

FILE NO. 131053

Petitions and Communications received from October 21, 2013, through October 28, 2013, for reference by the President to Committee considering related matters, or to be ordered filed by the Clerk on November 5, 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 Controller, submitting Whistleblower Program Annual Report for FY2012-2013. Copy: Each Supervisor. (1)

From Board of Appeals, submitting Annual Report for FY2012-2013. Copy: Each Supervisor. (2)

\*From Civil Service Commission, submitting Annual Report for FY2012-2013. Copy: Each Supervisor. (3)

\*From Controller, submitting District 7 Pedestrian Safety Improvement Project Report. Copy: Each Supervisor. (4)

\*From Controller, submitting Park Maintenance Standards Annual Report for FY2012-2013. Copy: Each Supervisor. (5)

From Controller, submitting updated Policy and Procedures on Personal Services Contracts. Copy: Each Supervisor. (6)

From concerned citizens, submitting signatures for a petition regarding fiber broadband. 1200 signatures. Copy: Each Supervisor. (7)

From concerned citizens, submitting signatures for a petition regarding Sharp Park. 875 signatures. Copy: Each Supervisor. (8)

From Capital Planning Committee, regarding authorizing legislation and a related supplemental appropriation request by Department of Public Health. Copy: Each Supervisor. (9)

From concerned citizens, submitting signatures for a petition regarding police patrol in the Excelsior Neighborhood. 330 signatures. File No. 130084. Copy: Each Supervisor. (10)

From concerned citizens, submitting signatures for a petition regarding housing and employment background checks standardization guidelines. 489 signatures. Copy: Each Supervisor. (11)

From Stephen M. Williams, regarding appeal of Final Mitigated Negative Declaration for 1050 Valencia Street. File Nos. 130896 - 130899. Copy: Each Supervisor. (12)

From California Bankers Association, regarding Mortgage Resolution Partners Proposal. Copy: Each Supervisor. (13)

From concerned citizens, regarding the Excelsior Neighborhood. 6 letters. File Nos. 130084, 130734. Copy: Each Supervisor. (14)

From Michel & Associates, P.C., regarding large capacity magazines for firearm ammunition. File No. 130585. Copy: Each Supervisor. (15)

From Jonathan Bonato, regarding park hours legislation. File No. 130766. Copy: Each Supervisor. (16)

From Ray W. Hartz, Jr., regarding various issues. Copy: Each Supervisor. (17)

From Human Resources, regarding Civil Grand Jury report, "Déjà Vu All Over Again: San Francisco's City Technology Needs a Culture Shock." (18)

From Mayor, regarding designation of an Acting Mayor through Wednesday, October 23, 2013, at 11:25 a.m. (19)

\*(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.)

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**From:** McGuire, Kristen [kristen.mcguire@sfgov.org] on behalf of Reports, Controller [controller.reports@sfgov.org]  
**Sent:** Thursday, October 24, 2013 1:09 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; jballesteros@sanfrancisco.travel; CON-EVERYONE; CON-CCSF Dept Heads; CON-Finance Officers  
**Subject:** Report Issued: Whistleblower Program Annual Report Fiscal Year 2012-13

The Office of the Controller's City Services Auditor Division (CSA) today issued the annual report for fiscal year 2012-13 on the complaints received, investigated, and closed by its Whistleblower Program. The Whistleblower Program received 291 complaints in the fiscal year, primarily through an online Web form. The vast majority (86 percent) of complaints were investigated or referred for investigation, and most (83 percent) of those received were closed within 90 days. The Whistleblower Program substantiated a diverse variety of allegations in fiscal year 2012-13. The Whistleblower Program has yielded quantifiable and nonquantifiable benefits to the City, its employees, and its residents.

To view the full report, please visit our Web site at:  
<http://openbook.sfgov.org/webreports/details3.aspx?id=1622>

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

## WHISTLEBLOWER PROGRAM ANNUAL REPORT

Fiscal Year 2012-13



October 24, 2013

## **BACKGROUND AND SUMMARY**

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An amendment to the Charter of the City and County of San Francisco (City) passed by San Francisco voters in 2003 instructed the Office of the Controller (Controller) to administer a whistleblower and citizen complaint hotline telephone number and Web site, and to publicize the hotline and Web site through public advertising and communications to city employees. As specifically authorized by the charter, since 2004 the Controller has received and tracked complaints on the quality and delivery of government services, wasteful and inefficient city government practices, misuse of government funds, and improper activities by city government officials, employees, and contractors. The Whistleblower Program evaluates and forwards complaints it receives to the appropriate agency. The charter also instructs the Controller to investigate and attempt to resolve the complaints when appropriate.

The Whistleblower Program Annual Report for July 2012 through June 2013 (fiscal year 2012-13) is the ninth annual report on complaints received by the Whistleblower Program. The report is part of a broad effort to promote and publicize the Whistleblower Program to city employees and members of the public.

The Whistleblower Program received 291 complaints in fiscal year 2012-13, primarily through an online Web form. The vast majority (86 percent) of complaints were investigated or referred for investigation, and most (83 percent) of those received were closed within 90 days. The Whistleblower Program has yielded quantifiable and nonquantifiable benefits to the City, its employees, and its residents. The Whistleblower Program substantiated a diverse variety of allegations in fiscal year 2012-13.

The Whistleblower Program is committed to publicizing and promoting the hotline to city employees and residents. To increase employees' awareness of it, the Whistleblower Program in fiscal year 2012-13 used various communication strategies, including participating in new employee orientation presentations, putting program contact information on employee pay stubs, and issuing quarterly and annual reports on program activity.

The Whistleblower Program does not act as an advocate for complainants in their disputes with city departments or employees. By law, the program must conduct its investigations confidentially and, therefore, cannot keep complainants informed about the review of their complaints or the progress of any investigation that may follow. This requirement is designed to protect the identity of the complainant and other individuals involved in the investigative process.

Complainants have the option of submitting a complaint anonymously. City officers and employees may not use any city resources, including work time, to ascertain or attempt to ascertain the identity of any person who has made a complaint to the Whistleblower Program. Employees or former employees who believe they were subject to retaliation may file a complaint with the Ethics Commission. The complaint must be filed no later than two years after the date of the alleged retaliation.

## THE WHISTLEBLOWER PROGRAM

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### A. Whistleblower Program Authority

*Authority is granted to the Controller to track and receive complaints.*

Charter Appendix F grants the Controller the authority to track and receive complaints concerning the quality and delivery of government services, wasteful and inefficient government practices, misuse of city funds, and improper activities by city officers and employees. Through the City Services Auditor Division, the Controller operates the Whistleblower Program.

The program receives and tracks complaints and investigates or otherwise attempts to resolve complaints. The program evaluates each complaint for its disposition and, when appropriate, coordinates investigations with various city departments.

A number of complaints received by the Whistleblower Program are in the jurisdiction of other city departments. When this is the case, the program will refer the complaint to the appropriate organization for resolution. These include complaints that:

- Another city agency is required by federal, state, or local law to adjudicate.
- May be resolved through a grievance mechanism established by a collective bargaining agreement.
- Involve allegations of conduct that may constitute a violation of criminal law.
- Are subject to an existing, ongoing investigation by San Francisco's District Attorney, City Attorney, or Ethics Commission.

### B. Benefits of the Whistleblower Program

*The Whistleblower Program has both quantifiable and nonquantifiable benefits.*

The Whistleblower Program has yielded quantifiable and nonquantifiable benefits to the City, its employees, and its residents, including the reduction of losses and the protection of city assets. Additional benefits that cannot be quantified include that the program:

- Results in enhanced departmental internal controls, including policies and procedures, that mitigate potential misuse of city resources.
- Provides an anonymous means for employees and the public to report complaints. Anonymous reporting protects complainant confidentiality, and encourages individuals to report improper activities.
- May deter future fraudulent behavior by increasing the perception by potential fraud perpetrators that the acts they have engaged in or are contemplating will be detected and punished.
- Provides complaint data that can be used to identify systemic problems in a department or program.

*Research indicates that complaint hotlines reduce losses.*

According to the Association of Certified Fraud Examiners (ACFE), a means to report suspicious activity is a critical component of an antifraud program, and tips are the most common method for the detection of fraud. The ACFE found that organizations with a hotline have a 51 percent likelihood of detecting fraud from a tip, compared to a 35 percent likelihood in organizations without a hotline.<sup>1</sup>

*Several local governments have established similar hotlines.*

Complaint hotline programs are used in a number of California jurisdictions besides San Francisco to help detect and prevent fraud, waste, and abuse, including:

**Counties**

- Fresno
- Los Angeles
- Orange
- Sacramento

**Cities**

- Los Angeles
- Oakland
- San Diego
- San Jose

**C. Communication of the Whistleblower Program**

*Employee outreach by the Whistleblower Program is essential to its effectiveness.*

Charter Appendix F, Section 1.107(c), requires that the Controller publicize the Whistleblower Program through press releases, public advertising, and communications to city employees.

In fiscal year 2012-13, Whistleblower Program marketing initiatives comprised of:

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<sup>1</sup> Association of Certified Fraud Examiners, *2012 Report to the Nations on Occupational Fraud and Abuse*, p. 16.

- Posting quarterly newsletters on the program's Web site.
- Including information about the program to the Department of Human Resources' on-demand new employee orientation program.
- Including information about the program in the Department of Human Resources' training for new supervisors and managers.
- Making presentations to staff at various city departments.
- Periodically including program contact information on electronic employee pay stubs.
- Including a downloadable poster on the program's Web site.

#### D. Investigations

*Investigations are conducted and coordinated with department management.*

Although Whistleblower Program personnel lead certain investigations, the majority of investigations are coordinated in collaboration with management of the department associated with the complaint. In these circumstances, department management leads the investigation and, where appropriate, the Whistleblower Program helps guide the investigation. This coordinated approach uses the expertise of all involved departments and leverages resources to ensure allegations are resolved in a timely manner.

*The program reviews departments' findings and corrective actions.*

Management of the department associated with the complaint is required to report to the Whistleblower Program on the results of its investigation and any corrective actions taken. The program reviews departmental investigative findings and corrective actions and, based on this review, determines the adequacy of the information provided and whether additional action is required before closing the complaint.

In cases where the Whistleblower Program led the investigation or conducted a significant amount of the investigative work, a separate report including recommended corrective action may be issued to department management. The San Francisco Campaign

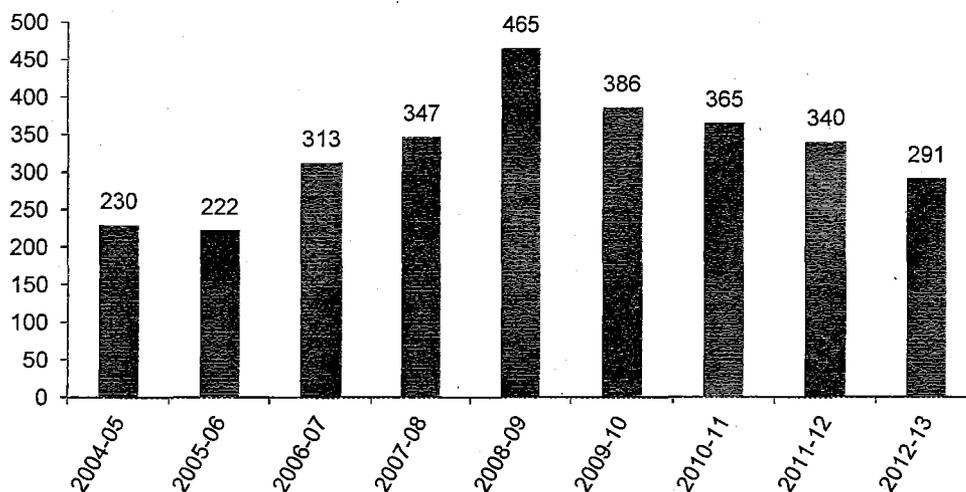
and Governmental Conduct Code, Section 4.107(e), allows the Controller to recommend that a city department take specific action based on the Controller's initial investigation. Within 60 days of receiving a recommendation, city departments shall report to the Controller in writing any action that the department has taken in response to a recommendation by the Controller.

### E. Statistical Summary

#### Total Complaints

The Whistleblower Program received 291 complaints in July 2012 through June 2013 (fiscal year 2012-13), a decrease from the 340 complaints received in fiscal year 2011-12.<sup>2</sup> Exhibit 1 presents yearly complaint totals since the program's inception.

**EXHIBIT 1** Whistleblower Program Complaints Received by Fiscal Year



San Francisco's program receives considerably more complaints per capita than do programs in other large California jurisdictions. In fiscal year 2012-13 San Francisco received more complaints (35.2) per 100,000 residents than either the City of San Diego (8.2) or Los

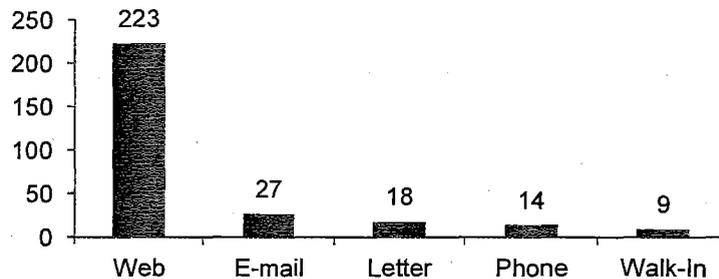
<sup>2</sup> Some complaints contain multiple allegations, and the Whistleblower Program does not track the number of allegations per complaint.

Angeles County (12.2).<sup>3,4</sup> San Francisco received 9.1 complaints per 1,000 budgeted positions in fiscal year 2012-13.<sup>5</sup> For comparison, the Network, a provider of hotline services, reported that its public administration industry clients received 7.6 complaints per 1,000 employees in 2012.<sup>6</sup>

### Source of Complaints

As shown in Exhibit 2, in fiscal year 2012-13 the Whistleblower Program received 223 complaints (77 percent) through its Web site.

**EXHIBIT 2** Sources of the 291 Complaints Received in Fiscal Year 2012-13



This number includes complaints reported through the City's 311 Customer Service Center. All other complaints were submitted through:

- E-mail to whistleblower@sfgov.org (27 complaints).
- Letters sent to the Controller in care of the Whistleblower Program (18 complaints).
- Calls to the Controller (14 complaints).
- Walk-in visits to the Controller's offices (9 complaints).

<sup>3</sup> U.S. Census Bureau, July 2012 population estimate data: San Francisco, 825,863; San Diego, 1,338,348; Los Angeles County 9,962,789.

<sup>4</sup> In fiscal year 2012-13 Los Angeles County received 1,216 complaints and the City of San Diego received 110 complaints.

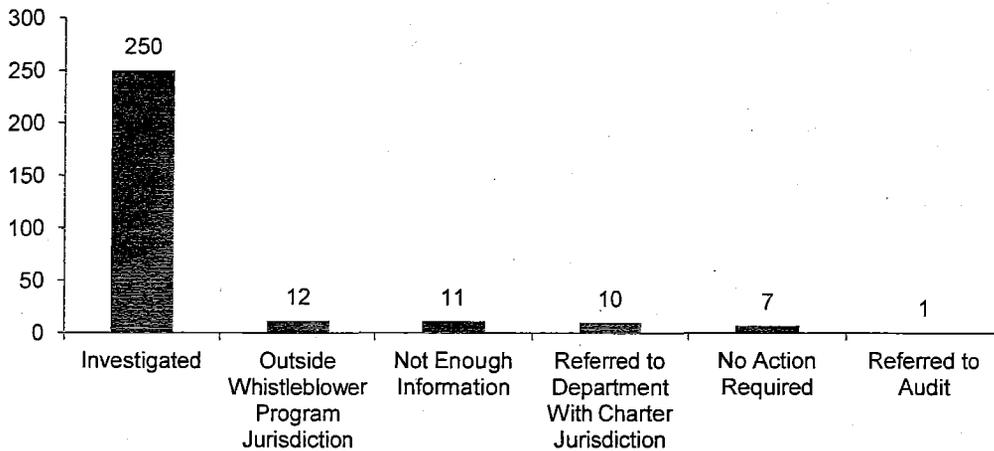
<sup>5</sup> The *Annual Salary Ordinance Fiscal Year Ending June 30, 2013 and Fiscal Year Ending June 30, 2014* lists 31,869.48 budgeted positions in fiscal year 2012-13, p. 323.

<sup>6</sup> The Network, *2013 Corporate Governance and Compliance Hotline Benchmarking Report*, p. 46.

### Actions Taken on Complaints

All complaints received are assigned a unique tracking number and reviewed by the Whistleblower Program's staff. As shown in Exhibit 3, The vast majority of complaints are investigated.

#### EXHIBIT 3 Actions Taken on 291 Complaints Received in Fiscal Year 2012-13



*Some of the 291 complaints received may include multiple allegations.*

- Of the 291 complaints received, 250 (86 percent) were investigated or referred for investigation.
- The remaining 41 complaints (14 percent) were categorized as follows:
  - Outside of Jurisdiction (12 complaints) – Issue falls within the jurisdiction of federal, state, or other noncity government agency or is a suggestion or general complaint about decisions that are within management's discretion.
  - Not Enough Information (11 complaints) – Insufficient information to investigate (for example, no indication of department, employees involved, or vehicle number).
  - Referred to Department with Charter Jurisdiction (10 complaints) – Complaint was referred to the city department with charter-

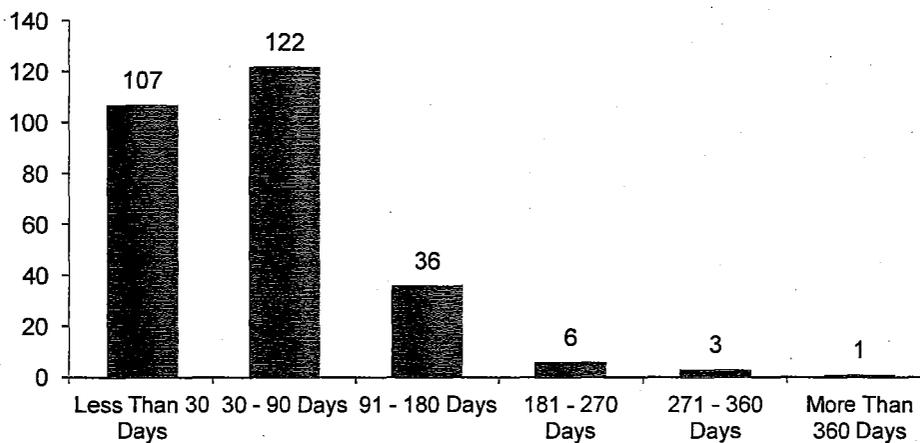
granted jurisdiction over the issue (for example, the Ethics Commission, City Attorney, or District Attorney).

- No Action Required (7 complaints) – A complaint was not explicitly conveyed, or provided additional information for a complaint that was already under investigation by the Whistleblower Program.
- Referred to Audit (1 complaint) – Complaint was submitted to the City Services Auditor Division’s Audits Unit to consider for a future audit.

#### How Long It Takes to Close Complaints

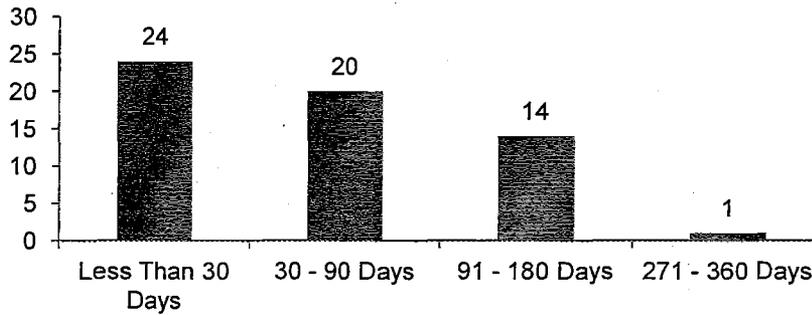
The Whistleblower Program investigated, either alone or in collaboration with another department, and closed 275 complaints in fiscal year 2012-13. As shown in Exhibit 4, 229 (83 percent) of the complaints received by the program were closed within 90 days.

**EXHIBIT 4** Age of 275 Complaints Closed in Fiscal Year 2012-13



At the end of the fiscal year 2012-13, 59 complaints were open. As shown in Exhibit 5, 44 (75 percent) of these complaints were less than 90 days old.

**EXHIBIT 5 Age of 59 Complaints Open at the Beginning of Fiscal Year 2013-14**



*Investigation completion times can vary greatly depending on the complexity of the issues involved. A variety of factors can influence the time it takes to investigate and close a complaint.*

Investigation completion times can vary greatly depending on the complexity of the issues involved. Steps that influence the length of investigations include researching issues identified in the complaint, accumulating documentation from multiple sources, interviewing witnesses, and coordinating resources between departments.

**Overview of Sustained Complaints in Fiscal Year 2012-13**

*The most common complaint alleges improper activities by city employees.*

The Whistleblower Program sustained, in part or in whole, 72 complaints in fiscal year 2012-13. Exhibit 6 lists sustained complaints by category. Complaints of improper activities by a city employee were most common.

**EXHIBIT 6 Sustained Complaint Allegations in Fiscal Year 2012-13**

Complaint Category	Number of Sustained Complaints
Improper Activities by City Employees	55
Quality and Delivery of Government Services	7
City Contractor	3
Wasteful and Inefficient Government Practices	1
Other	6
<b>Total</b>	<b>72</b>

Note: Some complaints may contain more than one type of allegation. Complaints are categorized by their primary allegation

Information regarding disciplinary action is reported to and tracked by the Whistleblower Program.

Exhibit 7 summarizes the corrective and preventive actions taken on complaints. Some complaints may involve multiple suspects or contain multiple allegations. As a result, it is possible for a complaint to have multiple dispositions.

<b>EXHIBIT 7    Actions Taken on Sustained Complaints in Fiscal Year 2012-13</b>	
<b>Action Taken</b>	<b>Number of Actions Taken</b>
Counseled (Verbal/Written Warning)	33
Procedures Changed/Reinforced	31
Termination	2
Disciplinary/Corrective Action Pending	1
Employees Suspended	1
Other	16
<b>Total</b>	<b>84</b>

The employee's department head/appointing officer is responsible for administering the appropriate discipline of employees. While the City is committed to a progressive discipline program, the nature of the offense generally determines the level of discipline, up to and including termination.

#### **F. Retaliation Complaints**

Retaliation against whistleblowers is illegal. That is, no city officer or employee may terminate, demote, suspend, or take other similar adverse employment action against a city officer or employee because that person has in good faith filed a complaint alleging that a city officer or employee engaged in improper governmental activity.

The Ethics Commission is charged with investigating retaliation complaints. The Ethics Commission conducts a preliminary review of each formal retaliation complaint. A preliminary review may include the review of relevant documents, communication with the complainant, communication with the respondent, and any other inquiry to determine whether a full investigation is warranted. Exhibit 8 displays for fiscal year 2012-13 the number of

retaliation complaints investigated after preliminary review, closed, sustained, and, on June 30, 2013, under investigation by the San Francisco Ethics Commission.

<b>EXHIBIT 8    Retaliation Complaints in Fiscal Year 2012-13</b>	
<b>Action</b>	<b>Count</b>
Investigated	1
Closed	1
Sustained (of those closed)	0
Open (under investigation)	0

Source: San Francisco Ethics Commission

According to the Ethics Commission, the one retaliation complaint investigated and closed in fiscal year 2012-13 alleged retaliation as a result of the complainant having filed a complaint with the Whistleblower Program. The Ethics Commission did not substantiate this complaint.

To establish retaliation, a complainant must demonstrate beyond a preponderance of the evidence that the complainant's engagement in a protected activity was a substantial motivating factor for an adverse employment action.

**G. Details of Selected Sustained Complaints**

Summarized below are details of select complaints, substantiated in part or in whole, concluded in fiscal year 2012-13. The diverse nature of these cases demonstrates the value of the City maintaining the Whistleblower Program. A complete list of complaints substantiated in part or in whole during the year can be found in the quarterly reports for fiscal year 2012-13 under *Whistleblower Program Summary Reports* at [www.sfgov.org/whistleblower](http://www.sfgov.org/whistleblower).

Complaint/Allegation	Resolution
An employee fueled a noncity vehicle at a city gas station that is for city vehicles only.	The department found that its gas-key was used at the location, date, and time alleged. The vehicle license plate number reported by the complainant corresponded to a vehicle owned by a city employee. The department released (terminated) the employee from probation.
Employees falsified overtime records and used city equipment for personal purposes. One of the employees performed work for another city department without a work order and used an illegal substance in the workplace.	The Whistleblower Program's investigation found that the employees' overtime records did not reconcile to GPS data from their city vehicles and that employees used their city vehicles and phones for personal purposes. The investigation found that the department did not have a valid index code in the City's accounting system for work performed for another department. The investigation did not substantiate that an employee used an illegal substance in the workplace. The Whistleblower Program recommended that the department work with the Department of Human Resources to ensure that any necessary personnel action is taken. The Whistleblower Program also recommended that the department implement additional controls to improve accountability and management oversight of the employees. Corrective action is pending.
An employee used city equipment and time to download and distribute movies.	The Whistleblower Program's investigation found that the employee's work computer contained media unrelated to the employee's duties. The investigation did not substantiate that the employee used city equipment to distribute the media. The department suspended the employee for ten days.
Employee wastefully spent city funds by purchasing equipment that was never used.	The Whistleblower Program's investigation found that the department spent \$106,433 to buy two pieces of equipment. In the four years since the purchase, one of these pieces of equipment was used only once and the other was never used because the department found that the equipment was unsuitable for its business needs. The Whistleblower Program recommended that the department dispose of the

Complaint/Allegation	Resolution
	equipment in accordance with city policies and establish controls to prevent future wasteful expenditures on equipment. The department concurred with the Whistleblower Program's recommendations and stated that it will attempt to use the equipment's parts for its operations.
An employee sold a department's inventory over the Internet.	The Whistleblower Program's investigation did not substantiate that the employee sold inventory items on the Internet. However, investigators identified needed improvements to the department's inventory control practices and recommended that the department further safeguard its assets.
Employees allowed a non-employee to enter an area with sensitive information to sell meat to the employees. The vendor is related to a department employee.	The department's investigation confirmed that a non-employee was allowed to sell meat products to employees in an area where sensitive information is kept. The department sent a memo to employees instructing them not to allow individuals not conducting official business into areas where sensitive information is stored. It was not substantiated that the individual attempting to sell meat products is related to one of the employees.
The scaffolding of a property under construction blocked a sidewalk, impeding access.	The Mayor's Office on Disability found that the property did not have an accessible path of travel in the public right of way. The department issued a correction notice to the contractor and verified that the contractor made the necessary modifications to allow ingress and egress at the work site.
An employee improperly approved a permit application, and inappropriately signed off on the resulting permit on behalf of another department.	The Whistleblower Program substantiated the allegation that the employee improperly approved a permit application. The Whistleblower Program did not substantiate that the employee intentionally signed the permit on behalf of another city department. The department reissued the statement of incompatible activities and the code of professional conduct to remind staff not to engage in activities that would appear to conflict with fair, impartial, and objective performance of officially assigned duties and responsibilities.
A manager exhibited poor management practices and verbally abused staff.	The department held a meeting with the employee to address the complaint's issues. The employee was counseled for their behavior. The department required that the employee attend training to improve communication and management skills.

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**From:** Board of Supervisors  
**To:** BOS-Supervisors  
**Subject:** FY13 Annual Report for Board of Appeals  
**Attachments:** FY13 Annual Report (FINAL).pdf

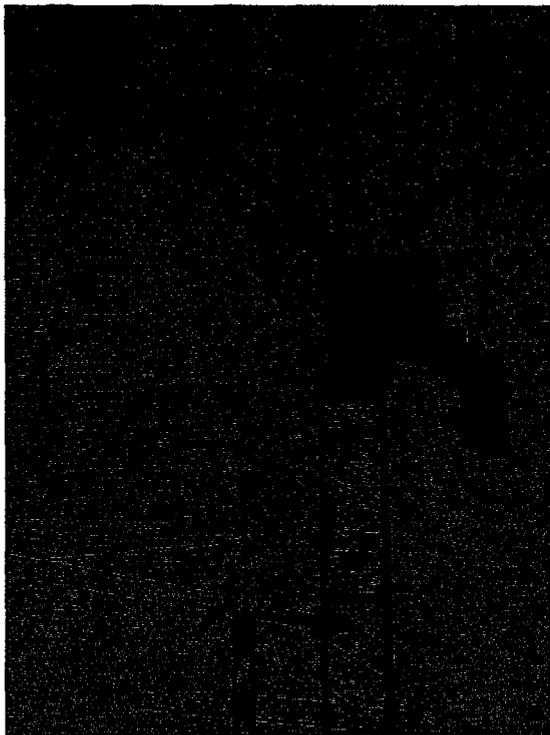
**From:** Goldstein, Cynthia  
**Sent:** Thursday, October 24, 2013 3:29 PM  
**To:** Board of Supervisors  
**Subject:** FY13 Annual Report for Board of Appeals

Please find attached a copy of the FY 2012-13 Annual Report for the Board of Appeals, submitted pursuant to the requirements of Charter Section 4.103.

Thank you.

Cynthia G. Goldstein  
Executive Director  
San Francisco Board of Appeals  
1650 Mission Street, Suite 304  
San Francisco, CA 94103  
Phone: 415-575-6881  
Fax: 415-575-6885  
Email: [cynthia.goldstein@sfgov.org](mailto:cynthia.goldstein@sfgov.org)

CITY AND COUNTY OF SAN FRANCISCO  
**BOARD OF APPEALS**



**ANNUAL REPORT**

July 1, 2012 – June 30, 2013

# HIGHLIGHTS

## CASES HEARD

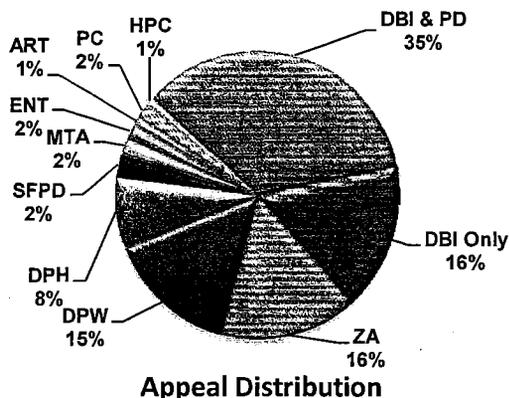
The Board held 27 regular meetings at which 147 matters were heard:

- 114 Appeals
- 14 Jurisdiction Requests
- 19 Rehearing Requests

## CASE ORIGINATION

Over two-thirds (70%) of the appeals heard by the Board were land use related, stemming from determinations made by the Department of Building Inspection (DBI), Planning Department (PD), Zoning Administrator (ZA), Planning Commission (PC) and Historic Preservation Commission (HPC). The Board also heard appeals of decisions made by the Department of Public Works (DPW), Department of Public Health (DPH), Police Department (SFPD), Taxi Division of the Municipal Transportation Agency (MTA), Entertainment Commission (ENT) and Arts Commission (ART).

The follow chart shows the percentage breakdown by the entity issuing the underlying determination being appealed. The land use portion is shaded.

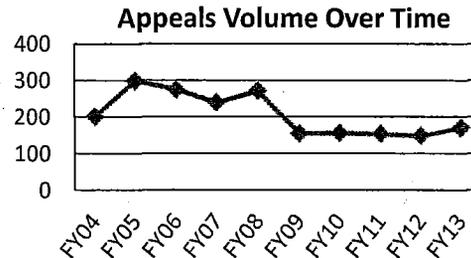


## BOARD ACTION

The Board upheld 55% of the departmental determinations it heard on appeal and overturned or modified 37%. Seven percent (7%) of the remaining appeals were pending at the close of the year and one percent (1%) was withdrawn.

## APPEAL VOLUME

The Board experienced the first increase in appeal volume since the economic decline began in 2008, ending the year 14% higher than the prior four years but still 18% lower than the ten year norm.



## APPEAL TRENDS

The number of Mobile Food Facility (food truck) appeals reduced by half over the prior year, but still comprised the largest number of appeals filed outside of the land use area. Restaurant and property owners located near proposed truck stops continued to raise concerns about the impact these trucks have on 'brick and mortar' establishments.

## BUDGET

The Board closed the year with a surplus in both of its revenue streams for the first time since the economic downturn began in 2008. Total revenue came in 11 percent over projections, even though no increases were made to the surcharge rates or filing fees, a clear indicator of the City's strengthening economy. Combined with reductions in expenditures, the Board ended the year with a surplus of \$188,428.

## ELECTION OF OFFICERS

During the first half of the fiscal year, Commissioner Chris Hwang served as President and Commissioner Frank Fung as Vice President. At the annual election of officers in January 2013, Commissioner Hwang was reelected President and Commissioner Ann Lazarus was elected as Vice President.

## **MISSION**

The Board of Appeals is a quasi-judicial body that was first created by the San Francisco Charter of 1932. It provides the public with a final administrative review process for a wide range of City determinations, including the granting, denial, suspension, revocation or modification of permits, licenses, and other use entitlements by various departments and other entities of the City & County of San Francisco.

As it hears and decides cases, the Board of Appeals strives to provide an efficient, fair and expeditious public hearing and decision-making process before an impartial panel as the last step in the City's review process.

## **JURISDICTION**

The Board's jurisdiction is derived from San Francisco Charter Section 4.106, portions of the San Francisco Business and Tax Regulations Code<sup>1</sup> and other City ordinances. The Charter authorizes the Board to "hear and determine appeals with respect to any person who has been denied a permit or license, or whose permit or license has been suspended, revoked or withdrawn, or who believes that his or her interest or the public interest will be adversely affected by the grant, denial, suspension or revocation of a license or permit...."<sup>2</sup> Determinations made by the Recreation and Park Commission or Department or by the Port Commission are specifically exempted,<sup>3</sup> as are appeals of building and demolition permits for projects that have been granted a conditional use authorization by the Planning Commission.<sup>4</sup>

The Board's jurisdiction to hear and decide appeals of certain other types of determinations are set forth in specific City Code provisions. For example, appeals of Planning Commission determinations dealing with the allocation of down office space may be heard by the Board, as can Certificates of Appropriateness issued by the Historic Preservation Commission. In addition, there are various Code provisions that establish how certain types of appeals should be handled by the Board and what review criteria must be applied. For instance, provisions of the Police Code set out the criteria to be applied to an appeal of a Place of Entertainment Permit and provisions of the Public Works Code discuss appeals of Mobile Food Facility permits.

The most common types of appeals heard by the Board involve:

- Building permits issued or denied by the Department of Building Inspection (DBI), including many that are subject to Planning Department review or result from discretionary review decisions of the Planning Commission
- Actions by the Zoning Administrator, including variance decisions, Letters of Determination, Stop Work Order Requests and Notices of Violation and Penalty
- Mobile food facility permits, wireless site permits and tree planting and removal permits issued by the Department of Public Works (DPW)
- Suspensions of Tobacco sales permits issued by the Department of Public Health (DPH)

<sup>1</sup> See Article 1, Section 8, *et seq.*

<sup>2</sup> See San Francisco Charter Section 4.106(b).

<sup>3</sup> *Ibid.*

<sup>4</sup> Appeals of the underlying Conditional Use Authorization may be made to the Board of Supervisors.

Less common but routinely heard by the Board are appeals related to:

- DPH-issued permits for restaurants and massage establishments
- Taxi driving and medallion permits issued by the Municipal Transportation Agency
- DPW-issued permits for minor sidewalk encroachments and street space occupancy
- DBI-issued electrical and plumbing permits
- Planning Commission determinations issued under Planning Code Sections 309, 320 and 325 dealing with large downtown developments

## **BOARD MEMBERSHIP**

The Board of Appeals is comprised of five members appointed to staggered four-year terms. Three members are appointed by the Mayor and two by the President of the Board of Supervisors. All appointments are subject to the approval (by majority vote) of the full Board of Supervisors. Officers are elected for one-year terms at the first regular meeting held after January 15 each year.<sup>5</sup> At the start of the fiscal year, the Mayor appointed former Port Commissioner Ann Lazarus to the Board. The Mayor also appointed San Francisco realtor Darryl Honda in December. At the Board's annual elections, President Hwang was reelected to another term and Commissioner Lazarus was elevated to the office of Vice President.

Current Board membership is as follows:

<b>Commissioner</b>	<b>Appointing Authority</b>	<b>Dates of Service</b>
<b>Chris Hwang</b> President, May 2012 – Present Vice President, January 2012 – May 2012	Board of Supervisors	May 12, 2010 to July 1, 2014
<b>Ann Lazarus</b> Vice President, January 2013 - Present	Mayor	July 25, 2012 to July 1, 2014
<b>Frank Fung</b> President, January 2009 – January 2010 Vice President, March 2008 – January 2009 May 2012 – January 2013	Mayor	October 19, 2004 to July 1, 2016 January 30, 1986 to June 8, 1988
<b>Darryl Honda</b>	Mayor	December 4, 2012 To July 1, 2016
<b>Arcelia Hurtado</b>	Board of Supervisors	September 11, 2012 to July 1, 2016 February 23, 2012 to July 1, 2012

<sup>5</sup> Rules of the Board of Appeals, Article I, Section 1.

## **MEETINGS OF THE BOARD**

During the fiscal year, the Board met twenty-seven times, totaling over 102 meeting hours. There were twelve meetings at which one member was absent, giving the Board a 90.5% attendance record. In addition, there were nine meetings during the first half of the year when a seat on the Board was vacant.

In addition to the appeals heard at each meeting, the Board also:

- Elected officers (January 16, 2013)
- Adopted the Board's two-year budget covering fiscal years 2013-14 and 2014-15 (February 13, 2013)
- Heard a presentation by the Department of Public Health Tobacco Free Project on the City's efforts to curb the sale of tobacco to minors (March 20, 2013)
- Heard a presentation by the General Services Agency's Director of Earthquake Safety regarding new legislation requiring retrofitting of multi-unit soft story buildings

Unless otherwise specially noticed, Board meetings are held on Wednesdays starting at 5:00 p.m. in City Hall.<sup>6</sup> They are conducted in accordance with the Rules of the Board of Appeals. In most cases, the appellant will address the Board first, then the determination holder, the respondent department(s) and members of the public. An opportunity for rebuttal is given to the parties. Board meetings are open to the public and are broadcast live on San Francisco's government television station (SFGovTV) cable television channels 26 and 78. Meetings may be viewed by computer, both live and on-demand.<sup>7</sup> Closed captioning is provided for these broadcasts and on the in-room monitor during Board meetings in City Hall. Meeting agenda and approved minutes are posted on the Board's website.<sup>8</sup>

## **APPEAL PROCESS**

Appeals must be filed within the legally prescribed appeal period, which varies depending upon the underlying determination being appealed. For most matters, the appeal period is fifteen days from the date the determination is issued, but other appeal periods may apply (for example, variance decisions issued by the Zoning Administrator must be appealed within ten days; and appeals of Certificates of Appropriateness issued by the Historic Preservation Commission must be filed within thirty days). In limited situations, the Board may allow an appeal to be filed late. Pursuant to the Board's Rules, late appeals are allowed when a City error has caused a would-be appellant to miss the appeal period.<sup>9</sup>

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<sup>6</sup> An annual meeting schedule is developed prior to the start of each calendar year and is available at the Board office and on the web at: <http://www.sfgov3.org/index.aspx?page=775>.

<sup>7</sup> Internet access is found at: [http://sanfrancisco.granicus.com/ViewPublisher.php?view\\_id=6](http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=6).

<sup>8</sup> The Board of Appeals website is found at: [www.sfgov.org/boa](http://www.sfgov.org/boa).

<sup>9</sup> Rules of the Board of Appeals, Article V, Section 10.

The parties to each appeal, including the City department that issued the determination being appealed, are encouraged to submit written arguments and other evidence for the Board's consideration. When an appeal is filed, the parties are given a schedule establishing deadlines for these submittals and are advised of the Board's requirements on length and formatting.<sup>10</sup> Members of the public also may submit briefs, letters and other evidence in support of their position on an appeal. As a way of notifying the public about pending appeals, the Board mails out postcards to all property owners and occupants within a 150 foot radius of any property that is the subject of an appeal.<sup>11</sup>

After reviewing the written file, Board members conduct a public hearing on the appeal at which they consider the testimony of the parties and comments from interested neighbors and other members of the public. After deliberation, the Board may vote to uphold or overrule the underlying departmental determination, or may impose conditions on the determination.<sup>12</sup>

Conditions imposed by the Board are wide-ranging, and most typically include:

- Modifications to building plans, for example:
  - Adding a privacy screen such as lattice to a new deck to limit sightlines into neighboring windows
  - Setting back a portion of an addition or other structure so it is further from a protesting neighbor's property line
  - Obscuring glass in neighbor-facing windows
  - Establishing 'good neighbor' policies such as limiting when construction may take place and how construction-related complaints will be handled
- Qualifications made to Zoning Administrator determinations, for example:
  - Requiring the filing of a Notice of Special Restrictions in order to specify a limit on the number of dwelling units at a property
  - Limiting the type, location or hours of operation of a commercial use
- Changing the length of a suspension imposed on taxi driving or tobacco sales permits, or imposing a suspension instead of permit revocation
- Limiting the items that may be sold by a food truck, or modifying the hours of operation, to avoid competition to neighboring restaurants
- Reducing the financial penalties imposed for construction work performed without a permit
- Specifying the number or size of replacement trees when allowing trees to be removed

The Charter<sup>13</sup> requires that a supermajority of Board members must agree in order to overturn or place conditions on a department's decision. When fully seated, this means four out of five votes are needed. If there is a vacancy on the Board, three votes are needed. A supermajority also is needed to grant a rehearing request or a request to file a late appeal.

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<sup>10</sup> Rules of the Board of Appeals, Article V, Section 4.

<sup>11</sup> See San Francisco Business and Tax Regulations Code Article 1, Section 12.

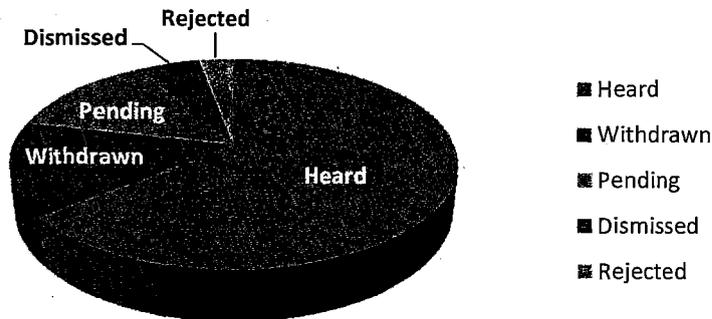
<sup>12</sup> On occasion, the Board will decide to continue a matter, typically to allow additional information to be prepared and submitted to the Board, or to give the parties time to negotiate a resolution. In rare instances a matter may be continued indefinitely (to the Board's "Call of the Chair" calendar) because an unknown amount of time is needed before the Board may move forward with a determination.

<sup>13</sup> See San Francisco Charter Section 4.106(d).

# APPEAL EXPERIENCE

During the year, 229 cases were on the Board's docket. Of these, 209 were new matters filed with the Board this year, consisting of 171 appeals, 16 requests for late jurisdiction and 22 rehearing requests.<sup>14</sup> The Board heard 147 matters: 114 appeals, 14 requests for late jurisdiction and 19 rehearing requests. The 82 matters that the Board did not hear were either withdrawn by the appellant (33), dismissed by the Board when the underlying permit was canceled by the permit holder (12), rejected by the Board<sup>15</sup> (7) or were filed late enough in the year that they will be heard in the subsequent year (30).

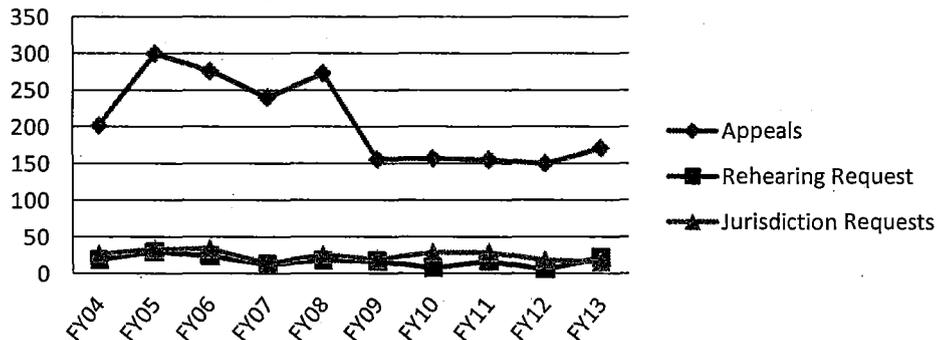
Matters by status (n=229)



## Volume

This year, the Board experienced its first significant increase in appeal volume since the nation's economic decline began in 2008. Over the past ten years, the Board has seen an average of 208 new appeals filed annually. However, since appeal volume tends to fluctuate with the health of the economy, during the previous four years the Board saw an average of only 150 new appeals, representing a 28% decline from the norm. The 171 new appeals filed this year reflect a 14% increase over the experience of the past four years, and places appeal volume at 18% under the ten year norm. The number of rehearing requests and jurisdiction requests has remained relatively constant over time.

Appeal Volume - Ten Year View



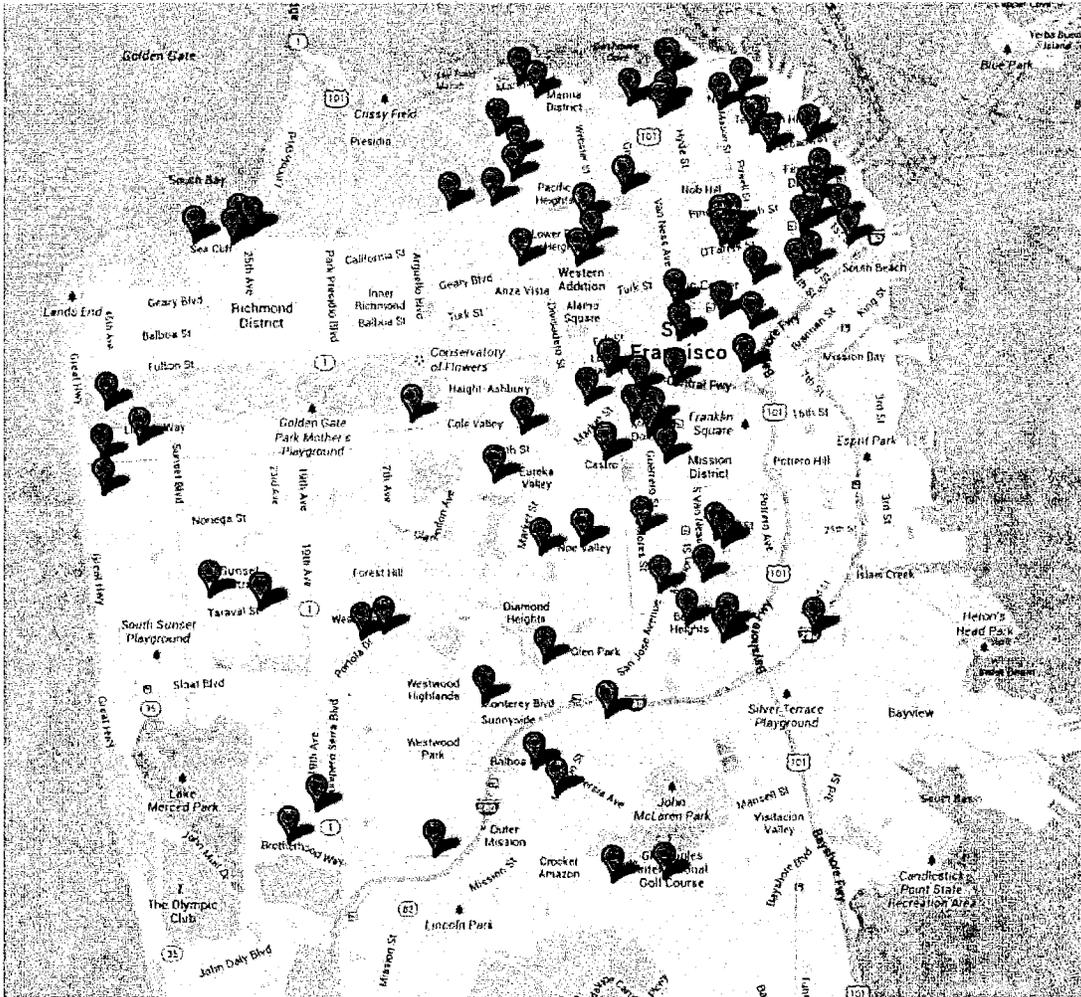
<sup>14</sup> The 20 additional matters were carried over from the prior year.

<sup>15</sup> Cases may be rejected after filing when further research determines that the Board lacks jurisdiction over the subject matter being appealed, for instance, where a Conditional Use Authorization was issued for a project related to a building permit.

## Geographic Distribution

The appeals heard by the Board during the year were associated with properties from a wide range of San Francisco neighborhoods. As depicted on the map below, the highest concentration of cases is seen in the Northeastern sector of the City, which is typical for the Board. Also typical, lower appeal volume is seen in the Western part of the City, as well as in the Northwest sector.

### Geographic Distribution of Appeals Heard



## Subject Matter

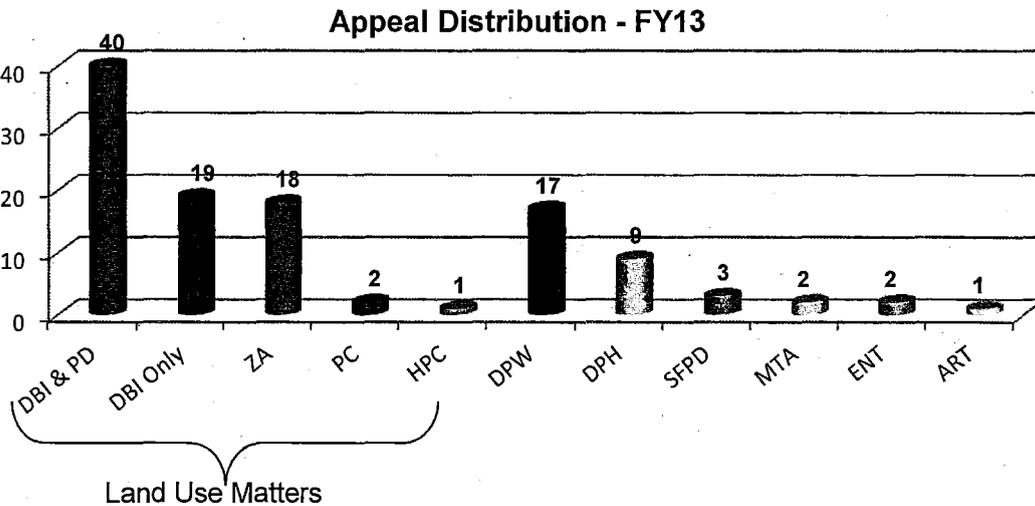
As in the past, the majority of appeals heard during the year were of land-use related determinations, with eighty land-use cases representing 70% of the appeals heard. As illustrated in the chart below,<sup>16</sup> these appeals were of determinations made by the

<sup>16</sup> DBI = Department of Building Inspection; PD = Planning Department; ZA = Zoning Administrator; PC = Planning Commission; HPC = Historic Preservation Commission; DPW = Department of Public Works; DPH = Department of Public Health; SFPD = Police Department; MTA = Municipal Transportation Agency; ENT = Entertainment Commission; ART = Arts Commission.

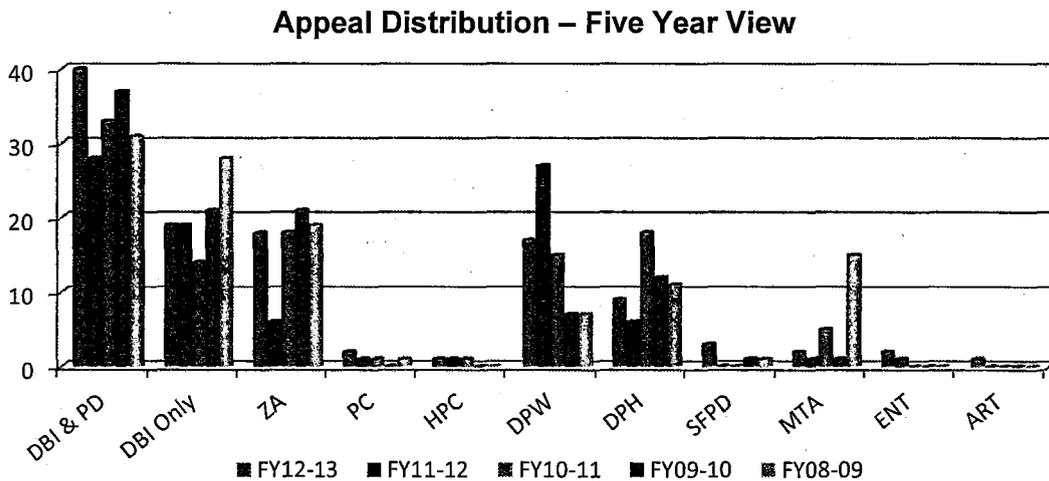
Planning Department, Department of Building Inspection, Zoning Administrator, Planning Commission and Historic Preservation Commission.

The next largest group of appeals was comprised of determinations made by the Department of Public Works (15%), primarily relating to Mobile Food Facility (food truck) and tree removal permits. Appeals of determinations made by the Department of Public Health represent eight percent of the matters heard, largely stemming from the suspension of tobacco sales permits resulting from the sale of tobacco to minors. The remaining seven percent was comprised of a few appeals each of determinations made by the Police Department, Municipal Transportation Agency, Entertainment Commission and Arts Commission.

A detailed description of the appeals heard can be found in Appendix A.



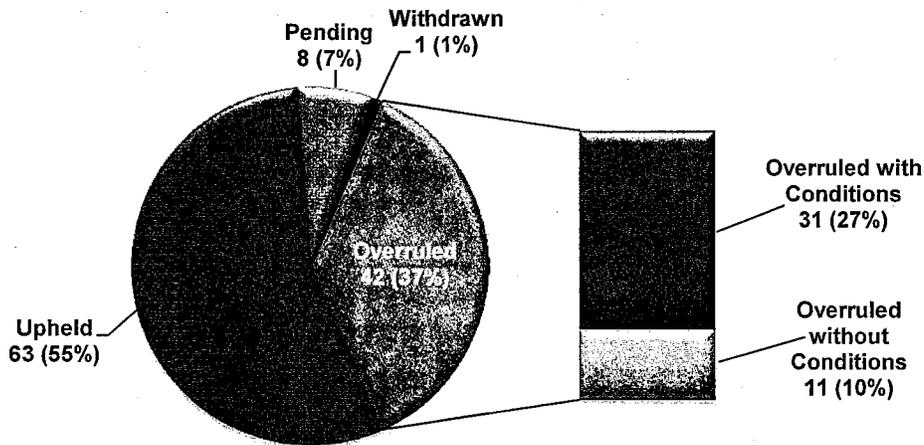
A review of appeal history over the past five years demonstrates both how appeal volume stemming from each source varies from year-to-year and also how land-use related matters consistently dominate the Board's calendar. As laws change and various business or development activities ebb and flow, appeal volume from a given source will fluctuate. For example, the chart below depicts a spike in appeals of DPW decisions issued last fiscal year, resulting from the enactment of the City's new food truck laws.



**Summary of Action Taken**

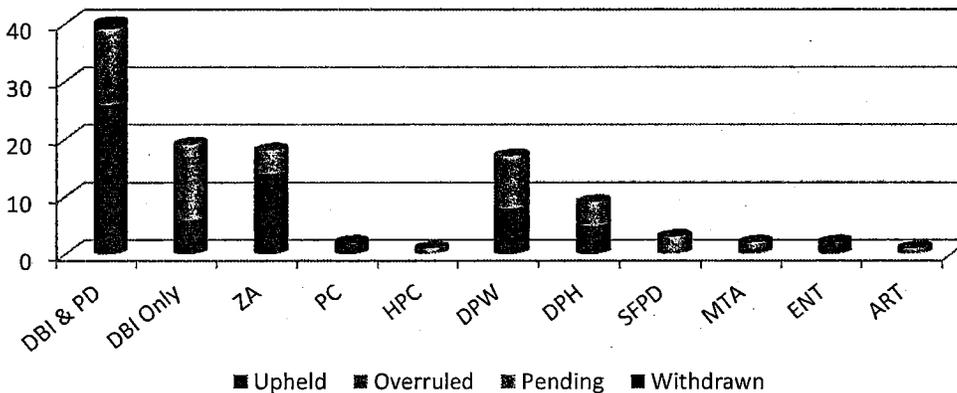
Of the 114 appeals heard during the year, the underlying departmental decision was upheld by the Board in 63 cases<sup>17</sup> and the department was overruled in 42 cases. Conditions were imposed by the Board in 31 of the departmental determinations it overruled. Eight cases were pending<sup>18</sup> and one was withdrawn at the close of the fiscal year.

**Outcome of Appeals Heard**



The chart below depicts how appeals were decided by the Board relative to each department from which determinations originated.

**Outcome - by Department**



<sup>17</sup> In eight of these cases, the matter was upheld by default. This occurs when there are fewer than four Board members who wish to overrule a departmental determination and fewer than three Board members who wish to uphold it. With four votes needed to pass a motion to overrule the department and three votes needed to pass a motion to uphold, no motion can pass. In such circumstances, by law, the underlying determination is upheld.

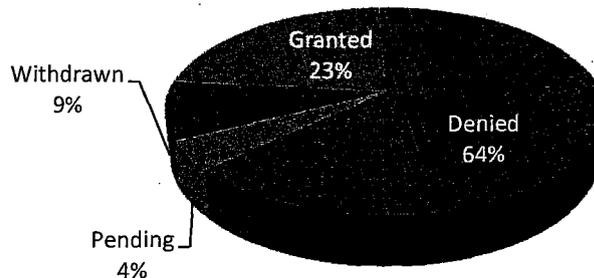
<sup>18</sup> Three of the pending cases were sent to the Board's Call of the Chair calendar. This calendar houses cases that the Board places on hold because some factor suggests that the matter is best decided at a later, unknown time. Typical reasons include allowing related litigation to resolve, providing time for the parties to seek necessary approvals or review from other City departments, and when the parties ask for an extended stay of the proceedings in order to attempt a negotiated resolution of the underlying dispute.

## Other Matters Heard

In addition to appeals, the Board routinely considers rehearing requests and jurisdiction requests.

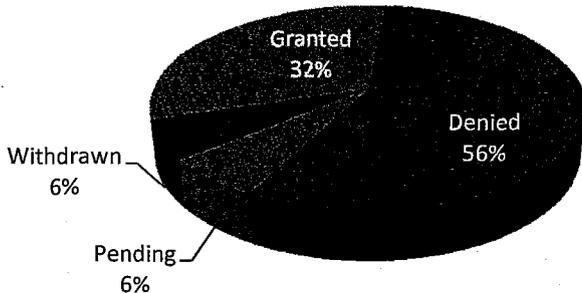
### Rehearing Requests

Once an appeal is heard and decided by the Board, the parties associated with the case have ten days within which they may request that the Board reconsider its decision.<sup>19</sup> Pursuant to the Board's Rules, upon the vote of a supermajority of Board members, to prevent manifest injustice, a motion for rehearing may be granted based on a showing that "new or different material facts or circumstances have arisen" since the Board's consideration of the matter that, if known at the time, "could have affected the outcome of the original hearing."<sup>20</sup> The Board received 22 rehearing requests during the year; five (23%) were granted, fourteen (64%) were denied. Of the remaining three, one (4%) was pending at the close of the year and two (9%) were withdrawn.



### Jurisdiction Requests

The Board may allow an appeal to be filed after the relevant appeal period has expired where some error on the part of the City caused the failure to file on time.<sup>21</sup> For example, a late appeal might be allowed where the Planning Code-required neighborhood notification about a project failed to properly describe the scope of work, or where such notice wasn't sent to all the required addresses. When a jurisdiction request is granted, a new five-day appeal period is created within which the requestor (and only the requestor) may file an appeal. Again, a supermajority of votes is needed for such a request to be granted. Sixteen jurisdiction requests were filed with the Board during the year. Five requests (31%) were granted and nine (57%) were denied. One request (6%) was pending at the close of the year and the one (6%) was withdrawn.



<sup>19</sup> See San Francisco Business and Tax Regulations Code, Article 1, Section 16; and Rules of the Board of Appeals, Article V, Section 9.

<sup>20</sup> Rules of the Board of Appeals, Article V, Section 9(b).

<sup>21</sup> See Franklin v. Steele, 131 Cal. App. 3d 558 (1982); Rules of the Board of Appeals, Article V, Section 10.

## LITIGATION

Parties dissatisfied with a Board determination may seek further review and relief in Superior Court. During the year, six new lawsuits were filed in which the Board of Appeals was named as a party. During this time, two lawsuits were resolved – with no liability to the City – and eight of the previously filed matters remain pending.

A description of each case and its status is provided in Appendix B.

## BUDGET

The Board's budget experience in Fiscal Year 2012-13 clearly evidenced the City's economic improvement. For the first time since the economic decline began in 2008, the Board ended the year with revenue that exceeded projections. The Board was able to close the year with a surplus of \$188,428; this was comprised of \$103,547 in surplus revenue and \$84,881 in reduced expenditures, as described below.

### Revenue

The Board's revenue budget is derived from two sources. The majority (95%) comes from surcharges placed on permit applications for those types of permits that have a recent history of being appealed to the Board.<sup>22</sup> The remainder (5%) comes from fees paid by individuals, community groups and businesses at the time a new appeal is filed. Each year, in preparing the coming year's budget, the Board and Controller's Office work together to determine whether any adjustments to the surcharge rates are needed in order to provide sufficient income to cover the Board's actual operating expenses. Any adjustment beyond inflation requires legislative action,<sup>23</sup> as does any change to filing fees.<sup>24</sup>

Going into Fiscal Year 2012-13, no adjustments were made to surcharge rates or filing fees based on the assumption that the City's continuing economic recovery would increase permit volume and correspondingly generate sufficient revenue for the Board. This assumption proved correct; the Board ended the year with a surplus in both funding sources, as shown in the table below.

**Projected v. Actual Revenue – FY12-13**

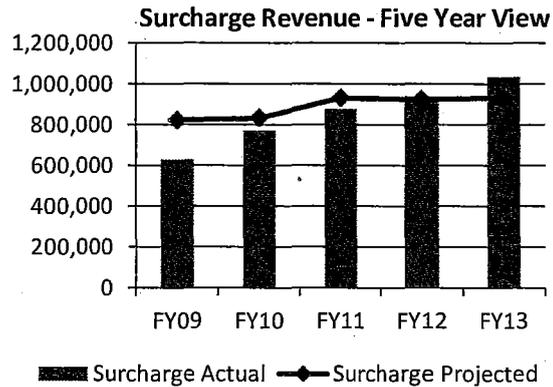
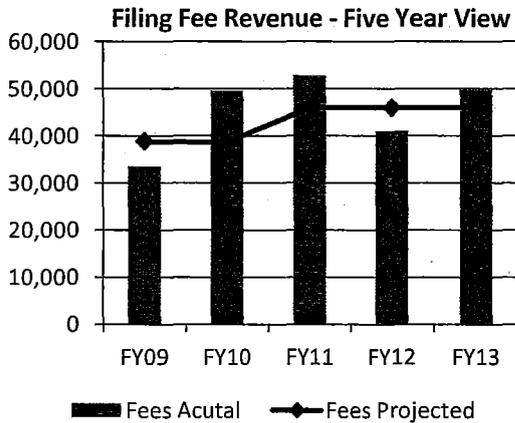
	Projected	Actual	Surplus (\$)	Surplus (%)
<b>Surcharge Revenue</b>	\$886,406	\$986,174	\$99,768	11.3%
<b>Filing Fee Revenue</b>	\$46,037	\$49,816	\$3,779	8.2%
<b>Total Revenue</b>	\$932,443	\$1,035,990	\$103,547	11.1%

<sup>22</sup> Surcharges are calculated by (1) determining the number of appeals filed in the prior fiscal year that originated with actions taken by each funding department, (2) applying the percentage of appeals for each department to the Board's expenditure budget to determine the dollar amount each funding department should contribute, and (3) dividing this dollar amount by the anticipated number of appealable permits issued by each funding department.

<sup>23</sup> San Francisco Administrative Code Chapter 10G.

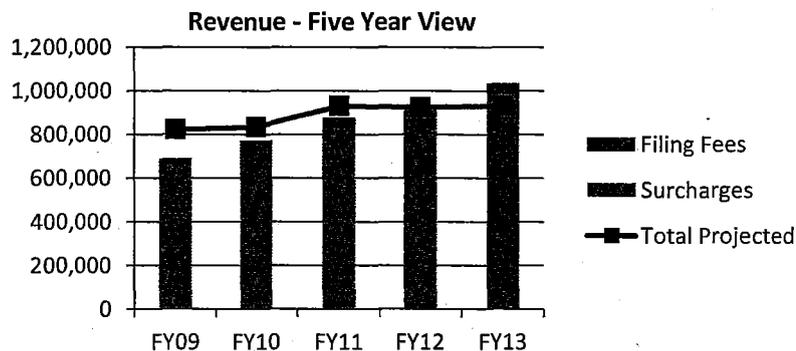
<sup>24</sup> Board fees are found in San Francisco Business and Tax Regulations Code Article 1, Section 8.

As depicted below, the Board's actual surcharge revenue – as compared to projected – has gradually improved since 2008 when the economic decline first caused this revenue streams to drop. In comparison, the Board's ability to capture filing fee revenue has fluctuated from year to year. Since appeal volume remained relatively constant, this fluctuation stems from variations in the types of appeals filed



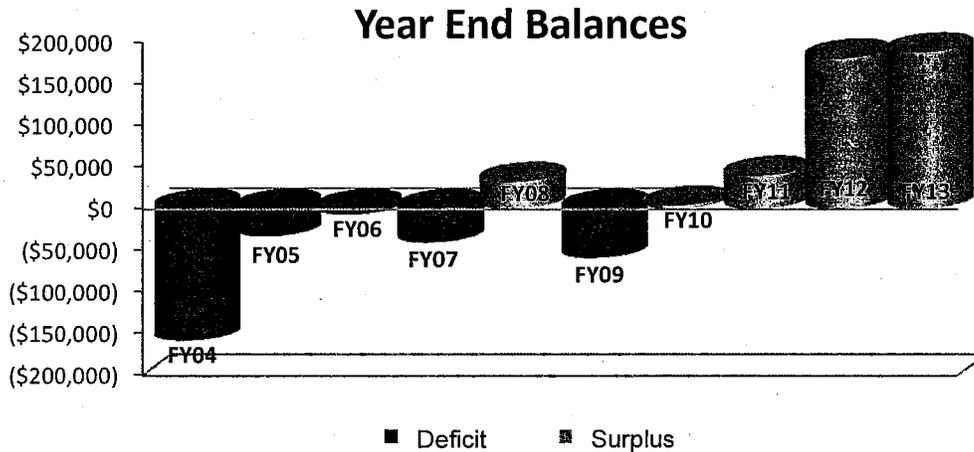
each year and the corresponding variation in filing fees. Given the small percentage of the budget comprised by fees, however, this fluctuation hasn't had a significant impact on the Board's total revenue budget.

As the Board's ability to generate surcharge revenue strengthened, the annual total revenue budget deficit continued to shrink. Fiscal Year 2008-09 saw the largest deficit of sixteen percent, down to seven percent in 2009-10, six percent in 2010-11 and just under one percent (.6%) last fiscal year. The chart below shows the Board's projected revenue budgets for the past five years, against actual revenue for those years from the two funding sources.



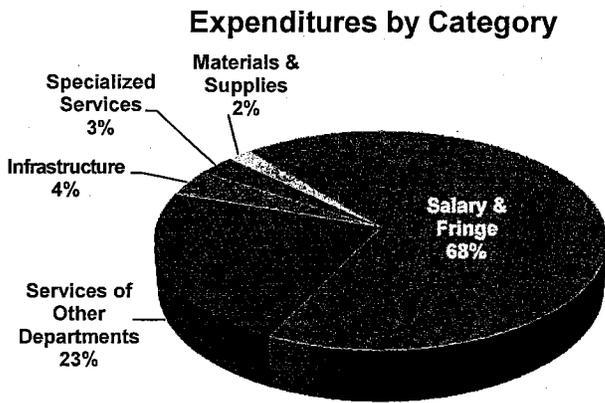
Despite sound projections and mindful spending, changing economic and other factors cause the Board's budget to fluctuate from year to year, in some years leaving the Board with a deficit and in others with a surplus (see chart below). To accommodate this variability, Board staff worked this year with the Controller and the Mayor's Office to establish a 'rainy day' fund. This fund captures any dollars remaining at the close of each year and allows the Board to apply those dollars in future years where the cost of service exceeds revenue. Previously, any surplus would be deposited into the General Fund as a form of reimbursement for those years in which a General Fund allocation

was needed to supplement a revenue deficit. With this fund, it is hoped that the Board will be self-sufficient and will no longer need to rely on General Fund dollars for additional support in the event lean revenue years return.



## Expenditures

With the economy still in flux, and in light of the revenue shortfalls experienced in recent years, the Board continued to limit its expenditures whenever possible in order to hedge against a possible deficit. Since appeal volume, though on the rise, was still lower than average, the Board was able to reduce spending on non-personnel expenses associated with the processing and hearing of appeals. This included lower costs to provide



neighborhood notification of appeals as well as the cost of televising Board meetings. In addition, a staff position was left vacant for part of the year. Overall, expenses were reduced by 9% (\$84,881) from the projected expenditure budget of \$945,403.<sup>25</sup> Combined with the revenue surplus described above, these savings allowed the Board to end the year with a total surplus of \$188,428.

As the chart (above) reflects, just over three-quarters (68% or \$588,555) of the Board's actual expenditures (\$860,522) paid for the salaries and fringe benefit expenses of Board employees. Twenty-three percent (\$196,732) paid for services provided by other

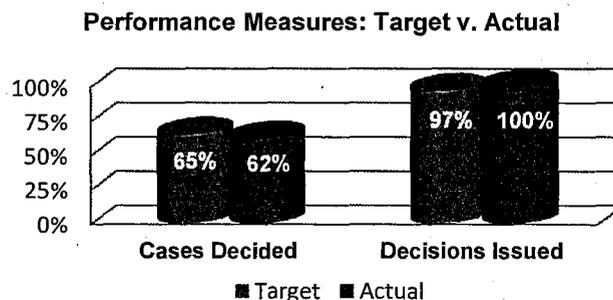
<sup>25</sup> The Board's projected revenue and projected expenditure budgets are not always balanced, and weren't going into this fiscal year. Due to an array of factors (e.g., modifications to labor agreements, insurance rate negotiations, etc.) changes are sometimes made to expense line items close to the end of the budget process, after the surcharge rates and revenue budget have been set. The Controller's Office assumes that any increase in expenses not covered by actual revenue will be paid for by a General Fund allocation, or going forward, by an allocation from the Board's 'rainy day' fund. Fortunately, such an allocation has not been necessary in recent years.

City departments, including advice and assistance provided by the City Attorney, the broadcasting and closed captioning of Board meetings by the Department of Technology's SFGovTV services, and support provided by the Department of Technology for the Board's computer systems and website. Infrastructure costs such as rent, phones and the rental of a photocopier, represented 4% (\$34,152) of the Board's expenses for the year. Three percent (\$24,801) paid for specialized services such as those of a contractor who researches and prepares the neighborhood notification address labels and maps, and interpreters who attend Board meetings to assist limited-English speaking individuals. Materials and supplies represented 2% (\$16,282) of the Board's expenditures, paying for commodities such as postage, paper and other office supplies.

## PERFORMANCE MEASURES

All City departments are required to report on specific statistical measures as a way of assessing and documenting performance. The two measures unique to the work of the Board of Appeals look at how long it takes the Board to decide cases and how quickly written decisions are released.

The speed at which the Board decides cases is measured by looking at how often cases are decided within 75 days of filing. Before the start of the year, a sixty-five percent target was set for this measure. In fact, the Board decided 62% of its caseload within the stated timeframe. In most instances, when cases are decided beyond the 75 day window, the delay is a result of continuances requested by the parties to allow time for settlement negotiations or further case preparation. In some cases, Board decisions are delayed when additional evidence is needed in order for the Board to make a fully informed decision, for example, when a permit holder fails to provide architectural plans and the Board cannot accurately assess the impact of a project without them.



The Board's second performance measure looks at how often written decisions are released within 15 days of final Board action. A 97% target was set for this measure, which the Board exceeded, releasing all written decisions within the 15 day timeframe.<sup>26</sup>

## BOARD STAFF

The work of the Board is supported by an Executive Director, Legal Assistant, two Legal Process Clerks and a Senior Clerk Typist. Staff is responsible for managing many facets of the appeal process, including the intake of new appeals, providing staff support at Board meetings,

<sup>26</sup> In those rare instances when decisions aren't released promptly, the delay typically is caused when multiple appeals are filed on one action and not all of the related cases move through the process simultaneously (e.g., when one party requests a rehearing but others do not).

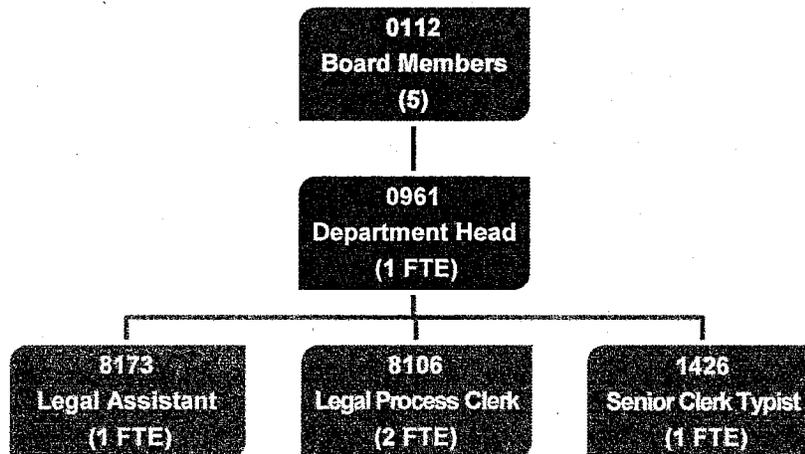
and preparing the Board's Notices of Decision which articulate the final determination made by the Board members at hearing.

Given the complexity of many of the appeals heard by the Board, it is common for voluminous filings to be submitted by the parties, including written argument, architectural plans, statements and studies prepared by experts and comments from members of the public. Staff tracks these documents as they move through the appeal process, ensuring that each Board member is given the materials needed to decide the matters presented at each meeting.

In addition to their usual responsibilities, the clerks at the Board continue to work on a long-term scanning project to capture Board decisions in an electronic format. Working backward from the present to the Board's inception in 1932, Board decisions are being scanned and shared with the Planning Department for inclusion in the City's on-line Property Information Map.<sup>27</sup>

During this year, one vacant Clerk Typist position was converted into a Legal Process Clerk position and filled mid-year. The Board is now fully staffed. Depicted below is the Board's current organization structure.

### Board of Appeals Organizational Chart



<sup>27</sup> This online database may be found on the internet at: <http://ec2-50-17-237-182.compute-1.amazonaws.com/PIM/?address=&x=57&y=17>.

## **APPENDIX A – APPEAL DETAIL**

A description of the cases heard by the Board during the year is set out below.

### **Department of Building Inspection and Planning Department**

Just over one-third (35%) of the 114 appeals heard during the year stemmed from determinations made by the Department of Building Inspection (DBI) that also involved Planning Department review. These 40 appeals focused on both Planning Code and Building Code issues, and include:

- 36 appeals protesting the issuance of a building permit
  - Protest appeals are typically filed by neighbors concerned that proposed construction will negatively impact their property, such as when a new deck may create sightlines into a neighbor's windows, or when building expansion would limit access to light and air or obstruct the mid-block open space.
- 4 appeals of denied building permits
  - Appeals of permit denials are filed by property owners seeking permission to move ahead with a project that has been disapproved by DBI and/or Planning. These disapprovals are often made by DBI at the request of the Planning Department, based on a determination that the proposed project is inconsistent with provisions of the Planning Code or Residential Design Standards.<sup>28</sup>

The Board upheld 65% (26) of these determinations and overruled 28% (11), placing conditions on the underlying permits in eight of the overruled matters. Of the remaining 7% (three cases) two appeals were pending at the close of the year, and one was withdrawn.

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

Nineteen appeals were heard of determinations made solely by the Department of Building Inspection:

- 12 appeals protesting the issuance of a building (7), plumbing (3) or electrical (2) permit
- 7 appeals protesting the imposition of penalties
  - Penalty appeals are filed by property owners who have been assessed fines for performing work without a permit or for exceeding the scope of a permit. In some cases, the Board will reduce a penalty where it finds that the property was purchased after the unpermitted work was performed or based on other extenuating circumstances.

The Board upheld 32% (6) of the DBI determinations and overruled 58% (11), imposing conditions on ten of the overruled matters, including all of the penalty-related matters. The two remaining cases (10%) were pending at the close of the year.

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<sup>28</sup> The Residential Design Standards promote residential building design that protects neighborhood character, preserves historic resources and promotes the goal of environmental sustainability.

### **Zoning Administrator**

The Board heard 18 appeals of Zoning Administrator (ZA) determinations:

- 9 appeals protesting the issuance of Letters of Determination (LOD)
  - LODs are written interpretations of how certain sections of the Planning Code should be applied to specific factual situations at a specific property. For example, an LOD may address whether a cannabis dispensary may operate at a particular address, whether a previously granted entitlement has expired, or what the legal dwelling unit count is for a particular parcel.
- 5 appeals of variance decisions: two protesting the granting of a variance; two appealing the denial of a variance; and one appealing conditions placed on a variance.
- 3 appeals protesting the issuance of Notices of Violation and Penalties, all protesting the Zoning Administrator's assessment that inappropriate business uses were taking place at the subject properties.
- 1 appeal of a Request for Release of Suspension, protesting the lifting of a suspension placed on a building permit where the Zoning Administrator determined the reasons for suspension had been satisfied.

The Board upheld the determination of the Zoning Administrator in 14 cases (78%), and overruled the ZA twice (11%) (imposing conditions in one case). The remaining two cases (11%) were pending at the close of the year.

### **Department of Public Works**

Seventeen appeals were heard relating to determinations made by the Department of Public Works (DPW):

- 8 were of mobile food facility permits, five of which protested the issuance of such permits, two appealed permit denials and one appealed permit revocation.
- 5 were of tree removal permits.
- 1 was of a wireless site permit.
- 1 was of a utility excavation permit.
- 1 was of a minor sidewalk encroachment permit.

The Board upheld eight and overruled eight DPW determinations, or 47% each. Conditions were imposed in all but one of the overruled cases. The one remaining case was pending at the close of the fiscal year.

### **Department of Public Health**

Nine appeals were filed on determinations made by the Department of Public Health (DPH):

- 6 appeals were related to penalties imposed on tobacco retailers
  - 4 of these were appealing a permit suspension resulting from the sale of tobacco to a minor that occurred as part of a joint DPH and San Francisco Police Department operation that uses underage decoys attempting to buy cigarettes. The Board upheld the suspensions in these cases.

- 2 related to business owners who allowed smoking in an enclosed area. The Board upheld the suspension in one appeal and the permit holder withdrew its appeal of a revocation in the other.
- 1 appealed the suspension of a massage establishment permit.
- 1 appealed the denial of a noise limit variance.
- 1 appealed the revocation of a permit to operate a restaurant.

The Board upheld the DPH determination in five cases (56%), overruled the department in four cases (44%) and placed conditions on three of the overruled matters.

### **Police Department**

The Board heard three appeals of Police determinations, overturning the denial of a tow car operator permit and of a fortuneteller permit, and also overturning the issuance of a second hand dealer permit. No conditions were imposed in any of these matters.

### **Entertainment Commission**

The Board heard two appeals related to Place of Entertainment permits issued by the Entertainment Commission, upholding the Commission's determination in both cases. One case was a protest appeal objecting to a new, temporary entertainment venue at Piers 27-29 in conjunction with the running of the America's Cup yacht races. The other was filed by a club operator protesting conditions placed on his permit limiting hours of operations and imposing other mitigation measures after objections were lodged by neighbors regarding noise levels.

### **Planning Commission**

There were two appeals filed protesting the Planning Commission's issuance of a coastal zone permit needed for the City to move forward with its plan to apply a synthetic surface and make other changes to soccer fields at the western edge of Golden Gate Park. The Board upheld the Commission's issuance of this permit.

### **Municipal Transportation Agency – Division of Taxis and Accessible Services**

The Board heard two taxi-related appeals, the revocation of a taxi medallion and suspension of a ramp taxi medallion. In both cases, the departmental determination was overruled; the Board overturned the revocation and reduced the length of the suspension.

### **Historic Preservation Commission**

The Board decided one Historic Preservation Commission decision, a protest appeal filed by the American Legion War Memorial Commission objecting to the granting of a Certificate of Appropriateness for exterior alterations of the City's War Memorial Veterans Building. The Board technically overruled the HPC by imposing additional conditions on the Certificate, but agreed with the HPC's granting of the determination.

### **Arts Commission**

The Board heard one appeal of an Arts Commission determination, overruling the Commission's denial of a Street Artist Certificate. At the close of the fiscal year this matter was pending due to the filing of a rehearing request by the Commission. That request was subsequently withdrawn and the Board's determination stands.

## **APPENDIX B – LITIGATION DETAIL**

Set out below is a description of the lawsuits in which the Board is named as a party, that were filed, pending or resolved during the year.

### **Clear Channel Outdoor, Inc. v. Board of Appeals of the City & County of San Francisco**

- **PENDING.** A challenge was filed to the issuance of a permit to reconstruct a sign located at 2283-2297 Market Street. Clear Channel filed a permit application to remove a billboard. The permit was issued, and the property owner appealed. On October 28, 2008, the Board granted the appeal, revoked Clear Channel's permit and authorized a revision of the building permit to allow the property owner to reinstall a billboard. The City won this case on demurrer at the trial court. On February 25, 2011, the Court of Appeal reversed the trial court, in part, concluding that Clear Channel had standing to challenge the Board's decision to overturn its permit, but not its decision to grant the property owners the right to reinstall and maintain a sign on their property. Clear Channel has not yet indicated whether it intends to pursue this ruling further.

### **Crown Castle NG West Inc. v. City & County of San Francisco**

- **NEW.** A challenge was filed to the Board's decision on August 23, 2012 to overturn the Department of Public Works and deny a wireless site permit on 27th Avenue. The subject permit was applied for after the Board revoked a similar permit for this location in April 2011. That permit is the subject of related litigation (see NextG Networks of California v. CCSF, below). A hearing on the merits is scheduled for early October 2013.

### **Fisherman's Wharf Community Benefit District v. City & County of San Francisco, et al.**

- **PENDING.** A challenge was filed to the Board's decision on April 12, 2012 to overturn the Department of Public Works and issue a mobile food facility permit for the operation of food cart serving coffee and tea at 2801 Leavenworth Street. Briefing and a hearing on the merits have not yet been scheduled.

### **Robert Michael Friedman v. San Francisco Taxi Commission, et al.**

- **PENDING.** This lawsuit challenges the Board's decision on July 23, 2008 to uphold the Taxi Commission's revocation of a taxi driver permit and taxi medallion. A hearing in Superior Court has not yet been scheduled.

### **Friends of the Landmark Filbert Street Cottages, et. al., v. City & County of San Francisco, et al.**

- **PENDING.** This case challenges, among other matters, the Board's denial on March 16, 2011 of late jurisdiction on three permits for a project that was given Conditional Use Authorization by the Planning Commission. The City prevailed at the trial court level. Petitioners appealed. The matter has been briefed in the Court of Appeal and Petitioners have requested oral argument. No date for oral argument has been set. Petitioners have also filed a writ petition in the Court of Appeal for a stay of the construction of the project, and briefs have been filed on that petition. The Court has issued a temporary stay, pending its decision on the writ petition.

**Tu Lam v. San Francisco Municipal Transportation Agency, et al.**

- **PENDING.** A challenge was filed to the Board's decision on May 29, 2009 to revoke Mr. Lam's taxi driving permit and taxi medallion. On December 7, 2009, the Court denied the petitioner's request for a stay of the revocation of his driving permit and medallion while his legal claims are pending. A hearing on the merits of the underlying writ petition has not yet been scheduled.

**David Scott Nale v. City & County of San Francisco, et al.**

- **NEW.** A challenge was filed to the Board's denial on March 13, 2012 of an appeal of a Zoning Administrator Letter of Determination that refused to grant additional extensions of a variance decision associated with the proposed construction of a garage on Fillmore Street. This litigation has been put on hold pending Mr. Nale's attempt to get a new permit for the garage.

**NextG Networks of California, Inc. v. City & County of San Francisco, et al.**

- **PENDING.** This case challenges the Board's decision on April 20, 2011 to revoke a wireless site permit issued by the Department of Public Works to a telecommunications services provider. After the Superior Court refused to grant NextG's application for a temporary restraining order, NextG appealed. Court of Appeal granted NextG's request for a stay, which prevented DPW from requiring NextG to remove the facility. A hearing on the merits is expected by the end of the calendar year.

**Nob Hill Association, et. al., v. City & County of San Francisco, et al.**

- **UPHELD.** This lawsuit challenges the Board's decision on January 13, 2010 that effectively affirmed a Letter of Determination issued by the Zoning Administrator stating that the existing entertainment-related use of the California Masonic Memorial Temple is a lawful non-conforming use and that the operators of the Temple may apply for a conditional use authorization which could intensify the entertainment-related use of the property. The Superior Court issued a decision overturning the Board's decision that the proposed renovation of the Masonic Memorial Temple could be approved through conditional use authorization and the City and Masonic Temple appealed. Before the Court of Appeal issued its opinion, the Masonic Temple and Nob Hill Association reached a settlement. Despite a request from the parties that the appeal be withdrawn, the Court of Appeal ruled on the merits in the City's favor and issued an unpublished opinion that found the Superior Court had erred in setting aside the Letter of Determination.

**Mica I. Ringel v. City & County of San Francisco, et al.**

- **NEW.** This lawsuit challenges, among other things, the Board's August 14, 2013 decision to deny a request to file a late appeal of a Zoning Administrator Letter of Legitimization. The Letter legitimizes an existing "Internet Services Exchange" use in a building located on Potrero Avenue. The matter has yet to be briefed or heard.

**San Francisco Architectural Heritage v. City & County of San Francisco, et al.**

- **DISMISSED.** A challenge was filed to the Board's decision on April 15, 2010 to uphold the issuance of permits that allow the demolition of the building located at 1450 Franklin Street and the construction of a new 13-story mixed-use project at that site. This project was part of a Redevelopment Agency Plan that expired shortly before the Board heard this appeal. In June 2013, the developer and petitioner settled the case for undisclosed terms and the petitioner dismissed its claim.

**San Francisco Coalition for Children's Outdoor Play, Education and the Environment v. City and County of San Francisco, et al.**

- **PENDING.** This lawsuit challenges the environmental determination associated with the coastal zone permit upheld by the Board on September 13, 2012. The permit was issued in conjunction with the proposed renovation of the athletic fields at the western end of Golden Gate Park. A hearing on the merits was held in Superior Court in August 2013 and a decision is expected before the end of the calendar year.

**765 Market Street Residential Owners Association, et al., v. City & County of San Francisco, et al.**

- **NEW.** This case challenges the City's decision to approve the development of a high rise residential building in the Yerba Buena neighborhood of San Francisco known as the 706 Mission Street – Mexican Museum Project. This includes the Board of Appeals decisions on July 31, 2013 to reject a request that it hear an appeal of a Planning Commission Motion made under Planning Code Section 295 (dealing with shadows on public land) and the Board's upholding of a Planning Commission determination granting exceptions under Planning Code Section 309. The case was filed in Sacramento and the City has joined a motion to bring the suit to San Francisco, which will be argued in October 2013. Briefing and a hearing on the merits have not yet been scheduled.

**United Taxicab Workers, et al. v. San Francisco Municipal Transportation Authority, et al.**

- **NEW.** A lawsuit was filed challenging both the SFMTA's adoption of a Resolution authorizing the lease of 150-200 taxi medallions to taxi companies and the Board of Appeals decision on November 17, 2012 to deny the United Taxicab Workers' request that the Board accept jurisdiction over its appeal of this SFMTA Resolution. Briefing and a hearing on the merits have not yet been scheduled.

**Winfield Design International, Inc. v. San Francisco Planning Department, et al.**

- **PENDING.** A lawsuit was filed challenging the Board's November 29, 2011 decision to uphold a Zoning Administrator Notice of Violation and Penalty that found a residential development project at 3000 23rd Street (aka 2690 Harrison Street) in violation of the Planning Code due to its non-compliance with Conditional Use requirements that the project provide seven Below Market Rate housing units. The City won on a demurrer in Superior Court and the plaintiffs have appealed. The matter has been fully briefed and the parties are awaiting a hearing date. *Note: the Board of Appeals is not a named defendant in this action.*

**Yerba Buena Consortium LLP v. City & County of San Francisco**

- **NEW.** A second lawsuit was filed challenging the City's approval of the 706 Mission Street – Mexican Museum Project, alleging violations of the California Environmental Quality Act (CEQA). Petitioners in this challenge allege that the pedestrian traffic study in the Project's Environmental Impact Report is flawed. Briefing and a hearing on the merits have not yet been scheduled.

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**To:** BOS-Supervisors  
**Subject:** Civil Service Commission's Annual Report for Fiscal Year 2012-2013  
**Attachments:** 10-17-13 CSC 12-13 Annual Report Transmittal Ltr to BoS.pdf; Final - 2012-2013 CSC Annual Report 10-11-13.pdf

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**From:** Calvillo, Angela  
**Sent:** Friday, October 25, 2013 3:59 PM  
**To:** Nevin, Peggy  
**Subject:** FW: Civil Service Commission's Annual Report for Fiscal Year 2012-2013

Dear Angela:

Attached is the Civil Service Commission's Annual Report for Fiscal Year 2012-2013.

Take care,

Jennifer Johnston  
Executive Officer  
Civil Service Commission  
Phone: (415) 252-3247  
Fax: (415) 252-3260  
25 Van Ness Avenue, Suite 720  
San Francisco, CA 94102  
[www.sfgov.org/Civil\\_Service](http://www.sfgov.org/Civil_Service)





# CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE  
MAYOR

October 17, 2013

SCOTT R. HELDFOND  
PRESIDENT

E. DENNIS NORMANDY  
VICE PRESIDENT

DOUGLAS S. CHAN  
COMMISSIONER

KATE FAVETTI  
COMMISSIONER

GINA M. ROCCANOVA  
COMMISSIONER

JENNIFER C. JOHNSTON  
EXECUTIVE OFFICER

Ms. Angela Calvillo  
Clerk of the Board  
San Francisco Board of Supervisors  
City Hall – Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
[Angela.Calvillo@sfgov.org](mailto:Angela.Calvillo@sfgov.org)

Dear Ms. Cavillo:

As required under Charter Section 4.103, attached is an electronic copy of the Civil Service Commission's Fiscal Year 2012-2013 Annual Report. The Annual Report is also posted on the Commission's website at [www.sfgov.org/civil\\_service](http://www.sfgov.org/civil_service).

Please phone me at (415) 252-3250 or email me at [Jennifer.Johnston@sfgov.org](mailto:Jennifer.Johnston@sfgov.org) should you have any questions.

Sincerely,

CIVIL SERVICE COMMISSION

A handwritten signature in cursive script that reads "Jennifer Johnston".

JENNIFER JOHNSTON  
Executive Officer

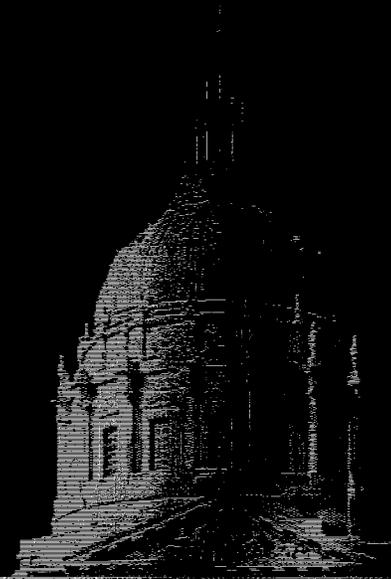
Attachment

Document is available  
at the Clerk's Office  
Room 244, City Hall



THE CITY AND COUNTY OF SAN FRANCISCO

# Civil Service Commission



Annual Report  
Fiscal Year 2012–2013

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**From:** Chapin-Rienzo, Shanda [shanda.chapin-rienzo@sfgov.org] on behalf of Reports, Controller [controller.reports@sfgov.org]  
**Sent:** Tuesday, October 22, 2013 12:30 PM  
**To:** Stevenson, Peg; Kronenberg, Chava; Phillips, Claire; Reynolds, Seleta; Hunter, Mari; Charles.Ream@sfmta.com; Rachel.Alonso@sfdpw.org; Validzic, Ana; Wier, Megan; Olea, Ricardo; Olea, Cristina; anna.laforte@sfcta.org; Maimoni, Andy; Gibson, Mathias; ed.reiskin@sfmta.com; Nuru, Mohammed; Garcia, Barbara; tilly.chang@sfcta.org; Yee, Bond; Papandreou, Timothy; Smith, Bridget; Martinsen, Janet; Alfaro, Nancy; Yee, Norman (BOS); Mormino, Matthias; Scanlon, Olivia; BOS-Supervisors; BOS-Legislative Aides; Kawa, Steve; sfdocs@sfpl.info; Rosenfield, Ben; Zmuda, Monique  
**Subject:** Report Issued: District 7 Pedestrian Safety Improvement Project Report

The Controller's Office today issued the District 7 Pedestrian Safety Improvement Project Report.

Pedestrians represent some of the most vulnerable street users in San Francisco. Supervisorial District 7, with streets such as 19th Avenue, Ocean Avenue and Sloat Boulevard accounts for approximately 5% of the city's pedestrian injuries and fatalities annually, and approximately 7% of the City's severe and fatal injuries annually. In San Francisco, half of traffic collision fatalities are pedestrians.

At the request of District 7 Supervisor Norman Yee, and to support on-going efforts for pedestrian improvements in San Francisco District 7, this report documents planned pedestrian safety projects and geographic information on pedestrian injuries in District 7. This memo is intended to improve City transparency efforts related to pedestrian safety and to guide pedestrian safety improvements in District 7.

To view the full report, please visit our website at: <http://openbook.sfgov.org/webreports/details3.aspx?id=1620>

For more information please contact:

Office of the Controller

City Services Auditor Division

Chava Kronenberg, Senior Performance Analyst

Phone: 415-554-7527

Email: [chava.kronenberg@sfgov.org](mailto:chava.kronenberg@sfgov.org)

Follow us on Twitter [@sfcontroller](https://twitter.com/sfcontroller)

Member, Board of Supervisors  
District 7



City and County of San Francisco

## **NORMAN YEE**

One of the most critical issues facing District 7 residents today is pedestrian safety. It is a top concern of my constituents, based on the high volume of e-mails and calls to my office. Long term data may indicate that pedestrians in District 7 are safer than many areas of San Francisco. However, of the first eight pedestrian fatalities in San Francisco before mid-March, 2013, four occurred in District 7. Additionally, in San Francisco, over 800 pedestrians are hit by cars every year and each year approximately 100 of them are severely injured or killed. California ranks second worst in the country for Pedestrian Collisions.

The need for action is clear. As my office focuses on creating safer streets for our pedestrians, the City of San Francisco is concurrently increasing its awareness of the issue. In April 2013, Mayor Edwin Lee published the "San Francisco Pedestrian Strategy." The solutions outlined in this document are intended to reach a citywide target of a 25% reduction in serious and fatal pedestrian injuries by 2016, and a 50% reduction by 2021.

In my first act as Supervisor, I called for a hearing on pedestrian safety issues in District 7. The hearing, held in April 2013, brought key City departments together to report on their current efforts to improve pedestrian safety. These departments included the Department of Public Works, San Francisco Municipal Transportation Agency, the Transportation Authority, Department of Public Health, District Attorney's Office and the San Francisco Police Department. We also heard testimony from more than 30 members of the public, most of them District 7 residents. These public statements both emphasized dangerous intersections that the City is already working to address as well as shed light on additional areas the departments had not yet identified.

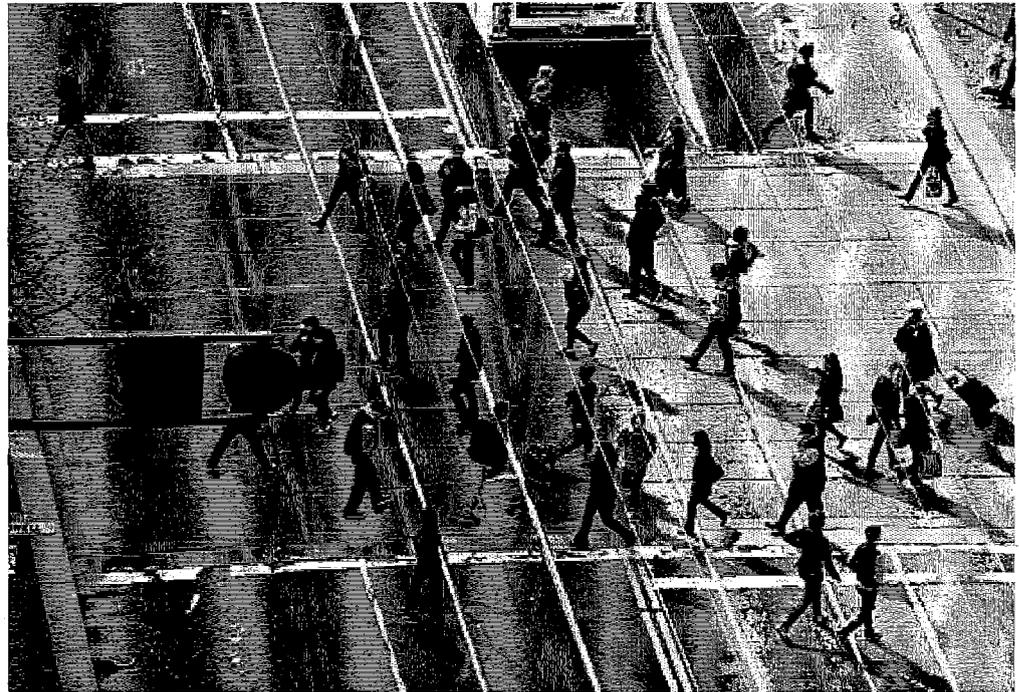
The hearing was the first time that multiple City departments were invited to coordinate and collaborate with members of the public around District 7 pedestrian safety. Based on the success of the hearing, we decided to create a living document that would help guide the City to make improvements for pedestrian safety for District 7 in a transparent way.



Document is available  
at the Clerk's Office  
Room 244, City Hall

# District 7 Pedestrian Safety Improvement Project

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10/22/2013

## Controller's Office Report

Chava Kronenberg, Performance Analyst  
Claire Phillips, Performance Analyst

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**From:** Chapin-Rienzo, Shanda on behalf of Reports, Controller  
**Sent:** Wednesday, October 23, 2013 1:28 PM  
**To:** Calvillo, Angela; Nevin, Peggy; BOS-Legislative Aides; BOS-Supervisors; Kawa, Steve; Howard, Kate; Falvey, Christine; Campbell, Severin; Newman, Debra; Rose, Harvey; sfdocs@sfpl.info; Gabriel Metcalf; Bob Linscheid; jballesteros@sanfrancisco.travel; CON-EVERYONE; CON-CCSF Dept Heads; CON-Finance Officers  
**Subject:** Report Issued: San Francisco Park Maintenance Standards Annual Report for fiscal year (FY) 2012-13

The Controller's Office has issued the San Francisco Park Maintenance Standards Annual Report for fiscal year (FY) 2012-13. On average, scores increased from 90.0 percent to 91.1 percent since last year. The majority of parks (87 percent) continue to score above 85 percent and more than half (94 parks) had higher scores in FY 2012-13 than in FY 2011-12.

Supervisory district averages rose, with only three of the 11 districts receiving lower scores than last year. Additionally, the difference in average score between the highest and lowest rated districts decreased — 5.8 percentage points separated the highest and lowest district compared to 8.4 percentage points last year. This narrowing indicates more consistent and evenly distributed scores and maintenance outcomes across the City.

The Controller's Office would like to thank the staff of the Recreation and Parks Department for their cooperation on the Park Maintenance Standards Program.

To view the full report, please visit our website at: <http://openbook.sfgov.org/webreports/details3.aspx?id=1621>

You can also access the report on the Controller's website (<http://www.sfcontroller.org/>) under the News & Events section.

This is a send only email. For more information, please contact:

Office of the Controller  
City Services Auditor Division  
Phone: 415-554-7463  
Email: [CSA.ProjectManager@sfgov.org](mailto:CSA.ProjectManager@sfgov.org)

Follow us on Twitter [@sfcontroller](https://twitter.com/sfcontroller)

Document is available  
at the Clerk's Office  
Room 244, City Hall

**City and County of San Francisco**

**Office of the Controller – City Services Auditor**

# **PARK MAINTENANCE STANDARDS**

## **ANNUAL REPORT FY 2012-13**

**Park scores increase over last fiscal  
year**



October 23, 2013

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**To:** BOS-Supervisors  
**Subject:** Updated Policy and Procedures on Personal Services Contracts  
**Attachments:** CSC PSC Policy and DHR PSC Procedures 10-25-13.pdf

**From:** Johnston, Jennifer [mailto:jennifer.johnston@sfgov.org]

**Sent:** Friday, October 25, 2013 05:44

**To:** DHR-PSCCoordinator, DHR; DHR-Personnel Officers; CON-CCSF Dept Heads

**Cc:** Joe Brenner (jebrenner@ifpte21.org); Bob Britton; Isen, Richard; Samanc, Ileana; Callahan, Micki; Buick, Jeanne; Gran, Martin

**Subject:** Updated Policy and Procedures on Personal Services Contracts

Dear Colleagues:

Attached are memorandums on the Civil Service Commission's updated policy on Personal Services Contracts (PSC) and the Department of Human Resources' guidelines for processing PSCs in accordance that policy, both effective immediately.

Among the many substantive changes in the Commission's policy, you will note the following:

- 1) The list of compelling reasons for contracting out have been revised to reflect departments' current operational needs and contracting realities.
- 2) All requests for PSCs and modifications thereto must now be submitted through the Citywide PSC Database to facilitate and expedite requests for approval, as well as to increase transparency and access to information.
- 3) The threshold for Expedited PSC requests has been increased from \$50,000 to \$100,000.
- 4) PSCs may now be measured in terms of duration instead of specific contract beginning and end dates, in recognition of the fact that there may be unavoidable delays in contract implementation.
- 5) Departments may request retroactive extensions within one year of the conclusion of an approved PSC duration, in recognition of the fact that unforeseen or emergency situations may prevent a department from requesting an extension during the life of an active PSC.
- 6) Posting and union notice requirements have been clarified and reiterated to ensure transparency and access to information.
- 7) Protest and appeal rights have been clarified and reiterated (Expedited and Regular PSCs may be appealed to the Commission) to ensure accountability.
- 8) More guidance has been provided regarding the Commission's requirements and expectations for supporting documentation and information with PSC submissions.

The Commission and DHR would like to thank the many stakeholders who provided input throughout the process to update PSC policy and procedural guidelines. Please let me know if you have any questions regarding the Commission's policy; any questions regarding DHR's procedural guidelines may be directed to the DHR PSC Coordinator.

Sincerely,

Jennifer Johnston  
Executive Officer  
Civil Service Commission  
Phone: (415) 252-3247  
Fax: (415) 252-3260  
25 Van Ness Avenue, Suite 720  
San Francisco, CA 94102  
[www.sfgov.org/Civil\\_Service](http://www.sfgov.org/Civil_Service)



# CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE  
MAYOR

Date: October 25, 2013

To: Department Heads  
Personnel Officers  
Departmental Contract Coordinators

From: Jennifer Johnston  
Executive Officer

Subject: **Policy and Procedures on Personal Services Contracts**

SCOTT R. HELDFOND  
PRESIDENT

E. DENNIS NORMANDY  
VICE PRESIDENT

DOUGLAS S. CHAN  
COMMISSIONER

KATE FAVETTI  
COMMISSIONER

GINA M. ROCCANOVA  
COMMISSIONER

JENNIFER C. JOHNSTON  
EXECUTIVE OFFICER

The purpose of this memorandum is to serve as a comprehensive guide on the Civil Service Commission's ("Commission") Rules and policies on Personal Services Contracts ("PSCs") as updated and adopted by the Commission on May 6, 2013, effective upon the issuance of this memorandum.

This memorandum shall serve to supersede previously issued memorandums on PSCs; including "Commission Policy Memorandum No. 2007-04" issued on May 30, 2007, and the "Amended Joint Department of Human Resources/Civil Service Commission Instructions for Processing Proposed Personal Services Contract Approval Requests" issued on September 16, 1996.

The Commission has delegated to the Department of Human Resources ("DHR") the authority to update and reissue the instructions for PSC submissions, consistent with the Commission's policies. DHR's updated PSC submission guidelines issued on October 25, 2013 are attached to this memorandum for reference, though they may be updated by DHR as needed. The most current submission guidelines may be located on the Commission's website at [www.sfgov.org/Civil\\_Service](http://www.sfgov.org/Civil_Service).

## Authority

Consistent with its Charter authority to oversee the merit system, the Commission sets policy on the review of proposed PSCs. This authority is underscored through case law and City Attorney's Opinions. The policy being that where there is a merit system, services provided to the public use public employees hired through that merit system. Based on criteria specified in its policy and procedure, the Commission *determines if the scope of service is appropriate for contracting out.*

## Longstanding Policy and Procedures

Over the years, the Commission has adopted a number of policies and procedures on PSCs. On December 5, 1994, the Commission issued revised policies and procedures

that clarified the roles of the Commission and DHR, streamlined and expedited the processing of PSCs, and provided for monitoring and auditing of the contracting procedure. The Commission and DHR jointly issued updated PSC policy and procedures on September 16, 1996, and the Commission reiterated its policies in a memorandum on May 30, 2007. Those policies and procedures remained in place unchanged, with periodic reminders and clarifications issued by the Commission, until the issuance of this memorandum.

Although the Commission has updated its policies and procedures on PSCs, it is important to note that they continue to include the following critical components: a streamlined Commission approval process; an appeal procedure to ensure merit system oversight; an approval option consistent with the City and County's budgetary time frames and process; and, a list of compelling circumstances that may be considered in approving the use of personal services contracts.

### **Personal Services Contract Review Criteria**

When reviewing a request for a PSC, the initial questions that are addressed are: 1) Is there an existing civil service class that can perform the required work? 2) Is it feasible or practical for civil service employees to perform the work? 3) If there is no current class, should one be created?

When there is no current class in which the duties and responsibilities encompass the desired need, a determination is made as to the feasibility of establishing a new class. If services are short-term and non-repetitive or so specialized and unique that they could not be appropriately performed by city personnel, establishing a new class may not be practical and the use of a contract may be appropriate.

If there are civil service classes that can perform the work, examples of compelling factors that may be considered as appropriate reasons for contracting out are:

- 1) Immediately needed services to address unanticipated or transitional situations, or services needed to address emergency situations. "Transitional situations" are those instances when contracting out is needed to bridge relatively short periods of time, such as during organizational restructuring that may be mandated by law or policy, or to facilitate a department's efforts to contract in services.
- 2) Short-term or capital projects requiring diverse skills, expertise and/or knowledge.
- 3) Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).
- 4) Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees.
- 5) Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).
- 6) Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

- 7) Cases where future funding is so uncertain that the establishment of new civil service positions, classes or programs is not feasible (including situations where there is grant funding).

Provided that there are compelling circumstances such as those listed above, the Commission may approve the use of a PSC even if there is an existing class.

### **The Role of the Department of Human Resources**

DHR reviews all requests for PSCs and modifications to previously approved PSCs submitted by departments to determine if the request complies with the Commission's policies. DHR then posts and forwards to the Commission requests for PSCs in excess of \$100,000 and those requests for PSC modifications that require Commission approval pursuant to this policy.

Requests for PSCs of \$100,000 or less do not require Commission approval. Instead, these PSCs, referred to as "Expedited PSCs," are reviewed and approved by DHR (PSCs in excess of \$100,000 are referred to as "Regular PSCs").

Misuse of Expedited PSCs is prohibited. For example, the use of PSCs for multiple vendors for the same scope of services in the same department that cumulatively exceed \$100,000 require DHR and Commission approval. Expedited PSCs where funding is added so that the total exceeds \$100,000 and requests to modify an approved Expedited PSC so that the amount exceeds \$100,000, must also be submitted to DHR and then the Commission for approval.

DHR is also responsible for reporting information regarding contract awards to the Commission on an annual basis. At the time that an approved PSC is processed for award, departments are required to submit to DHR information regarding the names, contract amounts and duration for all personal services contracts issued under the approved PSC. DHR, in turn, is required to submit that information for all PSCs awarded during the preceding year to the Commission no later than August 1<sup>st</sup> each year. Such DHR PSC contract award reports shall be made available for public inspection in the office of the Executive Officer, Civil Service Commission.

### **Departmental Personal Services Contract Coordinator**

Each City and County department that regularly utilizes PSCs must designate a departmental PSC coordinator. The PSC coordinator works closely with DHR and Commission staff to expedite the review of proposed contracts by explaining the evaluation criteria to departmental personnel and by ensuring that the proper documentation is sent to the Commission through DHR in a timely manner.

### **Departmental Requests for Personal Services Contracts**

#### **1) Timing of PSC Approval Submissions**

In order to facilitate and streamline the PSC approval process, all departments are required to utilize the Citywide Personal Services Contract Database for all PSC submissions, effective immediately. Departments must submit one request for a specific service regardless of the number of vendors.

Departments may submit proposed PSCs for approval as soon as the need arises and prior to the award of contract. Early submittals will expedite the PSC review and approval processes to ensure that the needed services can be performed as soon as possible.

2) PSC Approval Durations

Note that under the Commission's previous policies and procedures, departments were required to indicate specific effective and expiration dates for PSC approvals. However, there may be unanticipated delays in the contracting process, such that the actual contract award may occur several months to a year after the Commission has approved a request for PSC approval.

Therefore, effective upon the issuance of this memorandum, PSCs may be measured in terms of duration (e.g., one year, 18 months, three years, etc.) in order to provide departments with more flexibility and time to conclude the often time consuming contracting process.

However, the contract(s) under an approved PSC measured in terms of duration must be executed within one year of the Commission meeting date at which the PSC was approved.

3) Retroactive Requests for Extensions

The Commission also recognizes that there may be rare circumstances when a PSC for an active contract must unexpectedly be extended for a period of time without enough notice for the department to request the Commission's approval to modify the duration prior to its expiration. In such event, departments may submit a retroactive request to extend the duration of an approved but expired PSC, provided that it is within one year of the PSC's expiration, and with adequate justification as to why the department was unable to submit a timely request for modification. Requests beyond the one-year expiration date require the submission of a new request for PSC approval (and assignment of a new PSC number), irrespective of whether the contract under the PSC is still active.

4) Deadlines for PSC Submissions

Departments must comply with all applicable DHR and Commission PSC deadlines as stated in DHR's PSC guidelines. All deadlines are necessary to allow sufficient time for DHR staff review, report preparation, and distribution of reports to the Civil Service Commissioners. Cover letters are generally not necessary, except in instances when non-typical circumstances arise and an explanation is needed to expedite the review process.

PSC requests submitted after a deadline will be considered at a subsequent Commission meeting. In emergency situations when it becomes necessary for PSC Coordinators to submit PSC approval requests after a deadline, the PSC Coordinator must obtain the Human Resources Director's approval (for DHR deadlines) and/or the Executive Officer's approval (for Commission deadlines).

5) Content of PSC Submissions

PSC requests must be comprehensive and thorough. When drafting the PSC request, departments should keep in mind the purpose of the Commission's review and focus the information appropriately. Information must be brief, but specific. Background material and information must be included to clearly and sufficiently describe the specific service to be

provided. It is crucial to clearly and adequately explain why City employees cannot perform the services being requested in the PSC.

Requests citing a legal or regulatory authority must cite that authority and include an excerpt of the applicable provision. In the event that a board or commission determines that contracting out is the most effective way to provide the services to be performed under a PSC, the department must include a copy of the resolution or other legislative action of such decision. Additionally, requests to contract out services for which the Commission has previously approved a PSC must include a copy of the prior PSC.

### **Union Notice**

Departments are required to notify affected employee organizations of a department's request for both Regular and Expedited PSCs prior to forwarding the request for DHR review. A copy of the notice from the department to the applicable employee organization must be attached with the department's submission to the Commission. Some Collective Bargaining Agreements have additional requirements that must be considered in this process. Departments must refer to the applicable Collective Bargaining Agreement to determine the additional requirements.

### **Posting**

Once DHR has completed its review of an Expedited or Regular PSC, the department's request must be posted. The posting must include the PSC number assigned by DHR, the estimated amount, the scope of work to be considered, and the estimated duration.

If the department is requesting an annual amount for a multi-year request, the posting must specify either the total of the multi-year request or reflect that the amount is an annual amount. For example, a request indicating \$1,000,000 estimated annual amount for five (5) years will be listed on the Commission Agenda as "\$5,000,000" or "\$1,000,000 annually" with the duration clearly posted as five (5) years.

Affected employee organizations must also be notified of the posting.

In limited circumstances and with sufficient justification, the Commission may grant a department's request to omit the posting process and go directly from DHR review to Commission review.

### **Protests and Appeals (Civil Service Commission Rule Series 05.12)**

**Expedited PSCs:** Protests of a posted proposed Expedited PSC must be received by the Human Resources Director by close of business on the seventh day of posting. In the absence of any timely protest, approval of an Expedited PSC becomes final on close of business of the seventh day of posting. An appeal of the Human Resources Director's action on a timely protest of a proposed Expedited PSC may be appealed to the Commission, provided such appeal is received by the Executive Officer by close of business on the fifth working day (excluding Saturdays, Sundays, and holidays) following the postmarked mailing/email date of notification of the Human Resources Director's action.

**Regular PSCs:** An appeal of a posted proposed Regular Personal Services Contract may be appealed to the Commission, provided such appeal is received by the Executive Officer by close of business of the seventh day of posting.

Timely appeals will be considered by the Commission at its next regularly scheduled meeting. DHR forwards Personal Services Contracts submissions over \$100,000 where no appeal has been filed to the Executive Officer to calendar on the Ratification Agenda.

PSCs that are appealed will be placed on the Commission's Regular Agenda and will be considered by the Commission separately. Departments are required to have representatives present to respond to questions or provide clarification on the need for contractual services. If a department representative is not present, consideration of the PSC will be postponed to another meeting.

### **Ratification Agenda**

The Ratification Agenda is essentially a Consent Agenda used exclusively for expediting the processing of uncontested proposed PSCs and will precede the Consent Agenda on the Commission's calendar. Although they may provide public comment on a proposed PSC, individuals seeking to sever a proposed PSC from the Ratification Agenda must provide adequate justification to the Commission for their request and why they did not protest or appeal the item when they had the opportunity to do so.

### **Civil Service Commission Approval**

The Commission determines whether the circumstance pertaining to the need to provide services warrants the use of a PSC or contractors in lieu of civil service employees. PSCs include agreements for services paid by the City and County of San Francisco with individuals, companies, corporations, non-profit organizations, and other public agencies.

The Commission's role is distinguished from the roles of City departments, other commissions, the City Administrator, the Director of the Department of Administrative Services, and the Human Rights Commission ("HRC"). It is not the Commission's role to be involved in the selection of individual contractors or the cost of such services. Again, the role of the Commission is to determine whether contracting is warranted; the selection of the individual contractor is done by City departments, with oversight and final decision making authority exercised as appropriate by commissions, the City Administrator, the Director of the Department of Administrative Services, and the HRC.

Nor is it the Commission's role to determine positions where work or services can be performed by contract at a lesser cost than similar work performed by City and County employees. By Charter definition (Section 10.10445), this function, often called "Prop. J" contracting, is performed by the Controller and the Board of Supervisors.

The Commission retains final authority to approve PSCs after DHR review and posting. The Commission strongly recommends that a department representative attend the Commission meeting at which the department's request for PSC approval will be heard in order to answer any questions the Commission may have regarding that PSC. Failure to appear and/or sufficiently respond to the

Commission's questions may result in only conditional approval, postponement or denial of the PSC.

The Commission recommends that departments come forward to the Commission as soon as possible in the contracting process, in recognition of the fact that the actual contract award may occur months, and, for multiple year contracts, as much as a year after the Commission's approval.

Generally, unopposed PSCs in an amount greater than \$100,000 are placed on the Commission's Ratification Agenda for either regular, continuing, annual, or qualified approval:

The Commission may grant an annual approval so that a proposed contract may be included in a department's annual budget consistent with the City and County's budgetary timeframes and process. These approvals occur simultaneously with the budget process and must be submitted to DHR by March 1<sup>st</sup>. In the event the Mayor's budget deadlines are changed, the Human Resources Director is authorized to change the submission dates to conform to the revised schedule, provided that the PSC instructions are updated accordingly and the Executive Officer is notified of any changes to the schedule.

Continuing approval is granted by the Commission to comply with policy, funding or legal mandates. For example, those instances where: legal mandates direct the use of contractual services; or State or Federal funding requirements specify use of contractual services; or a City board, commission, the City Administrator, an elected official, or the Controller has determined that contracting is the most effective way to provide health and human welfare services; or the Retirement Board, consistent with its Charter and State constitutional authority, has determined that contracting is the most effective way to deliver investment management and actuarial services. Continuing approval is valid until revoked by the Commission.

For all PSCs for which the Commission approves a request for continuing approval, the requesting department must provide the Commission with annual reports listing the contracts awarded under the continuing approval. An annual report is to include the name of the contractor, type of service, amount, and duration of the contract. Annual reports are to be submitted to the Commission through DHR no later than August 1<sup>st</sup> of each year for the prior fiscal year. The Executive Officer will make all annual reports submitted under this section available for public inspection consistent with local and State law.

Regular approvals may be granted for those circumstances where annual or continuing approvals do not apply.

The Commission may also grant an interim, conditional approval known as "qualified approval" pending consideration of alternatives, requirements to report back to the Civil Service Commission or submission of additional information. Typically included with a qualified approval will be a request to the department to examine the feasibility of either budgeting positions in appropriate classification or obtaining a Proposition J contract certification.

A notice of the Commission's action will be sent to the departmental PSC Coordinator, the Controller's Office and the Office of Contract Administration. The PSC coordinator will also

receive separate notifications whenever a Qualified Approval is granted by the Commission. Departments must maintain copies of Commission notifications for their files.

**Modification of Previously Approved Personal Services Contracts**

Departments are required to resubmit a request when the circumstances of the original request change. This type of request is considered a "Modification." Changes which warrant a modification request for approval include:

1. Changes to the type or scope of service provided; or
2. Changes in legal or grant requirements for contracting; or
3. Increases of fifty percent (50%) or more over the Regular PSC contract amount approved by the Commission or the Expedited PSC contract amount if the requested increase amount will exceed the \$100,000 threshold; or
4. Extensions beyond the estimated term approved by the Commission for any length of time greater than fifty (50%) of the original duration approved by the Commission. As indicated above, departments may request a modification to extend a PSC that has expired in order to allow completion of the contracted services, provided that it is within one year of the expiration of the approved PSC duration.

**QUESTIONS**

Questions on Civil Service Commission Rules or policies regarding PSCs as detailed herein may be directed to Commission staff at (415) 252-3247. Questions regarding the procedures for submitting PSCs as detailed in DHR's instructions and guidelines may be directed to the DHR PSC Coordinator.

CIVIL SERVICE COMMISSION



JENNIFER JOHNSTON  
Executive Officer

Attachment (1)

Cc: Scott R. Heldfond, President  
E. Dennis Normandy, Vice President  
Douglas S. Chan, Commissioner  
Kate Favetti, Commissioner  
Gina Rocanova, Commissioner  
Micki Callahan, Human Resources Director

**City and County of San Francisco  
Resources**



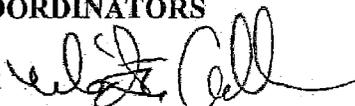
**Department of Human**

**Edwin M. Lee  
Mayor**

**Micki Callahan  
Human Resources Director**

**DATE: October 25, 2013**

**TO: DEPARTMENT PERSONNEL OFFICERS  
DEPARTMENT PERSONAL SERVICES CONTRACT COORDINATORS**

**FROM: MICKI CALLAHAN, HUMAN RESOURCES DIRECTOR** 

**SUBJECT: INSTRUCTIONS FOR PROCESSING PROPOSED PERSONAL  
SERVICE CONTRACTS**

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On May 6, 2013, the Civil Service Commission ("Commission") approved revisions to its policies, procedures and guidelines for approving requests by City departments for personal services contracts ("PSCs"). Those revisions are fully explained in the Commission's October 25, 2013 memorandum. Among its actions, the Commission delegated to the Department of Human Resources ("DHR") the responsibility for updating and reissuing instructions for PSC submissions consistent with the Commission's policies.

The purpose of this memorandum is to provide departments with detailed instructions for submitting and processing requests for PSCs before the Commission and the City's Human Resources Director effective as of October 25, 2013. This memo is an attachment to the Commission's October 25, 2013 memorandum on PSC policies.

**1) OVERVIEW**

PSCs are contracts paid for by the City and County of San Francisco ("City") for services provided by individuals, companies, corporations, nonprofit organizations and other public agencies. A PSC request covers a specific service regardless of the number of vendors.

The Commission determines the City's policy on the review and approval of proposed PSCs. The Commission's policy provides that, as a general rule, services are to be provided to the public by public employees hired through the merit system. However, the Commission's policy also recognizes that there are circumstances that may warrant the use of personal services contracts as a mechanism for the City to provide some of its services.

DHR reviews all requests for new or modified PSCs to determine whether they comply with the Commission's policies. DHR then posts all PSC requests and transmits those PSC requests that require Commission approval to the Commission.

The Commission has established a list of factors, which it revised on May 6, 2013, that it considers to be among the compelling factors for contracting out even when there are existing civil service classes that can perform the work of the proposed PSC. The Commission's list of factors, however, is not intended to be exhaustive, but rather to be demonstrative of the types of circumstances that may warrant the contracting out of personal services that could potentially otherwise be performed by civil service employees. For specific information on the factors pre-identified by the Commission, please refer to the Commission's policy (see attached, or go to the Commission's website at [www.sfgov.org/Civil\\_Service](http://www.sfgov.org/Civil_Service)).

## 2) PSC BASICS

- **Department PSC Coordinator:** Each City department that utilizes PSCs must have a department PSC coordinator. The department PSC coordinators are responsible for the submission of their departments' PSC requests. They are authorized by the department head/appointing authority to determine when their departments' PSC requests are ready for review by either the Human Resources Director or the Civil Service Commission. The department PSC coordinator works closely with DHR and Commission staff to expedite the review of proposed contracts, including explaining the evaluation criteria to department personnel and ensuring that the proper documentation is sent to the Commission through DHR in a timely manner. Each City department must notify DHR of the name, email address and telephone number of its departmental PSC coordinator.
- **Scheduling a PSC request before the Commission:** Departments may submit proposed PSCs for Commission or DHR approval as soon as the need arises, and must do so prior to the award of a contract. The practice of early submittal will expedite startup of the desired service(s).
- **Entering PSC requests into the PSC Database:** The PSC database collects the contents of the PSC Form 1 and PSC Award Notice ("PSC Form 2"), as well as additional relevant documents and information. Departments must submit all PSC requests through the PSC database.
- **Notifying affected union(s) of a PSC request:** Departments must notify the union(s) that represents City employees who could potentially perform the work of the proposed PSC through the PSC database. Please check each relevant Memorandum of Understanding (MOU) for the appropriate notice requirements.
- **Posting PSCs publicly:** DHR generally posts regular PSC requests to its website on a bi-monthly basis. DHR posts expedited PSC requests to its website at the time that a department submits the PSC request to DHR for review and approval. The DHR website is located at [www.sfdhr.org](http://www.sfdhr.org).
- **Processing a PSC request through DHR:** Once a PSC is ready for review, the department PSC coordinator must notify the DHR PSC coordinator through the PSC database by changing the PSC request's status to "Ready for Review by DHR."
- **Appealing a PSC request:** All PSC requests (regular and expedited) are appealable.

### 3) TYPES OF PSCs

DHR staff review all PSC requests. PSC requests are either regular or expedited. Regular PSCs are approved by the Civil Service Commission and expedited PSCs are approved by the Human Resources Director.

- Expedited PSCs – PSC requests that are less than or equal to \$100,000
- Regular PSCs – PSC requests that exceed \$100,000 (May be approved under one of three subcategories):
  - Continuing
  - Annual
  - Qualified

#### **EXPEDITED PSCs - \$100,000 AND UNDER**

- The Human Resources Director has the authority to approve all requests for expedited PSCs.
- DHR will complete its review of each expedited PSC request within seven (7) calendar days concurrently with the posting period.
- Expedited PSCs must contain the same information required of regular PSCs, and they are reviewed based on the same criteria as regular PSCs.
- The DHR PSC Coordinator will notify the department PSC Coordinator of the result of DHR's review once the seven-day review period has ended.
- Departments may not circumvent the \$100,000 expedited PSC threshold amount by submitting multiple PSCs for the same vendor to provide the same type of service for approximately the same period of time.
- When an expedited PSC is modified for less than 50% of its originally-approved amount or duration, but exceeds the \$100,000 threshold amount for expedited PSC requests, it goes to the Commission for approval through the procedures for regular PSC requests.
- Expedited PSCs that are modified to the extent that they require Commission approval will retain the same PSC reference number.

#### **REGULAR PSCs – OVER \$100,000**

- The Commission has the authority to approve all requests for regular PSCs.
- The DHR PSC Coordinator will review all regular PSC requests and notify the department PSC Coordinator when a PSC request is ready to be scheduled before the Commission.

### 4) SCHEDULING A PSC REQUEST BEFORE THE COMMISSION

- Scheduling a PSC request before the Commission may vary based on the type of PSC approval required, advance notification requirements in the applicable memoranda of understanding (MOU(s)) with the union(s) representing classifications potentially affected by

the PSC request, or whether a union initiates discussions with a department about a proposed PSC, as well as the Commission's schedule.

- The PSC database includes a reference chart of deadlines for document submission before each regularly scheduled Civil Service Commission meeting. Please ensure that your department's PSC submission conforms to the submission deadlines. The chart is also located on the DHR website at <http://www.sfdhr.org/index.aspx?page=419>.
- Submission and notice deadlines are necessary to allow sufficient time for DHR staff review, to ensure MOU compliance, and to allow for the preparation and distribution of the report packet to the Civil Service Commissioners before each Commission meeting.
- In rare circumstances, the Human Resources Director may waive DHR deadlines and/or the Commission's Executive Officer may waive Commission deadlines if a department misses a submission deadline for inclusion on a particular Commission meeting agenda. When a department requests a deadline waiver, a cover letter with an explanation for the request must be submitted for the request to be considered. If a deadline waiver request is not granted, the PSC request will proceed according to the regular timelines.

## 5) ENTERING PSC REQUESTS INTO THE PSC DATABASE

The City's new PSC database has improved capabilities for DHR, City departments, the City's unions, and the public to monitor PSC requests, approvals and conditional approvals; to access information on specific PSC requests; and to generate several types of reports on PSCs.

Departments will no longer need to submit the PSC Form 1 as a Microsoft Word document; rather, departments will be able to directly enter the required information into the PSC database<sup>1</sup> and the database will automatically populate the PSC Form 1 with all required information into a pdf format. After the information is entered by the department, the database will generate required notifications by email on behalf of the requesting department, DHR or the Commission. The PSC database can be accessed at <http://apps.sfgov.org/dhrdrupal/>.

When completing the PSC database fields, please keep in mind the following instructions:

- Provide brief but specific information to assist the Commission in determining whether the circumstances requiring the PSC request are compelling enough to contract out work when civil services class(es) exist to perform work within the same scope;
- Include background material and information to clearly and completely describe the specific services or work to be provided;
- Clearly explain the reasons why City employees cannot perform the services or work being requested;
- Spell out all words before using an acronym for the first time;
- Do not simply use "not applicable" or "N.A." The department must explain why there is no response to a particular item; and

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<sup>1</sup> The City and its unions have agreed to add additional fields in the database to collect information of interest to the unions with the intent of expediting discussions between the requesting department and affected unions on a specific PSC request. Populating the additional fields in the database may facilitate a department's request for a waiver by the union(s) of the advance notification requirements in the MOUs.

- Departments are not required to provide specific contract effective and expiration dates; rather, departments will provide the duration of contracts (e.g., the number of years or months the department seeks to contract out the work). Departments must begin the contract within a calendar year of the Commission's approval of the PSC. The PSC database will capture the number of years and months and the estimated start and end dates.
- PSC requests do not require cover letters. However, a department may submit a cover letter in the event unusual circumstances arise and an explanation may be necessary to expedite the review process.
- PSC requests that cite a legal or regulatory authority must include a copy of such authority (PSC Form 1 Question #5c or 5d). Likewise, if applicable, departments must include a copy of the board or commission action determining that contracting is the most effective way to provide the service (PSC Form 1 Question #5e). These documents can be uploaded to the PSC database.
- The Commission is critical of PSC requests of five years or greater since circumstances can change so greatly in such a significant amount of time. Therefore, the Commission asks the department to provide an explanation in support of such a request, either in a separate attached memorandum or indicated somewhere on the PSC Form.
- Always view and proofread the PDF of the PSC Form 1 produced by the PSC database prior to notifying the affected unions/submitting to DHR. Substantial revisions to the PSC request may result in delays of the PSC request's processing.

## 6) NOTIFYING AFFECTED UNION(S) OF A PSC REQUEST

- Departments must notify the union(s) representing classifications of employees potentially affected by a regular PSC request: Most MOUs require greater notice than the notice requirement in the Commission's policy—generally thirty (30) days' notice prior to the PSC request's submission to DHR, or at the time the department issues a Request for Proposals ("RFP")/ Request for Qualifications ("RFQ"), whichever occurs first. One notable exception is the SEIU Local 1021 MOU, which requires notice to the union sixty (60) days prior to the PSC request's submission to DHR, or at the time the department issues a Request for Proposals ("RFP")/Request for Qualifications ("RFQ"), whichever occurs first. However, notification requirements differ depending on the specific terms negotiated with the affected union(s), and departments must check the relevant MOUs when processing a PSC request.
- Expedited PSC requests: Departments must notify affected unions of the department's expedited PSC request no later than the date of the submission of the request to DHR.
- Modifications of PSC requests: Departments must notify affected unions of a modification to an expedited or regular PSC request no later than the date of the submission of the request to DHR.
- The PSC database generates an email notification to affected unions identified by the department requesting the PSC at the same time the department sets the PSC request's status to "Start Union Notification."

- If a PSC request requires union notification, the PSC database automatically fills in the date the department notified the affected unions of the PSC request and the name of the person submitting the PSC request.
- If there are questions about which classes of employees are impacted by the department's PSC request, please work with your department's personnel unit and/or your assigned DHR Client Services representative. The online Classification and Compensation Database is also a resource for identifying the union that covers the civil service classification(s) affected by the PSC request's scope of work: <http://sfdhr.org/index.aspx?page=32>.
- If the PSC request is substantively changed in terms of scope of work, affected civil service classifications, duration or amount since the union notification, the department must provide affected unions and DHR with the final PSC Form 1 by email. Be aware that the MOU advance notification requirements may be triggered if the changes made to the PSC request were not a product of discussions with affected unions.
- If a PSC request does not identify a civil service classification potentially affected by the PSC request, the departments must notify all of the City's exclusive labor organizations through the PSC database. The MOU advance notification requirements are not required when no civil service classifications are potentially affected. However, departments are strongly advised to identify all potentially affected civil service classifications and to notify the respective unions of the PSC request so as not to delay the PSC unnecessarily. Failure to notify the affected unions could result in a grievance and/or delay in processing a PSC request.

#### 7) **PROCESSING A PSC REQUEST THROUGH DHR**

- To initiate a PSC request, a department must enter all information required by the PSC Form 1 into the PSC database. When a PSC request is ready for review by DHR, the department PSC Coordinator will change the status of the PSC in the PSC database to "Ready for Review by DHR."
- Once the DHR PSC Coordinator receives notice that a PSC is ready for review, the DHR PSC Coordinator will review the information submitted by the department. If necessary, the DHR PSC Coordinator will contact the department PSC coordinator for additional required information or clarification.
- After the posting period is complete and the advance notice required by the affected unions expires, the DHR PSC Coordinator will schedule the PSC at the next scheduled Commission meeting and will prepare the PSC request's packet for the Commission's review. Each PSC packet must include the names of the individuals notified of the PSC request by the department because they represent unions affected by the PSC request.

#### 8) **POSTING PSCs PUBLICLY**

- DHR generally posts PSC requests on its website at [www.sfdhr.org](http://www.sfdhr.org) every other Friday for seven (7) calendar days. The DHR PSC Coordinator emails a copy of the posted PSC requests to the Commission, department PSC Coordinators and affected unions on the day of the posting.

- DHR also posts all expedited PSC requests to its website for seven (7) calendar days once they are submitted to DHR for review.
- In the rare situation when a department may need to expedite a PSC request and omit the DHR posting process, the department must have approval from the CSC Executive Officer prior to submitting the PSC request to DHR for review. In requesting approval to omit posting, the department must provide the Executive Officer with sufficient information in support of the request, as well as the consequence of denial. The PSC request must be entered into the PSC database and the department PSC coordinator must change the PSC request's status to "Start Union Notification" prior to changing its status to "Ready for DHR Review." The PSC request must indicate that the posting process is to be omitted in the PSC database.

## 9) APPEALING A PSC REQUEST

- PSC requests may be protested and/or appealed in accordance with the Commission's PSC policy.
  - Regular PSCs: An appeal of a posted regular PSC must be filed in the Commission's office by close of business on the seventh (7th) day of posting by mail or hand-delivery with the appellant's original signature and email address. Appeal forms and instructions are located on the Commission's website at <http://www.sfgov3.org/index.aspx?page=267>.
  - Expedited PSCs: Protests of a proposed expedited PSC must be filed with the Human Resources Director via email to [DHR-PSCCoordinator@sfgov.org](mailto:DHR-PSCCoordinator@sfgov.org) by close of business on the seventh day of posting. The Human Resources Director's decision on a PSC protest is appealable to the Commission within five (5) business days after notice of such decision.
- DHR will notify the affected department of any timely protests it receives on an expedited PSC during the seven-day posting period. The Executive Officer will notify DHR and the affected department of any appeal it receives on a regular PSC or on the decision of the Human Resources Director on an expedited PSC protest.
- **Note:** If a union objects to a PSC request directly to the requesting department at any point, the department must inform DHR of the parties' dispute and the reasons cited for the union's objection to the PSC. If the department and the objecting union have not resolved all issues related to the PSC request before it is placed on a Commission agenda, the department must inform DHR and the Commission that the request is still in dispute.
- Uncontested expedited PSCs become final on close of business of the seventh day of posting; uncontested regular PSCs are placed on the Commission's Ratification Agenda for the Commission's review and approval.
- PSC appeals are placed on the Regular Agenda as a separate item for the Commission's consideration at the next regularly scheduled meeting following receipt of the appeal, in accordance with the Commission's timelines.
- Departments must send representatives to the Commission meeting to speak on any PSC appeal. Departments should approach PSC appeals as they would any other type of appeal—they should submit a staff report if possible and appropriate (along with any additional supporting documentation or materials, if applicable), and they should be prepared to

provide the Commission with a presentation in support of their PSC request. Please contact the Executive Officer for guidance on applicable staff report submission deadlines and other requirements.

- **Note:** Department representatives must attend the Commission meeting even in the absence of an appeal, in the event that the Commission severs a PSC from the Ratification Agenda to scrutinize it and/or obtain additional information.

#### 10) **REGULAR PSC APPROVAL CATEGORIES: CONTINUING**

- The Commission may, at its discretion, grant "Continuing Approval" for a regular PSC request in situations where:
  - a. Legal mandates direct the use of contractual services;
  - b. State or Federal funding requirements specify use of contractual services;
  - c. A City board or commission, the City Administrator, an elected official, or the Controller has determined that contracting is the most effective way to provide health and human welfare services; or
  - d. The Retirement Board, consistent with its Charter and State constitutional authority, has determined that contracting is the most effective way to deliver investment management and actuarial services.
- Continuing Approval is valid until revoked by the Commission.
- If the Commission approves a request for Continuing Approval, the requesting department must provide the Commission with an annual report listing the contracts awarded under the Continuing Approval. The department's annual report must include the name of the contractor, type of service, amount, and duration of the contract.

#### 11) **REGULAR PSC APPROVAL CATEGORIES: ANNUAL**

- The Commission may grant "Annual Approval" for a regular PSC request in situations where a proposed contract is included in a department's annual budget.
- Appeals of PSC requests seeking Annual Approval will be considered by the Commission not later than its first meeting in April.
- In the event the Mayor's budget deadlines are changed, the Human Resources Director is authorized to change the deadlines for PSC requests seeking Annual Approval to conform to the revised budget schedule. DHR will notify the Commission's Executive Officer of any changes to the schedule.

#### 12) **REGULAR PSC APPROVAL CATEGORIES: QUALIFIED**

- The Commission may grant a PSC request "Qualified Approval." This conditional approval is generally an interim measure with direction to the contracting department to consider other alternatives for providing the service if the need for the service is expected to be ongoing, and/or to provide the Commission with additional information, and/or to report back to the Commission on the status of performance under the contract, and/or to continue discussions with the affected labor union(s).

- When approving a PSC request with a Qualified Approval, the Commission may recommend that the department examine the feasibility of either budgeting positions in appropriate classifications or obtaining a Proposition J contract certification.
- When a PSC request is granted Qualified Approval, the department's PSC coordinator must work directly with Commission staff to meet the terms of the conditions the Commission placed on the PSC.

### **13) MODIFICATION OF AN EXISTING PSC (See attached chart)**

- Departments are required to resubmit a request when the circumstances of the original request substantively change (e.g., changes to the type or scope of services provided, changes in legal or grant requirements for contracting, and any increases to the amount or duration of the PSC). This type of request is considered a "Modification."
- DHR reviews all modification requests and approves those requests that do not require Commission approval. Modifications which require Commission approval include:
  - Changes to the type or scope of services provided under a regular PSC; or
  - Changes in legal or grant requirements for contracting under a regular PSC; or
  - Increases of fifty percent (50%) or more over the current existing (last approved) regular PSC amount; or
  - Increases of fifty percent (50%) or more over the expedited PSC amount if it will increase the total amount of the PSC above the \$100,000 threshold.
  - Changes in the approved regular PSC contract duration that would increase the duration of the PSC by fifty percent (50%) or more above the original estimated duration approved by the Commission.
- In the event a department must request the Commission's approval to retroactively extend a PSC's duration, the department can do so within a year of the PSC's duration end date and retain its original PSC reference number. However, in such cases the department must provide the Commission with adequate justification for why it was unable to submit a timely request for modification, and it must not request to extend the PSC's duration for more than five years. DHR will not accept a request to modify a PSC more than one year after the PSC's approved duration. The department must submit a new PSC request.

### **14) AFTER PSC APPROVAL**

- After a Commission meeting, Commission staff will enter the outcome of each PSC request into the PSC database. The Commission will email a "Notice of Civil Service Commission Action" to the DHR PSC Coordinator and the department's PSC coordinator. In the event the Commission grants a "Qualified Approval," Commission staff will include any conditions placed on the PSC's approval in its Notice of Civil Service Commission Action to the department PSC coordinator.
- After the Commission approves a PSC request, the department must include a copy of the PSC Form 1 and a copy of the notice of the Commission's action when processing the PSC through the Office of Contract Administration. The Commission separately provides a copy of its notice of action to the Office of Contract Administration and the Controller's Office.

- At the time PSCs are processed for award, the department must enter the information required by the PSC Form 2 (contractor name, contract amount and the contract's actual start and end dates) into the PSC database. The database will generate reminders to the department to input the information required by the PSC Form 2 beginning six months after the PSC's approval.
- DHR will generate a report of contract awards (PSC Form 2 information) for the Commission no later than August 1 of each year for the preceding fiscal year.

## **QUESTIONS?**

If you have any questions about PSC procedures, the DHR PSC Coordinator can be emailed at [DHR-PSCCoordinator@sfgov.org](mailto:DHR-PSCCoordinator@sfgov.org) and the Civil Service Commission staff can be emailed at [civilservice@sfgov.org](mailto:civilservice@sfgov.org).

**ATTACHMENT - DHR PSC Memorandum October 25, 2013**

<b>PSC Types &amp; Union Notification Guidelines</b>	<b>Requires:</b> 30-Days Advance Notice to All Other Unions	<b>Requires:</b> 60-Days Advance Notice to SEIU	<b>Requires:</b> 7-Days Advance Notification to All Unions	<b>Types of Approval Required</b>
<b>Initial PSCs:</b>				
Regular (> \$100K)	X	X		CSC
Expedited (≤ \$100K)			X	DHR
<b>Modify - Regular PSCs:</b>				
> 50% of Initial Duration			X	CSC
> 50% of Last CSC Cumulative Approval Amount			X	CSC
≤ 50% of Last CSC Cumulative Amount			X	DHR
≤ 50% of Initial Duration			X	DHR
<b>Modify - Expedited PSCs:</b>				
> 50% of Last CSC Cumulative Approval Amount (after the \$100K threshold)			X	CSC
Cumulative Amount ≤ \$100K			X	DHR
Change in Duration (prior to the \$100K threshold)			X	DHR

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**From:** Board of Supervisors  
**To:** BOS-Supervisors  
**Subject:** 100 new signers: Allison Shaw, Chris Perry...

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**From:** Mark Mosheim [mailto:mail@changemail.org]  
**Sent:** Wednesday, October 23, 2013 6:38 PM  
**To:** Board of Supervisors  
**Subject:** 100 new signers: Allison Shaw, Chris Perry...

Another 100 people added their names to Dana S's petition "Make fiber broadband a priority for San Francisco"  
-- momentum is growing.

There are now 1200 signatures on this petition. Read reasons why people are signing, and respond to Dana S by clicking here:

<http://www.change.org/petitions/make-fiber-broadband-a-priority-for-san-francisco/responses/new?response=9272c59f571d>

Dear San Francisco Board of Supervisors,

As other cities embrace high-speed fiber broadband, San Francisco is getting left behind. Our city has underutilized public fiber and several local Internet Service Providers eager to deploy gigabit speed broadband to businesses and households, yet this is stymied by rules and regulations that have not kept pace with technology. Deployment of fiber and ultra-high speed broadband provides a unique opportunity to create innovation and new jobs, extend public access and develop valuable infrastructure that would serve our city for decades to come. I encourage you to develop policy to encourage fiber deployment and make ultra fast broadband a priority for San Francisco.

Sincerely,

- 1103. Allison Shaw San Francisco, California
- 1104. Chris Perry San Francisco, California
- . Amie Vaccaro San Francisco, California
- 1105. Orion Henry San Francisco, California
- 1106. Jake Barlow San Francisco, California
- 1107. Tim Hathaway San Francisco, California
- 1108. Marla Allen San Francisco, California
- 1109. alex milowski San Francisco, California
- 1110. Christian Brumund San Francisco, California
- 1111. Daniel Morris San Francisco, California
- 1112. Paul Thompson San Francisco, California
- 1113. Jesse Collier San Francisco, California
- 1114. Ryan Schaffer San Francisco, California
- 1115. Chris Wies san francisco, California
- 1116. Elsa Buechner San Francisco, California
- 1117. john Kent San Francisco, California
- 1118. Kim Hansen San Francisco, California
- 1119. Bruce Pray San Francisco, California

1120. Robert Clark San Francisco, California  
1121. Leffert Lefferts San Francisco, California  
1122. Robert Friedman San Francisco, California  
1123. David Elliott San Francisco, California  
1124. Ian Haddow San Francisco, California  
1125. Robert D San Francisco, California  
1126. Johnnie Thompson San Francisco, California  
1127. Aron Kirschner San Francisco, California  
1128. Lucille Zilber San Francisco, California  
1129. Matías Martínez San Francisco, California  
1130. Audra Morse San Francisco, California  
1131. Richard Jordan San Francisco, California  
1132. JEFFREY ROE Greenbrae, California  
1133. Alexander King San Francisco, California  
1134. Leilani Lumen San Francisco, California  
1135. Eric Wu San Francisco, California  
1136. Daniel Magyari San Francisco, California  
1137. Tekle Haileselassie San Francisco, California  
1138. Loc Mai San Francisco, California  
1139. David King San Francisco, California  
1140. Dean Prager San Francisco, California  
1141. Matthew Royal San Francisco, California  
1142. Aaron Daniel San Francisco, California  
1143. Brian Chiu San Francisco, California  
1144. Adam Singer San Francisco, California  
1145. Sean Leow San Francisco, California  
1146. kyle bray san francisco, California  
1147. Kim Smith San Francisco, California  
1148. Ping Fu San Francisco, California  
1149. Linda Lee San Francisco, California  
1150. Daniel Raidy SF, California  
1151. Terry Siddall San Francisco, California  
1152. Cristina Varela San Francisco, California  
1153. Arnel Valle San Francisco, California  
1154. James Chan San Francisco, California  
1155. Denis Harper San Francisco, California  
1155. Barbara Tauber San Francisco, California  
1156. Osvaldo Ruiz San Francisco, California  
1157. James Oberhausen San Francisco, California  
1158. Ryan Wilson San Francisco, California  
1159. Thomas Scharffenberger San Francisco, California  
1160. Eric Swenson San Francisco, California  
1161. chitty eisenberg San Francisco, California  
1162. Stephen Sundell San Francisco, California  
1163. Karen Gonzalez San Francisco, California  
1164. David Navarrete San Francisco, California  
1165. David Dickson San Francisco, California  
1166. Juan Peralta SF, California  
1167. kevin olson san francisco, California  
1168. J Depman San Francisco, California  
1169. anthony ricci san francisco, California

1170. Robert Dockendorff San Francisco, California
1171. David Jennings San Francisco, California
1172. Derek Bender San Francisco, California
1173. bridget saunders San Francisco, California
1174. Kyle Crossman San Francisco, California
1175. Elizabeth Thompson San Francisco, California
1176. Joseph Machado San Francisco, California
1177. Adore Rodriguez San Francisco, California
1178. Heilee Edwards San Francisco, California
1179. Sebra Leaves San Francisco, California
1180. Tommy Deschaine San Francisco, California
1181. Cynthia Williams San Francisco, California
1182. Natasha Joseph San Francisco, California
1183. Jeffrey Taylor San Francisco, California
1184. Julie Patrick ceres, California
1185. Pavlos Politopoulos San Francisco, California
1186. Kristen Politopoulos San Francisco, California
1187. Rebecca Rosen Lum San Francisco, California
1188. Shaily Gupta San Francisco, California
1189. Robert Markison San Francisco, California
1190. Teri Whitney San Francisco, California
1191. Carmelinda Mann San Francisco, California
1192. Grace McGovern San Francisco, California
1193. evi altschuler san francisco, California
1194. Susan Leas Latham San Francisco, California
1195. john seronello san francisco, California
1196. Therese Coupez san francisco, California
1197. Caroline Nakajima San Francisco, California
1198. zhi ning San Francisco, California
1199. Joshua Aldon San Francisco, California
1200. Mark Mosheim San Francisco, California

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**From:** Board of Supervisors  
**To:** BOS-Supervisors  
**Subject:** 25 more people signed: Hampton Gaddy, Catherine Hunt...

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**From:** Alyssa Sechler [mailto:mail@changemail.org]  
**Sent:** Tuesday, October 22, 2013 5:57 PM  
**To:** Board of Supervisors  
**Subject:** 25 more people signed: Hampton Gaddy, Catherine Hunt...

25 people recently add their names to Wild Equity Institute's petition "Restore Sharp Park". That means more than 500 people have signed on.

There are now 875 signatures on this petition. Read reasons why people are signing, and respond to Wild Equity Institute by clicking here:

<http://www.change.org/petitions/restore-sharp-park/responses/new?response=9272c59f571d>

Dear San Francisco Board of Supervisors,

Sharp Park Golf Course is owned by San Francisco but located in Pacifica, California. With a glut of golf courses around the Bay Area, I would like to see you work to transform Sharp Park from a money-losing, endangered species-killing golf course into a new National Park that provides recreational amenities everyone can enjoy. By partnering with the National Park Service, San Francisco can redirect the money it saves back to neighborhood parks and community centers, and we all get a new National Park! Please support the restoration of Sharp Park so valuable species can thrive and all people can enjoy the beautiful gifts nature has to offer.

Sincerely,

851. Hampton Gaddy Bloomfield, New Jersey
852. Catherine Hunt Birmingham, Alabama
853. Vincent Shenko Freehold, New Jersey
854. Amalia Pineiro Brewster, New York
855. John Dziak State College, Pennsylvania
856. Daryl Richardson Woodland Hills, California
857. Cheryl Barnett Roswell, Georgia
858. Elizabeth ODear Bellaire, Texas
859. Marie Daniels Los Angeles, California
860. Erin Kelly Phoenix, Oregon
861. Michael Nypaver Williamsfield, Ohio
862. Mary C Toronto, Canada
863. Theresa Vensel Chicago, Illinois
864. Lisa Anderson Youngstown, Ohio
865. Patricia Brown San Clemente, California
866. Natalie Fedotov Bayonne, New Jersey
867. Dan Magee Decatur, Georgia
868. Brianna Aaron Reisterstown, Maryland
869. Steven Newby Bronson, Florida

- 870. Ann Saunders Denham Springs, Louisiana
- 871. Malik Ibragimov Wayne, New Jersey
- 872. Lisa Hammond Tampa, Florida
- 873. Aden Ashni , Australia
- 874. Rachael Perry-Tickner Pell City, Alabama
- 875. Alyssa Sechler Turbotville, Louisiana



# Capital Planning Committee

BOS-11  
B87 Clerk  
\*C PAGE

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2013 OCT 23 PM 12:00

Naomi M. Kelly, City Administrator, Chair

## MEMORANDUM

October 22, 2013

**To:** Supervisor David Chiu, Board President *N. Kelly*

**From:** Naomi Kelly, City Administrator and Capital Planning Committee Chair

**Copy:** Members of the Board of Supervisors  
Angela Calvillo, Clerk of the Board  
Capital Planning Committee

**Regarding:** Authorizing resolution for the Department of Public Health (DPH) to issue San Francisco General Hospital (SFGH) Improvement General Obligation (G.O.) Bonds (\$209,955,000), and adoption of the 2014 Annual Infrastructure Construction Cost Inflation Estimate (AICCIE) (4.5%) for CY 2014

In accordance with Section 3.21 of the Administrative Code, on October 21, 2013, the Capital Planning Committee (CPC) reviewed one action item under consideration by the Board of Supervisors – authorizing legislation and a related supplemental appropriation request by DPH. It also took action on one item as required by the Admin Code to establish the Annual Infrastructure Cost Inflation Estimate (AICCIE) for calendar year 2014 at 4.5 percent. The CPC's recommendations are set forth below.

**1. Board File Number TBD:** **Approval of the authorizing resolution and related supplemental request for the issuance of up to \$209,955,000 in SFGH Improvement G.O. Bonds by DPH to finance the final stage of the SFGH Rebuild.**

**Recommendation:** Recommend the Board of Supervisors approve the ordinance.

**Comments:** The CPC recommends approval of these items by a vote of 11-0.

Committee members or representatives in favor include: Naomi Kelly, City Administrator; Judson True, Board President's Office; Ben Rosenfield, Controller; Ed Reiskin, Executive Director, SFMTA; Mohammed Nuru, Director, Public Works; Harlan Kelly, General Manager, SFPUC; John Rahaim, Director, Planning Department; Melissa Whitehouse, Mayor's Budget Office; Julia Dawson, San Francisco International Airport; Dawn Kamalanathan, Recreation and Parks Department; and Elaine Forbes, Port of San Francisco.

**2. CPC Action Item:**

**Adoption of the AICCIE for CY 2014 at 4.5%. This rate was determined using a combination of cost inflation data; market trends; national, state and local construction cost inflation indices; and discussion with local construction experts. A copy of the analysis is available under the October 21<sup>st</sup> CPC meeting at <http://onesanfrancisco.org/>.**

Action:

The CPC approves adoption of AICCIE at 4.5% for CY 2014.

Comments:

The CPC approves this item by a vote of 11-0.

Committee members or representatives in favor include: Naomi Kelly, City Administrator; Judson True, Board President's Office; Ben Rosenfield, Controller; Ed Reiskin, Executive Director, SFMTA; Mohammed Nuru, Director, Public Works; Harlan Kelly, General Manager, SFPUC; John Rahaim, Director, Planning Department; Melissa Whitehouse, Mayor's Budget Office; Julia Dawson, San Francisco International Airport; Dawn Kamalanathan, Recreation and Parks Department; and Elaine Forbes, Port of San Francisco.

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**From:** Board of Supervisors  
**To:** BOS-Supervisors  
**Subject:** 10 new signers: Henderson Lu Lu, Marisa Zuzga...

**From:** Veronica Lee [mailto:mail@changemail.org]  
**Sent:** Thursday, October 24, 2013 12:37 PM  
**To:** Board of Supervisors  
**Subject:** 10 new signers: Henderson Lu Lu, Marisa Zuzga...

10 new people recently signed Ney Street Neighborhood Watch's petition "[Tell Mayor Lee and Chief Suhr We Need More Than One Foot Patrol Officer in the Excelsior](#)" on Change.org.

There are now 330 signatures on this petition. Read reasons why people are signing, and respond to Ney Street Neighborhood Watch by clicking here:

<http://www.change.org/petitions/tell-mayor-lee-and-chief-suhr-we-need-more-than-one-foot-patrol-officer-in-the-excelsior/responses/new?response=9272c59f571d>

Dear San Francisco Board of Supervisors,

Immediately put additional experienced foot patrol officers on Mission Street from Trumbull to beyond Geneva to Mt. Vernon Street. Currently there is only one officer between Silver Avenue and Geneva – a 1.25 miles patrol area.

Sincerely,

321. Henderson Lu Lu San Francisco, California
322. Marisa Zuzga San Francisco, California
323. Stewart Mohammadi San Francisco, California
324. William Walker San Francisco, California
325. Monica Holguin San Francisco, California
326. David Elliott San Francisco, California
327. Matthew Donohue San Francisco, California
328. Patricia Hopkins San Francisco, California
329. Arthur Koch San Francisco, California
330. Veronica Lee San Francisco, California

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**From:** Board of Supervisors  
**To:** BOS-Supervisors; Miller, Alisa  
**Subject:** File 130084: 25 more people signed: Sam Matsunaga, Lucienda Baxter...

**From:** Monica Holguin [mailto:mail@changemail.org]  
**Sent:** Thursday, October 24, 2013 10:55 AM  
**To:** Board of Supervisors  
**Subject:** 25 more people signed: Sam Matsunaga, Lucienda Baxter...

25 people recently add their names to Ney Street Neighborhood Watch's petition "Tell Mayor Lee and Chief Suhr We Need More Than One Foot Patrol Officer in the Excelsior". That means more than 500 people have signed on.

There are now 325 signatures on this petition. Read reasons why people are signing, and respond to Ney Street Neighborhood Watch by clicking here:

<http://www.change.org/petitions/tell-mayor-lee-and-chief-suhr-we-need-more-than-one-foot-patrol-officer-in-the-excelsior/responses/new?response=9272c59f571d>

Dear San Francisco Board of Supervisors,

Immediately put additional experienced foot patrol officers on Mission Street from Trumbull to beyond Geneva to Mt. Vernon Street. Currently there is only one officer between Silver Avenue and Geneva – a 1.25 miles patrol area.

Sincerely,

302. Sam Matsunaga San Francisco, California
303. Lucienda Baxter San Francisco, California
304. Dayved Black San Francisco, California
305. James Agustin San Francisco, California
306. Jesus VIVANCO SAN FRANCISCO, California
307. Yvonne Villegas San Francisco, California
308. Tisha Hilario San Francisco, California
309. Tony Tran San Francisco, California
310. Paul Taylor San Francisco, California
311. Philip Bettney San Francisco, California
312. Melanie Walker San Francisco, California
313. Hugh G. Graham San Francisco, California
314. Peter Butterworth San Francisco, California
315. Christina Serrano San Francisco, California
316. Rob Foley San Francisco, California
317. Mary Jo Schleicher San Francisco, California
318. Derrick Lao San Francisco, California
319. Frank Betancourt San Francisco, California
320. Meena Duario San Francisco, California
323. Brian Cook San Francisco, California
321. Henderson Lu Lu San Francisco, California
322. Marisa Zuzga San Francisco, California

323. Stewart Mohammadi San Francisco, California
324. William Walker San Francisco, California.
325. Monica Holguin San Francisco, California

File 130084

**From:** meena duario [mailto:changemail.org]  
**Sent:** Thursday, October 24, 2013 9:29 AM  
**To:** Board of Supervisors  
**Subject:** 10 new signers: paul taylor, Philip Bettney...

10 new people recently signed Ney Street Neighborhood Watch's petition "Tell Mayor Lee and Chief Suhr We Need More Than One Foot Patrol Officer in the Excelsior" on Change.org.

There are now 319 signatures on this petition. Read reasons why people are signing, and respond to Ney Street Neighborhood Watch by clicking here:

<http://www.change.org/petitions/tell-mayor-lee-and-chief-suhr-we-need-more-than-one-foot-patrol-officer-in-the-excelsior/responses/new?response=9272c59f571d>

Dear San Francisco Board of Supervisors,

Immediately put additional experienced foot patrol officers on Mission Street from Trumbull to beyond Geneva to Mt. Vernon Street. Currently there is only one officer between Silver Avenue and Geneva – a 1.25 miles patrol area.

Sincerely,

310. paul taylor san francisco, California
311. Philip Bettney San Francisco, California
312. melanie walker san francisco, California
313. Hugh G. Graham San Francisco, California
314. Peter Butterworth San Francisco, California
315. Christina Serrano San Francisco, California
316. Rob Foley San Francisco, California
317. Mary Jo Schleicher San Francisco, California
318. Derrick Lao San Francisco, California
319. Frank Betancourt San Francisco, California

File 130084

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**From:** KATIUSCA SANCHEZ [mailto:changemail.org]  
**Sent:** Thursday, October 24, 2013 7:14 AM  
**To:** Board of Supervisors  
**Subject:** 10 new signers: Priscilla Martinez, David Bratt...

10 new people recently signed Ney Street Neighborhood Watch's petition "[Tell Mayor Lee and Chief Suhr We Need More Than One Foot Patrol Officer in the Excelsior](#)" on Change.org.

There are now 300 signatures on this petition. Read reasons why people are signing, and respond to Ney Street Neighborhood Watch by clicking here:

<http://www.change.org/petitions/tell-mayor-lee-and-chief-suhr-we-need-more-than-one-foot-patrol-officer-in-the-excelsior/responses/new?response=9272c59f571d>

Dear San Francisco Board of Supervisors,

Immediately put additional experienced foot patrol officers on Mission Street from Trumbull to beyond Geneva to Mt. Vernon Street. Currently there is only one officer between Silver Avenue and Geneva – a 1.25 miles patrol area.

Sincerely,

- 291. Priscilla Martinez San Francisco, California
- 292. David Bratt San Francisco, California
- 293. Maryanne Razzo San Francisco, California
- 294. Kim Semien san francisco, California
- 295. Avril Swan san francisco, California
- 296. Heather NELSON SAN FRANCISCO, California
- 296. Vivian Tov San Francisco, California
- 298. Lisa Ortiz San Francisco, California
- 298. Laurie Kottmeyer San Francisco, California
- 300. KATIUSCA SANCHEZ SF, California

File 130084

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**From:** Angelica Solis [mailto:changemail.org]  
**Sent:** Thursday, October 24, 2013 5:43 AM  
**To:** Board of Supervisors  
**Subject:** 10 new signers: Maritza Bustamante, Connie Rodriguez...

10 new people recently signed Ney Street Neighborhood Watch's petition "[Tell Mayor Lee and Chief Suhr We Need More Than One Foot Patrol Officer in the Excelsior](#)" on Change.org.

There are now 289 signatures on this petition. Read reasons why people are signing, and respond to Ney Street Neighborhood Watch by clicking here:

<http://www.change.org/petitions/tell-mayor-lee-and-chief-suhr-we-need-more-than-one-foot-patrol-officer-in-the-excelsior/responses/new?response=9272c59f571d>

Dear San Francisco Board of Supervisors,

Immediately put additional experienced foot patrol officers on Mission Street from Trumbull to beyond Geneva to Mt. Vernon Street. Currently there is only one officer between Silver Avenue and Geneva – a 1.25 miles patrol area.

Sincerely,

- 280. Maritza Bustamante San Francisco, California
- 281. Connie Rodriguez San Francisco, California
- 282. Paul Coussio San Francisco, California
- 283. Eric Hendy San Francisco, California
- 284. fabiani christina san francisco, California
- 285. Adriano Hrvatin San Francisco, California
- 286. Wanda Uvonne Jones-Most San Francisco, California
- 287. Jennifer Hail San Francisco, California
- 288. Marlo Saenz Fairbanks, Alaska
- 289. Pam Klotovich San Francisco, California

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**From:** Board of Supervisors  
**To:** BOS-Supervisors  
**Subject:** 10 new signers: rita connolly, marg connolly...

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**From:** Denise D'Anne [mailto:mail@changemail.org]  
**Sent:** Tuesday, October 22, 2013 8:56 PM  
**To:** Board of Supervisors  
**Subject:** 10 new signers: rita connolly, marg connolly...

10 new people recently signed Lawyers' Committee for Civil Rights's petition "[The Fair Chance Campaign: Reforming Housing and Employment Background Checks in San Francisco](#)" on Change.org.

There are now 489 signatures on this petition. Read reasons why people are signing, and respond to Lawyers' Committee for Civil Rights by clicking here:

<http://www.change.org/petitions/the-fair-chance-campaign-reforming-housing-and-employment-background-checks-in-san-francisco/responses/new?response=c64e3110b135>

Dear Members of the San Francisco Board of Supervisors,

I support Supervisor Jane Kim's new legislation to standardize guidelines for considering background checks by San Francisco employers and affordable housing providers. As many as 200,000 San Franciscans face barriers to employment and housing based on past arrests and convictions. Although they may have great qualifications, their applications are often screened out at the initial stages, leaving them with few job or housing options. Yet, research shows that access to jobs and housing is linked to successful community reintegration and reduced recidivism. The proposed legislation will allow applicants with past arrests and conviction records a fair chance to demonstrate their qualifications as an employee or tenant, while also balancing the needs of employers and housing providers. There are ten states and over 50 local jurisdictions across the United States that have embraced this type of policy reform aimed at supporting economic self-sufficiency. It's time for San Francisco to become a leader on this issue and take reform to the next level. Please support Supervisor Kim's new legislation.

Sincerely,

- 480. rita connolly san francisco, California
- 481. marg connolly anoka, Minnesota
- 482. Kathleen Culhane Watertown, Massachusetts
- 483. kotaro kimotsuki San Francisco, California
- 484. crystal nguyen Concord, California
- 485. juliana morales Fresno, California
- 486. Madison Gordon Belmont, California
- 487. David Oscos Brooklyn, New York
- 488. Ivan Vera San Francisco, California
- 489. Alise Henderson SAN LEANDRO, California



File 130896-130899

**From:** Board of Supervisors  
**To:** BOS-Supervisors; Lamug, Joy  
**Subject:** File 130896-130899: 1050 Valencia Street Appeal --Supervisor Wiener's Request for a Continuance  
**Attachments:** 1050 Valencia Street Consent to Continue Letter to BOS102213.pdf

**From:** Stephen M. Williams [mailto:smw@stevewilliamsllaw.com]  
**Sent:** Tuesday, October 22, 2013 12:44 PM  
**To:** Chiu, David  
**Cc:** Board of Supervisors; Power, Andres  
**Subject:** 1050 Valencia Street Appeal --Supervisor Wiener's Request for a Continuance

President Chiu:

Attached is a letter on behalf of the Liberty Hill Neighborhood Association consenting to the continuance of the Appeal of the Final Mitigated negative Declaration issued for 1050 Valencia Street. If you have any questions or require anything further please let me know at your convenience.

Sincerely,

Stephen M. Williams

**Stephen M. Williams**  
Law Offices of Stephen M. Williams  
1934 Divisadero Street  
San Francisco, CA 94115  
Phone: (415) 292-3656  
Fax: (415) 776-8047

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LAW OFFICES OF  
**STEPHEN M. WILLIAMS**

1934 Divisadero Street | San Francisco, CA 94115 | TEL: 415.292.3656 | FAX: 415.776.8047 | smw@stevewilliamsllaw.com

October 22, 2013

via e-mail and facsimile

David Chiu, President  
San Francisco Board of Supervisors  
City Hall, Room 234  
San Francisco, CA 94102

Re: **1050 Valencia Street (AKA) 1 Hill Street; Appeal of Final Mitigated  
Negative Declaration      Agenda Items 58-61**  
**Hearing Date: October 22, 2013; Special Order 3:00pm**  
**Supervisor Wiener's Request for a Continuance**

President Chiu and Honorable Members of the Board of Supervisors:

This office represents the Appellant, Liberty Hill Neighborhood Association (LHNA) in the above-noted appeal that is on the Board's calendar for today.

Yesterday morning I received an e-mail from Andres Power, legislative aide to Supervisor Wiener advising LHNA that Supervisor Wiener was called away on a family emergency and will not attend today's Board meeting. Mr. Power requested that LHNA consent to continue the hearing on its appeal to November 5, 2013.

This will notify the Board that LHNA, as a courtesy to Supervisor Wiener, has no objection to the requested continuance. We reviewed this date and several others with the group and although a number of witnesses will not be able to attend, we agreed to consent to the requested continuance.

Sincerely,

Stephen M. Williams

CC: Clerk of the Board  
Andres Power, Aide to Supervisor Wiener

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**From:** Board of Supervisors  
**To:** BOS-Supervisors  
**Subject:** FW: California Bankers Association comments - eminent domain  
**Attachments:** San Francisco letter 10-23-13.pdf

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**From:** Leland Chan [mailto:LChan@CalBankers.com]  
**Sent:** Thursday, October 24, 2013 11:11 AM  
**To:** Board of Supervisors  
**Subject:** California Bankers Association comments - eminent domain

Dear Clerk of the Board,

Attached is a letter to Supervisor Avalos which I would like to be distributed also to the members of the Board of Supervisors. I understand that this is the appropriate way to do so. Thank you for your assistance and let me know if I need to take other or further steps.

Leland Chan  
General Counsel  
California Bankers Association  
916/438-4404  
Cell: 415-321-9264  
[lchan@calbankers.com](mailto:lchan@calbankers.com)

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail [lchan@calbankers.com](mailto:lchan@calbankers.com) and delete the message.

 Please consider the environment before printing this e-mail.



1303 J Street, Suite 600, Sacramento, CA 95814-2939 T: 916/438-4400 F:  
916/441-5756

October 23, 2013

(via electronic mail)  
Supervisor John Avalos  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689

Re: Mortgage Resolution Partners Proposal; Eminent Domain

Dear Supervisor Avalos:

I am writing on behalf of the California Bankers Association and its members, which are most of the FDIC-insured financial institutions in the state, including those that do business in the City. CBA and its members recognize that many mortgage borrowers have struggled during the financial crisis. This and other cities face challenges attempting to provide services to homeowners and their communities. CBA's members are responsible lenders that have consistently sought to work with borrowers to avoid foreclosures where possible, through in-house modification programs as well as those established by the federal government. Individual banks have provided modifications to tens of thousands of borrowers and conducted outreach events, often working with community-based organizations. Unfortunately not all foreclosures are avoidable.

CBA also recognizes that Mortgage Resolution Partners' intentions are good: to re-price mortgages to improve borrowers' leverage position and thereby avoid further foreclosures. But we believe that the group's premises and methods are flawed. For the most part, borrowers default because of changed circumstances that hamper their ability to repay (like losing a job), not because home values fell below their mortgage debt. At any rate, MRP's plan does not focus on loans that are in default or in imminent threat of default, but rather on underwater loans that are *the least likely to default*.

According to its own marketing materials, MRP will screen borrowers who are current on their payments and who exhibit the ability to continue making payments. The sensible reason for selecting the strongest loans for condemnation is that they are more saleable, while defaulted loans are not. Controversially, MRP (again, according to their own materials) will seek to price these performing loans at a large discount: 15-20% below the market value of the property, which is already less than the face value of the note. The loans will then be marked back up to

5% below the property value and resold as FHA-qualified loans. Among the serious legal issues the plan raises are the following, which have yet to be fully litigated but definitely must be resolved in the courts before any plan may proceed:

- Using eminent domain to take the loans of current, financially stable borrowers will not prevent foreclosures or remediate blight, and thus casts legal doubt on the program's constitutionally required public purpose.
- Condemnation that consists solely of taking private property in order to transfer it to another private party (as opposed to an incidental private-to-private transfer that is part of a larger public project) is legally questionable, and is hardly more justifiable than condemning a cluster of struggling small businesses in order to transfer to a proven tax revenue generator like Walmart. That's what private markets are for, not eminent domain.
- The program relies on courts approving valuations that would not meet the constitutionally mandated "just compensation" standard. MRP cherry picks the strongest borrowers but wants to price their loans as if they are in default.

MRP's bold program also raises a number of unintended legal and practical issues that the City should take seriously:

- The City's ability to re-sell condemned loans as meeting FHA guidelines is in doubt in light of negative public comments about MRP's plan by representatives of federal housing agencies. This raises the prospect that the City would be left holding condemned loans for an undetermined period of time.
- Neither of the two California bills that would have exempted principal forgiveness from state tax liability, SB 30 and AB 42 (which CBA sponsored), was successfully enacted this year. This means that any borrower taking a principal reduction under the eminent domain program would be liable to pay California taxes on the amount of principal forgiven.
- Title insurance companies may be unwilling to place a clean policy of title in connection with either the City's acquisition loan or investors' take-out loan because of the legal uncertainties discussed above. Aside from putting the City at risk of being unable to resell condemned loans, homeowners may find themselves unable to sell their homes because of the cloud on title.
- Mortgage lenders and investors will face difficult to quantify risks that their loans may be taken at some future time for less than face value. This risk could result in reduced availability of affordable loans in affected areas, not because of redlining but rather as a consequence of business and legal uncertainties that MRP's program creates.

These are just some of the serious considerations to work through as the City weighs MRP's proposal. And you might be aware of Calpers' opposition to the City of Richmond's eminent

Supervisor Avalos  
October 24, 2013  
Page 3

domain plan based on its potential effect on the value of the pension giant's holdings. This is perhaps an indicator of further unintended consequences of implementing eminent domain in this extraordinary manner. CBA's members would be very willing to discuss the measures they have taken to modify loans. We would also welcome any discussion of the issues raised in this letter. We do not believe eminent domain will help the City achieve its goals.

Sincerely,

A handwritten signature in black ink, appearing to read 'Leland Chan', written in a cursive style.

Leland Chan  
General Counsel

cc: Members, SF Board of Supervisors  
Mayor Edwin Lee  
City Attorney Dennis Herrera  
Assessor-Recorder Carmen Chu

---

**From:** Jean Francois Houdre [houdre@sbcglobal.net]  
**Sent:** Friday, October 25, 2013 12:44 PM  
**To:** Nextdoor Excelsior North  
**Cc:** Avalos, John; Rahaim, John; tavakoli@sfgov.org; doug\_vu@sfgov.org; Lee, Mayor; Falvey, Timothy; Board of Supervisors  
**Subject:** No More MCD's in the Excelsior! DISTRICT 11 going up in SMOKE!

Dear Sirs,

On behalf of myself, my family and many long time residents that do not have the internet capability I am respectfully demanding that you put a stop to opening more MCD's in the Excelsior District. Currently we have three operating MCD's and I am pleading with you not to allow more to open and operate (that would be the Lucky Dragon that is awaiting approval to open less than 400 ft from an existing MCD). I feel like I am watching a bad movie. How can this be happening to my District without all the residents approving such changes??. I have the greatest amount of empathy for those who require such medicine, however, they should be sprinkled throughout the city and not saturated in one area, turning our District 11 into the mecca of MCD.

Please *re-think, re-evaluate, and simply put yourself in our shoes* and then ask yourself the question if you would be happy about such businesses being the primary thing that your Neighborhood is known for. We need hardware stores, UPS stores, KINKOS, and good clean grocery stores.

Thank you for careful consideration in this matter. **We currently have over 500 (and growing) signatures from the residents of District 11 opposing opening up more MCDs.**

***Please, on behalf of DISTRICT 11! DON'T LET UP GO UP IN SMOKE!***

Most sincerely,

Nancy Houdre

**From:** Nextdoor Excelsior North <reply@nextdoor.com>

**To:** houdre@sbcglobal.net

**Sent:** Friday, October 25, 2013 11:27 AM

**Subject:** Patricia De Fonte said "BOS will decide about Pot Club Legislation on November 7th"



**Patricia De Fonte**

Excelsior North

Oct 25

If you don't want to live in Excelsior Dam then write to these people and tell them "NO MORE MCD'S IN THE EXCELSIOR". We have one between Mission and Silver, and another submitted an applicaton to open less than a block away. We have three futher up mission, with 3 applications to open more.

I'm all for well run responsible MCD's - but not 8 of them in my neighborhood and none in other neighborhoods. And

they aren't all well run or responsible. We are lucky with the Green Cross, up on Geneva they are in hell.

Please hit reply when you do this so that you can encourage and inspire others.

Director John Rahaim, The San Francisco Planning Commission [John.rahaim@sfgov.org](mailto:John.rahaim@sfgov.org)

Supervisor John Avalos [john.avalos@sfgov.org](mailto:john.avalos@sfgov.org)

Shahde Tavakoli Shahde Office of Mayor Edwin M. Lee [Tavakoli@sfgov.org](mailto:Tavakoli@sfgov.org)

Doug Vu, Planning Dept. Staff overseeing the Lucky Dragon MCD planned for 4130 Mission Street,  
[doug\\_vu@sfgov.org](mailto:doug_vu@sfgov.org)

Mayor Ed Lee, [mayoredwinlee@sfgov.org](mailto:mayoredwinlee@sfgov.org)

Captain Timothy Falvey, Ingleside SFPD, [timothy.falvey@sfgov.org](mailto:timothy.falvey@sfgov.org)

San Francisco Board of Supervisors, [board.of.supervisors@sfgov.org](mailto:board.of.supervisors@sfgov.org)

Shared with Excelsior North and 11 nearby neighborhoods in General

[View or reply](#)

[Thank](#) · [Private message](#)

You can also reply by email or use Nextdoor for iPhone or Android.

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This message was intended for [houdre@sbcglobal.net](mailto:houdre@sbcglobal.net) Unsubscribe or adjust your email settings Nextdoor, 101 Spear Street, Suite 230, San Francisco, CA 94105

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**From:** Lucy Tse [lucytse218@yahoo.com]  
**Sent:** Monday, October 28, 2013 12:43 AM  
**To:** Board of Supervisors  
**Cc:** NEY 283 Linda Cook; NEY 308 CJ Russell; NEY/Congdon 111 Patricia Defonte  
**Subject:** Fwd: NO MORE MCD'S IN THE EXCELSIOR

I am sorry the previous e-mail for the board of supervisors did not go through.

Sent from Lucy's iPhone. Please excuse for typos.

Begin forwarded message:

**From:** Lucy Tse <lucytse218@yahoo.com>  
**Date:** October 28, 2013, 12:32:50 AM PDT  
**To:** "john.rahaim@sfgov.org" <john.rahaim@sfgov.org>, John Avalos <John.Avalos@sfgov.org>, "doug.vu@sfgov.org" <doug.vu@sfgov.org>, "mayoredwinlee@sfgov.org" <mayoredwinlee@sfgov.org>, "timothy.falvey@sfgov.org" <timothy.falvey@sfgov.org>, "board.of.sipervisors@sfgov.org" <board.of.sipervisors@sfgov.org>  
**Subject:** NO MORE MCD'S IN THE EXCELSIOR

To My Dear City Officials,

My name is Lucy Tse, who live in the Excelsior for the last twenty some years. My husband and I work so hard and raise all our four kids here. My neighbor Linda Cook and I started our Ney Street Neighborhood watch group and with all our neighbors hard working in the past years. we have seen lots of improvement in the neighborhood. Under our current leadership of Patricia Defonte, we have completed a few projects that we are proud of and won a reward in 2012. We were happy to be living in our neighborhood until lately, many of our neighbor do not feel safe to live here any more. There are more crimes acting lately. I strongly think that you should not approve any more MCD's in the Excelsior. We already have one on Mission and Silver. And another one submitted an application to open less than a block. THIS IS VERY UNFAIR TO US. Was it just because we do not have a park for small kids, or other facilities that other parts of the city have except this little forgotten corner in the city between Silver and Trumbull)? We are all paying the same tax rate but why we are getting the most unwanted business established in our neighborhood instead of bookstores, healthily food store and/or some other business that we can bring our kids to shop and explore our neighborhood with our generations to come. If you approve more Pot Clubs in our area. We would have to move out from the neighborhood that we have live and love for so long, we have worked so hard to make it better and was hoping to live here generation after generation. So I urge you to please consider my ( actually many of our neighbors who do not know how to write and express ) concerns and care about us. Thank you.

Lucy Tse

Sent from Lucy's iPhone. Please excuse for typos.

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**From:** Lisa Campbell [lisamorriscampbell@gmail.com]  
**Sent:** Friday, October 25, 2013 12:08 PM  
**To:** Rahaim, John; Avalos, John; Tavakoli@sfgov.org; doug\_vu@sfgov.org; Lee, Mayor; Falvey, Timothy; Board of Supervisors  
**Subject:** No MCD's in the Excelsior

Dear Government Leaders,

I've been too busy raising my two children (ages 4 and 3 months) to follow what's going on with MCDs in the Excelsior and Portola, but I hear there are several applying to open.

Please say NO to MCDs in my neighborhood! I am a member of the Baha'i Faith and when there was an MCD next to our worship center at 170 Valencia I felt intimidated by the MCD clientele lingering on the sidewalk, and there was an uptick in crime and immediate resale of pot right there on the street.

Additionally, for recovering drug addicts, like my husband, we don't need to see even more drugs in this city.

There is no way I want to introduce ever MORE of this element in the Excelsior and Portola, especially as there is already one on Mission north of Silver. I'm waiting for my four year old to ask me what that neon green cross is, and I do not look forward to explaining it. By the time he's in elementary school he'll know that's where you can go to score a resale.

Sincerely,  
Lisa Campbell  
122 Gambier St.

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**From:** Jana O. [jana0565@yahoo.com]  
**Sent:** Friday, October 25, 2013 2:32 PM  
**To:** Rahaim, John; Avalos, John; Tavakoli@sfgov.org; doug\_vu@sfgov.org; Lee, Mayor; Falvey, Timothy; Board of Supervisors  
**Subject:** MCD applications in the Excelsior district

I am a long-time San Francisco resident and am opposed to opening more MCDs in the Excelsior district. There are already enough, thank you.

Jan Luong

C-PAGES  
BOS-11 - electronically

130054 , 130734

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**From:** kt6strin [kt6strings@aol.com]  
**Sent:** Friday, October 25, 2013 3:05 PM  
**To:** Rahaim, John; Tavakoli@sfgov.org; doug\_vu@sfgov.org; Lee, Mayor; Falvey, Timothy; Board of Supervisors  
**Subject:** No more MCDs in the Excelsior Mission corridor

I join many Excelsior residents in voicing concern and strong objection to the approval of yet another marijuana cannabis dispensary in the Excelsior district. Presently, Green Cross operates an MCD at 4218 Mission, Lucky Dragon has applied for a permit a scant block away at 4130 Mission, and more applications for locations nearby are pending.

I recognize that MCDs may be providing a necessary medical service to some, but the proliferation and concentration of these outlets--and the attendant undesirable elements that they inevitably bring--in a neighborhood that has the highest ratio of children in the city is wholly inappropriate and contrary to the public good. I ask you to oppose opening new MCDs in our district, or at least see that some sort of reasonable limitation is implemented.

Sincerely,  
Katherine Taylor  
102 Maynard Street, SF 94112

File 130585

**From:** Board of Supervisors  
**To:** Evans, Derek  
**Subject:** Opposition Letter for Today's San Francisco Mayor and Board of Supervisors Meeting re: File No. 130585 - Police Code - Large Capacity Magazines; Sales of Firearms and Ammunition; Reporting Lost or Stolen Firearms; Shooting Ranges [MA-Interwoven.FID2744  
**Attachments:** 249315\_San Francisco Mayor and Board of Supervisors Opp. Ltr. re File No. 130585 - Police Code - Large Capacity Magazines\_ Sales of Firearms and Ammunition\_ Reporting Lost or Stolen Firearms\_ Shooting Ranges - Opposi.PDF  
**Importance:** High

**From:** Claudia Ayala [mailto:CAyala@michellawyers.com]  
**Sent:** Tuesday, October 22, 2013 10:14 AM  
**To:** Avalos, John; Campos, David; Cohen, Malia; Kim, Jane; Tang, Katy; Yee, Norman (BOS); Breed, London; Chiu, David; Farrell, Mark; Mar, Eric (BOS); Wiener, Scott; Calvillo, Angela; Board of Supervisors  
**Cc:** C.D. Michel; Anna M. Barvir  
**Subject:** Opposition Letter for Today's San Francisco Mayor and Board of Supervisors Meeting re: File No. 130585 - Police Code - Large Capacity Magazines; Sales of Firearms and Ammunition; Reporting Lost or Stolen Firearms; Shooting Ranges [MA-Interwoven.FID27444]  
**Importance:** High

Hon. Board of Supervisors & Clerk of The Board:

We respectfully submit the attached opposition letter on behalf of our clients in reference to the Board of Supervisors meeting regarding agenda item number 50 and S.F. file number 130585. We ask that you take a moment of your time to review our letter before your meeting today.

Please feel free to contact me if you have any problems opening the attachments or if you have any questions or concerns.

Thank you,

<p><b>Claudia Ayala</b> Senior Paralegal</p>  <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4473 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:CAyala@michellawyers.com">CAyala@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a></p> <p>180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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SENIOR COUNSEL  
C. D. MICHEL\*

SPECIAL COUNSEL  
JOSHUA R. DALE  
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TAMARA M. RIDER  
JOSEPH A. SILVOSO, III  
LOS ANGELES, CA

\*ALSO ADMITTED IN TEXAS

WRITER'S DIRECT CONTACT:  
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LOS ANGELES, CA

DAVID T. HARDY  
TUCSON, AZ

October 22, 2013

Mayor Edwin Lee  
Supervisor Eric Mar  
Supervisor Mark Farrell  
Supervisor David Chiu  
Supervisor Katy Tang  
Supervisor London Breed  
Supervisor Jane Kim  
Supervisor Norman Yee  
Supervisor Scott Wiener  
Supervisor David Campos  
Supervisor Malia Cohen  
Supervisor John Avalos  
SAN FRANCISCO MAYOR AND BOARD OF SUPERVISORS  
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[Board.of.Supervisors@sfgov.org](mailto:Board.of.Supervisors@sfgov.org)  
[Angela.Calvillo@sfgov.org](mailto:Angela.Calvillo@sfgov.org)  
**VIA FAX (415) 554-5227 & EMAIL**

**Re: File No. 130585 – Police Code – Large Capacity Magazines;  
Sales of Firearms and Ammunition; Reporting Lost or Stolen  
Firearms; Shooting Ranges – OPPOSITION**

Dear Honorable Mayor and Board of Supervisors:

We write on behalf of our clients, the National Rifle Association (NRA) and the California Rifle and Pistol Association (CRPA), as well as the hundreds of thousands of their members in California, including those residing in San Francisco (“the City”).

October 22, 2013

Page 2 of 6

Re: File No. 130585 – Police Code – Large Capacity Magazines; Sales of Firearms and Ammunition; Reporting Lost or Stolen Firearms; Shooting Ranges – OPPOSITION

For the reasons discussed below, our clients oppose adoption of File No. 130585 – Police Code – Large Capacity Magazines; Sales of Firearms and Ammunition; Reporting Lost or Stolen Firearms; Shooting Ranges to be considered by the Board of Supervisors on October 22, 2013 (“the Proposed Ordinance”).

## **I. “LARGE CAPACITY MAGAZINE” POSSESSION BAN**

California state law prohibits the sale, manufacture, or importation of “large capacity magazines” (i.e., ammunition feeding devices capable of holding more than 10 rounds). Cal. Penal Code § 32310. California does not prohibit the simple possession of “large capacity magazines” owned prior to January 1, 2000. *See* Cal. Penal Code §§ 32310, 32400 *et seq.*

The Proposed Ordinance seeks to: (1) Ban the possession of “large capacity magazines” in San Francisco, *including* many magazines lawfully acquired prior to January 1, 2000; (2) require persons already possessing a “large capacity magazine” to remove it from the city, surrender it to the Police Department, or sell or transfer it lawfully, within 90 days; and (3) provide certain exemptions.

As detailed below, the proposed magazine ban violates the Second Amendment and is impliedly preempted by state law.

### **A. The City’s Proposal to Ban the Possession of “Large Capacity Magazines” Violates the Second Amendment**

The Supreme Court’s decision in *District of Columbia v. Heller*, 554 U.S. 570, 624-25 (2008), is clear that arms “typically possessed by law-abiding citizens for lawful purposes” or those “in common use” are protected by the Second Amendment. That protection surely extends to commonly used ammunition feeding devices (e.g., magazines) which are often necessary for the meaningful exercise of the right. Under any standard of review, a flat ban on items protected by the Second Amendment is unconstitutional. *See id.* at 628-29 (finding D.C. ban on handguns, arms typically possessed by law-abiding citizens for lawful purposes, unconstitutional regardless of the standard of review applied).

The lawful use of ammunition feeding devices with a capacity of ten or more rounds for self-defense and other lawful purposes is exceedingly common. Due to the popularity of these magazines, and because of their effectiveness for personal defense, these items are widely used (and often preferred) for in-home self-defense. Certainly in the rushed and frantic circumstances that often accompany home invasions or personal attacks, the added capacity of a “large capacity magazine” may be the difference between life and death. The Proposed Ordinance will strip its

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Re: File No. 130585 – Police Code – Large Capacity Magazines; Sales of Firearms and Ammunition; Reporting Lost or Stolen Firearms; Shooting Ranges – OPPOSITION

citizens of access to magazines that enable them to adequately protect themselves when attacked by one or more armed assailants in their home.

The possession of “large capacity magazines” is thus protected by the Second Amendment, and the City’s proposed flat ban on that conduct is invalid. As the City’s “large capacity magazine” ban plainly violates the Second Amendment, its adoption will make the City a prime target for litigation, which can be costly.

**B. The City’s Proposal to Ban the Possession of “Large Capacity Magazines” Is Preempted by State Law**

Under the preemption doctrine, a local regulation will be struck down if it duplicates state law, conflicts with state law, or enters into a field wholly occupied by the state to the exclusion of local regulation, either expressly or by implication. *Fiscal v. City and County of San Francisco*, 158 Cal. App. 4th 895, 903-04 (2008). Banning the possession of “large capacity magazines,” as defined by the Proposed Ordinance, runs afoul of the preemption doctrine insofar as it contradicts state law and enters into an area of law that is fully occupied by state law.

**1. The “Large-Capacity Magazine” Ban Contradicts State Law**

A local law “*contradicts* state law when it is inimical to or cannot be reconciled with state law.” *O’Connell v. City of Stockton*, 41 Cal.4th 1061, 1068 (2007). The Proposed Ordinance is preempted as contradictory to state law to the extent it is intended to apply to any “large-capacity magazine” acquired prior to January 1, 2000. Those magazines are not illegal to possess under state law and, in fact, owners of such magazines enjoy various uses *expressly* granted by various Penal Code sections. To the extent the Proposed Ordinance applies to “large capacity magazines” acquired before 2000, it deprives those in lawful possession of such magazines from conduct they are expressly entitled to engage in under state law.

Flatly prohibiting what the state expressly allows, the proposal conflicts with state law and is preempted. *See Fiscal*, 158 Cal. App. 4th at 915.

**2. The “Large Capacity Magazine” Ban Improperly Enters an Area of Law That Is Fully Occupied by State Law**

Similarly, attempts to apply the Proposed Ordinance to “large-capacity magazines” acquired prior to 2000 is impliedly preempted by state law. A local ordinance that encroaches on an area of law impliedly occupied by the Legislature will be stricken as unconstitutional. State law impliedly preempts local regulation when:

(1) [T]he subject matter has been so fully and completely covered by general law as to

Re: File No. 130585 – Police Code – Large Capacity Magazines; Sales of Firearms and Ammunition; Reporting Lost or Stolen Firearms; Shooting Ranges – OPPOSITION

clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; *or* (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.

*Id.* at 904 (emphasis added).

First, “large-capacity magazines” are fully and completely regulated under the Penal Code, thereby foreclosing any local interference with the state statutory scheme (except that which was expressly authorized). Indeed, 16 different state statutes *specifically* regulate the possession, sale, manufacture, and importation of “large capacity magazines.”<sup>1</sup> While state law explicitly bans these practices generally, Cal. Penal Code § 32310, these 16 laws enumerate multiple circumstances in which it remains lawful to transfer “large capacity magazines.” And because a “large capacity magazine” is also a “generally prohibited weapon” under section 16590, an additional eight statutes apply.<sup>2</sup> In sum, 24 state statutes govern “large capacity magazines,” making up a broad and comprehensive regulatory regime indicating the Legislature’s intention to exclude additional regulation by local governments.

A prime example of the Legislature’s intent to prevent the local prohibition of “large capacity magazines” is found at Penal Code section 32420, which explicitly states that the magazine importation ban “does not apply to the importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with” the same magazine. Surely, the State did not intend to *explicitly permit* the importation of “large capacity magazines” by persons who possessed them prior to the sales ban, only to have the simultaneous and subsequent possession of the same magazines be made unlawful by local regulation. Further, local governments near California’s borders could effectively prohibit these magazines from exiting or entering the state, regardless of state law. Such a result offends the constitutional decree that local laws are subordinate.

The City’s proposal is also impliedly preempted because the regulation of “large capacity magazine” possession is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality. If local governments,

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<sup>1</sup> See Cal. Penal Code §§ 16740, 18010, 32310, 32315, 32390, 32400, 32405, 32410, 32415, 32420, 32425, 32430, 32435, 32440, 32445, 32450.

<sup>2</sup> See Cal. Penal Code §§ 16590, 17715, 17720, 17725, 17730, 17735, 17745, 17800.

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Re: File No. 130585 – Police Code – Large Capacity Magazines; Sales of Firearms and Ammunition; Reporting Lost or Stolen Firearms; Shooting Ranges – OPPOSITION

rather than the state, are permitted to enact further criminal restrictions on the possession of “large capacity magazines,” firearm holders will be confronted by a patchwork quilt of firearm and magazine laws each time they enter another jurisdiction, sowing frustration, uncertainty, and fear of prosecution among California residents as they travel throughout the state.

For the foregoing reasons, state law impliedly preempts the local regulation of “large capacity magazines,” and the City’s proposal is consequently invalid.

## **II. FAILURE TO TIMELY REPORT THE LOSS OR THEFT OF FIREARMS AND THE PRESUMPTION OF POSSESSION**

Currently, local law requires firearm owners to report the theft or loss of a firearm to law enforcement within 48 hours of becoming aware of the theft or loss. The Proposed Ordinance will amend Police Code section 616 to establish that the failure of a firearm owner to report a firearm theft or loss in accordance with local law creates a rebuttable presumption that he or she still possesses the firearm.

This proposal simply does not comport with our sense of justice and fairness. In fact, it turns the justice system on its head. When a gun is stolen, the firearm owner is the victim of a crime. But often, a gun owner may not discover and report a missing firearm before it is used in crime or before the City thinks they “*should* have become aware” it was missing. Under this law, the gun owner will be victimized again – this time, when the City treats them as a criminal with the burden of proving that they did not commit the crime their gun was used in by establishing that they no longer possessed it. The Proposed Ordinance thus places the burden of proof on the victim of gun theft to prove his or her innocence, rather than on the government where it belongs. This is *not* how our justice system works.

## **III. AMMUNITION SALES REGISTRATION REQUIREMENT**

Our client is pleased to see that the City has abandoned, for now, its attempt to amend current local law to require registration of all ammunition sales within the City. Each of the concerns that we expressed in our March 4, 2013, letter opposing the current registration of sales of 500 or more rounds would be greatly magnified by a requirement that required the reporting of every ammunition transaction, no matter how small.

## **IV. BAN ON MINORS AT SHOOTING RANGES WITHOUT PARENT OR GUARDIAN PRESENT**

It has been reported that the only shooting range within the City’s jurisdiction does not oppose the proposal to ban minors from entering a shooting ranges without a parent or guardian

October 22, 2013

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Re: File No. 130585 – Police Code – Large Capacity Magazines; Sales of Firearms and Ammunition; Reporting Lost or Stolen Firearms; Shooting Ranges – OPPOSITION

present.<sup>3</sup> Our client does not generally oppose such a requirement, except that it prevents youth civic and educational groups, such as the Boy Scouts of America or Girl Scouts of the United States of America, from honing proficiency in firearms safety and marksmanship through parent-approved group or troop outings.

To achieve the City's likely goals of preventing juvenile criminals from accessing shooting ranges, the City need only pass a law that no minor may enter a shooting range without the express, written permission of a parent or guardian. Our clients urge the City to amend the Proposed Ordinance accordingly.

## V. CONCLUSION

For the foregoing reasons, we strongly urge you to reject this proposal. Note that adoption of the unconstitutional provisions of the Proposed Ordinance will result in immediate litigation against the City to enjoin enforcement and have them declared invalid.

Should you require further guidance, our office is available to discuss in further detail the nuances of the constitutional issues raised by this proposal and analyzed in this correspondence.

Sincerely;

**Michel & Associates, P.C.**



Anna M. Barvir

AMB/ca

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<sup>3</sup> Neal Riley, *More Gun Control Laws Proposed for San Francisco*, SFGate (June 4, 2013), available at <http://blog.sfgate.com/cityinsider/2013/06/04/more-gun-control-laws-proposed-for-san-francisco/> (last accessed Oct. 21, 2013).

C-PALIS  
BOS-11  
130766

**From:** Jonathan Bonato [jonathanbonato@att.net]  
**Sent:** Saturday, October 26, 2013 7:50 AM  
**To:** Wiener, Scott; Farrell, Mark; Brian Basinger; James Tracy; Avalos, John; Chiu, David; Campos, David; Breed, London; Cohen, Malia; Yee, Norman (BOS); Tang, Katy; Kim, Jane  
**Cc:** director@cohsf.org; woo@mypropertyrights.com; press@twitter.com; MayorsPressOffice; senator.leno@senate.ca.gov; assemblymember.ammiano@assembly.ca.gov; Board of Supervisors; Caldeira, Rick; steve@thclinic.org; tommyavicolli mecca; kgoodin@cwclaw.com; kcasto@cwclaw.com; mtuft@cwclaw.com; leadorganizer@somcan.org; carlo@podersf.org  
**Subject:** Homeless Sleeping Tickets and Warrants Obstacle to Housing

Supervisors Wiener & Farrell,

I don't like looking a homeless person's suffering anymore than anyone else...but I am concerned if you pass legislation making it illegal for homeless people to sleep outside in the parks, the tickets and fines, and warrants they rack up will prevent them from being housed. When homeless people have outstanding warrants, it becomes another barrier to obtaining housing, especially programs like Mod Rehab Section 8. The housing authority is required to finger print and run criminal background checks on all applicants. Your legislation can delay and frustrate and cause homeless folks to loose out on rare and scarce housing opportunities. It will certainly discourage people already feeling very hopeless, folks who are ready to take their own life, by jumping from an SRO window, or walking in front of a bus, or jumping on the BART, Muni or Caltrain railway tracks in front of train.

Until San Francisco can place a moratorium on Ellis Act evictions and the Twitter IPO gold rush inspired mass evictions of artists and low income residents on Mid Market Street, until Governor Brown and Congress restore funding for affordable housing, it seems very misguided and unjust to be criminalizing homelessness.

I spent two years, one month and twenty seven days being homeless. The parks can be one of the safest places to be, certainly more pleasant than wandering the streets.

I am overwhelmed at my job with by the sheer numbers of homeless people who apply for housing, and I can only house a handful of them, as we have occasional vacancies.

Please don't make my job harder by criminalizing homelessness. Focus on stopping Ellis Act evictions, focus on halting John Gall's mass evictions at 1049 Market, and stopping his huge rent increases at 1005 and 1067 Market. Focus on finding housing for the Lee family who lost their home of 34 years this week, so Matthew Miller can get richer still, and Attorney Jeffrey Woo and Law Offices of Cooper, White, Cooper can profit off of the poor, seniors and disabled, please don't add insult to injury and make it a crime for these folks to be homeless.

Supervisors Wiener and Farrell, its time for you to try being homeless for a few weeks. Try surviving without access to bathrooms, unless you pay money to buy food or drink, try surviving without taking a shower, try surviving when you have to keep moving, because you can't sit down, trying surviving the hopelessness of ever finding housing when the average rent has skyrocketed to over \$3,000, while evictions of long time residents make front page news every day, alongside articles about Twitter tax breaks and IPOs raising 1.4 billion dollars. Try

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surviving with cold, cruel hearted real estate speculators and their attorneys who stand ready to evict you when you do find housing, if they see the opportunity to make millions of more dollars.

Its time for you to really understand to nature of this suffering, so you can become more compassionate and find the right way and wisdom to deal with suffering, other than trying to criminalize people who suffer.

Jonathan

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**Subject:** A Sincere Thank You to David Chiu  
**Attachments:** 11083 BOS Referral.pdf; OD FINAL 12050.pdf

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**From:** Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]

**Sent:** Wednesday, October 23, 2013 07:34

**To:** Calvillo, Angela

**Cc:** Avalos, John; Breed, London; Campos, David; Chiu, David; Cohen, Malia; Farrell, Mark; Kim, Jane; Mar, Eric (BOS); Tang, Katy; Scott Weiner; Yee, Norman (BOS); SF Examiner; SF Bay Guardian Editorial

**Subject:** A Sincere Thank You to David Chiu

Ms. Calvillo,

Please consider this an official communication to the Board of Supervisors for inclusion in correspondence.

**I would really like to thank Board of Supervisors President David Chiu for having me forcibly removed from the Board Chamber yesterday.**

**My efforts regarding open government had hit a point where my energy was flagging, and the decision by the President to take that dramatic action rather than simply choosing to warn me was just what I needed: a real shot in the arm! Again, thanks!**

As I was unable to make my public comment, I am providing a copy of the 150-word summary I had intended to submit:

**I am here once again to call to the attention of this BOS the referral from the SOTF regarding City Librarian Luis Herrera. This referral**

**is for the unlawful withholding of public records, including those used in a recent FPPC complaint. Herrera withheld these documents to cover up the fact that he had received gifts which he failed to report, and, in fact, to cover up the perjury committed when filing reports stating he had received nothing! A further referral is coming to this BOS regarding the abridgment of public comment at library commission meetings. In this short summary I cannot list all of Mr. Herrera's unlawful acts. But I would like to comment on my opinion regarding his actions and reactions: Mr. Herrera is a coward! I say that because only a coward would act and then send City employees under his supervision to answer for his unlawful acts!**

Attached is a copy of the referral letter from the Sunshine Ordinance Task Force (SOTF) regarding the matter. It is now more than seven months since this was referred to the BOS and "justice delayed is justice denied!" Also, as I indicated above, a second referral is coming regarding Mr. Herrera, so, I would sincerely hope you would not choose to complicate the separate issues by conflating them.

I have also attached a copy of the Order of Determination in SOTF case #12050 Ray Hartz v Angela Calvillo. Ms. Calvillo has willfully refused to comply with the order and as subsequent action by the Task Force has been

"delayed," I have filed three additional complaints for subsequent violations of the Sunshine Order as determined, not only in this specific case, but in five additional findings. The Library Commission, Ethics Commission, Police Commission and the Arts Commission all now place the 150-word summaries in "the body of the minutes" as directed by the Task Force to all City boards and Commissions. Ms. Calvillo has also failed to even attempt to comply with the Sunshine Ordinance as it refers to summaries of public testimony in the official minutes of the Board of Supervisors. This is nothing less than abridgement of free speech as guaranteed under the United States Constitution and the Constitution of the State of California. Despite the "Good Government Guide" advice, the placement of Ms. Calvillo's totally censored AND abridged summary of my comments in the body of the minutes in place of my summary is an abridgement of my Constitutionally protected political free speech. **Neither City Attorney Dennis Herrera nor Ms. Calvillo have shown any "compelling state interest" in restricting the free speech rights of citizens of San Francisco. Their failure to comply and continued obfuscation regarding the matter is not only a constitutional issue, but, also a matter of civil rights.**

As the Brown Act states regarding legal findings: *"These decisions found that prohibiting critical comments was a form of viewpoint discrimination, and that such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue."*

Placing the lawfully submitted 150-word summaries in a "disadvantaged" position, and substituting the "government version" of public testimony, is "viewpoint discrimination." This "disadvantaged position" guarantees that some members of the public will not read the actual public testimony and/or not understand the summary in the context of the meeting minutes. Compounding the matter by prefacing the submitted summary with a totally prejudicial introduction, rather than a simple statement that this was a "summary submitted by the speaker," is a further attempt to prejudice any reader of the official record as regards the speakers summary of their own comments.

**"Know your Rights Under the Sunshine Ordinance" is on each agenda for every board and commission in San Francisco, including the Board of Supervisors. Knowing your rights is one thing, but, getting the members of this Board of Supervisors, collectively and individually, to respect those rights is a ongoing battle! For members of the Board of Supervisors to take an oath to "support and defend the Constitutions of the United States and the State of California" and then do everything but, is an outrage!**

Sincerely,

Ray W. Hartz, Jr.  
Director, San Francisco Open Government

**SUNSHINE ORDINANCE  
TASK FORCE**



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

March 7, 2013

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

**Re: Public Library's Failure to Respond to Request to Identify Expenditure Documents  
(Sunshine Ordinance Complaint No. 11083, Hartz v Public Library)**

Dear Board of Supervisors,

On December 14, 2011, the Sunshine Ordinance Task Force ("Task Force") heard a Sunshine complaint brought by Ray Hartz, Jr. against the Public Library ("Library") alleging failure to appropriately respond to Mr. Hartz's July 21, 2011, Immediate Disclosure Request (IDR) for assistance in identifying the existence, form, and nature of documents related to the financial relationship between the Library and the nonprofit Friends of the San Francisco Public Library ("Friends"). Mr. Hartz had been attempting to receive records detailing itemization of the use of funds from Friends.

On March 12, 2012, the Task Force issued an Order of Determination finding that City Librarian Luis Herrera was in violation of Sunshine Ordinance Sections 67.21(c) for failure to direct Mr. Hartz to the proper office or staff person to respond to his request to identify documents related to Library expenditures of Friends' funds and 67.26 for failure to keep withholding to a minimum by not including documents related to Library expenditures of Friends' funds in the documents identified.

On November 7, 2012, the Task Force held a hearing on compliance with the Order of Determination and concluded that the Library continued to violate the Order by failing to provide documents related to the expenditures. The Task Force therefore voted to refer this matter to the Board of Supervisors for further investigation and possible action.

The Library records requested by Mr. Hartz are public records subject to disclosure under the Sunshine Ordinance and California Public Records Act. Sue Blackman, Library Commission Secretary, informed the Task Force that the Library does not know whether receipts exist that document the use or breakdown of funds and advised the Task Force that the Library is working with Friends to post expenditure documents online.

<http://www.sfgov.org/sunshine/>

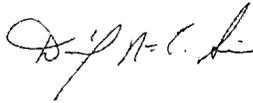
The Task Force recommends the Board of Supervisors investigate the Library's documentation of its expenditure of Friends' funds.

This request and referral is made under Section 67.30 (c) whereby the Task Force shall make referrals to a municipal office with enforcement power under the Sunshine Ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this Ordinance or the Acts.

Thank you for your timely attention to this matter. A description of the Task Force hearing, violations found, and decision are described in the attached Order of Determination. Please contact the Sunshine Ordinance Task Force Administrator at [sotf@sfgov.org](mailto:sotf@sfgov.org) or (415) 554-7724 with any questions or concerns.



Kitt Grant, Chair  
Sunshine Ordinance Task Force



David Sims, Member Attorney  
Sunshine Ordinance Task Force

Encl.

cc: Ray Hartz, Jr., Complainant  
Luis Herrera, City Librarian, Respondent  
Susan Blackman, Library Commission Secretary, Respondent  
Angela Calvillo, Clerk of the Board  
Jerry Threet, Deputy City Attorney



**ORDER OF DETERMINATION**

May 23, 2013

**DATE THE DECISION ISSUED**

April 3, 2013

*RAY HARTZ VS. CLERK OF THE BOARD (CASE NO. 12050)*

**FACTS OF THE CASE**

Complainant Ray Hartz ("Complainant") alleges that Angela Calvillo, Clerk of the Board of Supervisors (the "Clerk"), repeatedly violated section 67.16 of the Ordinance by failing to include his 150-word written statements, summarizing his public comments, in the body of the minutes of the Board's meetings held on March 6, 2012; April 17, 2012; May 8, 2012; June 5, 2012; July 24, 2012; September 4, 2012; and September 11, 2012.

**COMPLAINT FILED**

On October 23, 2012, Mr. Hartz filed a complaint with the Task Force.

**HEARING ON THE COMPLAINT**

On April 3, 2013, Complainant, Mr. Hartz appeared before the Task Force and presented his claim. Respondent, Rick Caldeira, Deputy Director, Office of the Clerk of the Board presented the Clerk of the Board's defense stating 150-word statements submitted are included in the Board's minutes as an addendum to the minutes.

The issue in the case is whether the Clerk of the Board violated Sections 67.16, 67.21, 67.30(c), 67.33, and 67.34 of the Ordinance.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the testimony and evidence presented the Task Force finds the testimony of Mr. Hartz to be persuasive and finds that Section 67.16 of the Ordinance to be applicable in this case. The Task Force does not find the testimony provided by Mr. Caldeira persuasive to this case.

**DECISION AND ORDER OF DETERMINATION**

The Task Force finds that Angela Calvillo, Clerk of the Board of Supervisors, violated Section 67.16 of the Sunshine Ordinance for failure to include Mr. Hartz's 150-word statement within the body of minutes at the point in the minutes where the speaker made his comments. The Clerk of the Board shall place 150-word statements submitted by members of the public within the minutes directly following the item addressed in public comment. Angela Calvillo, Clerk of the Board of Supervisors shall appear before the Education, Outreach and Training Committee on June 13, 2013.



This Order of Determination was adopted by the Sunshine Ordinance Task Force on April 3, 2013 by the following vote: (Hyland/Oka)

Ayes: Knee, Manneh, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pilpel, Grant

Absent: David

A handwritten signature in cursive script that reads "Kitt Grant".

Kitt Grant, Chair  
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney  
Ray Hartz, Jr., Complainant  
Angela Calvillo, Clerk of the Board of Supervisors, Respondent

SUBMITTED VIA EMAIL  
10/21/2013

City and County of San Francisco



Department of Human Resources

Edwin M. Lee  
Mayor

Micki Callahan  
Human Resources Director

C PAGE

Oct. 21, 2013

The Honorable Cynthia Ming-Mei Lee, Presiding Judge  
Superior Court of California, County of San Francisco  
400 McAllister Street  
San Francisco, CA 94102

Dear Judge Ming-Mei Lee:

The Civil Grand Jury issued its report entitled, "Déjà Vu All Over Again: San Francisco's City Technology Needs a Culture Shock," in June of 2011.

One of the recommendations contained in the report stated, "Pending revision of the Charter, the Mayor develop methods for speeding up the hiring process for ICT personnel."

The City and County of San Francisco Department of Human Resources(DHR) and Department of Technology (DT), in conjunction with members of COIT, individual departments, and Local 21, established an IT working group to address the City's IT hiring challenges in the fall of 2011.

Two areas in need of improvement were identified:

- (1) Process improvements: Improve the efficiency of IT hiring within the civil service system; and
- (2) Recruitment improvements: Improve the recruitment of qualified applicants through effective branding, marketing of City tech jobs, and use of social media.

The process improvements undertaken include:

- A pilot project in conjunction with DT to improve the timelines of IT hiring within the civil service framework in the short-term
- A proposal to update Civil Service Commission rules related to the exam process
- A long-term proposal to improve IT exams, which will expedite the hiring of qualified personnel, by creating a continuous exam process administered online.

The marketing improvements are being spearheaded by DHR and Local 21. The aim is to make IT jobs with the City more attractive by highlighting new technology projects being implemented by the City, and the people engaged in those projects. Additionally, the marketing materials will appeal to tech professionals' desire to make a difference in the community by engaging in civil service. DHR is also implementing the use of social media websites like LinkedIn, Facebook, and Twitter to reach out to potential employees.

Sincerely,

Susan Gard, Chief of Policy  
City and County of San Francisco  
Human Resources Department

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**To:** BOS-Supervisors  
**Subject:** Mayor Lee's return

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**From:** Elliott, Jason  
**Sent:** Monday, October 21, 2013 04:42  
**To:** Elliott, Jason  
**Subject:** Mayor Lee's return

Good afternoon:

Mayor Lee has returned to San Francisco early. The letter designating an Acting Mayor through Wednesday, October 23<sup>rd</sup> at 11:25am is no longer in effect.

Please let me know if you have any questions.

Thank you,  
jason

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Jason Elliott  
Director of Legislative & Government Affairs  
Office of Mayor Edwin M. Lee  
(415) 554-5105