's proposed changes to CEQA. I agree that our local CEQA laws need *some* modifications, but Supervisor Wiener's legislation is akin to cutting off an arm to cure a hangnail.

I also do not understand why this legislation is being rushed through, when a second piece of legislation has been proposed by Supervisor Kim. From what I have seen, Supervisor Kim's legislation will have some good, logical reforms and yet preserve CEQA protection for our parks and open spaces. I am sure that you agree that our parks are worth protecting!

San Francisco already has a poor reputation for its approach to the environmental review process. Let's take our time, review both pieces of legislation, and come up with an approach that is both fair and protects the environment.

Thank you for your consideration.

Katherine Howard, ASLA  
Outer Sunset District

## Board of Supervisors

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**To:** BOS-Supervisors  
**Subject:** File 121019: SUPPPORT Sup. Wiener's CEQA bill

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**From:** BVNA [<mailto:BVNA@ix.netcom.com>]  
**Sent:** Sunday, April 07, 2013 6:45 PM  
**Cc:** Ballard, Sarah; Miller, Alisa  
**Subject:** SUPPPORT Sup. Wiener's CEQA bill

Honorable Members of the Board of Supervisors:  
cc: Clerk of the Land Use Committee, Sarah Ballard, SFRPD

Buena Vista Neighborhood Association (BVNA) strongly urges that you **SUPPORT Supervisor Wiener's proposed legislation to establish a fair, clear and transparent CEQA appeals process in San Francisco.** The legislation is scheduled to be heard as Item 1 before your Board's Land Use Committee on Monday, April 8.

A glaring example of the unfair, inappropriate abuses which Sup. Wiener's bill addresses is an outrageous and selfish one-person, last-minute appeal regarding needed improvements at Dolores Park, which was featured in an SF Chronicle article today (Sunday 4/7). That unfair appeal attempts to overturn years of thorough and thoughtful outreach and broad community process that helped shape and supports the needed improvements. Supervisor Wiener's legislation also extends more fairness to small businesses, among other deserving constituencies.

Supervisor Kim's proposed alternative legislation on the topic does not deliver the same level of needed improvements which Sup. Wiener's bill does.

Respectfully  
Richard Magary, Steering Committee Chair  
Buena Vista Neighborhood Association (BVNA)  
555 Buena Vista West #601; San Francisco CA 94117-4143  
415/431-2359  
[BVNA@ix.netcom.com](mailto:BVNA@ix.netcom.com)  
4/7/2013 18:40pdt

## Board of Supervisors

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To: Miller, Alisa  
Subject: File 121019 Land Use Committee - April 8, 2013 - CEQA Procedures

From: CHRISTOPHER PEDERSON [<mailto:chpederson@yahoo.com>]  
Sent: Saturday, April 06, 2013 8:51 PM  
To: Chiu, David; Kim, Jane; Wiener, Scott  
Cc: Board of Supervisors  
Subject: Land Use Committee - April 8, 2013 - CEQA Procedures

Dear Supervisors Chiu, Kim, and Wiener,

I urge you to vote in support of Supervisor Wiener's proposed ordinance regarding the City's CEQA procedures. His proposed ordinance is fully consistent with statewide CEQA practice. The determination of what level of CEQA review is appropriate should be made at the outset of the process and any appeals regarding CEQA should be resolved as early in the process as possible.

To delay this decision or to allow multiple boards and commissions to reach independent decisions regarding the required level of review would create tremendous uncertainty and potential expense not only for project proponents but also for the public at large. This uncertainty prejudices not only private development projects but also sorely needed public works projects such as Muni improvements, pedestrian and bicycle enhancements, and park rehabilitation.

So long as adequate public notice is provided, the proposed ordinance will not impair public participation in the City's decisions. Demands for multiple and redundant rounds of CEQA review, however, have little to do with concern about the adequacy of environmental review. They are instead transparent attempts to maintain as many tools as possible for factional interest groups to delay and kill projects they dislike. That is not the purpose of CEQA.

Please vote for the proposed ordinance. Thank you.

Sincerely,  
Christopher Pederson  
201 Laguna St. # 9  
San Francisco, CA 94102

*Clage*

120 Highland Ave  
San Francisco, CA 94110

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2013 APR -4 PM 3:42

23 March 2013

San Francisco Board of Supervisors  
1 Dr Carlton B Goodlett Pl #244  
San Francisco, CA 94102

Dear Members of the San Francisco Board of Supervisors:

I am writing this letter to congratulate you on the decision to ban plastic bags in San Francisco in April 2007. I feel extremely proud that my city can become an example for other cities to protect our environment. I would also especially like to congratulate Mr. Ross Mirkarimi, although not in office anymore, for having crafted the bill despite the opposition from grocers.

I still hear many local residents appalled by the idea of having to pay 10 cents for a plastic bag, but I'm even more appalled at the idea that they do not care about their environment. While it may take some time for residents to get comfortable with bringing their own bag when they go shopping, this bill will ultimately have a positive outcome for our environment in the years to come.

America alone consumes around 100 million plastic bags a year. 12 million barrels of oil are estimated to produce plastic bags; many times these bags end up on sidewalks or floating around in the streets. Hence, they never make it to the recycling bin. According to the Darby Hoover of the Natural Resources Defense Council; it can take thousands of years for these wasteful bags to decompose.

According to an article in USA Today, titled Plastic Bag Ban Full of Holes, the cost of a plastic bag is about 1 penny; the cost for a paper bag is 5 cents, and for a compostable bags it's 10 cents. This was one of the arguments the California Grocers Association used to attack the plastic bag ban. The article furthermore describes that this association doubted that the industry could produce enough compostable bags for consumers.

Although there were many opposing the plastic bag ban, I believe it has been the most brilliant legislation that the Board of Supervisors has taken. The problem of plastic bags isn't whether they cost more or less; the real problem is that it's harming our environment. The problem isn't whether or not the industry can produce enough compostable bags; the problem is that as consumers we expect to be satisfied and often at the lowest cost. But is it really worth damaging our environment?

This is why I am writing this letter; to applaud the remarkable decision you Members of the Board have taken. While I still hear many consumers dismayed by this bill, claiming that it's ridiculous, I believe that this pronouncement will raise consciousness not only to residents of San Francisco, but to other cities as well. I appreciate the judgment you have made.

Sincerely,  
Andrea Lara





## Board of Supervisors

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**To:** BOS-Supervisors  
**Subject:** Please STOP proposed "Cycle Project" on Masonic

**From:** Roni McKinley [[mailto:roni\\_mckinley@yahoo.com](mailto:roni_mckinley@yahoo.com)]

**Sent:** Saturday, April 06, 2013 6:40 PM

**To:** Lee, Mayor; Board of Supervisors; Farrell, Mark; Sallaberry, Mike; [eric.1.mar@sfgov.org](mailto:eric.1.mar@sfgov.org); [ed.reiskin@sfmta.com](mailto:ed.reiskin@sfmta.com)

**Cc:** [citizenopa@gmail.com](mailto:citizenopa@gmail.com); gregor [lakner@yahoo.com](mailto:lakner@yahoo.com)

**Subject:** Please STOP proposed "Cycle Project" on Masonic

Dear Mayor Lee, SF Supervisors, MTS Board members and Mr. Reiskin:

I am writing to express my strong skepticism about the Masonic Avenue cycle track project, and concern about the fact that the neighborhood citizens were not invited to have input in the initial analysis or planning of the project. I am a home owner, tax payer and voter in this district, in the NOPA neighborhood, and I feel under represented in this process!

The current "fix Masonic" proposal is very one-sided, and not at all considerate of the impact on all who live, park and drive in the neighborhood. I am pro-bike lane for San Francisco, but these proposed changes seem to have more adverse effects than positive ones in terms of the environment, the traffic flow, bike accessibility and general quality of life issues in our area.

The proposed "cycle project" -- at a hefty price of \$21MILLION! -- will serve to aggravate congestion on Masonic Ave., especially during rush hour and especially with the increased traffic that may be generated by the new Target store. Masonic can be greatly improved by planting new trees, improving lighting, creating protected left hand turns and adding bus shelters, with much less hardship to the neighborhood and less cost than the proposed cycle track project will require.

Let's please PAUSE on this plan and take a harder look at it's implications and disadvantages before we start making phony "improvements." I think we can come up with a BETTER PLAN that will actually COST LESS.

Let's HAULT this project and take the time to consider a better path to improvement!

Thank you so much for your consideration, and for the opportunity to participate in how my neighborhood evolves and my tax dollars get spent! :)

Yours Sincerely,

Roni McKinley  
825 Central Avenue  
San Francisco, CA 94115

## Board of Supervisors

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**To:** BOS-Supervisors  
**Subject:** File 130213: Environmental Review 611 Buena Vista Ave W

**From:** Arthur Resnikoff [<mailto:art@ar-and-associates.com>]  
**Sent:** Sunday, April 07, 2013 3:44 PM  
**To:** Board of Supervisors  
**Cc:** [matt@mleffers.com](mailto:matt@mleffers.com) Leffer  
**Subject:** Environmental Review 611 Buena Vista Ave W

Dear Board:

As a neighbor, I wish to support having a further environmental review of the project at 611 Buena Vista West. As I understand it, the plan that the setback was based on is incorrect, being closer to the street than the existing structure. The project will not only affect the view from the park, but does not fit with the architectural integrity of the neighborhood. Agreements that were reached amicably regarding the original remodel were disregarded. Thank you for your consideration.

Art

Dr. Art Resnikoff  
[art@ar-and-associates.com](mailto:art@ar-and-associates.com)  
cell: 415-515-3757  
off: 415-255-7606

## Board of Supervisors

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To: BOS-Supervisors  
Subject: File 130213: 611 Buena Vista West CEQA Review

From: [matt@mleffers.com](mailto:matt@mleffers.com) [<mailto:matt@mleffers.com>]

Sent: Monday, April 08, 2013 8:01 PM

To: Board of Supervisors

Cc: Susan Brandt Hawley

Subject: 611 Buena Vista West CEQA Review

April 8, 2013

Board President David Chiu

and Members of the Board of Supervisors

Re: 611 Buena Vista West Expansion

Dear President Chiu and Supervisors,

My name is Matt Leffers and I reside next door and to the south of 611 Buena Vista, at 601 Buena Vista. I am writing to express my opposition to this project based on several important factors that I have itemized below:

1) The home at this site was originally remodeled nine years ago. The project sponsor wanted to change a house with more traditional styling into a modern home. Four DR's were filed and as a result of compromise the neighbors dropped their opposition. The new home was agreed to in exchange for keeping the house a similar size to the prior more traditional structure. The owner was able to add 1,410 square feet to the existing 938. **Compromises were made and agreed to nine years ago.**

After the last building inspector left the property, the project sponsor proceeded to put in a living unit that he had agreed not to do in settling one the four DR's. Additionally he informed me that he would not obscure the property line windows as agreed and specified on the building plans. The DR that was filed by the resident at 635 Buena Vista West was settled by agreeing to very specific landscaping meant to soften the blow of the architecture. This agreement was ignored by the project sponsor even though it was added to the approved plans. Now the project sponsor wants to add another story with a massive and intrusive deck system on the roof with a fire pit outside our bedroom window. This addition was the main focus of the four DR's that were filed nine years ago and was omitted as the primary benefit in settling the DR's.

2) The proposed addition will block existing ocean and roof line views from Buena Vista Park. Please see the below photo in which the view of the Pacific is spectacular. It is the spot where

people walking in the Park stop to gaze out at the horizon.

3) Numerous neighborhood meetings were held and the project sponsor refused to attend, preferring to send representatives even after extensive requests from our neighborhood group. Not one of the suggestions made by the neighbors was incorporated into the plans, even the simple request of re-configuring the garage to accommodate a car so we would not have the constant eyesore of looking at one car in the drive and another blocking it on the street. Many years ago the owner converted the garage to living space.

4) Threatening emails were sent to me by the project sponsor when he realized I was the person coordinating the neighborhood opposition. When the emails to me did not work, he sent a threatening email to my wife. I believe such threats have no place in this process, yet, they exemplify the projects sponsor's approach. As I am a contractor, the project sponsor researched my projects and my house and believed he found evidence of wrongdoing. He then threatened to report me to the authorities if I did not drop my opposition. I attach a few of these emails.

5) The 611 Buena Vista lot is quite small relative to other lots on the block. It was the site of a carriage house and later a garage, attendant to the home next door. The new structure is oversized for such a small lot. The structure had 938 square feet of living space when purchased in 2002 and as a result of the settlement of the four DR's the house is now 2,348 square feet, not including the garage now used as living space.

6) Lastly, Our neighborhood group had 601, 611 and 615 Buena Vista West surveyed to establish the relationships of the buildings. Ten years ago the project sponsors' used a dramatically flawed Site plan which was attained by moving my house, 601 Buena Vista West forward several feet. Based on MLS pictures of the original house, it is easy to see why. The Site Plan was intentionally misrepresented so that 611 Buena Vista West could be moved forward to be on the same plane as 615 Buena Vista West. Now they are using the same flawed plot plan to justify a more favorable setback for the new addition.

Please reject the Negative Declaration for this project and help save our historic neighborhood and the views from our Park!

Very Truly Yours

Matthew P. Leffers

601 Buena Vista West

San Francisco, CA 94117

(415) 706-0955

[matt@mleffers.com](mailto:matt@mleffers.com)

**Matthew P. Leffers**

**Leffers Real Estate**

**[www.leffersrealestate.com](http://www.leffersrealestate.com)**

**Real Estate Broker DRE# 01066815**

**General Contractor # 390912**

**(415) 706-0955**

## Board of Supervisors

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**To:** BOS-Supervisors  
**Subject:** File 130213: 611 Buena Vista West  
**Attachments:** Rear Yard\_130405.pdf

**From:** Jon Shields [mailto:[jonjs@me.com](mailto:jonjs@me.com)]  
**Sent:** Monday, April 08, 2013 9:44 PM  
**To:** Board of Supervisors  
**Subject:** 611 Buena Vista West

Honorable Board of Supervisors:

Our family has lived at 1430 Masonic Ave for over 18 years. Our backyard is adjacent to 611 Buena Vista West (to our East).

We object to the proposed addition due to shadowing. In particular, the additional floor will *completely eliminate* the precious little sunlight that we receive into our dining and family rooms.

Due to the slope of the hill, and the tall buildings uphill and to the south of us, we receive very little sun. The only direct sun that strikes our dining and family rooms is in the mid-morning, from mid-April to mid-October. This is the only time when the sun is not blocked by other buildings, as it rises through a gap directly over 611 Buena Vista West (see attached photo, taken in our dining room last August). After mid-morning, the sun is blocked by our immediate uphill neighbour for the rest of the day.

We were aware of the limited sunlight when we bought our house. However, we rationalised that having sun into the backyard and these key rooms on summer mornings was (just) enough to make the setting acceptable. It would be severely detrimental to our enjoyment of our home if this brief window of light was eliminated, as it seems it would be by the planned addition to 611 Buena Vista West.

I would also like to point out that from the perspective of folks living on Masonic, the proposed addition extends far higher than the other properties on Buena Vista. This is due to the slope of the hill coupled with the boxy nature of the design. I think this is clear in the "PROPOSED DESIGN" photo below.

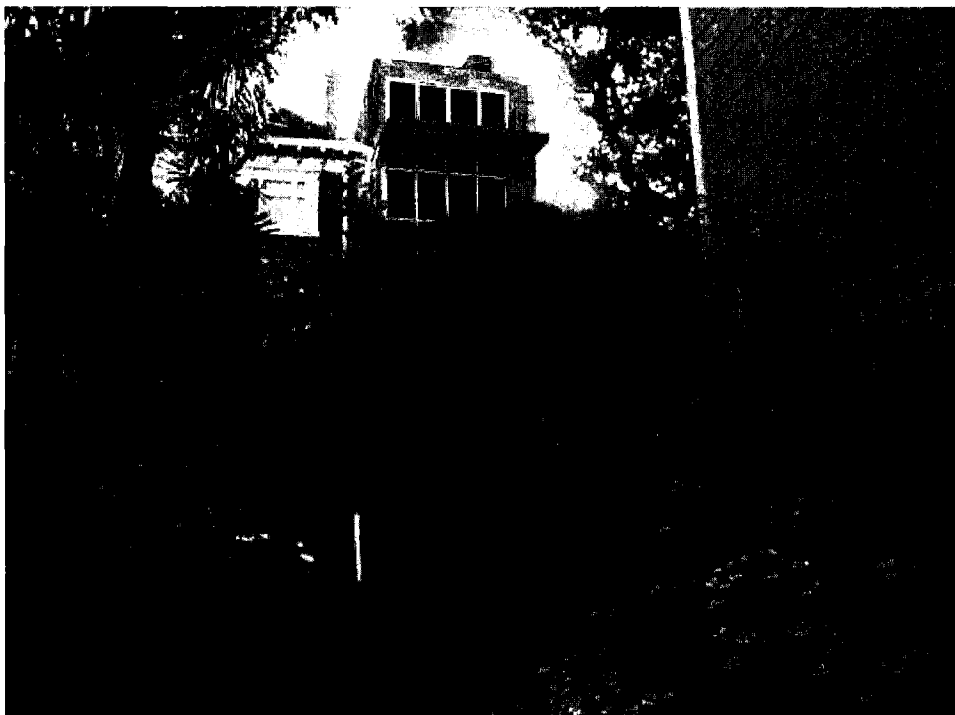
In summary, due to its restriction of light on properties on Masonic, including ours and others, this project will have a significant environmental impact and is inconsistent with city development policies, and environmental review and mitigation should be required.

thank you,

Jon and Pam Shields  
1430 Masonic Ave



**EXISTING CONDITIONS**



**PROPOSED DESIGN**

## Board of Supervisors

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To: BOS-Supervisors  
Subject: File 121017: Urgent: Here's Why the Board of Supe's Needs to Send Ordinance Regarding "Open Data Policy and Procedures" Back to Committee

From: pmonette-shaw [mailto:Pmonette-shaw@earthlink.net]

Sent: Monday, April 08, 2013 11:25 PM

To: Lee, Mayor; Chiu, David; Wiener, Scott; Kim, Jane; Tang, Katy; Avalos, John; Mar, Eric (BOS); Farrell, Mark; Breed, London; Yee, Norman (BOS); Cohen, Malia; Campos, David; Board of Supervisors; Calvillo, Angela

Subject: Urgent: Here's Why the Board of Supe's Needs to Send Ordinance Regarding "Open Data Policy and Procedures" Back to Committee

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### Patrick Monette-Shaw

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975 Sutter Street, Apt. 6

San Francisco, CA 94109

Phone: (415) 292-6969 • e-mail: [pmonette-shaw@earthlink.net](mailto:pmonette-shaw@earthlink.net)

April 8, 2013

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 Katy Tang, Supervisor, San Francisco Board of Supervisors, District 4

The Honorable London Breed, Supervisor, San Francisco Board of Supervisors, District 5

The Honorable Jane Kim, Supervisor, San Francisco Board of Supervisors, District 6

The Honorable Norman Yee, 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: Send Ordinance Regarding "Open Data Policy and Procedures" Back to Committee**

Dear Board of Supervisors,

Agenda Item #10, *Citywide Coordination of Open Data Policy and Procedures*, on the full Board's agenda for Tuesday, April 9 should be rejected, not passed on First Reading, and sent back to the Government Audit and Oversight Committee for further development, for many reasons, including those noted in this letter.

Here's why:



In several sections of the proposed legislation, it stipulates that the City shall use “open, non-proprietary standards, when practicable.” This is a red flag: The system should either use fully Open Data standards, or it should be re-named “Let’s Keep Using Proprietary Standards and Pretend It’s Open Data.”

Please reject this legislation on First Reading, and send it back to Committee for further work.

Respectfully submitted,

[signed]

Patrick Monette-Shaw

Columnist, *Westside Observer* Newspaper

cc: Angela Calvillo, Clerk of the Board, San Francisco Board of Supervisors

**Board of Supervisors**

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**From:** pmonette-shaw [Pmonette-shaw@earthlink.net]  
**Sent:** Sunday, April 07, 2013 9:20 PM  
**To:** Lee, Mayor; Chiu, David; Wiener, Scott; Kim, Jane; Tang, Katy; Avalos, John; Mar, Eric (BOS); Farrell, Mark; Breed, London; Yee, Norman (BOS); Cohen, Malia; Campos, David; Board of Supervisors; Calvillo, Angela  
**Subject:** Urgent: Here's Why the Board of Supe's Needs to Amend Language of Resolution Declaring April 9, 2013 as "Equal Pay Day"

**Patrick Monette-Shaw**

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975 Sutter Street, Apt. 6  
San Francisco, CA 94109  
Phone: (415) 292-6969 • e-mail: [pmonette-shaw@earthlink.net](mailto:pmonette-shaw@earthlink.net)

April 7, 2013

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 Katy Tang, Supervisor, San Francisco Board of Supervisors, District 4
- The Honorable London Breed, Supervisor, San Francisco Board of Supervisors, District 5
- The Honorable Jane Kim, Supervisor, San Francisco Board of Supervisors, District 6
- The Honorable Norman Yee, 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: Amend Language of Resolution Declaring "Equal Pay Day"**

Dear Board of Supervisors,

It is commendable that the Board of Supervisors wants to declare April 9, 2013 as *Equal Pay Day* in the City and County of San Francisco. However, the proposed Resolution doesn't go far enough.

You all know that the City and County of San Francisco is one of the largest employers in San Francisco. Sadly, the proposed Resolution appears to only apply to private-sector employers in San Francisco, not to the City itself as a major employer.

I strongly urge the full Board to quickly amend this Resolution before it is adopted, to add that the City's own Department of Human Resources (DHR) also be required to respond to the survey instrument.

In addition, given the City's efforts over the past five years to move lower-paid women and minorities out of secretarial job classification codes, and into even lower-paying "Public Service Aide" job classifications, the Board should also require DHR to conduct a cross-year analysis of just how many lower-paid clerical workers have been moved into even lower-paying jobs further eroding their "equal pay."

The City of San Francisco itself may be the worst perpetrators of unequal pay for having forced hundreds of women into even lower-paying jobs so the city could hire even more highly paid managers earning over \$150,000 annually.

Surely, one of you can take the initiative to quickly introduce these requirements on DHR prior to passing this Resolution.

Respectfully submitted,

[signed]

Patrick Monette-Shaw

Columnist, *Westside Observer* Newspaper

cc: Angela Calvillo, Clerk of the Board, San Francisco Board of Supervisors

## Board of Supervisors

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**To:** BOS-Supervisors; Miller, Alisa  
**Subject:** File 120669: Condo Conversion

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**From:** Cat Bell [<mailto:bellacatus@yahoo.com>]

**Sent:** Sunday, April 07, 2013 10:24 PM

**To:** Board of Supervisors

**Cc:** Breed, London

**Subject:** Condo Conversion

I oppose sweeping changes to Land Use ordinances to benefit a few without considerable public hearings, input, and discussion.

Sincerely,  
Cathy Bellin  
516 Clayton Street  
San Francisco, CA

## Board of Supervisors

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To: BOS-Supervisors  
Subject: Let sheep manage SF city lawns

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

From: [sunfreedom76@yahoo.com](mailto:sunfreedom76@yahoo.com) [<mailto:sunfreedom76@yahoo.com>]  
Sent: Sunday, April 07, 2013 3:48 PM  
To: Lee, Mayor; [board of supervisors@ci.sf.ca.us](mailto:board_of_supervisors@ci.sf.ca.us)  
Cc: [sunfreedom76@yahoo.com](mailto:sunfreedom76@yahoo.com); letters BAR ebar; [matierandross@sfchronicle.com](mailto:matierandross@sfchronicle.com)  
Subject: Let sheep manage SF city lawns

Dear Mayor and Supervisors  
of San Francisco:

If sheep can trim lawns in Paris,  
why not in San Francisco?

[ <http://www.sfgate.com/news/world/article/Ewes-ful-Paris-hires-sheep-to-mow-city-lawns-4412023.php> ]

Naturally,  
SUN  
[sunfreedom76@yahoo.com](mailto:sunfreedom76@yahoo.com)

7 April 2013

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## Board of Supervisors

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**To:** BOS-Supervisors  
**Subject:** To The Folk Living In San Francisco's Tenderloin Area

**From:** Ivan E Pratt [mailto:prattbuddhahood@gmail.com]

**Sent:** Saturday, April 06, 2013 9:21 AM

**To:** ajcn-mailer; ajones; Naymz App; bcoa; Board of Supervisors; David Baker; bill; Bill Dewart; christopher.nguyen; chico.garza; chiman lee; Chughes; dukenrat; Edward Evans; ecomerritt; Gold's Gym; goldoor5; HIVresource; Michael Hann; Michael Pacheco III; info; info; Kim, Jane; Mark Kaplan; KPFA Worker; Yun Lin Temple; Montantes, Richard; Nick Caskey; NichirenDaishoninsBuddhism; outreach; pelosi; reiko; rfreeman; sf\_district6; stevenandrew; taichi; volunteers  
**Subject:** To The Folk Living In San Francisco's Tenderloin Area

### WHAT COULD HAPPEN TO THE STOCK MARKET NOW THAT OBAMA HAS BEEN RE-ELECTED

I especially wanted to write and investigate this information for my average 'Brothers and Sisters' who may live and be employed in the San Francisco Tenderloin Area, who are dependent on SSI and HUD, HUD-SRO - sence realestate dealers and landlords in San Francisco seem to be going out of their minds building new rental and condominium buildings, and seem to be over looking the poor and indigent peoples living the street, and literally sleeping on the sidewalks. Our Mayor of San Francisco, Chiman Lee has recently dedicated a skyscraper to be built to the financial tune of \$190 million dollars by Boston Realtor Investors. Of course if we in living the Tenderloin of San Francisco have at least a minimum of \$500,000 investment, we too can also ride high on the condominium revolution by the wealthy of San Francisco Area: Of course if you think I'm being merely sarcastic check out 'Fisher Investments', who are just a business, I am not criticising them in any negative fashion, they've got to eat and live as well, but so do the poor indigent, elderly, and disabled of San Francisco's Tenderloin Area, living in HUD SRO'S, lets consider what 'Fisher Investments' has to project concerning the poor in the United States in general:

WebPage: 'Fisher Investments', <http://www.fisherinvestments.com>

### THANKYOU MYWHAT COULD HAPPEN TO THE STOCK MARKET NOW THAT OBAMA HAS BEEN RE-ELECTED

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WebPage: 'Fisher Investments', <http://www.fisherinvestments.com>

THANKYOU MY FELLOW RESIDENCE OF SAN FRANCISCO TENDERLOIN AREA,

IVAN EDGAR PRATT , [prattbuddhahood@gmail.com](mailto:prattbuddhahood@gmail.com)

April 5, 2013

NAM MYOHO RENGE KYO,