

# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON CHAIRPERSON

Date:

June 17, 2013

PAUL. A. RENNE VICE-CHAIRPERSON

To:

Members, Ethics Commission

BENEDICT Y. HUR
COMMISSIONER

COMMISSIONER

From:

John St. Croix, Executive Director

JAMIENNE S. STUDLEY | F

Re:

Hearing - Ethics Complaint 02-120402

JOHN ST. CROIX EXECUTIVE DIRECTOR

Enclosed is the Report and Recommendation for the above complaint. David Chiu, Malia Cohen, Eric Mar, and Scott Weiner are the named Respondents. Pastor Gavin is the named Complainant. Staff originally scheduled the matter to be heard during the regular Ethics Commission meeting of February 25, 2013. The matter was postponed to be heard at this meeting. All parties received a copy of the Report and Recommendation and a Hearing Notice prior to February 25, 2013, pursuant to the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations").

Under the Regulations neither the Respondents nor the Complainant are required to attend. However, if any party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence.

Under Chapter Three of the Regulations, the Executive Director shall prepare a written Report and Recommendation summarizing his or her factual and legal findings. Each Complainant and Respondent may submit a written response to the Director's Report and Recommendation. All responses to the Report and Recommendation are attached.

Each Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; each Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.

In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance.



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR CHAIRPERSON

Date:

February 1, 2013

JAMIENNE S. STUDLEY VICE-CHAIRPERSON

To:

Cc:

Members, Ethics Commission

BEVERLY HAYON COMMISSIONER David Chiu, President of the Board of Supervisors

DOROTHY S. LIU

Malia Cohen, Supervisor Eric Mar, Supervisor

COMMISSIONER

Scott Wiener, Supervisor

PAUL A. RENNE

Pastor Gavin

Paul A. Renne Commissioner

Members, Sunshine Ordinance Task Force

COMMISSIONER
JOHN ST. CROIX

EXECUTIVE DIRECTOR

From:

John St. Croix, Executive Director

Re:

REPORT AND RECOMMENDATION

ETHICS COMMISSION COMPLAINT NO. 02-120402

## INTRODUCTION AND JURISDICTION

On April 2, 2012, the Ethics Commission ("Commission") received a referral from the Sunshine Ordinance Task Force ("Task Force") for the Task Force complaint number 11048. The written referral stated: "The [Task Force] hereby provides notification of willful failure and official misconduct findings against San Francisco Board of Supervisors President David Chiu, Supervisor Eric Mar, Supervisor Scott Wiener, and Supervisor Malia Cohen ("Respondents") for failure to comply with Sunshine Ordinance public meeting provisions." Specifically, all four Respondents were found to have violated San Francisco Administrative Code, section 67.7(b) ("Sunshine Ordinance" or "Ordinance"), for "not providing the public with copies of the amendment to the Development Agreement which were provided to the policy body

in connection with an agenda item," and sections 67.15(a) and (b) for "failing to adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of the 14 pages of amendments."

The referral was made pursuant to Sunshine Ordinance, section 67.34, for the willful failure of the named Respondents to comply with provisions of the Ordinance. Sunshine Ordinance, section 67.34, provides that complaints involving allegations of willful violations of the Ordinance shall be handled by the Commission. Complaints alleging willful violations of the Ordinance by elected officials or department heads are handled pursuant to the Commission's Regulations for Violations of the Sunshine Ordinance ("Regulations"), Chapter Three. Under Chapter Three, the Executive Director must prepare a written report and recommendation summarizing his or her factual and legal findings, applicable legal provisions, and evidence gathered. The report and recommendation must also recommend whether or not a Respondent willfully violated the Ordinance, non-willfully violated the Ordinance, or did not violate the Ordinance. The Commission is not bound by the Executive Director's recommendation.

#### SUMMARY OF FACTUAL FINDINGS

On Tuesday, May 24, 2011, at 9:00 a.m., the Board of Supervisors Land Use and Economic Development Committee ("Committee") held a Special Meeting.<sup>1</sup> On the posted agenda for the Special Meeting were five items for discussion: Item 1) Transfer Agreement - Alice Griffith Public Housing Opportunity Center; Item 2) Development Agreement - Parkmerced; Item 3) Planning Code - Special Use District - Parkmerced; Item 4) Planning Code - Zoning Map Amendments - Parkmerced; and Item 5) General Plan Amendment - Parkmerced. Each item on the agenda contained a description of the matter to be heard. Because Items 2

<sup>&</sup>lt;sup>1</sup> At the time of this Special Meeting, the Committee held its regular meetings weekly on Mondays at 1:00 p.m.

through 5 were related to Parkmerced, the Committee heard those matters as a single item.

Present at the Special Meeting were Supervisors Mar, Weiner, and Cohen (the Committee members), Supervisor Elsbernd (whose district includes Parkmerced) and President Chiu.

Shortly after the consolidated item was introduced, President Chiu stated that he was introducing various amendments to the Development Agreement between the City and Parkmerced's owners.<sup>2</sup>

Copies of a 14-page document containing the amendments ("amendments") were distributed to the Committee. The 14-page document contained changes to the proposed Development Agreement between the City and Parkmerced. President Chiu also stated that copies of the amendments were available for the public, as well as a two-page summary document which outlined the proposed amendments. President Chiu instructed Judson True, his Legislative Aide, to provide either a copy of the amendments or the summary, or both, to any member of the public present at the meeting who wanted a copy.

During public comment, several speakers stated that they had read the amendments that were distributed at the meeting, but that they would have appreciated more time to review the document. Before voting on the motion regarding the Development Agreement, the Committee asked its legal counsel, Deputy City Attorney Cheryl Adams, if the amendments created a substantive change to the notice provided for on the posted meeting agenda. She advised that the amendments were within the scope of the language contained in the notice of the items posted on the agenda. She advised that the Committee could consider the matter with the inclusion of the amendments.

<sup>&</sup>lt;sup>2</sup> The Development Agreement was part of the ordinance that the Committee was considering and that would be moved to the full Board of Supervisors regarding the redevelopment of Parkmerced.

On June 20, 2011, Pastor Gavin and nine anonymous individuals submitted a complaint to the Task Force alleging that Supervisor Mar violated sections 67.7(a-d) and 67.7-1 of the Ordinance. On August 23, 2011, the Task Force held a hearing on the matter and determined that Supervisor Mar violated sections 67.7(b), 67.15(a), and 67.15(b) of the Ordinance. Both Pastor Gavin and the Legislative Aide to Supervisor Mar were present. Supervisor Mar's Aide stated that because it was President Chiu who introduced the amendments, any violation that the Task Force found should not be attributed to Supervisor Mar. The Task Force then amended the complaint to include President Chiu, and Supervisors Cohen and Weiner, and continued the matter. On September 2, 2011, the Task Force issued its "Order of Determination" ("Order") reflecting its determination that Supervisor Mar violated the Ordinance and that the Task Force continued the matter to hear from President Chiu and Supervisors Cohen and Wiener.

On September 27, 2011, the Task Force heard the continued matter and determined that President Chiu, Supervisor Cohen, and Supervisor Wiener also violated Ordinance sections 67.7(b), 67.15(a), and 67.15(b). Judson True attended and stated that he personally distributed both the amendments and summary to every member of the public in attendance at the Special Meeting who wanted a copy. He stated that the documents were distributed to the Committee at the same time they were distributed to the public. The Complainant disputed that the amendments and summary were distributed to the members of the public. Gillian Gillette, Legislative Aide to Supervisor Weiner, also attended and stated that the Committee relied on the Deputy City Attorney's advice that the amendments did not substantively change the notice on the agenda and that the meeting did not need to be continued or re-noticed. Andrea Bruss, Legislative Aide to Supervisor Cohen, also attended and stated that Supervisor Cohen agreed

with President Chiu and Supervisor Weiner. On November 1, 2011, the Task Force issued its Order reflecting the determination it made on September 27, 2011.

### SUMMARY OF APPLICABLE LAW

Sunshine Ordinance Section 67.6(f) provides in pertinent part that "[s]pecial meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings."

Sunshine Ordinance Section 67.7(b) provides, in reference to a posted agenda item of a regular meeting, that "[a] description is meaningful if it is suf-ficiently [sic] clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours."

Sunshine Ordinance Section 67.15(a) provides, in pertinent part, that every agenda for a regular meeting "shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's [sic] subject matter

jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article."

Sunshine Ordinance Section 67.15(b) provides that every agenda for a special meeting at which an action is proposed to be taken on an item "shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon."

Sunshine Ordinance Section 67.34 states that "[t]he willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission."

## SUMMARY OF EVIDENCE GATHERED

Staff reviewed the video recording of the Committee's Special Meeting held on May 24, 2011, the Committee's Special Meeting Agenda (Exhibit 1), and the Agenda's related documents (Exhibit 2). Staff also reviewed the audio recordings of both Task Force hearings on the matter, and the documents forwarded from the Task Force (Appendix A). Staff reviewed the amendments (Exhibit 3) and summary (Exhibit 4). After reviewing the recordings and documents, staff determined that no interviews were necessary. All documents that staff reviewed are attached to this report.

#### LEGAL FINDINGS

A. There was no violation of Ordinance section 67.7(b) because the meeting in question was a Special Meeting.

Sunshine Ordinance Section 67.7 is titled "Agenda Requirements; Regular Meetings." Section 67.7(b) relates to section 67.7(a), which provides that at least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Section 67.7(b) defines the term "meaningful description" as used in section 67.7(a). Section 67.7(b) provides that notice of an item on an agenda must contain a description of the item that is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting. Section 67.7(b) also provides that documents that have been provided to the policy body in connection with an agenda item shall be posted adjacent to the agenda. It further provides that if the documents are of more than one page in length, they may be made available for public inspection and copying at a location indicated on the agenda during normal office hours.

The notice and agenda requirements for special meetings are outlined in section 67.6(f). That section contains different requirements for the posting of an agenda for a special meeting. The requirements under that section are that notice must be provided within 72 hours in advance of, "the time and place of the special meeting and the business to be transacted." No specific requirements are outlined in section 67.6(f) regarding the time-frame in which documents that may be distributed in connection with the posted agenda item must be made available to the public.

The basis for the Task Force finding that all four Supervisors violated section 67.7(b) was that they did not "[provide] the public with copies of the amendment to the Development Agreement which were provided to the policy body in connection with an agenda item." As discussed, the meeting in question was not a regular meeting. Thus, section 67.7(b) is inapplicable. However, even had the meeting been a regular meeting, there would have been no violation of section 67.7(b).

First, the Development Agreement and other supporting documents were posted with the agenda. Second, the finding of the Task Force that the public was not provided with copies of the amendment to the Development Agreement which were provided to the policy body in connection with an agenda item does not accurately reflect what occurred at the Special Meeting. The amendments were distributed to the public at the same time as they were distributed to the Committee.

Under section 67.7(b) the issue was not whether the amendments were provided to the public; rather, the issue was whether the introduction of the amendments substantively changed the item so that the notice provided was no longer adequate to apprise a member of the public that he or she may have reason to attend the meeting.

The agenda item was worded broadly enough to encompass the consideration of the amendments to the Development Agreement that was discussed at the meeting. The four agenda items that related to Parkmerced were noticed with descriptions that were clear and specific to alert a member of the public whose interests were affected by the item that he or she may have reason to attend the meeting. The video recording of the Committee meeting shows that President Chiu, who introduced the item, stated that copies of the amendments were available for the public, and that he instructed his Aide to distribute the document to anyone who wanted a

copy. The document distributed at the meeting contained the proposed amendments to the agenda item that was being discussed and that was noticed on the agenda. In addition, the Committee acted on the advice of the Deputy City Attorney who stated the amendments were within the scope of the language on the agenda of the noticed items, and that their introduction did not substantively change the notice for the item that appeared on the agenda.

In summary, there was no violation of section 67.7(b) as to all Respondents because: 1) that section relates specifically to agenda requirements for regular meetings, 2) the document was actually made available to the public during the special meeting, 3) the introduction of the item did not substantively change the description provided for in the agenda, and 4) the Committee reasonably relied on the advice of its legal counsel that it could proceed.

B. There is no violation of section 67.15(a) or 67.15(b) because the meeting in question was a Special Meeting and public comment was provided for on the posted agenda item.

The Task Force found the violations of section 67.15(a) and (b) because it determined that the four Supervisors failed to "adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of the 14 pages of amendments." However, section 67.15 does not govern the notice requirements of an agenda, and staff has only addressed this issue because the Task Referral included these violations.

Section 67.15 addresses in its entirety the requirement that a policy body allow for public testimony at a meeting. Subsection (a) specifically outlines that each agenda for a regular meeting of a policy body must include an agenda item in which the public may "directly address a policy body on items of interest to the public that are within policy body's subject matter

jurisdiction (commonly referred to as "general public comment")." As discussed above, the meeting in question here was a special meeting; thus, the requirements of 67.15(a) are inapplicable. The requirements for public testimony at a special meeting are outlined in section 67.15(b).

Section 67.15(b) states that "[e]very agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon." Supervisor Mar stated at the beginning of the meeting that public comment would be limited to two minutes per individual. Public comment took place during the combined item regarding Parkmerced and each individual was allowed up to the full two minutes to speak. Not only did the agenda provide for public comment on the posted item; public comment actually occurred.

### RECOMMENDATION

Based on the above reasons staff recommends that the Commission find:

- 1) President Chiu did not violate the Sunshine Ordinance as to all allegations, and
- 2) Supervisor Cohen did not violate the Sunshine Ordinance as to all allegations, and
- 3) Supervisor Mar did not violate the Sunshine Ordinance as to all allegations, and
- 4) Supervisor Weiner did not violate the Sunshine Ordinance as to all allegations.

<sup>&</sup>lt;sup>3</sup> Section 67.15(a) also provides that "the agenda need not provide an opportunity for members of the public to address the [Board of Supervisors] on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board."

From:

John St.Croix/ETHICS/SFGOV

To:

Catherine Argumedo/ETHICS/SFGOV@SFGOV, Garrett

Chatfield/ETHICS/SFGOV@SFGOV, Mabel Ng/ETHICS/SFGOV@SFGOV

Date:

Friday, February 15, 2013 04:01PM

Subject:

Fw: Response re: Ethics Commission Complaint No. 02-120402

John St. Croix Executive Director, San Francisco Ethics Commission 25 Van Ness Avenue, Suite 220 San Francisco, CA 94102-6053

-----Forwarded by John St.Croix/ETHICS/SFGOV on 02/15/2013 04:00PM -----

To: "St.Croix, John" <john.st.croix@sfgov.org>
From: "Chiu, David" <david.chiu@sfgov.org>

Date: 02/15/2013 03:59PM

Subject: Response re: Ethics Commission Complaint No. 02-120402

Mr. St Croix - Please see below and distribute as appropriate.

February 15, 2013

Re: Ethics Commission Complaint No. 02-120402

Dear Chairperson Hur and Members of the Ethics Commission:

Thank you for the opportunity to provide written comment regarding the above complaint. I agree with the staff recommendation - and the reasoning behind it - that I did not violate the Sunshine Ordinance. I followed the clear advice of the Deputy City Attorney at the Land Use Committee meeting of May 24, 2011.

Thank you very much for your consideration in this matter.

Sincerely,

David Chiu

Member, Board of Supervisors District 8



## City and County of San Francisco

2013 FEB [4 PM 1:49

SCOTT WIENER ETHICS COMMISSION

威善高 BY.

February 13, 2012

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

RE: Hearing - Ethics Complaint 02-120402

Wiere

Dear Mr. St. Croix:

On the matter referenced above, I agree with your recommendation to the Commission that I did not violate the Sunshine Ordinance. I appreciate this opportunity to respond.

Sincerely,

Scott Wiener

Supervisor, District 8

SW/AP

## SUNSHINE ORDINANCE TASK FORCE



## FIL EN Hall

名別ではいる。 Goodlett Place, Room 244
San Francisco 94102-4689
SAN F ( A P O M G O 554-7724

Fax No. 415) 554-7854

TDD/TTY No. (415) 554-5227

March 13, 2012

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

Re: Sunshine Complaint No. 11048, Pastor Gavin v. Supervisor Mar (Part 1) and Pastor Gavin v. Supervisor Chiu, Supervisor Wiener, and Supervisor Cohen (Part 2)

Notice of Willful Failure and Official Misconduct

The Sunshine Ordinance Task Force ("Task Force") hereby provides notification of willful failure and official misconduct findings against San Francisco Board of Supervisors President David Chiu, Süpervisor Eric Mar, Supervisor Scott Wiener, and Supervisor Malia Cohen for failure to comply with Sunshine Ordinance public meeting provisions (see S.F. Admin. Code Sec. 67) in Sunshine Complaint No. 11048, Pastor Gavin v. Supervisor Mar (Part 1) and Pastor Gavin v. Supervisor Chiu, Supervisor Wiener, and Supervisor Cohen (Part 2).

This referral is made in request for appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.34 whereby the "willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct;"
- (2) San Francisco City Charter Section 15.102 which provides that the Ethics Commission "may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records;"
- (3) San Francisco City Charter Section 15.105 (Suspension and Removal); and
- (4) Sunshine Ordinance Section 67.30(c) which provides that "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts."

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

### Background

Anonymous complainant "Pastor Gavin" filed a complaint with the Task Force on June 20, 2011 alleging Supervisor Eric Mar violated public meeting laws during the Board of Supervisor's Land Use Committee meeting on May 24, 2011. Supervisor Mar is Chair of the Land Use Committee.

On August 23, 2011, the Task Force named the two other Land Use Committee members, Supervisor Wiener and Supervisor Cohen, and President Chiu as additional respondents to the complaint.

## Task Force Hearings on Complaint

On August 23, 2011, the Task Force held the first hearing on the complaint. The Task Force found Supervisor Mar in violation of Sunshine Ordinance public meeting laws. The Task Force continued the complaint to its September 27, 2011 meeting and named President Chiu, Supervisor Wiener, and Supervisor Cohen as respondents to the complaint. A description of the hearing, violations found, and the Task Force decision are described in the two Orders of Determination attached to this referral.

On September 27, 2011, the Task Force held the second hearing on the complaint. The Task Force found President Chiu, Supervisor Wiener, and Supervisor Cohen in violation of Sunshine Ordinance public meeting laws. The Task Force further found willful failure and official misconduct against all four respondents, and approved notice of this matter to the District Attorney's Office. A description of the hearing, violations found, the Task Force decision, and the reasoning behind the decision are described in the two Orders of Determination attached to this referral.

Thank you for your attention to this matter. Copies of the two Orders of Determination are attached.

Please confirm receipt of this notice to the Task Force Administrator at sott@sfgov.org or (415) 554-7724. The Administrator is also available to provide any additional information needed.

CHope Jamoon

Hope Johnson, Chair Sunshine Ordinance Task Force

Encls.

Cc: Pastor Gavin, Complainant
Board President David Chiu, Respondent
Supervisor Eric Mar, Respondent
Supervisor Scott Wiener, Respondent
Supervisor Malia Cohen, Respondent
Judson True, Legislative Aide to President Chiu
Andrea Bruss, Legislative Aide to Supervisor Cohen
Jerry Threet, Deputy City Attorney

#### SUNSHINE ORDINANCE TASK FORCE



City Hall 1 Dr. Carlton B. Goodlett Place, Room 244 San Francisco 94102-4689 Tel. No. (415) 554-7724 2012FARNO-915)H\$498548 TDD/TTY No. (415) 554-5227 SAN FRANCISCO ETHICS COMMISSION

## ORDER OF DETERMINATION

September 3, 2011

DATE THE DECISION ISSUED August 23, 2011

PASTOR GAVIN V SUPERVISOR CHIU AND SUPERVISOR MAR (CASE NO. 11048)

## FACTS OF THE CASE

Pastor Gavin and other anonymous complainants ("Complainants") allege that San Francisco Supervisor Eric Mar, Chair of the Land Use Committee of the Board of Supervisors, violated public meeting laws during the Land Use Committee meeting on May 24, 2011 when he allowed Supervisor David Chiu to introduce significant amendments to proposed legislation involving Parkmerced without providing copies of those amendments to the public and then voted on the amendments instead of continuing the item to a later meeting to provide the public opportunity to review them.

## COMPLAINT FILED

On June 20, 2011, Complainants filed this complaint against Supervisor Mar, alleging violations of Sunshine Ordinance Sections 67.7 and 67.7-1.

## HEARING ON THE COMPLAINT

On August 23, 2011, Pastor Gavin presented Complainants' case to the Task Force. Lin-Shao Chin, legislative aide to Supervisor Mar, provided the response.

Pastor Gavin testified that May 24th was a dark day for the City and County of San Francisco when procedures were used at the Land Use Committee hearing and subsequent Board of Supervisors meeting which violated the Sunshine Ordinance. She said a week earlier, the San Francisco Civil Grand Jury reported that the Parkmerced Project's Mixed Use Program Development Agreement, for all its complexity, fails to mitigate the most significant risk it creates: the direct loss of statutory tenant rights by Parkmerced residents. At the Land Use meeting, Supervisor David Chiu asked committee members Supervisors Eric Mar, Malia Cohen, and Scott Wiener to add 14 pages of new revisions to the Development Agreement and forward it to the Board of Supervisors. No motion to continue the matter was made or voted on by the Committee. She said Supervisor Mar voted against adopting the amendments and he noted that there could be a possible Sunshine Ordinance violation involved. He was outvoted by Supervisors Cohen and Wiener on the motion to approve the amended item and refer it to the Board of Supervisors. Supervisor David

Campos echoed Supervisor Mar's Sunshine Ordinance violation concern at the full Board meeting later that day.

At both meetings, she said, the public, especially Parkmerced citizen tenants, were given only a two-page summary of Supervisor Chiu's newly proposed amendments to the Development Agreement and denied the opportunity to read the actual text of the 14 pages of amendments. She also said Deputy City Attorney Charles Sullivan told the Committee during the meeting that there was no need for additional public comment because the amendments were within the scope of the agreement noticed and the Committee had already heard comment from the public on the item. She said she disagreed with him because the item had been continued to the May 24th meeting only for purposes of considering four Environmental Impact Reports, whereas Supervisor Chiu's new revisions concern tenant rights. The 14 pages, she added, substantially change the Development Agreement and thus meet the requirement for additional public comment and continuation of the item vote to a later meeting.

Respondent Lin-Shao Chin testified that Supervisor Mar is not the appropriate focus of the complaint because the amendments were introduced by Supervisor Chiu and, moreover, Supervisor Mar was not in possession of the amendments before the meeting and was surprised by their introduction. She said she has seen no evidence that this complaint should be filed against Supervisor Mar. She noted that Supervisor Mar voted against the amendments, in support of the residents. She also testified that she was not aware of any attempt by Supervisor Mar to continue the item.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that the introduction of 14 pages of proposed amendments without providing copies or adequate review time to members of the public should have prompted Supervisor Eric Mar, as Chair of the Committee, to try to continue the meeting, but instead the members proceeded to vote on the substance of the newly amended legislation. The Task Force further found that as the Chair of the Land Use Committee Supervisor Mar was an appropriate focus of the Complaint. The Task Force further noted that Supervisor Mar was heard several times during the Committee meeting stating that he wanted public comment over quickly and requesting members of the public not use the full amount of time provided for each speaker.

## DECISION AND ORDER OF DETERMINATION

The Task Force finds that Supervisor Eric Mar violated Sunshine Ordinance Section 67.7(b) for not providing the public with copies of the amendments to the Development Agreement, which were provided to the policy body in connection with an agenda item; and Section 67.15(a) and (b) for failing to adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of the 14 pages of amendments. The Task Force continues this complaint to the September 27, 2011 Task Force meeting and names Board President David Chiu and Land Use Committee members Supervisor Scott Wiener and Supervisor Malia Cohen as respondents to the original complaint.

## CITY AND COUNTY OF SAN FRANCISCO

This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 23, 2011 by the following vote: (Knee/Costa)
Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

Hope Jamour

Hope Johnson, Chair Sunshine Ordinance Task Force

David Snyder, Esq., Member, Seat #1\* Sunshine Ordinance Task Force

c: Pastor Gavin, Complainant
Supervisor Eric Mar, Respondent
Lin-Shao Chin, Respondent
Supervisor David Chiu
Supervisor Malia Cohen
Supervisor Scott Wiener
Jerry Threet, Deputy City Attorney

\*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.

### SUNSHINE ORDINANCE TASK FORCE



City Hall

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## ORDER OF DETERMINATION November 1, 2011

DATE THE DECISION ISSUED September 27, 2011

PASTOR GAVIN v SUPERVISOR CHIU, SUPERVISOR WIENER, AND SUPERVISOR COHEN (CONTINUATION OF CASE NO. 11048)

## FACTS OF THE CASE

On August 23, 2011, the Sunshine Ordinance Task Force ("Task Force") heard Complaint No. 11048, Pastor Gavin v. Supervisor Mar. The Task Force found that, during the May 24, 2011 Board of Supervisor's Land Use and Economic Development Committee meeting, San Francisco Supervisor Eric Mar, Chair of the Land Use Committee, violated several sections of the Sunshine Ordinance by failing to provide the public with copies of 14 pages of amendments to the Parkmerced Development Agreement, which were provided to the policy body by Board President David Chiu in connection with an agenda item, and by allowing the introduction of the last-minute and substantive changes to the relevant agenda item without adequate notice.

The Task Force continued the complaint to its September 27, 2011 meeting and named the other two Land Use Committee members, Supervisors Scott Wiener and Malia Cohen, and Board President David Chiu as respondents to the complaint.

### COMPLAINT FILED

The original complaint was filed on June 20, 2011, alleging violations of Sunshine Ordinance Sections 67.7 and 67.7-1.

#### HEARING ON THE COMPLAINT

On September 27, 2011, Pastor Gavin and her supporters presented their case to the Task Force. Judson True, legislative aide to President Chiu, Gillian Gillette, legislative aide to Supervisor Wiener, and Andrea Bruss, legislative aide to Supervisor Cohen, presented the response.

Pastor Gavin testified that she and her Parkmerced neighbors learned at the May 24th Land Use Committee meeting of the introduction of 14 pages of amendments to the Parkmerced Development Agreement. She said many residents did not know how the 14 pages correlated with the entire document. She also said they were not allowed to provide

public comment on a document that would directly affect their homes. Several of Pastor Gavin's supporters told the Task Force that members of the public were provided with only a two-page summary of the amendments, not the full 14 pages.

Pastor Gavin said it is chilling and disturbing for an American citizen and a San Francisco resident to watch the video of the meeting and see what transpired. She said every time she watches the tape she notices something new, such as Supervisor Cohen admitting that she had not seen the revisions prior to the meeting and that she only spoke briefly about it with Michael Yarney of the Office of Economic and Workforce Development.

Pastor Gavin noted that none of the Land Use Committee members had seen the revisions, only Board President Chiu and Deputy City Attorney Charles Sullivan who wrote the document. The issue, she said, is about the loss of homes for 5,000 residents, the destruction of 1,000 trees, habitat destruction, the violation of agenda requirements under the Sunshine Ordinance, and the unpatriotic way the elected officials behaved to push through the document to the Board of Supervisors which was meeting two hours later.

Mr. True said the agenda for the Land Use Committee on May 24, 2011, included a proposed ordinance approving the Parkmerced Development Agreement and a copy of the 200-page contract between the City and the developer. The contents of the revised 14 pages, he said, further strengthened the protections provided to residents. Mr. True said he personally distributed copies of the amendments as well as a two-page summary to whoever requested copies at both the Land Use meeting and the following full Board meeting. The Supervisors have to seek the advice of the City Attorney and in this case the advice was that the revisions were within the scope of the agreement that was noticed and could be forwarded to the full Board without the need for additional public comment. He added that changes to an underlying document do not trigger a continuance or public comment as was the case in several matters before the Supervisors such as the Hunters Point Shipyard project. In response to Task Force inquiries, Mr. True said he could think of no reason that the Committee could not have continued the hearing to provide opportunity for the public to review the amendments, other than the upcoming budget process.

Ms. Gillette said the Supervisors did not violate the Sunshine Ordinance by following the advice of the City Attorney. She said the Task Force appears to be suggesting it could cite a supervisor for an action the City Attorney has deemed legal. She said the Task Force cannot tell the Supervisors how to vote and what motions to make because the Supervisors are accountable only to the voters. She said the transcript of the Board meeting will show that statements made by Deputy City Attorney Cheryl Adams at the Committee meeting are reaffirmed by Deputy City Attorney Charles Sullivan, specifically that this is a revision to a contract. She said Deputy City Attorney Adams also added that the noticing was broad and did not require the need for additional public comment.

Ms. Bruss said Supervisor Cohen does not think she and the other Supervisors on the Land Use Committee violated the Sunshine Ordinance by not continuing the hearing on the agreement. She said copies of the amendments were made available to anyone who wanted the document. The Supervisors based their decisions on the advice of the City Attorney, she said.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony it received, the Task Force found that neither the members of the Land Use Committee nor the public had sufficient time to adequately review and analyze the 14 pages of amendments. The Task Force further found that the amendments worked a significant enough change in the meeting agenda to warrant a new notice and a continued meeting. Based on respondent Mr. True's testimony, the Task Force further found that the Land Use Committee had no reason that the hearing could not have been continued. The Task Force concluded that the 14 pages of amendments to the Development Agreement were not adequately noticed in the agenda. The Task Force further concluded that, given the late introduction of significant changes to the content of the Land Use Committee's meeting, Board President Chiu and members of the Committee should have continued the hearing so that it could be properly noticed as required under the Sunshine Ordinance.

## **DECISION AND ORDER OF DETERMINATION**

The Task Force found that President David Chiu, Supervisor Scott Wiener, and Supervisor Malia Cohen violated Sunshine Ordinance Section 67.7(b) for not providing the public with copies of the amendments to the Development Agreement which were provided to the policy body in connection with an agenda item, and Sections 67.15(a) and (b) for failing to adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of the 14 pages of amendments. The two Orders of Determination in this complaint are to be referred to the Ethics Commission and the District Attorney for willful failure and official misconduct.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on

September 27, 2011 by the following vote: (Washburn/Manneh)

Ayes: Snyder, Knee, Cauthen, Manneh, Washburn, Wolfe, Chan, Johnson

Excused: Costa, West Absent: Knoebber

Hope Johnson, Chair

Sunshine Ordinance Task Force

Hope Jamson

David Snyder, Esq., Member, Seat #1\* Sunshine Ordinance Task Force

cc: Pastor Gavin, Complainant Supervisor David Chiu

> Supervisor Malia Cohen Supervisor Scott Wiener

Judson True, legislative aide to President Chiu

Andrea Bruss, legislative aide to Supervisor Cohen Gillian Gillette, legislative aide to Supervisor Wiener

Jerry Threet, Deputy City Attorney

\*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.

## Appendix A

Date: August 23, 2011 Item No. 1 & 2 File No. 11048

## SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST\*

Pas	tor Gavin against Sup	ervisor Chiu,	Supervisor Mar
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			•
pleted by:	Chris Rustom	Date:	August 19, 2011
		-	

\*This list reflects the explanatory documents provided

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

## CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA City Attorney

## OFFICE OF THE CITY ATTORNEY

JERRY THREET Deputy City Attorney

DIRECT DIAL: (415) 554-3914 E-MAIL: jeny.threet@sfgov.org

## MEMORANDUM

TO:

Sunshine Task Force

FROM:

Jerry Threet

Deputy City Attorney

DATE:

July 22, 2011

RE:

Complaint No. 11048, Pastor Gavin, et al. v. Supervisor Mar

#### COMPLAINT

## THE COMPLAINANT ALLEGES THE FOLLOWING:

Pastor Gavin (an assumed name), as well as other anonymous complainants ("Complainants") allege that San Francisco Supervisor Eric Mar ( the "Supervisor"), the chair of the Land Use Committee of the Board of Supervisors, violated public meetings laws when Supervisor David Chiu introduced amendments to legislation involving Park Merced during the May 24, 2011 committee meeting.

## COMPLAINANT FILES COMPLAINT:

On June 20, 2011, Complainants filed this complaint against Mar, alleging violations of Sunshine Ordinance Sections 67.7 and 67.7-1.

#### JURISDICTION

The Board of Supervisors in a policy body. Therefore the Task Force has jurisdiction to hear a complaint against it or one of its officers alleging violations of the public meetings laws.

## APPLICABLE STATUTORY SECTION(S):

## Section 67 of the San Francisco Administrative Code:

- Section 67.7 governs descriptions of agenda items for a public meeting.
- Section 67.7-1 deals with the notice to be provided by City agencies to residents regarding any activity that may affect their property or the neighborhood.

## Sections 54050 et seq. of the Cal. Government Code (the "Brown Act")

Section 54954.2 deals with posting of agendas and description of items in those agendas.

#### MEMORANDUM

TO: Sunshine Task Force

DATE: July 22, 2011

PAGE: 2

RE: Complaint No. 11048, Pastor Gavin, et al. v. Supervisor Mar

### APPLICABLE CASE LAW:

• Phillips v. Seely (1974) 43 Cal. App.3d 104, 120 ("where the subject matter to be considered is sufficiently defined to apprise the public of the matter to be considered and notice has been given in the manner required by law, the governing body is not required to give further special notice.").

Carlson v. Paradise Unified Sch. Dist. (1971) 18 Cal.App.3d 196, 200 ("it is imperative that the agenda of the board's business be made public and in some detail so that the

general public can ascertain the nature of such business.").

The California Attorney General has concluded that, under Government Code § 54954.2, the agenda must include a sufficient description "to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body." See The Brown Act: Open meetings for Local Legislative Bodies.

#### ISSUES TO BE DETERMINED

### Contested/Uncontested Facts:

Complainants' Allegations

Complainants allege that, during the May 24, 2011 meeting of the Land Use, Supervisor David Chiu introduced 14 pages of amendments to the development agreement between the City and the developers of the Park Merced project then being considered by the Committee. Complainants further allege that these changes to the development agreement during the meeting, without giving the public an opportunity to view them previously, was an egregious violation of the public's rights under sections 67.7 and 67.7-1 of the Sunshine Ordinance. Complainants do not allege facts that directly explain why the violation was that of Supervisor Mar.

## The Supervisor's Response

The Supervisor does not dispute the above allegations. However, the Supervisor alleges that he received the proposed amendments at the same time as the public, opposed them publicly, and voted against them. The Supervisor further suggests that he is not the proper target of the complaint.

## **OUESTIONS THAT MAY ASSIST IN DETERMINING FACTS:**

• What was the exact description of the item when it was on the meeting agenda of the Land Use Committee for consideration?

 Was notice of the proposed legislation mailed to residents of any specific geographic area that may have been affected by its passage?

#### MEMORANDUM

TO:

Sunshine Task Force

DATE:

July 22, 2011

PAGE:

3 RE:

Complaint No. 11048, Pastor Gavin, et al. v. Supervisor Mar

## LEGAL ISSUES/LEGAL DETERMINATIONS:

Were sections of the Sunshine Ordinance, Brown Act, and/or California Constitution Article I, Section three violated?

#### SUGGESTED ANALYSIS

Under Section 67.7(a) of the Ordinance:

Was the agenda description of the legislative item in question a "meaningful description"?

Under Section 67.7(b) of the Ordinance:

- Was the agenda description of the legislative item in question "sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item"?
- Was the agenda description of the legislative item in question "brief, concise and written in plain, easily understood English"?

Under Section 67.7-1 of the Ordinance:

If notice of the legislative item was mailed to residents of a specific area, was the notice "brief, concise and written in plain, easily understood English"?

## Under Section 54954.2 of the Brown Act:

- Was the agenda description of the legislative item in question a "brief general description"?
- Was the agenda description sufficient "to apprise the public of the matter to be considered"?

### CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

#### MEMORANDUM

TO:

Sunshine Task Force

DATE:

July 22, 2011

PAGE:

4.

Complaint No. 11048, Pastor Gavin, et al. v. Supervisor Mar

## ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

Section 67.7 (a): "At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting."

Section 67.7 (b): "A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours."

Section 67.7-1(a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

## SECTIONS 54950.ET SEQ. OF THE CAL. GOVERNMENT CODE

Section 54954.2(a) provides, in pertinent part:

"At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words."

Jun 21 11 01:50p

Sundhine Ord, Tack Force



# SUNSHINE ORDINANCE TASK FORCE 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102 Tel. (415) 554-7724; Fax (415) 554-7854 http://www.afgov.org/sunshine

Complaint against which Department or Commission Land Use Commission
Name of Individual contacted at Department or Commission Supervisor Mar
Alleged violation public records access  Alleged violation of public meeting. Date of meeting 00/24/20//
Sunshine Ordinance Section 67.7-1 and 67.7 (If known, please cite specific provision(s) being violated)
Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.
My rights under the Sunshine Ordinance were,  violated under sections 67.7-1 Publice Notice  and Sections (a) and (b) and Section (a7, 7 Agenda.  Require muluts Sections (a), (b), (e) and (d).  Do you want a public hearing before the Sunshine Ordinance Task Force? Wyes po  Do you also want a pre-hearing conference before the Compleint Committee? yes I no
Name Pastar GAUIN Address Grijalva Dr.
Telephone No. E-Mail Address
Date June 20, 2011 Signature
request confidentiality of my personal information.

NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or c-mail address).

p.2

Sunshine Ord, Task Forw

Grijalva Drive San Francisco, CA 94132

June 21, 2011

Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett PL - Room 244
San Francisco, CA 94102

RE: Hearing Request

Dear Sunshine Task Force:

On May 24, 2011 during the Land Use Commission meeting, Board President David Chiu introduced 14 new pages that were to be added to the development agreement the city has with the developers at Parkmerced

By changing document that impacts the 8,000 residents of Parkmerced and not giving them or the public the opportunity to view the new information was an egregious violation of our rights under the Sunshine Ordinance, sections 67.7-1 Public Notice and Agenda Requirements 67.7. We have filed a complaint with the Sunshine Task Force to ask for a hearing.

My neighbors and I have filed a complaint with your department. We do not wish to have any of our information released into the public records and wish remain anonymous due to concerns regarding retaliation until the hearing.

If you have any questions please contact me via the United States mail. I look forward to hearing from you.

-Sinceroly,

Pastor Gavin

416-554-7854

p.2

Jul 05 11 11:08a

Sunshine Ord, Task Force

Grijalva Drive San Francisco, CA 94132

July 5, 2011

Mr. Chris Ruston Sunshine Oridance Task Force 1 Dr. Carlton B. Goodlett Pl, Room 244 San Francisco, CA 94102

RE: Correct Date of Sunshine Ordinance Violation

Dear Mr. Ruston:

In regards to our conversation this morning about the date of the scheduled hearing regarding the Land Use Committee meeting meeting, I realized there was an error in the date of the alleged incident on the complaint.

The correct date regarding the Land Use Meeting was on May 24, 2011 not June 24;2011. I apologize for the error and if you need to contact me further please do not hesitate to call me. My telephone number is (415) 334-2010. However, I am requesting that my telephone number remain confidential.

Once again the date of the alleged violation of the sunshine ordinance was on May 24, 2011. I look forward to hearing from you and thank you for your assistance.

· Sincerely,

Pastor Gavin

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Sunshine Ord, Task Force



### SUNSHINE ORDINANCE TASK FORCE 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854 http://www.sfgov.org/sunshine

Complaint against which Department or Commission Land Use Commission
Name of Individual contacted at Department or Commission Supervisor Max
Alleged violation public records access  Alleged violation of public meeting. Date of meeting  Olo 124 12 011
Sunshine Ordinance Section (If known, please cite specific provision(s) being violated)
Please describe alleged violation. Use additional paper If needed. Please attach any relevant documentation supporting your complaint.  My rights under the Sunshine Ordinance were violated under Sections: 67.7-1 (a) and Cb), and Agenda Requirements Section (67.7 (a), (b), (c), (d)
Do you want a public hearing before the Sunshine Ordinance Task Force?  Do you also want a pre-hearing conference before the Complaint Committee?  yes pro-
(Optional) Name(ng) Address
Telephone No. 4/5 E-Mail Address
Date 6/20 // Signature  I request confidentiality of my personal information, yes no

<sup>1</sup> NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS
PECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL
ADDRESS IN LIBU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Jun 21 11 01:50p



# SUNSHINE ORDINANCE TASK FORCE 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102 Tel. (415) 554-7724; Fax (415) 554-7854 http://www.sfgov.org/sunshine

Complaint against which Department or Commission Land Use Commission
Name of Individual contacted at Department or Commission Superus's or Max
Alleged violation public records access Alleged violation of public meeting. Date of meeting.
Sunshine Ordinance Section 67.7-1 and Section 67.7  (If known, please cite specific provision(s) being violated)
Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.
Myrights under the Sunshine Ordinance were violated under Section 67.1 Public Notice Requirements
Sections (a) and (b), and Section 67.7 Agenda Requirements Sections (a), (b), (C) and (d)
Do you want a public hearing before the Sunshine Ordinance Task Force?  Do you also want a pre-hearing conference before the Complaint Committee?  No you also want a pre-hearing conference before the Complaint Committee?
(Optional) Name Address
Telephone No. E-Mall Address/
Date 06/20/2011
l request confidentiality of my personal information. ⊠ yes ☐ no
NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS

NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Jun 21 11 01:50p



# SUNSHINE ORDINANCE TASK FORCE 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102 Tel. (415) 554-7724; Fax (415) 554-7854 http://www.sfgov.org/sunshine

Complaint against which Department or Commission Land Use Commission
Name of individual contacted at Department or Commission Supervisor Mar
Alleged violation public records access  Alleged violation of public meeting. Date of meeting 06/24/2011
Sunshine Ordinance Section 67.7 and 67.7 (If known, please cite specific provision(s) being violated)
Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.
My rights under the Sunshine Ordinance were violated under Section 67.7-1 Public Natice
Requirements and Section 67.7 Agenda Requirements seitions (a),(b), (c), and (d).
Do you want a public hearing before the Sunshine Ordinance Task Force?  Do you also want a pre-hearing conference before the Complaint Committee?  No you also want a pre-hearing conference before the Complaint Committee?
(Optional) <sup>1</sup> Name Address
Telephone No. E-Mail Address
Date 6 20 11
I request confidentiality of my personal information, ⊠ yes ☐ no

NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS PECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be snonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, for number, or e-mail address).

Jun 21. 11:01:50p



#### SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102 Tel. (415) 554-7724; Fax (415) 554-7854 http://www.sfgov.org/sunshine

#### SUNSHINE ORDINANCE COMPLAINT

<sup>1</sup> NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

415-554-76...

р,В



#### SUNSHINE ORDINANCE TASK FORCE 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102 Tel. (415) 554-7724; Fax (415) 554-7854 http://www.sfgov.org/sunshine

#### SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission
Name of individual contacted at Department or Commission Supervisor Avalos Mar
Alleged violation public records access  Alleged violation of public meeting. Date of meeting 06/24/2011
Sunshine Ordinance Section 67.7-1 and 67.7 (If known, please cite specific provision(s) being violated)
Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.  My rights under the Sunshine Ordinance were violated under Sections (e7.7-1, Publice Notice Requirements Sections (a) and (b), Section (e7.7 Agenda Requirements Sections (a), (b), (c) and (d).  Do you want a public hearing before the Sunshine Ordinance Task Force?  A yes   no
Do you also want a pre-hearing conference before the Complaint Committee?   yes   no
(Optiona 1 Address Address Address
Telephone No. E-Mail Address
Date 0(e.   20   70   1
I request confidentiality of my personal information. ☑ yes ☐ no

<sup>1</sup> NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS PECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTP (Phone number, fax number, or e-mail address).



# SUNSHINE ORDINANCE TASK FORCE 1 Dr. Cerlton B. Goodlett Place, Room 244, San Francisco CA 94102 Tel. (415) 554-7724; Fax (415) 554-7854 http://www.sfgov.org/sunshine SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Land Use Commission
Name of Individual contacted at Department or Commission Supervi'sov Avalos Mar
Alleged violation public records access Alleged violation of public meeting. Date of meeting  Oblight 12011
Sunshine Ordinance Section 67.7-1 and 67.7 (If known, please cite specific provision(s) being violated)
Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.
My rights under the Sunshine Ordinance were violated under Sections 67.7-1, Rublic Notice
Requirements and Section 67,7 Agenda Requirements Sections (a), (b), (c) and (d)
Do you want a public hearing before the Sunshine Ordinance Task Force?  Do you also want a pre-hearing conference before the Complaint Committee?  yes  no
(Optional) <sup>1</sup> , Name Address
Telephone No. E-Mail Address
Date 06/20/20// I request confidentiality of my personal information.     Yes   No
NOTICE PERSONAL INFORMATION THAT VOIL PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE

I NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Jun 21 11 01:50p

Sunshine Ord. Task Force



# SUNSHINE ORDINANCE TASK FORCE 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102 Tel. (415) 554-7724; Fax (415) 554-7854 http://www.sfgov.org/sunshine

#### SUNSHINE ORDINANCE COMPLAINT

<sup>1</sup> NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS PECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Jun 21 11 01:51p

Sunshine Ord, Task Force



#### SUNSHINE ORDINANCE TASK FÖRCE 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102 Tel. (415) 554-7724; Fax (415) 554-7854 http://www.sfgov.org/sunshine SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Name of Individual contacted at Department or Commission Alleged violation public records access Alleged violation of public meeting. Date of meeting Sunshine Ordinance Section 67.7-1 ound 67.7 (If known, please cite specific provision(s) being violated) Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint. nder the sumshine Ordinance were ur Sections 67.7-1 Public Notice Do you want a public hearing before the Sunshine Ordinance Task Force? Do you also want a pre-hearing conference before the Complaint Committee? ves (Option) Address Name E-Mail Address Telephone No. Date Signature I request confidentiality of my personal information. 

yes no NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE

CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED: YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or c-mail address).

Sunshine Ord. Task Force



#### SUNSHINE ORDINANCE TASK FORCE

1 Dr. Catlton B. Goodlett Place, Room 244, San Francisco CA 94102 Tel. (415) 554-7724; Fax (415) 554-7854

http://www.sfgov.org/sunshine

#### SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Land Use Commission
Name of individual contacted at Department or Commission Superitism Max
Alleged violation public records access  Alleged violation of public meeting. Date of meeting 06/24/2011
Sunshine Ordinance Section (a7, 7-1 and 1,7,7 (If known, please cite specific provision(s) being violated)
Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.
My rights under the Sunshine Ordinance were violated under sections 67.7-1 Public Notice
Sections Ca)(b)(c) and (d).
Do you want a public hearing before the Sunshine Ordinance Task Force?  Do you also want a pre-hearing conference before the Complaint Committee?  yes no
(Optional) <sup>1</sup> Name Address
Telephone No. E-Mail Address
Date
Signature I request confidentiality of my personal information. ☑ yes ☐ no

 $<sup>^{1}</sup>$  notice: personal information that you provide may be subject to disclosure under the CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS PECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).



#### Myrna Melgar/BOS/SFGOV 06/24/2011 04:47 PM

To Chris Rustom/BOS/SFGOV@SFGOV

cc Joseph Smooke/BOS/SFGOV@SFGOV, Les Hilger <les, hilger@sfgov.org>, Rick Caldeira/BOS/SFGOV@SFGOV, Angela

bcc

Subject Re: Fw: Sunshine Complaint Received: #11048\_Pastor Gavin v Supervisor David Chlu, Supervisor Eric Mar

Mr. Rustom,

A thorough search of our records indicates no records of prior requests by Pastor Gavin. In fact, in reading this complaint, it is unclear to us what exactly this constituent is looking for. If you can provide us with more specific guidance, we would be happy to help him in his search.

The letter written by Pastor Gavin complains about the Introduction of 14 pages of amendments by Supervisor Chiu to the development agreement for Parkmerced. This office received those amendments at the same time as the public did during the hearing at the Land Use Committee on May 23rd. As a matter of record, Supervisor Mar voted against this item and publicly stated that he was disturbed by the lack of transparency in the process. It is unclear to us why Supervisor Mar is the target of this complaint, as we had nothing to do with the amendments named in the complaint, and in fact the Supervisor opposed them.

Myrna Melgar Legislative Alde Office of Supervisor Eric Mar San Francisco District 1 1 Dr. Carlton B. Goodlett Place, Clty Hall, Room 244 San Francisco CA 94102 (415)554-7412

Date:	September 27, 2011	•		Item No. 8	
	•		. ,	File No. 11048	3

#### SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST\*

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\*This list reflects the explanatory documents provided

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

#### SUNSHINE ORDINANCE TASK FORCE



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

#### ORDER OF DETERMINATION September 3, 2011

DATE THE DECISION ISSUED
August 23, 2011

PASTOR GAVIN V SUPERVISOR CHIU AND SUPERVISOR MAR (CASE NO. 11048)

#### FACTS OF THE CASE

Pastor Gavin and other anonymous complainants ("Complainants") allege that San Francisco Supervisor Eric Mar, Chair of the Land Use Committee of the Board of Supervisors, violated public meeting laws during the Land Use Committee meeting on May 24, 2011 when he allowed Supervisor David Chiu to introduce significant amendments to proposed legislation involving Parkmerced without providing copies of those amendments to the public and then voted on the amendments instead of continuing the item to a later meeting to provide the public opportunity to review them.

#### COMPLAINT FILED

On June 20, 2011, Complainants filed this complaint against Supervisor Mar, alleging violations of Sunshine Ordinance Sections 67.7 and 67.7-1.

#### HEARING ON THE COMPLAINT

On August 23, 2011, Pastor Gavin presented Complainants' case to the Task Force. Lin-Shao Chin, legislative aide to Supervisor Mar, provided the response.

Pastor Gavin testified that May 24th was a dark day for the City and County of San Francisco when procedures were used at the Land Use Committee hearing and subsequent Board of Supervisors meeting which violated the Sunshine Ordinance. She said a week earlier, the San Francisco Civil Grand Jury reported that the Parkmerced Project's Mixed Use Program Development Agreement, for all its complexity, fails to mitigate the most significant risk it creates: the direct loss of statutory tenant rights by Parkmerced residents. At the Land Use meeting, Supervisor David Chiu asked committee members Supervisors Eric Mar, Malia Cohen, and Scott Wiener to add 14 pages of new revisions to the Development Agreement and forward it to the Board of Supervisors. No motion to continue the matter was made or voted on by the Committee. She said Supervisor Mar voted against adopting the amendments and he noted that there could be a possible Sunshine Ordinance violation Involved. He was outvoted by Supervisors Cohen and Wiener on the motion to approve the amended item and refer it to the Board of Supervisors. Supervisor David

Campos echoed Supervisor Mar's Sunshine Ordinance violation concern at the full Board meeting later that day.

At both meetings, she said, the public, especially Parkmerced citizen tenants, were given only a two-page summary of Supervisor Chiu's newly proposed amendments to the Development Agreement and denied the opportunity to read the actual text of the 14 pages of amendments. She also said Deputy City Attorney Charles Sullivan told the Committee during the meeting that there was no need for additional public comment because the amendments were within the scope of the agreement noticed and the Committee had already heard comment from the public on the item. She said she disagreed with him because the item had been continued to the May 24th meeting only for purposes of considering four Environmental Impact Reports, whereas Supervisor Chiu's new revisions concern tenant rights. The 14 pages, she added, substantially change the Development Agreement and thus meet the requirement for additional public comment and continuation of the item vote to a later meeting.

Respondent Lin-Shao Chin testified that Supervisor Mar is not the appropriate focus of the complaint because the amendments were introduced by Supervisor Chiu and, moreover, Supervisor Mar was not in possession of the amendments before the meeting and was surprised by their introduction. She said she has seen no evidence that this complaint should be filed against Supervisor Mar. She noted that Supervisor Mar voted against the amendments, in support of the residents. She also testified that she was not aware of any attempt by Supervisor Mar to continue the Item.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that the introduction of 14 pages of proposed amendments without providing copies or adequate review time to members of the public should have prompted Supervisor Eric Mar, as Chair of the Committee, to try to continue the meeting, but instead the members proceeded to vote on the substance of the newly amended legislation. The Task Force further found that as the Chair of the Land Use Committee Supervisor Mar was an appropriate focus of the Complaint. The Task Force further noted that Supervisor Mar was heard several times during the Committee meeting stating that he wanted public comment over quickly and requesting members of the public not use the full amount of time provided for each speaker.

#### DECISION AND ORDER OF DETERMINATION

The Task Force finds that Supervisor Eric Mar violated Sunshine Ordinance Section 67.7(b) for not providing the public with copies of the amendments to the Development Agreement, which were provided to the policy body in connection with an agenda item; and Section 67.15(a) and (b) for failing to adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of the 14 pages of amendments. The Task Force continues this complaint to the September 27, 2011 Task Force meeting and names Board President David Chiu and Land Use Committee members Supervisor Scott Wiener and Supervisor Malia Cohen as respondents to the original complaint.

#### CITY AND COUNTY OF SAN FRANCISCO

This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 23, 2011 by the following vote: (Knee/Costa)

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan

Hope Johnson, Chair Sunshine Ordinance Task Force

David Snyder, Esq., Member, Seat #1\* Sunshine Ordinance Task Force

c: Pastor Gavin, Complainant Supervisor Eric Mar, Respondent Lin-Shao Chin, Respondent Supervisor David Chiu Supervisor Malia Cohen Supervisor Scott Wiener Jerry Threet, Deputy City Attorney

\*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.

## Exhibit 1



## City and County of San Francisco Meeting Agenda

City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4689

#### Land Use and Economic Development Committee

Members: Eric Mar, Malia Cohen, Scott Wlener

Clerk: Alisa Somera (415) 554-4447

Tuesday, May 24, 2011

9:00 AM

City Hall, Committee Room 263

**Special Meeting** 

Note: Each item on the Consent or Regular agenda may include the following documents:

- 1) Legislation
- 2) Budget and Legislative Analyst report
- 3) Department or Agency cover letter and/or report
- 4) Public correspondence

These items will be available for review at City Hall, Room 244, Reception Desk.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding City representatives, except that public speakers using translation assistance will be allowed to testify for twice the amount of the public testimony time limit. If simultaneous translation services are used, speakers will be governed by the public testimony time limit applied to speakers not requesting translation assistance. Members of the public who want a document placed on the overhead for display should clearly state such and subsequently remove the document when they want the screen to return to live coverage of the meeting.

#### **AGENDA CHANGES**

#### **REGULAR AGENDA**

1. 110564

[Transfer Agreement - Alice Griffith Public Housing Opportunity Center]

Sponsor: Mayor

Resolution approving and authorizing the transfer of a modular structure located at 2525 Griffith Street, commonly known as the Alice Griffith Opportunity Center, by the City and County of San Francisco, acting by and through the Mayor's Office of Housing to the Housing Authority of the City and County of San Francisco, for the purpose of continuing resident and community events and the provision of resident services benefitting Alice Griffith Public Housing residents.

5/3/11; RECEIVED AND ASSIGNED to the Land Use and Economic Development Committee.

#### 2. 110300 [Development Agreement - Parkmerced]

Sponsor: Elsbernd

Ordinance approving a Development Agreement between the City and County of San Francisco and Parkmerced Investors, LLC, for certain real property located in the Lake Merced District of San Francisco, commonly referred to as Parkmerced, generally bounded by Vidal Drive, Font Boulevard, Pinto Avenue and Serrano Drive to the north, 19th Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to the south, and Lake Merced Boulevard to the west; making findings under the California Environmental Quality Act, findings of conformity with the City's General Plan and with the eight priority policies of Planning Code Section 101.1(b); and waiving certain provisions of Administrative Code Chapter 56. (Planning Department)

(Economic Impact.)

3/15/11; RECEIVED AND ASSIGNED to the Land Use and Economic Development Committee.

4/6/11: REFERRED TO DEPARTMENT. Referred to the Controller for review and report.

5/16/11; CONTINUED. Heard in Committee. Speakers: Supervisor Sean Elsbernd (Board of Supervisors; Michael Yarne (Economic and Workforce Development); Marlena Byrne (City Attorney's Office); presented Information concerning the matter and answered questions raised throughout the hearing. John Huang; Arne Larsen; James Rulgomez; Jeanie Scott; Bruce Kennedy; Mike Smith; Elizabeth Keith; Jim Cook; Bill Blackwell; Adrian Siml; Matt Chamberlain; Nicolo Barozzi; Tim Colen; Carol Koppel; Catherine Wong; Anna-Marie Bratton; Danny Campbell; Javier Flores; Jeff Rock; Manuel Flores; spoke in support of the matter. Aaron Goodman; Lora Traveler; Joey Foyin; Kathy Lims; Michael Russom; Bernie Choden; Healani Ting; Hiroshl Fukuda; Dean Preston; George Wooding; Ted Gullickson; Larry Jones; Mitchell Omerberg; spoke in opposition to the matter.

Continued to May 24, 2011.

The Chair will entertain a motion to send this item forward as a Committee Report to the full Board on May 24, 2011.

### 3. 110301 [Planning Code - Special Use District - Parkmerced] Sponsor: Elsbernd

Ordinance amending the San Francisco Planning Code by amending Sections 102.5 and 201 to include the Parkmerced Zoning Districts; adding Section 249.64 to establish the Parkmerced Special Use District; amending Planning Code Section 270 to refer to the Parkmerced Special Use District; and adopting findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the priority policies of Planning Code Section 101.1. (Planning Commission)

(Economic Impact.)

3/4/11: RECEIVED AND ASSIGNED to the Land Use and Economic Development Committee.

4/6/11; REFERRED TO DEPARTMENT. Referred to the Controller for review and report.

5/16/11; AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE. Heard in Committee. Speakers: Supervisor Sean Elsbernd (Board of Supervisors; Michael Yarne (Economic and Workforce Development); Marlena Byrne (City Attorney's Office); presented information concerning the matter and answered questions raised throughout the hearing. John Huang; Arne Larsen; James Rulgomez; Jeanie Scott; Bruce Kennedy; Mike Smith; Elizabeth Keith; Jim Cook; Bill Blackwell; Adrian Simi; Matt Chamberlain; Nicolo Barozzi; Tim Colen; Carol Koppel; Catherine Wong; Anna- Marle Bratton; Danny Campbell; Javier Flores; Jeff Rock; Manuel Flores; spoke in support of the matter. Aaron Goodman; Lora Traveler; Joey Foyin; Kathy Lims; Michael Russom; Bernie Choden; Healani Ting; Hiroshi Fukuda; Dean Preston; George Wooding; Ted Guillickson; Larry Jones; Mitchell Omerberg; spoke in opposition to the matter.

5/16/11; CONTINUED AS AMENDED. Continued to May 24, 2011.

The Chair will entertain a motion to send this item forward as a Committee Report to the full Board on May 24, 2011.

#### 4. 110302

#### [Planning Code - Zoning Map Amendments - Parkmerced]

Sponsor: Elsbernd

Ordinance amending the San Francisco Planning Code by amending Sectional Maps ZN13, HT13, and SU13 of the Zoning Map of the City and County of San Francisco to reflect the Parkmerced Special Use District; adopting findings, including environmental findings, Section 302 findings, and findings of consistency with the General Plan and the priority policies of Planning Code Section 101.1. (Planning Commission)

(Economic Impact.)

3/4/11; RECEIVED AND ASSIGNED to the Land Use and Economic Development Committee. 5/6/2011 - Notice was malled.

4/6/11; REFERRED TO DEPARTMENT. Referred to the Controller for review and report.

5/16/11; AMENDED. Heard in Committee. Speakers: Supervisor Sean Elsbernd (Board of Supervisors; Michael Yarne (Economic and Workforce Development); Mariena Byrne (City Attorney's Office); presented information concerning the matter and answered questions raised throughout the hearing. John Huang; Arne Larsen; James Ruigomez; Jeanie Scott; Bruce Kennedy; Mike Smith; Elizabeth Keith; Jim Cook; Bill Blackwell; Adrian Simi; Matt Chamberlain; Nicolo Barozzi; Tim Colen; Carol Koppel; Catherine Wong; Anna-Marie Bratton; Danny Campbell; Javier Flores; Jeff Rock; Manuel Flores; spoke in support of the matter. Aaron Goodman; Lora Traveler; Joey Foyin; Kathy Lims; Michael Russom; Bernie Choden; Healani Ting; Hiroshi Fukuda; Dean Preston; George Wooding; Ted Guillickson; Larry Jones; Mitchell Omerberg; spoke in opposition to the matter.

5/16/11; CONTINUED AS AMENDED, Continued to May 24, 2011.

The Chair will entertain a motion to send this item forward as a Committee Report to the full Board on May 24, 2011.

#### 5. 110303

#### [General Plan Amendment - Parkmerced]

Sponsor: Elsbernd

Ordinance amending the San Francisco General Plan by amending the Urban Design Element Height Map with respect to the Parkmerced site; adopting findings, including environmental findings and findings of consistency with the General Plan and Planning Code Section 101.1. (Planning Commission)

(Economic Impact.)

3/4/11; RECEIVED AND ASSIGNED to the Land Use and Economic Development Committee. 5/6/2011 - Notice was published, malled and posted.

4/6/11; REFERRED TO DEPARTMENT. Referred to the Controller for review and report.

5/16/11; AMENDED. Heard in Committee. Speakers: Supervisor Sean Elsbernd (Board of Supervisors; Michael Yarne (Economic and Workforce Development); Marlena Byrne (Cily Attorney's Office); presented information concerning the matter and answered questions raised throughout the hearing. John Huang; Arne Larsen; James Ruigomez; Jeanie Scott; Bruce Kennedy; Mike Smith; Elizabeth Keith; Jim Cook; Bill Blackwell; Adrian Simi; Matt Chamberlain; Nicolo Barozzi; Tim Colen; Carol Koppel; Catherine Wong; Anna-Marie Bratton; Danny Campbell; Javier Flores; Jeff Rock; Manuel Flores; spoke in support of the matter. Aaron Goodman; Lora Traveler; Joey Foyin; Kathy Lims; Michael Russom; Bernie Choden; Healani Ting; Hiroshi Fukuda; Dean Preston; George Wooding; Ted Gullickson; Larry Jones; Mitchell Omerberg; spoke in opposition to the matter.

5/16/11; CONTINUED AS AMENDED. Continued to May 24, 2011.

The Chair will entertain a motion to send this item forward as a Committee Report to the full Board on May 24, 2011.

#### ADJOURNMENT

#### IMPORTANT INFORMATION

NOTE: Persons unable to attend the meeting may submit to the City, by the time the proceedings begin, written comments regarding the agenda items above. These comments will be made a part of the official public record and shall be brought to the attention of the Board of Supervisors. Any written comments should be sent to: Committee Clerk of the Land Use Committee, San Francisco Board of Supervisors, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102 by 5:00 p.m. on the day prior to the hearing. Comments which cannot be delivered to the committee clerk by that time may be taken directly to the hearing at the location above.

#### NOTE:

Pursuant to Government Code Section 65009, the following notice is hereby given: if you challenge, in court, the general plan amendments or planning code and zoning map amendments described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

#### LEGISLATION UNDER THE 30-DAY RULE

#### (Not to be considered at this meeting)

Rule 5.40 provides that when an ordinance or resolution is introduced which would CREATE OR REVISE MAJOR CITY POLICY, the committee to which the legislation is assigned shall not consider the legislation until at least thirty days after the date of introduction. The provisions of this rule shall not apply to the routine operations of the departments of the City or when a legal time limit controls the hearing timing. In general, the rule shall not apply to hearings to consider subject matter when no legislation has been presented, nor shall the rule apply to resolutions which simply URGE action to be taken.

#### 110482 [Planning Code - Miscellaneous Technical Amendments]

Ordinance amending the San Francisco Planning Code to: 1) correct clerical errors, make language revisions and update Sections 121.2, 134, 136.1, 142, 185, 201, 204.1, 204.2, 205, 205.1, 205.3, 207.2, 209.3, 217, 243, 303, 309, 311, 312, 317, 602.25, 602.26, 607.1, and various Sections and Tables in Articles 7 and 8; and 2) adopting findings, including findings under the California Environmental Quality Act, Planning Code Section 302 findings, and findings of consistency with the General Plan and Planning Code Section 101.1. (Planning Commission)

4/28/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee.

[Zoning Map Amendments - Washington-Broadway Special Use District 1; Waterfront Special Use Districts 2 and 3; Special Districts for Sign Illumination; and Special Districts for Scenic Streets]
Sponsor: Chiu

Ordinance amending Sheets SU01, SS01, and SS02 of the San Francisco Zoning Map to: 1) add blocks and lots to the Washington-Broadway Special Use District 1; 2) add blocks to the Waterfront Special Use District 2; 3) delete blocks and add lots to the Waterfront Special Use District 3; 4) make the boundaries of the Special District for Sign Illumination on Broadway co-extensive with the Broadway Neighborhood Commercial District; 5) delete the Van Ness Special District for Sign Illumination; and 6) add The Embarcadero from Taylor Street to Second Street to the Special District for Scenic Streets; adopting findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

5/3/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee,

5/12/11; REFERRED TO DEPARTMENT. Referred to the Planning Department for environmental review; Planning Commission for public hearing and recommendation; and Small Business Commission for review and recommendation.

#### 110548

#### [Planning Code - Zoning - Uses, Signs, Building Features, Floor Area Ratio, Parking, and Compliance in Specified Use Districts] Sponsor: Chiu

Ordinance amending the San Francisco Planning Code by repealing Sections 136.2, 136.3, 158, 187, 249.15, 263.2, 263.3, 602.25, 602.26, 607.3, and 607.4 and amending various other Sections to: 1) increase the amount of principally permitted parking spaces for dwellings in RC-4 and C-3 Districts; 2) make off-street parking requirements in the Van Ness Special Use District and RC-3 Districts consistent with those of RC-4 Districts; 3) eliminate minimum parking requirements for the Chinatown Mixed Use Districts and North Beach Neighborhood Commercial Districts; 4) allow exceptions from required parking under specified circumstances; 5) amend the restrictions on off-street parking rates and extend them to additional zoning districts; 6) revise sign, awning, canopy and marquee controls in specified zoning districts; 7) increase the permitted use size for limited corner commercial uses in RTO and RM districts, and allow reactivation of lapsed limited commercial uses in R Districts; 8) revise the boundaries of and modify parking and screening requirements in the Washington-Broadway and Waterfront Special Use Districts; 9) modify controls for uses and accessory uses in Commercial and Residential-Commercial Districts; 10) permit certain exceptions from exposure and open space requirements for historic buildings; and 11) modify conformity requirements in various use districts; adopting findings, including environmental findings, Section 302

5/3/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee.

.5/12/11; REFERRED TO DEPARTMENT. Referred to the Planning Department for environmental review; Planning Commission for public hearing and recommendation; and Small Business Commission for review and recommendation,

findings, and findings of consistency with the General Plan and the Priority Policies of

#### 110624

#### [General Plan Amendments - Executive Park Subarea Plan]

Planning Code Section 101.1.

Ordinance amending the San Francisco General Plan by amending the Executive Park Subarea Plan of the Bayview Hunters Point Area Plan, the Land Use Index and maps and figures in various elements and adopting findings, including environmental findings and findings of consistency with the General Plan and Planning Code Section 101.1. (Planning Commission)

5/11/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee.

[Zoning - Establishment of the Executive Park Special Use District and Special Height and Bulk Provisions and Permit Review Procedures for the Special Use District

Ordinance amending the San Francisco Planning Code by adding Section 249.54 to establish the Executive Park Special Use District; adding Section 263.27 to establish Special Height Provisions for the Executive Park Special Use District and the 65/240 EP Height and Bulk District; amending Table 270 to provide that the Table is not applicable to the Executive Park Special Use District; and adding Section 309.2 to establish Permit Review Procedures in the Executive Park Special Use District; adopting findings, including environmental findings, Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1. (Planning Commission)

5/11/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee.

#### 110626

[Zoning Map Amendments - Executive Park Subarea Plan Area]
Ordinance amending the San Francisco Planning Code by amending Sectional Maps SU10 of the Zoning Map of the City and County of San Francisco to establish the Executive Park Special Use District; amending Sectional Map HT10 to establish the 65/240-EP Height and Bulk District; amending Sectional Map ZN09 to change certain Executive Park parcels from C-2(Community Business) and M-1(Light Industrial) to RC-3(Residential-Commercial Combined, Medium Density); adopting findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1. (Planning Commission)

5/11/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee.

#### 110627

[General Plan Amendment - Community Safety Element]

Ordinance amending the San Francisco General Plan by amending the Community Safety Element to reference the most recent Hazard Mitigation Plan; and making findings, including findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1, and environmental findings. (Planning Department)

#### 110657

[Building Code - Permit Exemption for Cartouches]

Sponsor: Wiener

Ordinance amending the Building Code of the City and County of San Francisco Section 106A.2 to exempt cartouches from permit requirements; and adopting environmental findings.

5/17/11; ASSIGNED UNDER 30 DAY RULE to the Land Use and Economic Development Committee.

#### Meeting Procedures

The Board of Supervisors is the legislative body of the City and County of San Francisco. The Board has several standing committees where ordinances and resolutions are the subject of hearings at which members of the public are urged to testify. The full Board does not hold a second public hearing on measures which have been heard in committee.

Board procedures do not permit: 1) persons in the audience to vocally express support or opposition to statements by Supervisors or by other persons testifying; 2) ringing and use of cell phones, pagers, and similar sound-producing electronic devices; 3) bringing in or displaying signs in the meeting room; 4) standing in the meeting room.

The public is encouraged to testify at Committee meetings and to write letters to the Clerk of the Board or to Supervisors: 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

LAPTOP COMPUTER FOR PRESENTATIONS: Contact City Hall Media Services at (415) 554-7490 to coordinate the use of the laptop computer for presentations. Presenters should arrive 30 minutes prior to the meeting to test their presentations on the computer.

AGENDA PACKET: Available for review in Clerk's Office, Room 244, City Hall, and on the internet at <a href="http://www.sfbos.org/meetings">http://www.sfbos.org/meetings</a>. Meetings are cablecast on SF Cable 26. For DVD copies and scheduling call (415) 554-4188.

LANGUAGE INTERPRETERS: Requests must be received at least 48 hours in advance of the meeting to help ensure availability. Contact Madeleine Licavoli at (415) 554-7722. AVISO EN ESPAÑOL: La solicitud para un traductor debe recibirse antes de mediodía de el viernes anterior a la reunion. Llame a Erasmo Vazquez (415) 554-4909.

翻譯 必須在會議前最少四十八小時提出要求 請 電 (415) 554-7719

#### Disability Access

The Legislative Chamber (Room 250) and the Committee Room (Room 263) in City Hall are wheelchair

Meetings are real-time captioned and are cablecast open-captioned on SF Cable 26. Assistive listening devices for the Legislative Chamber are available upon request at the Clerk of the Board's Office, Room 244. Assistive listening devices for the Committee Room are available upon request at the Clerk of the Board's Office, Room 244 or in the Committee Room. To request sign language interpreters, readers, large print agendas or other accommodations, please contact Madeleine Licavoli at (415) 554-7722 or (415) 554-5227 (TTY). Requests made at least 48 hours in advance of the meeting will help to ensure availability.

The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and 71L. For more information about MUNI accessible services, call (415) 701-4485.

There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and

Grove Street.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to perfumes and various other chemical-based scented products. Please help the City to accommodate these individuals.

#### Know Your Rights Under The Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The Sunshine Ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact by mail the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102, by phone at (415) 554-7724, by fax at (415) 554-7854 or by email at sotf@sfgov.org

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at http://www.sfbos.org/sunshine

#### Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code Sec. 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112; web site www.sfgov.org/ethics

## Exhibit 2

File	No. <u>110300</u>	Committee Board Item	Item No No	2
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Supervisor Elsbernd BOARD OF SUPERVISORS

[Development Agreement - Parkmerced]

Ordinance approving a Development Agreement between the City and County of San Francisco and Parkmerced Investors, LLC, for certain real property located in the Lake Merced District of San Francisco, commonly referred to as Parkmerced, generally bounded by Vidal Drive, Font Boulevard, Pinto Avenue and Serrano Drive to the north, 19<sup>th</sup> Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to the south, and Lake Merced Boulevard to the west; making findings under the California Environmental Quality Act, findings of conformity with the City's General Plan and with the eight priority policies of Planning Code Section 101.1(b); and waiving certain provisions of Administrative Code Chapter 56.

NOTE:

Additions are <u>single-underline italics Times New Roman</u>; deletions are <u>strike through italies Times New Roman</u>.

Board amendment additions are <u>double-underlined</u>;

Board amendment deletions are <u>strikethrough normal</u>.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Project Findings. The Board of Supervisors makes the following findings:

- (a) California Government Code Section 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within the jurisdiction of the city, county, or city and county.
- (b) Chapter 56 of the San Francisco Administrative Code ("Chapter 56") sets forth certain procedures for the processing and approval of development agreements in the City and County of San Francisco (the "City").
- (c) Parkmerced Investors LLC, a Delaware limited liability company ("Developer") is the owner of that certain approximately 152 acre site located in the Lake Merced District in San Francisco and commonly known as "Parkmerced" (the "Project Site"). The Project Site is

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generally bounded by Vidal Drive, Font Boulevard, Pinto Avenue and Serrano Drive to the north, 19th Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to the south, and Lake Merced Boulevard to the west.

- (d) Developer filed an application with the City's Planning Department for approval of a development agreement relating to the Project Site under Chapter 56. Developer also filed applications with the Department to (a) amend the City's Planning Code to create the Parkmerced Special Use District, (b) amend the City's General Plan to change applicable height and bulk classifications, and (c) amend applicable zoning maps.
- (e) Developer has proposed a long-term mixed-use development program to comprehensively replan and redesign the Project Site (the "Project"). The Project will, upon completion, increase residential density, provide a neighborhood core with new commercial and retail services, reconfigure the street network and public realm, improve and enhance the open space amenities, modify and extend existing neighborhood transit facilities, and improve utilities within the Project Site, all as further described in the proposed development agreement, a copy of which is on file with the Clerk of the Board in File No. 110300 (the "Development Agreement").
- (f) The Project includes the retention of approximately half of the existing apartments at the Project Site. The remaining half would be demolished over time, provided these units will not be demolished until Developer builds new units and relocates the existing tenants into these new units in accordance with the terms of the Development Agreement. Upon completion, approximately 5,679 net new residential units would be added to the Project Site for a total of 8,900 residential units (1,683 existing-to-be-retained units + 1,538 newly constructed replacement units + 5,679 newly constructed units = 8,900 units).
- (f) The Project also includes approximately 310,000 square feet of commercial use, 64,000 square feet of recreational/fitness center/community center use, 100,000 square feet

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Planning Department

of building and property maintenance use, 25,000 square feet of educational use, and net new off-street parking for up to 6,252 vehicles, all as more particularly described in the plan documents incorporated into the Development Agreement.

- (g) Concurrently with this Ordinance, the Board is taking a number of actions in furtherance of the Project, including the approval of amendments to the City's General Plan (Board File No. \_\_\_\_10303 \_\_\_), Planning Code (Board File No. \_\_\_\_10301 \_\_\_), and Zoning Maps (Board File No. \_\_\_\_10302 \_\_\_\_) (collectively, together with this Ordinance, the "Project Ordinances").
- (h) The City has determined that as a result of the development of the Project Site in accordance with the Development Agreement, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies, as more particularly described in the Development Agreement. The Development Agreement will eliminate uncertainty in the City's land use planning for the Project Site and secure orderly development of the Project Site consistent with the Parkmerced Special Use District.

#### Section 2. CEQA Findings.

(a) On February 10, 2011, at a duly noticed public hearing, the Planning Commission certified the Final Environmental Impact Report ("Final EIR") for the Project, by Motion No. \_\_\_\_\_\_18269 \_\_\_\_\_ finding that the Final EIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, contains no significant revisions to the Draft EIR, and the content of the report and the procedures through which the Final EIR was prepared, publicized and reviewed comply with the provisions of the California Environmental Quality Act (California Public Resources Code Section 21000 et seq., "CEQA"), the State CEQA Guidelines (California Code of Regulations

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Planning Department BOARD OF SUPERVISORS

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	B.	The Board of Supervisors finds that the Development Agreement is in conformity
with	the Gen	eral Plan, as amended, and the elght priority policies of Planning Code Section
101.	1 for the	reasons set forth in Planning Commission Resolution No. <u>18273</u> . The
Boai	d hereby	adopts the findings set forth in Planning Commission Resolution No.
	18273	and incorporates those findings herein by reference.

#### Section 4. Development Agreement.

- The Board of Supervisors approves all of the terms and conditions of the Development Agreement, in substantially the form on file with the Clerk of the Board of Supervisors in File No. 110300, including but not limited to: (i) one-for-one replacement of certain rent-controlled dwelling units currently existing on the Project Site with new units (the "Replacement Units"); (ii) the non-applicability of certain provisions of the Costa-Hawkins Rental Housing Act (California Civil Code Section 1954.50 et seq.; the "Costa-Hawkins Act"), and Developer's waiver of any and all rights under the Costa-Hawkins Act and the Ellis Act (California Government Code Section 7060 et seq.; the "Ellis Act") and any other laws or regulations so that each Replacement Unit will be subject to rent control and other provisions protecting tenants under the City's Rent Ordinance, and each below market rent ("BMR") unit will be subject to the City's BMR requirements as set forth in Planning Code Section 415; and (iii) the relocation by Developer of existing tenants to the Replacement Units, with an initial rent and pass through charges equal to the rent and pass through charges charged to the existing tenant for his or her existing unit at the time of relocation, with the right to remain in the Replacement Unit for an unlimited term subject to the eviction rules, procedures and protections set forth in the San Francisco Rent Ordinance, and with no pass through charges added to rent of the Replacement Unit for the capital costs of the Project.
- B. The Board of Supervisors also approves the subdivision and condominium map provisions as set forth in Section 3.10 of the Development Agreement, including the

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requirements relative to the Recorded Restrictions. The Board of Supervisors understands and agrees that the Replacement Units shall be rental units for the life of the building, and the Replacement Units shall be rent controlled for so long as the San Francisco Rent Ordinance, as amended, supplanted or replaced, remains in effect.

- C. Without limiting the terms of the Development Agreement, the Board of Supervisors expressly finds that the items listed in Section 4.A and 4.B above are a material and important part of the Development Agreement, and the Board would not be willing to approve the Development Agreement without these provisions.
- The Board of Supervisors approves and authorizes the execution, delivery and D. performance by the City of the Development Agreement, subject to the approval of the Development Agreement by the City's Municipal Transportation Agency and Public Utilities Commission, each in their sole discretion (the "Subsequent Approvals") and Developer's payment of all City costs with respect to the Development Agreement. Upon receipt of the Subsequent Approvals and the payment of City's costs billed to Developer, (i) the Director of Planning and other listed City officials are authorized to execute and deliver the Development Agreement, and (ii) the Director of Planning and other applicable City officials are authorized to take all actions reasonably necessary or prudent to perform the City's obligations under the Development Agreement in accordance with the terms of the Development Agreement and Chapter 56, as applicable. The Director of Planning, at his or her discretion and in consultation with the City Attorney, is authorized to enter into any additions, amendments or other modifications to the Development Agreement that the Director of Planning determines are in the best interests of the City and that do not materially increase the obligations or liabilities of the City or decrease the benefits to the City under the Development Agreement, subject to the approval of any affected City agency as more particularly described in the Development Agreement.

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In connection with the Development Agreement, the Board of Supervisors finds that the requirements of Chapter 56 have been substantially complied with, and hereby waives any procedural requirements of Chapter 56 if and to the extent that they have not been strictly complied with.

Section 5. Chapter 56 Waiver; Ratification.

All actions taken by City officials in preparing and submitting the Development В, Agreement to the Board of Supervisors for review and consideration are hereby ratified and confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken by City officials consistent with this Ordinance.

Section 6. Effective Date. This Ordinance shall become effective on the date that all of the Project Ordinances are effective.

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

Ву:

Charles R. Sullyan Deputy City Attorney

#### LEGISLATIVE DIGEST

[Development Agreement - Parkmerced]

Ordinance approving a Development Agreement between the City and County of San Francisco and Parkmerced Investors LLC for certain real property located in the Lake Merced District of San Francisco and commonly referred to as Parkmerced, generally bounded by Vidal Drive, Font Boulevard, Pinto Avenue and Serrano Drive to the north, 19th Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to the south, and Lake Merced Boulevard to the west, making findings under the California Environmental Quality Act, findings of conformity with the City's General Plan and with the eight priority policies of Planning Code Section 101.1(b), and waiving certain provisions of Administrative Code Chapter 56.

#### **Existing Law**

California Government Code section 65864 et seq. (the "Development Agreement Statute") and Chapter 56 of the San Francisco Administrative Code ("Chapter 56") authorize the City to enter into a development agreement regarding the development of real property. Chapters 37and 37A of the San Francisco Administrative Code (the "Rent Ordinance") establishes certain tenant protections and rights with respect to rental units that are covered by the Rent Ordinance. As a general matter, rental units that are created after the effective date of the Rent Ordinance, or June 13, 1979, are not covered by the Rent Ordinance.

#### Amendments to Current Law.

The proposed ordinance, if adopted, would result in the approval of the proposed development agreement (the "Development Agreement") with Parkmerced Investors LLC ("Developer") in accordance with the Development Agreement Statute and Chapter 56. The Development Agreement would provide to Developer the vested right to develop the project site as described in the Development Agreement over a 30 year term. There are no proposed amendments to current law. The parties have agreed to impose the Rent Ordinance on the 1,538 replacement units.

#### Background Information

Under the Development Agreement, the Developer proposes to increase residential density, provide a neighborhood core with new commercial and retail services, reconfigure the street network, improve and enhance the open space amenities, modify and extend existing neighborhood transit facilities, and improve utilities within the project site. The project includes the retention of approximately half of the existing apartments at the site. The

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remaining half would be demolished over time, provided these units will not be demolished until the Developer builds new units and relocates the existing tenants into these new units. Upon completion, approximately 5,679 net new residential units would be added to the project site for a total of 8,900 residential units (1,683 existing-to-be-retained units + 1,538 newly constructed replacement units + 5,679 newly constructed units = 8,900 units). The parties have agreed that the Rent Ordinance, including the rent control provisions, will apply to the 1,538 replacement units.

The project also includes approximately 310,000 square feet of commercial use, 64,000 square feet of recreational/fitness center/community center use, 100,000 square feet of building and property maintenance use, 25,000 square feet of educational use, and net new off-street parking for up to 6,252 vehicles, all as more particularly described in the Development Agreement.

By separate legislation, the Board is considering taking a number of actions in furtherance of the proposed project, including the approval of amendments to the City's General Plant Planting Code and Zoning Maps.



## Planning Commission Motion No. 18269 Environmental Impact Report Certification

HEARING DATE: FEBRUARY 10, 2011.

Hearing Date:

February 10, 2011

Case No.:

2008.0021E

Project Address: .

3711 19th Avenue

Zoning:

RM-4, RM-1 and RH-1(D)

Block/Lot:

40-X and 1Height and Bulk District

7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001,

7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001,

7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001, and 7370-001

Project Sponsor:

Seth Mallen, Parkmerced Investors, LLC

3711 19<sup>th</sup> Avenue

San Francisco, CA 94132

Staff Contact:

Rick Cooper - (415) 575-9027

rick.cooper@sfgov.org

ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED PARKMERCED PROJECT

MOVED; that the San Francisco Planning Commission ("Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2008.0021E, Parkmerced Project, 3711 19th Avenue ("Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department ("Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., "CEQA"), the State CEQA Guidelines (Cal. Code of Regulations Title 14, Section 15000 et seq., ("CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31").

.1.650 Mission St Sulte 400 San Francisco, CA 94103-2479

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Planning Information: 415.558.6377

- A. The Department determined that an Environmental Impact Report ("EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on May 20, 2009
- B. On May 12, 2010, the Department published the Draft Environmental Impact Report ("DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.
- C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by Department staff on May 12, 2010.
- D. On May 12, 2010, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.
- E. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on May 12, 2010.
- The Commission held a duly noticed public hearing on the DEIR on June 17, 2010, and received public comment. The period for acceptance of written comments ended on July 12, 2010.
- 3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 61-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received and based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Comments and Responses document, published on October 28, 2010, distributed to the Commission and all parties who commented on the DEIR, and made available to the public at the Department at 1650 Mission Street.
- 4. The Department has prepared a Final Environmental Impact Report (FEIR), consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Comments and Responses document, all as required by law.
- 5. Project Environmental Impact Report files have been made available for review by the Commission and the public. These files are available for public review at the Department at 1650 Mission Street, and are part of the record before the Commission.
- 6. On February 10, 2011 the Commission reviewed and considered the FEIR and finds that the contents of the FEIR and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31.

- 7. The Planning Commission finds that the FEIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR, and hereby CERTIFIES THE COMPLETION of the FEIR in compliance with CEQA and the CEQA Guidelines.
- 8. The Commission, in certifying the completion of the FEIR, finds that the project described in it:
- A. Will result in the following significant and unavoidable project-specific environmental impacts:
- Elimination of a visual/scenic resource of the built environment through the demolition
  of the existing garden apartment buildings and the removal of the existing landscaping;
- 2) Impairment of the significance of the Parkmerced historic district, an historical resource, through the demolition of the existing garden apartment buildings and removal of existing landscape features on the Project Site;
- Construction-related transportation impacts in the project vicinity due to construction vehicle traffic and road construction associated with the realignment of the existing light rail tracks;
- 4) Traffic impacts at 8 intersections, including:
  - Junipero Serra Boulevard/Sloat Boulevard/St. Francisco Boulevard/Portola Drive Significant contribution to LOS F conditions during the weekday PM peak hour and weekend midday peak hour;
  - Junipero Serra Boulevard/John Daly Boulevard/I-280 Northbound On-Ramp/I-280 Southbound Off-Ramp/SR 1 Northbound On-Ramp Significant contribution to LOS F conditions during the weekday PM peak hour;
  - 19th Avenue/Sloat Boulevard LOS E to LOS F in the AM peak hour;
  - 19th Avenue/Winston Drive LOS D to LOS E in the weekend midday peak hour and significant contribution to LOS F conditions during the PM peak hour;
  - Sunset Boulevard/Lake Merced Boulevard LOS C to LOS E in the PM peak hour;
  - Lake Merced Boulevard/Winston Drive LOS C to LOS E in the AM peak hour and LOS
    D to LOS F in the PM peak hour;
  - Lake Merced Boulevard/Font Boulevard LOS D to LOS F in the AM peak hour and LOS C to LOS F in the PM peak hour; and
  - Lake Merced Boulevard/Brotherhood Way LOS D to LOS E in the AM peak hour, LOS
     C to LOS F in the PM peak hour, and LOS C to LOS E in the weekend midday peak hour;

- 5) Traffic impacts on the following freeway segments:
  - Southbound State Route 1 (Junipero Serra Boulevard) weaving segment between the onramp from Brotherhood Way and the off-ramp to John Daly Boulevard – Significant contribution to LOS E conditions during the AM peak hour, and LOS E to LOS F during the PM peak hour, and
  - Northbound State Route 1 (Junipero Serra Boulevard) weaving segment between the
    Brotherhood Way on-ramp and Brotherhood Way off-ramp, due to uncertainty of
    proposed mitigation to remove the loop onramp and replace it with a left-turn onramp,
    which is subject to Calirans' jurisdiction.
- 6) Potential transit impacts due to the exceedance of the available transit capacity of Muni transit routes serving the Project Study Area, due to uncertainty of proposed mitigation to provide additional transit vehicles, which is subject to SFMTA's jurisdiction;
- 7) Potential transit impacts to the M Ocean View light rail due to route realignment and subsequent increased travel time, due to uncertainty of proposed mitigation to provide additional light rail vehicles or install transit signal priority, which are both subject to the SFMTA's jurisdiction;
- Potential transit impacts due to increased vehicular traffic resulting in increased travel times for operations of the Muni 17-Parkmerced, 18-48<sup>th</sup> Avenue, 28-19<sup>th</sup> Avenue, 28L-19<sup>th</sup> Avenue Limited and 29-Sunset bus lines, as well as SamTrans bus service along the Lake Merced Boulevard corridor, due to uncertainty of proposed mitigation to provide additional transit vehicles or install transit preferential treatments, which are both subject to SFMTA's jurisdiction;
- 9) Transit impacts due to increased travel times and effects to operations of the Muni 17-Parkmerced, 28-19th Avenue and 28L-19th Avenue Limited and 29-Sunset bus lines, as well as SamTrans bus service along the Lake Merced Boulevard corridor;
- 10) Noise impacts due to increased traffic;
- 11) Light rail noise and vibration impacts;
- 12) Noise impacts due to operation of stationary noise sources potentially exceeding noise level standards;
- 13) Construction-related toxic air contaminates impact;
- 14) Operational regional air quality impacts;
- 15) Temporary wind impacts during phased construction;

Motion No. 18270 Hearing Date: February 10, 2010

- 16) Potential wind impacts due to the proposed Special Use District, which could result in exceedances of the wind hazard criterion or increases in the area subject to winds greater than 26 mph;
- 17): Operational biological impacts to special-status species, including interference with bird or bat movement and migration corridors and raptor nest sites due to operation of the 51 wind turbines on the western periphery of the Project Site;
  - B. Will contribute considerably to the following cumulative environmental impacts:
- A cumulative impact to the Parkmerced historic district, an historical resource, through the demolition of the existing garden apartment buildings and removal of existing landscape features.
- 2) Cumulative traffic impacts at 13 intersections, including:
  - Junipero Serra Boulevard/Sloat Boulevard/St. Francis Boulevard/Portola Drive;
  - Junipero Serra Boulevard/John Daly Boulevard/I-280 Northbound On-Ramp/I-280 Southbound Off-Ramp/SR 1 Northbound On-Ramp;
  - 19th Avenue/Sloat Boulevard;
  - 19th Avenue/Winston Drive;
  - 19th Avenue/Holloway Avenue;
  - Brotherhood Way/Chumasero Drive;
  - Sunset Boulevard/Lake Merced Boulevard;
  - Lake Merced Boulevard/Winston Drive;
  - Lake Merced Boulevard/Font Boulevard;
  - Lake Merced Boulevard/Brotherhood Way;
  - Lake Merced Boulevard/John Muir Drive;
  - John Daly Boulevard/Lake Merced Boulevard; and
  - Lake Merced Boulevard/Gonzalez Drive;
- 3) Cumulative impacts to traffic at four freeway segments on State Route 1 (Junipero Serra Boulevard):
  - Southbound between the Brotherhood Way on-ramp and John Daly Boulevard off-ramp;
  - Northbound between the off-ramp to Northbound I-280 and the John Daly Boulevard on-ramp;
  - Northbound between the John Daly Boulevard on-ramp and the Alemany Boulevard offramp; and

CASE NO. 2008.0021E 3711-19<sup>th</sup> Avenue

Motion No. 18270 Hearing Date: February 10, 2010

- Northbound between the Brotherhood Way loop on- and off-ramps, due to uncertainty of proposed mitigation to remove the loop onramp and replace it with a left-turn onramp, which is subject to Caltrans' jurisdiction;
- Cumulative impact to transit capacity under 2030 cumulative conditions by contributing transit ridership to screenlines expected to exceed available transit capacity;
  - 5) Cumulative noise impacts due to increases in traffic from the Project in combination with other development; and
  - 6) Cumulative air quality impacts;

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of February 10, 2011.

Commissioners Antonini, Borden, Fong, and Miguel

NAYS: Commissioners Moore, Olague, and Sugaya

ABSENT:

AYES:

ADOPTED: February 10, 2011



# Planning Commission Resolution No. 18271

## Planning Code Text Amendment, Zoning Map Amendment, and General Plan Amendment HEARING DATE: FEBRUARY 10, 2011

Project Name;

Parkmerced Mixed-Use Development Program

T Case: Add Section 249,64; Amend Sections 102,5, 201, and 270

Z Case: Rezone the Subject Property

M Case: Amend the General Plan Urban Design Element Map 4

Case Number:

2008.0021EPMTZW

Initiated by:

Seth Mallen, Parkmerced Investors, LLC

3711 – 19th Avenue

San Francisco, CA 94132

Staff Contact:

Elizabeth Watty, Planner

Reviewed By David

Elizabeth, Watty@sfgov.org; 415-558-6620 David Alumbaugh, Acting Director Citywide Planning

David, Alumbaugh@sfgov.org, 415-558-6601

90-Day Deadline:

N/A - Sponsor Initiated

Recommendation:

Recommend Approval.

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

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Planning Information: 415,558,6377

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT AN ORDINANCE THAT WOULD (1) AMEND THE SAN FRANCISCO PLANNING CODE TEXT TO CREATE PLANNING CODE SECTION 249.64, THE "PARKMERCED SPECIAL USE DISTRICT" (PMSUD), AMEND PLANNING CODE SECTION 270 TO CREATE A NEW BULK DISTRICT ("PM") FOR THE PROPOSED FARKMERCED SPECIAL USE DISTRICT, AMEND PLANNING CODE SECTION 102.5. AND 201 TO INCLUDE THE PARKMERCED ZONING DISTRICTS; (2) AMEND THE PLANNING CODE ZONING MAP SHEETS ZN13, HT13, AND SU13 TO RECLASSIFY PARKMERCED, BEING ALL OF ASSESSOR'S BLOCKS 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001, AND 7370-001 FROM RM-1 (RESIDENTIAL MIXED, LOW DENSITY), RM-4 (RESIDENTIAL MIXED, HIGH DENSITY), & RH-1(D) (RESIDENTIAL HOUSE, ONE-FAMILY, DETACHED) DISTRICTS, TO PM [PARKMERCED RESIDENTIAL (PM-R), PARKMERCED MIXED USE - SOCIAL HEART (PM-MU1), PARKMERCED MIXED USE - NEIGHBORHOOD COMMONS (PM-MU2), PARKMERCED SCHOOL (PM-S), PARKMERCED COMMUNITY/FITNESS (PM-CF), AND PARKMERCED OPEN SPACE (PM-OS)], AND TO MAKE CONFORMING MAP AMENDMENTS TO FACILITATE THE LONG-RANGE DEVELOPMENT PLANS OUTLINED IN THE PARKMERCED MIXED-USE

www.sfplanning.org

EXHIBIT A

Hearing Date: February 10, 2011

DEVELOPMENT PROGRAM; (3) AMEND THE SAN FRANCISCO GENERAL PLAN URBAN DESIGN ELEMENT MAP 4 TO MAKE CONFORMING MAP AMENEDMENTS; (4) ADOPT A RESOLUTION URGING THE CALIFORNIA COASTAL COMMISSION TO AMEND THE LOCAL COASTAL PROGRAM TO INCORPORATE THE AMENDMENTS HEREIN; AND (5) MAKE AND ADOPT FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

## PREAMBLE

On January 8, 2008, Seth Mallen of Steller Management (hereinafter "Project Sponsor"), submitted an Environmental Evaluation Application with the Planning Department (hereinafter "Department"), Case No. 2008,0021E; and

On May 12, 2010, the Draft Environmental Impact Report (DEIR) for the Project was prepared and published for public review; and

The Draft EIR was available for public comment until July 12, 2010; and

On February 10, 2011, the San Francisco Planning Commission (hereinafter "Commission") reviewed and considered the Final Environmental EIR (FEIR) and found that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"); and

On February 10, 2011, the Commission: certified the FEIR by Motion No. 18629, adopted approval findings pursuant to CEQA by Motion No. 18270 (Exhibit A); and adopted the Mitigation, Monitoring, and Reporting Program (MMRP) (Exhibit B to Motion No. 18270). The CEQA approval findings and the MMRP (Exhibits A and B, respectively; to Motion No. 18270) are incorporated herein by this reference thereto as if fully set forth in this Motion; and

On August 12, 2010, the Project Sponsor applied to the Planning Department for a Planning Code Text Amendment, a Zoning Reclassification and a General Plan Amendment (hereinafter Map Amendments) to allow for the creation and implementation of the Parkmerced Special Use District under Case No. 2008.0021MTZ; and

The proposed General Plan Amendments would make conforming amendments to the Urban Design Element's Map 4 to reflect the proposed rezoning; and

The proposed Zoning Reclassification would amend Zoning Map Sheets ZN13, HT13, and SU13 to rezone Parkmerced, being all of Assessor's blocks 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7323-001, 7323-001, 7333-B-001, 7333-B-001, 7333-C-001, 7333-C-001, 7333-B-001, 7333-B-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-001, 7339-001, 7339-001, 7339-001, 7340-001, 7341-001, 7342-001, 7338-001, 7339-001, 7339-001, 7340-001, 7341-001, 7342-001, 7339-001, 7338-001, 7339-001, 7340-001,

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001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001, and 7370-001 from RM-1 (Residential Mixed, Low Density), RM-4 (Residential Mixed, High Density), & RH-1(D) (Residential House, One-Family, Detached) Districts, to PM [Parkmerced Residential (PM-R), Parkmerced Mixed Use – Social Heart (PM-MU1), Parkmerced Mixed Use – Neighborhood Commons (PM-MU2), Parkmerced School (PM-S), Parkmerced Community/Fitness (PM-CF), and Parkmerced Open Space (PM-OS) (hereinafter "Parkmerced Zoning Districts")]; and

The proposed Planning Code Text Amendments would create Planning Code Section 249.64, the "Parkmerced Special Use District" (hereinafter "PMSUD"), amend Planning Code Section 270 to create a new Bulk District (PM) for the proposed Parkmerced Special Use District, and amend Planning Code Section 102.5 and 201 to include the Parkmerced Zoning Districts; and

On October 27, 2010 the Project Sponsor filed a Development Agreement Application after months of negotiations with the Mayor's Office of Workforce and Economic Development; and

The Commission conducted informational hearings on the Parkmerced Project and considered public comment on November 4, November 18, December 9, December 16, 2010, and on January 13, 2011, and

On January 10, 2011, the Project Sponsor filed a Coastal Zone Permit Application, to authorize the rezoning and development of Assessor's Blocks 7309, 7309-A, 7334, 7333, portions of which are located within the Local Coastal Zone Permit Area; and

On January 13, 2011, the Commission passed Resolution No. 18255, initiating amendments to the Planning Code, Zoning Maps, and General Plan related to the proposed Project; and

On February 10, 2011, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinances; and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented by Department staff, and other interested parties; and

All pertinent documents associated with Case No. 2008.0021EPMTZW may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Fourth Floor, San Francisco, California; and

Whereas, the Commission has reviewed the proposed Ordinances; and

MOVED, that the Commission hereby recommends that the Board of Supervisors approve the proposed Ordinances, following execution of the Development Agreement, and adopt the attached Resolution to that effect, and,

MOVED, that the Commission hereby recommends that the Board of Supervisors request amendment of the Local Coastal Program to the California Coastal Commission to reflect the adoption of these

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Ordinances and the findings herein, and further request that such amendment of the Local Coastal Program will become effective immediately upon approval by the California Coastal Commission, without further action required by the City and County of San Francisco.

MOVED, that the Commission hereby recommends that the Board of Supervisors approve both the Connect Cambon to 19th Avenue project variant (as described in Appendix B of the Parkmerced Design Standards + Guidelines) and the Project, with a condition placed on the Project Variant that the vehicularized Diaz Avenue, between Cambon and Gonzalez Drives, retain the strong pedestrian connection to the Diaz pedestrian plaza, reinforced in part by the elimination of the on-street parking and the widening of the sidewalks on this block.

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The Commission finds the Parkmerced Mixed-Use Development Program to be a beneficial development to the City that could not be accommodated without the actions requested.

- 1. Parkmerced was constructed in the 1940s and early 1950s based on a model of separation of land uses, extensive reliance on the automobile for all purposes, and an insular circulation system featuring few connections to the wider city context. These patterns of development have proven to be unsustainable and exacerbate local and regional problems of transportation, air quality, and energy consumption and embody characteristics that do not meet the needs of today and the future to support sustainable growth.
- 2. Assembly Bill 32 set statewide goals for greenhouse gas reductions and Senate Bill 375 further requires local regions and municipalities to coordinate land use and transportation plans to reduce greenhouse gas emissions. In the Bay Area, according to the Bay Area Air Quality Management District, 40% of greenhouse gas emissions come from transportation, primarily private vehicle travel. The average Bay Area household drives 18,000 miles per year. Low residential density and lack of mixed uses that prevent trips from being effectively served by public transit or made by walking or bicycling are the primary reasons for high Vehicle Miles Travelled (VMT) for Bay Area households. Regional growth will occur, and it is the duty of every Bay Area city to direct growth to infill areas that are supported by necessary services and well-served by public transportation and that do not expand the footprint of existing urbanized areas.
- 3. The proposed infill Project density of 59 units per acre, incorporation of neighborhood-serving retail into a neighborhood center, and retrofitting of the block pattern to reduce block size, is more typical of San Francisco neighborhoods with low VMT. Based on consistent data from similar neighborhoods locally and throughout the country, the VMT of households in such a neighborhood is expected to be less than 10,000 miles per year.
- 4. Parkmerced is already well situated with regard to public transit infrastructure, as it sits adjacent to MUNI light rail service on 19th Avenue, is served by several MUNI bus lines, and is close to the Daly City BART station. It is currently substantially underbuilt based on existing zoning. It is one

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of the best situated areas on the west side of the City to absorb growth in a transit-oriented and sustainable fashion, and its ownership under a single entity provides a rare opportunity to consider a long-term master plan for reconfiguration and improvement to meet the needs of the 21st-century and beyond.

- 5. The proposed transportation investments as part of the Project, including MUNI rail re-alignment through the Project Site, would further improve service to the area and provide more operational options to the San Francisco Metropolitan Transit Authority (hereinafter, "SFMTA"). The proposal has been well-coordinated with SFMTA, paves the way and provides a down-payment for more long-term "Tier 5" options, and the Development Agreement paves the way for evaluating and incorporating additional Tier 5 options by the City. Without this Project, the City may not be able to achieve the necessary transportation improvements in the 19 Avenue corridor.
- 6. The existing Parkmerced landscape is resource consumptive in its expansive use of manicured mono-cultural lawns, and the original neighborhood and landscape design directly disrupted and degraded ecological functions, particularly by diverting rainwater flow away from the underground aquifer and Lake Merced. The proposed Parkmerced Mixed-Use Development Program will result in a landscape that is both environmentally and financially sustainable and restores degraded systems. Improvements include creation of a system of bioswales and cisterns to direct stormwater into a restored creek corridor feeding into Lake Merced and/or the underlying groundwater basin. In addition, the proposed Parkmerced Mixed-Use Development Program will result in the generation of 20% of the total estimated annual energy consumed by the Project, through the installation of renewable energy sources (such as photovoltaic cells and wind turbines) and cogeneration facilities.
- 7. The existing neighborhood, while giving the impression of expansive open space, has little usable public open space. Its publicly-accessible green spaces are primarily comprised of snippets and inbetween spaces such as roadway medians, building setbacks and undefined planted areas separating towers. The proposed Project would re-design the open space system to create distinct public open spaces in the form of both a larger connected network of major public open spaces, including a creek corridor, athletic fields, and farm (which the Project Sponsor proposes to develop as organic and which may be managed by a professional farmer), as well as smaller dispersed neighborhood parks activated by adjacent community uses and small-scale retail.
- 8. The Parkmerced Mixed-Use Development Program would result in increased rental and for-sale housing of various sizes and income levels, and would provide a great diversity of housing types to meet the needs of a broad spectrum of household types. The proposal would provide a broader range of building and unit types than exist today. Whereas 7% of current units have three bedrooms, the proposed Project would include 15% 3-bedroom units. While today over 52% of existing units are in the 13-story towers, upon full build-out, fewer than 35% of all units will be in towers of 11-14 stories.
- 9. Under the terms of the proposed Development Agreement, the Project would replace, on a one-for-one basis, the 1,538 existing units subject to the City's Residential Rent Stabilization and Arbitration Ordinance (hereinafter; "Rent Stabilization Ordinance") that would be demolished as part of the proposed Project with 1,538 "replacement units" of comparable size in newly constructed buildings. All existing tenants in these to-be-demolished units would be offered a

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replacement unit of comparable size at their existing rents, all relocation expenses would be paid for by the Project Sponsor, and, under the terms of the proposed Development Agreement, the replacement unit would be subject to the provisions of the Rent Stabilization Ordinance for the life of the building. Replacement units in the new buildings would chosen by existing tenants on a seniority basis. To the extent that any of the 1,538 replacement units are not occupied by an existing tenant who has elected to relocate, the replacement unit will be made available to a new tenant and will also be subject to the provisions of the Rent Stabilization Ordinance for the life of the building. The Project Sponsor will pay relocation expenses to existing tenants who choose not to relocate into a replacement unit.

- 10. The Parkmerced Mixed-Use Development Program would result in an entire neighborhood completely built in conformity with the City's recently-adopted Better Streets Plan, providing an excellent pedestrian environment.
- 11. The Parkmerced Mixed-Use Development Program would result in numerous public improvements to the intersections adjacent to and surrounding Parkmerced, providing circulation benefits not just for Parkmerced but for the wider community.
- 12. The Parkmerced Mixed-Use Development Program would create a social heart for the community, and would create a traditional pedestrian-oriented neighborhood commercial district within close walking distance of all Parkmerced residents. The proposed Parkmerced Mixed-Use. Development Program would result in 1,500 permanent jobs.
- 13. The proposed Project includes a comprehensive program for environmental sustainability, seeking to minimize any growth in water or energy use, to accommodate new growth by constructing infrastructure in a manner that will allow connection to future recycled water supplies, and by committing to invest in renewable energy infrastructure and efficiency measures that are above and beyond existing requirements.
- 14. The Parkmerced Mixed-Use Development Program establishes a detailed design review process for buildings and community improvements.
- 15. The Planning Code Text Amendments, Zoning Reclassifications, and General Plan Map Amendment are necessary in order to approve the Parkmerced Mixed-Use Development Program.

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 General Plan Compliance. The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

## HOUSING ELEMENT (2004 PER WRIT)

Objectives and Policies

## **OBJECTIVE 1:**

TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT DEMAND.

## Policy 1.4

Locate in-fill housing on appropriate sites in established residential neighborhoods.

San Francisco is expected to provide 68,000 new by 2035, in order to meet the Association of Bay Area Governments' (ABAG) projections for San Francisco's projected population growth. The Parkmerced Mixed-Use Development Project will help provide approximately 8% of the City's total housing goals, with a total of 5,679 new units at full Project build-out, over the next 20-30 years:

Parkmerced is currently accessible by public transit and located within an established residential neighborhood. One of the shortcomings of the existing residential neighborhood is that it does not have convenient non-vehicular access to neighborhood-serving amenities. As a result of this Project, neighborhood-serving amenities will be built, and there will be improved pedestrian and bicycle access to those amenities.

The Project will create transit infrastructure improvements, in addition to the bicycle and pedestrian improvements. Two new light rail transit stops will be added, and one light rail stop relocated to a more convenient and safer location, within the Parkmerced Site. Since proximity to transit does influence rates of auto ownership and the need for parking, locating 5,679 net new units at Parkmerced supports the City's transit first policy, which discourages car dependency.

## **OBJECTIVE 2:**

RETAIN THE EXISTING SUPPLY OF HOUSING

#### Policy 2.3

Restrict the conversion of rental housing to other forms of tenure or occupancy.

<sup>&</sup>lt;sup>1</sup> This number represents a recent update ABAG made to recognize the recession of 2008. Although these updated numbers have not yet been formally adopted and thus are not the "official" ABAG Projections, they are found to be more accurate based on the City and ABAG's analyses, and their use is consistent with ABAG's current regional planning work and development of the Sustainable Communities Strategy.

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Existing housing stock is the City's major source of relatively affordable housing. Although it is typically difficult to replace given the cost of new construction, the Parkmerced Mixed-Use Development Program will include replacement housing for all demolished units and will provide such replacement housing to existing tenants at their current rent. Furthermore, the Parkmerced Mixed-Use Development Program will retain the existing quantity of rental units at the Site within the newly constructed buildings, so that at no time will there be less than the existing 3,221 rental units at Parkmerced. This will be memorialized through the execution of the Development Agreement.

## OBJECTIVE 3:

ENHANCE THE PHYSICAL CONDITION AND SAFETY OF HOUSING WITHOUT JEOPARDIZING USE OR AFFORDABILITY.

#### Policy 3.5

Improve the seismic stability of existing housing without reducing the supply of affordable housing.

The Parkmerced Mixed-Use Development Program, at full build-out, will result in increased seismic stability for residents occupying the Site, while not reducing the supply of affordable housing.

The existing garden apartments that will demolished as part of this Project cannot feasibly be rehabilitated; Parkmerced was originally constructed during the material shortages of World War II and the buildings are reaching the end of their useful life.

#### **OBJECTIVE 4:**

SUPPORT AFFORDABLE HOUSING PRODUCTION BY INCREASING SITE AVAILABILITY AND CAPACITY

#### Policy 4,1

Actively identify and pursue opportunity sites for permanently affordable housing.

## Policy 4.2

Include affordable units in larger housing projects.

#### Policy 4.3

Encourage the construction of affordable units for single households in residential hotels and "efficiency" units.

## Policy 4.6

Support a greater range of housing types and building techniques to promote more economical housing construction and potentially achieve greater affordable housing production.

One of the Policies in the General Plan states that "large and privately held land parcels should also be identified and actively promoted for affordable housing". The Parkmerced Site is consistent with this Policy in that the Parkmerced Mixed-Use Development Program will meet the requirements of the City's Inclusionary Affordable Housing Program with respect to net new units, with a minimum of 1/3 of such

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requirement satisfied through the construction of Below-Market Rate ("BMR") units on or within 1,000 feet of the Project Site.

In addition to providing new BMR units, the Project will also include a diversity of housing typologies, including studio or "efficiency" units.

## 'OBJECTIVE 6:

PROTECT THE AFFORDABILITY OF EXISTING HOUSING.

#### Policy 6.2.

Ensure that housing developed to be affordable is kept affordable.,

#### Policy 6.3

Safeguard tenants from excessive rent increases.

Under the terms of the Development Agreement, existing tenants who occupy rent-controlled units would be allowed to relocate to a replacement unit located in a newly constructed building with the same rent and same rent-control protections as their to-be-demolished unit, to ensure that those tenants who currently occupy rent control units who choose to relocate to new units are guaranteed protections from excessive rent increases and arbitrary eviction. Furthermore, under the proposed Development Agreement, all existing rent-controlled units — the physical units themselves — would be replaced with new rent-controlled, replacement units, for the life of the building. As a result, at no time will there be less than 3,221 units subject to the terms of the Rent Stabilization Ordinance.

## **OBJECTIVE 8:**

ENSURE EQUAL ACCESS TO HOUSING OPPORTUNITIES.

#### Policy 8.1

Encourage sufficient and suitable rental housing opportunities and emphasize permanently affordable rental units wherever possible.

## Policy 8.4

Encourage greater economic integration within housing projects and throughout San Francisco.

#### Policy 8.7

Eliminate discrimination against households with children.

#### Policy 8.8

Promote the adaptability and maximum accessibility of residential dwellings for 'disabled and elderly occupants.

## Policy 8.9

Encourage the provision of new home ownership opportunities through new construction so that increased owner occupancy does not diminish the supply of rental housing.

This Objective of the Housing Element states that population diversity and integration is one of the City's most important assets, and in order to retain that diversity, there needs to be a variety of housing

## Parkmerced Mixed-Use Development Program

opportunities available. The Parkmerced Mixed-Use Development Program includes a variety of integrated housing opportunities within the Project Site, including both rental and for-sale units, from efficiency studio units to family-sized three-bedroom units, as well as BMR units as required by the City's Affordable Inclusionary Housing Program and the retention of an additional 3,221 units subject to the terms of the Rent Stabilization Ordinance. Some of the units will be located closer to transit and farther from car storage, whereas other units will be located closer to car storage and farther from transit. This provides great diversity in the type of units available, which should result in population diversity at Parkmerced.

Currently, much of the existing housing at Parkmerced is reaching the end of its useful life and is not ADA accessible. The Parkmerced Mixed-Use Development Program will result in 1,538 of the existing rental units being replaced by new, well-constructed, ADA accessible rental-units. In addition, there will be 5,679 net new units added to Parkmerced, all of which will be well-constructed and ADA accessible.

## **OBJECTIVE 9:**

AVOID OR MITIGATE HARDSHIPS IMPOSED BY DISPLACEMENT,

#### Policy 9.1

Minimize the hardships of displacement by providing essential relocation services.

## Policy 9.2

Offer displacement households the right of first refusal to occupy replacement housing units that are comparable in size, location, cost, and rent control protection.

The Parkmerced Mixed-Use Development Program, through the Development Agreement, will mitigate hardships imposed by displacement, by providing substantial notice to tenants in advance of their unit's demolition, and guarantees them a new unit of approximately equal size in a newly constructed building, at the same rent-controlled price and with the same protections afforded to rent-controlled units. The Parkmerced Mixed-Use Development Program further mitigates hardships imposed by displacement by relocating any tenant of a to-be-demolished building to a newly constructed replacement unit at the Project Sponsor's sole cost, and by paying relocation benefits to any tenant in of a to-be-demolished building who elects not to relocate to a replacement unit at Parkmerced.

#### Policy 11.2

Ensure housing is provided with adequate public improvements, services, and amenities.

#### Policy 11.3

Encourage appropriate neighborhood-serving commercial activities in residential areas, without causing affordable housing displacement.

#### Policy 11.4 .

Avoid or minimize disruption cause by expansion of institutions, large-scale uses and autooriented development into residential areas.

## Policy 11.10

Include energy efficient features in new residential development and encourage weatherization in existing housing to reduce the overall housing costs and the long-range cost of maintenance.

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Parkmerced is currently an auto-oriented development that lacks sufficient pedestrian-oriented, neighborhood-serving commercial activities to satisfy the daily needs of its residents. At the core of the Parkmerced Mixed-Use Development Program are many new neighborhood-serving amenities and usable open spaces, such as a neighborhood-commercial commons, new restaurants, a new preschool/elementary school and daycare facility site, fitness center, new athletic fields, walking and tiking paths, a new farm, and community gardens.

As part of the Parkmerced Mixed-Use Development Program, all new dwelling-units will be energy efficient. The Project's energy-efficiency features include maximizing daylight exposure in new construction, installing Tier 1 or better appliances in residential units, and designing residential and non-residential building envelopes to perform a minimum of 15% and 10%, respectively, more efficiently than current Title 24 standard.

#### URBAN DESIGN ELEMENT

## Objectives and Policies

#### OBJECTIVE 1

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBHROODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

## Policy 1.1

Recognize and protect major views in the city, with particular attention to those of open space and water.

#### Policy 1.2

Recognize, protect and reinforce the existing street pattern, especially as it is related to topography.

## Policy 1.3

Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

#### Policy 1.4

Protect and promote large-scale landscaping and open space that define districts and topography.

#### Policy 1.6

Make centers of activity more prominent through design of street features and by other means.

## Policy 1.7

Recognize the natural boundaries of districts, and promote connections between districts

## Policy 1.9

Increase the clarity of routes for travelers.

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The siting of new structures within the Parkmerced Mixed-Use Development Program has been designed in such a way so to cluster new towers within existing towers' sight-lines from the residential neighborhoods to the east, in order to preserve views of Lake Merced and the Pacific Ocean from the adjacent neighborhoods. While maintaining Juan Bautista Circle and the major radial streets that currently characterize Parkmerced, the street grid of Parkmerced would be redesigned to increase clarity for travelers by creating a more legible hierarchy of street types, and by providing a grid that is easier to navigate due its smaller blocks and more orthogonal orientation. With a prevailing neighborhood fabric of 4-to-6 stories, taller structures of 8-10 stories will be located at key intersections and adjacent to notable locations and spaces to define centers of activity, provide landmarks and clarity for movement, and activate public spaces. Further, denser and taller development is generally concentrated on the east half of the site, closer to 19th Avenue to emphasize connection to public transit and this major transportation corridor, while tapering down in intensity toward the west. The open space system will include major district-scale open spaces, connecting Juan Bautista Circle with the stream corridor to the athletic fields, farm, and Belvedere Garden connecting to Lake Merced; together this system will better define the edge of the neighborhood and create clear connections between adjacent districts, linking major local and regional open spaces with large-scale landscape features and providing clarity for residents and visitors.

**OBJECTIVE 3:** 

MODERATION OF MAJOR NEW, DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHOBRHOOD ENVIRONMENT.

Policy 3.1

Promote harmony in the visual relationships and transitions between new and older buildings.

Policy 3.2

Avoid extreme contrasts in color, shape and other characteristics which will cause new buildings to stand out in excess of their public importance,

Policy 3.3

Promote efforts to achieve high quality of design for buildings to be constructed at prominent locations.

Promote building forms that will respect and improve the integrity of open spaces and other public areas.

Policy 3.5

Relate the height of buildings to important attributes of the city pattern and to the height and character of existing development.

Policy 3,6

Relate the bulk of buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction.

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Policy 3.7

Recognize the special urban design problems posed in development of large properties.

The Parkmerced Mixed-Use Development Program includes the retention of the 11 existing tower buildings, and the construction of approximately 5,679 net new units. The new units will be constructed in new buildings that will be compatible with the existing structures, and will vary in height and design. The siting of new structures has been designed in such a way so to cluster new towers within existing towers' sight-lines from the residential neighborhoods to the east, in order to preserve views of Lake Merced and the Pacific Ocean from the adjacent neighborhoods. The street grid of Parkmerced would be redesigned to increase clarity for travelers by creating a more legible hierarchy of street types, and by providing a grid that is easier to navigate due its smaller blocks and more orthogonal orientation. With a prevailing neighborhood fabric of 4-to-6 stories, taller structures of 8-10 stories will be located at key intersections and adjacent to notable locations and spaces to define centers of activity, provide landmarks and clarity for movement, and activate public spaces. Further, denser and taller development is generally concentrated on the east half of the site, closer to 19th Avenue to emphasize connection to public transit and this major transportation corridor, while tapering down in intensity toward the west. The open space system will include major district-scale open spaces, to better define the edge of the neighborhood and create clear connections between adjacent districts and to link major local and regional open spaces with large-scale landscape features.

Each new building constructed as part of the Parkmerced Mixed-Use Development Program will be subject to a design review process conducted by the Planning Department and governed by the terms of the proposed Parkmerced Special Use District. The design review process is intended to ensure that all buildings within Parkmerced are designed to complement the aesthetic of the development, exhibit high quality architectural design and comply with the requirements of the Parkmerced Design Standards + Guidelines and the Parkmerced Sustainability Plan.

The Project Site is large - approximately 152 acres (including streets) - and as such, it has been given close consideration with regard to Project's urban design features, the need for neighborhood-serving amenities, and the need for improved transit. The five guiding Plan documents (including the above referenced Design Standards + Guidelines and the Sustainability Plan) together constitute a "master plan" for the Site, creating a framework and set of rules for the Site's future development. Through these guiding documents, the full build-out of this Site will be a better connected community with a fine-grain urban fabric containing small blocks and a variety of building heights and sizes; the Site's physical access to the surrounding established neighborhoods will be improved through the creation of new bicycle, pedestrian, and transit connections at the Site's periphery.

OBJECTIVE 4:

IMPROVEMENT OF THE NEIGHOBRHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY.

' Policy 4.3

Provide adequate lighting in public areas.

Policy 4.4

Design walkways and parking facilities to minimize danger to pedestrians.

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Policy 4.5

Provide adequate maintenance for public areas.

Policy 4.6:

Emphasize the importance of local centers providing commercial and government services.

Policy 4.8:

Provide convenient access to a variety of recreation opportunities.

Policy 4.9:

Maximize the use of recreation areas for recreational purposes.

Policy 4.10:

Encourage or require the provision of recreation space in private development.

Policy 4.12

Install, promote and maintain landscaping in public and private areas.

Policy 4.13:

Improve pedestrian areas by providing human scale and interest.

The Parkmerced Mixed-Use Development Program includes numerous guidelines that enhance the public realm, livability, and character of the neighborhood. These features include ground-floor walk-up units in all new buildings, required landscaping strips at the front of all properties, uniform plantings and street trees, pedestrian-oriented lighting, 2,945,000sf of new open spaces such as athletic fields, community gardens, and an-farm that will give the neighborhood an identity and provide a center for activity. The Development Agreement outlines operational standards and maintenance procedures to be followed by the Project Sponsor (or homeowners' association, as applicable) for all privately-owned public spaces.

Parking garages, which typically lack visual interest, will be underground and located on the western side of the Site, which will increase pedestrian safety by not having automobile ingress and egress crossing sidewalks throughout the neighborhood. Utility wires will also be located underground to enhance the appearance of the streets and neighborhood.

Throughout the Site there will be approximately 230,000 square feet of new neighborhood-serving retail, including a full-service grocery store. There will neighborhood-serving amenities of small and moderate scale, in order to create both a commercial core and to provide services within close proximity of every dwelling-unit. There will also be 80,000sf of office space, 25,000sf dedicated to a preschool/elementary school or daycare facility, and 64,000sf dedicated to a fitness/community center.

RECREATION AND OPEN SPACE ELEMENT

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## **OBJECTIVE 1:**

PROVIDE OPPORTUNITIES FOR RECREATION AND THE ENJOYMENT OF OPEN SPACE IN EVERY SAN FRANCISCO NEIGHBORHOOD.

#### Policy 4.4:

Acquire and develop new public open space in existing residential neighborhoods, giving priority to areas which are most deficient in open space.

#### Policy 4.5:

Require private usable outdoor open space in new residential development.

#### Policy 4.6

Assure the provision of adequate public open space to serve new residential development.

As part of the Parkmerced Mixed-Use Development Program, there will be a total of 2,964,000sf of open space, including 2.1 acres of open space provided through six Neighborhood Commons, 2.94 acres of open space provided through the creation of new athletic fields, and over one-acre of open space provided through the creation of community gardens. In addition to the publically-accessible usable open space, each residential building will contain usable semi-private or private open space in the following ratios: 36 square feet per unit if private open space (e.g. balconies), and 48 square feet per unit if semi-private open space (e.g. roof decks).

## TRANSPORTATION ELEMENT

## Objectives and Policies

## **OBJECTIVE 1:**

MEET THE NEEDS OF ALL RESIDENTS AND VISITORS FOR SAFE, CONVENIENT AND INEXPENSIVE TRAVEL WITHIN SAN FRANCISCO AND BETWEEN THE CITY AND OTHER PARTS OF THE REGION WHILE MAINTAINING THE HIGH QUALITY LIVING ENVIRONMENT OF THE BAY AREA.

#### Policy 1.2

Ensure the safety and comfort of pedestrians throughout the city.

## Policy 1.3

Give priority to public transit and other alternatives to the private automobile as the means of meeting San Francisco's transportation needs, particularly those of commuters.

#### Policy 1.5

Coordinate regional and local transportation systems and provide for interline transit transfers.

#### Policy 1.6

Ensure choices among modes of travel and accommodate each mode when and where it is most appropriate.

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#### Policy 1.7

Assure expanded mobility for the disadvantaged.

As part of the Parkmerced Mixed-Use Development Program, there will be substantial investment in pedestrian, bicycle, and transit improvements throughout and adjacent to the Site. The Site will be redesigned to be consistent with the City's recently-adopted Better Streets Plan, including the use of smaller blocks and new connections outside of the Site, making it more pedestrian-friendly. There will be an enhanced network of dedicated bikeways; as well as enhanced access to the Site to improve vehicular circulation. The Project will include shuttle service to Daly City BART Station, to encourage the use of public transportation. Lastly, the Project includes re-routing the MUNI M-Oceanview light-rail line through the Site, creating two new transit stops and relocating the existing Parkmerced/SFSU transit within the Site. By re-routing the MUNI M-Oceanview light-rail line and relocating the Parkmerced/SFSU stop, use of transit will be safer and more accessible, by eliminating the need to cross the busy 19th Avenue intersection to board the train. To further encourage the use of public transit, the Project Sponsor will be providing transit pass subsidies, and bike and car share opportunities.

#### **OBJECTIVE 2:**

USE THE TRANSPORTATION SYSTEM AS A MEANS FOR GUIDEING DEVELOPMENT AND IMPROVING THE ENVIRONMENT.

## Policy 2.1

Uses rapid transit and other transportation improvements in the city and region as the catalyst for desirable development, and coordinate new facilities with public and private development.

## Policy 2.2

Reduce pollution, noise and energy consumption.

#### Policy 2.4

Organize the transportation system to reinforce community identity, improve linkages among interrelated activities and provide focus for community activities.

## Policy 2.5

Provide incentives for ht use of transit, carpools, vanpools, walking and bicycling and reduce the need for new or expanded automobile and automobile parking facilities.

The Parkmerced Mixed-Use Development Program will improve public transit connections throughout the City and region by re-routing the MUNI M-Oceanveiw light-rail line through Parkmerced. Such rerouting will make transit stops more accessible, allow SFMTA to run "short-lines" that do not continue all the way through the low-ridership areas to Balboa Park, and provide opportunities for future connections to Daly City BART. It will also incentivize the use of public transit by providing transit subsidies to all tenants, and providing free shuttles to the Daly City BART station. There will also be improved bus service through the Site and free shuttles to local shopping centers, in addition to making bicycle and pedestrian improvements, which together, improve transit connections and accessibility.

## **OBJECTIVE 4:**

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Parkmerced Mixed-Use Development Program

MAINTAIN AND ENHANCE SAN FRANCISCO'S POSITION AS THE HUB OF A REGIONAL, CITY-CENTERED TRANSIT SYSTEM.

## Policy 4.2

Increase transit ridership capacity in all congested regional corridors.

## Policy 4.5

Provide convenient transit service that connects the regional transit network to major employment centers outside the downtown area.

The Parkmerced Mixed-Use Development Program will increase transit ridership capacity by providing funding to SFMTA to purchase an additional light-rail vehicle, which in turn will help SFMTA maintain headways. Through improved service on the MUNI M-Oceanview light-rail line and the provision of a free shuttle service to BART, residents and visitors will have more convenient access to regional transitnetworks including BART, regional bus lines and the Golden Gate Transit ferry service.

#### **OBJECTIVE 18:**

ESTABLISH A STREET HIERARCHY SYSTEM IN WHICH THE FUNCTION AND DESIGN OF EACH STREET ARE CONSISTENT WITH THE CHARACTER AND USE OF ADJACENT LAND.

## Policy 18.2

Design streets for a level of traffic that serves, but will not cause a detrimental impact on adjacent land uses, nor eliminate the efficient and safe movement of transit vehicles and bicycles.

As a result of the Parkmerced Mixed-Use Development Program, the entire site will be redesigned to be consistent with the City's Better Streets Plan.

## OBJECTIVE 20:

DEVELOP TRANSIT AS THE PRIMARY MODE OF TRAVEL TO AND FROM DOWNTOWN AND ALL MAJOR ACTIVITY CENTERS WITHIN THE REGION.

## Policy 21.2

Where a high level of transit ridership or potential ridership exists along a corridor, existing transit service or technology should be upgraded to attract and accommodate riders.

## Policy 21.7

Make convenient transfers between transit lines, systems and modes possible by establishing common or closely located terminals for local and regional transit systems by coordinating fares and schedules and by providing bicycle access and secure bicycle parking.

#### Policy 21.9

Improve pedestrian and bicycle access to transit facilities.

Policy 21.10

Parkmerced Mixed-Use Development Program

Ensure passenger and operator safety in the design and operation of transit vehicles and station facilities.

The Parkmerced Mixed-Use Development Program will result in the re-routing the MUNI M-Oceanview light-rail line from the middle of the busy 19th Avenue to within the Project Site, making pedestrian and bicycle access to the station safer and more accessible by eliminating the need to cross the busy 19th Avenue intersection to board the train. The Site will continue to be served by several MUNI bus lines, which will also stop in the vicinity of the new station, making transfers relatively easy.

- The proposed long-range mixed-use development project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:
  - A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Project would enhance the neighborhood-serving retail uses by creating a neighborhood-serving retail core with approximately 230,000 square feet of new retail space, thereby providing the community with services such as a grocery store and banking. The existing Parkmerced development currently has only a very small amount of neighborhood-serving retail, which is located adjacent to the Project Site. In combination with the proposed approximately 69,000 square feet of new office space, the new retail uses would provide opportunities for resident employment and business ownership. Furthermore, the proposed addition of 5,679 net new households would strengthen business at existing establishments in the vicinity of the Project Site and bolster demand for additional retail uses.

B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed Project would preserve the existing diversity and character of Parkmerced by maintaining the same number of rent controlled units (3,221 rent controlled units) that currently exist at Parkmerced. The Project would accomplish this by conserving 1,683 existing rent controlled apartments, which would remain subject to the Rent Stabilization Ordinance, and replacing all 1,538 existing rent controlled apartments that would be demolished by the Project with a new unit that would be subject to the same protections as contained in the Rent Stabilization Ordinance for the life of the building. In addition, under the proposed Project, residents of buildings proposed for demolition would be given the opportunity to relocate to such replacement units in a new building and would be assessed the same rent as their previous unit. The Project would also enhance the diversity of Parkmerced by constructing a large number of new BMR affordable units. Currently, Parkmerced has no BMR units. Further, the proposed Project would enhance the character of the Parkmerced neighborhood by establishing a social and commercial core, improving pedestrian accessibility, and creating open space and recreational opportunities.

C) The City's supply of affordable housing will be preserved and enhanced:

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Parkmerced Mixed-Use Development Program

The proposed Project will result in the construction of a significant number of BMR housing units in accordance with the Development Agreement to be executed by the Project Sponsor and the City. Such BMR units will significantly increase the City's supply of affordable housing. Moreover, the affordability of the existing rent-controlled units would be maintained for all existing residents, who, under the terms of the proposed Development Agreement, would continue to benefit from the protections of the Rent Stabilization Ordinance, including residents of units proposed for replacement who elect to relocate to a new unit. For such relocated residents, the Project proposes that the new unit be rented at the same rent controlled rate as the resident's existing unit, thereby preserving affordability of the Project for existing residents. Under the terms of the proposed Development Agreement, the replacement unit would be subject to the same rent increase restrictions as contained in the Rent Stabilization Ordinance for the life of the building, regardless of whether an existing tenant elects to relocate to the unit or the unit is occupied by a new tenant.

D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

The proposed Project would enhance MUNI transit service by re-routing the MUNI M-Oceanview light-rail line through the Project Site, creating two new stations and relocating the existing Parkmerced/SFSU station. These improvements would alleviate the overcrowding issues at the existing Parkmerced/SFSU station and improve the connection to SFSU by requiring riders to cross Holloway Avenue as opposed to Nineteenth Avenue. The realignment would also reduce the walking distance to transit for residents of Parkmerced, thereby encouraging the use of public transportation. In addition, the proposed roadway re-alignments would ease the burden on City streets in the Parkmerced area by improving traffic flow. Finally, the proposed Project would add approximately 90 on-street and 6,252 off-street parking spaces, ensuring that residents of the proposed Project do not rely on parking in the adjoining neighborhoods.

E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Project would not displace any industrial or service sector uses because of new commercial office development since the existing buildings slated for demolition do not contain any industrial or service sector uses. The Project Site is currently occupied by residential apartment buildings.

F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The proposed Project would help the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake because the new buildings would be constructed in accordance with all applicable building codes and regulations with regard to seismic safety.

Parkmerced Mixed-Use Development Program

G) That landmark and historic buildings will be preserved:

The proposed Project would not adversely impact any City landmarks because there are no City-designated landmarks on the Project Site. Although none of the buildings on the Project Site are designated City landmarks, as mitigation for the Proposed Project's impacts to historic resources under the California Environmental Quality Act, the Project Sponsor will prepare documentation of the site based on the National Park Service's Historic American Building Survey/Historic American Engineering Record Historical Report Guidelines and provide a permanent display of interpretative materials concerning the history of the original Parkmerced complex.

H) Parks and open space and their access to sunlight and vistas will be protected from development:

The proposed Project would provide 68 acres of open space in a network of publically accessible neighborhood parks, athletic fields, public plazas, greenways and a farm. The Project would provide significant additional open space in the form of private or semi-private open space areas such as centralized outdoor courtyards, roof decks, and balconies. These private and semi-private open spaces would be required within the development of each residential building within Parkmerced. The parks and open space would be more accessible and usable than the current open spaces. Parks and open space within, and in the vicinity of, the proposed Project would continue to receive a substantial amount of sunlight during the day when use is at its highest rate. Existing coastal views from parks located to the east and north of the Project Site would be maintained with implementation of the proposed Project.

 The proposed long-range mixed-use development project is consistent with the requirements set forth in Planning Code Section 302, in that:

The Project is necessary and desirable because it would enhance the lives of existing and future residents, and the City as a whole, by converting a single-use residential complex into a high-quality, mixed-use development that includes neighborhood-serving retail and numerous open space and recreational activities. The Project would also construct a significant amount of new housing units at an in-fill location within an existing urban environment and replace existing housing units that were constructed during the material shortages experienced during World War II and that are reaching the end of their useful life with new residential buildings that would be more energy efficient and meet current ADA requirements. The residential density that would result from the proposed in-fill housing is permitted by, and consistent with, the existing zoning of the Parkmerced site. With only 8,900 total housing units proposed, the Project would be smaller than the 10,302 units principally permitted by the existing zoning or the 11,750 housing units permitted through a Planned Unit Development. Additionally, the proposed Project would enhance alternatives to automobile use by making certain improvement to public transportation and by providing services to residents such as a shuttle to the Daly City BART station and carpool/vanpool services. Because a Special Use District is necessary in order to implement the proposed Project, and for the reasons set forth above, the Commission finds the requested amendments to the Planning Code, Zoning Maps, and General Plan to be required by public necessity, convenience and general welfare.

Hearing Date: February 10, 2011

Parkmerced Mixed-Use Development Program

- 4. Findings under the California Environmental Quality Act (CEQA):
  - a. On February 10, 2011, the Planning Commission, by Motion No. 18629, certified a Final Environmental Impact Report ("FEIR") for the Parkmerced Mixed-Use Development Program in compliance with CEQA, the CEQA Guidelines and Chapter 31, finding that the FEIR was completed in compliance with CEQA and was adequate, accurate and objective and reflected the independent judgment of the Planning Commission; a copy of the motion is on file with the Clerk of the Commission.
  - b. Also on February 10, 2011, the Commission reviewed and considered the information contained in the FEIR and by Motion No. 18270 adopted CEQA Findings for the proposed Parkmerced Mixed-Use Development Program Project under CEQA, the CEQA Guidelines and Chapter 31, including the adoption of a mitigation monitoring and reporting program (MMRP) and a statement of overriding considerations, ("CEQA Findings"). The CEQA Findings for the proposed Project are on file with the Clerk of the Commission and are incorporated into this Motion by

I hereby certify that the Planning Commission

Commission Secretary

AYES:

Commissioners Antonini, Borden, Fong, and Miguel

NAYS:

Commissioners Moore, Olague, and Sugaya

ABSENT:

ADOPTED:

February 10, 2011



# SAN FRANCISCO PLANNING

# PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- ☑ Affordable Housing (Sec. 415)
- ☐ Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- ☑ First Source Hiring (Admin. Code)
- ☐ Child Care Requirement (Sec. 414)
- ☑ Development Agreement

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Reception: 415.558.6378

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Planning Information: 415,558,6377

# Planning Commission Motion No. 18272 Local Coastal Zone Permit Application

HEARING DATE: FEBRUARY 10, 2011

Project Name:

Parlonerced Mixed-Use Development Program

P Case: Coastal Zone Permit

Case Number!

2008.0021ÈPMTZW

Initiated by:

Seth Mallen, Parkmerced Investors, LLC

3711 - 19th Avenue

San Francisco, CA 94132

Staff Contact:

Elizabeth Watty, Planner

Elizabeth, Watty@sfgov.org, 415-558-6620

Reviewed By:

David Alumbaugh, Acting Director Citywide Planning

David, Alumbaugh@sfgov.org, 415-558-6601

ADOPTING FINDINGS RELATING TO APPROVAL OF A COASTAL ZONE PERMIT, PURSUANT TO PLANNING CODE SECTION 330, TO ALLOW THE FULL IMPLEMENTATION OF THE PARKMERCED MIXED-USE DEVELOPMENT PROGRAM, AS ADOPTED BY THE PLANNING COMMISSION AND INCORPORATED HEREIN BY REFERENCE AS THOUGH FULLY SET FORTH IN MOTION NO. 18270 AND RESOLUTION NO.S 18271 AND 18273. A PORTION OF THE PARKMERCED SITE, SPECIFICALLY LOTS 7309, 7309-A, 7334, 7337, and 7333, ARE LOCATED WITHIN THE LOCAL COASTAL ZONE; AND MAKING AND ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECITON 101.1.

## PREAMBLE

On January 8, 2008, Seth Mallen of Steller Management (hereinafter "Project Sponsor"), submitted an Environmental Evaluation Application with the Planning Department (hereinafter "Department"), Case No. 2008.0021E, and

On May 12, 2010, the Draft Environmental Impact Report (DEIR) for the Project was prepared and published for public review; and

The Draft EIR was available for public comment until July 12, 2010; and

www.sfplanning.org

Motion No. 18272 Hearing Date: February 10, 2011

On February 10, 2011, the San Francisco Planning Commission (hereinafter "Commission") reviewed and considered the Final Environmental EIR (FEIR) and found that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"); and

On February 10, 2011, the Commission: certified the FEIR by Motion No. 18629, adopted approval findings pursuant to CEQA by Motion No. 18270 (Exhibit A); and adopted the Mitigation, Monitoring, and Reporting Program (MMRP) (Exhibit B to Motion No. 18270). The CEQA approval findings and the MMRP (Exhibits A and B, respectively, to Motion No. 18270) are incorporated herein by this reference thereto as if fully set forth in this Motion; and

On August 12, 2010, the Project Sponsor applied to the Planning Department for a Planning Code Text Amendment, a Zoning Reclassification and a General Plan Amendment (hereinafter Map Amendments) to allow for the creation and implementation of the Parkmerced Special Use District under Case No. 2008.0021MTZ; and

The proposed General Plan Amendments would make conforming amendments to the to the Urban Design Element's Map 4 to reflect the proposed rezoning; and

The proposed Zoning Reclassification would amend Zoning Map Sheets ZN13, HT13, and SU13 to rezone Parkmerced, being all of Assessor's blocks 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7336-001, 7336-001, 7341-001, 7342-001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7360-001, 7361-001, 7361-001, 7362-001, 7363-001, 7364-001, 7366-001, 7366-001, 7366-001, 7366-001, 7369-001; and 7370-001 from RM-1 (Residential Mixed, Low Density), RM-4 (Residential Mixed, High Density), & RH-1(D) (Residential House, One-Family, Detached) Districts, to PM [Parkmerced Residential (PM-R), Parkmerced Mixed Use – Social Heart (PM-MU1), Parkmerced Mixed Use – Neighborhood Commons (PM-MU2), Parkmerced School (PM-S), Parkmerced Community/Fitness (PM-CF), and Parkmerced Open Space (PM-OS) (hereinafter "Parkmerced Zoning Districts")]; and

The proposed Planning Code Text Amendments would create Planning Code Section 249.64, the "Parkmerced Special Use District" (hereinafter "PMSUD"), amend Planning Code Section 270 to create a new Bulk District (PM) for the proposed Parkmerced Special Use District, and amend Planning Code Section 102.5 and 201 to include the Parkmerced Zoning Districts; and

On October 27, 2010 the Project Sponsor filed a Development Agreement Application after months of negotiations with the Mayor's Office of Workforce and Economic Development; and

Motion No. 18272 Hearing Date: February 10, 2011

The Commission conducted informational hearings on the Parkmerced Project and considered public comment on November 4, November 18, December 9, December 16, 2010, and on January 13, 2011; and

On January 10, 2011, the Project Sponsor filed a Coastal Zone Permit Application, to authorize the rezoning and development of Assessor's Blocks 7309, 7309-A, 7334, 7333 and 7337, portions of which are located within the Local Coastal Zone Permit Area; and

On January 13, 2011, the Commission passed Resolution No. 18255, initiating amendments to the Planning Code, Zoning Maps, and General Plan related to the proposed Project; and

On February 10, 2011, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the Motion; and

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented by Department staff, and other interested parties; and

All pertinent documents associated with Case No. 2008.0021EPMTZW may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Fourth Floor, San Francisco, California; and

Whereas, the Commission has reviewed the Motion; and

MOVED, that the Commission hereby authorizes the Local Coastal Zone Permit requested in Application No. 2008.0021EPMTZW, based on the following findings:

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments; this Commission finds, concludes, and determines as follows:

- 1. The above recitals are accurate and constitute findings of this Commission.
- The Commission finds the Parkmerced Mixed-Use Development Program to be a beneficial development to the City that could not be accommodated without the actions requested.
- 3. The Parkmerced Development Project necessitates approval by the Planning Commission of a Local Coastal Zone Petmit, since a portion of the Site (Assessor's Blocks 7309, 7309-A, 7334, 7337, and 7333) is included in the boundaries of the Local Coastal Zone. Specifically, the portion of the Site located within the Local Coastal Zone Area consists of the southern half of development block 02W (portion of APN 7309/7309-A), development block 03W (portion of APN 7334), the western edge of development block 04 (portion of APN 7337) and the western edge of development block 23 (portion of APN

7333). The project proposes to demolish existing two-and three-story residential buildings on development block 02W and 03W and to replace such buildings with three-and four-story residential buildings. The portions of development blocks 04 and 23 within the Local Coastal Zone Permit Area would be designated as open space under the proposed Project.

4. Site Description and Present Use. Parkmerced is bounded by Lake Merced Boulevard to the west, Brotherhood Way to the south, Junipero Serra Boulevard, Felix Avenue, Cambon Drive, and 19th Avenue to the east, and Holloway Avenue, Varela Avenue, Serrano Drive, Font Boulevard, Pinto Avenue, and Vidal Drive to the north, it is within the RM-1 (Residential Mixed, Low-Density), RM-4 (Residential Mixed, High-Density), and RH-1(D) (Residential House, One-Family, Detached) Districts and 40-X and 130-D Height and Bulk Districts.

The Site measures 152-acres in total (including streets), and is defined by an axial street grid with a large open space in the center and a series of "pie-shaped" residential blocks. The residential units on each of these blocks surround a central courtyard open to the sky. The development is also articulated by landscaped boulevards and secondary streets that weave around buildings, open spaces, and larger open spaces in the vicinity of the tower buildings. The Site contains 3,221 existing rental apartments in 170 two-story residential buildings (townhouses) and 11 residential tower buildings that are 13 stories tall, as well as associated parking, buildings services, a leasing/operations office and a private pre-school/day care facility. There are also about 75 acres of existing open space throughout the Project Site in a network of lawns, courtyard areas, private open space; and playgrounds.

Parking for the residential apartments in the towers is currently provided in three above-grade centralized parking garages, which accommodate a total of 1,540 parking stalls. Parking for the townhouses is provided in attached carports, which provide a total of 1,507 parking spaces. An additional 151 parking spaces used for maintenance and office parking are provided in a surface parking lot. In addition to the 3,198 total private off-street parking spaces, there are 1,591 existing public on-street parking spaces.

As noted in the submitted Historic Resource Evaluation (HRE), the Parkmerced rental complex was constructed between 1941 and 1951 as the first all-rental community in San Francisco, as a response to the continued demand for housing the United States during and after World War II. <sup>1</sup> The buildings and site plan at Parkmerced were designed by Leonard Schultze & Associates for the Metropolitan Life Insurance Company (MetLife), while the landscaping of the open space and interior garden courtyards were designed by Thomas Church and other landscape architects from his office.

<sup>&</sup>quot;Historic Resource Evaluation & Cultural Landscape Assessment: Parkmerced" (April 29, 2009), prepared for Turnstone Consulting by Page & Turnbull, Inc. Available by request at the San Francisco Planning Department (1650 Mission Street, Suite 400, San Francisco, CA 94103) in the Case Docket for Case No. 2008.0021E. The document is referred to as the "Parkmerced HRE."

5. Surrounding Properties and Neighborhood. The 152-acre Site is located in the Lakeshore Neighborhood, in the southwest corner of San Francisco. The surrounding neighborhood includes Stonestown Galleria and San Francisco State University to the north; the Lakeside and Ingleside Terrace neighborhoods to the east; the Brotherhood Way religious and scholastic institutions, San Francisco Golf Club, and a residential neighborhood to the south; and Lake Merced and the Fleming and Harding Park Golf Courses to the west.

## 6. Project Description

#### Overview

The proposed Project is a long-term (approximately 20-30 years) mixed-use development program to comprehensively re-plan and re-design the approximately 116-acre Site (152acres including streets). The Project proposes to increase the residential density, provide new commercial and retail services, provide new transit facilities, and improve existing utilities within the development Site. Of the existing 3,221 residential units on the Site, approximately 1,683 units located within the 11 existing towers would remain and approximately 1,538 existing apartments would be demolished and replaced in phases over the approximately 20 to 30-year development period. As provided by the proposed Development Agreement, these replacement units would be subject to the San Francisco Rent Stabilization Ordinance and existing tenants in the to-be-replaced buildings would have rights to relocate into the new units at their existing rents. An additional 5,679 net new units would also be added to the Site for a Project total of 8,900 units. New buildings on the Site would range in height from 35 feet to 145 feet; and would not be taller than the existing towers, which will remain. Neighborhood-serving retail and office space would also be constructed as part of the proposed Project and concentrated on Crespi Drive, near the northeast part of the Site and the light-rail line. The proposed new neighborhood core would be located within walking distance of all the residences within Parkmerced. In addition, small neighborhood-serving retail establishments would be constructed outside of the neighborhood core, in proximity to residential units throughout the Site. A new preschool/elementary school and daycare facility site, fitness center, and new open space uses including athletic fields, walking and biking paths, a new farm, and community gardens would also be provided on the Project Site. Infrastructure improvements would include the installation of a bioswale system to process stormwater on-site and renewable energy sources, such as wind turbines and photovoltaic cells, which are detailed in the Sustainability Plan. Transportation improvements would include the realignment of the MUNI light rail-line through the Project Site, traffic improvements to intersections adjacent to the Project Site, provision of a free shuttle service to Daly City BART and other items detailed in the Transportation Plan.

## The Plan Documents

There are five guiding documents that combine to create a comprehensive and detailed blueprint for guiding all future land use, building, and community infrastructure improvements and programs at Parkmerced. These documents provide technical specifications, development are incorporated by reference into both the Development Agreement and the Planning Code.

The Vision Plan lays out a conceptual framework for transforming the existing Parkmerced housing development into a "21st century model of a healthy neighborhood".

The Design Standards and Guidelines prescribe urban design controls for land use, open spaces, streets, blocks and individual buildings. It contains the Regulating Plan which establishes the physical boundaries and measurements for all streets, blocks, parcels, open spaces, buildable areas, and easements. It also outlines a process for project implementation, establishing a design review process for buildings that limits the modifications from the standards, and specifies the Planning Commission and public review processes for the design of large projects and community improvements.

The Sustainability Plan contains specific strategies and metrics which together address the management and conservation of energy, water and other natural resources, and also establishes goals for green building standards.

The Transportation Plan provides a framework and management plan for addressing transit and vehicular travel to and from the neighborhood.

The Infrastructure Report establishes an outline for anticipated site-wide improvements to all street and public rights-of-way, underground utilities, and grading, and includes detailed engineering plans for those improvements.

## Land Use, Urban Design, and Building Form

The Parkmerced Mixed-Use Development Program includes the retention of the 11 existing tower buildings, and the construction of approximately 5,679 net new units. The new units will be constructed in new buildings that will be compatible with the existing structures, and will vary in height and design. The siting of new structures has been designed in such a way so to cluster new towers within existing towers' sight-lines from the residential neighborhoods to the east, in order to preserve views of Lake Merced and the Pacific Ocean from the adjacent neighborhoods. Parkmerced would be redesigned to increase clarity for travelers by creating a more legible hierarchy of street types, and by providing a grid that is easier to navigate. With a prevailing neighborhood fabric of 4-to-6 stories, taller structures of 8-10 stories will be located at key intersections and adjacent to notable locations and spaces to define centers of activity, provide landmarks and clarity for movement, and activate public spaces. Denser and taller development would be generally concentrated on the east half of the site, closer to 19th Avenue and the MUNI light-rail to emphasize connection to public transit and this major transportation corridor, while tapering down in intensity toward the west. The design includes the following features:

Street grid adjusted to reduce scale of blocks and improve circulation — introduction of new streets, alleys, and pedestrian paseos, realignment of some existing streets. Key elements of the original street grid design are preserved,

- including Juan Bautista Circle at the center with streets radiating outward, and Font Blvd as a major ceremonial connector. Gonzalez Drive is realigned as a major Boulevard on the south to improve circulation, organize major open spaces, and make room for creation of major public open space.
- Existing towers will remain. Low-rise 2-3 story buildings will all be replaced by street-facing buildings ranging in height from 35 to 145 feet. New towers will be clustered near the existing towers, in order to maintain existing view-sheds.
- In general, higher density and taller buildings will be located on the eastern half of the Site, closer to 19th Avenue and public transit (streetcar). The predominant neighborhood scale on the eastern half is a 65-foot (6-story) base, and 45 feet (4 stories) on the western half. These bases are punctuated by taller structures at key intersections and locations to provide wayfinding and highlight key public places, as well as provide diversity and texture in the urban fabric. Smaller streets on the west side would be lined by 3-story buildings.
- Except in the neighborhood commercial core, all buildings will have mandated landscaped setbacks and be lined on the ground floor with walk-up townhouse units that have individual front doors directly accessing the sidewalks.
- A new pedestrian-oriented neighborhood commercial area typical of San Francisco neighborhoods (with housing above ground floor retail), which will include a full-service supermarket, will be created at the northeast quadrant of the neighborhood, focused on a re-aligned Crespi Drive. Additional small, neighborhood retail (e.g. café, dry cleaners) would be sited adjacent to the neighborhood commons parks scattered around the Site. All residents would be within a short (5 minute) walk of supporting services.
- The overall neighborhood density proposed is approximately 59 units per acre, as compared to 40 units per acre in the Mission District and 86 units per acre in the Chinatown and North Beach Districts. This density is necessary to provide support for neighborhood shops and services within walking distance, as well as facilitate the use of transit, bicycling, and walking for daily activities.

## Open Space

The proposed Project would provide 68 acres of open space in a network of publically accessible neighborhood parks, athletic fields, public plazas, greenways and a farm, and in the form of private or semi-private open space areas such as centralized outdoor courtyards, roof decks, and balconies. These private and semi-private open spaces would be required with the development of each residential building within Parkmerced. The parks and open space would be more accessible and usable than the current public open spaces, which are predominantly characterized by wide street medians and undefined and un-programmed lawn areas surrounding towers. Most open space is currently provided in the form of semi-private interior-block shared courtyards. Parks and open space within, and in the vicinity of, the proposed Project would continue to receive a substantial amount of sunlight during the day when use is at its highest rate. Existing coastal views from parks located to the east and north of the Project Site would be maintained with implementation of the proposed Project. The main public open space would include:

- Neighborhood Commons: Six of these 0.35-acre neighborhood-scale parks (2.1-acres total) would be evenly distributed around the neighborhood to provide social gathering spaces and opportunity for passive and active recreation within a 2-minute walk of almost every resident. These spaces would be activated by small retail or community uses, like cafes, in adjacent buildings.
- Transit Plaza: A new 0.88 -acre public plaza with ancillary small retail at the northeast corner of the Site at Holloway/19th Avenue would feature a relocated City College/Parkmerced station for the MUNI light-rail, providing a better and safer waiting environment for passengers than the existing station in the middle of 19th Avenue.
- Diaz Plaza: This small street in the neighborhood commercial heart would be pedestrianized into an active 0.34-acre plaza, with restaurants and shops opening out onto the plaza and activating the space.
- Juan Bautista Circle: The historic 2.44-acre circle would be renovated with new landscaping and amenities, including a pond (and underground cistern) to collect stormwater and serve as a major ecological feature to feed water into the stream system that leads through the Site to Lake Merced.
- Stream Corridor: Leading from the Circle toward Lake Merced, the stream corridor is the backbone of the open space system, connecting the major open spaces and providing a greenway through the heart of the neighborhood. Walking paths and passive recreational open spaces are proposed along the corridor, which would also provide important wildlife habitat. Including the Farm and the Belvedere Garden (see below), the Stream Corridor would be 12,06-acres.
- Farm and Orchard: The over 2-acre farm, which may be managed by a professional farmer, is intended to be a productive landscape to supply local farmers' markets and restaurants with organic, locally-grown produce, and would utilize local on-site compost to reduce resource consumption of trucking food waste from the neighborhood. The farm would also provide educational and hands-on opportunities for residents.
- Belvedere Garden: A new garden overlook and terraced steps with water feature would provide a new direct pedestrian link from the neighborhood through the southwest corner of the Site to the major open spaces at Lake Merced.
- Athletic Fields: The 2.94-acre athletic fields would provide an opportunity for active recreation (e.g. soccer) in the neighborhood, as well as for adjacent off-site neighbors along Brotherhood Way, such as school and church groups (a new pedestrian connection is proposed to connect to Brotherhood Way).
- Community Garden: The existing small community garden located near the towers to the west of Juan Bautista Circle would be significantly expanded to 1.1-

acres, offering many more residents, particularly those in towers and other units without private open space, the opportunity to garden.

In addition to these public open spaces, all new units would be required to provided either 36 square feet of private open space (e.g. balconies, private patios, stoops) or 48 square feet of shared common open space (e.g. courtyards, roof decks). Almost every block would include a shared semi-private courtyard, as delineated in the Regulating Plans.

Most open spaces would be, as currently, owned by the developer or future Master Homeowners' Association. Through the Development Agreement, these spaces would be required to be maintained in good condition in perpetuity, and would guarantee the rights of the public to use the spaces as they would any City park and establish minimum hours of operation.

## Transportation

The comprehensive transportation program proposes to improve conditions for all modes of movement, and supports the objective of growing the neighborhood as a transit- and pedestrian-oriented district. The proposed improvements are as follows:

Pedestrian: A revised street grid providing smaller blocks, new streets, and mid-block paths for more direct and shorter connections for those on foot. All interior streets would be redesigned to exceed the minimum specifications of the Better Streets Plan for sidewalk width, amenities, and traffic calming. On the periphery of the neighborhood, several additional and safer crossings of the major streets are proposed on Lake Merced Boulevard, Brotherhood Way, and 19th Avenue. Finally, the land use program, with both increased residential density and a retail program, will provide and support services within walking distance.

Bicycle: New dedicated bicycle lanes and paths would be provided on Gonzalez Drive, Tapla Drive, Font Boulevard, Chumasero Drive, and Juan Bautista Circle to provide safe and direct connections for cyclists to important destinations and to link up with existing and planned bicycle routes outside of the neighborhood and at SFSU. Additionally, a new direct connection toward the Daly City BART station would be made possible by the reconfiguration of the interchange of Junipero Serra and Brotherhood Way.

Transit: The Project proposes to re-route the MUNI light-rail line, which currently runs in the middle of 19th Avenue, through Parkmerced, to relocate one station from the middle of 19th Avenue to within the Site and to create two new stations. This alignment has been coordinated with SFMTA and offers several operational advantages for transit service (such as being able to run short-lines that do not continue all the way through low-ridership areas to Balboa Park), in addition to better serving in a safer, more pleasant, and more convenient environment the majority of the riders in this area, who come from the west side of 19th Avenue at Parkmerced and SFSU. SFMTA would have the option of running trains all the way through to Balboa Park or terminating at Parkmerced. The Project proposes to dedicate necessary right-of-way easements and to build the infrastructure for this realignment. The Project also dedicates easements for a future extension of the light-rail line toward the Daly City BART station. Finally, the Project

proposes to fund the purchase by the SFMTA of one light-rail vehicle in order to maintain headways.

Vehicular: The current limited and circuitous access to the neighborhood would be enhanced by providing new access points with new or reconfigured intersections along Lake Merced (at Gonzalez, Acevedo, and Vidal), on Brotherhood Way (at Chumasero), on Junipero Serra (at Chumasero), and on 19th Avenue (at Crespi Drive). Other improvements are proposed at nearby intersections and sections of road to improve circulation, including but not limited to the addition of turn lanes and signalization changes.

Many of these improvements would require approval of the San Francisco Municipal Transit Authority (SFMTA), the California Public Utilities Commission (CPUC), and Caltrans; the Development Agreement includes provisions for seeking these approvals; and for proposing and implementing alternative projects that achieve equivalent public benefits should the proposals not garner necessary approvals from outside agencies. Per the Development Agreement, the developer must get necessary approvals and permits for the rail project within 7 years after the approval of the Agreement and must begin construction on the rail project by the time 2,500 new dwelling units have been constructed. Note that the first two years of the time period are reserved for the City to consider further modifications to the alignment based on ongoing studies of the 19th Avenue corridor ("Tier 5") (within funding provide in part by the Project Sponsor), and that construction of the rail project must be phased to allow later modification per Tier 5.

The Transportation Plan also includes a comprehensive Transportation Demand Management (TDM) program that obligates the Developer to undertake certain programs and services, including free shuttles to Daly City BART and nearby shopping centers, transit pass subsidies of \$20 per unit per month, a Transportation Coordinator to assist residents and employees of the Site, and implementation of a bicycle-share program.

Off-street parking for the residential units will primarily, but not exclusively be in underground garages, and will be concentrated on the west side of the Site (while units are concentrated toward the eastern half) to discourage casual usage. As parking would be unbundled and market-priced, occupants who wish to have parking space would have the option to pay less to park further away from their residence. Per the proposed SUD, parking could be provided up to one space per dwelling unit and non-residential parking would be capped generally at one space per 750 square feet (with some variation for specific uses). (Note that off-street parking would not strictly be required for any use per the SUD).

The Transportation Plan fully details goals and implementation actions for the Project.

#### Housing and Tenant Relocation

There are 3,221 dwelling units currently on-site. The housing stock is limited to two types: 2-3-story garden apartments (48% of total - 1,538 units) and 13-story tower

apartments (52% of total – 1683 units). Of the existing units, 35% are one-bedroom units, 58% are two-bedroom units, and 7% are three-bedroom units.

The proposed Project would demolish all of the existing garden apartments and replace them with a much broader mixture and variety of housing and building types, including units of various types in 3- to 6-story low rise buildings, 8- to 10-story mid-rise buildings, and 11- to 14-story towers. The Project would replace the existing units and add a net addition of approximately 5,679 units for a total of 8,900 units on-site. The percentage of one-bedroom units would remain at 35%, but there would be a larger percentage (15%) of three-bedroom units. Overall, the proportion of units in towers would decrease from 52.2% today to 34.4% as proposed. As the base of almost all new buildings will be lined with residential units, approximately 800 of the new units will be in the form of ground-level, walk-up units with direct, individual private access to sidewalks, front stoops, and/or courtyards.

The existing apartments slated for demolition are primarily wood-framed and stucco structures. To the extent practical, the existing structures will be "deconstructed", allowing for maximum re-use or recycling of materials. The feasibility of materials reused or recycled may be limited by the requirements for abatement of hazardous materials and the potential value of the recycled material. The proposed demolition and deconstruction will occur in conjunction with the construction phases over the 20- to 30-year development period.

Under the proposed Development Agreement, the Project would replace, on a one-for-one basis, the 1,538 existing units subject to the Rent Stabilization Ordinance that would be demolished as part of the proposed Project. All existing tenants in these units would be offered a newly-constructed unit of comparable size (all with new appliances, including washers, dryers, and dishwashers) at their existing rents, and all relocation expenses would be paid for by the Project Sponsor. Prior to the submittal of a permit for a Replacement Building, the Developer is required to submit a Tenant Relocation Plan to the City, outlining the existing to-be-demolished units, the number of existing tenants and estimated schedule for the relocation. The Development Agreement outlines a detailed notification and new-unit selection process.

#### Sustainability.

A key objective of the Project is to create a neighborhood that substantially improves the resource efficiency of both the existing development and future growth. The moderate-density housing, mixed-use land use, fine-grained urban design, and transit-oriented transportation program, described above, aim to substantially reduce the per capita amount of vehicular travel, which currently makes up the largest share (40%) of Bay Area greenhouse gas emissions. Besides these measures that are the basis for the Project, the Project would reduce environmental impacts of the existing Site and its growth through the following measures, amongst others:

Energy: The project has a goal of "Net Zero" energy usage for new development. To help strive toward this goal, the Project is committed to numerous renewable energy

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production and efficiency measures. In accordance with the Development Agreement, the project would install renewable energy sources (e.g. photovoltaic cells or wind turbines) capable of providing 10% of the total estimated annual energy consumed by the Site; and cogeneration facilities capable of providing an additional 10% of the total estimated annual energy consumed. The project has also committed to construct all new buildings to improve on current Title 24 energy standards for residential building envelopes by at least 15% and all other Title 24 energy standards by at least 10%.

Water: The Project proposes to reduce stormwater runoff into the combined sewer system (thereby reducing demand on the sewer and treatment infrastructure, as well as reducing frequency of discharge of untreated runoff into the ocean) by collecting and slowing the runoff of stormwater in an extensive system of in-street bio-swales, the Juan Bautista Circle pond and cistern, and the stream corridor. This system would partially restore historical stream flows from the Site into Lake Merced, replenishing the aquifer and improving water quality and water levels in Lake Merced. The Project is also located in the City's Recycled Water Ordinance area, requiring that all new buildings be dualplumbed for delivery of non-potable water for toilet flushing, building mechanical systems, irrigation and other non-potable water uses. The Project proposes to install recycled water distribution infrastructure (i.e. piping) throughout the project's right-ofways and connecting to new buildings, so that in the future the Project can connect to planned SFPUC recycled water supply systems (e.g. potentially running up Lake Merced Boulevard). This would substantially reduce demand from the Site for potable water from the City's Hetch Hetchy system. The Project will reduce water consumption by up to 60% on a per capita basis.

The Sustainability Plan fully details goals and implementation actions for the Project.

- 7. Elements of Project Located Within the Local Coastal Zone. The elements on the Project, as described above, to be located within the Local Coastal Zone area subject to the City's jurisdiction include:
  - Demolition of existing two- and three-story "garden apartments" and replacement
     with three- and four-story residential buildings to be constructed in accordance with the sustainability measures applicable to the entire Project;
  - Protections for existing tenants, including the tenant relocation and rent control
    provisions described above, shall apply to all residential construction in the Local
    Coastal Zone;
  - Construction of bioswales associated with each building to treat stormwater run-off on-site;
  - Enhancement of existing open space, including the creation of Belvedere Gardens and a portion of the Stream Corridor; and

 Establishing an additional access point and pedestrian crossing location to the Project Site from Lake Merced Boulevard at Gonzalez Drive, and making traffic improvements to the intersection of Lake Merced Boulevard and Higuera Avenue.

Although the Project contemplates the installation of wind turbines along the western edge of the Project Site to meet the energy generation requirements contained in the Development Agreement, the wind turbines are not included in the current Coastal Zone Permit application. The Project Sponsor will seek a separate Coastal Zone Permit for the wine turbines when required for their construction.

- 8. Public Comment. The Department has received a substantial amount of public testimony regarding the Project, both in support and opposition. Many of these comments were received during the public informational hearings held for this project (October 21, 2010, November 4, 18, 2010, December 9, 16, 2010, and January 13, 2011) and as part of the EIR process.
- 9. Planning Code Section 330 Local Coastal Zone Permit Review

The Parkmerced Mixed-Use Development Project necessitates approval by the Planning Commission of a Local Coastal Zone Permit, including findings of consistency with the Western Shoreline Area Plan of the General Plan (San Francisco's Local Coastal Program), pursuant to Planning Code Section 330, since a portion of the Site (Assessor's Blocks 7309, 7309-A, 7334, 7337, and 7333) is included in the boundaries of the Local Coastal Zone. Specifically, the portion of the Site located within the Local Coastal Zone Area consists of the southern half of development block 02W (portion of APN 7309/7309-A), development block 03W (portion of APN 7334), the western edge of development block 04 (portion of APN 7337) and the western edge of development block 23 (portion of APN 7333). The project proposes to demolish existing two-and three-story residential buildings on development block 02W and 03W and to replace such buildings with three-and four-story residential buildings. The portions of development blocks 04 and 23 within the Local Coastal Zone Permit Area would be designated as open space under the proposed Project.

A small portion of the southwest corner of the Project Site at the intersection of Lake Merced Boulevard and Brotherhood Way is located within the Coastal Zone area that is under the jurisdiction of the California Coastal Commission, because the later portion is not under the City and County of San Francisco's jurisdiction with regard to Coastal Zone review, the Project Sponsor will seek approvals separately to the Coastal Commission prior to any improvements to that land.

10. Planning Code Section 302. Pursuant to Planning Code Section 330.5(d), the Local Coastal Zone Permit Application shall be reviewed by the Commission subject to the procedures for reviewing Planning Code Amendments, as outlined in Planning Code Section 302. On balance, the Project is found to be consistent with said criteria in that:

- The Commission finds the Parkmerced Mixed-Use Development Program to be a beneficial development to the City that could not be accommodated without the actions requested.
- b. Parkimerced was constructed in the 1940s and early 1950s based on a model of separation of land uses, extensive reliance on the automobile for all purposes, and an insular circulation system featuring few connections to the wider city context. These patterns of development have proven to be unsustainable and exacerbate local and regional problems of transportation, air quality, and energy consumption and embody characteristics that do not meet the needs of today and the future to support sustainable growth.
- c. Assembly Bill 32 set statewide goals for greenhouse gas reductions and Senate Bill 375 further requires local regions and municipalities to coordinate land use and transportation plans to reduce greenhouse gas emissions. In the Bay Area, according to the Bay Area Air Quality Management District, 40% of greenhouse gas emissions come from transportation, primarily private vehicle travel. The average Bay Area household drives 18,000 miles per year. Low residential density and lack of mixed uses that prevent trips from being effectively served by public transit or made by walking or bicycling are the primary reasons for high Vehicle Miles Travelled (VMT) for Bay Area households. Regional growth will occur, and it is the duty of every Bay Area city to direct growth to infill areas that are supported by necessary services and well-served by public transportation and that do not expand the footprint of existing urbanized areas.
- d. The proposed infill Project density of 59 units per acre, incorporation of neighborhood-serving retail into a neighborhood center, and retrofitting of the block pattern to reduce block size, is more typical of San Francisco neighborhoods with low VMT. Based on consistent data from similar neighborhoods locally and throughout the country, the VMT of households in such a neighborhood is expected to be less than 10,000 miles per year.
- e. Parkmerced is already well situated with regard to public transit infrastructure, as it sits adjacent to MUNI light rail service on 19th Avenue, is served by several MUNI bus lines, and is close to the Daly City BART station. It is currently substantially underbuilt based on existing zoning. It is one of the best situated areas on the west side of the City to absorb growth in a transit-oriented and sustainable fashion, and its ownership under a single entity provides a rare opportunity to consider a long-term master plan for reconfiguration and improvement to meet the needs of the 21st-century and beyond.
- f. The proposed transportation investments as part of the Project, including MUNI rail re-alignment through the Project Site, would further improve service to the area and provide more operational options to the San Francisco Metropolitan Transit Authority (hereinafter, "MTA"). The proposal has been well-coordinated with MTA, paves the way and provides a down-payment for more long-term "Tier 5" options, and the Development Agreement paves the way for evaluating

and incorporating additional Tier 5 options by the City. Without this Project, the City may not be able to achieve the necessary transportation improvements in the 19 Avenue corridor.

- g. The existing Parkmerced landscape is resource consumptive in its expansive use of manicured mono-cultural lawns, and the original neighborhood and landscape design directly disrupted and degraded ecological functions, particularly by diverting rainwater flow away from the underground aquifer and Lake Merced. The proposed Parkmerced Mixed-Use Development Program will result in a landscape that is both environmentally and financially sustainable and restores degraded systems. Improvements include creation of a system of bioswales and cisterns to direct stormwater into a restored creek corridor feeding into Lake Merced and/or the underlying groundwater basin. In addition, the proposed Parkmerced Mixed-Use Development Program will result in the generation of 20% of the total annual energy consumed by the Project, through the installation of renewable energy sources (such as photovoltaic cells and wind turbines) and cogeneration facilities.
- h. The existing neighborhood, while giving the impression of expansive open space, has little usable public open space. Its publicly-accessible green spaces are primarily comprised of snippets and in-between spaces such as roadway medians, building setbacks and undefined planted areas separating towers. The proposed Project would re-design the open space system to create distinct public open spaces in the form of both a larger connected network of major public open spaces, including a creek corridor, athletic fields, and farm, as well as smaller dispersed neighborhood parks activated by adjacent community uses and small-scale retail.
- i. The Parkmerced Mixed-Use Development Program would result in increased rental and for sale housing of various sizes and income levels, and would provide a great diversity of housing types to meet the needs of a broad spectrum of household types. The proposal would provide a broader range of building and unit types than exist today. Whereas 7% of current units have three bedrooms, the proposed project would include 15% 3-bedroom units. While today over 52% of existing units are in the 13-story towers, upon full build-out, fewer than 35% of all units will be in towers of 11-14 stories.
- Under the terms of the proposed Development Agreement, the Project would replace, on a one-for-one basis, the 1,538 existing units subject to the City's Residential Rent Stabilization and Arbitration Ordinance (hereinafter, "Rent Stabilization Ordinance") that would be demolished as part of the proposed Project with 1,538 "replacement units" of comparable size in newly constructed buildings. All existing tenants in these to-be-demolished units would be offered a replacement unit of comparable size at their existing rents, all relocation expenses would be paid for by the Project Sponsor, and, as set forth in the proposed Development Agreement, the replacement unit would be subject to the provisions of the Rent Stabilization Ordinance for the life of the building.

Replacement units in the new buildings would chosen by existing tenants on a seniority basis. Under the proposed Development Agreement, to the extent that any of the 1,538 replacement units are not occupied by an existing tenant who has elected to relocate, the replacement unit will be made available to a new tenant and will also be subject to the provisions of the Rent Stabilization Ordinance for the life of the building. The project sponsor will pay relocation expenses to existing tenants who choose not to relocate into a replacement unit.

- k. The Parkmerced Mixed-Use Development Program would result in an entire neighborhood completely built in conformity with the City's recently-adopted Better Streets Plan, providing an excellent pedestrian environment.
- The Parkmerced Mixed-Use Development Program would result in numerous public improvements to the intersections adjacent to and surrounding Parkmerced, providing circulation benefits not just for Parkmerced but for the wider community.
- m. The Parkmerced Mixed-Use Development Program would create a social heart for the community, and would create a traditional pedestrian-oriented neighborhood commercial district within close walking distance of all Parkmerced residents. The proposed Parkmerced Mixed-Use Development Program would result in 1,500 permanent jobs.
- n. The proposed Project includes a comprehensive program for environmental sustainability, seeking to minimize any growth in water or energy use, to accommodate new growth by constructing infrastructure in a manner that will allow connection to future recycled water supplies, and by committing to invest in renewable energy infrastructure and efficiency measures that are above and beyond existing requirements.
- The Parkmerced Mixed-Use Development Program establishes a detailed design review process for buildings and community improvements.
- p. The Local Coastal Permit is necessary in order to approve the Parkmerced Mixed-Use Development Program.
- 11. General Plan Compliance. The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

WESTERN SHORELINE AREA PLAN

Lake Merced

Objectives and Policies

OBJECTIVE 5:

PRESERVE THE RECREATIONAL AND NATURAL HABITAT OF LAKE MERCED.

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#### Policy 5.1

Preserve in a safe, attractive and usable condition the recreational facilities, passive activities, playgrounds and vistas of Lake Merced area for the enjoyment of citizens and visitors to the city.

#### Policy 5.2

Maintain a recreational pathway around the lake designed for multiple use.

#### Policy 5.3

Allow only those activities in Lake Merced area which will not threaten the quality of the water as a standby reservoir for emergency use.

The Parkmerced Mixed-Use Development Program includes the retention of the 11 existing tower buildings, and the construction of approximately 5,679 net new units. The siting of new structures has been designed in such a way so to cluster new towers within existing towers' sightlines from the residential neighborhoods to the east, in order to preserve views of Lake Merced and the Pacific Ocean.

On the periphery of the neighborhood, a new garden overlook and terraced steps with water feature (Belvedere Garden) would provide a new direct pedestrian link from the neighborhood through the southwest corner of the Site to the major open spaces at Lake Merced, making Lake Merced's pathway more usable and accessible to residents living to the east of the Lake.

The Project proposes to reduce stormwater runoff into the combined sewer system (thereby reducing demand on the sewer and treatment infrastructure, as well as reducing frequency of discharge of untreated runoff into the ocean) by collecting and slowing the runoff of stormwater in an extensive system of in-street bio-swales, the Juan Bautista Circle pond and cistern, and the stream corridor. This system would partially restore historical stream flows from the Site into Lake Merced, replenishing the aquifer and improving water quality and water levels in Lake Merced. Any and all construction activities in the Local Coastal Zone (and elsewhere on the Project Site) will comply with mitigation measures set forth in the FEIR, protecting against construction-site run-off to Lake Merced.

- 12. Planning Code Section 101.1(b) establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the Project complies with said policies in that:
  - A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposed Project would enhance the neighborhood-serving retail uses by creating a neighborhood-serving retail core with approximately 230,000 square feet of new retail space, thereby providing the community with services such as a grocery store and banking. The existing Parkmerced development currently has only a very small amount of neighborhood-

serving retail, which is located adjacent to the Project Site. In combination with the proposed approximately 69,000 square feet of new office space, the new retail uses would provide opportunities for resident employment and business ownership. Furthermore, the proposed addition of 5,679 net new households would strengthen business at existing establishments in the vicinity of the Project Site and bolster demand for additional retail uses.

B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The proposed Project would preserve the existing diversity and character of Parkmerced by maintaining the same number of rent controlled units (3,221 rent controlled units) that currently exist at Parkmerced. The Project would accomplish this by conserving 1,683 existing rent controlled apartments, which would remain subject to the Rent Stabilization Ordinance, and replacing all 1,538 existing rent controlled apartments that would be demolished by the Project with a new unit that would be subject to the same protections as contained in the Rent Stabilization Ordinance for the life of the building. In addition, under the proposed Project, residents of buildings proposed for demolition would be given the opportunity to relocate to such replacement units in a new building and would be assessed the same rent as their previous unit. The Project would also enhance the diversity of Parkmerced by constructing a large number of new BMR affordable units. Currently, Parkmerced has no BMR units. Further, the proposed Project would enhance the character of the Parkmerced neighborhood by establishing a social and commercial core, improving pedestrian accessibility, and creating open space and recreational opportunities.

C. That the City's supply of affordable housing be preserved and enhanced,

The proposed Project will result in the construction of a significant number of BMR housing units in accordance with the Development Agreement to be executed by the Project Sponsor and the City. Such BMR units will significantly increase the City's supply of affordable housing. Moreover, the affordability of the existing rent-controlled units would be maintained for all existing residents, who, under the terms of the proposed Development Agreement, would continue to benefit from the protections of the Rent Stabilization Ordinance, including residents of units proposed for replacement who elect to relocate to a new unit. For such relocated residents, the Project proposes that the new unit be rented at the same rent controlled rate as the resident's existing unit, thereby preserving affordability of the Project for existing residents. Under the proposed Development Agreement, the replacement unit would be subject to the same rent increase restrictions as contained in the Rent Stabilization Ordinance for the life of the building, regardless of whether an existing tenant elects to relocate to the unit or the unit is occupied by a new tenant.

 That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The proposed Project would enhance MUNI transit service by re-routing the MUNI M-Oceanview light-rail line through the Project Site, creating two new stations and relocating

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the existing Parkmerced/SFSU station: These improvements would alleviate the overcrowding issues at the existing Parkmerced/SFSU station and improve the connection to SFSU by requiring riders to cross Holloway Avenue as opposed to Nineteenth Avenue. The realignment would also reduce the walking distance to transit for residents of Parkmerced, thereby encouraging the use of public transportation. In addition, the proposed roadway realignments would ease the burden on City streets in the Parkmerced area by improving traffic flow. Finally, the proposed Project would add approximately 90 on-street and 6,252 off-street parking spaces, ensuring that residents of the proposed Project do not rely on parking in the adjoining neighborhoods.

E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The proposed Project would not displace any industrial or service sector uses because of new commercial office development since the existing buildings slated for demolition do not contain any industrial or service sector uses. The Project Site is currently occupied by residential apartment buildings.

F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The proposed Project would help the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake because the new buildings would be constructed in accordance with all applicable building codes and regulations with regard to seismic safety.

G. That landmarks and historic buildings be preserved.

The proposed Project would not adversely impact any City landmarks because there are no registered landmarks on the Project Site. Although none of the buildings on the Project Site are designated City landmarks, as mitigation for the Proposed Project's impacts to historic resources under the California Environmental Quality Act, the Project Sponsor will prepare documentation of the site based on the National Park Service's Historic American Building Survey/Historic American Engineering Record Historical Report Guidelines and provide a permanent display of interpretative materials concerning the history of the original Parkmerced complex.

H. That our parks and open space and their access to sunlight and vistas be protected from development.

The proposed Project would provide 68 acres of open space in a network of publically accessible neighborhood parks, athletic fields, public plazas, greenways and a farm. The Project would provide significant additional open space in the form of private or semi-private

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open space areas such as outdoor courtyards, roof decks, and balconies. These private and semi-private open spaces would be required within the development of each residential building within Parkmerced. The parks and open space would be more accessible and usable than the current open spaces. Parks and open space within, and in the vicinity of, the proposed Project would continue to receive a substantial amount of sunlight during the day when use is at its highest rate. Existing coastal views from parks located to the east and north of the Project Site would be maintained with implementation of the proposed Project.

- 13. The Commission hereby finds that approval of the Local Coastal Zone Permit Application would promote the health, safety and welfare of the City.
- 14. Findings under the California Environmental Quality Act (CEQA): On February 10, 2011, the Commission reviewed and considered the information contained in the FEIR and by Motion No. 18270 adopted CEQA Findings for the proposed Parkmerced Mixed-Use Development Program Project under CEQA, the CEQA Guidelines and Chapter 31, including the adoption of a mitigation monitoring and reporting program (MMRP) and a statement of overriding considerations, ("CEQA Findings"). The CEQA Findings and MMRP for the proposed Project are on file with the Clerk of the Commission and are hereby incorporated into this Motion by reference and adopted.

#### DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby APPROVES the Local Coastal Zone Permit No. 2008.0021EPMTZW in general conformance with the Application as received on January 10, 2011 and stamped "EXCHIBIT A", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Local Coastal Zone Permit to the Board of Appeals within fifteen (15) days after the date of this Motion No. 18272. The effective date of this Motion shall be the date of this Motion if, not appealed (after the 15-day period has expired) OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. For further information, please contact the Board of Appeals in person at 1650 Mission Street, 3rd Floor (Room 304) or call 575-6880.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on February 10, 2011

AYES

Commissioners Antonini, Borden, Fong, and Migue

NAYS:

Commissioners Moore, Olague, and Sugaya

ABSENT:

ADOPTED:

February 10, 2011



## Planning Commission Resolution No. 18273

Development Agreement HEARING DATE: FEBRUARY 10, 2011

Date:

January 27, 2011

Project Name:

Parkmerced Mixed-Use Development Program

W Case: Development Agreement

Cașe Number:

2008.0021EPMTZW

Initiated by:

Seth Mallen, Parkmerced Investors, LLC

3711 - 19th Avenue

San Francisco, CA 94132

Staff Contact:

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E.

Elizabeth Watty@sfgov.org, 415-558-6620
David Alumbaugh, Acting Director Citywide Planning

David.Alumbaugh@sfgov.org, 415-558-6601

90-Day Deadline:

N/A - Sponsor Initiated

Recommendation:

Recommend Approval

RESOLUTION APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND PARKMERCED INVESTORS, LLC., A DELAWARE LIMITED LIABILITY CORPORATION, FOR CERTAIN REAL PROPERTY LOCATED AT 3711 19TH AVENUE IN THE LAKE MERCED DISTRICT IN THE SOUTHWEST CORNER OF SAN FRANCISCO AND GENERALLY BOUNDED BY VIDAL DRIVE, FONT BOULEVARD, PINTO AVENUE, AND SERRANCE DRIVE TO THE NORTH, 19TH AVENUE AND TUNIPERO SERRA BOULEVEARD TO THE EAST, BROTHERHOOD WAY TO THE SOUTH, AND LAKE MERCED BOULEVARD TO THE WEST, AND COMPRISED OF ASSESSOR'S BLOCKS AND LOTS 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001, and 7370-001, ALTOGETHER CONSISTING OF APPROXIMATELY 152-ACRES AND COMMONLY KNOWN AS PARKMERECED, FOR A TERM OF THIRTY (30) YEARS AND MAKING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, GENERAL PLAN FINDINGS, AND FINDINGS PURSUANT TO PLANNING CODE SECTION 101.1(b).

The Planning Commission (hereinafter "Commission") finds as follows:

<u>www.sfplanning.org</u>

1660 Mission St Sulte 400 San Francisco, CA 94103-2479

Reception: 415,558,6378

Fax: 415,558,6409

Planning Information: 415,558,6377

- 1. California Government Code Section 65864 et seq: authorizes any city, county, or city and county to enter into an agreement for the development of real property within the jurisdiction of the city, county, or city and county.
- Chapter 56 of the San Francisco Administrative Code sets forth the procedure by which any request for a development agreement will be processed and approved in the City and County of San Francisco.
- Parkmerced Investors, LLC ("Developer") owns the real property located in the City and County of San Francisco, California located at 3711 19th Avenue on Assessor's Blocks and Lots 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7334-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7345-001, 7345-A-001, 7345-B<sub>1</sub>001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7366-001, 7366-001, 7367-001, 7368-001, 7369-001, and 7370-001, altogether consisting of approximately 152 acres and commonly known as Parkmerced (the "Project Site").
- 4. The Developer filed an Application with the City's Department of Planning for approval of a development agreement under Administrative Code Chapter 56. The Developer also filed applications with the Department of Planning to (a) amend the City's Planning Code to create the Parkmerced Special Use District, (b) amend the City's General Plan to change applicable height and bulk classifications, (c) amend applicable zoning maps.
  - 5. The Developer proposes to increase residential density, provide a neighborhood core with new commercial and retail services, reconfigure the street network and public realin, improve and enhance the open space amenities, modify and extend existing neighborhood transit facilities, and improve utilities within the Project Site. The Developer proposes to retain approximately half (1,683) of the existing 3,221 rent-controlled apartments as part of the Project. The remaining half would be demolished over time and replaced with the Replacement Units. Approximately 5,679 net new residential units would be added to the Project Site over time. In total, upon completion of the Project, there will be up to 8,900 residential units on the Project Site (1,683 existing-to-be-retained units + 1,538 newly constructed Replacement Units + 5,679 newly constructed units = 8,900 units). The Project Site would also be developed with a mixed-use residential and commercial development with accessory parking and loading. The Parties wish to ensure appropriate development of the Project Site, to provide for the replacement of the 1,538 rent-controlled units and tenant amenities in the residential structures currently existing on the Project Site and proposed to be demolished, and to protect the tenants of the existing residential structures from displacement due to the proposed development of the Project Site. The Parties acknowledge that this Agreement is entered into in consideration of the respective burdens and benefits of the Parties contained in this Agreement.

#### RESOLUTION NO. 18273 Hearing Date: February 10, 2011

- 6. The Office of Economic and Workforce Development ("OEWD"), in consultation with the Planning Director, has substantially negotiated a development agreement for the Project Site, a copy of which is attached as Exhibit A (the "Development Agreement").
- 7. While the attached Development Agreement is substantially complete, there are items that OEWD staff and the Developer are still negotiating, which items are highlighted in a separate OEWD memorandum to the Commission. The Development Agreement must also be reviewed and approved separately by the Board of the San Francisco Municipal Transportation Agency, the San Francisco Public Utilities Commission and ultimately the San Francisco Board of Supervisors. These two City commissions and the Board of Supervisors may propose or recommend additional changes to the Development Agreement subsequent to this Commission reviewing and approving the attached Development Agreement.
- 8. The Planning Department analyzed the Project (Case No. 2008.0021EPMTZW), including the Development Agreement and other actions related to the Project, in a draft Environmental Impact Report published on May 12, 2010. On February 10, 2011, by Motion No. 18629, the Commission made findings and certified the Final Environmental Impact Report ("FEIR") in compliance with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq., ("CEQA"), the State CEQA Guidelines (California Code of Regulations Title 14 Sections 15000 et seq.) and Chapter 31 of the San Francisco Administrative Code (Chapter 31).
- 9. Also on February 10, 2011, the Commission reviewed and considered the information contained in the FEIR and by Motion No. 18270 adopted CEQA Findings for the proposed Parkmerced Mixed-Use Development Program Project under CEQA, the CEQA Guidelines and Chapter 31, including the adoption of a mitigation monitoring and reporting program (MMRP) and a statement of overriding considerations, ("CEQA Findings"). The CEQA Findings, including the MMRP, for the proposed Project are on file with the Clerk of the Commission and are hereby incorporated into this Motion by reference as though fully set forth and are hereby adopted by the Commission in support of this action.
- 10. The Commission hereby finds, for the reasons set for in Motion No.'s 18270 and 18272, and Resolution No.'s 18271 and 18273, that the Development Agreement and related approval actions are, on balance, consistent with the General Plan including any area plans, and are consistent with the Planning Code Priority Policies of Planning Code Section 101.1(b).
- .11. The Director accepted the application for filing after it was deemed complete; published notice of acceptance in an official newspaper; and has made the application publicly available under Administrative Code Section 56.4(c).
- 12. OEWD has prepared an estimated budget of the reasonable costs to be incurred by the City in preparing and adopting the proposed Development Agreement and preparing related documents and that document is available for review by the Commission under Administrative Code Section 56.20. A copy of the estimated budget of the City's costs

associated with this matter recommended is attached as Exhibit B. The Developer is required to pay to the City all of the City's costs in preparing and negotiating the Development Agreement, including all staff time for all City Department's involved in the preparation of the Development Agreement and associated Planning Code and General Plan amendments.

- 13. The Director has scheduled and the Commission has held a public hearing as required by Administrative Code Section 56.4(c). The Planning Department gave notice as required by Planning Code Section 306.3 and mailed such notice on January 21, 2011, which is at least 10 days before the hearing to local public agencies as required by Administrative Code Section 56.8(b).
- 14. The Planning Department file on this matter was available for public review at least 20 days before the first public hearing on the development agreement as required by Administrative Code Section 56.10(b). The file continues to be available for review at the Planning Department at 1650 Mission Street, 4th floor, San Francisco.

IT IS HEREBY RESOLVED, that the Commission approves the Development Agreement, in substantially the form attached hereto as Exhibit A; and, be it

FURTHER RESOLVED, that the Commission approves the estimated budget of the City's costs associated with this matter recommended by the Director in Exhibit B; and, be it

FURTHER RESOLVED, that the Commission finds that the application, public notice, Planning Commission hearing, and Planning Director reporting requirements regarding the Development Agreement negotiations contained in Administrative Code Chapter 56 required of the Planning Commission and the Planning Director have been substantially satisfied in light of the over 250 public meetings held for the project and the five public informational hearings provided by Planning Department staff at the Planning Commission and the information contained in the Director's Report Regarding Parkmerced Development Agreement Negotiations; and, be it

FURTHER RESOLVED, that the Commission authorizes the Planning Director to take such actions and make such changes as deemed necessary and appropriate to implement this Commission's recommendation of approval and to incorporate recommendations or changes from the SFMTA Board, the SFPUC and/or the Board of Supervisors, provided that such changes do not materially increase any obligations of the City or materially decrease any benefits to the City contained in the Development Agreement attached as Exhibit A; and be it

FURTHER RESOLVED, that on or before the date the Development Agreement becomes effective, and pursuant to Administrative Code Section 56.20(b), the Developer shall pay the City an amount equal to all of the City's costs in preparing and negotiating the Development Agreement, including all staff time for the Planning Department and the City Attorneys' Office, as invoiced by the Planning Director.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on February 10, 2011:

Commussion secretary

AYES: Commissioners Antonini, Borden, Fong, and Miguel

NAYS: Commissioners Moore, Olague, and Sugaya

ABSENT:

ADOPTED: February 10, 2011

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# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Motion No. 18270

#### **CEQA Findings**

**HEARING DATE: FEBRUARY 10, 2011** 

Date:

January 27, 2011

Project Name:

Parkmerced Mixed-Use Development Program

Case Number:

2008.0021EPMTZW

Initiated by:

Seth Mallen, Parkmerced Investors, LLC

3711 - 19th Avenue

San Francisco, CA 94132

Staff Contact:

Elizabeth Watty, Planner

. .

Elizabeth.Watty@sfgov.org, 415-558-6620

Reviewed By:

David Alumbaugh, Acting Director Citywide Planning

David Alumbaugh@sfgov.org, 415-558-6601.

Recommendation:

Adopt CEQA Findings

ADOPTING PROJECT APPROVAL FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) TO ALLOW THE FULL IMPLEMENTATION OF THE PARKMERCED MIXED-USE DEVELOPMENT PROGRAM ("PROJECT"), BEING ALL OF ASSESSOR'S BLOCKS 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7332-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7336-001, 7341-001, 7342-001, 7343-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001, and 7370-001, IN THE RM-1 (RESIDENTIAL MIXED, LOW DENSITY), RM-4 (RESIDENTIAL MIXED, HIGH DENSITY), & RH-1(D) (RESIDENTIAL HOUSE, ONE-FAMILY, DETACHED) DISTRICTS.

#### PREAMBLE

In determining to approve the Parkmerced Project ("Project") described in Section A, Project Description below, the San Francisco Planning Commission (hereinafter "Commission") makes and adopts the following findings of fact and decisions regarding mitigation measures and alternatives, and adopts the statement of overriding considerations, based on substantial evidence in the whole record of this proceeding and under the California Environmental Quality Act ("CEQA"), California Public Resources Code Sections 21000 et seq., particularly Sections 21081 and 21081.5, the Guidelines for Implementation of CEQA ("CEQA Guidelines"), 14 California Code of Regulations Sections 15000 et seq., particularly Sections 15091 through 15093, and Chapter 31 of the San Francisco Administration Code.

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415,558,6409

Planning Information: 415,558.6377 Motion No. 18270 Hearing Date: February 10, 2011

#### **FINDINGS**

The San Francisco Planning Commission hereby incorporates by reference as though fully set forth herein the findings for the Project approval of the Parkmerced Mixed-Use Development Program (hereinafter the "Project") attached hereto as Exhibit A pursuant to the California Environmental Quality Act, California Public Resources Code, Sections 21000 et seq. ("CEQA"), the Guidelines for Implementation of CEQA, Title 15 California Code of Regulations Sections 15000 et. seq. ("Guidelines"), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"), entitled Environmental Quality:

#### A. Project Description

The Parkmerced Mixed-Use Development Program is a long-term (20-30 year) mixed-use development program to comprehensively replan and redevelop the Parkmerced Project Site—the "Project" identified in the Final HIR. The Project would increase residential density, provide a neighborhood core with new commercial and retail services, modify transit facilities, and improve utilities within the development site. A new site for a Pre-K-5 school and/or day care facility, a fitness center, and new open space uses, including athletic playing fields, walking and biking paths, an approximately 2-acre farm, and community gardens, would also be provided. About 1,683 of the existing apartments located in 11 tower buildings would be retained. Over an approximately 20-year period of phased construction, the remaining 1,538 existing apartments would be demolished in phases and fully replaced, and an additional 5,679 net new units would be added to the Project Site, resulting at full build-out in a total of about 8,900 units on the Project Site.

The Project includes construction of (or provides financing for construction of) a series of transportation improvements, which include rerouting the existing Muni Metro M Ocean View line from its current alignment along 19th Avenue. The new alignment, as currently envisioned and analyzed in the Final EIR, would leave 19th Avenue at Holloway Avenue and proceed through the neighborhood core in Parkmerced. The Muni M line trains would then travel alternately along one of two alignments: trains either would re-enter 19th Avenue south of Felix Avenue and terminate at the existing Balboa Park station, or they would terminate at a new station, with full layover and terminal facilities, constructed on the Project Site at the intersection of Font Boulevard and Chumasero Drive.

The Proposed Project also includes a series of infrastructure improvements, including the installation of a combination of renewable energy sources, such as wind turbines and photovoltaic cells, to meet a portion of the Proposed Project's energy demand. In addition, stormwater runoff from buildings and streets would be captured and filtered through a series of bioswales, ponds, and other natural filtration systems. The filtered stormwater would then either percolate into the groundwater that feeds the Upper Westside groundwater basin and Lake Merced or be released directly into Lake Merced.

Amendments to the San Francisco Planning Code and the San Francisco General Plan are also proposed as part of the Proposed Project. The Planning Code amendments would change the Height and Bulk District Zoning Map and would add a Special Use District (SUD) applicable to

Motion No. 18270 Hearing Date: February 10, 2011

the entire Project Site, which would include an overlay of density and uses within the SUD. A Development Agreement is also proposed as part of the Project, as well as adoption of the Parkmerced Design Standards and Guidelines, which contain specific development guidelines.

The Final EIR also evaluated a Project sub-variant, which would construct a right-turn ingress along 19th Avenue between Crespi Drive and Junipero Serra Boulevard at Cambon Drive. This new access location would provide ingress for southbound vehicles only and would not provide access out onto 19th Avenue.

#### B. Planning and Environmental Review Process

The Project Sponsor applied for environmental review on January 8, 2008. The Department determined that an Environmental Impact Report was required and provided public notice of the preparation of such on May 20, 2009, and held a public scoping meeting on June 8, 2009. The Department published a Draft Environmental Impact Report (DEIR) on May 12, 2010. The Commission held a public hearing to solicit testimony on the DEIR on June 17, 2010. The Department received written comments on the DEIR for 61-days, beginning on May 12, 2010. The Department published the Comments and Responses on October 28, 2010. The DEIR, together with the Comments and Responses document, constitute the Final Environmental Impact Report (FEIR) for the Parkmerced Mixed-Use Development Program: The Commission certified the FEIR: on February 10, 2011, in Motion No. 18629.

Pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq., (CEQA), Title 14 California Code of Regulations Section 15000 et seq. (CEQA Guidelines), and Chapter 31 of the San Francisco Administrative Code, the Planning Commission has reviewed and considered the FEIR, which is available for public review at the Planning Department's offices at 1650 Mission Street.

Pursuant to CEQA Guidelines Section 15162, the Commission finds that the proposed actions before this Commission are within the scope of the project analyzed in the FEIR and (1) that no substantial changes are proposed in the Project and no substantial changes have occurred with respect to the circumstances under which this Project will be undertaken that would require major revisions to the FEIR due to the involvement of any new significant environmental effects or a substantial increase in the severity of previously identified effects and (2) no new information that was not known and could not have been known shows that the project will have any new significant effects not analyzed in the FEIR or a substantial increase in the severity of any effect analyzed or that new mitigation measures should be included that have not. The Commission further finds that an addendum to the FEIR is not required due to any changes in the Project or the Project's circumstances.

The public hearing transcript, a copy of all letters regarding the FEIR received during the public review period, the administrative record, and background documentation for the FEIR are located at the Planning Department, 1650 Mission Street, San Francisco. The Planning Commission Secretary, Linda Avery, is the custodian of records for the Planning Department and the Planning Commission.

#### DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby adopts the CEQA Findings attached hereto as Exhibit A and the Mitigation Monitoring and Reporting Program (MMRP) attached hereto as Exhibit B, which are incorporated herein by reference as though fully set forth.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on Thursday, February 10, 2011

Commission

AYES: Commissioners Antonini, Borden, Fong, and Miguel

NAYS: Commissioners Moore, Olague, and Sugaya

ABSENT:

ADOPTED: February 10, 2011



#### ATTACHMENT A

# PARKMERCED PROJECT CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS: FINDINGS OF FACT, EVALUATION OF MITIGATION MEASURES AND ALTERNATIVES, AND STATEMENT OF OVERRIDING CONSIDERATIONS SAN FRANCISCO PLANNING COMMISSION

(Revised: February 3, 2011)

In determining to approve the Parkmerced Project ("Project") described in Section I, Project Description below, the San Francisco Planning Commission makes and adopts the following findings of fact and decisions regarding mitigation measures and alternatives, and adopts the statement of overriding considerations, based on substantial evidence in the whole record of this proceeding and under the California Environmental Quality Act ("CEQA"), California Public Resources Code Sections 21000 et seq., particularly Sections 21081 and 21081.5, the Guidelines for Implementation of CEQA ("CEQA Guidelines"), 14 California Code of Regulations Sections 15000 et seq., particularly Sections 15091 through 15093, and Chapter 31 of the San Francisco Administration Code.

This document is organized as follows:

Section I provides a description of the Project proposed for adoption, and, in the alternative, the No Muni Realignment Alternative, the environmental review process for the Project, the approval actions to be taken and the location of records;

Section II identifies the impacts found not to be significant that do not require mitigation;

Section III identifies potentially significant impacts that can be avoided or reduced to less-than significant levels through mitigation and describes the disposition of the mitigation measures,

Section IV identifies significant impacts that cannot be avoided or reduced to less-than-significant levels and describes any applicable mitigation measures as well as the disposition of the mitigation measures;

Section V identifies mitigation measures proposed but rejected as infeasible for economic, legal, social, technological, or other considerations;

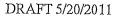
Section VI evaluates the different Project alternatives and the economic, legal, social, technological, and other considerations that support approval of the Project and the rejection of the alternatives, or elements thereof, analyzed; and

Section VII presents a statement of overriding considerations setting forth specific reasons in support of the Commission's actions and its rejection of the alternatives not incorporated into the Project.



File No. 2008,0021E Parkmerced Project February 10, 2011 Page 1 of 41

#### EXHIBIT 1: MITIGATION MONITORING AND REPORTING PROGRAM FOR THE PARKMERCED PROJECT (Includes Text for Adopted Mitigation and Improvement Measures) Monitoring/Report Responsibility for Status/Date MEASURES ADOPTED AS CONDITIONS OF APPROVAL Schedule. Responsibility Implementation Completed MITIGATION MEASURES YOR THE PARKMER OLD PROJECT Cultural Resources and Archeological Paleontological Resources Miligation Measures Project sponsor to retain qualified Prior to construction submittal of Mitigation Measure M-CR-1: Documentation and Interpretation Consultant to submit , report to Planning Documentation HABS/HAER/HALS Department professional The Project Spensor shall retain a professional who meets the Secretary of the guidelines documentation for approval by Planning consultant Interior's Professional Qualifications Standards for Architectural History to prepare written and photographic documentation of the Parkmerced complex within the Project Department, The documentation for the property shall be prepared based on the National Park Service's (NPS) Historic American Building Survey (HABS) / Historic American Engineering Record (HAER) Historical Report Guidelines, and will include a selection of measured drawings based upon NPS Historic American Landscape Survey (HALS) Guidelines. This type of documentation is based on a combination of both HABS/HAER standards (Levels I, II and III) and NPS's policy for photographic documentation as outlined in the National Register of Historic Places and National Historic Landmarks Survey Photo Policy Expansion. Prior to construction. transmit documentation to the SF Library, and . NWIC, The measured drawings for this documentation shall follow HALS Level I standards. To determine the number of the measured drawings, the professional shall consult with the San Francisco Planning Department's Preservation Coordinator. The written historical data for this documentation shall follow HABS / HABR Level I The written historical data for this documentation shall follow HABS / HABR, Level standards. The written data shall be accompanied by a sketch plan of the property. Efforts should also be made to locate original construction drawings or plans of the property during the period of significance. If located, these drawings should be photographed, reproduced, and included in the dataset. If construction drawings or plans cannot be located, as built drawings shall be produced. Either HABS/HAER standard large format or digital photography shall be used. If Either HAHS/HAEK standard large fortmat or digital photography small ob used. In digital photography is used, the lack and paper combinations for printing photographs must be in compliance with NR-NHL Photo Policy Expansion and have a permanency rating of approximately 115 years. Digital photographs will be taken as uncompressed, TIF file format. The size of each image will be 1600x1200 pixels at 330 ppi (gixels per inch) or larger, color format, and printed in black and white. The file name for each electronic image shall correspond with the index of photographs and photograph label. Photograph views for the dataset shall include (a) contextual views; (b) views of each side of each building and interior ylews, where possible; (e) oblique vlews of buildings; and (d) detail views of character-defining features, including features on the interiors of some buildings. All views shall be referenced on a photographic key. This





RECORDING REQUESTED BY CLERK OF THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

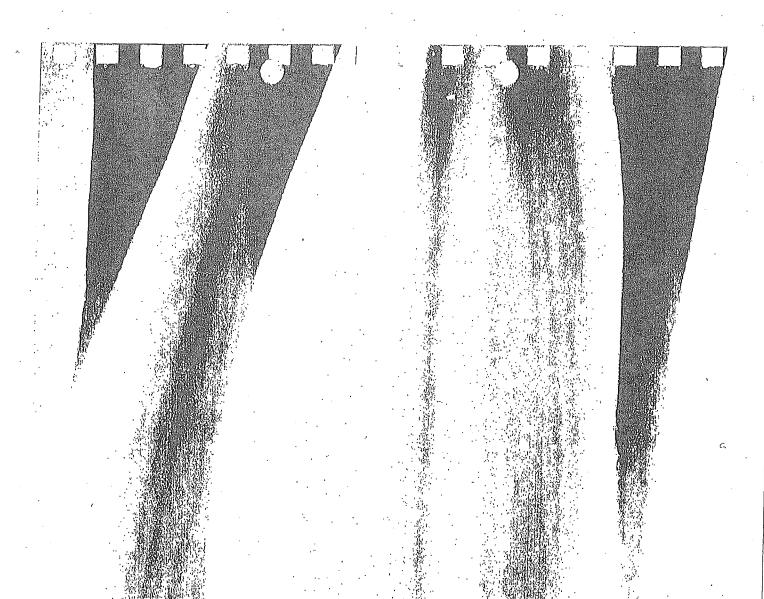
(Exempt from Recording Fees Pursuant to Government Code Section 27383)

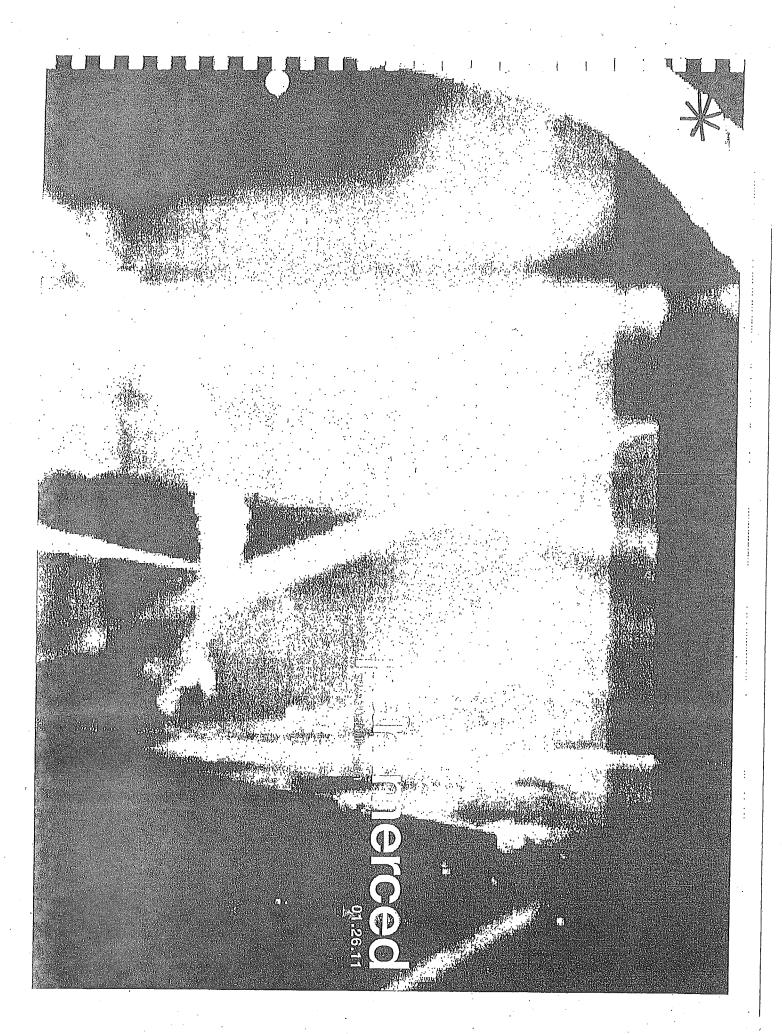
AND WHEN RECORDED MAIL TO:

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

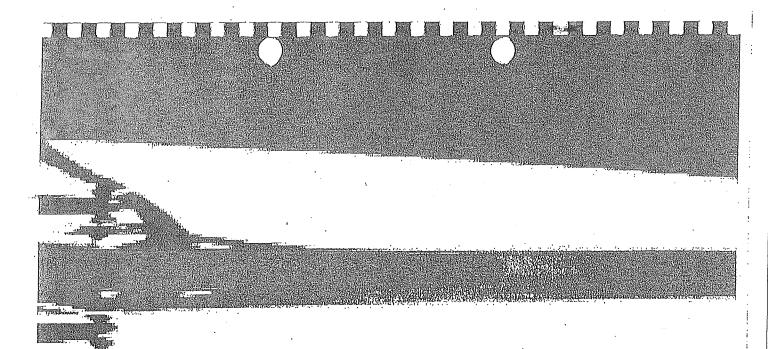
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARKMERCED INVESTORS LLC
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE PARKMERCED DEVELOPMENT PROJECT

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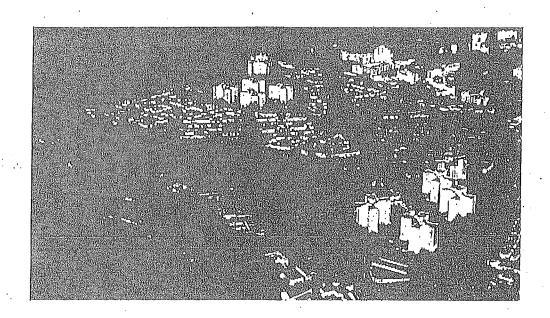


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# PARKMERCED PROJECT

Volume 1 - Chapters I-VIII



CITY AND COUNTY OF SAN FRANCISCO PLANNING DEPARTMENT: CASE NO. 2008.0021E

STATE CLEARINGHOUSE NO. 2009052073

DRAFT EIR PUBLICATION DATE: MAY 12, 2010

DRAFT EIR PUBLIC HEARING DATE: JUNE 17, 2010

DRAFT EIR PUBLIC COMMENT PERIOD: MAY 12, 2010 TO JUNE 28, 2010

Written comments should be sent to:

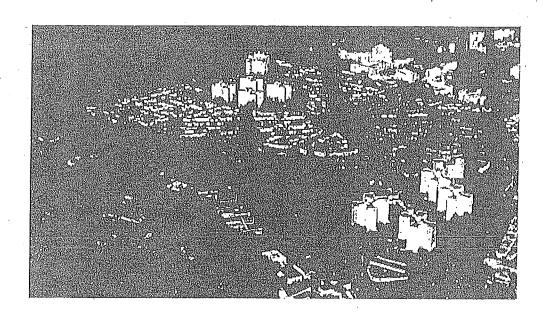
Environmental Review Officer San Francisco Planning Department 1650 Mission Street, Suite 400 San Francisco, CA 94103 BOARD OF JUFFERVISION SAME STANDSON TO THE PROPERTY OF THE PRO

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# PARKMERCED PROJECT

Volume 2 - Appendices



CITY AND COUNTY OF SAN FRANCISCO PLANNING DEPARTMENT: CASE NO. 2008.0021E

STATE CLEARINGHOUSE NO. 2009052073

DRAFT EIR PUBLICATION DATE: MAY 12, 2010 DRAFT EIR PUBLIC HEARING DATE: JUNE 17, 2010

DRAFT EIR PUBLIC COMMENT PERIOD: MAY 12, 2010 TO JUNE 28, 2010

Written comments should be sent to: Environmental Review Officer San Francisco Planning Department 1650 Mission Street, Suite 400

San Francisco, CA 94103

R

SOARD OF SUPERVISION SAMERAMORECO

(I)

# Exhibit 3

5/24/11

SECTION	PROPOSED ADDITION OR REVISION TO PARKMERCED
	DEVELOPMENT AGREEMENT:
Add new text to end of § 3.4.1:	(a) Require first Replacement Units be built on identified vacant land; (b) Require that existing blocks of tenants be kept together; and (c)Provide certain existing garden units not be demolished until the end of the Project and allow certain long-term tenants, facing a relocation, to elect to move into such garden apartments upon a vacancy.
	(a) <u>First Development Sites</u> . The Parties acknowledge that the construction of Replacement Units before the demolition of any Existing Units is a key requirement of this Agreement and is intended to ensure that the Existing Tenants are protected from displacement. Therefore, notwithstanding anything to the contrary above, no demolition shall occur and no other buildings shall be constructed on the Project Site until Replacement Units have been Completed on one of the three sites identified on <u>Exhibit V</u> .
	(b) Phasing of Tenant Relocation. The Parties also understand that the Existing Tenants may have strong social and community bonds with each other, and the Parties seek to respect and maintain those social and community bonds. Accordingly, Relocating Tenants residing within the same existing numerically-identified blocks as shown in Exhibit W shall have the right in connection with the exercise of their relocation options pursuant to Article 4 to elect to be collectively moved to Replacement Units within the same new block (subject to the rights of Existing Tenants to move on an interim basis and the rights of individual Relocating Tenants as described in Article 4) such that Relocating Tenants will remain neighbors within the same block notwithstanding their relocation. For the purposes of this Agreement, blocks 37W and 37E shall be considered separate blocks.
	(c) Interim Replacement Units; Long-Term Resident Protection. In order to provide Replacement Units with the same style and quality of life as the existing garden apartments, the City shall not approve a Development Phase Application that would result in demolition of the apartment buildings located on the three (3) existing blocks identified on Exhibit X (the "Interim Replacement Units") until the earlier of (i) the date upon which development of all other residential parcels have been Completed or (ii) twenty (20) years from the Effective Date of the Agreement. The Interim Replacement Units shall be offered to Existing Tenants that have occupied an Existing Unit for more than ten (10) years (a "Long-Term Existing Tenant") as of the Effective Date. Within sixty (60) days of the Effective Date of this Agreement, Developer shall deliver written notice to all Long-Term Existing Tenants (the "Long-Term Existing Tenant Notice"). The Long-Term Existing Tenant Notice shall request that the Long-Term Existing Tenant complete and return an attached response form that notifies Developer of the Long-Term Existing Tenant's interest in relocating to an Interim Replacement Unit, as an alternative to being relocated to a Replacement Unit before the

Building Vacancy Date for their existing building. The purpose of such response form is solely to provide information to Developer in order to plan for and facilitate the future relocation process to an Interim Replacement Unit. Existing Tenant's response indicating interest in accepting or rejecting an Interim Replacement Unit shall be non-binding and delivery or lack of delivery of such response form shall have no legal effect on an Existing Tenant's ability to later request an Interim Replacement Unit or a Replacement Unit in accordance with this Agreement. Long Term Existing Tenants shall have the additional option to request relocation to an Interim Replacement Unit anytime after receipt of an Existing Tenant Notice and before receipt of the Relocation Notice. Upon request to relocate to an Interim Replacement Unit, Developer shall move such Long-Term Existing Tenant to a vacant Interim Replacement Unit and Developer shall be responsible for all Relocation Costs for consistent with Section 4.4.8(a). Long Term Existing Tenants will be allowed to stay in the Interim Replacement Unit until such time as the Interim Replacement Units receive a Relocation Notice or, if the Long Term Existing Tenant rejects a Replacement Unit, until the applicable Building Vacancy Date, consistent with Article 4.

# Amend § 3.10.2:

Require Developer to enter into a lease addendum with each Existing Tenant at the time of relocation into a Replacement Unit (and include this addendum in all future leases of the Replacement Units) to incorporate the tenant protections of the DA, including rent control on the Replacement Unit and the Existing Tenant's right to a lifetime lease subject to the provisions of Rent Ordinance.

Notwithstanding anything to the contrary set forth above, in any subdivision or condominium map placed on the Project Site, the Replacement Units shall not be subdivided into separate condominium units so as to ensure that the Replacement Units remain rental units, under common ownership for each such building, for the life of each such building in which a Replacement Unit is located. Developer shall record restrictions running with the land, in form and substance satisfactory to the Planning Director and the City Attorney (the "Recorded Restrictions"), binding upon Developer and successor owners of all or part of the Replacement Units, that shall, without limitation: (i) require that the Replacement Units remain rental for the life of the buildings in which they are located, and require that the language set forth in Exhibit Y be included in all leases for each Replacement Unit; (ii) waive any and all rights to evict tenants under the Ellis Act and any other laws or regulations that permit owner move-in evictions; (iii) apply the terms of Rent Ordinance to the Replacement Units, and acknowledge the nonapplicability of the Costa-Hawkins Act, and provide the City and each tenant in a Replacement Unit the express right to enforce these provisions and collect attorneys fees and costs in any enforcement action, and expressly include the remedies set forth in Sections 12.8 and 12.9 of this Agreement if rent control under the Rent Ordinance is deemed not to apply to the Replacement Units for any reason; and (iv) waive any other laws or regulations that would limit the ability of the City or any tenant to enforce the rental-only requirements and the other benefits and amenities relative to the Replacement Units under this

Agreement. Developer, on behalf of itself and successor owners, agrees that it shall not seek to challenge the applicability or enforceability of the Recorded Restrictions. Without limiting the City's rights and remedies as set forth in this Agreement, the Parties acknowledge and agree that the City shall have the right of specific performance to enforce the Recorded Restrictions against Developer and all successor owners. The City would not be willing to enter into this Agreement, permit the demolition of Existing Units, or approve a subdivision or condominium map, without the agreement and understanding as set forth above. Delete Permit Existing Tenants to petition the Rent Board for a reduction in service § 4.3.1(c): due to the loss of a patio or balcony by deleting the following language in the DA.(c) While some of the Existing Units have patios or balconies, the Replacement Units may or may not have patios or balconies. The City agrees that, because of the improvement in the size and quality of the open space proposed by the Project compared to the existing open space at the Project Site, and due to the Project's provision of amenities in the Replacement Units that are not present in the existing units (such as a washing machine, dryer, and dishwasher), the lack of a patio or balcony in a Replacement Unit shall not violate the Rent Ordinance. Conforming change; same lease addendum language as above (requiring the Amend § 4.3.3: addendum for all future leases of the Replacement Units). Right of Existing Tenants to Relocate to Replacement Units. Each Existing Tenant shall have the right to relocate from an Existing Unit to a Replacement Unit in accordance with terms of this Article 4; provided, however, that if more than one person occupies an Existing Unit, the persons occupying the Existing Unit shall collectively be entitled to relocate to only one (1) Replacement Unit as further described in Section 4.4.3. Developer shall lease to each Existing Tenant who elects to and does relocate to a Replacement Unit in accordance with the terms of this Section 4.3 (each, a "Relocating Tenant") a Replacement Unit under the same terms and provisions as the Relocating Tenant's existing lease; provided, however, that (i) the date of initial occupancy shall continue to be the date of the existing lease for all purposes except for calculating future rent increases, as set forth in Section 4.3.6 below, (ii) such existing lease shall be amended to reflect the changed location of the leased premises (and the changed location of any parking space, if applicable), and (iii) such existing lease shall be amended to add the language set forth in Exhibit Y, which language shall also be included in all future leases for each Replacement Unit and (iv) no other amendments to the lease shall be made (including but not limited to any provision regarding the permissibility of pets). Add text to Conforming change; require existing blocks of tenants to remain together upon end of relocation.

§4.4.1(a):	Each Tenant Relocation Plan shall ensure that Relocating Tenants within an existing block (as shown in <u>Exhibit W</u> ) shall be provided the opportunity to move to Replacement Units located on the same block, so that the Relocating Tenants can remain neighbors of the same block despite their relocation.
Amend § 4.4.5(a):	Add time(from 20 days to not less than 45 days) for Existing Tenants to select a Replacement Unit.
	Each Existing Tenant desiring to exercise his or her right to relocate to a Replacement Unit must, within the latter of (i) twenty (20) days following the last of the three dates provided in the Replacement Unit Availability Notice for the Existing Tenant's visit of the model Replacement Unit or (ii) forty-five (45) days from receipt of the Replacement Unit Availability Notice (collectively, the "Selection Period"), deliver written notice to Developer of (i) his or her decision to relocate or not to relocate to a Replacement Building, and (ii) for Existing Tenants choosing to relocate, their selection of all available Replacement Units (of the unit type for which they qualify), ranked in the order of preference in accordance with the Tenant Relocation Plan (the "Replacement Unit Preference Notice"). Delivery of the Replacement Unit Preference Notice to Developer shall determine which Existing Tenants become Relocating Tenants and which remain Existing Tenants qualifying for Relocation Payment Benefits under this Agreement.
Replace §4.4.8(a):	Provide for either Developer payment of all costs of relocation, including packing costs, using one or more bonded and licensed moving companies, or allow Existing Tenants to arrange for its own move and be paid a moving allowance equal to amounts payable under State Relocation Law.
	(a) Relocation Obligations. Developer shall be responsible at Developer's cost for moving the possessions of each Relocating Tenant (including the packing and unpacking of such possessions) from the Relocating Tenant's Existing Unit to the applicable Replacement Unit ("Developer's Move"). Developer shall contract with one or more licensed and bonded moving companies, and shall pay all costs and fees to such moving companies. Alternatively, each Relocating Tenant shall have the right to a dislocation allowance, as set forth in Government Code section 7262(b), equal to the Residential Moving Expense and Dislocation Allowance Payment Schedule established by Part 24 of Title 49 of the Code of Federal Regulation ("Dislocation Allowance"). Developer shall, upon request, inform Relocating Tenants of the Dislocation Allowance amount. If the Relocating Tenant consists of more than one person and such persons are not able to collectively agree on whether to select the Developer's Move or the Dislocation Allowance, then the person with the highest seniority shall make the selection. For Existing Tenants that choose the Dislocation Allowance, then Developer shall pay the Dislocation Allowance directly to the Existing Tenant within thirty (30) days following such selection, and the Existing Tenant shall then be responsible for completing the move to the Replacement Unit at its sole cost.

Add new § 4.6:

Allow tenants to petition for a rent reduction based upon construction impacts. Also, if significantly adversely affected by construction, then provide for relocation payments under Rent Ordinance to allow tenant to move off site or for Developer to move the tenant to other areas of the Project Site at Developer's cost.

- 4.6 <u>Construction Noise and Disruption.</u>
- 4.6.1 Rent Abatement. Any tenant legally occupying a residential unit at the Project Site shall have the right to petition the Rent Board for a finding of a reduction in service as a result of adverse construction impacts in accordance with the Rent Ordinance. Any such petition shall be determined in accordance with the standard practices and procedures of the Rent Board applied on a Citywide basis pursuant to the Rent Ordinance.
- 4.6.2 Additional Remedies. The Rent Board has advised the Parties that the Rent Ordinance does not permit remedies other than rent abatement if a tenant experiences adverse construction impacts. The Parties acknowledge that rent abatement may be an insufficient remedy in the event that construction creates significant adverse impacts to tenants. For the purposes of this Agreement, "significant adverse construction impacts" shall mean construction noise or disruption that a resident of the City would not reasonably expect to experience in an urban environment. Accordingly, persons legally occupying an Existing Unit on the Effective Date may, if significantly and adversely impacted by construction from the Project, may request either (i) Relocation Payment Benefits or (ii) relocation to an equivalent unit on the Project Site. To receive these remedies, (i) the persons must demonstrate by substantial evidence to Developer or the Rent Board that they are suffering significant adverse impacts from construction exposure that merit the right to vacate the Existing Unit, and (ii) all of the persons legally occupying the Existing Unit must be willing to vacate the Existing Unit (the "Impact Findings").

Relocation Payment Benefits. If the persons occupying the Existing Unit requested Relocation Payment Benefits and Developer or the Rent Board makes the Impact Findings, then such persons shall vacate the Existing Unit within ninety (90) days and upon such vacation Developer shall pay to such persons the Relocation Payment Benefits (less any rent due and owing from such persons). Any persons who subsequently occupy an Existing Unit vacated under this Section 4.6.2 shall be deemed a New Tenant, and shall not have the right to a Replacement Unit or the right to Relocation Payment Benefits so long as Developer includes in each written lease the No Relocation Benefits Statement.

Relocation to an Equivalent Unit. If the persons occupying the Existing Unit request relocation on the Project Site and the Rent Board or Developer makes the Impact Findings, then such persons shall have the right to select an equivalent residential unit on the Project Site (either a Tower Unit or an Alternate Existing Unit) from those identified by Developer as vacant. The persons shall have the right to occupy the equivalent residential unit under the same terms of their

existing lease, subject to the Rent Ordinance and the lease revisions set forth in Section 4.3.3. Such persons shall be moved to the selected residential unit at Developer's cost. For purposes of this Section 4.6.2, an "equivalent residential unit" shall mean a residential unit on the Project Site with the same number of bedrooms and bathrooms as the Existing Tenant's Existing Unit and acceptable to the Existing Tenant in its sole discretion. An Existing Tenant may, but shall not be required to, accept a smaller or larger residential unit subject to such adjustments in rent as may be agreed upon by the Existing Tenant and Developer.

- (a) If an Existing Tenant elects to move into a Tower Unit under this Section 4.6.2, then such Existing Tenant will have the right to stay in the Tower Unit under their existing lease (with the lease revisions set forth in Section 4.3.3) and shall no longer qualify for the Relocation Payment Benefits or for a Replacement Unit under Article 4.
- If an Existing Tenant elects to temporarily move into a different Existing Unit under this Section 4.6.2 (an "Alternate Existing Unit"), then such Existing Tenant will have the right to relocate into a Replacement Unit in the same manner and the time frame, with the same notices, as if the Existing Tenant never left the Existing Unit but (i) the notices to such Existing Tenant shall be triggered by the date of demolition of the Alternate Existing Unit instead of the Existing Unit, and (ii) the Existing Tenant's date of initial occupancy shall not change but the Existing Tenant's seniority, for purposes of selecting a Replacement Unit, shall be determined in relation to the other Existing Tenants in the To-Be-Replaced Building in which the Alternate Existing Unit is located. No person shall have the right to more than two (2) temporary relocations under this Section 4.6.2. If the Existing Tenant moves to an Alternate Existing Unit and rejects or is deemed to reject the Replacement Unit as set forth in Section 4.4.7, then the Existing Tenant shall not become a Relocating Tenant but instead shall have the right to remain in the Alternate Existing Unit under the terms of their existing lease, subject to the Rent Ordinance, until the Building Vacancy Date, and shall (A) no longer qualify for a Replacement Unit, but (B) shall continue to qualify for Relocation Payment Benefits as an alternative to the Replacement Unit.

Add new § 12.8 and 12.9:

Provide express remedies for Developer's or future owner's failure to honor rent control provisions (a "Reneging Owner") or for a final judicial determination of unenforceability. For a Reneging Owner, City has immediate right to terminate DA and receive Rent Control Liquidation Amount plus maximum interest permitted under law. Rent Control Liquidation Amount is the net present value of the difference between the units with and without rent control plus 20%.

For judicial determination before construction starts, City can terminate entire DA. For judicial determination after construction starts, the parties will meet and confer to maintain benefit of bargain and to protect tenants, and Developer/Owner cannot take any adverse action against tenants (including increase rents or evictions) until the matter is resolved or Developer/Owner pays the Rent Control Liquidation Amount. Developer/Owner must either voluntarily continue to apply rent control rents or pay the Rent Control

Liquidation Amount for the life of the Replacement Unit. City (acting through MOH) will use payment to provide vouchers to affected tenants to cover the difference between rent control rent and rent charged by Developer/Owner. Tenants have separate rights of enforcement for all of rent control provisions. City has right of first refusal for all of the Replacement Units, for the benefit of City and its designee (i.e., Existing Tenants).

Rent Control Liquidation Amount will be determined using CBRE methodology (currently estimated at approximately \$160M). It the Parties fail to agree on the amount, then baseball arbitration.

12.8 Disputes Relating to the Rent Ordinance. As set forth in Article 4, the Parties would not have entered into this Agreement without rent control under the Rent Ordinance applying to all of the Replacement Units for the life of the Replacement Buildings. Accordingly, notwithstanding anything to the contrary above, the Parties agree to the following rights and remedies relative to the Rent Ordinance and the Replacement Units:

12.8.1 If, notwithstanding the clear intent of the Parties as set forth in this Agreement, Developer or its Affiliates sues or takes other action (against City or any tenant) to challenge the applicability of rent control under the Rent Ordinance to any of the Replacement Units (such Developer and its Affiliates shall be referred to collectively as a "Reneging Owner" and such action shall be referred to as a "Reneging Act"), then such Reneging Act shall be deemed an Event of Default, which may be cured within thirty (30) days of such Reneging Act if the Reneging Act was made by mistake or inadvertence. Without limiting City's other rights and remedies under this Agreement, each Reneging Owner shall pay the Rent Control Liquidation Amount immediately upon the taking of a Reneging Act, and such amount shall accrue interest at the highest rate permitted by law from the date of the Reneging Act to the date of payment. If a Reneging Owner fails to cure the Event of Default within 30 days (if applicable, as set forth above), the City shall have the immediate right to terminate this Agreement against the Reneging Owner and to take such additional actions and pursue such additional remedies as may be permitted by law or in equity, including but not limited to specific performance of the rent control requirements and limitations as set forth in Article 4. Affected tenants also have the right to pursue all rights and remedies against a Reneging Owner.

Notwithstanding anything in this Agreement to the contrary, upon the Reneging Act (or the Owner's failure to cure the Reneging Act as set forth above), the Planning Director shall have the right to send a notice of termination which will become effective and terminate this Agreement as to the Reneging Owner upon delivery. This termination right shall apply to the Reneging Owner only, and not to other Developers that continue to recognize and abide by the terms of this Agreement.

12.8.2 In addition, upon publication of a decision by a court of competent jurisdiction (after the Board adopts the Enacting Ordinance) relating to the application of rent control under a development agreement that, in the reasonable

opinion of the City Attorney, directly jeopardizes the enforceability of rent control as applied to the Replacement Units under this Agreement, the City shall have the right to issue a notice of suspension and immediately halt the issuance of demolition permits and tenant relocations, but shall not have the right to halt other development work at the Project Site (except against a Reneging Owner). Upon delivery by City of a notice of suspension, the Parties (not including a Reneging Owner) agree to meet and confer for a period of not less than sixty (60) days, as such period may be extended by mutual agreement or, if the matter has been submitted to a court, until the matter has been finally adjudicated beyond any and all appeal periods (the "Meet and Confer Period"). The term of this Agreement shall be extended on day to day basis for each day of the Meet and Confer Period. During the Meet and Confer Period the Parties will use good faith efforts to maintain the benefit of the bargain to both Parties and to protect all tenants. If the Parties are able to reach agreement on an acceptable approach to maintain the mutual benefit of the bargain and to protect tenants during the Meet and Confer Period, they shall memorialize such agreement in writing. Any such agreement that amends the terms of this Agreement shall be subject to the prior approval of the City's Board of Supervisors, acting by ordinance and in its sole discretion, as an amendment to this Agreement. Any such amendment shall be recorded against the applicable portions of the Project Site. The Parties may also agree to mediation during the Meet and Confer Period to assist with identifying solutions that maintain the benefit of the bargain for both Parties and to protect tenants. Either Party may seek judicial relief to determine their respective rights and obligations under this Agreement if the Parties fail to reach agreement during the Meet and Confer Period.

- 12.8.3 If the Parties are not able to reach agreement during the Meet and Confer Period or if the Board of Supervisors does not approve the proposed amendment to this Agreement, or if a court with jurisdiction reaches a final, binding, and non-appealable determination (meaning that the appeal period for a decision has expired without an appeal or the decision can no longer be appealed to a higher court) that rent control under the Rent Ordinance does not apply to the Replacement Units notwithstanding the clear language of this Agreement and the applicable leases (each, a "Rent Control Rejection"), then Developer shall still be required to build a Replacement Building before demolishing a To-Be-Replaced Building and to comply with all provisions of Article 4, including the Existing Tenant relocation and payment provisions (but excluding the rent control provisions that have been determined by a court to be unenforceable) for so long as this Agreement remains in effect, and:
- (a) If the Rent Control Rejection occurs before commencement of substantial construction of any building or Community Improvement on the Project Site, then the City shall have the immediate right to terminate this Agreement in its entirety, without cost or liability, by written notice to Developer. Upon delivery of such notice to Developer and subject to a hearing by the Board of Supervisors to validate such termination, this Agreement will terminate and the City shall have

the right, acting alone, to record a notice of termination.

- If the Rent Control Rejection occurs at any time after commencement of substantial construction of any building or Community Improvement on the Project Site, then each Developer (other than a Reneging Owner) may prevent a termination of this Agreement by the City and have the right to proceed with its rights and obligations under this Agreement, including the right to demolish To-Be-Replaced Buildings, by performing all of its obligations under Article 4, including the construction, relocation, and payment provisions but excluding any rent control provisions that have been declared unenforceable, and either paying the Rent Control Liquidation Amount as set forth in subsection (c) below (the "Rent Control Liquidation Option") or (ii) voluntarily continue to perform and abide by all of the requirements of Article 4, including the application of rent control under the Rent Ordinance to the Replacement Units (the "Voluntary Rent Control Option") and thereby not pay the Rent Control Liquidation Amount for so long as it continues the Voluntary Rent Control Option for all of its Replacement Units; provided under either option Developer shall also be required to pay the Relocation Payments Benefit to any Existing Tenant that vacates its Replacement Unit as a result of a Rent Control Rejection within ninety (90) days following any increase in rent above that which would be permitted under the Rent Ordinance. Following a Rent Control Rejection, each Developer or owner of an existing Replacement Building shall notify the City in writing of its election to proceed under the Voluntary Rent Control Option or the Payment Option: Any election of the Voluntary Rent Control Option shall be (i) made in writing and in recordable form approved by the City and (ii) included in any Assignment and Assumption Agreement for the applicable portion of the Project Site. If a Developer chooses to proceed under the Voluntary Rent Control Option but then subsequently takes a Reneging Act at any time during the remaining life of the Replacement Unit, then that Developer shall be required to immediately pay the Rent Control Liquidation Amount to the City at that time, and such amount shall accrue interest at the highest rate permitted by law from the date of the Reneging Act to the date of payment.
- (c) The Rent Control Liquidation Amount shall be equal to one-hundred and twenty percent (120%) of the net present value of the difference between (i) the amount of rent that the tenant would have paid for his or her Replacement Unit under the Rent Ordinance as required by the terms of this Agreement and (ii) the amount of rent the that tenant would be expected to pay for his or her Rent-Controlled Replacement Unit at the prevailing market rate of rent, using the same methodology (including the number of years used to calculate net present value) as was used by CBRE in its document entitled Parkmerced Pro Forma Review & Public Benefits Analysis dated January 1, 2011. Following a Rent Control Rejection, Developer shall, unless it agrees to the Voluntary Rent Control Option as set forth above, promptly provide to the City a detailed analysis, with backup documentation, of its determination of the Rent Control Liquidation Amount. The Parties will meet and confer for a period of not less than 30 days (as such period may be extended by mutual agreement) to reach agreement on the Rent

Control Liquidation Amount. If the Parties are not able to reach agreement on the Rent Control Liquidation Amount, then either Party shall have the right to initiate arbitration to determine the Rent Control Liquidation Amount in accordance with Section 12.9 below. With respect to a Reneging Owner, the Rent Control Liquidation Amount shall be determined by the court that adjudicates the dispute between the City and the Reneging Owner.

- (d) By entering into this Agreement, and notwithstanding any subsequent Reneging Act, each Developer agrees that it will accept rent from all tenants in a Replacement Unit at the amounts permitted under the Rent Ordinance, and will not attempt to evict any tenant for failing to pay any higher amount, before payment of the Rent Control Liquidation Amount and, if the matter is being litigated, before the matter is finally adjudicated and upheld beyond any and all appeal periods.
- After negotiation, the Parties have agreed to the Rent Control Liquidation Amount as the damages that the City will suffer in the event that the Rent Ordinance does not apply to the Replacement Units, and such amount will be used by the City as set forth in subsection (f) below. The added twenty percent (20%) is designed to cover City's administrative and other costs in operating the tenant protection programs described in subsection (f) below. Developer further acknowledges and agrees that any collection of the Rent Control Liquidation Amount shall not (i) release or otherwise limit the liability of Developer for default or violation of this Agreement or limit any of City's other rights and remedies in this Agreement, (ii) release or otherwise limit the requirement of Developer to complete each Replacement Building before demolishing a To-Be-Replaced Building, or (iii) release or otherwise limit the requirement of Developer to relocate each Existing Tenant and/or pay the Relocation Benefits Payments as set forth in Article 4 or in subsection (b) above. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THAT IT HAS AGREED TO THE TERMS AND PROVISIONS OF THIS SECTION, INCLUDING THE METHODOLOGY FOR CALCULATING THE RENT CONTROL LIQUIDATION AMOUNT, AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED PAYMENT PROVISION.

INITIALS:	City	Developer

(f) City shall deposit all payments of the Rent Control Liquidation Amount into a Tenant Protection Fund to be administered by MOH (or any successor City agency). MOH shall use the funds in the Tenant Protection Fund to provide vouchers to tenants in Replacement Units to pay the difference between the rent that is charged for that Replacement Unit following a Reneging Act and the rent that would have been charged under the Rent Ordinance as applied to that Replacement Unit (the "Rent Assistance"). After four (4) years or more of Rent Assistance to a tenant, MOH shall have the right, but not the obligation, to

discontinue paying Rent Assistance to that tenant if its household income exceeds one-hundred and twenty (120%) of the area median income for San Francisco, as determined by MOH in accordance with its BMR program. MOH shall continue to pay the Rent Assistance from the Tenant Protection Fund for each tenant in a Replacement Unit for so long as that tenant remains in the Replacement Unit, subject to the right (but not obligation) to eliminate payments for tenants above one-hundred and twenty (120%) area median income as set forth above. Upon MOH's determination that sufficient funds are available to pay the Rent Assistance to tenants as provided above, MOH shall also have the right to use any excess funds in the Tenant Protection Fund to pay for a first time homebuyer program, to pay for additional housing vouchers, or to purchase increased affordability for existing BMR Units at the Project Site. In no event shall the City or Developer be liable for any payments above the amounts available in the Tenant Protection Fund.

- Following a Rent Control Rejection, and unless Developer has elected the (g) Voluntary Rent Control Option for the benefit of the Relocating Tenants, City shall have a one-time right of first refusal (the "ROFR"), for itself or its designee (including Existing Tenants), to rent each Replacement Unit. Developer shall first offer the Replacement Unit to City at the same rent, and under the same conditions and terms, as Developer is willing to accept from a third party (collectively, the "Rental Terms"). The Rental Terms shall be contained in a written notice (the "First Refusal Notice") from Developer to City, which notice shall include a copy of the proposed lease. City or its designee shall have the right to lease one or more of the Replacement Units by providing to Developer a notice of acceptance within sixty (60) days following City's receipt of the First Refusal Notice, together with the leases as signed by the City or its designee. Notwithstanding anything to the contrary in the Rental Terms, Developer shall not have the right to impose or require a new security deposit on an Existing Tenant, and shall instead transfer any existing security deposit to the new lease. If City or its designee does not deliver an acceptance notice for a Replacement Unit with the signed lease within sixty (60) days, then Developer shall have the right to lease that Replacement Unit to a third party on the Rental Terms for a period of up to one-hundred and eighty (180) days. If Developer leases the Replacement Unit on the Rental Terms during this one-hundred and eighty (180) day period, then the City's ROFR for that Replacement Unit shall terminate. If the Replacement Unit is not leased within 180 days, or if Developer is willing to lower the rent or otherwise change the Rental Terms for a Replacement Unit, then City's ROFR shall continue and Developer shall provide to City a new First Refusal Notice specifying the new Rental Terms that that Developer is willing to accept. Once a Replacement Unit has been leased under the terms set forth above (to either City or its designee, or to a third party), then City's ROFR shall terminate and be of no further force or effect.
- 12.9 Arbitration for Rent Control Liquidation Amount.
- 12.9.1 <u>Appointment</u>. Each Party shall appoint one (1) appraiser within thirty (30) days after the notice that the arbitration provisions of this Section have been

invoked. Upon selecting its appraiser, each Party shall promptly notify the other party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in the City and County of San Francisco, and shall be a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations. Each such MAI appraiser may have a prior working relationship with either or both of the Parties, provided that such working relationship shall be disclosed to both Parties. Without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing multi-family real estate in the City and County of San Francisco. If either Party fails to appoint its appraiser within such thirty (30)-day period, the appraiser appointed by the other party shall individually determine the Rent Control Liquidation Amount in accordance with the provisions hereof.

12.9.2 Instruction and Completion. Each appraiser will make an independent determination of the Rent Control Liquidation Amount. Each appraiser will be provided with a copy of the CBRE analysis entitled Parkmerced Pro Forma Review & Public Benefits Analysis dated January 1, 2011, and shall use the same methodology as contained in such CBRE analysis to determine the Rent Control Liquidation Amount. The appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Rent Control Liquidation Amount. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the appraiser appointed by the other party regarding the instructions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its written appraisal setting forth the Rent Control Liquidation Amount to the Parties within sixty (60) days after the appointment of the last of such appraisers. If the higher appraised Rent Control Liquidation Amount is not more than one hundred ten percent (110%) of the lower appraised Rent Control Liquidation Amount, then the Rent Control Liquidation Amount shall be the average of such two (2) Rent Control Liquidation Amount figures,

12.9.3 <u>Potential Third Appraiser</u>. If the higher appraised Rent Control Liquidation Amount is more than one hundred ten percent (110%) of the lower appraised Rent Control Liquidation Amount, then the first two appraisers shall agree upon and appoint an independent third appraiser within thirty (30) days after both of the first two (2) appraisals have been submitted to the Parties, in

accordance with the following procedure. The third appraiser shall have the minimum qualifications as required of an appraiser set forth above. The two appraisers shall inform the parties of their appointment at or before the end of such thirty (30)-day appointment period. Each Party shall have the opportunity to question the proposed third appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the Parties, and any other matters relevant to the appraisal. Either Party may, by written notice to the other Party and the two appraisers, raise a good faith objection to the selection of the third appraiser based on his or her failure to meet the requirements of this Section. In such event, if the two (2) appraisers determine that the objection was made in good faith, the two (2) appraisers shall promptly select another third appraiser, subject again to the same process for the raising of objections. If neither Party raises a good faith objection to the appointment of the third appraiser within ten (10) days after notice of his or her appointment is given, each such Party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third appraiser or any other matter relating to the selection of the third appraiser under this Agreement. If for any reason the two appraisers do not appoint such third appraiser within such thirty (30)-day period (or within a reasonable period thereafter), then either Party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third appraiser meeting the foregoing qualifications. If the Court denies or otherwise refuses to act upon such application within sixty (60) days from the date on which the Party first applies to the Court for appointment of the third appraiser, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third appraiser meeting the foregoing qualifications.

12.9.4 Baseball Appraisal. Such third appraiser shall consider the appraisals submitted by the first two appraisers as well as any other relevant written evidence which the third appraiser may request of either or both of the first two appraisers. If either of the first two appraisers shall submit any such evidence to such third appraiser, it shall do so only at the request of the third appraiser and shall deliver a complete and accurate copy to the other Party and the appraiser such Party selected, at the same time it submits the same to the third appraiser. Neither Party, nor the appraisers they appoint, shall conduct any ex parte communications with the third appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the third appraiser shall select the Rent Control Liquidation Amount determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the actual Rent Control Liquidation Amount. The determination of the third appraiser shall be limited solely to the issue of deciding which of the determinations of the two appraisers is closest to the actual Rent Control Liquidation Amount. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Agreement.

12.9.5 Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Rent Control Liquidation Amount by the accepted appraisal shall be conclusive, final and binding on the Parties. Neither of the first two (2) appraisers nor the third appraiser shall have any power to modify any of the provisions of this Agreement and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Agreement. Subject to the provisions of this Section, the Parties will cooperate to provide all appropriate information to the appraisers and the third appraiser. The appraisers and the third appraiser will each produce their determination in writing, supported by the reasons for the determination.

12.9.6 Fees and Costs; Waiver. Each Party shall bear the fees, costs and expenses of the appraiser it selects. The fees, costs and expenses of the third appraiser shall be shared equally by City and Developer. If there is more than one Developer at the time the arbitration process begins, then the Developer with the most seniority under this Agreement (i.e., the Developer that is the first to enter into this Agreement with City) shall have the right to determine the Rent Control Liquidation Amount and to participate in the arbitration as set forth in this Section 12.9, and upon determination the Rent Control Liquidation Amount shall apply to all Developers at that time. The City shall not be required or permitted to charge different Rent Control Liquidation Amounts for different Developers; provided, if a Developer agrees to the Voluntary Rent Control Option but then subsequently takes a Reneging Act (by attempting to impose rents above the amount that would be permitted under the Rent Ordinance) at any time during the remaining life of the Replacement Unit, then that Developer shall be required to immediately pay the Rent Control Liquidation Amount, as determined at that time (and by arbitration at that time, if required).

# Revise §12.2:

Make clear that all persons occupying Existing Units are third party beneficiaries of the Agreement, and shall have the right to not only enforce the requirements of Article 4, but also the right to confirm the validity and enforceability of Article 4 at any time from and after the adoption of the Enacting Ordinance.

12.2 Private Right of Action. In addition to the options available to the City to enforce this Agreement, all persons occupying Existing Units shall have, immediately on the Effective Date, a private right of action against the Developer and any successor owner, but not against the City, to enforce the Replacement Unit requirements set forth in Article 4 of this Agreement, including but not limited to rent control provisions required under the Rent Ordinance thereunder, with attorneys' fees and costs awarded to the prevailing party in any enforcement action. The Parties recognize and agree that such persons shall be express third party beneficiaries of the requirements set forth in Article 4, with the right to enforce to the greatest extent under law and equity, and confirm the validity and enforceability of, the requirements in Article 4 at any time from and after adoption of the Enacting Ordinance.

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# Exhibit 4

Board of Supervisors President David Chiu – Summary of Changes to Strengthen Rent Control in Parkmerced Development Agreement

5/24/2011

SECTION	PROPOSED ADDITIONS OR REVISIONS TO PARKMERCED
	DEVELOPMENT AGREEMENT TO STRENGTHEN TENANT RIGHTS:
Add new	PHASING IMPROVEMENTS FOR THE TENANTS BENEFIT
text to end of § 3.4.1;	(a) "First Blocks" Provision. Require first Replacement Units be built on identified vacant land
Add text to end of §4.4;1(a)	(b) "Preserve Existing Neighbors" Provision. Require that existing blocks of tenants be kept together; and
3 11.1.1(u)	(c) "Safe Harbor/Last Phase" Provision. Require that several pre-determined concrete-constructed existing garden unit blocks not be demolished until the end of the Project and allow certain long-term tenants (10-yr tenure or greater), facing a relocation, to elect to move into such garden apartments upon a vacancy.
Amend § 3.10.2, & § 4.3.3	NEW LEASE ADDENDUM PROVISION – CREATES CONTRACTUAL PRIVITY BETWEEN EACH DEVELOPER/OWNER AND ALL TENANTS OCCUPYING REPLACEMENT UNITS.
	Provides yet another line of defense if a bad actor attempts to invalidate rent control protections on any Replacement Unit. Requires each Owner/Developer to enter into a lease addendum with each Existing Tenant at the time of relocation into a Replacement Unit (and include this addendum in all future leases of the Replacement Units) to incorporate the tenant protections of the DA, including rent control on the Replacement Unit and the Existing Tenant's right to a lifetime lease subject to the provisions of Rent Ordinance.
Delete	COMPENSATION FOR POTENTIAL LOSS OF PATIO OPEN SPACE
§ 4.3.1(c):	Permits Existing Tenants to petition the Rent Board for a reduction in service due to the loss of a patio or balcony by deleting the following language in the DA.
Amend	EXTEND TIME FOR TENANTS TO SELECT REPLACMENT UNITS
§ 4.4.5(a):	
	Require a minimum of 45 days for Existing Tenants to select a Replacement Unit; actual time could be greater.
Replace	IMPROVE MOVING BENEFITS FOR TENANTS
§4.4.8(a):	Modeled on State Relocation moving benefits, require that (1) Developer pay all "actual" costs of relocation, including packing costs, using one or more bonded and licensed moving companies, or (2) allow Existing Tenants to arrange for their own moves and be paid a moving allowance (a "cash out") equal to amounts payable under State Relocation Law.
Add new	STRENGTHEN TENANT RIGHTS DURING CONSTRUCTION PERIOD
§ 4.6:	(1) Any tenant (new or existing) may petition for a rent reduction based upon construction impacts.
	(2) Any tenant on the Project Site as of the Effective Date of the DA who can demonstrate to the Rent Board that they have been significantly adversely

	affected by construction at any time may seek the following additional
	remedies:  (a) Obtain full Relocation Benefits under the Rent Ordinance to allow tenant to permanently move off-site (at any time, before receiving an Existing Tenant notice); or
	(b) Relocate to an Equivalent Unit at their same rent on the Project Site at Developer's cost and preserve their future right to relocate to a new Replacement Unit or accept Relocation Benefits and leave at a later date.
Add new	NEW REMEDIES & PROTECTIONS FOR EXISTING TENANTS
§ 12.8 and 12.9:	Provide express remedies for Developer's or future owner's failure to honor rent control provisions (a "Reneging Owner") or for a final judicial determination of unenforceability.
	(1) For a Reneging Owner, City may immediately terminate the DA & collect Rent Control Liquidation Amount plus maximum interest permitted under law. Rent Control Liquidation Amount is the net present value of the difference between the units with and without rent control plus 20%, or 120% the NPV.
	(2) For an adverse judicial determination before construction starts, City can terminate the entire DA.
	(3) For an adverse judicial determination after construction starts, the parties will meet and confer to maintain benefit of bargain and to protect tenants, and Developer/Owner cannot take any adverse action against tenants (including increase rents or evictions) until the matter is resolved or Developer/Owner pays the full Rent Control Liquidation Amount. Developer/Owner must either voluntarily continue to apply rent control rents via special Addendum lease terms or pay the Rent Control Liquidation Amount for the life of the Replacement Unit.
	City (acting through MOH) will use Rent Control Liquidation payments to provide permanent rent vouchers to affected tenants to cover the difference between rent control rent and rent charged by Developer/Owner.
	Tenants have separate rights of enforcement for all of rent control provisions.  City has right of first refusal for all of the Replacement Units, for the benefit of City and its designee (i.e., Existing Tenants).
	Rent Control Liquidation Amount will be determined using CBRE methodology (currently estimated at approximately \$160M). It the Parties fail to agree on the amount, then baseball arbitration.
Revise §12.2:	Make clear that tenants are third party beneficiaries to the Development Agreement.



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON CHAIRPERSON

Date:

To:

June 17, 2013

PAUL. A. RENNE VICE-CHAIRPERSON

Members, Ethics Commission

BENEDICT Y. HUR
COMMISSIONER

From:

John St. Croix, Executive Director

JAMIENNE S. STUDLEY
COMMISSIONER

Re:

Hearing - Ethics Complaint 01-130307

JOHN ST. CROIX EXECUTIVE DIRECTOR

Enclosed is the Report and Recommendation for the above complaint referred from the Sunshine Ordinance Task Force. Luis Herrera is the named Respondent. Ray Hartz is the named Complainant. Staff originally scheduled this matter to be heard during the regular Ethics Commission meeting of April 22, 2013. The matter was postponed to be heard at this meeting. All parties received a copy of the Report and Recommendation and a Hearing Notice prior to April 22, 2013, pursuant to the Ethics Commission Regulations for Violations of the Sunshine Ordinance ("Regulations").

Under the Regulations, neither the Respondent nor the Complainant is required to attend. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence.

Under Chapter Three of the Regulations, the Executive Director shall prepare a written Report and Recommendation summarizing his or her factual and legal findings. Each Complainant and Respondent may submit a written response to the Director's Report and Recommendation. All responses to the Report and Recommendation are attached.

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing.

In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance.



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BEVERLY HAYON CHAIRPERSON

Date:

To:

Cc:

From:

April 1, 2013

PAUL A. RENNE VICE-CHAIRPERSON

Members, Ethics Commission

BENEDICT Y. HUR
COMMISSIONER

Luis Herrera, San Francisco City Librarian Ray Hartz

Ra

JAMIENNE S. STUDLEY

Members, Sunshine Ordinance Task Force

REPORT AND RECOMMENDATION

COMMISSIONER

John St. Croix, Executive Director

JOHN ST. CROIX
EXECUTIVE DIRECTOR
Re:

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ETHICS COMMISSION COMPLAINT NO. 01-130307

# INTRODUCTION AND JURISDICTION

On March 7, 2013, the Ethics Commission ("Commission") received a referral from the Sunshine Ordinance Task Force ("Task Force") for Task Force complaint number 11098. The written referral stated: "At the December 5, 2012 [Task Force] meeting the Task Force moved to refer Luis Herrera, City Librarian to the Ethics Commission for failure to comply with the Order of Determination, for violating Sections 67.16 for failure to include Mr. Hartz's public comment summaries in the Library Commission's minutes and Section 67.34 for willful failure to comply with the Order of Determination from the April 4, 2012 [Task Force] meeting [sic]." The referral stated that it was made under section 67.30(c).

Task Force referrals made under section 67.30(c) are heard under Chapter Two of the Ethics Commission Regulations for Violations of the Sunshine Ordinance.

Those hearings are conducted under the presumption that the Task Force findings were

correct, and staff has no role in investigating the underlying complaint. However, this referral also alleged a violation of section 67.34, as well as a request for the Ethics Commission "to investigate Luis Herrera, City Librarian for his willful failure to include public comment summaries in the body of the Library Commission minutes." In addition, the motion that was made and voted on by the Task Force to refer the matter to the Ethics Commission included that it be referred as a willful violation. Thus, staff accepted this referral under section 67.34.<sup>1</sup>

Sunshine Ordinance section 67.34 provides that complaints involving allegations of willful violations of the Ordinance shall be handled by the Commission. Complaints alleging a willful violation of the Ordinance by elected officials or department heads are handled pursuant to the Commission's Regulations for Violations of the Sunshine Ordinance ("Regulations"), Chapter Three. The City Librarian is a department head. Under Chapter Three, the Executive Director must prepare a written report and recommendation summarizing his or her factual and legal findings, applicable legal provisions, and evidence gathered. The report and recommendation must also recommend whether or not a Respondent willfully violated the Ordinance, non-willfully violated the Ordinance, or did not violate the Ordinance. The Commission is not bound by the Executive Director's recommendation.

# SUMMARY OF FACTUAL FINDINGS

On December 15, 2011, Ray Hartz filed a complaint with the Task Force against Luis Herrera. The complaint alleged a public meeting violation on both November 17 and December 1, 2011, of Sunshine Ordinance section 67.16. Mr. Hartz alleged that on November 17, 2011, the Library Commission approved minutes for its meetings held on August 18 and October 6,

<sup>&</sup>lt;sup>1</sup> The written Task Force Order, dated March 12, 2012, also included a finding that Luis Herrera violated Sunshine Ordinance section 67.21(e). However, that violation was not included in the Referral.

2011; and that on December 1, 2011, it approved minutes for its meeting held on November 3, 2011. Mr. Hartz alleged that in all three sets of minutes, various 150-word summaries submitted by Mr. Hartz and other members of the public were not included in the body of the minutes, thereby violating section 67.16 of the Sunshine Ordinance. Mr. Hartz alleged that the Task Force had already determined that any 150-word statement submitted to a City policy body must be included in the minutes.

On March 7, 2012, the Task Force held a hearing on the complaint. Mr. Hartz presented his case against Mr. Herrera. No Library Commission representative attended the hearing. Mr. Hartz stated that the 150-word written summaries were not included in the body of the minutes because the Library Commission placed the summaries at the end of the minutes in an addendum. He stated that the Task Force had already determined that placing the summaries at the end of the minutes is a violation of section 67.16. He stated that the Library Commission demonstrated that it willfully violated section 67.16 because it did not change its practice as to where it places the summaries in the minutes. Mr. Hartz stated that he included Mr. Herrera as the respondent because the City Librarian is ultimately responsible for ensuring that Library staff comply with Task Force determinations.

At that hearing, the Task Force concluded that Mr. Herrera violated section 67.16 by including the summaries at the end of the minutes, and section 67.21(e) for failing to appear at the hearing. The Task Force also instructed Mr. Herrera and the Library Commission to change the minutes so that the summaries are included within the body of the minutes and not at the end. The Task Force sent the matter to its Compliance and Amendments Committee ("CAC") to monitor compliance of the Order.

On May 15, 2012, the CAC held a meeting on the matter. Mr. Hartz was present and the Library Commission did not send a representative. Mr. Hartz stated that the Library Commission did not change the minutes as directed by the Task Force's Order. The CAC motioned to move the matter back to the full Task Force after finding that the Library did not comply with the Order.

On December 5, 2012, the full Task Force convened again to hear the matter. Mr. Hartz was present, as was Sue Blackman, the Library Commission Secretary. Mr. Hartz stated that the Library Commission continued to include the 150-word summaries at the end of the minutes, contrary to the Order from the Task Force. Ms. Blackman stated that Mr. Herrera had no involvement with the preparation or approval of the minutes. She stated that the Library Commission consistently followed the advice of the City Attorney which allows for the inclusion of written summaries in an addendum at the end of the minutes. The Task Force made a motion and voted to refer the matter to the Ethics Commission. The maker of the motion stated that the inclusion of section 67.34 was for the willful failure to comply with the Order. The Task Force issued a written referral to the Ethics Commission on March 7, 2013.

# SUMMARY OF APPLICABLE LAW

Section 67.16 provides, in relevant part, that "any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes."

Section 67.34 states that "[t]he willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by

elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission."

# SUMMARY OF EVIDENCE GATHERED

Staff reviewed the audio recordings of the Task Force hearing on the matter, the CAC meeting, and the subsequent full Task Force meeting. Staff also reviewed all documents submitted to the Task Force, and the minutes for the Library Commission meetings of August 18, October 6, and November 3, 2011 (*see* Appendix A). After reviewing the recordings and documents, staff determined that no interviews were necessary. All documents that staff reviewed are included in Appendix A.

# LEGAL FINDINGS

There was no violation of section 67.16 because the Library Commission included Mr.

Hartz's 150-word written summaries as required by the Sunshine Ordinance.

Section 67.16 of the Sunshine Ordinance requires boards and commissions to record minutes for each regular and special meeting. It also states that "[a]ny written summary provided by a speaker of no more than 150 words be included in the minutes." The Office of the City Attorney has published an overview of the laws governing the conduct of public officials in its Good Government Guide. In this guide, the Office of the City Attorney has advised policy bodies that, because the written statement is not part of the official minutes adopted by the body, the statement may be included as an attachment to the minutes. (*See* SF Good Govt. Guide, Part 3, § IV(G)(2)(b), p. 133 – 134.)

In the minutes for the Library Commission meeting of August 18, 2011, the Library Commission included six 150-word summaries. The six summaries were included in an addendum and were each identified as to the speaker and to which agenda item each summary

was commenting upon. Mr. Hartz's summary was included in that addendum. In the minutes for the Library Commission meeting of October 6, 2011, the Library Commission included twelve 150-word summaries. Mr. Hartz had four summaries that were included in the twelve. The twelve summaries were included in an addendum and were identified as to the speaker and as to which agenda item each summary was commenting upon. In the minutes for the Library Commission meeting or November 3, 2011, the Library Commission included nine 150-word summaries. Mr. Hartz had two summaries that were included in the nine. The nine summaries were included in an addendum and were identified as to the speaker and as to which agenda item each summary was commenting upon. The addenda for all three sets of minutes at issue were not separate attachments, but followed the agenda items within the same document.

All of the 150-word summaries appeared in the minutes. The Sunshine Ordinance is silent as to where in a policy body's minutes any 150-word summary should be placed. Further, the Library Commission placed the summaries in the minutes as outlined in the Good Government Guide. Although the Task Force disagrees with the City Attorney's position, City departments rely on the advice provided in the Good Government Guide to ensure they are in compliance with various legal requirements. To date, the Task Force has not issued any policy advice to City departments regarding compliance with Sunshine Ordinance section 67.16, and on its website the Task Force directs users to the Good Government Guide as a legal reference. Because the 150-word statements were included in the minutes, staff finds that there is no violation of section 67.16.<sup>2</sup>

<sup>&</sup>lt;sup>2</sup> The Commission received a prior referral from the Task Force on August 15, 2011, alleging, among other things, the same violation by the Library Commission for a different set of minutes (Complaint no. 06-110816). That matter was concluded under the Commission's prior set of regulations. In that matter, the Commission dismissed the section 67.16 allegation for the same reasons as outlined in this Report and Recommendation. In addition, the Ethics Commission

# **RECOMMENDATION**

Based on the above reasons staff recommends that the Commission find that City

Librarian Luis Herrera did not violate the Sunshine Ordinance as to all allegations referred by the

Task Force.

dismissed Complaint no. 03-120402 at a public hearing on February 25, 2013, which alleged the same violation against the Library Commission for its meeting minutes of May 19, 2011, and June 16, 2011. At the hearing on February 25, 2013, the Library Commission asserted that, going forward, it was changing its policy regarding minutes so that the 150-word summaries will be placed at the point in the minutes that records each speaker's comments on an agenda item.

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Tuesday, April 02, 2013
San Francisco Ethics Commission

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San Francisco, CA 94102

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To all members of the San Francisco Ethics Commission,

I am under no illusion that the hearing of Ethics Complaint No. 01-130307 will in any way be a fair hearing. The Ethics Commission will endeavor to dismiss this complaint as it did a similar complaint in February of this year. It will do so for the same reasons as it dismissed the prior complaint.

A brief history of this long, drawn out matter:

January 25, 2011 Ray Hartz v. Library Commission. This order of determination directed the Library Commission to place 150 word summaries in the body of the minutes. Under findings of fact and conclusions of law the Task Force wrote: "The Task Force further noted that the statements should be within the body of the minutes to prevent public officials from unlawfully abridging unwanted or critical public comment."

August 23, 2011 Ray Hartz v. Luis Herrera of the Public Library. This order of determination directed the City Librarian to place 150 word summaries in the body of the minutes.

December 14, 2011 Ray Hartz V. City Attorney Dennis Herrera. This order of determination noticed the City Attorney that the Task Force had found that placement of 150 word summaries, other than in the body of the minutes, was in violation of the clear wording of the ordinance. It further noticed the City Attorney that the advice given in the Good Government Guide was contrary to the clear wording of the law.

December 14, 2011 Ray Hartz V. Public Library. This order of determination found additional violations by the Library and the Library Commission for failing to place 150 word summaries as directed by previous orders from the task force.

Ray Hartz V. Ethics Commission. This order of determination found Executive Director John St. Croix in violation of the Sunshine Ordinance for failure to include 150 word summaries in the body of the minutes. Under findings of fact and conclusions of law, the task force said the following: "The Task Force disagrees with the City Attorney's Offices' interpretation and continues to interpret the phrase "in the minutes" using the simple, plain language meaning of the words."

March 7, 2012 <u>Ray Hartz V. Luis Herrera, City Librarian</u>. This order of determination found additional violations by the Library and the Library Commission for failing to place 150 word summaries as previously directed by the Task Force.

May 18, 2012 Placement of Public Comment Summaries in Minutes. (Sunshine Ordinance Complaint No. 11071, Hartz v. City Attorney. This memorandum noticed all city departments and agencies of the disagreement between the Sunshine Ordinance Task Force and the City Attorney's Office regarding the placement of 150 word summaries in the minutes of meetings. This memorandum reads in part: "The Task Force disagrees with the Office of the City Attorney's interpretation of the requirements for inclusion of the public comment summaries in meeting minutes. Failure to include the summaries within the body of meeting minutes may result in the Task Force finding a violation of the Sunshine Ordinance, notwithstanding the City Attorney's advice to the contrary." The memorandum continues: "These findings are based on the purpose of the Sunshine Ordinance to maximize public access to public information and public meetings and limit the ability for public officials to abridge critical speech, on evidence presented at multiple task force hearings, and on careful Task Force deliberations over the past year."

Tomorrow, March 3, 2012, there will be two additional hearings before the Sunshine Ordinance Task Force regarding this same matter! One hearing will be regarding additional violations by this Ethics Commission, with the second being focused on multiple violations by the Clerk of the Board of Supervisors, Angela Calvillo.

I find it very interesting that the so-called "investigation" conducted by the Ethics Commission staff failed to include any of the Task Force inquiries, discussions, deliberations, or findings in this matter. The investigation failed to look any further than the Good Government Guide, as it only wished to defend the actions of City departments and agencies, including this Ethics Commission. While it should be noted that this commission has changed its placement of 150 word summaries, it should also be noted that this was done without any discussion by this commission of its change in policy. It's as if a person who parked illegally and was ticketed on Monday, then again Tuesday, then again Wednesday, then again Thursday, finally parked legally on Friday and wanted the prior violations ignored!

The members of the Ethics Commission are in the awkward position of having to ignore two full years of findings contrary to their own position. The staff "investigation" allows them to do this. If they find the City Librarian in violation, they also acknowledge their own failure to act appropriately. The staff "investigation" allows them to do this.

If the investigation had gone beyond one page in the Good Government Guide it could, with even a cursory examination of the public record, uncover the reasons for the actions of the various commissions. For example, the minutes and recordings of the Library Commission meetings clearly establish the animus toward comments made by members of the public. The members of the commission have repeatedly, through word and action, attempted to either censor and/or abridge public comment. They did not like what members of the public had to say, and if they couldn't prevent

it being said, they would at least keep it out of the official record. If they couldn't keep it out of the record, they would place it where it was less likely to be seen. If they couldn't prevent it being seen, they use the same Good Government Guide, to justify prefacing the statement with a derogatory introduction. Anything to censor and/or abridge those with whom they disagree! You really have to look no further than the findings of this Ethics Commission recommending removal of Library Commission Pres. Jewelle Gomez, but that's not in the good Government guide is it?

And besides, if you were to find City Librarian Luis Herrera in violation, you would have to send a recommendation to the appointing authority, wouldn't you? And who is the appointing authority in this case, oh yes, the Library Commission. This is the same body that has dismissed your findings in regard to their Pres. Jewelle Gomez and reelected her, I forget, is it two or three times now? What would they be likely to do with your recommendation? They would ignore it of course! Here the Ethics Commission is also an awkward position: how many recommendations can you send, which are subsequently ignored, before your reputation is truly in tatters? These are, of course, rhetorical questions.

So, while I think we are all aware of what the findings will be in this hearing, I will participate in the farce. It will be one more set of facts on the public record to show how city departments and agencies have no problem violating the constitutional and/or civil rights of the citizens of San Francisco. I believe it is fair to say that the list of findings at the beginning of this letter clearly show the lengths that these bodies will go to in silencing their opponents! The findings of this Ethics Commission will only lengthen the record.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government



# San Francisco Public Library

Date: June 11, 2013

To: Ethics Commission

From: Luis Herrera, City Librarian

Re: Ethics Complaint 01-130307

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ETHICS COMMISSION

The Ethics Commission heard a similar complaint regarding the Library Commission Minutes on February 25, 2013 and at that time found that there was no violation of the Sunshine Ordinance.

Since that time, the Library Commission, following the lead of the Ethics Commission in the modification of its own minutes concerning written summaries has adopted similar modifications to its minutes and is now including the 150 word summaries within the body of the minutes. (See Draft May 2, 2013 Library Commission Minutes attached.)

In the preparation of the Minutes discussed at this hearing, the Library Commission did follow Section 67.16 of the Sunshine Ordinance which requires that "any written summary provided by a speaker of no more than 150 words be included in the minutes." The Commission also has followed the Good Government Guide. The City Attorney has advised policy bodies that, because the written statement is not part of the official minutes adopted by the body, the statement may be included as an attachment or addendum to the minutes. (See City Attorney Opinion dated June 1, 2011). The Library Commission has included the 150 word summaries submitted by Mr. Hartz as an addendum and identified which agenda item each summary was commenting on. The addenda to the minutes are not separate attachments, but follow the agenda items in the same document. Despite this, the Sunshine Ordinance Task Force has found "willful failure to include the 150-word summary in the body of the minutes."

The Library agrees with the findings of your staff's recommendation that the City Librarian Luis Herrera did not violate the Sunshine Ordinance as to all allegations referred by the Task Force and continues to assert that the preparation of the Library Commission Minutes follows the law.

Attachments: Library Commission draft Minutes May 2, 2013

City Attorney Opinion dated June 1, 2011

# CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA City Attorney

# OFFICE OF THE CITY ATTORNEY

ALICIA CABRERA Deputy City Attorney

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# **MEMORANDUM**

TO:	Library Commission	Y Y	
FROM:	Alicia Cabrera Deputy City Attorney		
DATE:	June 1, 2011	61-	Total
RE:	150 Word Summary	95	
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You have asked the City Attorney's Office for advice on the following sentence in Section 67.16 of the Sunshine Ordinance: "Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes." (S.F. Admin. Code § 67.16.)

The City Attorney's Good Government Guide, which is available on the City Attorney's website (under "Resources"), addresses this provision. The Good Government Guide states, at page 134:

The Sunshine Ordinance allows any person who spoke during a public comment period at a meeting of a Charter board or commission to supply a brief written summary of the comments to be included in the minutes if it is 150 words or less. Admin. Code § 67.16. The summary is not part of the body's official minutes, nor does the body vouch for its accuracy; and the minutes may expressly so state. The summary may be included as an attachment to the minutes. The policy body may reject the summary if it exceeds the prescribed word limit or is not an accurate summary of the speaker's public comment.

In addition, if the commenter's summary is included as an attachment to the minutes, we recommend that the text of the minutes cross-reference the attachment so as to direct the reader to the attachment. While the Sunshine Ordinance does not require the cross-reference, it will facilitate public access to written summaries of comments.

#### DRAFT

## SAN FRANCISCO PUBLIC LIBRARY COMMISSION

## Minutes of the Regular Meeting of May 2, 2013

The San Francisco Public Library Commission held a regular meeting on Thursday, May 2, 2013 in the Koret Auditorium Main Library.

The meeting was called to order at 4:36 pm.

Commissioners present: Gomez, Lee, Mall, Munson, Nguyen, and Ono.

Commissioner Randlett entered the meeting at 5:09 pm.

#### AGENDA ITEM NO. 1 GENERAL PUBLIC COMMENT

An anonymous citizen said at the last meeting he mentioned Le Mot de Coulter and the public comment fund. He asked the Commissioners if they thought that one day that is what they would stand for. He said the Commission thinks if you run your enemies out of town that will solve all of your problems. He said the benefit of running people out of town is that you never have to recognize any shared humanity. He said the Commission thinks it is killing his claim on humanity but it is killing its own.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate & Stop the Ignorance – Don't accept money from the Friends of the Library. "Maybe what you should do is what they used to do in the old Roman Republic – elect Ms. Gomez for the position of dictator for life and then at least the rest of us would have the hope an assassination might result in a change of leadership." Understanding Le Mot de Coulter, and the Public Comment Fund, you once would've been shocked. You put all of your eggs in one basket; getting rid of people once and for all; like old Cowboy movies – running your enemies out of town. The benefit is never having to recognize any shared humanity. You should develop the ears to hear people, or you shouldn't be representatives. You are killing your own claim on humanity.

Abandoning your humanity to serve the interests of money is the nightmare of the human race.

Ray Hartz, Director San Francisco Open Government, said he gave copies of a document from the Framework for each of you. He said he would be using graphics but because the Commission doesn't like what we say you want to abridge and censor it. He said we will be going back to the Sunshine Ordinance Task Force (SOTF) because he is sick and tired of the Commission trying to keep what we say out of the official record. He said the Framework states that "Friends will provide the Library or its designee with quarterly reports of its cash, pledges and other sources of funding." He said this was taken before the SOTF who found your City Librarian in violation of the ordinance. He said it has been referred to the Board of Supervisors requesting enforcement action against Luis Herrera. He asked if the two new Commissioners were going to participate in this ongoing fraud and deception of the public relating to the 50 to 60 Million Dollars the Friends have raised and expended.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

I have just passed out two pages from a document known as the "Framework." This first sheet is to ensure that none of the members of this Library Commission can pretend not to know what I'm talking about. The second sheet includes section 3.6 City Right to Audit. "Friends will provide the Library or its designee with quarterly reports of its cash, pledges and other sources of funding." Failure to produce these documents, among others, resulted in a March 7, 2013 referral to the Board of Supervisors requesting enforcement action against city librarian Luis Herrera. Mr. Herrera is probably working under the delusion that the BOS will not hear this referral. The board and the public will hear this matter, even if in two-minute increments spread out over a year! It would seem less painful for this commission to have a hearing, rather than experience a "Death by 1000 cuts."

Peter Warfield, Executive Director, Library Users Association, said the library unfortunately has a long and sad history of obstruction and making it difficult or impossible to get documents that are legally required to turn over. He said delays, redactions and refusals to turn over documents have been taken in some cases to the Sunshine Ordinance Task Force which is the body, whose members are chosen by the Board of Supervisors to be the watchdog of sunshine for the city. He said the Library Citizens Advisory Committee (LCAC) which was created by the Board of Supervisors and met for a number of years had the agendas and minutes posted on the library's website. He said there is now no mention on the website of the LCAC. He said there may be other ways to get at those records but an ordinary citizen with a reasonable search would not be able to find those records. He said he hopes that the Commission will pay attention to those sorts of problems at the Library.

# AGENDA ITEM 2. RESOLUTION HONORING FORMER LIBRARY COMMISSIONER LARRY KANE

President Gomez read a resolution honoring former Commissioner Larry Kane.

#### **Public Comment**

An anonymous citizen said we have to give you credit for putting this on the agenda. He said we rarely get a Commissioner of his level and he is the sort of person that comes on the Commission to give back to the community. He said Mr. Kane was just a few days short of 8 full years. He went over Mr. Kane's attendance record for each year he was on the Commission. He said there should have been 164 meetings during Mr. Kane's tenure and only 149 were held. He said Mr. Kane was late 64 times, he left early 19 times and he was absent 19 times. He said Mr. Kane only attended 49 full meetings out of 149 yet we consider Larry Kane one of the better Commissioners. He said Mr. Kane used to ask questions of the Friends of the Library and suggest that they report back to the Commission. He said this was intended to show how unaware Mr. Kane was of how sleazy the Friends are. He was faithful to the idea of additional hours and holding meetings at the branches. He said on balance, Mr. Kane was above average.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate & Ignorance – Don't give money to, or accept money from the Friends of the Library. Whatever opprobrium and obloquy we heap upon Mr. Kane he will consider an endorsement. Commissioners at his level want to serve humanity, rather than most who act like pigs. Mr. Kane's first meeting was May 5, 2005. The first year his attendance was absent once, late once. It went downhill from there. Even after moving to 4:30 he was still late 10 times in one year, absent four times. Overall, out of 149 meetings he was late 64 times and only attended 49 full meetings. Outrageously Mr. Kane would imply he was really unaware of how sleazy the Friends are. He knows. Mr. Kane was the first to nominate Jewelle Gomez as President, his idea of a joke. He spoke up for service to the public and meeting in branches, so overall above average.

Ray Hartz, Executive Director, San Francisco Open Government, said Mr. Kane has made some really solid efforts to improve the overall library. He said with all the praise there needs to be some balance to paint an honest picture. He said Mr. Kane willfully participated in a cover-up related to the Friends of the Library. He said Mr. Kane participated in actions to censor and abridge public comment. He said despite Mr. Kane's legal background, he never made any effort to protect the right to free speech.

He said Mr. Kane was willfully ignorant in the two areas he mentioned, betrayed the public trust placed in him and knows that this commendation is tainted.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

With all the praise for Commissioner Kane, there needs to be some balance to paint an honest picture. Throughout his years of service on the Library Commission, he knowingly and willfully participated in a cover-up related to the finances of The Friends of the San Francisco Public Library. Further, he participated in actions to censor and abridge public comment. Mr. Kane, despite his legal background, never asked why the Library Commission wanted to silence dissent and never made any effort to protect the right to free speech. Mr. Kane's only concern was that the city attorney said it was okay and that there was something to cover his ass! Thomas Aquinas teaches: "Willful ignorance of what one ought to know is a mortal sin." Mr. Kane was willfully ignorant in the two areas I mentioned, betrayed the public trust placed in him, and knows that this commendation is tainted.

Peter Warfield, Library Users Association, said he appreciates this being on the agenda. He said Larry Kane has recently been one of the most intelligent and conscientious of the Library Commission members. He said Mr. Kane followed issues and asked questions. He said Mr. Kane pushed for the expansion of library open hours, something that Library Users Association, has been pushing for years. He said unfortunately there are some down sides as you have heard and in general it was a disappointment that Larry Kane's questions were sometimes softball and he did not insist on a prompt fix he would ask for more information at a later date. He said Larry Kane voted to reelect Jewelle Gomez as President after she had been found by the Ethics Commission that her behavior was so egregious that she should be sacked by the Mayor. He said Larry Kane let things go without commenting or trying to improve things. He said eight years on the Library Commission is a good effort and public spirited and we appreciate that.

Iona Eisner said she is a student at San Francisco State University and is attending her first Library Commission meeting. She said she has been going to the library since she was 4 years old and she appreciates what Larry Kane has done and thinks he should be honored

#### Commission Discussion

Commissioner Ono said it was a great honor working with Larry and sitting next to him. She said Larry always asked the probing questions that she wanted to ask. She said she appreciated that Larry took the time when he went to the library with his family, to ask patrons what they thought about the library. She said Larry did that on his own time and he

did it because he cared. She said she appreciated that Larry brought his kids with him, because he wants them to learn. She said she will try her hardest to keep his mantra of getting more open hours. She said it was a great pleasure and honor to work with Larry Kane.

Commissioner Munson said he agrees with Commissioner Ono's comments. He said Larry Kane has been an exceptional commissioner on this Commission. He said the naysayers just spoke about their particular focus. He said the Commission has been managing well a program with total expenditures approaching \$200 Million. He said Larry Kane has always kept in mind the big picture and he thinks Larry deserves a special tribute.

Commissioner Nguyen said he would like to congratulate and thank Larry Kane for his enquiring nature and the wonderful courage and energy that he brought to the Commission. He said the willingness of Larry to ask the kind of questions he has asked has been very educational to him. He said he appreciates all that Larry has done for the Commission and he will miss having a fellow dimple chin on the Commission.

Commissioner Mall said she has only had the opportunity to meet with Commissioner Kane on one occasion and she is so sorry that they will not be serving on the Commission together. She said she was impressed that Larry Kane has been a partner in a major law firm in the city, on other nonprofit boards, his dedication to the youth of San Francisco, along with having his own children. She said there aren't a lot of people willing to take the time to dedicate themselves to something like the San Francisco Public Library the way Larry has and she said she thinks Larry is a remarkable person.

President Gomez said she relied on Larry Kane always for his tough questions and his perspective and good humor and she was always inspired by his bike riding to the meetings.

<u>Motion:</u> By Commissioner Ono, seconded by Commissioner Munson to approve a resolution honoring Larry Kane for his outstanding leadership and dedicated hard work as a member of the Commission and to hereby recognize, honor, commend and thank him.

Action: AYES 7-0: (Gomez, Lee, Mall, Munson, Nguyen, Ono and Randlett)

Larry Kane said his wife and daughters win on patience of him being late. He said thank you to the Commissioners for all their kind words and said it means a lot to him. He said he has learned a lot by serving on the Commission. He said that people can complain about the library and he has learned that the librarians and staff at the branches and the Main are some of the hardest working public servants that there are. He said it would not be the great library system it is without the great hard working librarians and staff. He said when he served he tried to keep three things in check when he asked questions or made decisions. He said he always

wanted to make our library the greatest public library system in America or the world. He said with Luis Herrera's leadership this system, if not already there, is on its way to becoming the greatest public library system ever and he thinks that is our goal. He said he wanted to make sure we were building branches for the next century and that we have open access hours for not just his kids but the kids he has coached and kids across the city especially those without access to computers. He said he always thought about disadvantaged people. He said there are certain aspects of the meetings he will not miss but he really enjoyed the opportunity to serve. He said he really appreciates this and hopes the Commission will keep up the good work.

# AGENDA ITEM NO. 3 FINES AND FEES ORDINANCE

Luis Herrera, City Librarian, said this item follows the conversation from the last meeting. He said in the packets are the draft resolution, the draft ordinance, legislative digest, and the existing ordinance. He said the cover memo outlines the changes they are recommending to the Fines and Fees ordinance. He said they are recommending reducing the DVD overdue fines for adults/seniors from \$1 per day to \$.10 per day; a new fee for reproduction of photographs per project in an unlimited media; and scaled fees for scanning photographs based on higher resolution purposes.

Shellie Cocking, Collections and Cataloging Manager, gave a presentation on the streamline borrowing policies. She said the goal was to standardize item limits, loan periods, renewals and fines. She said they wanted to improve the user experience and create efficiencies. She explained the former item limits and fines. She said the goal was to have all media types have the same item limit, loan period, fines and renewal limits. She said they have made some changes and are now asking for the fines change. She addressed some of the issues that the Commission had raised during the previous meeting and gave some circulation and collection figures to address those issues. She gave some average prices for books, new hard covers and DVDs. She said there is no logical reason to charge more for late fees for DVDs.

## **Public Comment**

An anonymous citizen said that the Commission says that it endorses sunshine violations, official misconduct and concealment. He said for the Commission to say that the citizens are negative and it is their own fault is a self-serving illusion that the Commission creates itself. He said it would have been important to have the approval of the minutes first so that you could reconcile what you were told last time. He said there were questions at the last meeting about whether the libraries fines and fees go into the budget and you were told quite rightly that the Supervisors create a mechanism where they add back the money that goes into the General Fund back into the Library Preservation Fund, but the secret is that it does not add to the Library Preservation Fund because it has a maximum

set by ordinance. He said the system was created because there was more demand than items for the DVDs.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate, Stop the Ignorance – Don't give money to, or accept money from the Friends of the Library. We are grateful to Mr. Munson for orienting the new commissioners. The Commission endorses sunshine violations, official misconduct and concealment. Making the citizens negative is an artificial illusion. By approving the minutes first, you could reconcile what you were told last time. This is the first time you have seen this resolution. In response to question about the fees going into the library's budget, you were told that the Supervisors cosmetically transfer an amount for the fine proceeds. The total budget is set by the Library Preservation Fund, which does not increase based on the fines transfer. The fines are a function of the frequency of the borrowing cycle, and fines for DVD's were created to replenish availability for the demand. I hope you will insist on answers to the questions you asked.

Peter Warfield, Executive Director, Library Users Association, said fines and fees deter usage. He said Sandy Berman is a well respected long time now retired former head librarian and he would like to play a recording left by him regarding this subject. He said we agree with the reductions but not the increases. The tape recording from Sandy Berman said that most fines are charged to increase revenue to secure extra funds. Sandy Berman said it is indisputable that fines deter library use by poor people.

Ray Hartz, Director San Francisco Open Government, said he likes that Commissioner Munson always talks about how negative the public comments are because it really shows the efforts to keep public comments out of the official record and to silence what we have to say because you don't like what we have to say. He said you take credit for everything positive that occurs and ignore anything that goes wrong. He said it is sensible if you are going to have fines that they are consistent and the lending periods should be consistent as well. He said it simplifies it for everyone. He said for a long time a multi disc DVD was put into different cases and now all of the DVDs in a set are lent out together. He said Commissioner Lee had raised the issue of a social contract at the last meeting. He said he does believe it is a social contract and that is the most important part of it. He said if people were made aware of the fact that they can renew online, fines wouldn't be an issue.

#### Commission Discussion

Commissioner Ono asked what type of impact the change in the DVD fee will have on the budget.

Luis Herrera, City Librarian, said we are hoping that the efficiencies we are creating will help offset the impact on the budget from the change in fees, and he said the change in fees will not have an impact on the operating budget.

Commissioner Lee said he has talked to a number of people, who said they think they will be deprived of an item because people will keep the items longer if the fines are reduced. He said he would like the Commission to reconsider reducing the fees.

Commissioner Munson asked about the efficiencies created.

Shellie Cocking, Collections and Cataloging Manager, said it is hard to estimate the savings in staff time that staff spends with unhappy patrons over the high fee for the DVDs. She said they have changed the borrowing policies by moving all television shows into one case.

Commissioner Munson said he wanted to clarify that now a person can take out the entire set of discs rather than wait for each individual disc to become available. He asked about the renewals of DVDs.

Shellie Cocking, Collections and Cataloging Manager, said if a patron has a hold on an item there is no renewal allowed.

Commissioner Munson said if people renew then there is no fine.

Luis Herrera, City Librarian, said it is all about facilitating access. He said we are looking at how we make the user experience better and how we eliminate barriers. He said all of the work the staff has done in reviewing the policies is really making a difference in improving the user experience.

Commissioner Mall said all other material is \$.10 a day

Commissioner Lee said DVDs are used three to one compared to other materials.

President Gomez said there is a higher percentage of borrowing books than DVDs.

Shellie Cocking, Collections and Cataloging Manager, said that books do not circulate as much as DVDs, but the smaller portion of books like NY Times bestsellers have a higher turnover than DVDs. She said when we are purchasing DVDs, we are now treating them equally to books. She said we make sure that we have at least one copy for every three holds so that the wait for patrons will never be too long.

Commissioner Mall said there is already a very generous policy on borrowing and since everything else is \$.10 she supports the proposal to decrease the fines on the DVDs, President Gomez said she understands Commissioner Lee's position that people might keep things longer since the fines are higher to keep a DVD but she said she also thinks there is something good about having the fines be uniform that creates a culture of returning materials. She said she hopes we will be able to keep track of how this goes if we vote to support this.

Commissioner Randlett said it is too bad that we don't have a survey on this and we do not have a cost analysis. She said she is not sure we have the best information to make an accurate decision.

Luis Herrera, City Librarian, said we are getting a lot of feedback from the community about the differences in the fees. He said we went to the Council of Neighborhood Libraries recently and had a good conversation that it would make sense to give us some level of consistency. He said Commissioner Mall attended that meeting as well.

President Gomez said the Task Force has looked into this over the past year and she feels fairly confident that the Task Force members have based their recommendations on good information.

Motion: By Commissioner Munson, seconded by Commissioner Mall to approve the Resolution urging the Board of Supervisors to adopt the ordinance attached hereto standardizing overdue fees for materials, regardless of format; and increasing fees for services (scanning at higher resolutions than currently offered) and for reproduction of photographs for commercial purposes for a single media and unlimited media with a request for a report back to the Commission on the data related to the DVD fines in one year.

Commissioner Lee said he would be voting no on this motion but he wanted to clarify that his no vote was only related to the decrease in DVD fines.

Action: AYES 6: (Gomez, Mall, Munson, Nguyen, Ono, and Randlett)
NAY 1: (Lee)

Commissioner Mall asked if it is possible to have streaming videos in the future.

Luis Herrera, City Librarian, said we could see streaming in the future, but it is not here yet.

Shellie Cocking, Collections and Cataloging Manager, said there is a new product called Hoopla that some libraries are using that does stream video, music and audio books.

## AGENDA ITEM NO. 4 CITY LIBRARIANS REPORT

Luis Herrera, City Librarian, said that Jill Bourne, Deputy City Librarian, has accepted the position of City Librarian for San Jose. He said we are

very proud of her and she will be with us throughout the month of May He said she will begin her tenure in San Jose in July. He said we will have a wonderful send off for her. He said she has done a phenomenal job in her almost 7 years with us. He said beyond the leadership of her helping us to expand hours, she has taken some amazing initiatives with the Teen Center and other initiatives such as Green Stacks, BLIP, Library Journal Mover and Shaker in 2009 and has been instrumental in all of the initiatives of the Library. He said the second topic is that we are going to be bringing an additional day of service for our branch libraries. He said this was approved as part of this year's budget. He said the three branches are Visitacion Valley, Mission Bay and Portola. He said starting June 2 Visitacion Valley will be open on Sundays and on Monday June 3 both the Mission Bay and Portola Branches will be open on Mondays making all three of those branches seven day operations. He said what is exciting about it is that we know that summer is extremely important for our youth. He said last year we had over 14,000 participants in our Summer Reading Program. He said this is part of the process of revising and modifying the hours and we will be coming back on May 16 we will come back with more detailed rollout of our plans for the additional hours for the system. He said each of these libraries averages about 400-500 library users every day. He said Donya Drummond will give a presentation on the Jobs and Career Center.

Donya Drummond, Jobs and Careers Librarian, gave a presentation on the Jobs and Career Center. She said the collection went from 99% noncirculating to 99% circulating last spring, 2012 and we have seen a significant increase in usage since then. She explained the various collections available. She said there is a Jobs and Careers Bulletin Board. She said they have increased the programming for jobs and careers. She said they offer programs and classes in such areas as resume writing, how to use social media, and successful interviewing. She said the Center has offered author visits. She said the center uses social media including YouTube and Pinterest. She said many of the Libraries eLearning programs offer webinars, podcasts, online tutorials, video tutorials and others. She said ed2go is the Library's newest eLearning data base offering interactive six week courses. She said they have expanded the job seeker computer time. She went over highlights of the Jobs and Careers Resource Homepage. She said one of the things patrons are looking for is where to find jobs and the webpage has job listing websites using various criteria. She said the site also shows materials in the library that can be checked out and database resources. The Center also does outreach with other organizations in the area.

#### **Public Comment**

An anonymous citizen said he wanted to caution the Commissioners especially if they are new that there is a restriction that you not have a discussion of things not on your agenda. He said with respect to Jill Bourne and the expanded hours he hopes these subjects will come up at the last meeting in May. He said the Jobs and Career Center is very nice

and an important issue and he doesn't have anything negative to say about that right now.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate & Ignorance – Don't give money to, or accept money from the Friends of the Library. There is a legal prohibition against discussions that are not on the agenda. Previously this was a sore point, and I hope we are not going through that again. With respect to Jill Bourne and new hours in some branches, we need something in writing but presumably those subjects will come up again. This should not be the last meeting in May. The Jobs and Career Center is an important issue, so very nice. I am apprehensive about partnerships but I don't have anything negative to say about them right now.

Peter Warfield, Executive Director, Library Users Association, said congratulations to Jill Bourne and hooray for adding another day to the operations of three branches. He said that is an issue that Library Users Association has been promoting for many years including prior to the time the City Librarian arrived here. He said it is encouraging that our efforts have borne fruit. He said the City Librarian vigorously opposed adding any more time to branches and opening branches on Sundays. He said the Board of Supervisors set money aside for additional hours and the Library never used it. He said the Library did the same thing the following year and about six months later, a year and a half after the original discussion, the library finally started to implement some of the branches having additional days. He said Library Users Association encourages all of the branches to be seven day branches and certainly to have more evening and weekend hours. He said the Jobs and Career Center presentation was very interesting and he appreciates the color copies that were provided to the public. He said there are very serious privacy issues with such money making outfits as Facebook, and the Library still does not allow folks to simply save a Word document on the Library's computers.

Ray Hartz, Director San Francisco Open Government, said he is surprised Ms. Bourne is not here but he hopes she is enjoying her vacation. He said he hopes she is getting plenty of rest and getting herself in an excellent frame of mind for a well-deserved promotion. He said he wanted to thank Ms. Bourne for her service to the San Francisco Public Library. He said he believes the City of San Jose has made an excellent choice and he hopes that she will choose to make the citizens of San Jose true partners in her efforts to maximize the benefit of the public library. He said his suggestion to her would be to ask herself what would Luis Herrera do and do the opposite.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

I would like to thank Jill Bourne, Deputy City Librarian for her service to the San Francisco Public Library and to the citizens of San Francisco. I believe the City of San Jose has made a good choice in her selection to lead their library system. I believe Ms. Bourne has learned many valuable lessons from her tenure here at the public library. I hope that she will choose to make the citizens of San Jose true partners in her efforts to maximize the benefit the public library can bring to the citizens of the city. I hope she will truly welcome, and whenever possible, make use of citizen input. Above all, I hope she will instill in the operations of the San Jose Public Library, and the San Jose Library Commission, a practice of openness and honesty. My suggestion: ask "What would Luis Herrera do?" Then do the opposite!

## Commission Discussion

Commissioner Randlett said it is excellent news about the additional hours and she said it would be great if we could do a press story in support of the City Librarian. She said she thinks that since she has been on the Commission that he has been both prudent and ethical in his decisions and none are made in a vacuum. She said she is pleased that Jill Bourne is moving on to a well deserved position and that she and the City Librarian worked very closely together and the City should be grateful for the City Librarian's leadership to help guide and prepare her for such a significant honor.

Luis Herrera, City Librarian said they plan a robust campaign to promote the new hours and roll it out in sync with the summer reading program.

Commissioner Randlett said she was really impressed with the Job and Career Center and she liked the presentation. She said it would be great to get some data from people who have used the Center and whom have gotten jobs. She said that would be a nice completion of the circle.

Commissioner Mall asked about the number of computers in the Center.

Donya Drummond, Jobs and Career Center Manager said there are 20 computers in the computer training room, where the job seekers lab is.

Commissioner Mall asked if those computers are all used.

Luis Herrera, City Librarian, said all of the computers in the library have the resources in them.

Commissioner Mall said she applauds everything that the Center is doing and she said there might be more opportunities for partnership with all of the growth in the Mid Market area. Commissioner Ono said it was a great presentation and she didn't realize that there was eLearning available.

Donya Drummond, Jobs and Career Center Manager, said the Ed2Go has a lot of different job skill classes.

Commissioner Ono said she wanted to point out that Jill Bourne is not the first person to become a head librarian of another city, Brian Bannon before this became City Librarian of Chicago so she said it is a testament to the City Librarian's mentoring, managing and supervision and his nurturing and also his being Librarian of the Year.

President Gomez said thank you to the staff for a great presentation. She said for the last few years the City has really needed the Center.

Commissioner Lee said he agreed it was a wonderful presentation. He asked if they were working with the job seekers on networking.

Donya Drummond, Jobs and Career Center Manager, said they actually have held a networking class and she said using Social Networking like LinkedIn is an amazing way to tap into the job market.

Luis Herrera, City Librarian, said thanks to Edward Melton and Donna Marion and Maureen Singleton for getting us ready for the June 2 weekend for the new hours.

## AGENDA ITEM NO. 5 LABOR UNION REPORT

There was no report at this meeting.

## AGENDA ITEM NO. 6 APPROVAL OF MINUTES APRIL 4, 2013

## Public Comment

An anonymous citizen said online minutes have referred to explanatory documents but there is no such reference in the hard copies. He said there are only three instances where the Secretary has changed my comments from what was submitted. He said on page 6 it should be "that there be no fines" not "there are". He said on page 10 it should read Stop the Hate, Stop the Ignorance" not "& Ignorance" and on page 11 it should not read "not subject" but should be "nor subject to." He said on page 12 Commissioner Randlett did not mean to make changes from the Anonymous Citizen. He said those changes were made to the Minutes with the implication that he wanted to preserve grammatical changes and that is not the case.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate, Stop the Ignorance – Don't give money to, or accept money from the Friends of the Library. Again the online version of the minutes refer to explanatory documents, but there is no such reference available for those who rely on the hard copy being approved here. Since the online minutes is a PDF, you are going out of your way to make it different. You will be happy to learn that there are only three instances where your secretary altered what I submitted. On page 6, "that there be no fines." Not, "there are." On page 10, "Stop the Hate, Stop the Ignorance." Not, "& Ignorance." On page 11, "nor subject to." Not, "not subject." On page 12, Commissioner Randlett did not mean to make changes from the Anonymous Citizen. The changes in the prior minutes were made. The implication was that I wanted to preserve grammatical errors and that is not the case.

Ray Hartz, Director, San Francisco Open Government, said the Library Commission and the City Librarian want to take credit for everything positive that occurs and deny responsibility for anything negative. He said they have been found by the Sunshine Ordinance Task Force to have censored and abridged free speech on numerous occasions and went on to explain the various violations. He said the Ethics Commission directed a change in the placement of the 150 word summaries and that change has not been made. He said the Commission seems to think this is a joke. He said you can either put it on the agenda and make a formal change of policy or we can go back to the Ethics Commission and tell them Mr. Herrera lied to them.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

As I said in the past, the Library Commission and the City Librarian want to take credit for everything positive that occurs and deny responsibility for anything negative. The Library Commission and the City Librarian had been found by the SOTF to have censored and/or abridged free speech on multiple occasions. The City Librarian has been found to have unlawfully withheld public records, in particular, the financial records I mentioned in general public comment. In violating the constitutional and civil rights of the public this commission and the City Librarian have pointed fingers at one another, each claiming it was the others decision. Before the Ethics Commission, the City Librarian promised a change in policy regarding the placement of 150 word summaries and has yet to keep that promise. A member of the Ethics Commission stated that if this change was not made, he would consider it a willful violation.

Peter Warfield, Library Users Association, said while the minutes give the appearance of lengthy summaries, some of the summaries make a hash out of what was said. He said on page 2 under General Public Comment it says "she intended on charging me" he said me should be changed to

him. He said on page 4 the last line of his remarks "the Excelsior Branch was said to have about a 10% cut in the books and she was silenced." He said it should say she was silenced at the meeting. He said the point was that branch had 68,000 books and the library was now saying the newly renovated branch would have 42,000. He said that whole sense of fraud in the reporting of what was going on was left out. He said there are repeated references to his comments as for example on page 10 where it says "he believes" and other places it says "he thinks". He said he does not make those types of comments, he simply states what he has to say.

## Commission Discussion

Commissioner Ono said that under the Motion on page 12 she thought that the motion was to approve the Minutes of February 7, 2013 as amended to include the grammatical changed mentioned by the Anonymous Citizen. She said she thought that should be Peter Warfield instead of the Anonymous Citizen.

Sue Blackman, Commission Secretary said she thought that Commissioner Randlett in her motion was referring to the grammatical changes mentioned by the Anonymous Citizen and not the formatting changes mentioned by Peter Warfield.

<u>Motion:</u> By Commissioner Ono, seconded by Commissioner Munson to approve the Minutes of April 4, 2013.

<u>Action:</u> AYES 7-0: (Lee, Gomez, Mall, Munson, Nguyen, Ono, and Randlett)

## AGENDA ITEM NO. 7 ADJOURNMENT

Ray Hartz, Director, San Francisco Open Government, said BF Skinner the father of behavioral conditioning said 'any behavior which is rewarded will be repeated.' He said when I make my comments and watch you afraid to lift your eyes because you know what I'm saying is right and you are embarrassed by it, that is a reward and it keeps me going. He said when you roll your eyes and make feeble excuses for each other another reward. He said it is just the three of us right now and all of you. He said he has fought for three years to get his statements into the Minutes and all you know that you did not put them in the minutes because you don't like dissenting opinions. He said you never refute our statements because you don't have anything to refute them with. He said he hopes the City Controller does an audit of the Friends and that you all get into the newspapers.

Peter Warfield, Library Users Association, said traditionally adjournment has been used for honoring people who have left this world and who were connected in some way to the library. He said because there are new Commissioners that there might be a recent pattern changed and that New Business would be included on the agenda as it has been in the past. He said it shuts the Commission up and prevents the

Commissioners from doing the job you were appointed to do in this city as public servants. He said to silence yourselves without ever saying anything about it is very unfortunate. He said there has been a lot of talk of naysayers and he said he doesn't think that is being a naysayer to say that we want more open hours, more money in the budget for books, or that the reduction in fines is not enough. He said there is a great deal of positive in people telling you about problems so that you can fix them. He said it shouldn't be your job just to ignore it.

<u>Motion:</u> By Commissioner Randlett, seconded by Commissioner Munson, to adjourn the regular meeting of May 2, 2013.

Action: AYES 7-0: (Lee, Gomez, Mall, Munson, Ono, Nguyen and Randlett)

The meeting adjourned at 6:52 pm.

Sue Blackman Commission Secretary

Please note: These are draft minutes subject to revision by the Public Library Commission. Copies of commission minutes and handouts are available in the office of the secretary of the San Francisco Public Library Commission, 6th floor, Main Library, 100 Larkin Street, San Francisco, CA 94102-4733.

Explanatory documents: Copies of listed explanatory documents are available as follows: (1) from the commission secretary/custodian of records, 6<sup>th</sup> floor, Main Library; (2) in the rear of Koret Auditorium immediately prior to, and during, the meeting; and (3), to the extent possible, on the Public Library's website <a href="http://sfpl.org">http://sfpl.org</a>. Additional materials not listed as explanatory documents on this agenda, if any, that are distributed to library commissioners prior to or during the meeting in connection with any agenda item will be available to the public for inspection and copying in accordance with Government Code Section 54954.1 and Sunshine Ordinance Sections 67.9, 67.28(b), and 67.28(d).

## 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

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

Re: Compliance and Amendments Committee recommendation for referral to the Ethics Commission in the case of Ray Hartz v Luis Herrera for allegedly not including a brief written summary of public comments within the body of the meeting minutes.

(Sunshine Ordinance Complaint No. 11098, Hartz v Luis Herrera, City Librarian)

Dear Ethics Commission,

On March 7, 2012, the Task Force heard Complaint No. 11098, by Ray Hartz ("Complainant") against Luis Herrera, City Librarian ("Respondent"). The Complaint alleged that Respondent failed to include, within the body of the official minutes, written summaries of public testimony of not more than 150 words supplied by members of the public, with regard to the minutes of the August 18, 2011, October 6, 2011, and November 3, 2011 general meetings of the Library Commission.

Ray Hartz represented himself during the hearing, while Respondent did not appear. At the conclusion of the hearing, the Task Force found Respondent in violation of Sunshine Ordinance Section 67.16 for failure to include the 150-word summary of the Complainant's comments in the body of the Library Commission meeting minutes, and 67.21(e) for the Respondent's failure to appear at the hearing. The Task Force referred the matter to the Compliance and Amendments Committee to monitor compliance with its Order.

The Task Force issued an Order of Determination in this matter on March 12, 2012. The Order required that Respondent make the changes necessary to include the public comment summaries in the body of the minutes for the Library Commission's regular meetings held on August 18, 2011, October 6, 2011 and November 3, 2011.

On May 15, 2012 the Compliance and Amendments Committee heard Ray Hartz (Complainant) provide an update on an order of determination from the April 4, 2012 full SOTF meeting. The Respondent (Luis Herrera) was not present to provide an update and respond to questions. The

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

committee moved to refer the matter back to the Task Force with a recommendation that it be forwarded to the Ethics Commission.

At the December 5, 2012 SOTF meeting the Task Force moved to refer Luis Herrera, City Librarian to the Ethics Commission for failure to comply with the Order of Determination, for violating Sections 67.16 for failure to include Mr. Hartz's public comment summaries in the Library Commission's minutes and Section 67.34 for willful failure to comply with the Order of Determination from the April 4, 2012 SOTF meeting.

The Task Force recommends the Ethics commission investigate Luis Herrera, City Librarian for his willful failure to include public comment summaries in the body of the Library Commission minutes.

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 or (415) 554-7724 with any questions or concerns.

Kitt Grant, Chair

MaxX Shant

Sunshine Ordinance Task Force

David Sims, Member Attorney Sunshine Ordinance Task Force

Encl.

Ray Hartz, Jr., Complainant cc:

Luis Herrera, City Librarian, Respondent

Jerry Threet, Deputy City Attorney

## SUNSHINE ORDINANCE TASK FORCE



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

## ORDER OF DETERMINATION March 12, 2012

**DATE THE DECISION ISSUED** March 7, 2012

RAY HARTZ, JR. v. LUIS HERRERA, CITY LIBRARIAN (CASE NO. 11098)

FACTS OF THE CASE

Complainant Ray Hartz alleges that San Francisco City Librarian Luis Herrera violated the Sunshine Ordinance by failing to instruct San Francisco Library Commission Secretary Sue Blackman to include Mr. Hartz's public comment summaries of 150 words or less within the body of minutes that were approved by the San Francisco Public Library Commission during meetings held on November 17, 2011 and December 1, 2011.

## **COMPLAINT FILED**

On December 15, 2011, Mr. Hartz filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against Mr. Herrera, alleging violation of Sunshine Ordinance Section 67.16.

#### HEARING ON THE COMPLAINT

On March 7, 2012, Ray Hartz presented his case to the Task Force. Neither respondent Luis Herrera nor an authorized representative appeared at the hearing or provided any other response to Mr. Hartz's complaint.

The Library Commission approved draft minutes for its regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011. Those minutes did not include public comments summaries that were submitted by public speakers in the body of the minutes, but rather included them as attachments to the minutes. Mr. Hartz alleged that, by approving these minutes, the Library Commission disregarded the Task Force's prior findings in Sunshine Complaints 10054 and 11054 that public comment summaries provided by members of the public must be included within the body of the minutes, not as attachments.

Mr. Hartz further stated he filed his complaint against Mr. Herrera rather than the Library Commission because Mr. Herrera is the direct supervisor of Library Commission Secretary Sue Blackman, who prepares the draft minutes. He stated that, as a managerial employee, Mr. Herrera is responsible for ensuring San Francisco Public Library employees comply with the Sunshine Ordinance, including requiring Ms. Blackman to place his public comment

summaries in the minutes. Mr. Hartz alleged that Mr. Herrera is either directing Ms. Blackman to ignore the Task Force's findings or failing to ensure she complies with the Sunshine Ordinance.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concludes that Sunshine Ordinance Section 67.16 provides that "any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes." The Task Force continues to interpret the phrase "included in the minutes" by using the plain meaning of the words, and finds that the public comment summaries must be placed within the body of the minutes, not as attachments. The Task Force concludes, as it has in multiple prior Orders, that the phrase "included in the minutes" does not mean "attached to the minutes."

The Task Force further observes, as it has before, that the Sunshine Ordinance vests the Task Force with authority to hear complaints regarding the Sunshine Ordinance's public meeting provisions. Sunshine Ordinance Section 67.30 requires the Task Force to "make referrals to a municipal office with enforcement power under this ordinance... whenever it concludes that any person has violated *any provisions of this ordinance*" (emphasis added). As it would be impossible for the Task Force to find a violation of the public meeting provisions of the Sunshine Ordinance without hearing complaints alleging such violations, the Ordinance plainly vests authority in the Task Force to hold such hearings and, based on the process outlined in Sunshine Ordinance Section 67.21(e), to require respondents or authorized representatives to attend such hearings.

### DECISION AND ORDER OF DETERMINATION

The Task Force finds City Librarian Luis Herrera in violation of Sunshine Ordinance Sections 67.16 for failure to include Mr. Hartz's public comment summaries in the Library Commission minutes and 67.21(e) for failure to appear at the Task Force hearing on the complaint.

Mr. Herrera and the Library Commission shall make the changes necessary to include the public comment summaries in the body of the minutes for the Library Commission's regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011 within 5 business days of the issuance of this Order, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00 p.m. in Room 408 at City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Costa)

Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Noes: 0

Absent: 3 - Cauthen, Wolfe, Chan

SUNSHINE ORDINANCE TASK FORCE

Hope Johnson

Hope Johnson, Chair Sunshine Ordinance Task Force

THAT

David Snyder, Esq., Member, Seat #1\* Sunshine Ordinance Task Force

cc: Ray Hartz, Complainant

City Librarian Luis Herrera, Respondent

Jewelle Gomez, President, Library Commission

Jerry Threet, Deputy City Attorney

\*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.

## APPENDIX A

Date March 7, 2012

Item No. 11 & 12 File No. 11098

# SUNSHINE ORDINANCE TASK FORCE AGENDA PACKET CONTENTS LIST

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<sup>\*</sup>An asterisked item represents the cover sheet to a document that exceeds 25 pages.

The complete document is in the file.





## SUNSHINE ORDINANCE TASK FORCE 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102 Tel. (415) 554-7724; Fax (415) 554-7854 http://www.sfgov.org/sunshine

## SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission 5 Francisco Public LIBRARY
Name of individual contacted at Department or Commission Luis Heerera, City Libraria
Alleged violation public records access Alleged violation of public meeting. Date of meeting ////////////////////////////////////
Sunshine Ordinance Section Section 67.16 MIDUTES
(If known, please cite specific provision(s) being violated)
Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.  PLEASE SEE ATTICKED
1 CCASE OCC PATRICIA
Do you want a public hearing before the Sunshine Ordinance Task Force?   Do you also want a pre-hearing conference before the Complaint Committee?   は yes
Name RAY WHARTZ, TR Address SAW FRANCISCO CA 94109
Telephone No. (415) 345-9144 E-Mail Address RWHARTZTR @SBCGW84L, XT
Date 12/15/11 Kay W Hand
l request confidentiality of my personal information. ☐ yes ☒, no
1 NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL

ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

### Thursday, December 15, 2011

At a meeting of the San Francisco Public Library Commission on November 17, 2011 the commission approved minutes for the regular meeting of August 18, 2011 and the regular meeting of October 6, 2011. At a meeting of the San Francisco Public Library Commission on December 1, 2011 the commission approved minutes for the regular meeting of November 3, 2011. All documents were prepared by Ms. Sue Blackman, the Library Commission secretary. In both sets of minutes, 150 word symmaries provided by myself and others were not included in the body of the minutes in accordance with the determinations issued by the Sunshine Ordinance Task Force (Determination #10054 Ray Hartz v Library Commission) and (Determination #11054 Ray Hartz v Luis Herrera, City Librarian. The meeting minutes approved at the above listed meetings are three additional violations of the ordinance. Ms. Blackman is a city employee under the direct supervision of Luis Herrera City Librarian. As her supervisor, Mr. Herrera is responsible for ensuring that Ms. Blackman performs her duties in accordance with applicable law. Mr. Herrera has either directed Ms. Blackman to ignore the task force ruling or has failed to ensure that she complies with that ruling in her preparation of the minutes submitted for approval. As a managerial employee, it is the responsibility of Mr. Herrera to ensure that all employees of the San Francisco Public Library comply with applicable laws, in this instance, the Sunshine Ordinance.

File No. <u>11098</u>	· · ·		SOTF Item No			
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<sup>\*</sup>An asterisked Item represents the cover sheet to a document that exceeds 25 pages.

The complete document is in the file.

### SUNSHINE ORDINANCE TASK FORCE



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## ORDER OF DETERMINATION March 12, 2012

DATE THE DECISION ISSUED March 7, 2012

RAY HARTZ, JR. v. LUIS HERRERA, CITY LIBRARIAN (CASE NO. 11098)

## FACTS OF THE CASE

Complainant Ray Hartz alleges that San Francisco City Librarian Luis Herrera violated the Sunshine Ordinance by falling to instruct San Francisco Library Commission Secretary Sue Blackman to include Mr. Hartz's public comment summaries of 150 words or less within the body of minutes that were approved by the San Francisco Public Library Commission during meetings held on November 17, 2011 and December 1, 2011.

#### **COMPLAINT FILED**

On December 15, 2011, Mr. Hartz filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against Mr. Herrera, alleging violation of Sunshine Ordinance Section 67.16.

## HEARING ON THE COMPLAINT

On March 7, 2012, Ray Hartz presented his case to the Task Force. Neither respondent Luis Herrera nor an authorized representative appeared at the hearing or provided any other response to Mr. Hartz's complaint.

The Library Commission approved draft minutes for its regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011. Those minutes did not include public comments summaries that were submitted by public speakers in the body of the minutes, but rather included them as attachments to the minutes. Mr. Hartz alleged that, by approving these minutes, the Library Commission disregarded the Task Force's prior findings in Sunshine Complaints 10054 and 11054 that public comment summaries provided by members of the public must be included within the body of the minutes, not as attachments.

Mr. Hartz further stated he filed his complaint against Mr. Herrera rather than the Library Commission because Mr. Herrera is the direct supervisor of Library Commission Secretary Sue Blackman, who prepares the draft minutes. He stated that, as a managerial employee, Mr. Herrera is responsible for ensuring San Francisco Public Library employees comply with the Sunshine Ordinance, including requiring Ms. Blackman to place his public comment

## SUNSHINE ORDINANCE TASK FORCE

summaries in the minutes. Mr. Hartz alleged that Mr. Herrera is either directing Ms. Blackman to ignore the Task Force's findings or failing to ensure she complies with the Sunshine Ordinance.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concludes that Sunshine Ordinance Section 67.16 provides that "any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes." The Task Force continues to interpret the phrase "included in the minutes" by using the plain meaning of the words, and finds that the public comment summaries must be placed within the body of the minutes, not as attachments. The Task Force concludes, as it has in multiple prior Orders, that the phrase "included in the minutes" does not mean "attached to the minutes."

The Task Force further observes, as it has before, that the Sunshine Ordinance vests the Task Force with authority to hear complaints regarding the Sunshine Ordinance's public meeting provisions. Sunshine Ordinance Section 67.30 requires the Task Force to "make referrals to a municipal office with enforcement power under this ordinance... whenever it concludes that any person has violated *any provisions of this ordinance*" (emphasis added). As it would be impossible for the Task Force to find a violation of the public meeting provisions of the Sunshine Ordinance without hearing complaints alleging such violations, the Ordinance plainly vests authority in the Task Force to hold such hearings and, based on the process outlined in Sunshine Ordinance Section 67.21(e), to require respondents or authorized representatives to attend such hearings.

## DECISION AND ORDER OF DETERMINATION

The Task Force finds City Librarian Luis Herrera in violation of Sunshine Ordinance Sections 67.16 for failure to include Mr. Hartz's public comment summaries in the Library Commission minutes and 67.21(e) for fallure to appear at the Task Force hearing on the complaint.

Mr. Herrera and the Library Commission shall make the changes necessary to include the public comment summaries in the body of the minutes for the Library Commission's regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011 within 5 business days of the issuance of this Order, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00 p.m. in Room 408 at City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Costa)

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Noes: 0

Absent: 3 - Cauthen, Wolfe, Chan

Sunshine Ordinance Task Force

Hope Johnson

Hope Johnson, Chair Sunshine Ordinance Task Force

THAT

David Snyder, Esq., Member, Seat #1\* Sunshine Ordinance Task Force

cc: Ray Hartz, Complainant
City Librarian Luis Herrera, Respondent
Jewelle Gomez, President, Library Commission
Jerry Threet, Deputy City Attorney

\*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.



DENNIS J. HERRERA City Attorney

## OFFICE OF THE CITY ATTORNEY

MICHAEL R. KARNS Deputy City Attorney

Direct Dial:

(415) 554-3970

Email:

michael,karns@sfgov,org

## MEMORANDUM

TO:

Sunshine Ordinance Task Force

FROM:

Michael Karns

Deputy City Attorney

DATE:

March 2, 2012

RE:

Complaint 11098 - Hartz v. Library, et al.

#### BACKGROUND

Complainant Ray Hartz ("Complainant") alleges that the San Francisco Public Library (the "Library"), as well as City Librarian Luis Herrera ("Herrera") and Library Commission ("Commission") Secretary Sue Blackman, violated the Sunshine Ordinance by failing to include in the body of the official minutes written statements of not more than 150 words supplied by members of the public during public testimony, with regard to the minutes of the August 18, 2011, October 6, 2011, and November 3, 2011 general meetings of the Commission. Mr. Hartz further alleges that this violation occurred at the November 17, 2011 meeting of the Commission when it approved the the August 18, 2011 and October 6, 2011 minutes, and at the December 1, 2011 meeting of the Commission when it approved the November 3, 2011 minutes. Mr. Hartz further alleges that the violation is that of the Library and Herrera, as the Library employs the Commission Secretary and Mr. Herrera supervises here. Mr. Hartz's complaint identifies Administrative Code Section 67.16 as having been violated. Mr. Hartz further alleges that the above violation occurred after the Task Force had referred two previous identical violation, in Complaints 10054 and 11054, to the Ethics Commission.

#### COMPLAINT

On December 15, 2011, Mr. Hartz filed a complaint with the Task Force alleging a violation of Section 67.16 of the Ordinance.

#### JURISDICTION

The Library has not contested jurisdiction to hear the complaint.

## APPLICABLE STATUTORY SECTION(S):

#### Section 67 of the San Francisco Administrative Code:

 Section 67.16 governs the inclusion in the minutes of an 150-word statement of a member of the public summarizing their public comment made during a meeting.

## APPLICABLE CASE LAW:

None.

#### ISSUES TO BE DETERMINED

#### Uncontested/Contested Facts

Complainant alleges that Commission Secretary Sue Blackman created drafts minutes of the August 18, 2011 and October 6, 2011 general meetings of the Library Commission, which

## OFFICE OF THE CITY ATTORNEY

#### MEMORANDUM

Sunshine Ordinance Task Force

DATE:

March 2, 2012

PAGE:

RE:

Complaint 11098 – Hartz v. Library, et al.

were presented to the Commission during their November 17, 2011 meeting. Complainant further alleges that Commission Secretary Sue Blackman created drafts minutes of the November 3, 2011 general meeting of the Library Commission, which were presented to the Commission during their December 1, 2011 meeting. Complainant further alleges that these draft minutes did not include in the body of the minutes several written statements of not more than 150 words that had been supplied by members of the public summarizing their public testimony during the August 18, 2011, October 6, 2011, and November 3, 2011 general meetings, in violation of §67.16 of the Ordinance. Complainant further alleges that these violations occurred at the time that the Commission approved the above minutes on November 17, 2011 and December 1, 2011. Complainant further alleges that the violation is that of the Library and Herrera, rather than that of Ms. Blackman, because the Library employs the Commission Secretary and Mr. Herrera supervises her. Complainant identifies §67.16 of the Ordinance as having been violated, Complainant further alleges that the above violations occurred after the Task Force had referred two previous substantially similar violations, in Complaints 10054 and 11054, to the Ethics Commission.

Neither the Library nor Herrera has filed any response to this complaint. In response to previous substiantially similar complaints (Complaints 10054 and 11054), the Library and Commission contested whether their actions constitute a violation of the Ordinance, According to the Library and Commission, the Ordinance requires only that the 150 word statement summarizing public comment be included in the minutes; it does not require that the summary be in the body of the minutes in the same location as the public comment which the statement summarizes. The Library further alleges that it has determined that the manner in which it includes the summary statements in its minutes comply with the ordinance and that the City Attorney has so advised them.

## QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

Does the requirement of §67.16 that the Commission include a 150 word summary of testimony in its minutes, further require the Commission to include that summary in the body of the minutes specifically under that agenda item?

Does including the 150 word summary as an addendum to the meeting minutes, with a

reference in the body of the minutes, violate §67.16?

Does the action of the Library and Commission, through the actions of Ms. Blackman, in doing so, knowing that the Task Force has previously ruled that summary must be included in the body of the minutes, constitute willful failure under §67.34?

Does Mr. Herrera's failure to instruct Ms. Blackman to follow the instructions of the previous order of the Task Force in creating the minutes in question constitute "willful failure"?

## LEGAL ISSUES/LEGAL DETERMINATIONS:

## Under Section 67.16 of the Ordinance:

Determine whether Ms. Blackman's summarizing of complainant's testimony in the body of the meeting minutes, and the inclusion of his statement as an addendum to those same minutes with a reference to the summary in the body of the minutes, violated the requirements of §67.16.

Under Section 67.34 of the Ordinance:

## OFFICE OF THE CITY ATTORNEY

#### **MEMORANDUM**

Sunshine Ordinance Task Force March 2, 2012

TO: DATE: PAGE:

RE: Complaint 11098 - Hartz v. Library, et al.

Determine whether this failure is a "willful failure" under §67.34.

Determine whether this failure can be attributed to Mr. Herrera, and/or whether his failure to instruct Ms. Blackman to follow the previous order of the Task Force is a "willful failure" under §67.34.

## CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.



Complaint #11098 Sue A. Blackman to:

Andrea. Ausberry@sfgov.org, sotf@sfgov.org, Ray Hartz Jr 03/01/2012 03:51 PM

Cc: Luis Herrera Show Details

March 1, 2012

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

Re: Complaint #11098 Ray W. Hartz v. Luis Herrera

Dear Task Force Members:

This letter is in response to Complaint #110098 ("Complaint"), which was filed by Ray Hartz on December 19, 2011 against Luis Herrera, City Librarian ("City Librarian"). For the reasons set forth below, the complaint is without merit and should be dismissed.

## The Complaint

The Complaint alleges that the City Librarian violated Section 67.16 of the Administrative Code when the Library Commission approved the meeting minutes for November 17, 2011 and December 1, 2011. The complainant states that "150 word summaries provided by myself and others were not included in the body of the minutes in accordance with the determination issued by the Sunshine Ordinance Task Force (SOTF) (Determination #10054 Ray Hartz vs. Library Commission) and (Determination #11054 Ray Hartz v. Luis Herrera, City Librarian)."

A letter of referral for enforcement of Order of Determination No. 10054 was sent to the Ethics Commission on August 15, 2011. The Ethics Commission did not calendar the item and staff's recommendation was accepted. The Ethics Commission has already stated that the Library Commission was following the advice of the City Attorney and that city departments all rely in good faith on the advice of the City Attorney to ensure that they accurately adhere to the requirements of any law. Additionally, the Ethics Commission stated that the Library Commission has added a notation in the minutes that the 150 word statements are appended at the end of the Minutes. Finally, the Ethics Commission stated that "The Sunshine Ordinance provides no mechanism to compel a public official to attend a hearing before the Task Force regarding public meeting violations."

The City Librarian and the Library Commission continue to maintain that the current practice does not violate Administrative Code Section 67.16, which sets forth the requirements for meeting minutes. Charter commissions are required to include a number of requirements in the meeting minutes, including "any person speaking during a public comment period may supply a brief written summary of the comments which shall, if no more than 150 words, be included in the minutes."

The Good Government Guide 2010-11 Edition page 134 states: "The Sunshine Ordinance allows any person who spoke during a public comment period at a meeting of a Charter board or commission to supply a brief written summary of the comments to be included in the minutes if it is 150 words or less. Admin. Code Sec. 67.16. The summary is not part of the body's official minutes, nor does the body youch for its accuracy; and the minutes may expressly so state. The summary may be included as an

attachment to the minutes. The policy body may reject the summary if it exceeds the prescribed word limit or is not an accurate summary of the speaker's public comment,"

In addition to following the Good Government Guidé, the Library Commission requested a legal opinion from the City Attorney's Office as to whether the Library Commission is legally required to include the 150 word summary in the body of the minutes. The City Attorney's Office reiterated that the Library's practice of including the 150 word summary as an attachment to the minutes and incorporating by reference the attachment in the body of the minutes to clearly direct the reader to the commenter's summary complied with the legal requirement.

#### Conclusion

Nothing in the Commission Minutes of November 17, 2011, or December 1, 2011 violates the law. To the contrary, the Commission places the 150 word statement as an addendum and mentions it in the body of the minutes in accordance with the advice of the City Attorney's Office. Since the SOTF has previously ruled on a similar issue, we see no reason why this issue should be heard again.

We hope this letter will be of assistance to the Task Force. If I can be of further assistance with respect to this complaint, please do not hesitate to contact me.

Sincerely,

Sue Blackman Custodian of Records, Library Commission Secretary San Francisco Public Library 100 Larkin Street San Francisco, CA 94102-4733 415.557.4233

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Official SFPL use only





## SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102 Tel. (415) 554-7724; Fax (415) 554-7854 http://www.sfgov.org/sunshine

## SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission	SAN FRANCISCO PUBLIC LIBRARY
Name of individual contacted at Department or Commi	ssion Luis HERRERA, CITY LIBRARIA
Alleged violation public records access Alleged violation of public meeting. Date of meeting.	ting 11/17/11 1AND 12/1/11
Sunshine Ordinance Section Section 67.16 (If known, please	。 Mi กับารเร cite specific provision(s) being violated)
Please describe alleged violation. Use additional production supporting your complaint.  PLEASE SEE ATTACHED	aper if needed. Please attach any relevant
	1
Do you want a public hearing before the Sunshine Ord Do you also want a pre-hearing conference before the	
	ess JAN FRANCISCO CA 94109
Telephone No. (415) 345-9144 E-Mail Ac	Idress RWHARTZTR@SBCGLUBAL, NET
Date 12/15/11	Kay W. Hand
I request confidentiality of my personal information.	yes 🗵 no
,	

07/31/08

INOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

#### Thursday, December 15, 2011

At a meeting of the San Francisco Public Library Commission on November 17, 2011 the commission approved minutes for the regular meeting of August 18, 2011 and the regular meeting of October 6, 2011. At a meeting of the San Francisco Public Library Commission on December 1, 2011 the commission approved minutes for the regular meeting of November 3, 2011. All documents were prepared by Ms. Sue Blackman, the Library Commission secretary. In both sets of minutes, 150 word summaries provided by myself and others were not included in the body of the minutes in accordance with the determinations issued by the Sunshine Ordinance Task Force (Determination #10054 Ray Hartz v Library Commission) and (Determination #11054 Ray Hartz v Luis Herrera, City Librarian. The meeting minutes approved at the above listed meetings are three additional violations of the ordinance. Ms. Blackman is a city employee under the direct supervision of Luis Herrera City Librarian. As her supervisor, Mr. Herrera is responsible for ensuring that Ms. Blackman performs her duties in accordance with applicable law. Mr. Herrera has either directed Ms. Blackman to ignore the task force ruling or has falled to ensure that she complies with that ruling in her preparation of the minutes submitted for approval. As a managerial employee, it is the responsibility of Mr. Herrera to ensure that all employees of the San Francisco Public Library comply with applicable laws, in this Instance, the Sunshine Ordinance.

File No	11098 '		SOTF Item No. 3  CAC Item No.			
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	AGENDA PACKET CON				••	
Sunshine C	ordinance Task Force (SOTF)		Date: D	ecember	<u>5, 2012</u>	
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Completed Completed	by: Andrea Ausberry by:	_Date	Novembe	er 27, 2012 	<u>'</u> , ·	

<sup>\*</sup>An asterisked item represents the cover sheet to a document that exceeds 25 pages.

The complete document is in the file.

#### SUNSHINE ORDINANCE TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 24
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/ITY No. (415) 554-5227

## ORDER OF DETERMINATION March 12, 2012

DATE THE DECISION ISSUED March 7, 2012

RAY HARTZ, JR. v. LUIS HERRERA, CITY LIBRARIAN (CASE NO. 11098)

## FACTS OF THE CASE

Complainant Ray Hartz alleges that San Francisco City Librarian Luis Herrera violated the Sunshine Ordinance by falling to instruct San Francisco Library Commission Secretary Sue Blackman to include Mr. Hartz's public comment summaries of 150 words or less within the body of minutes that were approved by the San Francisco Public Library Commission during meetings held on November 17, 2011 and December 1, 2011.

#### **COMPLAINT FILED**

On December 15, 2011, Mr. Hartz filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against Mr. Herrera, alleging violation of Sunshine Ordinance Section 67.16.

### HEARING ON THE COMPLAINT

On March 7, 2012, Ray Hartz presented his case to the Task Force. Neither respondent Luis Herrera nor an authorized representative appeared at the hearing or provided any other response to Mr. Hartz's complaint.

The Library Commission approved draft minutes for its regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011. Those minutes did not include public comments summaries that were submitted by public speakers in the body of the minutes, but rather included them as attachments to the minutes. Mr. Hartz alleged that, by approving these minutes, the Library Commission disregarded the Task Force's prior findings in Sunshine Complaints 10054 and 11054 that public comment summaries provided by members of the public must be included within the body of the minutes, not as attachments.

Mr. Hartz further stated he filed his complaint against Mr. Herrera rather than the Library Commission because Mr. Herrera is the direct supervisor of Library Commission Secretary Sue Blackman, who prepares the draft minutes. He stated that, as a managerial employee, Mr. Herrera is responsible for ensuring San Francisco Public Library employees comply with the Sunshine Ordinance, including requiring Ms. Blackman to place his public comment

## SUNSHINE ORDINANCE TASK FORCE

summaries in the minutes. Mr. Hartz alleged that Mr. Herrera is either directing Ms. Blackman to ignore the Task Force's findings or failing to ensure she complies with the Sunshine Ordinance.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concludes that Sunshine Ordinance Section 67.16 provides that "any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes." The Task Force continues to interpret the phrase "included in the minutes" by using the plain meaning of the words, and finds that the public comment summaries must be placed within the body of the minutes, not as attachments. The Task Force concludes, as it has in multiple prior Orders, that the phrase "included in the minutes" does not mean "attached to the minutes."

The Task Force further observes, as it has before, that the Sunshine Ordinance vests the Task Force with authority to hear complaints regarding the Sunshine Ordinance's public meeting provisions. Sunshine Ordinance Section 67.30 requires the Task Force to "make referrals to a municipal office with enforcement power under this ordinance... whenever it concludes that any person has violated *any provisions of this ordinance*" (emphasis added). As it would be impossible for the Task Force to find a violation of the public meeting provisions of the Sunshine Ordinance without hearing complaints alleging such violations; the Ordinance plainly vests authority in the Task Force to hold such hearings and, based on the process outlined in Sunshine Ordinance Section 67.21(e), to require respondents or authorized representatives to attend such hearings.

## DECISION AND ORDER OF DETERMINATION

The Task Force finds City Librarian Luis Herrera in violation of Sunshine Ordinance Sections 67.16 for failure to include Mr. Hartz's public comment summaries in the Library Commission minutes and 67.21(e) for failure to appear at the Task Force hearing on the complaint.

Mr. Herrera and the Library Commission shall make the changes necessary to include the public comment summaries in the body of the minutes for the Library Commission's regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011 within 5 business days of the Issuance of this Order, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00 p.m. in Room 408 at City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Costa)

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Noes: 0

Absent: 3 - Cauthen, Wolfe, Chan

SUNSHINE ORDINANCE TASK FORCE

Hope Johnson

Hope Johnson, Chair Sunshine Ordinance Task Force

PAR

David Snyder, Esq., Member, Seat #1\* Sunshine Ordinance Task Force

cc: Ray Hartz, Complainant

City Librarian Luis Herrera, Respondent Jewelle Gomez, President, Library Commission

Jerry Threet, Deputy City Attorney

<sup>\*</sup>Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.



DENNIS J. HERRERA City Attorney

## OFFICE OF THE CITY ATTORNEY

MICHAEL R. KARNS Deputy City Attorney

Direct Dial:

(415) 554-3970

Email:

mlchael.karns@sfgoy.org

## MEMORANDUM

TO:

Sunshine Ordinance Task Force

FROM:

Michael Karns

Deputy City Attorney

DATE:

March 2, 2012

RE:

Complaint 11098 – Hartz v. Library, et al.

#### BACKGROUND

Complainant Ray Hartz ("Complainant") alleges that the San Francisco Public Library (the "Library"), as well as City Librarian Luis Herrera ("Herrera") and Library Commission ("Commission") Secretary Sue Blackman, violated the Sunshine Ordinance by failing to include in the body of the official minutes written statements of not more than 150 words supplied by members of the public during public testimony, with regard to the minutes of the August 18, 2011, October 6, 2011, and November 3, 2011 general meetings of the Commission. Mr. Hartz further alleges that this violation occurred at the November 17, 2011 meeting of the Commission when it approved the the August 18, 2011 and October 6, 2011 minutes, and at the December 1, 2011 meeting of the Commission when it approved the November 3, 2011 minutes. Mr. Hartz further alleges that the violation is that of the Library and Herrera, as the Library employs the Commission-Secretary and Mr. Herrera supervises here. Mr. Hartz's complaint identifies Administrative Code Section 67.16 as having been violated. Mr. Hartz further alleges that the above violation occurred after the Task Force had referred two previous identical violation, in Complaints 10054 and 11054, to the Ethics Commission.

#### COMPLAINT

On December 15, 2011, Mr. Hartz filed a complaint with the Task Force alleging a violation of Section 67.16 of the Ordinance.

#### JURISDICTION

The Library has not contested jurisdiction to hear the complaint.

### APPLICABLE STATUTORY SECTION(S):

## Section 67 of the San Francisco Administrative Code:

• Section 67.16 governs the inclusion in the minutes of an 150-word statement of a member of the public summarizing their public comment made during a meeting.

#### APPLICABLE CASE LAW:

None.

## ISSUES TO BE DETERMINED

#### Uncontested/Contested Facts

Complainant alleges that Commission Secretary Sue Blackman created drafts minutes of the August 18, 2011 and October 6, 2011 general meetings of the Library Commission, which

OFFICE OF THE CITY ATTORNEY

## MEMORANDUM

TO:

Sunshine Ordinance Task Force

DAȚE:

March 2, 2012

PAGE:

RE:

Complaint 11098 - Hartz v. Library, et al.

were presented to the Commission during their November 17, 2011 meeting. Complainant further alleges that Commission Secretary Sue Blackman created drafts minutes of the November 3, 2011 general meeting of the Library Commission, which were presented to the Commission during their December 1, 2011 meeting. Complainant further alleges that these draft minutes did not include in the body of the minutes several written statements of not more than 150 words that had been supplied by members of the public summarizing their public testimony during the August 18, 2011, October 6, 2011, and November 3, 2011 general meetings, in violation of §67.16 of the Ordinance. Complainant further alleges that these violations occurred at the time that the Commission approved the above minutes on November 17, 2011 and December 1, 2011. Complainant further alleges that the violation is that of the Library and Herrera, rather than that of Ms. Blackman, because the Library employs the Commission Secretary and Mr. Herrera supervises her. Complainant identifies §67.16 of the Ordinance as having been violated. Complainant further alleges that the above violations occurred after the Task Force had referred two previous substantially similar violations, in Complaints 10054 and 11054, to the Ethics Commission.

Neither the Library nor Herrera has filed any response to this complaint. In response to previous substiantially similar complaints (Complaints 10054 and 11054), the Library and Commission contested whether their actions constitute a violation of the Ordinance. According to the Library and Commission, the Ordinance requires only that the 150 word statement summarizing public comment be included in the minutes; it does not require that the summary be in the body of the minutes in the same location as the public comment which the statement summarizes. The Library further alleges that it has determined that the manner in which it includes the summary statements in its minutes comply with the ordinance and that the City Attorney has so advised them.

### OUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

Does the requirement of §67.16 that the Commission include a 150 word summary of testimony in its minutes, further require the Commission to include that summary in the body of the minutes specifically under that agenda item?

Does including the 150 word summary as an addendum to the meeting minutes, with a

reference in the body of the minutes, violate §67.16?

Does the action of the Library and Commission, through the actions of Ms. Blackman, in doing so, knowing that the Task Force has previously ruled that summary must be included in the body of the minutes, constitute willful failure under §67.34?

Does Mr. Herrera's failure to instruct Ms. Blackman to follow the instructions of the previous order of the Task Force in creating the minutes in question constitute "willful failure"?

## LEGAL ISSUES/LEGAL DETERMINATIONS:

## Under Section 67.16 of the Ordinance:

Determine whether Ms. Blackman's summarizing of complainant's testimony in the body of the meeting minutes, and the inclusion of his statement as an addendum to those same minutes with a reference to the summary in the body of the minutes, violated the requirements of §67.16.

Under Section 67.34 of the Ordinance:

## OFFICE OF THE CITY ATTORNEY

## MEMORANDUM

TO:

Sunshine Ordinance Task Force March 2, 2012

DATE:

PAGE: RE:

Complaint 11098 - Hartz v. Library, et al.

Determine whether this failure is a "willful failure" under §67.34.
Determine whether this failure can be attributed to Mr. Herrera, and/or whether his failure to instruct Ms. Blackman to follow the previous order of the Task Force is a "willful failure" under §67.34.

## CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

Page 1 of 2 File No. 11098



Sunshine Ordinance Compliance Ray Hartz Jr to: Tom DeCaigny 05/16/2012 01:58 PM Cc: SOTF, MSW Bruce Wolfe Show Details

San Francisco Arts Commission 25 Van Ness Avenue, Suite 345 San Francisco, CA 94102 415/252-2590

Wednesday, May 16, 2012

Dear Director DeCaigny,

Please consider this an official communication with all membes of the Arts Commission and include it as such in the agenda for the next meeting.

At the Sunshine Ordinance Task Force (SOTF) Compliance and Amendments Committee meeting last night, I was truly dismayed at the behavior of and statements made by the representative of the Arts Commission. Not only was she totally unprepared and unable to answer valid questions regarding the matter at hand, an Order of Determination from the full SOTF, she seemed simply defiant regarding the order. She presented no explanation as to why the Arts Commission had not previously responded in any way to the Order, but, simply stated that the Arts Commission did not intend to comply. The Committee voted to send the matter to the full Task Force with a recommenation that it be referred to the Ethics Commission. I feel that decision was not only corrrect, but, was the only possible alternative in response to the matter

The members of the Committee tried to explain the requirements of the law, but, your representative simply responded in ways that indicated she could or would not change the response. Members also tried to explain the requirements of not only the Sunshine Ordinance, but also the Brown Act, in supporting the Order of Determination. She seemed to pay little attention to what they said, took no notes of applicable sections of the law they were referencing, and did not even stay for the conclusion of the case. She obviously had more important things to do!

I have mentioned to the full Arts Commission the failure of it and some of it's subcommittees to adhere to the requirements of the Sunshine Ordinance and the Brown Act. I have also mentioned my experience and those of others at the level of hostility to which I and other members of the public are subjected. While recent discussions have indicated the completion of necessary training and the signing of Sunshine Declarations by members of the Commission, I have serious doubts about whether members have a true understanding of the law or perhaps hold a belief that they don't have to comply. I would like to remind you and the full Arts Commission that compliance with both the Sunshine Ordinance and the Brown Act are not only a matter of law, but, also act as protection of each citizen's right to participate in governmental deliberations. Most importantly they are designed to protect the civil rights and legal rights of the public under both the Constitution of the State of California and the United States Constitution. The members of the Arts Commission have taken an oath in which they swore to support those documents and that includes all of the citizen rights that flow therefrom.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government



Fw: San Francisco Police Department comtemplates prosecution against citizen exercising Constitutional rights!

Ray Hartz Jr

to:

SOTF

05/15/2012 11:28 AM

Cc:

MSW Bruce Wolfe Show Details

Dear Ms. Ausberry,

Please include the following email chain in the documents for Case #12018 Ray Hartz v Greg Shur, Chief of Police.

Thank you.

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

---- Forwarded Message ----

From: Ray Hartz Jr <rwhartzlr@sbcglobal.net>

To: Jennifer.Dorantes@sfgov.org

.Cc: Greg.Suhr@sfgov.org; SOTF <sotf@sfgov.org>; MSW Bruce Wolfe <sotf@brucewolfe.net>; Paula Jesson <paula.jesson@sfgov.org>; Matt Dorsey <matt.dorsey@sfgov.org>; jsabatini@sfexaminer.com

Sent: Tue, May 15, 2012 11:17:45 AM

Subject: San Francisco Police Department comtemplates prosecution against citizen exercising Constitutional rights!

Good morning Lt. Dorantes,

The SFPD, and in particular your division, could have complied with the Sunshine Ordinance and the California Public Records Act (CPRA) in accordance with both laws. For some reason, the Department chose to ignore the requirements of the law and waited well beyond any acceptable response date to raise these "justifications." You forced me to file a petition with the Office of the City Attorney, in his capacity as Supervisor of Records, to get you to finally admit to the existance of additional documents and provide justification for withholding. I believe this goes to a "pattern of behavior" of the Police Department and it's leadership to retaliate against those who question City government, especially the San Francisco Police Department.

I have asked that this response be included in the file for Sunshine Ordinance Task Force case # Case #12018 Ray Hartz v Greg Suhr, Chief of Police. This case is to be heard on June 6, 2012.

I have to say that I view your statement that "Neither the District Attorney nor Court has determined that a prosecution will not be sought, and the statute of limitations for filing charges has not expired." is really nothing but a ham-handed threat that action is being considered. I will speak to this matter before the Police Commission tomorrow, May 16, 2012

You leave me no choice but to file a Police complaint against Library Commission President Jewelle Gomez for the threats she made against me following the meeting of the Commission on February 2, 2012, including, but not limited to: knowing 12 people who would "fucking" bury me, that she wanted to throw the "fucking" microphone at me, that she wanted to "garotte" me with the microphone cord, and that she grew up in the "ghetto" carrying a "straight razor." These threats were published by the San Francisco Public Library on the Library website and remained there for several weeks. The statements have been verified by independant sources and also reported in the San Francisco Examiner. I guess since the SFPD has allowed itself to be used in this way, you leave me no choice but to fight "fire with fire" as a means of self-defense.

Previously I really was not fearful about Ms. Gomez comments, but, the SFPD response in withholding documents has made me reconsider filing a complaint against Ms. Gomez and the San Francisco Public Library. Ms. Gomez made the threats and the San Francisco Public Library posted those threats on their website. Now the San Francisco Police Department is threatening a "prosecution." I AM NOW TRULY FEARFUL, FOR MY SAFETY FROM BOTH MS GOMEZ AND THE SAN FRANCISCO POLICE DEPARTMENT!

Please be aware of a Sunshine Ordinance Task Force (SOTF) Order of Determination in case #10050 RAY HARTZ v POLICE COMMISSION found:

"Judging from the testimony and evidence presented, the Task Force finds that Mr. Hartz's comments to the commission constituted criticism protected by Section 67.15(d), and that the commission abridged that criticism in violation of same."

At that meeting the then Vice-President of the Police Commission, Thomas Mazzuco, looked me in the eye and lied to my face. He told me that I was not allowed to voice my criticism, a fact that as a lawyer, a member of the California Bar, a former prosecutor, a person subject to both Sunshine training and yearly filing of a Sunshine Declaration, had to know was not true. When I challenged Mr. Mazzuco that he was violating my Constitutionally protected right to speak, he said he was "just enforcing the rules," as if "the rules" could invalidate the protections of the United States Constitution, the Constitution of the State of California, the Brown Act, and the Sunshine Ordinance. This was also in total disregard to the oath he took when joining the commission!

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

From: "Jennifer, Dorantes@sfgov.org" < Jennifer, Dorantes@sfgov.org>

To: rwhartzjr@sbcglobal.net Cc: Paula.Jesson@sfgov.org

Sent: Tue, May 15, 2012 10:30:13 AM Subject: Immediate Disclosure Request

Good Morning Mr. Hartz,

Chief Suhr asked that I respond to your email regarding the status of the Department's investigation of

case number 120098278. At this time, that investigation is open but inactive.

Regarding your public records request for a copy of the police incident report in that case, and "documents produced in relation to this complaint," the Department does have responsive investigative records in addition to the police incident report that we provided previously. However, those records are records of a complaint to and an investigation conducted by a local police agency, and are exempt from production under California Government Code Section 6254(f). While San Francisco Administrative Code Section 67.24(d) provides for the disclosure of records pertaining to a law enforcement investigation in some circumstances, those circumstances do not apply here. Neither the District Attorney nor Court has determined that a prosecution will not be sought, and the statute of limitations for filing charges has not expired. According, the Department is not disclosing these additional responsive records.

If you have any further questions please feel free to contact me.

Lieutenant Jennifer Dorantes #559 Officer in Charge, Legal Division San Francisco Police Department 850 Bryant Street, Rm 575 415-553-7929



Complaint #11098 Sue A. Blackman to: Andrea Ausberry

Andrea. Ausberry@sfgov.org, sotf@sfgov.org, Ray Hartz Jr 03/01/2012 03:51 PM

Cc: Luis Herrera Show Details

March 1, 2012

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

Re: Complaint #11098 Ray W. Hartz v. Luis Herrera

Dear Task Force Members:

This letter is in response to Complaint #110098 ("Complaint"), which was filed by Ray Hartz on December 19, 2011 against Luis Herrera, City Librarian ("City Librarian"). For the reasons set forth below, the complaint is without merit and should be dismissed.

#### The Complaint

The Complaint alleges that the City Librarian violated Section 67.16 of the Administrative Code when the Library Commission approved the meeting minutes for November 17, 2011 and December 1, 2011. The complainant states that "150 word summaries provided by myself and others were not included in the body of the minutes in accordance with the determination issued by the Sunshine Ordinance Task Force (SOTF) (Determination #10054 Ray Hartz vs. Library Commission) and (Determination #11054 Ray Hartz v. Luis Herrera, City Librarian)."

A letter of referral for enforcement of Order of Determination No. 10054 was sent to the Ethics Commission on August 15, 2011. The Ethics Commission did not calendar the item and staff's recommendation was accepted. The Ethics Commission has already stated that the Library Commission was following the advice of the City Attorney and that city departments all rely in good faith on the advice of the City Attorney to ensure that they accurately adhere to the requirements of any law. Additionally, the Ethics Commission stated that the Library Commission has added a notation in the minutes that the 150 word statements are appended at the end of the Minutes. Finally, the Ethics Commission stated that "The Sunshine Ordinance provides no mechanism to compel a public official to attend a hearing before the Task Force regarding public meeting violations."

The City Librarian and the Library Commission continue to maintain that the current practice does not violate Administrative Code Section 67.16, which sets forth the requirements for meeting minutes. Charter commissions are required to include a number of requirements in the meeting minutes, including "any person speaking during a public comment period may supply a brief written summary of the comments which shall, if no more than 150 words, be included in the minutes."

The Good Government Guide 2010-11 Edition page 134 states: "The S unshine Ordinance allows any person who spoke during a public comment period at a meeting of a Charter board or commission to supply a brief written summary of the comments to be included in the minutes if it is 150 words or less. Admin. Code Sec. 67.16. The summary is not part of the body's official minutes, nor does the body vouch for its accuracy; and the minutes may expressly so state. The summary may be included as an

attachment to the minutes. The policy body may reject the summary if it exceeds the prescribed word limit or is not an accurate summary of the speaker's public comment."

In addition to following the Good Government Guide, the Library Commission requested a legal opinion from the City Attorney's Office as to whether the Library Commission is legally required to include the 150 word summary in the body of the minutes. The City Attorney's Office reiterated that the Library's practice of including the 150 word summary as an attachment to the minutes and incorporating by reference the attachment in the body of the minutes to clearly direct the reader to the commenter's summary complied with the legal requirement.

#### Conclusion

Nothing In the Commission Minutes of November 17, 2011, or December 1, 2011 violates the law. To the contrary, the Commission places the 150 word statement as an addendum and mentions it in the body of the minutes in accordance with the advice of the City Attorney's Office. Since the SOTF has previously ruled on a similar issue, we see no reason why this issue should be heard again.

We hope this letter will be of assistance to the Task Force. If I can be of further assistance with respect to this complaint, please do not hesitate to contact me.

Sincerely,

Sue Blackman Custodian of Records, Library Commission Secretary San Francisco Public Library 100 Larkin Street San Francisco, CA 94102-4733 415,557,4233

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# SUNSHINE ORDINANCE TASK FORCE 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102 Tel. (415) 554-7724; Fax (415) 554-7854 http://www.sfgov.org/sunshine

#### SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission 5 FRANCISCO PUBLIC LIBRARY
Name of individual contacted at Department or Commission Luis Herrera, City Libraria
Alleged violation public records access Alleged violation of public meeting. Date of meeting ////////////////////////////////////
Sunshine Ordinance Section Section 67.16 Minimums (If known, please cite specific provision(s) being violated)
Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.  PLEASE SEE ATTICLES
TEASE VEE FITTENES
Do you want a public hearing before the Sunshine Ordinance Task Force? yes no no you also want a pre-hearing conference before the Complaint Committee? yes no
(Optional) B39LOAVENWORTH ST, #304 Name RAY WHARTZ, TR Address SAW FRANCISCO CA 94109
Telephone No. (415)345-9144 E-Mail Address RWHARTZTRESBCGLUBAL, XT
Date 12/15/11 Kay W. Hand
l request confidentiality of my personal information. ☐ yes ☒, no
NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS

07/31/08

NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

#### Thursday, December 15, 2011

At a meeting of the San Francisco Public Library Commission on November 17, 2011 the commission approved minutes for the regular meeting of August 18, 2011 and the regular meeting of October 6, 2011. At a meeting of the San Francisco Public Library Commission on December 1, 2011 the commission approved minutes for the regular meeting of November 3, 2011. All documents were prepared by Ms. Sue Blackman, the Library Commission secretary. In both sets of minutes, 150 word summaries provided by myself and others were not included in the body of the minutes in accordance with the determinations issued by the Sunshine Ordinance Task Force (Determination #10054 Rav Hartz v Library Commission) and (Determination #11054 Ray Hartz v Luis Herrera, City Librarian. The meeting minutes approved at the above listed meetings are three additional violations of the ordinance. Ms. Blackman is a city employee under the direct supervision of Luis Herrera City Librarian. As her supervisor, Mr. Herrera is responsible for ensuring that Ms. Blackman performs her duties in accordance with applicable law. Mr. Herrera has either directed Ms. Blackman to ignore the task force ruling or has failed to ensure that she complies with that ruling in her preparation of the minutes submitted for approval. As a managerial employee, it is the responsibility of Mr. Herrera to ensure that all employees of the San Francisco Public Library comply with applicable laws, in this instance, the Sunshine Ordinance.



Notice to Parties for April 4 Hope Johnson to: SOTF Co; Bruce Wolfe, Jerry Threet, Rick Caldeira Please respond to Hope Johnson

03/22/2012 06:33 PM

#### NOTICE TO ALL PARTIES IN SUNSHINE FILE NO. 11098:

The Sunshine Ordinance Task Force must rehear File No. 11098, Ray Hartz v. Luis Herrera. The compolaint was originally heard on March 7, 2012; however, the response provided by respondents was not made available to the Task Force prior to or during the hearing. In an effort to provide due process to all parties, the Task Force will re-hear this complaint at its regularly scheduled meeting on April 4, 2012 at 4:00pm in Room 408.

Hope Johnson, Chair Sunshine Ordinance Task Force

### Marsahr@Zclai2012 - Draft | Select Language | ▼ |

#### SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO Draft MINUTES

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

March 7, 2012 - 5:00 PM

#### Rescheduled Meeting

Members: Chair Hope Johnson, Vice-Chair Bruce Wolfe, David Snyder, Richard Knee, Sue Cauthen, Suzanne Manneh, Allyson Washburn, Jay Costa, Hanley Chan, Jackson West

1. Call to Order, Roll Call, and Agenda Changes. (00:00:01 -00:04:47)

The meeting was called to order at 5:17 p.m. Vice Chair Wolfe, Members Cauthen, Costa, and Chan were noted absent. There was a quorum. Member Costa was noted present at 5:40 p.m.

Member Knee, seconded by Member Washburn, moved to EXCUSE Vice Chair Wolfe and Member Chan.

Public comment: Jason Grant Garza spoke against the motion. Patrick Monette Shaw spoke in support of the motion.

The motion PASSED without objection.

2. Discussion of Survey of Costs of Compliance with City Sunshine Ordinance (00:24:33 - 1:27:06)

Task Force members discussed the Controller's survey of City agencies and departments, requested by Supervisor Scott Wiener, of costs of compliance with San Francisco's Sunshine Ordinance.

Member Washburn, seconded by Member Knee, moved that the Chair send a letter to Supervisor Wiener, on behalf of the Task Force, acknowledging the survey, expressing concern with the secrecy of the survey request, requesting clarification of motive and expected benefits, expressing concern with the survey instrument, offering input, and inviting Supervisor Wiener to attend a meeting to discuss the survey.

Public comment: Patrick Monette-Shaw; Thomas Picarello; Ray Hartz, Director, San Francisco Open Government; Peter Warfield, Executive Director, Library Users Association; and Hal Smith spoke in support of the motion.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen Excused: 2 - Chan, Wolfe

3. File No. 11090: Determination of jurisdiction on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format. (1:31:16 - 1:31:47)

Member Knee, seconded by Member Washburn, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

4. File No. 11090: Hearing on complaint filed by Patrick Monette-Shaw against the Controller's Office for not providing data in a requested format. (1:31:48 - 2:49:10)

Complainant Patrick Monette-Shaw provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent Monique Zmuda, Deputy Controller, provided an overview of the Controller's response and requested the Task Force dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent did not provide a rebuttal. Complainant provided a rebuttal and again requested the Task Force to find violation.

Respondent stated the data requested by complainant existed in raw form and would require many hours to generate accurately in report form. The parties agreed to work to resolve the request with alternate data.

Member Snyder, seconded by Member Washburn, moved to CONTINUE THE MATTER TO THE CALL OF THE CHAIR.

Public comment: Ray Hartz, Jr., San Francisco Open Government, asked if program used to provide information to San Francisco Chronicle columnists Matier and Ross was still available. Peter Warfield inquired as to the purpose for the postponement of the Item and for what result.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen Excused: 2 - Chan, Wolfe

RECESS

The Task Force reconvened at 8:19 p.m.

5. File No. 11095: Determination of jurisdiction on complaint filed by Arnita Bowman against the Recreation and Park Department for allegedly not providing requested documents. (00:04:48 -00:06:20)

Complainant, sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the Task Force's regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

6. File No. 11095: Hearing on complaint filed by Arnita Bowman against the Recreation and Park Department for allegedly not providing requested documents. (00:04:48 -00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

7. File No. 11096: Determination of jurisdiction on complaint filed by Arnita Bowman against the Department of Parks and Recreation for allegedly not providing requested documents and delayed response. (00:04:48 – 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

8. File No. 11096: Hearing on complaint filed by Arnita Bowman against the Department of Parks and Recreation for

allegedly not providing requested documents and delayed response. (00:04:48 - 00:06:20)

Complainant sent notice she would not be able to attend the hearing.

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

9. File No. 11097: Determination of jurisdiction on complaint filed by Charles Pitts against the Police Department for allegedly not providing requested information. (Discussion and Action) (00:06:20 – 00:08:52)

Complainant requested a continuance.

Member Washburn, seconded by Member Knee, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

10. File No. 11097: Hearing on complaint filed by Charles Pitts against the Police Department for allegedly not providing requested information. (00:06:20 - 00:08:52)

Complainant requested a continuance.

Member Washburn, seconded by Member Knee, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

11. File No. 11098: Determination of jurisdiction on complaint filed by Ray Hartz, Jr. against Luis Herrera, City Librarian, for allegedly not including a brief written summary of his comments in meeting minutes. (3:06 – 3:08)

Member Knee, seconded by Member Washburn, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

12. File No. 11098: Hearing on complaint filed by Ray Hartz, Jr. against Luis Herrera, City Librarian, for allegedly not including a brief written summary of his comments in meeting minutes. (3:08 – 4:07)

Complainant Ray Hartz, Jr. provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent was not present. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Deputy City Attorney Michael Karns responded to questions from Task Force members. Complainant provided a rebuttal and again requested the Task Force to find violation.

Member Washburn, seconded by Member Knee, moved (1) to find Luis Herrera in violation of Sunshine Ordinance Sections 67.16 and 67.21(e) for failure to include the 150-word summary of the Complainants's comments in the Library Commission meeting minutes and the Respondent's failure to appear at this hearing, and (2) refer the matter to Compliance and Amendments Committee.

Public comment: Peter Warfield, Executive Director, Library Users Association, said the Task Force should find that the Respondent committed a willful violation.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen

Excused: 2 - Chan, Wolfe

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.

#### RECESS

The Task Force reconvened at 9:25 p.m.

13. File No. 12001: Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly redacting requested speaker cards information. (4:12-4:13)

Member Knee, seconded by Member Manneh, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

14. File No. 12001: Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly redacting requested speaker cards information. (4:13 – 5:17)

Complainant Peter Warfield, Executive Director, Library Users Association, provided an overview of the complaint and requested the Task Force find violation. No speakers offered facts and evidence in support of complainant. Respondent Kate Patterson, Public Relations Director, Arts Commission, provided an overview of the Arts Commission response and requested the Task Force dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent provided a rebuttal and again requested the Task Force dismiss the complaint. Complainant provided a rebuttal and again requested the Task Force find violation.

Member Washburn, seconded by Member Manneh, moved (1) to find the Arts Commission in violation of Sunshine Ordinance Sections 67.25(a) for failure to respond in a timely manner, 67.26 for failure to keep withholding to a minimum by providing unredacted speaker cards, and 67.27 for failure to justify withholding the redacted information; and (2) to refer the matter to Compliance and Amendments Committee.

The motion PASSED by the following vote:

Ayes: 7 - Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Absent: 1 - Cauthen Excused: 2 - Chan, Wolfe

ORDERED DETERMINED and REFERRED TO COMPLIANCE AND AMENDMENTS.

15. File No. 12002: Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly routinely asking members of the public to fill out speaker cards if they wish to speak, reinforcing the impression that they are required to do so. (5:17 - 5:18)

Member Knee, seconded by Member Manneh, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

16. File No. 12002: Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly routinely asking members of the public to fill out speaker cards if they wish to speak, reinforcing the Impression that they are required to do so. (5:18 – 5:42)

Complainant Peter Warfield, Executive Director, Library Users Association, provided an overview of the complaint and requested the Task Force to find violation. No speakers offered facts and evidence in support of complainant. Respondent Kate Patterson, Public Relations Director, Arts Commission, provided an overview of the Agency's defense and requested the Task Force to dismiss the complaint. No speakers offered facts and evidence in support of respondent. A question and answer period followed. Respondent provided a rebuttal and again requested the Task Force dismiss the complaint. Complainant provided a rebuttal and again requested the Task Force find violation.

Respondent provided documentation demonstrating the Arts Commission has revised the language on its speaker cards to notify members of the public they are not required to submit speaker cards in order to speak at meetings.

#### 000038

Due to lack of a motion, the Task Force FOUND NO VIOLATION. MATTER IS CONCLUDED.

17. File No. 12003: Determination of jurisdiction on complaint filed by the Library Users Association against the Arts Commission for allegedly not allowing provisions for general public comment about the Bernal Heights Branch Library's historic multi-cultural Victor Jara Mural destruction and replacement. (5:43 – 5:44)

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

18. File No. 12003: Hearing on complaint filed by the Library Users Association against the Arts Commission for allegedly not allowing provisions for general public comment about the Bernal Heights Branch Library's historic multi-cultural Victor Jara Mural destruction and replacement. (5:43 – 5:44)

Member Knee, seconded by Member Washburn, moved to CONTINUE the matter to the regular meeting of April 4, 2012.

There were no speakers. The motion PASSED without objection.

19. General Public Comment: (00:10:07 - 00:24:32 and 1:27:07 - 1:30:53)

A member of the public expressed concerns about the Library Commission splitting off 150-word comment summaries from their minutes. Patrick Monette-Shaw expressed concerns about his complaint pending at the Ethics Commission. Peter Warfield, Executive Director, Library Users Association, thanked the Task Force for changing the Task Force meeting day to Wednesday, and expressed concerns about the Library. Jason Grant Garza expressed concerns about what he termed lack of progress in handling complaints he has filed. Thomas Picarello expressed concerns about Jason Grant Garza's complaints, and suggested that Task Force meetings commence at 5:00 p.m. Ray Hartz, Jr. expressed various concerns.

20. Administrator's Report (5:44 - 5:45)

The Administrator's Report was reviewed.

Public comment: Peter Warfield suggested that more information be listed in the compliant log.

21. Announcements, Comments, Questions, and Future Agenda Items (5:45 - 5:46)

There were none.

22, ADJOURNMENT (5:46 - 5:47)

Member Knee, seconded by Member Manneh, moved to ADJOURN.

There were no speakers. The motion PASSED without objection.

There being no further business, the Task Force adjourned at 11:00 p.m.



#### SAN FRANCISCO PUBLIC LIBRARY COMMISSION

#### Minutes of the Regular Meeting of August 18, 2011

(Approved as amended at the November 17, 2011 regular meeting).

The San Francisco Public Library Commission held a regular meeting on Thursday, August 18, 2011, in the Koret Auditorium, Main Library.

The meeting was called to order at 4:35 pm.

Commissioners present: Breyer, Gomez, Kane, Munson, Randlett, and Ono

Commissioner Nguyen was excused.

#### AGENDA ITEM NO. 1 PUBLIC COMMENT

An anonymous citizen said as part of the post-occupancy evaluation (POE) of the Main Library there was pressure to incorporate the critics into the process. He said he received a handwritten note from Charles Higueras inviting him to participate. He said they hired a professor from UC Berkeley to oversee the process and at the public hearing, she asked to tape record the meeting then instantly fell into a deep sleep. He said he waited for 30 seconds, rattled his chair, then thanked her and left. He said that was not only the first time anyone said his input would be welcome, but the last. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said the library has installed its new policy for media which treats media items the same as books and it is a terrible idea. He said this will shrink the selection for members of the public and materials will be lost. He said the library hired an outside company to do a survey on the results of the new policy.

Ray Hartz, Director San Francisco Open Government, quoted one of his favorite authors Frank Herbert who said "Any training school for free citizens must begin by teaching distrust not trust; it must teach questioning not acceptance of stock answers." He said the Library

Commission should take this under consideration when monitoring its fiduciary duties over the Friends of the Library. He said there are two more sunshine complaints going before the Sunshine Task Force next week. He said one relates to the 150 word statements in the Minutes and one that relates to a request from the City Librarian for information. (See Addendum for a summary of this comment submitted by the speaker.)

### AGENDA ITEM NO. 2 BRANCH LIBRARY IMPROVEMENT PROGRAM BUDGET TRANSFERS

Luis Herrera, City Librarian, said there is a memo in your packet explaining the requested actions on this item. He said the first is to increase the BLIP Program Reserve by \$1.089 million from the Visitacion Valley Infrastructure Fund revenue appropriated by ordinance in January 2011 that is now available to the BLIP. He said the other action is to transfer \$1.7 million from the Program Reserve to the new Bayview Branch Library Project. He said Ordinance 4-11 approved by the Board of Supervisors and signed by the Mayor in January 2011 appropriated \$2.169 million from the Visitacion Valley Infrastructure Fund (VVIF) to the public library for the Visitacion Valley Branch Library Project. He said since January, the Controller has released an additional \$77,000 in fee revenue for the project. He said a total of \$1,089 million from the VVIF is now available to the Library to fund the project. He said the Commission previously approved \$2.0 million from the Library Preservation Fund (LPF) appropriated in FY 2008-09 as an advance against receipt of VVIF revenue for the Visitacion Valley Branch Project. With appropriation and receipt of \$1.089 million from the VVIF, we are requesting that \$1.089 million of the \$2.0 million advance from the LPF be transferred to the reserve. He said approval of this request will increase the reserve from \$2.404 million to \$3.493 million. He said additionally there has been an increase in the Bayview project and he gave the history of the project and the change from the traditional design/bid/build contracting approach to a Construction Manager/General Contractor (CM/GC) for the purpose of increasing local hire. He gave additional details on the project and said the project was divided into 27 trade packages. He said the groundbreaking was wonderful and provided a hopeful spirit in the community. He said the reality is that there are increased costs for the project.

#### **Public Comment**

Willie Ratcliff said he owns Liberty Builders and he was awarded the Bayview Branch contract in November. He said the contract was rescinded before the November election and the library has to take some of the responsibility for adding \$1.7 million to the cost of the library. He said his bid was \$309,000 below the next highest bidder who does not live in the community. He said the Library Commission, DPW and Gavin Newsom actually discriminated against the businesses in the community. He said you should pay the contractor off, bring back Liberty Builders and

he guarantees that you won't have the pay an additional \$1.7 million. He said it was set up for failure.

An anonymous citizen said on November 18, 2010 you were told that this was an advance from the Library Preservation Fund. He said at that time you expected that the money wouldn't go back to the LPF because you would find some other use for that money. This seems to be the ratification of that. He said this is impossible to follow because there are many different reserves. He said there are two betrayals to the Board of Supervisors. He said this is not the accountability the public is entitled to. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said the August 15 memo from the City Librarian is very difficult to understand. He said this looks like a naked raid on the Library Preservation Fund. He said it looks like you are taking the money from the VVIF and putting it into the Bayview Branch project instead of back into the LPF. He said the Bayview Branch project was originally estimated at \$3.8 million and has now skyrocketed to just a little bit less than \$10 million more, well over triple the original cost. He said the additional nearly \$2 million you are proposing now is a very hefty percentage of the very high previous budget. He said there are lots of questions about what is really going on with the Bayview Branch.

Mr. Carpenter said he was a lifetime resident of the Bayview. He said the building of a library complements the community but the residents that reside there are being forced out economically. He said when you upgrade a community and you don't give the residents an opportunity to upgrade their standing that is what brings about gentrification. He said he is here in support of Liberty Builders and they are a legitimate contractor in the community. He said we need jobs because our businesses are our economic base.

Ray Hartz, Director San Francisco Open Government, said in 2008 he was the field election deputy in the Bayview/Hunters Point area for both the primary and general election. He said he was in charge of nine of the polling places. He said he has followed with interest the lack of relationship between City government and the African American community. He said they came to the wrong group and it is a group that basically rubber stamps what the City Librarian puts in front of it. He said none of the Commissioners are anything but puppets to Ms. Gomez. He said what you have here is a dictatorship.

#### Commission Discussion

Commissioner Munson asked for a little bit more background on the issue with Liberty Builders.

Luis Herrera, City Librarian said there was a process through the Office of Contract Management. He said Liberty Builders was awarded the

contract and the process began to finalize the bid. He said he understood that the obligation was not met by Liberty Builders so the decision was made to go to the next qualified bidder in the process. He said there are legal requirements that govern the awarding of contracts. He said he understands that the process was adhered to.

Commissioner Kane said he was fearful of this circumstance when we switched from competitive bid to this Construction Manager/General Contractor process. He said this money could go back into our Library Preservation Fund to help our long term operations so we are making a tradeoff between library hours and long term service and getting the project done. He said he would like more information on possible increases to the budget of the project.

Luis Herrera, City Librarian said that the contract management process was not intended to reduce costs but rather to maximize the opportunity for local hiring. He said we knew there would be some potential consequences to that including possible cost increases and delay. He said we are working closely with DPW to contain costs.

Lena Chen, Bond Program Manager said out of the \$1.7 million we are requesting, \$1.6 million is for construction costs and the rest is soft costs. He said originally construction costs were at \$4.5 million and currently we are at \$5.7 million.

Luis Herrera said this is approximately a 35% increase.

Lena Chen, Bond Program Manager, said we have bid out 27 different trade packages. She said the only package for which there were no bids was for landscaping. She said there are several packages we are getting ready to reward, but basically we have a bid on 26 packages.

Commissioner Kane said there seems to be a disconnect in the information coming to the Commission and he would like to know where we are in this project.

Lena Chen, Bond Program Manager, said with this increase that should take care of the construction costs for the project.

Luis Herrera, City Librarian said there are additional projects that need to be closed out that will provide additional funds to go into the reserve. He said we will need to go to the balance of the Library Preservation Fund for anticipated increases in the North Beach project. He said we are confident that we will be able to complete the BLIP project and still maintain a healthy operation budget.

Commissioner Kane asked when the project is expected to be completed.

Lena Chen, Bond Program Manager, said the project is expected to be completed the end of 2012.

Edgar Lopez, Department of Public Works, said DPW has done everything possible to maximize bidding on the project. He said some of the contractors feel that there is going to be work stoppages, and that they might not make money. He said we have gone above and beyond what we have done on any other project. He said the awards are based on low bid. He said there are controls on the contractor for delays.

Commissioner Randlett said the Commission made a choice to do smaller bids. She said it appears even though we have done that the contractors have expressed concern about work stoppages. She asked about the percentage of packages that will be done by local firms.

Lena Chen said 10 out of the 26 packages are local.

Commissioner Randlett said she is sensitive and concerned about ballooning costs, but it appears that a year ago there was a commitment made to the community that some of the work would be done by members of the community. She said she is committed that a new library be built in the Bayview area.

Commissioner Ono had a question about KCK Builders and whether they are truly a local firm.

Lena Chen, Bond Program Manager, said they have met with KCK Builders and consider them to be a local firm.

Commissioner Breyer said his perception is that \$1.7 million is due to higher construction costs. He said 10 of the bid packages are local and of the 16 remaining there may be additional local companies.

Lena Chen said we have exceeded the goal of 30% set by the HRC and have already reached 46%. She said the electrical bid came in very high. She said other bids came in high as well. She said they are allowed to negotiate with the bidders. She said several have been rebid more than once.

Commissioner Kane said we need to have a first class library as quickly as possible for the citizens of Bayview. He said he will want to have an audit at the end of the project, so that there will be lessons learned for other city projects.

President Gomez said that the legacy of oppression is quite costly and we will ultimately be proud of the process and the outcome.

<u>Motion</u>: By Commissioner Munson, seconded by Commissioner Randlett to approve the budget transfer from the Visitacion Valley Infrastructure Fee revenue of \$1,089,489 to the BLIP program reserve; and to approve the transfer of \$1,736,448 funds from the BLIP program reserve to increase the Bayview Branch Library project budget.

Action: AYES 6-0: (Breyer, Gomez, Kane, Munson, Ono and Randlett).

#### AGENDA ITEM NO. 3. BOND PROGRAM MANAGER'S REPORT

Lena Chen, Bond Program Manager, said the approved <u>budget</u> is \$188,910,119. She said the Bayview Branch is in the construction stage and continuing with award of trade packages and the North Beach Branch is in the construction document phase. She said the Ortega Branch is scheduled to open on September 10, 2011 and the Golden Gate Valley Branch is scheduled to open in October. She said 20 projects are completed and open to the public. She showed photographs and gave reports on projects in construction including: Ortega and Golden Gate Valley.

Luis Herrera, City Librarian, said they have brought in more resources for the Ortega Branch in order to meet the schedule. And there have been conversations with the contractor about costs and having to change the scope of work to insure that the project is finished on time.

Jill Bourne, Deputy City Librarian, said that the mini Ortega branch that has been serving the community during the construction will be closing on August 22 and there will be bookmobile service on Monday, Wednesday and Friday until the new branch opens on September 10.

Lena Chen, Bond Program Manager, said there was a groundbreaking for the new Bayview Branch Library on Friday, July 22. She showed photographs from the groundbreaking and construction work at the site. She said the design team is working on construction documents for the North Beach Branch Library and the public art selection process has been started. She gave a summary of public outreach and awards won for the Bernal Heights renovation and the Ingleside Branch Library. She showed photographs from the opening of the Visitacion Valley Branch Library.

#### Public Comment

An anonymous citizen said he assumes you are probably asking yourselves why the revenue bonds did not meet the goals we thought they were going to meet. He said we will soon be back to the full staffing demands that the voters approved under the Library Preservation Fund. He said those demands are going to be drawing on the same reserve that the BLIP will be needed for, as well as the interest payments. He said the holes are all too obvious, but we will save the specifics for another day. (See addendum for a 150 word statement submitted by the speaker.)

President Gomez left the meeting at 5:57 pm and Vice-President Munson took over as chair of the meeting.

Peter Warfield, Library Users Association, said North Beach is going to cost well over double what was originally planned for, Ortega will be

approximately triple and Bayview is continuing to rise and will be around triple the cost. He said those costs will come out of available operating funds in what was the Library Preservation Fund with the original mandate to be spent on the operation of the library and not on structures. He said that is no longer the mandate. He said two items had been discussed and there has been no response. He said at the Bayview Branch there was a sculpture and he wondered what the final outcome was for that sculpture. He said he had mentioned a structurally beautiful very old urinal at the Golden Gate Valley Branch and he wondered what happened.

#### Commission Discussion

There was no Commission discussion on this item.

#### AGENDA ITEM NO. 4. CITY LIBRARIANS'S REPORT

Luis Herrera, City Librarian, said he would like to introduce our new Chief of Collections and Technical Services, Laura Lent. He said she has been with the library for a number of years and we are very proud to make this appointment. He said the Commission approved the funding for the Chinatown Him Mark Lai Branch Library Exterior Maintenance Project several years ago and we are moving forward with the project.

Roberto Lombardi, Facilities Director, said the contractor for the work on the Chinatown Him Mark Lai Branch Library is on board and the building will remain completely open and accessible to the public. He said the exterior will be cleaned and the terracotta decoration will be repaired and replaced. He said they expect the work to be done by September of this year.

Kathy Lawhun, Chief of Main, gave a little background on the Library's virtual reference services. She said virtual reference started with our email service in 1996. It started with over 100 questions a month and is now up to 650 questions a month. She said in 2000 the Library started its online chat service. She said there are librarians across the world answering questions. She said in 2007 the Library started its online tutoring sessions. She said a year and a half ago we started our instant messaging services with our third floor staff. She said this is real time, text based questions and this has been updated to Ref Chatter which is both text and chat. She said it is a popup on our website. She said you can add this number to your mobile device 871.4294 and you will be able to get your answer immediately. She said the original virtual reference was the telephone and we have been doing that for over 100 years.

Lisa Vestal, Chief Curator, gave an update on <u>exhibitions</u> including American Sabor, a traveling exhibition from the Smithsonian, She said it features Latinos in U.S. Popular Music and will be in the Skylight Gallery from August 27 – November 13. She said the opening program will be held Saturday, August 27 at 3:00 pm in the Koret Auditorium with the five time Grammy award winning John Santos Sextet. She said the Library

will also be hosting "Music for a City, Music for the World 100 years with the San Francisco Symphony" in the Jewett Gallery from September 8, 2011, through January 9, 2012. She said the exhibit shows the impact of the San Francisco Symphony from its formative years to its present position as one of the Country's foremost respected orchestras. She said for more information on all exhibitions you can go to: www.sfpl.org/exhibitions.

Luis Herrera, City Librarian, said thank you to Lisa Vestal and the Exhibition team. He said these are two wonderful examples of the diverse programs that the library offers.

#### **Public Comment**

An anonymous citizen said he is happy to see that we are spending money to preserve the historical features of our branches. He said preserving the historical nature of our branches is very important. He said he is also gratified to hear that we are going to have a program on the Latino musical contribution.

Peter Warfield, Library Users Association, said he wishes Mr. Lombardi would give a report about the sanitation and the smells that one can find in the Library's bathrooms. He said the basics are not being taken care of. He said he is always glad to hear about the exhibits, but he is very concerned about a book de-emphasis. He said with respect to the virtual reference he is glad to hear that all these accommodations are being made to people who are looking for this type of access to information but he would like to see more attention paid to the actual librarians who work serving patrons in the library.

Ray Hartz, Director San Francisco Open Government, said access to the graphics is the same as the 150 word statement in that it stifles public participation. He said there is no viable reason to not have the 150 word statement in the body of the minutes, which the Brown Act requires. He said the same thing goes with the graphics. He said 90% of the people at the meeting are staff. He said very few people come to the meetings because of the attitude of the Commission.

#### Commission Discussion

Commissioner Breyer said he appreciates the Instant Chat feature the Library has initiated. He said one feature that he is not impressed with is the email reminders that go out. He said that the wording is not very good and there is a lot you could do as far as marketing and getting the word out about library programs and information. He said this is a significant way in which lots of library users will see the library. He said he would like to hear the other Commissioner's thoughts about this.

Commissioner Kane said it is a fantastic idea to promote branch activities and other programs through email notifications. He asked about late fees

and fines since we are no longer doing paper notices. He asked about the cost and usage of the tutoring.

Kathy Lawhun, Chief of Main said over the last three or four years there have been over 10,000 uses per year for the tutoring services. She said it is on the kid page and the teen page on the website. She said it is marketed to the schools and the subscription is based on the usage and right now it costs about \$160,000. She said it has gone up in the past and it has now leveled out. She said there is a monthly report that we can provide to the Commission.

Commissioner Kane said the American Sabor exhibit is fantastic and hopefully the teacher lessons will be pushed out to the schools.

Jill Bourne, Deputy City Librarian, said after the last Commission discussion on the print notices, the library has decided to phase out the print noticing more slowly so the changeover to email notices has not yet been done.

Luis Herrera, City Librarian, said the potential savings from the print notices could offset other services like the tutoring costs. He said the amazing thing about the American Sabor exhibit is the number of partners involved in the program.

Brian Bannon, Chief of Information Technology responded to Commissioner Randlett's question about the email reminders. He said staff is looking at the overall digital strategy and a variety of different areas. He said one is greater customization for users and allowing users to have a more personalized approach. He said they will be looking at a more robust marketing plan for print notices. He said they will report back at a future meeting.

Commissioner Randlett would like to see Commissioner Breyer more involved in the process.

Luis Herrera, City Librarian, said he will give some consideration to the issue of Commissioner Breyer's involvement in the process.

#### AGENDA ITEM NO. 5. THE LABOR UNION REPORT

Cathy Bremer, third floor reference librarian and the Chief Steward of the Librarian's Guild of SEIU 1021, said that cities and counties are struggling economically and because of that some entities are looking at the privatization of libraries by a company named Library Systems and Services, Inc (LSSI). She said after a brief popularity people started to look at the services being provided by this company. She said LSSI runs 35 branches of the Riverside County Library. She said there is an immediate threat to Sonoma County. She said LSSI fires everyone on staff and then brings some back at much lower wages. She said State Assemblyman Das Williams put forth a bill AB438, which would provide taxpayers the right to important information about any proposal to

privatize local free libraries. She said she would like the Commission to consider having a resolution in support of this Assembly Bill. She said she would appreciate it if this could come back to the Commission at the next meeting as an action item.

#### Public Comment

An anonymous citizen said the idea that this Library Commission will take a stand in favor of public values and against privatization is when hell will freeze over next week. He said this brings so many ideas from this meeting together. He said the idea that the public could use the graphics as a gesture of equal treatment and citizen empowerment, ignores the reality that public attendance, public comment and access to documents was a struggle for decades, and those advances are endorsed in California statutes. He said a private company claims that if you don't take their deal of private fund-raising and private influence peddling. He said you recognize that from the Friends and Foundation. He said the Commission has already endorsed privatization with its support of privatization in the Civic Center Community Benefit District.

Commissioner Randlett left the meeting at 6:48 pm.

Peter Warfield, Library Users Association said he is very glad the union representative has talked about privatization and LSSI, which has a long and unfortunate history. He said this issue is worth learning about. He said he would like to see the information as soon as possible. He said he is concerned about some things about the legislation. He said you are still losing the public in public library. He said patron privacy and information independence is one of the most important things that public libraries can offer. He said those things will be lost when a corporation takes over. He said this Commission is not anti-privatization as it has shown in several instances.

Ray Hartz, Director San Francisco Open Government, said he supports the bill and it is designed to insure that public libraries do remain public and that is important for one critical reason and that is if it becomes a private entity there is no ability or willingness to respond to the public. He said the biggest savings will be employees and if you cut down the services they can discourage people from coming to the library. He said one of things that is always being discussed is outreach. He said he has never seen the Commission encourage people to come to these meetings.

#### Commission Discussion

Commissioner Breyer thanked the labor representative for her presentation and said he would like to consider action on the item at an upcoming meeting.

Commissioner Kane said he agrees and would like to see this scheduled for an upcoming meeting.

Luis Herrera, City Librarian, said he would be working with the City Attorney's office to look at the issue.

#### AGENDA ITEM NO. 6. ADJOURNMENT

There was no public comment on this item.

<u>Motion:</u> By Commissioner Kane, seconded by Commissioner Ono to adjourn the regular meeting of August 18, 2011.

Action: AYES 5-0: (Breyer, Gomez, Munson, Nguyen and Ono).

The meeting adjourned at 6:56 pm.

Sue Blackman Commission Secretary

Explanatory documents: Copies of listed explanatory documents are available as follows: (1) from the commission secretary/custodian of records, 6<sup>th</sup> floor, Main Library; (2) in the rear of Koret Auditorium immediately prior to, and during, the meeting; and (3), to the extent possible, on the Public Library's website <a href="http://sfpl.org">http://sfpl.org</a>. Additional materials not listed as explanatory documents on this agenda, if any, that are distributed to library commissioners prior to or during the meeting in connection with any agenda item will be available to the public for inspection and copying in accordance with Government Code Section 54954.1 and Sunshine Ordinance Sections 67.9, 67.28(b), and 67.28(d).

#### **ADDENDUM**

These summary statements are provided by the speaker: Their contents are neither generated by, nor subject to approval or verification of accuracy by, the San Francisco Public Library Commission.

Item 1: General Public Comment

Anonymous Citizen: Stop the Hate & Ignorance – Don't give or accept money from the Friends & Foundation

You must be already laughing at the public before they start for the momentum of ridicule:

This intersection of many forces in society is sometimes so emblematic that it resonates with a poetic power, as if the gods themselves were manipulating events to reveal the underlying reality.

During the post-occupancy evaluation there was pressure to incorporate the critics into the process.

I got a handwritten note from Charles Higueras inviting me to participate. They hired a professor from UC Berkeley. She was a handicapped individual which I support, but they failed to provide accommodation. Her handicap was narcolepsy.

At the public hearing, she asked to tape record, then instantly fell into a deep sleep. I waited over thirty seconds, then thanked her and left.

That was not only the first time anyone said my input would be welcome, but the last.

#### Item 1: General Public Comment

Ray Hartz, Director San Francisco Open Government: In accordance with the San Francisco Sunshine Ordinance of 1999, section 67.16 Minutes, I ask the following statement be entered in the minutes of this meeting. From the above listed section: "Any person speaking during the public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the minutes."

One of my favorite authors, Frank Herbert, wrote the following:

"Any training school for free citizens must begin by teaching distrust, not trust. It must teach questioning, no acceptance of stock answers."

I believe the Library Commission should keep this thought in mind when carrying out its fiduciary responsibilities in monitoring the Friends of the San Francisco Public Library!

Item 2: Branch Library Improvement Program Budget Transfers

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

You were told at the Commission meeting of November 18, 2010, this was an advance from the Library Preservation Fund. I pointed out at that time that your administration told the Capital Planning Committee that the money would not go back because you would find other uses for that money. This seems to be ratified.

The memorandum is impossible to follow because when you use the term "return to the reserve," the BLIP, the Library Preservation Fund and the Visitacion Valley Infrastructure Fund all have reserves.

You did not ask the Board of Supervisors for \$1.2 million for Bayview. Each fund should be accountable. Transferring money, just because you need it, is a betrayal of public consideration and of library priorities committed to under the Library Preservation Fund.

This is not the accountability the public is entitled to.

Item 3: Bond Program Manager's Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

Wouldn't it be nice if the citizens had access to the graphics.

Presumably you have all used your magnifying glass, gone over that spreadsheet and know where the holes are.

You have probably asked yourself why the revenue bonds did not meet the goals we thought it was going to meet. Where is the staff impact? We are soon going to be back to the full staffing demands that the voters approved under the Library Preservation Fund.

Those demands are going to be drawing on the same reserve that the BLIP will be needed for, as well as the interest payments. Ask yourself what the impact would be if we didn't find ourselves in the midst of a recession.

The holes are all too obvious, but we will save the specifics for another day.

Item 4: City Librarian's Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

Wouldn't it be nice if the citizens had access to the graphics.

I notice that the graphic has been advanced to the next item while I am still commenting on this one.

I am always happy to see that we are maintaining the historical features of our branches. There was no mention of how much it will cost. Still it is important to preserve the historical nature of our libraries.

I am also gratified to hear that we are going to have programs on the Latino musical contribution. Assistant City Librarian Jill Bourne claims she knows how to dance. Perhaps she will come to one of these programs and we can show off our Salsa.

#### Item 5: Labor Union Report

Anonymous Citizen: Stop the Hate and Ignorance – Don't give money to, or accept money from the Friends & Foundation.

This Library Commission will take a stand in favor of public values and against privatization; and hell is going to freeze over.

The idea that the public could use the graphics as a gesture of equal treatment and citizen empowerment, ignores the reality that public attendance, public comment and access to documents was a struggle of decades, and those advances are endorsed in California statutes.

The beast rears its ugly head, indeed. A private company claims that if you don't take their deal of private fund-raising and private influence peddling, you can have no libraries at all. You recognize that from the Friends & Foundation here. Its abuse and contempt that has prevented this institution from being accountable to the public.

You endorsed the privatization in the Civic Center Community Benefit District, so their goons can haul us away.



#### SAN FRANCISCO PUBLIC LIBRARY COMMISSION

Minutes of the Regular Meeting of October 6, 2011

(Approved at the regular Commission meeting of November 17, 2011)

The San Francisco Public Library Commission held a regular meeting on Thursday, October 6, 2011, at the Visitacion Valley Branch Library.

The meeting was called to order at 4:33 pm.

Commissioners present: Brever, Gomez, Ono and Randlett

Commissioner Nguyen arrived at 4:49 pm.

Commissioner Kane arrived at 4:50 pm.

Commissioner Munson arrived at 4:52 pm.

#### AGENDA ITEM NO. 1 PUBLIC COMMENT

An anonymous citizen said the focus of public comment over the last few months has been that the Ethics Commission has found the President of the Commission guilty of conduct which "falls below the standard of decency required of all public officials." He said they also recommended her removal from office. He said he found a germane article in the New York Times with a quotation about the political system having abandoned its citizens and having lost a sense of responsibility for one another. He said the Library Commission feels that the idea that they should be constrained by ethical and moral considerations is just preposterous. He said the library has a network of self-serving interests called the "Friends of the Library" family. (See Addendum for a summary of this comment submitted by the speaker.)

Ray Hartz, Director San Francisco Open Government, said the Visitacion Branch Library is a beautiful one and gave his compliments to the librarian and those involved. He read a quote from one of his favorite authors, Frank Herbert that "politics is the art of appearing candid and completely open, while concealing as much as possible." He said he believes the Library Commission and Commission Secretary are truly

political creatures as opposed to public servants and that the City Librarian is first and foremost a true politician as is clearly shown in his repeated attempts to restrict public access to public records which related to the finances of the Friends of the Library. He said no one tries so hard to hide something, unless there is truly something to hide. He said the Library Commission has done nothing to oversee the finances of the Friends of the Library. He said millions of dollars are raised by the Friends and the Commission should be questioning how those dollars are spent. (See Addendum for a summary of this comment submitted by the speaker.)

Betty Paschal, resident of Visitacion Valley, said thank you to the Commission for opening this beautiful branch library.

Peter Warfield, Executive Director, Library Users Association, said he agrees with the previous speakers and said this is a very nice new building. He said the dysfunctional copying machines that have been installed in the branches are essentially unusable without considerable assistance. He said it has never been said that the 11 x 17 paper would not be available. He said he had to have two people assist him with doing basic copying and it still did not print properly. He challenged the Commissioners to be able to do basic copying and printing tasks. He said the Library has vandalized its oldest building on the front of the Park Branch with metallic inserts in the front of the building.

Eddie Epps, resident of Visitacion Valley, said thank you to the Commission from all the residents of Visitacion Valley for this beautiful new library. She said the library is a safe place for children and members of the community to get together and has made a big difference for Visitacion Valley.

President Gomez said that Item No. 8 approval of the Minutes of August 18, 2011, would be trailed to a later date because of a problem related to the posting of these minutes on the web.

### AGENDA ITEM NO. 2. STATEMENT OF INCOMPATIBLE ACTIVITIES (SIA)

Jill Bourne, Deputy City Librarian, said there is a <u>memo</u> and background information in the packets about the Statement of Incompatible Activities (SIA). She said all City departments, boards and commissions are required to adopt a SIA. She gave a presentation on the requirements for the SIA and a chronology of events on the preparation of the SIA. She said the recommended edits include adding key policy and procedural documents that guide library specific activities; removing specific prohibitions that restrict staff activities in areas of: authorship, publishing, instruction, and exhibits; and adding language restricting activities of "officers" per Ethics Commission. She explained the specific edits within the document itself. She said Mabel Ng, Deputy Executive Director, Ethics Commission, is available to answer any questions from the Commission.

#### Public Comment

An anonymous citizen said on January 15, 2004 the Library Commission approved a SIA. He said he attended the Ethics Commission meeting on May 9, 2011 and was shocked to learn that the library staff was requesting an amendment to the SIA. He said the issue had not been before the Library Commission and since he brought that to the Ethics Commission's attention, Jill Bourne told the Ethics Commission that the 2004 policy had insufficient input from the staff and too much from the public. He said many issues, including a private digitization project, have been concealed and he said he was shocked that the Library Commission has been bypassed. (See Addendum for a summary of this comment submitted by the speaker.)

Ray Hartz, Director, Director San Francisco Open Government, said it is interesting to note that all of the Commissioners have shown up for this meeting. He said the Commission should ask the representative of the Ethics Commission about the letter they had sent to the Mayor asking that the President of the Library Commission be removed. He said the Sunshine Ordinance Task Force has found the Library Commission and the City Librarian in violation of the Sunshine Ordinance.

Andrea Grimes, Special Collections Librarian and SEIU officer, said the 2004 document was not a good document. She said there was very little input from the staff at that time. She said the Library Administration has worked carefully to insure that the library staff has been included in the preparation of this document. She said she is confident that this is a good document that will support staff in the work that they do for the public.

Peter Warfield, Library Users Association, said he would request the Commission not take action on this item today especially since the Deputy City Librarian said there is no urgency on this. He said the initial packet he received was a mess. He said there were multiple versions and none were labeled so it was very confusing.

#### Commission Discussion

Commissioner Munson said he did have similar issues with the attachments as did Mr. Warfield and he would like to see this item discussed today but that the Commission not take action at this meeting. He said some of the earlier drafts were too rigid. He said staff should be commended for taking this on.

Commissioner Breyer said he wanted to specifically know about what applies to the Commissioners and the administrative staff.

Mabel Ng, Deputy Executive Director Ethics Commission, said Commissioners can ask the Ethics Commission in advance to rule on certain types of activities. She said they would specifically like to know what type of compensation is received and the type of vendor or contractor with the City. She said for staff an advance written determination would be from the City Librarian. She said for the City Librarian, it would be the appointing authority and for the Commission it would be the appointing authority, the Commission itself or the Ethics Commission. She said the Ethics Commission wanted to make sure there was no undue pressure from the Library Commissioners on the library staff.

Commissioner Randlett said she would like to support the recommendations by the Ethics Commission.

Luis Herrera, City Librarian, said he would like language drafted on the publication authorship issues as well as any other issue the Commission is concerned with.

President Gomez said we should give specific concerns to Jill Bourne, Deputy City Librarian who can then work with the Ethics Commission to draft specific language.

Commissioner Kane said the Commission does not approve specific contracts and the City Charter precludes Commissioners from undue influence

Commissioner Breyer said he was curious about the types of examples of conflicts.

President Gomez said this item would be brought back to the Commission for further discussion.

## AGENDA ITEM NO. 3. BRANCH LIBRARY IMPROVEMENT PROGRAM (BLIP) BUDGET TRANSFERS TO BLIP PROGRAM RESERVE AND PROGRAM MANAGEMENT BUDGET

Luis Herrera, City Librarian, said there is a <u>memo</u> in the packets that explains the requested transfers. He said the first is to increase the BLIP Program Reserve by a total of \$717,692 as a result of closing out the Richmond and Ingleside projects and decreasing the BLIP Bond Financing budget allocation and the second is to transfer \$795,250 from the Program Reserve to the Program Reserve to the BLIP Program Management budget.

Maureen Singleton, Chief Financial Officer, responded to questions from Commissioner Randlett and explained that the Richmond and Ingleside project closeouts were additional money in the budget after the projects were complete. She said the Richmond reduction is \$255,813, the Ingleside reduction is \$103,377 and the BLIP Bond Financing budget reduction is \$358,502 for a total of \$717,692 to be transferred to the BLIP Program Reserve. She said additionally they are requesting a transfer of \$795,250 to the BLIP Program Management budget from the Program Reserve. She said the Department of Public Works (DPW) provides the

BLIP Program management services for the Library. She explained the current and projected BLIP Program Management Costs. She said the proposed action is to increase the Program Management budget by \$795,250, which would cover the costs through 2012, when the Bayview Branch Library is anticipated to be complete. She gave the breakdown of the BLIP Program Management Costs. She said there has been a downward trend for each year as the projects have been completed. She outlined the line items for the BLIP budget transfers.

#### **Public Comment**

An anonymous citizen said the Commission recently approved transfers in August. He said there was no mention at that time about these transfers. He said we are told that the bond program management was funded through the end of 2012 and now we need three quarters of a Million for the same period. He said that if the library suddenly got three quarters of a Million dollars it seems we could have found some public services for that money. He said if you have come to the end of the program management that should be where we are saving money, not where we are increasing it. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said there are a great number of questions that seem not to be answered by the memo. He said he wondered why we are just now hearing about savings from the Richmond Branch, which opened a number of years ago and Ingleside as well. He said there is not a very good explanation for the numbers coming in and going out. He said the management costs are not delineated very clearly. He said the library could not afford \$30,000 for an alternative space while the Park Branch was closed and now there is additional revenue to be found.

Ray Hartz, Director of San Francisco Open Government, said he cannot tell whether the information provided is correct or not and whether there is enough information for the Commission to take action. He said he questioned the amount of \$400,000 a year for a program manager. He said this program has gone over budget and over time. He said he doesn't understand what is going on and he is sure the Commission doesn't either.

#### Commission Discussion

Maureen Singleton responded to a question regarding the Bond Program Manager's salary and said the salary is approximately \$130,000 with fringe benefit costs and overhead.

Commissioner Kane asked to see more detail on the amount.

Commissioner Randlett said she thought the information presented needed to have a little more detail than what has been presented.

Commissioner Kane said there has been a history of issues regarding soft costs. He said with only two projects going forward he is concerned about the amount for the soft costs.

Commissioner Randlett said every single renovation has different issues. She said it is more important to have transparency about what the figures are. She said she needs clarification as to what is being presented.

Luis Herrera, City Librarian, said there are a lot of variables that go into the cost of the BLIP. He said no one would have anticipated how long the program would take to complete. He said not too long ago there was a significant deficit and we were able to find additional resources. He said there have been issues on soft costs versus hard costs. He said what we are talking about now are indirect costs that we have no control over. He said that is the cost of doing business and we work closely with DPW to control costs.

Commissioner Kane said this is really funding the program management budget.

Maureen Singleton, Chief Financial Officer, said besides the two projects to complete there are closeouts of other projects that need to be taken care of.

Commissioner Randlett said there is also a delay in some of the close outs because there are State grants involved and the State audits have not been complete.

Commissioner Kane would like to know the construction budget for the Bayview Branch.

Lena Chen, Bond Program Manager, said the last budget for the Bayview project was \$13.5 million. She said the construction piece totals just over \$8.7 million.

Luis Herrera, City Librarian, said there are some DPW costs included within each project budget.

Jill Bourne, Deputy City Librarian, said the amount being discussed today is for administrative activities.

Commissioner Kane would like to know at another meeting exactly what the DPW costs are with this program.

Luis Herrera, City Librarian, said he urges the Commission to take action on this item today. He said there will be additional costs with the entire BLIP program.

Edgar Lopez, Deputy Manager with DPW, said the program management costs are not included in the soft costs. He said there is still a lot of work

to be done on the projects. He said they can come back with additional information if that will be helpful to the Commission.

Commissioner Munson said it would be helpful to receive more details.

Maureen Singleton said the amount requested would take the program through 2012. She said there is no money available now. This money is needed to support the program.

Commissioner Randlett said she was concerned about the need for the immediacy of the transfer.

President Gomez said this reserve was explicitly created for just this sort of thing.

Commissioner Munson asked if there could be an amount for a shorter period of time.

Motion: By Commissioner Kane, seconded by Commissioner Munson to approve the <u>budget transfer</u> from Richmond, Ingleside and the Bond Financing Cost budgets of \$717,692 to the BLIP program reserve and to approve the transfer of \$477,153 funds from the BLIP Program Reserve to increase the BLIP Program Management budget through June 30, 2012.

<u>Action:</u> AYES 7-0: (Breyer, Gomez, Kane, Munson, Nguyen, Ono, and Randlett).

#### AGENDA ITEM NO. 4 BOND PROGRAM MANAGER'S REPORT

Lena Chen, Bond Program Manager, said the approved <u>budget</u> is \$188,910,119. She said the North Beach Branch is in the construction document phase. She said the Golden Gate Valley Branch is <u>scheduled</u> to open on October 15, and the Bayview Branch is in construction. She said after next week there will be 22 branches complete and open. She showed photographs and gave <u>reports on projects</u> in <u>construction</u> including: Golden Gate Valley and Bayview. She said the design team for the North Beach Branch Library has just completed 50% construction documents and she showed some of the designs. She showed slides from the opening of the Ortega Branch Library.

Roberto Lombardi, Facilities Director, gave an update on post-BLIP follow up for the Richmond, Potrero, and Park Branches. He said there were a few leak problems with the Richmond Branch, which have now been corrected and a few HVAC issues which they are still working to correct. He said at the Potrero Branch there were some issues with waterproofing one of the walls so the branch was closed for a few days to correct that. He said there was an issue with the spacing between buildings at the Park Branch which caused a security problem so they have been working with the neighbor and are working on correcting the problem.

#### **Public Comment**

An anonymous citizen said he is not sure it is such an occasion for completing 22 branches when it is so far behind schedule and that delay has caused enormous problems. He said he is sure you count your blessings because of the collapse of the economy, because if the economy had not collapsed, the BLIP certainly would have had egregious cost overruns in good times. He said he did go to the Ortega opening and it was a gorgeous day and many young people were excited about the opening of the playground at the same time. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said the Ortega opening was quite festive and he is looking forward to the Golden Gate Valley Branch Library opening. He said apparently the beautiful sculptural urinal was not saved at the Golden Gate Valley Branch. He said the Park Branch Library façade as an historic building should not have been touched and certainly after all the discussion that took place at the Historic Preservation Commission about the branch. He said it was not a good idea that this was done without any public discussion.

Ray Hartz, Director of San Francisco Open Government, said since he has been coming to these meetings the BLIP program has been a constant concern to him. He said it seems like staff always comes to the Commission at the last minute with requests for budget transfers and says they have to have the money today or everything will stop.

Mindy Linetzky, Branch Library Improvement Program Administrator, said there was a wonderful article on the front page of the San Francisco Chronicle about the Branch Library Improvement Program and how it has flourished and how the libraries are doing a wonderful job. She said she has worked on the program for 9 ½ years and now she is only doing 50% time and will be off the program by the end of the year. She said the Chronicle article was sort of the best present she could get.

#### Commission Discussion

Commissioner Kane thanked Mindy Linetzky for her incredible work over 9 years.

Commissioner Randlett said that independent journalists clearly did their homework and found that the program was successful and that says a lot. She said she appreciates the public comment and she asked that members of the public please consider that Commissioners do listen to what the public has to say and she hopes there will be some level of decorum in the meetings.

President Gomez thanked Commissioner Randlett for her insightful comments.

Commissioner Munson there has been very negative comments about how long the BLIP program has taken. He said we have 21 really great completed branches. He said we are taking advantage of opportunities and making the branches better. He said the library system is very healthy. He said we would all appreciate a civil atmosphere.

Commissioner Nguyen left the meeting at 6:45 pm.

# AGENDA ITEM NO. 5 GENERAL STATEMENT ON PRIVATIZATION OF LIBRARIES

Luis Herrera, City Librarian, said a couple of meetings ago the labor group brought to your attention information regarding Assembly Bill 328. The Bill was discussed at the next Commission meeting and the Commission requested that a general on the <u>Privatization of Public Library Systems</u> be brought back to the Commission for discussion and action.

#### **Public Comment**

An anonymous citizen said the members of the public have always been a force for respect and civility and demanded equal treatment and not gotten it. He said if you want to change that, the ball is in your court. He said Assembly Bill 438 was sent to the Governor on September 22. He said his understanding is that it is still unsigned and unvetoed, or it becomes law without signature. He said the Board of Supervisors had this item on its agenda but they continued an endorsement of this bill. He said he heartily endorses this statement. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said he certainly aims for civility and he appreciates some of the actions by the Commission at this meeting. He said the Statement on Privatization came out of a request for the Commission to endorse Assembly Bill 328, but he does not see any reference to that in this statement. He said he would support the Commission approving this Statement but would like to see support for the Assembly Bill as well.

Ray Hartz, Director San Francisco Open Government, said one of his favorite authors, Frank Herbert, wrote the following: "Politics is the art of appearing candid and completely open, while concealing as much as possible." He said the statement before the Commission says that they affirm the independence, freedom and effectiveness of the American public library. He said this sounds good, but unfortunately it does not hold true when a citizen wants to access public regards, he said then the word "freedom" is conveniently disregarded. He said this is especially true when it relates to the Friends of the Library and how their money is raised and expended. He said if he were the City Librarian, he would not want anyone looking at the annual City Librarians Discretionary Fund in which the Friends provide him amounts in excess of \$35,000 per year. He said if someone respects his right to free speech then he would return the

favor, but he simply gets a body that looks the other way and denies his civil rights. (See Addendum for a summary of this comment submitted by the speaker.)

Motion: By Commissioner Kane, seconded by Commissioner Ono to approve the following Statement on Privatization of Public Library Services: American public libraries are a public good – a common resource available to all, funded by public dollars and governed by local residents. They are an essential public service and should remain directly accountable to the public they serve. Maintaining the control and oversight of operations is critical to preserve a strong and viable library system. In light of the recent and growing trend of local municipalities considering the privatization of library services, the San Francisco Public Library Commission wishes to affirm its commitment to a free and public library system. Privatization threatens the loss of local community control of the library, its services and expenditures of tax dollars. As members of the San Francisco Public Library Commission we are dedicated to the life of the public commons, reject the privatization of public libraries and uphold and affirm the independence, freedom and effectiveness of the American public library.

Action: AYES 6-0: (Breyer, Gomez, Kane, Munson, Ono, and Randlett).

#### AGENDA ITEM NO. 6. CITY LIBRARIAN'S REPORT

Luis Herrera, City Librarian, said Alice Chan, the Visitacion Valley Branch Manager will give a brief overview of this wonderful community and the services offered at the library.

Alice Chan, Visitacion Valley Branch Manager, said there are about 41,000 residents in the Visitacion Valley community. She said 57% of the population is Asian, 21% Latino Hispanic, 16% Caucasian and 10% African American and only 31% only speak English at home. She said the new library opened on July 30, 2011 with a wonderful opening party. She said the branch is open six days a week Monday through Saturday with an average of 630 visitors per day. She said the staff is multilingual and has a multilingual collection. She said the branch has 17 public computers. She said the community room is very well used by many of the community organizations. She said circulation to date as gone up 54% compared to the circulation the same time last year. She said the library holds new programming including multilingual story times and has developed strong partnerships with community organizations and schools. She said the library is here to serve the community and they receive a lot of support from the community.

Luis Herrera, City Librarian, said the Bernal Heights Branch Library Art Project has been presented to the Visual Arts Committee and the Arts Commission with suggestions for modifications and it is now making its way back to the Visual Arts Committee for further review. He said they are looking at a timeline of executing the project next spring. He said there is a <u>letter</u> in the packets from the Executive Director of the Ethics

Commission, John St. Croix, dismissing the matter relating to the 150-word statements in the minutes.

#### **Public Comment**

An anonymous citizen said the credit and thanks for this new library belongs to the Visitacion Valley neighborhood itself. He said at every juncture this neighborhood resisted being short changed for a library here and finally they succeeded in getting a new building. He said the statement that the Ethics Commission has dismissed the complaint is not accurate and only the Executive Director has done so. He said both the Civil Grand Jury and the Board of Supervisors have both said that is not adequate and there should be hearings before the full Ethics Commission. He said the Executive Director did say that the Ethics Commission could have put this on their agenda and they didn't, but he said he does not think that is adequate. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said the previous speaker has pointed out some very significant aspects related to the report. He said there was a long process in which this neighborhood fought to get an adequate library which has had a very good outcome. He said the Ethics Commission has only once considered a referral from the Sunshine Task Force which involved your President shouting down a member of the public. He said the Ethics Commission recommended that that Commissioner be sacked. He said the Ethics Commission has been faulted for not hearing referrals from the Sunshine Task Force. He said the Art Commission has not seriously taken up consideration on the Bernal Heights Branch Library art project.

Ray Hartz, Director San Francisco Open Government, said one of his favorite authors, Frank Herbert, wrote the following: "Politics is the art of appearing candid and completely open, while concealing as much as possible." He said Mr. Herrera's selective presentation of documents shows again his primary focus as a truly political creature. He includes letters from the Ethics Commission, dismissing a complaint while excluding any documentation related to the two findings by the Sunshine Ordinance Task Force which found the defendants in violation of the Ordinance. He said the letter from the Ethics Commission is simply a proforma dismissal by their Executive Director. He said the Civil Grand Jury report found the Ethics Commission had dismissed every case sent them. He said he has tried to exercise his rights. He said the Commission ignores his civil rights and the rights of others. (See Addendum for a summary of this comment submitted by the speaker.)

#### Commission Discussion

Commissioner Breyer asked about the change in printers in the library.

Luis Herrera, City Librarian, said there is a new contract for printers with a lot of new equipment and like any new initiative it will take a considerable amount of time to roll out.

Kathy Lawhun, Chief of Main, said before the printers were installed 200 people were trained on them. She said we now have technicians going around to each branch to further train staff.

Jill Bourne, Deputy City Librarian, said there is a learning curve for the new equipment.

Commissioner Kane said he is interested in what issues if any there are at the new branch.

Linda Brooks-Burton, South East District Manager, said that Alice Chan the Visitacion Valley Branch Manager is doing a wonderful job and doing a lot of outreach to the community.

Luis Herrera, City Librarian, said there are some minor punch list items that need to be worked out for the branch.

# AGENDA ITEM NO. 7 APPROVAL OF THE MINUTES OF JULY 21, 2011

#### Public Comment

An anonymous citizen said he hopes the Commission remembers that there has been public comment on these minutes before on September 1. He said it would have been more satisfactory if your secretary had explained this but Commissioner Kane had continued these minutes so changes could be made. He said not a single change was made. He said all of the flaws are still there. He said the unfavorable comments were buried time after time. He said on page 4 Mr. Hartz never said the mural was sexist and the minutes are putting words in his mouth. He said comments from Commissioner Nguyen on page 12 do not include his comment about an illegal meeting. He said his comments on page 11 were not reported accurately. And his comments in general public comment about your failure to clean your own house have been ignored. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said he would like to postpone the approval of the minutes because he went to the library today and had problems watching the DVD because it would stop and start again. He said it was not possible to do a thorough review. He said these minutes have a number of problems regarding several very important issues. He said on page 1 the anonymous citizen's comments were not complete. He said his comments included that it was important to report that Sue Cauthen's comments had been denied during public comment. He said Mr. Hartz's comments regarding the Bay Area Reporter were not reported

accurately. He said his remarks about the Bernal Artwork were not complete.

Ray Hartz, Director San Francisco Open Government, said one of his favorite authors, Frank Herbert, wrote the following "Politics is the art of appearing candid and completely open, while concealing as much as possible." He said approval of these minutes in their current form is an additional violation of prior rulings of the Sunshine Ordinance Task Force (SOTF). He said the SOTF is by law the body which decides what the Ordinance means. He said he can think of no other description of the City Librarian and Commission's conduct as cowardly. He said to evade the responsibilities under law and then to send the Commission Secretary to answer for your decisions is nothing short of cowardice. He said when someone doesn't take the effort to obey the law and the person who has pressed these allegations they are taken to task for being uncivil. He said the Constitution guarantees his right to free speech. He said we have laws that are not followed. (See Addendum for a summary of this comment submitted by the speaker.)

<u>Motion:</u> By Commissioner Kane, seconded by Commissioner Munson to approve the <u>Minutes of July 21, 2011</u>.

Action: AYES 6-0: (Breyer, Gomez, Kane, Munson, Ono, and Randlett).

# AGENDA ITEM NO. 8 APPROVAL OF THE MINUTES OF AUGUST 18, 2011

These Minutes have been trailed to the next meeting.

#### AGENDA ITEM NO. 9. ADJOURNMENT

#### **Public Comment**

An anonymous citizen said he would like to recommend that the Commission adjourn in honor of the passing of Edeltraut Raith a career librarian who died on July 30, 2011 at the age of 92. He said he remembers her from the late 70's and early 80's when she was involved with some of the controversies surrounding the Children's Librarian and he does not remember when she retired. He said she was one of those people who gave her entire working life to this library.

Peter Warfield, Library Users Association, said he would second the anonymous citizen's recommendation to adjourn in honor of Edeltraut Raith. He said once again this meeting will be adjourning without discussing new business and that should be included on your agenda.

<u>Motion</u>: By Commissioner Munson, seconded by Commissioner Kane to adjourn the regular meeting of October 6, 2011.

Action: AYES 6-0: (Breyer, Gomez, Kane, Munson, Ono and Randlett).

The meeting adjourned at 7:30 pm.

Sue Blackman Commission Secretary

Explanatory documents: Copies of listed explanatory documents are available as follows: (1) from the commission secretary/custodian of records, 6<sup>th</sup> floor, Main Library; (2) in the rear of Koret Auditorium immediately prior to, and during, the meeting; and (3), to the extent possible, on the Public Library's website <a href="http://sfpl.org">http://sfpl.org</a>. Additional materials not listed as explanatory documents on this agenda, if any, that are distributed to library commissioners prior to or during the meeting in connection with any agenda item will be available to the public for inspection and copying in accordance with Government Code Section 54954.1 and Sunshine Ordinance Sections 67.9, 67.28(b), and 67.28(d).

#### **ADDENDUM**

These summary statements are provided by the speaker: Their contents are neither generated by, nor subject to approval or verification of accuracy by, the San Francisco Public Library Commission.

#### Item 1: General Public Comment

Anonymous Citizen: Stop the Hate & Ignorance – Don't give or accept money from the Friends & Foundation

The Ethics Commission found your president guilty of conduct "below the standard of decency" and recommended her removal from office.

A germane NY Times article describing the world-wide contempt for the political class contained the quotation, "The political system has abandoned its citizens. We have lost a sense of responsibility for one another."

The Library Commission feels that the idea that they should be constrained by ethical and moral considerations is just preposterous and the lies are incredible. You will claim that water doesn't run downhill, then laugh at our powerlessness to claim the truth.

As far as you are concerned, you are only dispossessing the dispossessed, but it is done to the entire society.

The reason for this dishonesty is the network of self-serving interests you call the "Friend of the Library" Family.

The Visitacion Valley Neighborhood knows it.

Ray Hartz, Director San Francisco Open Government: One of my favorite authors, Frank Herbert, wrote the following: "Politics is the art of appearing candid and completely open, while concealing as much as possible." I believe the members of the Library Commission and its Secretary, Sue Blackman, are truly political creatures as opposed to public servants. I also believe that City Librarian, Luis Herrera, is first and foremost a true politician in that his overall actions are those of someone "appearing candid and completely open, while concealing as much as possible.: This is clearly shown, first and foremost, in his repeated attempts to restrict public access to public records which relate to the finances of the Friends of the San Francisco Public Library. No one tries so hard to hide something unless there is truly something to hide!

### Item 2: Statement of Incompatible Activities (SIA)

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

While informing an Ethics Commission meeting of your malfeasance, your library administration appeared to request changes to its Incompatible Activities policy never approved by you.

On July 15, 2004, this Commission approved a policy that was never rescinded, yet that policy is not listed with your other policies, and the version before the Ethics Commission is on the City Librarian's web page.

The Assistant City Librarian explained both that the 2004 policy had insufficient input from the Library Staff and too much from the public, apparently not exclusive enough, and also that the present Library Commissioners are all new.

Since I was there, the Assistant City Librarian was obliged to tell the Ethics Commission that it would come before you.

Many issues, including a private digitization project, have been concealed and I am shocked that the Library Commission has been bypassed.

# Item 3: Branch Library Improvement Program (BLIP) Budget Transfers to BLIP Program Reserve and Program Management Budget

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

Would I be able to make sense of this if I had access to the graphics? Apparently, the Administration can't.

It would have been interesting to explain the recent transfers from the Visitacion Valley Infrastructure Fund here in Visitacion Valley.

We are told that management was funded through the end of 2012, and now we need three-quarters of a Million for the same period.

One would assume that if we suddenly discovered 3/4 of \$Million that we didn't know we had as recently as six weeks ago, we could find public services for that money.

By the presentation's own terms, we are putting money into management we thought was funded through the end of 2012. As we come to the end of the program, management should be where we are saving money, not where we are increasing it.

### Item 4: Bond Program Manager's Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

I think I can be brief. I don't think it is such an occasion for completing 22 branches when it is so far behind schedule and that delay has caused enormous problems. I am sure you remind yourselves constantly of what a blessing the collapse of the economy has been, because if the economy had not collapsed, the BLIP certainly would have with the egregious cost overruns in good times. There is a saying about dark clouds having silver linings.

I finally saw myself in one of the crowd shots. Not as big of a thrill as I thought it would be. Perhaps when I was younger.

I was at the Ortega opening. It was a gorgeous day and many young people were excited about the opening of the playground at the same time.

#### Item 5: General Statement on Privatization of Libraries

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

Speaking for myself and the members of the public who have attended this meeting over many years, we have always been a force for respect and civility and

demanded equal treatment and not gotten it. If you want to change that, the ball is in your court.

Since your City Librarian has not given you any background let me do so. Assembly Bill 438 was sent to the Governor on September 22, and my understanding is that he has 30 days to either sign or veto it, or it becomes law without signature.

The Supervisors have continued an endorsement of this bill.

I detect the hand of the Librarian's Guild in the phrase "the life of the public commons" in recognition that democracy depends on a shared commons and the library belongs not to the philanthropists, but to us all.

Ray Hartz, Director of San Francisco Open Government: One of my favorite authors, Frank Herbert, wrote the following: "Politics is the art of appearing candid and completely open, while concealing as much as possible." In this draft statement, the Library Commission says that they "affirm the independence, freedom and effectiveness of the American public library." Sounds good but, unfortunately it does not hold true when a citizen of the City and County of San Francisco wants to access public records. There the word "freedom" is conveniently disregarded. This is especially true if anyone attempts to understand the relationship between the Library and the Friends of the Library. In particular, how millions of dollars are raised each year and how those funds are expended. And, I guess, if I were the City Librarian, I would not want anyone looking at the annual City Librarians Discretionary Fund, in which the Friends provide him amounts in excess of \$35,000 per year.

### Item 6: City Librarian's Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends & Foundation.

I don't have time to go through the entire history, but the credit for this new branch belongs to the neighborhood itself. At every juncture the neighbors resisted being shortchanged on this branch and finally forced the construction of the full-scale project.

The statewide bond had scenarios for funding levels that put Visitacion Valley at the end, and still the administration tried to save money here and the neighborhood resisted strenuously.

You claim that the Ethics Commission has dismissed the complaint against you, when in fact only the Executive Director has done so. Both the Civil Grand Jury and the Board of Supervisors have both gone on record as stating that is inadequate and there should be hearings before the full Ethics Commission. The fine print is that dismissal was endorsed by omission, but that is clearly insufficient.

Ray Hartz, Director San Francisco Open Government: One of my favorite authors, Frank Herbert, wrote the following: "Politics is the art of appearing candid and completely open, while concealing as much as possible." The City Librarian's Report, particularly Mr. Herrera's selective presentation of documentation, shows again his primary focus as a truly political creature. He includes letters from the Ethics Commission, dismissing a complaint while excluding any mention, let alone documentation, related to two findings by the Sunshine Ordinance Task Force: #10054 against the Library Commission and #11054 against the City Librarian. Both of these decisions found the defendants in violation of the Sunshine Ordinance. The letters presented from the Ethics Commission is simply a pro forma dismissal by their Executive Director. The recent Civil Grand Jury report found the Ethics Commission had dismissed every case sent them, stating: "None of these cases were ever heard at an open hearing before the Ethics Commission."

### Item 7: Approval of the Minutes (July 21, 2011)

Anonymous Citizen: Stop the Hate and Ignorance – Don't give money to, or accept money from the Friends & Foundation.

I hope you are having a moment of déjà vu. We made public comment on these minutes on September 1. It would have been more satisfactory if your secretary had explained this, but Commissioner Kane continued these minutes so that changes could be made. Not a single change was made. All of the flaws that we pointed out at that time are still there.

I can go through them again so you can ignore me again.

Mr. Hartz on Page 4 never said the mural was sexist and you are putting words in his mouth.

Page 12 references a question from Commissioner Nguyen where he admitted an illegal meeting and that has been ignored.

My comments in general public comment about your failure to clean your own house: All are ignored for the second time around – déjà vu.

Ray Hartz, Director San Francisco Open Government: One of my favorite authors, Frank Herbert, wrote the following: "Politics is the art of appearing candid and completely open, while concealing as much as possible." Approval of these minutes, in their current form is an additional violation of prior rulings of the Sunshine Ordinance Task Force #10054 and #11054, finding that 150 word summaries must be included in the body of the minutes. The SOTF is, by law, the body which decides what the Ordinance means. I can honestly think of no other description of the Library Commission and the City Librarians behaviors than to describe them as cowardly. To evade your responsibilities under law and then send the Commission Secretary to answer for your decisions is nothing short of cowardice. It is simply a device being used to evade your responsibilities under the law. If you can't win a fair fight, you simply chose to not fight fairly.

### Item 9: Adjournment

Anonymous Citizen: I would like to recommend that we adjourn in honor of one of our career librarians, Edeltraut Raith. She actually passed away on July 30, but her obituary did not appear until September 16. She was born in 1919 and was 92 when she passed away. I remember her from the late 70's and early 80's when she was involved in the Children's Department controversies. She was educated at UC Berkeley and got her library degree at USC. She was one of those people who gave her entire working life to this library.



### San Francisco Public Library

#### SAN FRANCISCO PUBLIC LIBRARY COMMISSION

Minutes of the Regular Meeting of November 3, 2011

(As amended and approved at the regular Commission meeting on December 1, 2011)

The San Francisco Public Library Commission held a regular meeting on Thursday, November 3, 2011, in the Koret Auditorium, Main Library.

The meeting was called to order at 4:41 pm.

Commissioners present: Breyer, Gomez, Munson and Randlett

Commissioner excused: Ono

Commissioners Kane and Nguyen arrived at 4:45 pm.

#### AGENDA ITEM NO. 1 PUBLIC COMMENT

An anonymous citizen said at the last meeting a Commissioner endorsed civility and decorum. He said he often refers to "Le mot de Coulter" which is the tip of the iceberg of vile stuff that he hopes you can barely imagine, including laughing while we are serious. He said the "barriers to the truth" is what is truly harmful. He said never mind the "public comment fund" to which your president contributes. He said if the Friends were not such thieves you would not need to be so aggressive to protect them from accountability. He said the Ethics Commission found against your president and you could have supported the standard of decency, irrespective of persons, but you did the opposite. He said basic reason and decency is reserved exclusively for the donors. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Executive Director, Library Users Association, said he hopes the people in the room are listening to what the public has to say because it affects the library in a number of ways. He said when you look up an item in the catalog sometimes you get additional information but sometimes you get additional information that is not available. He said the back button does not work in the catalog. He said the printing and copying machines are an atrocity and the branch librarian could not help

him with the copying. He said the Bernal Branch library mural community process was appallingly bad and closed.

Ray Hartz, Director San Francisco Open Government, said during the October, 2011 meeting the staff identified just under \$750,000 in savings and at the same time immediately identified a need for just over \$750,000 in additional needed expenditures. He said the Commission had questions and received only vague answers and when the Commission asked about delaying the action they were warned of dire consequences if just over \$500,000 wasn't immediately transferred. He said the Commission when ordered to jump paused only long enough to ask "how high"? He said the additional funds were authorized and, typical of many similar situations in the Commission's past will probably never be mentioned again. He said he has a funny feeling the Commission has seriatim meetings and discusses things before the meetings. He said he recently asked for assistance and was not given any and it is clear that information has been withheld. (See Addendum for a summary of this comment submitted by the speaker.)

# AGENDA ITEM NO. 2. COUNCIL OF NEIGHBORHOOD LIBRARIES (CNL) REPORT

Laura Bernabei said she is the Ingleside Branch representative for the Council of Neighborhood Libraries (CNL). She asked that other members of the CNL in the audience please rise and be recognized. She said CNL is a group of volunteers from each of the branch libraries. She said there are one or two members from each branch. She said members are recommended by branch librarians and appointed by the Chief of Branches. She said we have 39 members at this time representing 27 branches. She said the CNL mission is: "In order to create a public library system that best meets the needs of San Franciscans, the CNL promotes dialogue among and between Branch Libraries, San Francisco neighborhoods, and library and City decision-makers by promoting public awareness about the library system and its services; identifying and championing branch needs and working to resolve issues; and acting as a conduit for neighborhood input," She said CNL meets once a month and the Chief of Branches chairs the meeting. At the meetings we discuss any new topics that we need to work on and learn new things about the library. We also get to share with each other what is happening at the different branches. She said Sue Blackman also attends the meetings representing the Commission and lets us know what happens at the Commission meetings.

Ellen Egbert, represents the Bernal Branch at CNL, said one of the major issues has been the Branch Library Improvement Program (BLIP). She said even before BLIP many of the members were working hard to collect signatures to get the initiative on the ballot. She said Luis Herrera has been with us through every single branch opening and we appreciate his efforts. She said CNL has been very active in the BLIP activities

attending all community meetings and they have attempted to mediate when issues have arisen. She said they have participated in fundraising efforts for the branches. She said CNL members participate in closing and opening parties. She said one CNL member participates in the Furniture, Fixture and Equipments meetings for the branches. She said with the branch managers CNL members have helped to design brochures for the branches. She said just before the opening CNL members help out with the pizza party for all the staff involved in the opening and Luis graciously thanks everyone involved. She said CNL members have devised a lessons learned checklist for post occupancy evaluation. She said all of us at CNL are proud to have been part of the BLIP program and are proud to say 22 down and only 2 to go.

Harriet Solis said she represents the Merced branch at CNL. She said basically CNL provides basic support for the libraries. She said elected official outreach is one of our official tasks. She said during election periods they make sure those running for office know how important the libraries are to the communities. She said they attend other community events, attend Library Commission meetings, do new member recruitment and have a Steering Committee that meets once a month with Luis and the Chief of Branches.

#### **Public Comment**

An anonymous citizen said he is gratified to see some members of the Council of Neighborhood Libraries and he hopes they will continue to come to the Commission meetings. He said the CNL has been a source of people who support not only the library, but San Francisco and Democracy in general. He said he hopes they will follow in the footsteps of their former members who got active and serious about the library system, and were hungry for more than pizza. (See Addendum for a summary of this comment submitted by the speaker.)

Ray Hartz, Director, San Francisco Open Government, said this item is agendized in a way that makes it impossible for members of the public to understand the content. He said there is no meaningful description and no explanatory documents are supplied. He said the Sunshine Ordinance states "a description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend or seek more information on the item." He said the Library Commission seems intent on suppressing public comment and he wonders if this is done with the intent of suppressing public attendance. He said the public won't know to attend if they don't know their interests are affected by the item. He said the Commission treats the public like mushrooms by keeping them in the dark and feeding them BS. He said he appreciates the CNL, but those of us who choose to raise issues are treated poorly and intimidated. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Director Library Users Association, said it is nice to have people come who do support libraries. He said it would be nice to do some joint projects together. He said the CNL may not know but the administration came to the Commission with a proposal of a cut to the book budget. He said thanks to the Library Users Association's efforts the plan was ultimately rejected by this Commission so that there was no cut to the book budget. He said he has been trying to understand what has been going on with the Bernal Branch and the artwork project and if there is a calendar about the history of Bernal it seems like the Branch would have access to it.

#### Commission Discussion

President Gomez thanked the members from the CNL.

Commissioner Kane said the Commission appreciates the work of the CNL

Commission Nguyen said he would like some background on the history of the CNL.

Ellen Egbert, member CNL, said CNL began prior to the opening of the new Main. She said the branches were in trouble and with the assistance of the Chief of Branches the group was formed. She said they report to the Commission about once a year.

Luis Herrera, City Librarian, said the group came about at a grass roots level due to fiscal issues and lack of attention to the branches. He said their leadership has helped on many issues.

Commissioner Breyer said he is interested in how the CNL is engaging in the neighborhood.

Ellen Egbert said CNL members are all part of the communities they represent and they share information with the community and ask for input from the community.

Commissioner Randlett said CNL's work is invaluable and she thanked them for acknowledging the work of the City Librarian because he does do a lot of good work and deserves recognition. She said the Commission admires the work that CNL does.

### AGENDA ITEM NO. 3. CITY LIBRARIAN'S REPORT

Luis Herrera, City Librarian, said he wanted to make a couple announcements on some key positions that will round out his Management Team. He said Edward Melton is the new Chief of Branches. He said Edward comes to us from the Houston Public Library where he oversaw 10 library locations and oversaw their mobile technology lab. He said Edward was responsible for managing and planning the new technology libraries in Houston. He said he wanted to

thank Martha Neves for the work she has done as interim Chief of Branches. He said the second appointment is Toni Cordova as Chief of Communications, Programs and Partnerships. He said she comes to us from Tucson, Arizona with over 25 years of experience in communications and public relations primarily in the area of public education and the non-profit and business sectors. He said most recently she was Director of Government and Community Relations for a school district in El Paso, Texas and prior to that she was the Chief of Staff for the Tucson Unified School District, the second largest public school district in Arizona. He said Toni has led key initiatives to position the districts as key partners in their respective communities through engaging diverse communities. He said he would like to ask to table the Controller's 2011 City Survey and a discussion can take place at a future meeting. He said with the support of the Commission, the Library has continued to identify new and innovative ways of serving our communities. He said prior to today there have been updates on earlier digitization efforts including laptop lending, website enhancements and ebook collections. He said topics to be discussed at this meeting include: upgrades to public wireless access in SFPL facilities; enhancements to patron email notices; and progress on digitization projects that are creating greater public access to San Francisco documents, San Francisco History Room materials, and unique analog video collections.

Brian Bannon, Chief Information Officer, gave a presentation on the Wi-Fi upgrades.

Michelle Jeffers, Public Information Officer, explained the new email notifications and showed the difference between the old email notifications and the new notifications which highlight upcoming activities at the library.

Christina Moretta, Photo Curator, and Trent Garcia, Electronic/Digital Services Librarian gave a presentation on a pilot program called Analog to Digital. She said the Library has received a California State Library Services and Technology Act (LSTA) grant. She said the library has digitized 2,395 minutes of analog audio visual material. She said the material will be accessible via the SFPL website. Trent Garcia said the next steps will be public access, cataloging and preservation.

Susan Goldstein, City Archivist, said she is co-managing a program with Kate Wingerson who helped to put this presentation together. She said the grant provided One Scribe machine and one IA scanner on-site at each location. She said a second machine is run by volunteers, with IA staff training and oversight. She said the priorities for scanning are things that are unique, local, fragile, non-circulating and copyright-free. She said this includes government documents, local history, and city directories. She said 2019 items have been scanned that have had 321,894 hits on the Internet Archive site. She said these books are used all the time. She said they are doing partnerships with other organizations. She said they are looking at sustainability beyond the one year of the grant.

Christina Moretta said they have developed a partnership with Dan Vanderkam who geocoded 13,257 images. She said this resulted in a website www.oldsf.org where specific sites can be clicked on and historical photos and information will appear.

Toni Bernardi, Chief of <u>Children and Youth Services</u> gave an update on some major programs. She said on October 6, 2011 the library participated in Read for the Record with 46 library programs and 2,030 attendees. She said the Tricycle Music Fest West had 7,208 attendees with 2 Main Stages and 6 branch concerts. She said this morning there was an event in the Children's Center with 186 Fifth Graders celebrating mythology. She said on Saturday, November 12, Chris Van Allsburg and Lemony Snicket will be in discussion from 2:00 – 4:00 pm.

Michelle Jeffers, <u>Public Information</u> Officer, said last night the library hosted Mary Roach in conversation with Adam Savage as part of the Library's One City One Book. She said as part of the American Sabor exhibit, this Saturday will be a teen Latin dance showcase at 2:00 pm in the Koret Auditorium. She said the Marjorie G. and Carl W. Stern Book Arts & Special Collections Center annual holiday lecture will be held Saturday, December 10 at 2:00 pm. She said on January 18, 2012 at 6 pm Richard Bolles will be holding a program celebrating the 40<sup>th</sup> anniversary of "What Color is Your Parachute."

#### **Public Comment**

An anonymous citizen said over the years he has become the institutional memory, and he said he assumes that if you wanted to know the history you would ask him. He said welcome to the new staff members. He said the e-mail overdue notice looks like a generic junk mail and not something personal and important to the patron. He said he hopes some of the images from the PowerPoint on the Digital Services Strategy do not indicate its user-friendliness. He said the first sentence from the explanatory document is ungrammatical gobbledygook. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Executive Director, Library Users Association, said he is glad to see programs mentioned that include books and reading. He said regarding the Wi-Fi update there is no mention about the potential health risks. He is particularly worried about those that work in the library and with the patrons. He said the e-mail notification does not show at the top of the e-mail what type of notification it is. He said the disastrous installation of the copier machines was apparently installed without any input from the patrons of the library.

Ray Hartz, Director of San Francisco Open Government, said there is no denying that we have a marvelous resource in our public libraries and our staff that works in them. He said it is out of concern of that institution that I and the other speakers do what we do. He said if there are soft ball questions staff will come back with answers but when there are questions about the money those responses are evasive. He said he has not heard

what has happened to the paper notices. He said historical preservation was important in what was presented but the history of the Bernal Branch has not been preserved. He said when the mural goes down at the branch there will be a loss of history and he hopes that the library will somehow maintain that history.

### Commission Discussion

Commissioner Kane asked if there were plans to digitize newspapers.

Susan Goldstein, City Archivist, said there are copyright issues and it is very difficult to digitize newspapers.

Commissioner Kane said a lot more people would be interested in newspapers than some of the other things mentioned. He said he is glad it is funded for another year. He said on Digital Strategy he would like to see a report at least once a quarter and he would like to see a report on long term strategy. He said books are changing fast. He said he is happy we have the new Chiefs on board. He asked about the search that was done.

Luis Herrera, City Librarian, said the searches were all done nationwide through a recruitment firm and it included internal and external candidates. He said there will be more <u>updates on the Digital Strategy</u>. He said they will be looking for additional money to digitize newspapers.

Commissioner Breyer asked about the limits on use for Wi-Fi. He asked if a computer is available can a user use it for longer than an hour.

Brian Bannon, Chief Information Officer, said the Wi-Fi is available 24-7 and he said the loaner laptops are wireless. He said laptops are subject to the same requirements as are the desktop computers.

Commissioner Breyer said he appreciates the updates. He asked about the rollout for the new printers.

Luis Herrera, City Librarian, said any major change in equipment will have some bumps in the road so they are working closely with the supplier to work out the kinks.

Commissioner Nguyen said he is very excited about the oldsf website. He said he also wanted to follow up on the health issues related to wireless. He asked if the library had any additional information related to this.

Brian Bannon said there have been no substantive changes to Wi-Fi other than upgrading it. He said he does not have any additional research on the health issues.

Commissioner Kane said the work Dan Vanderkam did on the geocoding was amazing and the library owes him a huge thank you for that work.

President Gomez thanked staff for a great report. Commissioner Randlett said she is extremely appreciative of the high quality hard work by the staff.

Luis Herrera said Susan Goldstein will be recognized as one of the Heroes by the California Historical Society in a couple of weeks.

#### AGENDA ITEM NO. 4. LABOR UNION REPORT

Cathy Bremer, Local 1021, said she was happy to report that Governor Brown signed AB 438 into law safeguarding against the privatization of libraries. He said the last meeting at the Visitacion Valley Branch was especially painful to survive the nasty comments that were being made by the public at the meeting. She said there was no civility last month. She said she understands about watchdogs, but there is such negativity on every topic three times that it is very tedious. She said she would like to hear comments from the public with an eye towards making things better.

#### Public Comment

Ray Hartz, Director San Francisco Open Government, said Voltaire said "I may not agree with what a man has to say but I will defend to the death his right to say it." He said bottom line is the union representative doesn't like our comments either. He said she is free to come up and say she doesn't like our comments just as the Commission is free to say that as well. He said the fact that you don't like our comments does not mean that they are not true. He said one of the reasons there is the desire to keep the 150 word statements out of the Minutes is the fact that you want to silence public comment. He said he is exercising his rights under the First Amendment. He said you would like to have meetings where the public is excluded. He said some comments make people uncomfortable but the bottom line is the Commission has a fiduciary responsibility and he sees the Commission do nothing.

Andrea Grimes, Special Collections Librarian, said there is a difference between disagreeing and being abusive and we have seen both of it and we are familiar with the abuse that took place 20 years ago. She said she believes it is time to move on and be productive and yes sometimes disagreeing. She said we need to hear from our public when they have important criticisms but on the other hand no staff member, no library administrator or Commissioner should have to endure verbal abuse. She said that is just not o.k. She said she would like to see the public agree and disagree but let's knock off the incivility.

An anonymous citizen said he realizes what has been going on for the last twenty years and that has been a fraction of his tenure. He said he knows what civility and decorum means and he has been an advocate for decent treatment at the Library Commission for more years than he cares to remember. He said the ball is in your court. He said you can't feel yourself pushed, you can only feel yourself pushing back. He said you

can't hide behind masks and propagate the kinds of dishonesty and abuse you have propagated then blame it on the citizens. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said he is very disappointed that we heard the report that we did. He said these are very long term and venerated members of the staff that have spoken. He said in 1996 and 1997 there was a lot of contention about a variety of things and he heard about the incivility by the public. He said he hasn't called anybody names or questioned anybody's motives. He said he has spoken about facts and two of your Commissioners followed up on two issues he raised at this meeting. He said the concerns he has brought up like the book budget and paper notices have also been addressed by the Commission.

#### Commission Discussion

Commissioner Breyer said he wanted to thank the labor representatives for keeping the Commission up to date on the legislative actions and said he and the Commission are very appreciative of the staff's work.

Commissioner Randlett thanked the labor representatives for their comments about the manner in which public comment takes place.

# AGENDA ITEM NO. 5 2012 LIBRARY COMMISSION MEETING SCHEDULE

Sue Blackman, Library Commission Secretary, said the <u>draft 2012</u> <u>meeting schedule</u> is similar to this past year. She said there will be four months with only one meeting: January, July, August, and December due to the holidays and the regular summer break.

#### **Public Comment**

An anonymous citizen said last year there were 22 scheduled meetings and this year's schedule only has 20. He said you need to look and see if this is a schedule that can be met. He said this year there have 18 scheduled meetings, five cancelled meetings and one was replaced by a special meeting so there have been 14 meetings. He listed the Commission's attendance records for those meetings. He said historically there were many more meetings. He said Commissioner Nguyen has testified to one Monday meeting, but we don't know how many more Monday meetings there have been. He said the public's business gets done here and you should have at least as many meetings as last year and the Commissioners should attend the meetings. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said the attendance by the Commissioners has not been exemplary. He said former Mayor Newsom set what he considered attendance standards which he urges the Commissioners to look at. He said quite a number of the Commissioners fall below those attendance standards. He said if the public's comments

are not factual he would expect the Commissioners to address this. He said the meetings used to be at 5:30. Some other Commissions meet at 6:30 or 7. He said he would urge you to change the hour of the meetings to a later time such as 5:30.

Ray Hartz, Director San Francisco Open Government, said you need to consider what is going on here. He said he appreciates the anonymous citizen keeping track of the Commission attendance and it should be your responsibility not members of the public. He said as far as the criticism goes, he said dealing with this Commission is like dealing with a fort under siege. He said you sit behind the desks and we never get any response. He said people who damage institutions are typically not the people on the outside trying to get in they are the people on the inside trying to keep others out. He said how many members of the public bother to come to your meetings? He said people don't come to the meetings because they see the push back the Commission gives to public comment. He said everything comes down to your resistance to looking at the money.

#### Commissioner Discussion

Commissioner Munson said they had been asked in the past to change the date to a little later and they agreed to change it to 4:30. He said the Commissioners have a great deal of dedication and he does not appreciate it when members of the public make things personal.

<u>Motion:</u> By Commissioner Kane, seconded by Commissioner Munson to approve the 2012 Library Commission Schedule:

<u>Action:</u> AYES 6-0: (Breyer, Gomez, Kane, Munson, Nguyen and Randlett).

# AGENDA ITEM NO. 6 APPROVAL OF THE MINUTES OF AUGUST 18, 2011

#### **Public Comment**

An anonymous citizen said his comment on the first page reflects his comments on the POE but omits the conclusions you were supposed to draw about the underlying reality and ridicule of the public. He said on page 3 his comments were not reflected accurately. He said on page 10 his comments about the labor union report do not include his comments about the blackmail of the Friends of the Library. (See Addendum for a summary of this comment submitted by the speaker.)

Peter Warfield, Library Users Association, said his comments on page 1 are not reflected accurately and his point is not made in the description in the Minutes. He said in certain respect these Minutes are quite good, but just before item 4 on page 7 he said his comment on the Bond Program Manager's Report should read "money to be spent on the operation of the library and not on *construction*" not on structures as it currently reads.

Ray Hartz, Director San Francisco Open Government, said he has reviewed past minutes and has raised concerns about how he is being misrepresented and what he got was silence. He said when he asked the Commission to read the law about the 150 word summary being included in the minutes, you say you are following the City Attorney's advice, but the City Attorney has changed his advice in the past. He said when members of the public point out that there are inaccuracies what we get is ignored. He said the Sunshine Task Force has ruled twice against you and for me to keep my statements in the body of the minutes. He said you violate my free speech rights and then you are surprised when I get uncivil. (See Addendum for a summary of this comment submitted by the speaker.)

#### Commission Discussion

Commissioner Randlett said she did want to acknowledge that Mr. Warfield has been quite dignified and civil and she has not specifically directed comments towards him.

Commissioner Breyer said on page five under his comments the word costs should be added after "perception is that \$1.7 million is due to higher construction costs.

<u>Motion:</u> By Commissioner Breyer, seconded by Commissioner Munson to approve the <u>Minutes of August 18, 2011</u> as amended with the correction by Commissioner Breyer to add the word costs on page 5.

<u>Action:</u> AYES 6-0: (Breyer, Gomez, Kane, Munson, Nguyen, and Randlett).

# AGENDA ITEM NO. 7 APPROVAL OF THE MINUTES OF SEPTEMBER 1, 2011

An anonymous citizen said these minutes are so instructive of the various themes that have been addressed today. He said on page 3 his comments are not reflected accurately. He said the point he was making was that the public was defending itself because of its advocacy of open government. He said on the bottom of page 9 this is a situation where Mr. Hartz spoke for 3 minutes and 21 seconds. He said the summary only represents the first 52 seconds and ignores everything he said after that point

Peter Warfield, Executive Director, Library Users Association, said the harshest social cut you can give someone is to ignore them. He said there is a range of ways that you express disapproval. He said in that respect when you ignore the public you are playing a very harsh cut against the public. When you ignore a request for a correction it makes it appear that he is wrong in what he is saying. He said on page 7 under public comment he is quoted as saying "he asked about how that

compares with the overall collection which he believes is around 200,000." He said there are more than 2 million books in the collection that last he saw and the titles are in the 700,000 range.

Ray Hartz, Executive Director San Francisco Open Government, said his interest is two things 1) that members of the public are allowed to speak and 2) members of the public are allowed to access public records, which are the property of the citizens of the City and County of San Francisco. He said he watches the abuse and ignoring of the members of the public by the Commission. He said he is just trying to do the right thing and he has the right to come up here and question the things that you do.

Commissioner Randlett left the meeting.

#### Commission Discussion

Commissioner Kane requested that the secretary check the tape for the number that was stated by Mr. Warfield on page 7 and correct that number if it is misrepresented.

<u>Motion:</u> By Commissioner Kane, seconded by Commissioner Munson to approve the <u>Minutes of September 1, 2011</u> with the amendment to Mr. Warfield's comments on page 7 if needed.

Action: AYES 5-0: (Breyer, Gomez, Kane, Munson, and Nguyen).

#### AGENDA ITEM NO. 8. ADJOURNMENT

#### **Public Comment**

Peter Warfield, Library Users Association, said he does not recommend adjourning when the agenda does not include New Business as he has requested. He said that gives the Commission the opportunity to add items to future agendas.

<u>Motion:</u> By Commissioner Munson, seconded by Commissioner Breyer to adjourn the regular meeting of November 3, 2011.

Action: AYES 5-0: (Breyer, Gomez, Kane, Munson, and Nguyen).

The meeting adjourned at 6:58 pm.

Sue Blackman Commission Secretary

Explanatory documents: Copies of listed explanatory documents are available as follows: (1) from the commission secretary/custodian of records, 6<sup>th</sup> floor, Main Library; (2) in the rear of Koret Auditorium immediately prior to, and during, the meeting; and (3), to the extent possible, on the Public Library's website <a href="http://sfpl.org">http://sfpl.org</a>. Additional materials not listed as explanatory documents on this agenda, if any, that

are distributed to library commissioners prior to or during the meeting in connection with any agenda item will be available to the public for inspection and copying in accordance with Government Code Section 54954.1 and Sunshine Ordinance Sections 67.9, 67.28(b), and 67.28(d).

#### **ADDENDUM**

These summary statements are provided by the speaker: Their contents are neither generated by, nor subject to approval or verification of accuracy by, the San Francisco Public Library Commission.

Item 1: General Public Comment

Anonymous Citizen: Stop the Hate & Ignorance – Don't give or accept money from the Friends of the Library

A Library Commissioner endorsed civility and decorum, but did not clarify she was chastising your president, and thanking the citizens, so I will set the record straight.

"Le mot de Coulter" is the tip of the iceberg of vile stuff that I hope you can barely imagine, including laughing while we are serious. Barriers to the truth is the harm known in psychology as "psychic assault." Your president contributes to the "public comment fund."

This is how wealth maintains exclusive influence for themselves and disenfranchises the citizens. If the Friends were not such thieves you would not need to be so aggressive to protect them from accountability.

At the Ethics Commission, you could have supported the standard of decency, irrespective of persons, but you did the opposite. Basic reason and decency is reserved exclusively for the donors.

Ray Hartz, Executive Director San Francisco Open Government: During the October, 2011 meeting of the Library Commission, the Library Staff identified just under \$750,000 in savings for two completed branches in the BLIP program. Just in time, too! After identifying the savings, they immediately identified a need for just over \$750,000 in additional needed expenditures. Following very vague explanations for these needed amounts, the Commissioners asked questions and received only very vague answers. When mention was made about delaying the authorization until these questions were answered, representatives of the Library went into crisis mode and warned of dire consequences if just over \$500,000 wasn't immediately transferred. Typical of their usual handling of things placed before them: the Library Commission, when ordered to "JUMP!" paused only long enough to ask: "HOW HIGH?" The additional funds were authorized and, typical of many similar situations in the Commission's past, will probably never be mentioned again!

Item 2: Council of Neighborhood Libraries (CNL) Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends of the Library

I am glad to see members of the Council of Neighborhood Libraries and I hope they will continue to come.

The Council has been a source of people who support not only the library, but San Francisco and Democracy in general. I hope they will see the need to continue to come to Library Commission meetings not just when they are invited.

I hope they will follow in the footsteps of their former members who got active and serious about the library system, and were hungry for more than pizza.

Ray Hartz, Executive Director San Francisco Open Government: This item is agendized in a way that makes it impossible for members of the public to understand the content. There is no "meaningful description" and no "explanatory documents" are supplied. The Sunshine Ordinance states: "Sec. 67.7(b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend or seek more information on the item." As the Library Commission seems intent on suppressing public comment, particularly "meaningful" public comment, I don't think it unfair to "wonder aloud" if this is done with the intent of suppressing public attendance. After all, the public won't know to attend if they don't know if their "interests are affected by the item." The Library Commission treats the Public like mushrooms: keep them in the dark and feed them B.S.

Item 3: City Librarian's Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends of the Library

Over the years I have become the institutional memory, and I assume that if you wanted to know the history, you would ask me.

Welcome to the new staff members and I hope they have been warned what they are getting into.

Thanks to the City Librarian for giving us a warning of the Controller's report.

The e-mail overdue notice looks like a generic junk mail and not something personal and important to the patron.

I don't want to be too critical of the digitization project because it is a work in progress, but I hope the PowerPoint does not indicate its user-friendliness.

The first sentence from the explanatory document includes "to ensuring" which must be a difficult error for a native speaker to make. We all recognize this as ungrammatical gobbledegook.

Item 4: Labor Union Report

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends of the Library

Twenty years has been a fraction of my tenure. I know what civility means. I have been an advocate for decent treatment at the Library Commission for more years than I care to remember, in some cases, before you were born.

The staff should remind you of what the citizens have endured. I said before, the ball was in your court and I have had no response. You can only feel yourselves pushing back.

There are commissions and public bodies in this city that have supportive relationships with their public. If you want to know why that is not true before the Library Commission maybe you need to examine your own consciences.

You can't hide behind masks and propagate the kinds of dishonesty and abuse you have propagated and then blame it on the citizens.

Item 5: 2012 Library Commission Meeting Schedule

Anonymous Citizen: Stop the Hate, Stop the Ignorance – Don't give or accept money from the Friends of the Library

This year's schedule had 22 scheduled meetings and next year only 20.

So far there have been 18 scheduled meetings, five cancellations, one of which was replaced with a special meeting. So there have been 14 meetings.

President Gomez and Mr. Breyer have both perfect attendance and perfect punctuality.

Mr. Munson attended 13 meetings and late 3 times.

Ms. Ono attended 12 meetings and late once.

Mr. Kane attended 11 meeting and late 5 times.

Mr. Nguyen attended 9 meetings and late 5 times.

Ms. Randlett attended 7 meetings and late once.

Some commissioners have never been here for adjournment.

Historically there were many more meetings. Commissioner Nguyen has testified to one Monday meeting, but we don't know how many more Monday meetings there have been.

The public's business gets done here and you should have at least as many meetings as last year and come to them.

Item 6: Approval of the Minutes (August 18, 2011)

Anonymous Citizen: Stop the Hate and Ignorance – Don't give money to, or accept money from the Friends of the Library.

I want to acknowledge, Le mot de Coulter; feels like old times. The anonymous citizen's general public comment reviews the incident after the POE but omits the conclusions you were supposed to draw about the underlying reality and the ridicule of the public.

On page 3, the expectation the money would not go back was what your administration told the Capital Planning Committee and the "two betrayals" that were omitted, were betrayal of the purpose of the Library Preservation Fund and of public disclosure.

On page 10, after the phrase "if you don't take their deal of private fund-raising and private influence peddling" has no "then" clause, because that was about the blackmail of the Friends of the Library and you can't have that.

Item 7: Approval of the Minutes (September 1, 2011)

Anonymous Citizen: Stop the Hate and Ignorance – Don't give money to, or accept money from the Friends of the Library.

These minutes reflect issues addressed today where meaning has been drained out or perverted.

On page 3, the point was that the public was being attacked for its defense of open government and the commentor was the chair of the Sunshine Task Force and an author of the Sunshine Bill of Rights. Mr. Munson robs us of this positive context, and the minutes rob us of it again.

So that this won't seem self-serving let us use Mr. Hartz as an example. On page 9, the summary, slightly garbled, reflects the first 52 seconds and then ignores everything said after that point. He had opinions and points to make, including the minutes containing viewpoint discrimination, Ms. Blackman carrying your water, and a dishonest discussion.

Parenthetically, the Ethics Commission didn't find me below the standard of decency.