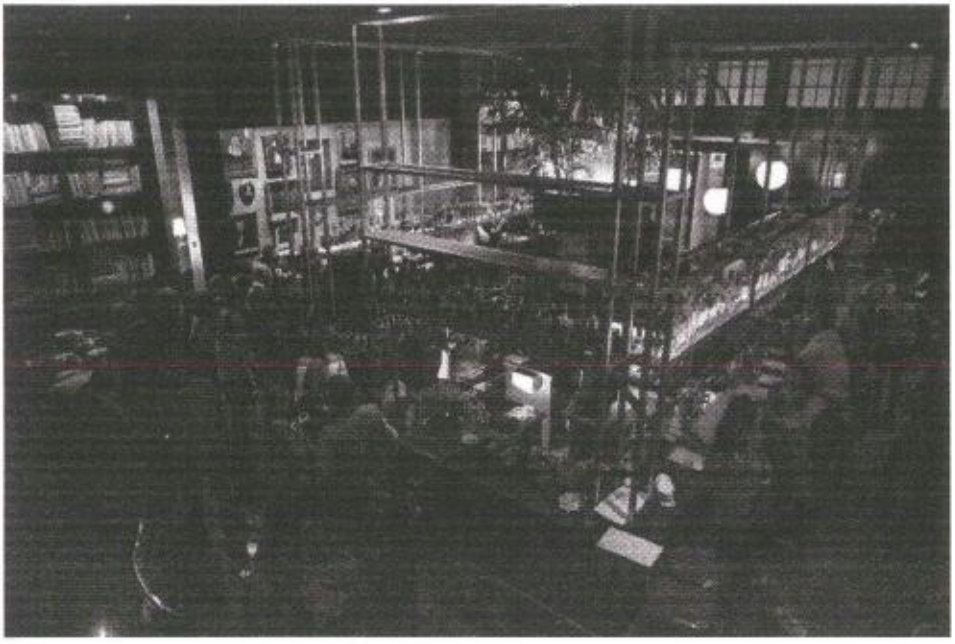
Bring live entertainment to The Dorian

SAN FRANCISCO PLANNING COMMISSION



Yelp

Nightlife is synonymous with cities, and San Francisco is known for the fabulous entertainment offered after the sun goes down. People flock here both to live and to visit because of the art, music, dance accessible here - from the traditional to the experimental, and everything in between. Nightlife enhances our economy by supporting local businesses and allowing artists to earn compensation for their talents.

The Dorian wants to be able to contribute to the nightlife of San Francisco: to play live music and host cabaret shows - in

29 Signatures Collected

Only 21 more until our goal of 50

SIGN THIS PETITION

First Name

Last Name

Email *

Zip/Postal Code *

Not in the US?

Comments

ADD YOUR NAME

addition to the music it already plays as a bar. The Dorian's location at Chestnut and Fillmore is close to multiple other bars. Adding live music and shows to our culture is especially important at a time when many bars and music halls are closing.

The permit The Dorian needs to host live shows is usually given freely by the city. But a neighbor has contested the permit using a procedure called Discretionary Review (DR). Because of DR, the Dorian is in danger of not being able to play live entertainment.

Northern Neighbors supports fun, expression, human connection and the local economy. We believe that The Dorian should be able to play live music and host shows.

If you support fun, local business, and the artists that help make our city unique and famous throughout the world, please speak up and sign this petition to the Planning Commission supporting The Dorian's request to host live entertainment. Without strong pro-fun voices, the Planning Commission may deny the permit.

PETITION BY

MICHAEL CHEN
San Francisco, California

SPONSORED BY

NORTHERN NEIGHBORS SF
San Francisco, CA

To: San Francisco Planning Commission
From: [Your Name]

Please deny the Discretionary Review and allow The Dorian at 2001 Chestnut Street to host live entertainment. Strong nightlife adds to the character and community of the neighborhood, as well as our city at large. It supports artists and the local economy. The Chestnut and Fillmore corridors in the Marina have a great nightlife scene, and The Dorian's entertainment permit will add to the fun on this block, which is already a business corridor.

First name	Last name	Email	Address	Zip code	Comments	Timestamp (EST)
Michael	Chen	mychen10@	1688 Pine St	94109		2020-02-07 06:11:00 EST
Caroline	Bas	caroline.m.b	237 Arguello	94118		2020-02-07 09:06:35 EST
Elizabeth	Miller	dancewithliz	1790 Broadw	94109		2020-02-07 11:17:43 EST
Keith	Soranno	ksoranno@yahoo.com		94109		2020-02-07 11:29:39 EST
Eddie	Siegel	edwardjsieg	1842 Divisad	94115		2020-02-07 11:52:53 EST
Yann	Benetreau	yannbd@hot	375 Euclid A	94118		2020-02-07 11:57:53 EST
Theodore	Kramer	theodore.kramer@gmail.c		94109		2020-02-07 15:35:31 EST
Molly	Alarcon	mollyalarcon@gmail.com		94115		2020-02-08 13:36:40 EST
June	Wong	junewongsf@aol.com		94123		2020-02-08 18:47:29 EST
Andrew	Cohen	drew.d.cohen@gmail.com		94123		2020-02-09 12:42:47 EST
Lee	Moore	leemoore75@gmail.com		94109		2020-02-09 20:58:57 EST
Kevin	Chagnon	kevinchagnon@gmail.com		94109		2020-02-09 23:01:49 EST
Justin	Mitchell	jmitchell871@gmail.com		94116		2020-02-10 13:38:26 EST
Lisa	Frare	lisafrare@gmail.com		94116		2020-02-10 17:35:46 EST
Altay	Guvench	aguvench@gmail.com		94123		2020-02-10 18:05:19 EST
Taylor	Choi	tc@taylorchoi.com		94123		2020-02-10 23:48:00 EST
Caroline	Bas	caroline.m.b	237 Arguello	94118		2020-02-11 01:19:33 EST
Brian	Bartman	brianbartman@yahoo.com		94558		2020-02-11 05:42:35 EST
kimberly	ayres	kimberlyayresinteriordesig		94109-1233		2020-02-11 10:35:25 EST
Sarah	Boudreau	boudreau.sa	1520 Greenv	94123		2020-02-11 11:20:35 EST
Stephen	Lambe	stephenlambe@gmail.cor		94118		2020-02-11 11:38:20 EST
Thomas	Anger	tomanger@gmail.com		94133		2020-02-11 12:03:16 EST
charles	maas	charliemaas1@gmail.com		94109		2020-02-11 12:06:40 EST
Matthew	Ticknor	matt@juncti	1299 Lombai	94109		2020-02-11 13:11:42 EST
Alexis	Clark	alexisruthclark@gmail.cor		94123		2020-02-11 17:18:05 EST
Sam	Schooley	samuel.schooley@gmail.c		94612		2020-02-11 19:04:32 EST
Sam	Schooley	samuel.schooley@gmail.c		94612		2020-02-11 19:04:32 EST
Dana	Beuschel	dana.beusch	825 Post St #	94109		2020-02-11 19:58:12 EST

E. Miller	Artists and nightlife keep our city's culture, allure, and excitement strong throughout the ages. They support the local economy and jobs. Bring live entertainment to The Dorian!
B. Bartman	Let there be Rock! And maybe karaoke...
T. Anger	Support live music
D. Beuschel	Bars are good for neighborhoods! And entertainment uses for bars are even better! Entertainment uses benefit musicians and artists by creating paid opportunities, small businesses by bringing in customers, and neighborhoods by enriching the cultural scene. I live across the street from a bar with an entertainment use and it's awesome. The only reason noise can on rare occasions be an issue is because historic preservation won't let me have double pane windows ?, which is not the responsibility of the bar. Please support The Dorian and don't take DR!

Marina Cow Hollow Neighbors and Merchants

2269 Chestnut Street

San Francisco, Ca.94123

neighbors@marinacowhollowneighborsandmerchants.com

SF Planning Commission:

Re: Discretionary Review 2001 Chestnut Street 2019014251DRP

With deep regret as an association we tried to let the parties of this issue settle the issue among themselves. Then over the weekend we found out that the issues are far deeper than we thought.

We want both the neighbors to have quality of life and the business to have economic viability.

Over the weekend we had many more complaints about this application and the interactions with the neighbors and the neighboring merchants concerning this establishment.

We do not want for Chestnut Street to have the same problems with that the neighbors are having with the management of the Dorian as the neighbors are having with the sister restaurant of the Dorian. We want everyone to get along and respect each other.

We are requesting a six week continuance of this application so that we may mediate the issues concerning this application and come up with a viable solution.

If you choose not to allow us to try to settle this issue and approve this application for an entertainment permit, it will be appealed.

If this application is approved we wish for the following conditions be applied to the permit. They are:

1. Live entertainment to stop at 10 P.M. Sunday through Wednesday
2. That the entertainment to stop at 12 Midnight on Thursday, Friday and Saturday.
3. That heavy curtains are placed on the Chestnut Street Side of the building during the event.
4. That last call for alcohol shall be at 1:30 A.M.
5. That there be individuals that patrol both sides of the building during and 30 minutes after the event to alleviate the noise element issues.
6. That there be a bouncer at the door and that the bouncer is to keep all noise at a minimum during the event and after the event.
7. That there be a liaison from the establishment with the neighbors and a member of our organization. That there will be a back-up liaison when the lead liaison is not on duty.
8. That there Not be anyone except workers in the back ally at all times and that the ally be clean at all times.
9. That there be not retribution from either side at all times.

Thank you for your time,

Patricia Vaughey - President.

THE PALNNING DEPARTMENT'S HUB PLAN RACIAL/SOCIAL EQUITY ASSESSEMENT

What's Missing – The Whole Truth!

Anticipated Benefits

- More housing near transit lines
- Significant number of new on-site affordable housing units and money for affordable housing for working class people
- Significant number of new luxury housing units for very wealthy people
- Significant number of new market housing units for well-paid professionals
- Improved streets and alleys, improve safety for people to walk and bike
- New and improved open space amenities
- No loss of existing housing units
- Increased property values for all investment class owners
- Significantly increased property values for up-zoned development class owners

Potential Burdens

- Potential small loss of retail and industrial jobs
- Over time risk of small business displacement due to changing demographics, higher commercial rents, including existing retail spaces, and new retail demands
- Displacement of homeless individuals due to new population intolerance for encampments

Additional Community Concerns

- Ground floor uses may not be neighborhood serving due to high retail rents in new development.
- Design of new buildings could be uninviting to a diverse population.
- Many market-rate projects may elect to fee-out affordable housing requirements rather than provide actual affordable housing in the district.
- Social/cultural demographic disparities in new upscale residences and district as a whole could lead to much less actual racial/cultural diversity in the inclusionary affordable housing in particular and the district as a whole.
- There is no community-based mechanism proposed as part of the Plan to pro-actively address any of these issues.
- New market rate housing could lead to gentrification pressures in adjacent neighborhoods, especially the North Mission.

Submitting for Minutes FY 20-21 Budget Commission Mtg: 2/13/2020 Item# 9
#2019-023608CRV G. Schuttish

The FY 20-21 Budget Contract to study Housing Affordability - Alternate Models for $50K.

Four Suggestions for Housing Affordability Strategies

1. Oversight of tenant occupied units seeking approval.

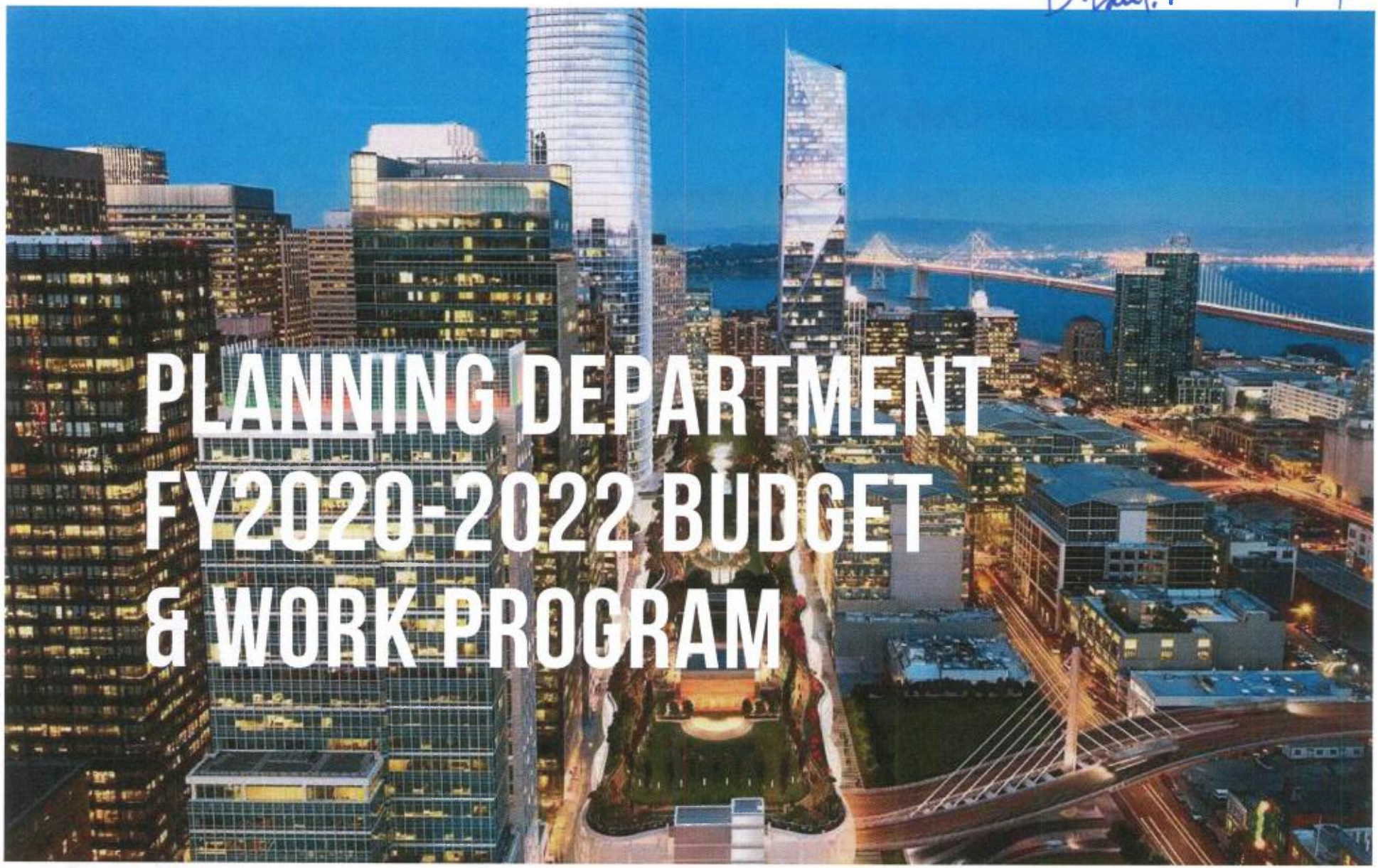
2. Citywide Resource Survey to highlight smaller, older multi-unit buildings that can been flagged to the Small Sites Program or could add an ADU to garage areas in single family homes.

3. Demolitions that have CUA hearings make findings of what is Necessary and Desirable with Affordable by Design, increase in density by efficient use of interior space. Developers report on occupancy and tenure (both sale and rental) within 6 months of CFC. Applicable for ADUs.

4. Demo Calcs for major Alterations by adjusting the Calcs to effectuate policy efficacy. Commission has the ability to adjust Section 317 (b) (2) (B) and Section 317 (b) (2) (C) per Section 317 (b) (2) (D).

In other words: Preservation of Existing Housing.

(150 words)

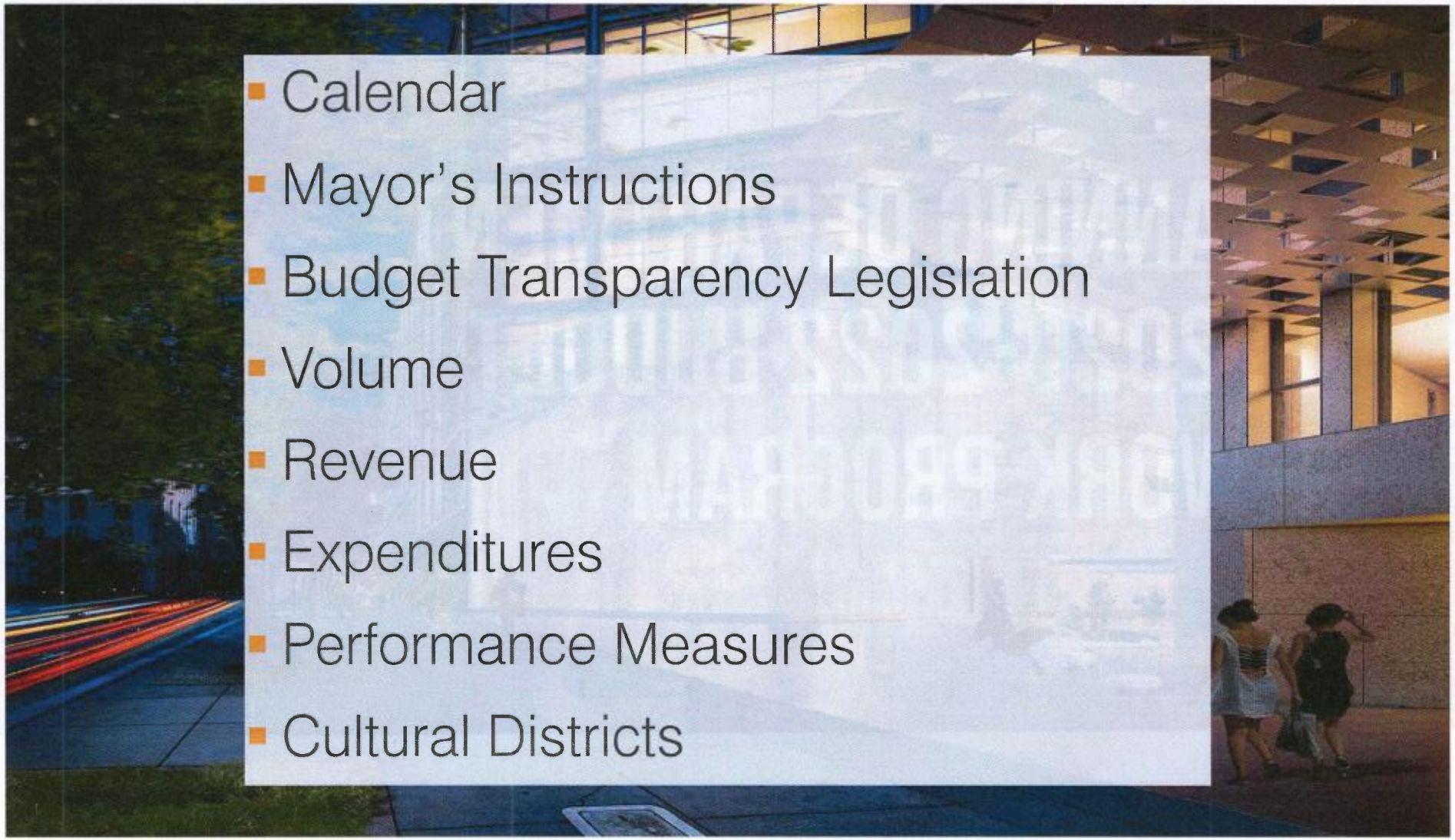


PLANNING DEPARTMENT FY2020-2022 BUDGET & WORK PROGRAM

Deborah Landis
Deputy Director of Administration, February 13, 2020

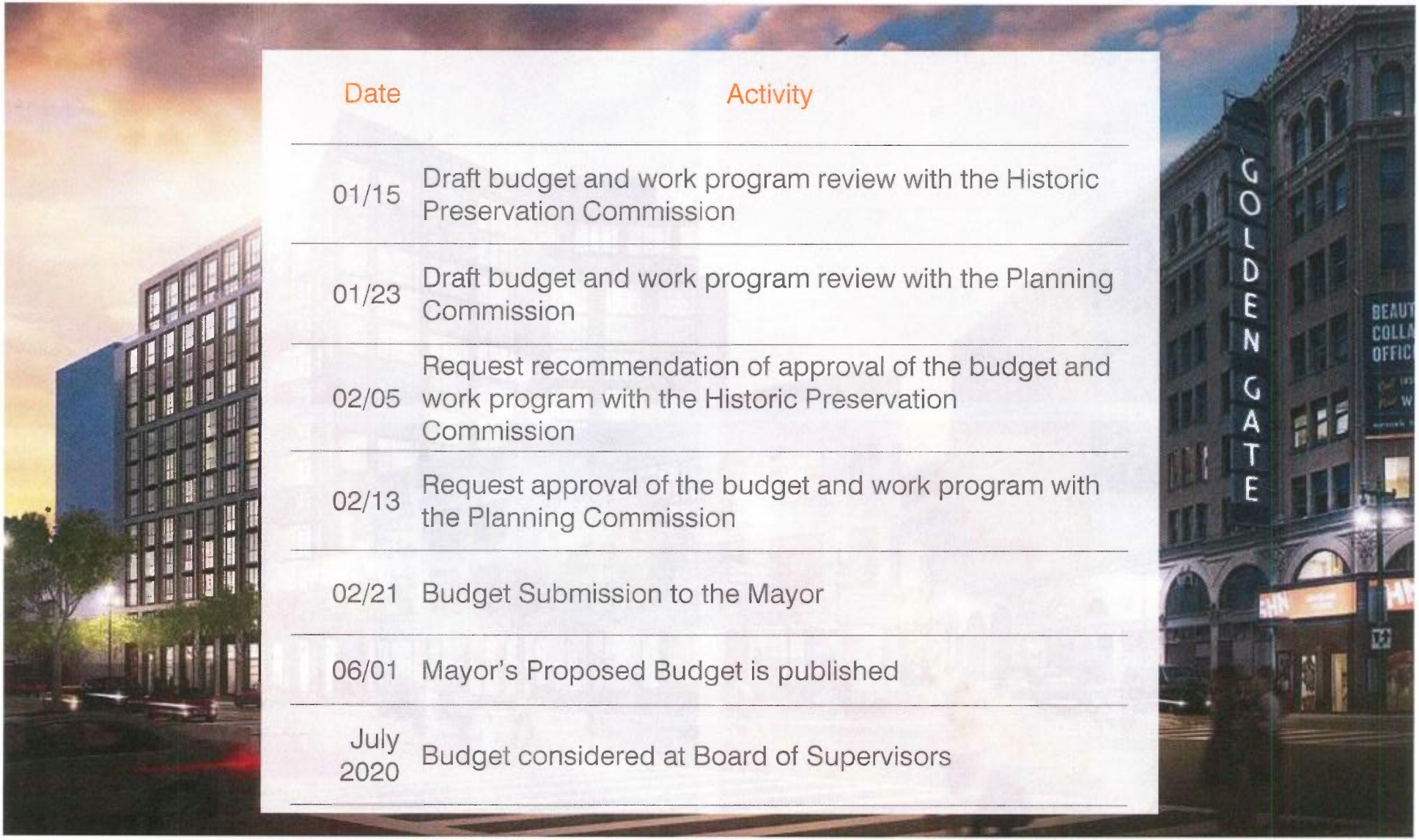
San Francisco Planning

FY20-22 Budget Overview



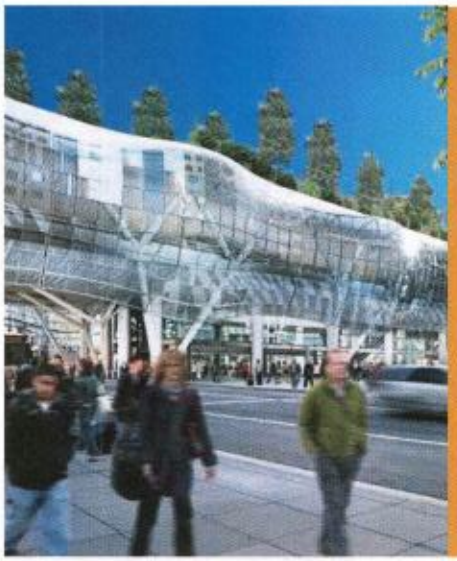
- Calendar
- Mayor's Instructions
- Budget Transparency Legislation
- Volume
- Revenue
- Expenditures
- Performance Measures
- Cultural Districts

Budget Calendar FY20-22



Date	Activity
01/15	Draft budget and work program review with the Historic Preservation Commission
01/23	Draft budget and work program review with the Planning Commission
02/05	Request recommendation of approval of the budget and work program with the Historic Preservation Commission
02/13	Request approval of the budget and work program with the Planning Commission
02/21	Budget Submission to the Mayor
06/01	Mayor's Proposed Budget is published
July 2020	Budget considered at Board of Supervisors

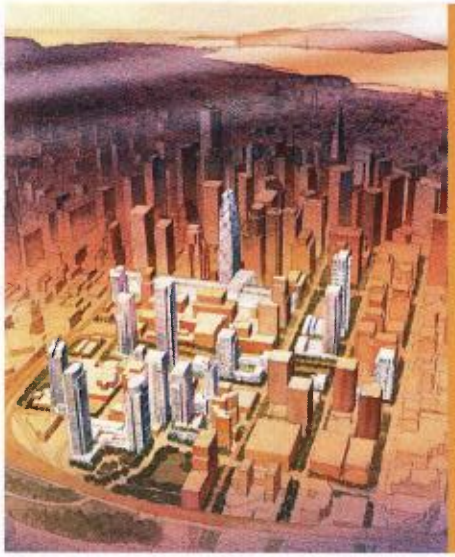
Mayor's Office Budget Instructions



Budgetary Focus

Prioritize housing, shelter, and services for those in need

Healthy and vibrant neighborhoods

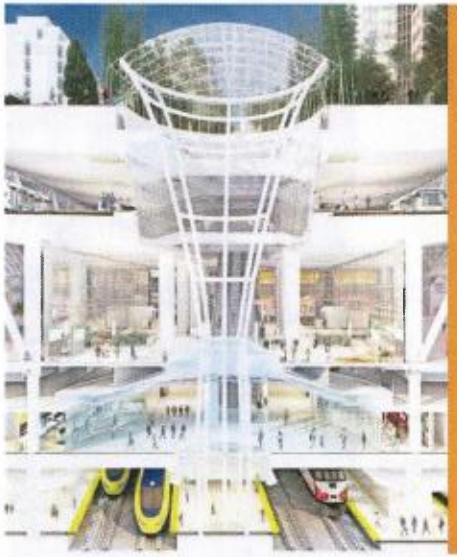


Financial Joint Report

Two-year deficit of ($419.5M)

Slowing revenue growth

Rising employee costs



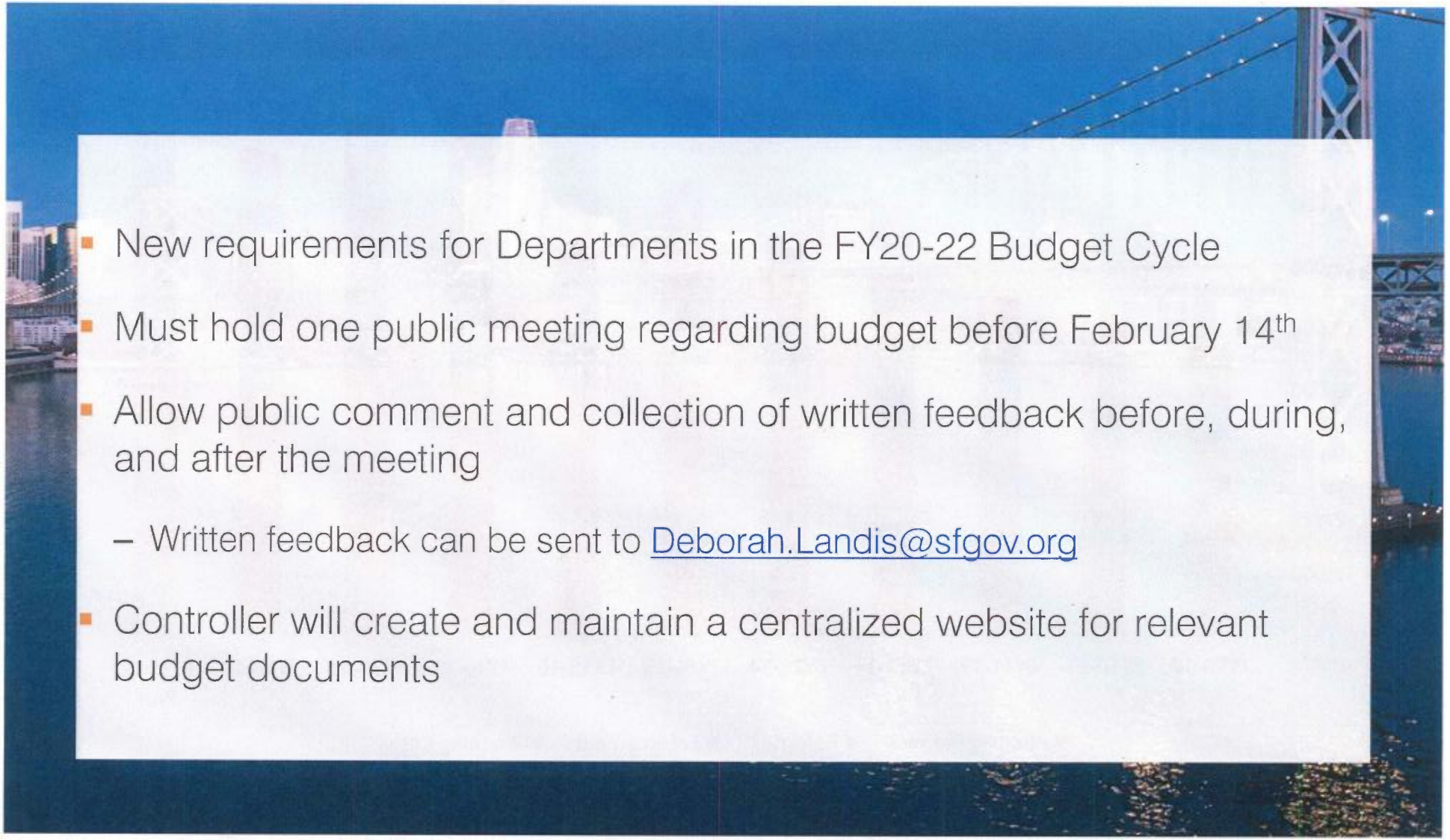
No New Positions

Planning is not requesting any new positions

General Fund Support Reduction

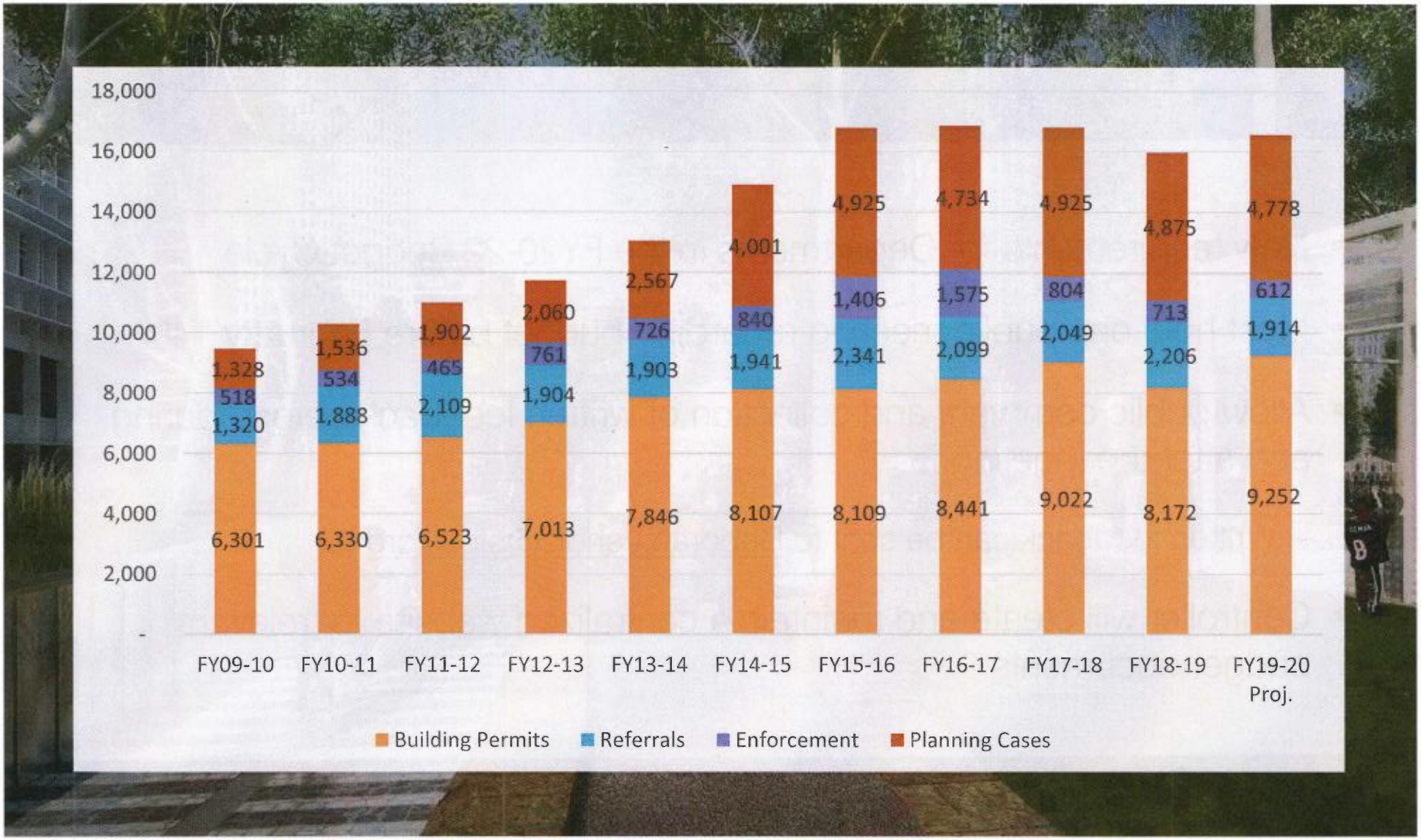
(3.5%) reduction in adjusted General Fund Support in each budget year

Budget Transparency Legislation



- New requirements for Departments in the FY20-22 Budget Cycle
- Must hold one public meeting regarding budget before February 14th
- Allow public comment and collection of written feedback before, during, and after the meeting
  - Written feedback can be sent to Deborah.Landis@sfgov.org
- Controller will create and maintain a centralized website for relevant budget documents

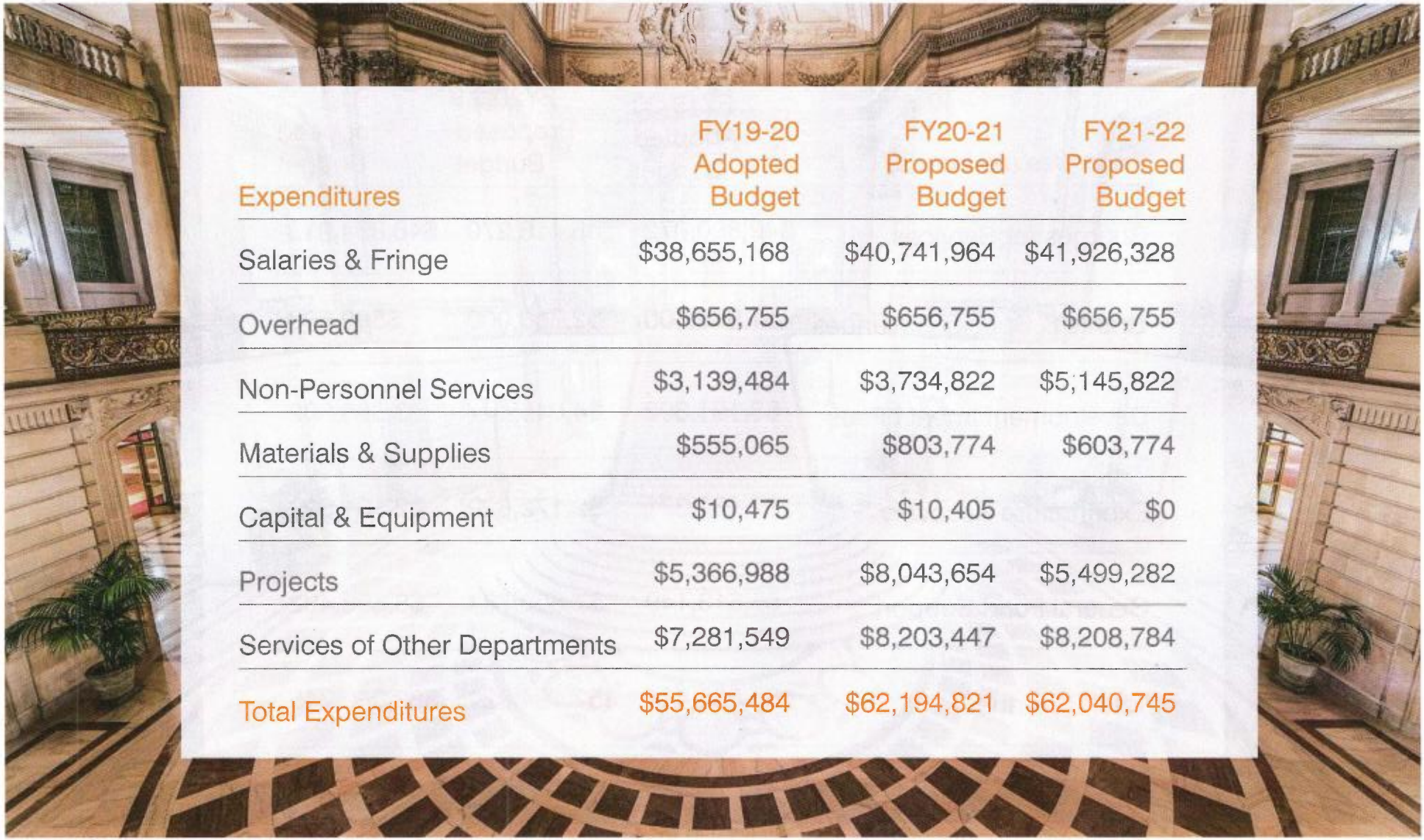
10 Year Volume & Current Year Projection



Revenue Budget FY20-22

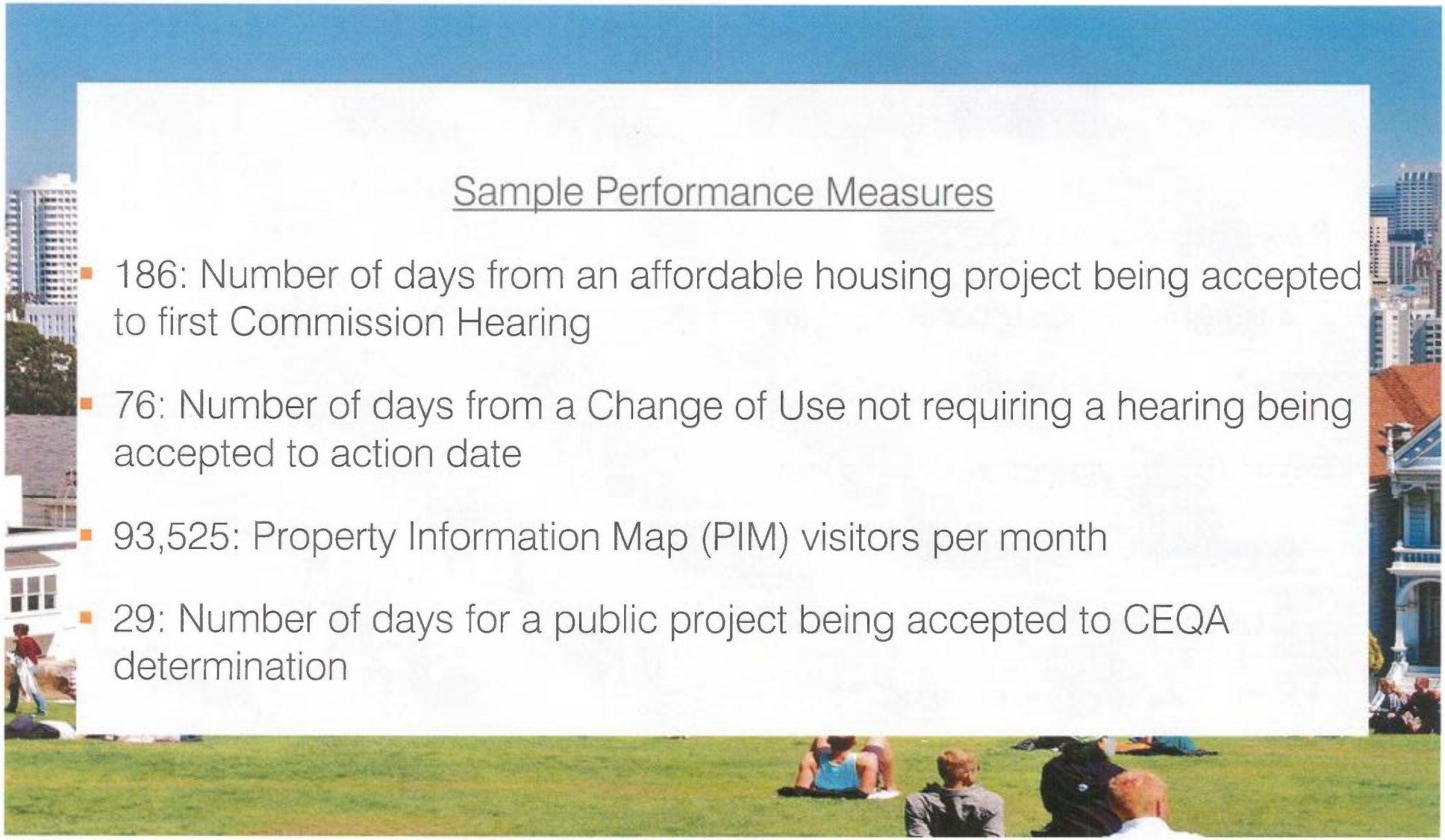
Revenues (All Funds)	FY19-20 Adopted Budget	FY20-21 Proposed Budget	FY21-22 Proposed Budget
Charges for Services	$42,890,072	$45,418,270	$46,834,919
Grants & Special Revenues	$1,938,500	$2,756,000	$590,600
Development Impact Fees	$3,191,392	$4,045,147	$3,885,302
Expenditure Recovery	$2,132,371	$2,172,620	$2,131,522
General Fund Support	$5,513,149	$7,802,784	$8,598,402
Total Revenues	$55,665,484	$62,194,821	$62,040,745

Expenditure Budget FY20-22



Expenditures	FY19-20 Adopted Budget	FY20-21 Proposed Budget	FY21-22 Proposed Budget
Salaries & Fringe	$38,655,168	$40,741,964	$41,926,328
Overhead	$656,755	$656,755	$656,755
Non-Personnel Services	$3,139,484	$3,734,822	$5,145,822
Materials & Supplies	$555,065	$803,774	$603,774
Capital & Equipment	$10,475	$10,405	$0
Projects	$5,366,988	$8,043,654	$5,499,282
Services of Other Departments	$7,281,549	$8,203,447	$8,208,784
Total Expenditures	$55,665,484	$62,194,821	$62,040,745

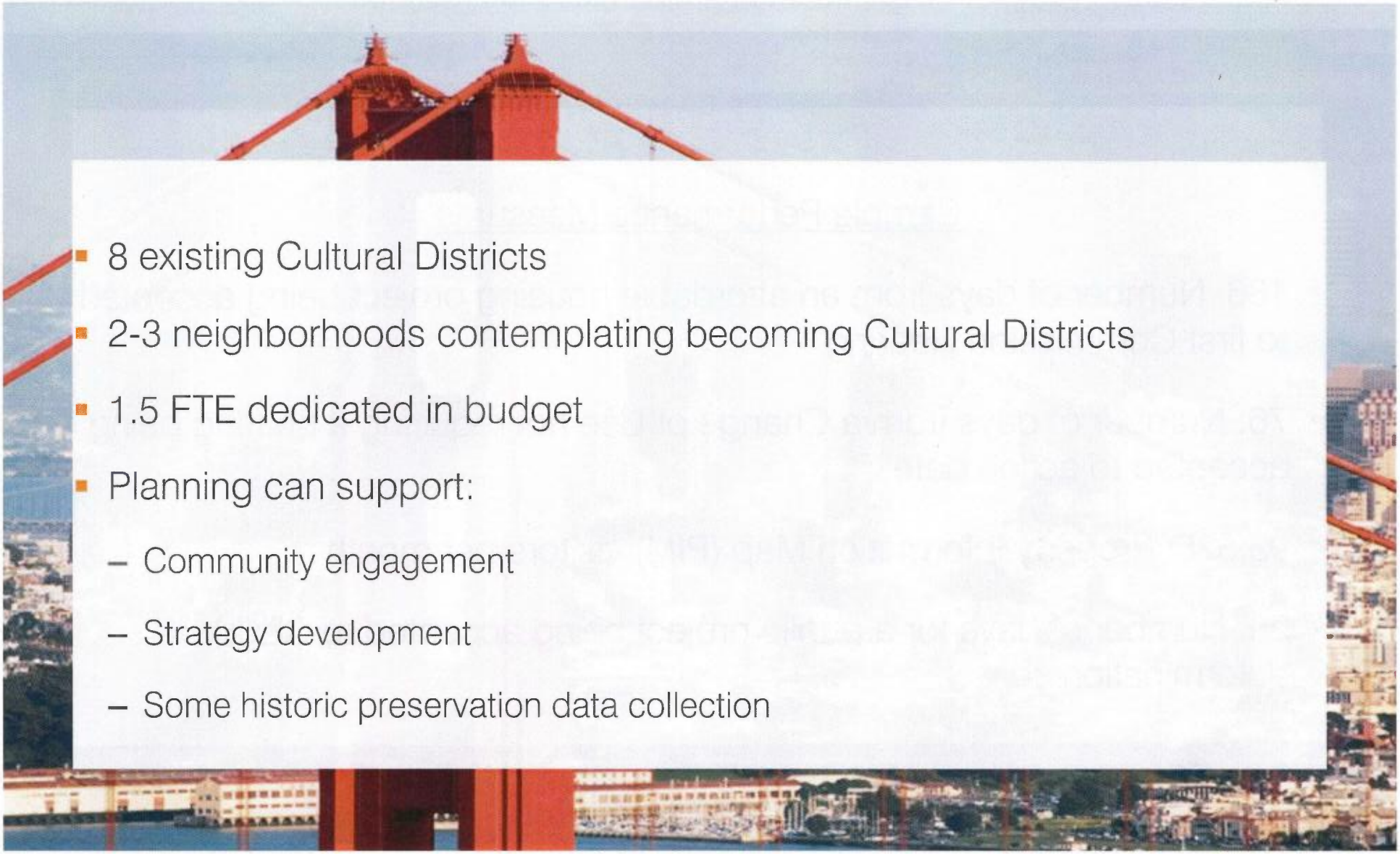
Performance Measures



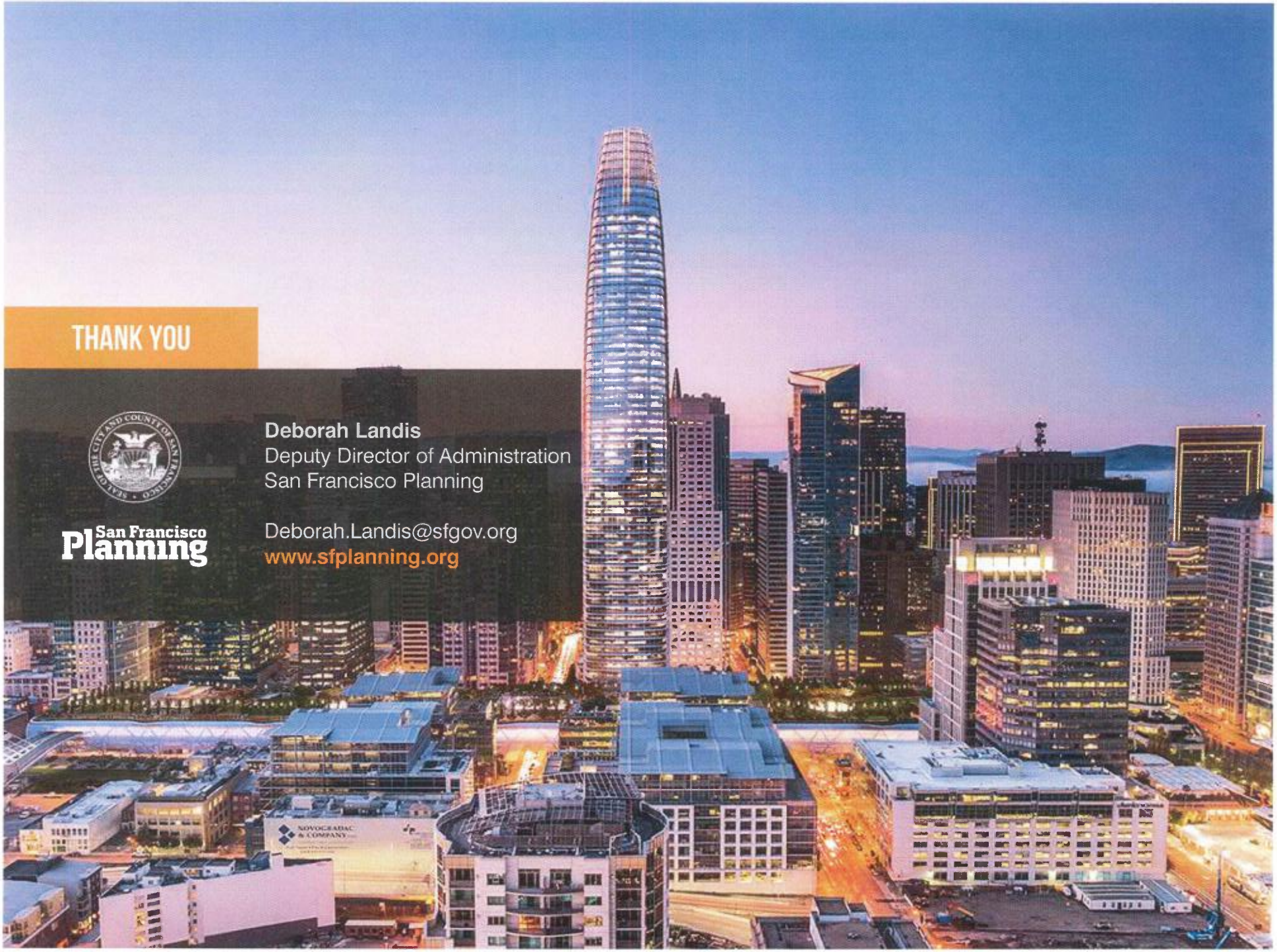
Sample Performance Measures

- 186: Number of days from an affordable housing project being accepted to first Commission Hearing
- 76: Number of days from a Change of Use not requiring a hearing being accepted to action date
- 93,525: Property Information Map (PIM) visitors per month
- 29: Number of days for a public project being accepted to CEQA determination

Cultural Districts



- 8 existing Cultural Districts
- 2-3 neighborhoods contemplating becoming Cultural Districts
- 1.5 FTE dedicated in budget
- Planning can support:
  - Community engagement
  - Strategy development
  - Some historic preservation data collection


THANK YOU
Deborah Landis
Deputy Director of Administration
San Francisco Planning
Deborah.Landis@sfgov.org
www.sfplanning.org
San Francisco Planning

COPY FOR RECORD

Received at CPC Hearing 2/13/20
Pub. Com.

February 13, 2020

Dear Commissioner Imperiale,

Welcome to the Planning Commission and best of luck to you. Attached is correspondence that I have previously submitted to all the Commissioners, Director Rahaim and the City Attorney.

The June 10, 2019 letter (plus attachments) asks for an adjustment to the values of the Demolition Calculation per Section 317 Tantamount to Demolition. The intent of the adjustment is to promote policy efficacy in preserving Housing as stated in the Planning Code.

I have lived in Noe Valley for nearly 34 years and in the past 5 to 6 years there have been too many extreme alterations that have not received the scrutiny they should per the Planning Code. The impact is the same as a complete demolition with loss of housing and increase in the cost of this housing. These are speculative projects and they are contrary to the words and intent of the Planning Code and the Housing Element. I think this speculation has helped to generate the radical increase in the price of housing, as well as add to the overall pressure in the cost of housing Citywide.

The October 27, 2016 memo was in response to the RET. The RET discarded the definition of demolition in the RH neighborhoods. Based on all the speculative projects that *should have been reviewed as Demolitions* over the previous years, I thought this was a mistake. I proposed a definition different than the one with Demo Calcs and Tantamount to Demolition, one that was qualitative not quantitative. It was apparent in all the speculative projects that vertical expansions were actually no different than "real" demolitions in the outcome. They were fundamentally a new structure. And the outcome was lots of housing that was not Relatively Affordable per Section 317. The issue with vertical expansions was further confirmed in the DBI presentations at the two joint hearings of the Building Inspection Commission and the Planning Commission in 2018/2019.

I wanted to submit these to you to bring this issue to your attention.
Again congratulations on your appointment to the Planning Commission and best wishes.

Sincerely,

GS

Georgia Schuttish
(schuttishtr@sbcglobal.net)

June 10, 2019

President Myrna Melgar
San Francisco Planning Commission
1650 Mission Street
San Francisco, California

Dear President Melgar:

This letter has two requests concerning Demo Calcs.

First, that the Planning Commission adjust the Demolition Calculations (aka "values") as defined at Planning Code Section 317 (b) (2) (B) and Planning Code Section 317 (b) (2) (C).

And second, the Planning Commission ask the City Attorney if the Commission can further adjust the Demolition Calculations to align with the three adjustments to the values that the Zoning Administrator has made regarding Administrative Approval of Demolitions over the past five years.

Adjusting Demo Calculations per Section 317

Please see Part 7, page 27 of *"Zoning Controls on the Removal of Dwelling Units, A San Francisco Planning Code Implementation Document, October 2010"*. The "values" of the Demo Calcs are also defined here. Regarding the Demo Calcs it says,

> *"The following values are subject to non-legislative updates* ***and may be adjusted periodically by the Planning Commission to further the efficacy*** *of Section 317, in order to promote the objectives of the General Plan and Planning Code".*

And what is that efficacy? As it says in Section 317 (b) (2) (D):

> *"...to conserve existing sound housing and preserve affordable housing."*

I know that you and the other Commissioners understand this issue. All I would add is that there have been many extreme alterations over the past four to five years. Maybe even longer. These alterations have used the current Demo Calcs to their Project Sponsor's advantage and are masking the fact that they really are Demolitions. Whether it is called "Tantamount" or "DeFacto", the outcome is the same — no efficacy for promoting the *objectives*.

Previously I submitted to the Commission for the record a list of over 70 projects, mostly in Noe Valley that are with a few exceptions, speculative projects that have had exponential increases from the pre-work sale of the property to the post-work sale of the property, with an average increase of $3 million+. Additionally, back in December of 2015, Commissioner Richards and Staff looked over a sample of five projects in Noe Valley. At that time, according to Staff's analysis, 40% of the projects from the sample should have been reviewed as actual Demolitions, not as Alterations.

The Commission has the right and may seize the reins and make an adjustment per Section 317 (b) (2) (D) regardless of any legislation that may or may not be coming over from the Board. The Commission has never adjusted the values of the Demolition Calculations since Section 317 was enacted....although I don't know why there is any reason that you could not adjust them on the Consent Calendar?

While I did not agree with the RET because it did not have a definition of Demolition, I am sorry that it was withdrawn. At least there would have been a debate over the past year and a half, instead of nothing.

Further Adjustment to Demolition Calculations

I am also asking that the Commission request the City Attorney to issue an opinion as to whether or not the Commission can adjust the Demo Calcs beyond the amount defined by the values in Section 317 (b) (2) (B) and Section 317 (b) (2) (C).

The Zoning Administrator has adjusted the values for the RH-1 at least three times since Section 317 was added to the Planning Code. (There have likely been more times than three* but the three that are published, I submitted previously for the Record during General Public Comment). Any proposed Demolition in the RH-1 could receive Administrative Approval from the ZA with an official appraisal, if that appraisal is greater than the dollar amount of the value at that time. In March 2014 the value was $1.506 million; by November 2015 the value was $1.63 million and the value was most recently increased to $1.9 million in December 2017. According to recent correspondence with Mr. Teague the value will be increased again shortly.

Why should the Planning Commission further adjust the values for the Demo Calcs to "catch up" to the adjustments the Zoning Administrator has made to the RH-1 values since 2014 and ***"...to further the efficacy of Section 317..."***?

One reason is that the original idea for what is nicknamed "the Pacific Heights Exemption" was that some RH-1 neighborhoods were more *naturally unaffordable* and that a Demolition in these neighborhoods would not have an effect on the intent of Section 317 because some of these zoned neighborhoods were already expensive and affordable housing *would not* be lost by approving a Demolition. By making further adjustment to the Demo Calcs the Commission could better protect the more *naturally affordable* neighborhoods and homes from Demolitions masked as Alterations regardless of the underlying zoning just as the Zoning Administrator does in the RH-1 neighborhoods that may still be *naturally affordable*.

Another reason is that prior to March 2014, I cannot find any officially published listing of the value for the RH-1*. However, I have attached a letter concerning the request for a Section 317 exemption for the Demolition of 125 Crown Terrace dated April 2009. According to the letter at that time *"properties containing single-family dwellings must be valued at $1.54 million or more to be exempt from this ordinance"*. Putting aside the later permit history at 125 Crown Terrace, the attached letter concerning its appraised value suggests that the values in San Francisco were flat (or even fell) for quite a long period of time (in parallel with the economic crisis and recovery for those years 2008 to 2014). However the recent rapid rate of increase of the RH-1 value as adjusted by the ZA *three times* since 2014 illustrates the affordability crisis....and the highly speculative nature of the market. This should be offset by further adjusting the values of Demo Calcs by the Planning Commission as Section 317 intended.

Another reason for further adjustment to the Demo Calcs by the Commission is that Part 7 of the Periodic Adjustment to the Criteria includes both criteria for the Commission's adjustments and the criteria for the Zoning Administrator's adjustments to the values on the same Part 7, page 27 of the Code Implementation Document (CID). I discussed this history of both of these values on May 6, 2019 hearing during General Public Comment and submitted my testimony which is in the approved Minutes.

Another reason is that in the original legislation as passed by both the Planning Commission and the Board of Supervisors, Section 317 (d) (3) (A) regarding the adjustment of the values for

the RH-1 was to have the adjustment made by the Planning Commission and not the Zoning Administrator. This language in the Code has not changed and still says that the Planning Commission makes the adjustment. The Code Implementation Document gives the ZA this job of making the actual adjustment in the document. (The CID is dated October 2010 which says the ZA makes the adjustments, while the letter on Crown Terrace from the ZA is dated a year and a half earlier on April 29, 2009. However Section 317 (d) (3) (A) does grant the authority to the Planning Commission, just as it does in Section 317 (b) (2) (D). Section 317 was finalized and signed by Mayor Newsom on April 17, 2008. The powers in Section 317 to adjust all values seem to be linked to the Planning Commission. The rationale to adjust is linked.

Another reason is that since the new ADU legislation there are technically no more RH-1 zoned neighborhoods. This came up in the Commissioner's discussion at the June 6th at General Public Comment. The Commission needs to recalibrate the values overall and catch up by enacting further adjustments.

The most important reason for further adjustments is the original intent of Section 317. For the past five years housing in San Francisco has been besieged by the boom economy or as some like to call it, "the money bomb". Mitigating this impact and catching up with the original intent of Section 317 to ***"....conserve exciting housing and preserve affordable housing"*** is more than necessary.

In addition to the 125 Crown Terrace letter, I am attaching my work sheet of what the Demo Calcs could be, whether adjusted once or three times. These numbers are based on the maximum adjustments to Section 317 (b) (2) (B) and Section 317 (b) (2) (C) as allowed by Section 317 (b) (2) (D). The third attachment that the Commission may find helpful, as well as historically import is from an unpublished case from the Court of Appeal, First District, Division 2, California. It is entitled, "Ara TEHLIRIAN et al, Plantiffs and Appellants, v. City and County of San Francisco, Defendant and Respondent; Jose Morales, Real Party in Interest and Respondent. It concerns the issues at the heart of this request for a further adjustment to the Demolition Calculations by the Planning Commission.

Closing

It took the better part of the first decade of the 21st century to get an Ordinance passed that created Section 317. Section 317 has its faults, but the intent is very sound. There was no major opposition to it as best I can tell from the record when it was before decision makers more than a decade ago. Adjusting the values of the Demo Calcs in 2019 would be a good thing. Please consider adjusting them at least once and please consider asking the City Attorney if you may use your powers as a Planning Commission to go even further.

Sincerely,

Georgia Schuttish
460 Duncan Street

cc: Commission Vice President Koppel; Commissioner Moore; Commissioner Fung;
Commissioner Johnson; Commissioner Richards; Commissioner Hillis
Deputy City Attorney Kristen A. Jensen; Deputy City Attorney Kate Stacy

att: Letter re: Crown Terrace from L. Badiner to A. Brown; 4/29/2009
Work Sheet on Demo Calcs (G. Schuttish)
Tehlirian v. City and County of San Francisco (WestlawNext) © 2016 Thomson Reuters

SAN FRANCISCO
PLANNING DEPARTMENT

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April 29, 2009

Ms. Amy Brown
Director of Real Estate
Real Estate Division
General Services Agency
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

RE: **Residential Appraisal Report**
125 Crown Terrace
2719B/003

Dear Ms. Brown:

Attached, please find a copy of a Residential Appraisal Report for the above-mentioned property for your review and comments.

Due to the continuing shortage of affordable housing in San Francisco, a public hearing before the Planning Commission is required prior to the approval of any permit that would remove existing housing, with certain exceptions. Section 317. Loss of Dwelling Units through Merger, Conversion, and Demolition, within the Planning Code was adopted in May of 2008 to address these issues. The Zoning Administrator may modify economic criteria related to property values and construction costs as warranted by changing economic conditions to meet the intent of this Section, therefore, the exception to Section 317 of the Planning Code requires that properties containing single-family dwellings must be valued at $1.54 million or more to be exempt from this ordinance.

The submitted appraisal indicates the property value is $1.6 million, while ZILLOW.COM lists the value as approximately $750,000. Your comments regarding the accuracy of the submitted document would be appreciated. If you have any questions, please contact Cecilia Jaroslawsky at (415) 558-6348.

Thank you.

Sincerely,

Lawrence B. Badiner
Zoning Administrator
Acting Director

cc: Cecilia Jaroslawsky, Planner

Encl.
G:\LETTERS OF DETERMINATION\ZA LETTER.doc

CARLA JAROSLAWSKY

Amy L. Brown
Director of Real Estate

City and County of San Francisco
REAL ESTATE DIVISION

May 15, 2009

REI 09-07

Larry B. Badiner
Zoning Administrator
Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Subject: Residential Appraisal Report – 125 Crown Terrace
Block 2719B, Lot 003

Dear Mr. Badiner:

At your request we completed a brief review of the appraisal report prepared by Brian Cassidy for the single family residence located at 125 Crown Terrace and have the following comments:

1) The Appraiser used three "comparable" sales to justify the $1,600,000 indicated value.

The record shows that Comparable Sale No. 1 sold in June 2007 (not July 2008) for $1,850,000 (not $1,995,000). From June 2007 to January 2009 (the date of value) property values have trended lower. The site area is 8,489 sf (potential for two sites) versus 3,700 sf for the subject property and the living area 1,795 sf versus 878 sf for the subject property. In our opinion the adjustment for site area should be greater than the $200,000 used by the appraiser. The appraiser adjusted for the difference in living area based on $75 sf. In our opinion this adjustment should have been higher (closer to the $225 sf the appraiser used in his cost approach).

The other two comparable sales also had considerably more living area. Again this adjustment should have been greater.

2) The subject property sold for $850,000 in August 2006 at the peak of the market.

It is therefore our opinion that the market value of the subject property in January 2009 was considerably less than $1,600,000.

Office of the Director of Real Estate • 25 Van Ness Avenue, Suite 400 • San Francisco, CA 94102
(415) 554-9850 • FAX: (415) 552-9216

	50% and	65% / or	50% and	50%
	4. B1	B2	C1	C2
YEAR 1	40%	52%	40%	40%
YEAR 2	32%	41.69%	32%	32%
YEAR 3	25.6%	33.28%	25.6%	25.6%
YEAR 4??	20.48%	26.62%	20.48%	20.48%

2018-2019 WORK SHEET

PLANNING CODE SECTIONS

317(b)(2)(B)

317(b)(2)(C)

↓

current demo calcs.

317(b)(2)(D)

↓

YEARS 1-3 MATCH ADJUSTMENTS TO VALUES FOLLOWIN ZA 2014-2018

↓

YEAR 4 HYPOTHETICAL ADJUSTMENT??

ATTACHMENT 2

General Public Comment 9/12/2019 to Commission from G. Schuttish

NUMERICAL CRITERIA VALUES FOR RH-1 from 2009 - September 12, 2019

$2.2 MILLION
July 2019

$1.9 MILLION
December 2017

$1.63 MILLION
November 2015

$1.54 MILLION
April 2009

$1.506 MILLION
March 2014

$1.3 MILLION
August 2013

No Adjustment to Demo Calculations for RH-2 and RH-3 since Code Implementation Document, October 2010

2009 value stated in 4/29/2009 ZA Letter to Amy Brown re: Crown Terrace; 2013 value based on RJ&R memo by D. Silverman found on Internet; All other values published by Planning Department in "Removal of Dwelling Units Periodic Adjustment to Numerical Criteria"

2007 WL 779353
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

Court of Appeal, First District, Division 2, California.

Ara **TEHLIRIAN** et al, Plaintiffs and Appellants,
v.
CITY AND **COUNTY** OF **SAN FRANCISCO**, Defendant and Respondent;
Jose Morales, Real Party in Interest and Respondent.

No. A112246. | (**San Francisco City and County** Super. Ct. No. 505035). | March 16, 2007.

Attorneys and Law Firms

James Brandan Kraus, Andrew Mayer Zacks, Zacks Utrecht & Leadbetter P.C., **San Francisco**, CA, for Plaintiffs and Appellants.

Susan S. Cleveland, Sarah Ellen Owsowitz, Office of the City Attorney, **San Francisco**, CA, for Defendant and Respondent.

Raquel Fox, Tenderloin Housing Clinic, Inc., **San Francisco**, CA, for Real Party in Interest and Respondent.

Opinion

LAMBDEN, J.

***1** Appellants Ara **Tehlirian**, Berg **Tehlirian**, and ABT LLC (petitioners) [1] seek reversal of the superior court's denial of their petition for writ of administrative mandate, as well as an order directing issuance of a writ to the **San Francisco** Board of Appeals instructing them to reconsider petitioners' permit application and make legally relevant findings. We affirm the superior court's denial of their petition.

BACKGROUND

Petitioners own an old residential duplex located a 572-572A San Jose Avenue in **San Francisco**, purchased by Ara and Berg **Tehlirian** in 1994. The duplex consists of two units, one on the ground floor and one on the second floor, each containing two bedrooms and one bath, and measuring approximately 750 square feet. Real party in interest Jose Morales, 76 years old as of June 2005 and a self-described "low-income senior," has resided in one of the two residential units in the building since 1965; the other unit has been vacant during this dispute.

In November 2002, petitioners, through their architect, Best Design and Construction, submitted a building permit application to the Department of Building Inspection for the **City** and **County** of **San Francisco** (**City**). [2] The proposed project would remove the existing brick foundation, convert the ground floor residential unit into a two-car garage and storage facility, renovate the second floor residential unit, and add a third floor, to be used as a second residential unit. The project would add 335 square feet to the ground floor, 368 square feet to the second floor, and a 1,038 square foot third floor, extending the building in the front and back.

Morales requested the Planning Commission (Commission) conduct a discretionary review of petitioners' application. The subsequent Planning Department staff report to the Commission summarized petitioners' proposed project as follows:

"The proposed project aims to convert the first floor into a garage (currently it is used as a dwelling unit), in order to provide parking for the two dwelling units located above. The second floor the existing dwelling unit, the entryway, [*sic*] and provides a horizontal rear addition of 135 square feet. It proposes a horizontal front addition of 625 square feet and a new bay window. This second floor unit has two bedrooms and two bathrooms. The proposal also includes a vertical addition, a new third floor to house the second dwelling unit. The unit has two bedrooms and two bathrooms and is larger than the existing dwelling unit by approximately 300 square feet. The existing units measure approximately 750 square feet. The re-modeled units measure approximately 1,050."

According to the Planning Department staff summary, Morales was "concerned that his displacement will affect his health, he will incur relocation costs, and that the proposal

will result in increased rental costs. The tenant is also concerned that the project would reduce the city's affordable housing stock."

*2 After further analysis, the Planning Department staff reported: "There are concerns that this project is a demolition. The Department of Building Inspection has made the determination that this project is an alteration, not a demolition. Therefore, the Planning Department has received the application as an alteration." The staff recommended that the Commission not take discretionary review and approve the project as proposed. The Commission subsequently conducted a discretionary review of the project and denied the building permit application in October 2003 by a four-to-one vote, based on the following findings:

"The proposed project is not a major alteration but a de facto demolition; [¶] The project would result in the de facto loss of affordable housing by improving and expanding the existing units that are currently accessible to lower-income tenants because of their size and relative lack of amenities; [¶] The proposal might result in the displacement of an elderly man with limited income; and [¶] Any conditions of approval attached to the building permit relating to rental rates, relocation, tenant's right of return, and other arrangements made between the landlord and tenant would not be enforceable by the [Commission]."

Petitioners appealed to the Board of Appeals (Board) on the ground that the Commission erred in its determination that the alterations were a de facto demolition. In February 2004, the Board heard statements from, among others, Ara Tehlirian, Morales, and the public. Ara Tehlirian stated that he and his family wanted to move to San Francisco and live on the premises in order to be closer to family, and needed to make the alterations called for by the project in order to do so. The Board voted three to two to overrule the denial and grant the permit with conditions as presented by petitioners, which vote was insufficient to overturn the denial. After a rehearing in November 2004, the Board voted three to two to uphold the denial. The Board did not make specific findings regarding either ruling.

Petitioners filed a petition for a writ of administrative mandate in superior court pursuant to Code of Civil Procedure section 1094.5. The court denied the writ in September 2005, finding that the Board had substantial evidence before it that the project would impact the City's health, safety, and welfare by reducing its stock of affordable housing.

This timely appeal followed. We have granted each party's request for judicial notice of certain documents. These include excerpts from the Housing Element of the City's General Plan and documents related to petitioners' notice of withdrawal of the rental unit occupied by Morales pursuant to the Ellis Act, which we discuss further, *post*.[3]

DISCUSSION

On appeal, petitioners argue that (1) the board "failed to proceed in a manner required by law because it failed to make findings in affirming the Commission's decision to deny the permit"; and (2) "there is no substantial evidence to support the findings that the proposed remodel is either a demolition or would negatively affect the City's affordable rental housing stock." Neither argument has merit.

I. *The "Findings" Issue*

*3 Petitioners argue that the Board failed to make findings in this case, constituting an abuse of discretion under Code of Civil Procedure section 1094.5, citing *Topanga Assn. for a Scenic Community v. **County** of Los Angeles* (1974) 11 Cal.3d 506, 515 (***Topanga***) and *Hadley v. **City** of Ontario* (1974) 43 Cal.App.3d 121, 127-129 (***Hadley***).)

Code of Civil Procedure section 1094.5, subdivision (b) states in relevant part that "[a]buse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." This section "clearly imports a duty on the part of the administrative agency to make findings as a basis for judicial review." (*Hadley, supra*, 43 Cal.App.3d at p. 127, citing *Topanga, supra*, 11 Cal.3d at pp. 515-517.) However, this duty has not been extended to appellate bodies reviewing administrative agency decisions. (*Ross v. **City** of Rolling Hills Estates* (1987) 192 Cal.App.3d 370, 376 (***Ross***) [stating, "[b]y affirming the Commission's decision, the Council in effect adopted its findings"]; *Carmel Valley View, Ltd. v. Board of Supervisors* (1976) 58 Cal.App.3d 817, 823 (***Carmel Valley View***) [the action of the board of supervisors in effect adopted the findings of the Commission].)

Here, the Commission made specific findings, which we quote in the discussion portion above. These findings "are

sufficient to apprise the parties and the court of the basis" for the City's action here. (*Ross, supra*, 192 Cal.App.3d at p. 377.) The Board, by upholding the Commission's ruling, in effect adopted these findings. (*Id.* at pp. 376-377; *Carmel Valley View, supra*, 58 Cal.App.3d at p. 823.) Petitioners' argument is without merit.

II. *The Substantial Evidence Issue*

A. *Substantial Evidence Standard of Review*

The parties agree that because the right at stake is not a fundamental right, we apply a substantial evidence standard of review (*Strumsky v. San Diego* ***County*** *Employees Retirement Assn.* (1974) 11 Cal.3d, 28, 44-45), doing so to review the Board's decision, not the trial court's. (*Auburn Woods I Homeowners Assn. v. Fair Employment & Housing Com.* (2004) 121 Cal.App.4th 1578, 1583 (***Auburn***).) In reviewing the validity of the Board's decision, Code of Civil Procedure section 1094.5 requires we inquire into whether the Board " 'acted in excess of its jurisdiction and whether there was any prejudicial abuse of discretion.' " (***Auburn***, at p. 1583.) Abuse of discretion is established if the Board " 'failed to proceed in the manner required by law or its finding ... is not supported by substantial evidence in light of the whole record.' " (*Ibid.*)

We exercise the same function as the trial court and must decide if the Board's findings were based on substantial evidence. (*Auburn, supra*, 121 Cal.App.4th at 1583.) We do not reweigh the evidence, and must view the evidence in the light most favorable to the Board's findings and indulge in all reasonable inferences in support thereof. (*Ibid.*) " ' "We may not isolate only the evidence which supports the administrative finding and disregard other relevant evidence in the record. [Citations.] On the other hand, neither we nor the trial court may disregard or overturn the [Board's] finding ' "for the reason that it is considered that a contrary finding would have been equally or more reasonable" ' " ' " (*Ibid.*) We must uphold the Board's decision " 'unless the review of the entire record shows it is so lacking in evidentiary support as to render the decision unreasonable.' " (*Ibid.*) " 'Substantial evidence is defined as: " 'relevant evidence that a reasonable mind might accept as adequate to support a conclusion, ...' " [Citation] or evidence of " ' "ponderable legal significance ... reasonable in nature, credible, and of solid value." ' " ' " (*Auburn, supra*, 121 Cal.App.4th at 1583.)

***4** Moreover, if the Board committed errors of law, we are not bound by its legal conclusions. (*Auburn, supra*, 121 Cal.App.4th at 1583.)

B. *The Scope of Administrative Review*

San Francisco administrative authorities exercise discretion in the review of permit applications pursuant to **San Francisco** Business and Tax Regulations Code, article I, section 26, subdivision (b), which provides: "[I]n the granting or denying of any permit ... the granting ... power may take into consideration the effect of the proposed business or calling upon surrounding property and upon its residents, and inhabitants thereof; and in granting or denying said permit ... may exercise its sound discretion as to whether said permit should be granted ... denied or revoked."

Article I, section 26 of the **San Francisco** Business and Tax Regulations is "comprehensive language affecting the issuance of ***all*** permits sought under the authority of the relevant **San Francisco** Charter and ordinance provisions [that] in plain terms vests the granting power with a 'sound discretion' generally." (*Lindell Co. v. Board of Permit Appeals* (1943) 23 Cal.2d 303, 311; see also *Guinnane v.* ***San Francisco City*** *Planning Com.* (1989) 209 Cal.App.3d 732, 738, fn. 4 (***Guinnane***); *Martin v.* ***City*** *and* ***County*** *of* ***San Francisco*** (2005) 135 Cal.App.4th 392, 406-407 (***Martin***).)

Furthermore, "[s]ection 26 ... vest[s] administrative authorities with very broad discretion to decide whether and on what conditions an applicant will be granted a permit. And if the application is for a building permit, the fact that the applicant's project complies with zoning ordinance and building codes does not restrict the scope of that discretion." (*Martin, supra*, 135 Cal . App.4th at p. 400; accord, *Guinnane, supra*, 209 Cal.App.3d at p. 736 ["compliance with the zoning laws and building codes did not entitle [the applicant] to a building permit as a matter of course"].) Thus, the Commission has the discretion to reject a permit simply because a proposed residential development is "unsuitable for the indicated location." (*Guinnane, supra*, 209 Cal.App.3d at p. 736.) As Division Four of this District recently stated:

"[I]t is well established that section 26 administrative discretion is not cabined by specific criteria that may be set forth in city codes or ordinances. Instead, that discretion is informed by public interest, encompassing

anything impacting the public health, safety or general welfare." (*Martin, supra*, 135 Cal.App.4th at p. 407.)

Under the City's Charter, the Board of Appeals has broad discretionary review powers. Section 4.106 of the Charter of the City and County of San Francisco (Charter section 4.106) authorizes the Board of Appeals to hear and determine appeals arising from the grant or denial of a permit, and to take the public interest into account in doing so. It states in relevant part:

"The Board shall hear and determine appeals with respect to any person who has been denied a permit ... or who believes that his or her interest or the public interest will be adversely affected by the grant [or] denial ... of a ... permit." (Charter, § 4.106, subd. (b).)

***5** Charter section 4.106, subdivision (d) states:

"After hearing and necessary investigation, the Board may concur in the action of the department involved, or by the affirmative vote of four members (or if a vacancy exists, by a vote of three members) overrule the action of the Department.

"Where the Board exercises its authority to modify or overrule the action of the department, the board shall state in summary its reasons in writing."

Thus, "both the planning commission (under § 26) and the board of permit appeals (under § 3.651 of the city charter) [4] are authorized to exercise independent discretionary review of a building permit application, the final authority being reposed in the board. Further ... such review is not confined to a determination whether the applicant has complied with the city's zoning ordinances and building codes." (*Guinnane, supra*, 209 Cal.App.3d at p. 740, fn. added.) "The board generally enjoys ' "complete power to hear and determine the entire controversy, [is] free to draw its own conclusions from the conflicting evidence before it and, in the exercise of its independent judgment in the matter, affirm or overrule...." ' [Citations.] However, that power must be exercised within the bounds of all applicable city charter, ordinance and code sections, and any action on its part that exceeds these bounds is void." (***City and County of San Francisco*** *v. Board of Permit Appeals* (1989) 207 Cal.App.3d 1099, 1104-1105.)

C. *The Board's Ruling*

Petitioners contend no substantial evidence supported the Board's finding that their project was a demolition or would result in the loss of "affordable" housing, either to Morales or the City at large. This is incorrect.

1. *"De Facto Demolition"*

The Commission's findings referred to the project as resulting in a "de facto demolition." It is not completely clear whether the Commission's use of this phrase was intended to find that the project constituted a "demolition" as that term is defined under municipal law, rather than an "alteration." [5] However, the record indicates that the Board reviewed the appeal with this in mind, as the Board's Vice President Sugaya stated at the November 2004 rehearing, "I still believe that this is an ***illegal demolition*** and that's what we're voting on." (Italics added.) Accordingly, we review the record to determine whether substantial evidence was presented to support the finding that the project was a "demolition" as that term is defined under municipal law. We conclude that such evidence was presented.

The City's Building Code defines "demolition" for the purpose of determining whether an unlawful residential demolition has occurred. It is defined as "the total tearing down or destruction of a building containing one or more residential units, or any alteration which destroys or removes ... principal portions of an existing structure containing one or more residential units." (S.F. Building Code, § 103.3.2. [6])

***6** The term "principal portion" is defined as "that construction which determines the shape and size of the building envelope (such as the exterior walls, roof and interior bearing elements), or that construction which alters two-thirds or more of the interior elements (such as walls, partitions, floors or ceilings)." (S.F. Building Code, § 103.3.2.)

Thus, under the City Building Code, a "demolition" includes an alteration which destroys or removes principal portions of an existing structure containing one or more residential units, which "principal portions" include "a construction which determines the shape and size of the building envelope," including, but not limited to, exterior walls, roof, and interior bearing elements. Petitioners' proposed project meets this definition of "demolition ." Petitioners' plans, rather than being "fairly modest" as petitioners claim, indicated that the project would, among other things, replace the existing brick

foundation, convert the first floor 750 square foot residential unit into an expanded two-car garage, renovate and expand the second floor rental unit occupied by Morales from 750 to 1,050 square feet, and add an entirely new third floor on top of the building, where a 1,050 square foot modern residential unit would be constructed. It can be reasonably concluded from these plans that both the shape and size of the building envelope would be significantly altered, and that "principal portions" of the building would be removed or destroyed (such as the second floor roof, a significant portion of the building "envelope" for the horizontal expansion of the first and second floors, the first floor residential unit, some portion of the first floor exterior for cars to enter the new garage, and the existing foundation).

Furthermore, there was substantial evidence that two-thirds or more of the interior gravity bearing walls would be removed by the project. A letter by Stuart Stoller, a senior associate at SGPA, an architecture and planning firm, was submitted to the Board,[7] in which Stoller disagreed with the estimate by **Tehlirian**'s own architect, Charles Ng, that "less than 57% of the existing bearing walls" would be removed in the proposed construction. Stoller opined, based on his review of petitioners' "existing wall diagram," that the diagram did not take into consideration certain specified aspects of the premises or address certain "potential" requirements which, if considered, "could likely indicate that 33% or less of the existing wall structure will be retained." Stoller's letter called into question whether or not two-thirds of the interior gravity load bearing walls would be removed in the course of the project.

A letter by licensed contractor Alan Klonsky was also submitted to the Board. Klonsky reviewed Mr. Morales's rental unit and certain unspecified project plans. He stated:

"Although the project drawings are labeled as vertical and horizontal additions, in reality, the scope of work constitutes a demolition and the construction of a new building. At ground level, now occupied by the second unit, a garage is proposed along with the foundation and structural upgrades required by the construction of a 3-story building. Over the garage 2 floors of new construction will be built with an increase in the footprint of the building to current allowable lot coverage. The 2 new units will be significantly larger than the existing apartments. [¶] ... [¶] This project will require the existing building to disappear as a new building takes its place. Any remnant of the original construction will be symbolic at best. It appears to me that proposed scope of [*sic*] far exceeds the definition of a remodel."

*7 Based on this substantial evidence, the Board could reasonably conclude that the project, rather than calling for "alterations" as claimed by petitioners, was in fact ("de facto") a "demolition" as that term is defined by the City's Building Code. The plans called for significant changes to the shape and size of the building by the destruction or removal of significant principle portions of it. Klonsky's views, while not discussing the City's definition of demolition, confirmed these dramatic changes. The Board also could reasonably rely on Stoller's letter to conclude that the project more likely than not would destroy two-thirds or more of the linear feet of gravity load bearing walls, which would also constitute a "demolition" as defined in the City's Building Code.

Petitioners argue that we should disregard Stoller's letter as "soundly defective," amounting to "merely speculation and unsubstantiated opinion," because Stoller's qualifications are unclear, he examined only an "existing wall diagram" without showing how he could rely on it for his conclusions, and stated his conclusions in an unacceptably equivocal fashion (using such terms as "could" and "likely").

Petitioners' arguments lack merit. The Board could reasonably infer that a senior associate of an architecture and planning firm has the expertise to evaluate the materials Stoller reviewed and opine about them. Indeed, Ng's own qualifications appear to be less than what petitioners represent, i.e., a "licensed architect."[8] The evidence also strongly suggests that Stoller and Ng relied on the same or a very similar document in stating their views of the proposed project, since Stoller refers to "the 'Existing Wall Diagram' submitted by the project sponsor" and Ng refers to an "existing walls diagram." Neither explains how he could rely on such a document for his conclusions.

As for the quality of Stoller's opinion, his statements were not conclusory, and are a far cry from those discussed in the cases petitioners cite. (See *Gentry v. City of Murrieta* 1995) 36 Cal.App.4th 1359, 1421-1422 [expert found no effect on groundwater except for a "possible exception," and relied on unspecified information]; *Drouet v. Superior Court* (2003) 31 Cal.4th 583, 598 [referring to a "snippet" of a Senate Committee analysis in discussing a statute's interpretation, merely identified as "sufficiently tentative and equivocal to caution us against relying too heavily on [it]"]; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748,

756 [referring to a "conclusory" comment regarding what "might" occur as speculative and not substantive evidence]; *Keeton v. Workers' Comp. Appeals Bd.* (1979) 94 Cal.App.3d 307, 312, fn. 2 [merely referring to a "conclusory" doctor's report].) Stoller identified specific areas of the structure and potential requirements that factor into his views, and listed five specific items of concern. He used the phrase "could ... indicate" because he reached different conclusions depending on which of his stated items of concern are considered. [9] His use of terms such as "likely" or "potential requirements" to qualify his conclusions is hardly fatal in an expert opinion. They may go to the weight afforded to his opinion, but do not eliminate their merit altogether.

***8** Petitioners also argue that Klonsky's statement is an "unsupported conclusion, especially because it is contrary to the Planning Department's informed determination. Nothing in his conclusion attempted to apply relevant building code standards governing remodel versus demolition." Petitioners miss the relevance of Klonsky's statement, which is to support the conclusion that, practically speaking, the project "demolishes" the old building and places a new, significantly different one in its place, regardless of the Building Code definitions.

Petitioners also argue that we should rely on the Planning Department, which petitioners contend "repeatedly found ... the project *not* a demolition." The record does not support petitioners' contention. The Planning Department stated in recommending that the Commission not take discretionary review: "The Department of Building Inspection has made the determination that this project is an alteration, not a demolition. Therefore, the Planning Department has received the application as an alteration."

Regardless, we will not reweigh the evidence. The Board was entitled to rely on the substantial evidence that the **Tehlirian** project was a "de facto" demolition, even in the face of contrary evidence.

In their reply brief, petitioners also distinguish the City's and Morales's reference to a "de facto demolition" from a "de jure demolition," arguing that it constitutes an "admission" that there is no evidence of the latter, and that the Board acted without authority to reject a permit application for a mere "de facto demolition." To the contrary, the City argues that "the Project rose to the level of a demolition," and Morales, as he argued before the Board, contends that the "de facto demolition" constituted a "demolition" as the term is defined by the City's Building Code. As we have already stated, Board Vice President Sugaya stated that the Board was considering whether this was an "illegal demolition." In any event, there was substantial evidence that the project called for a "demolition" as that term is defined by the City's Building Code.

2. Affordable Housing

The Board did not abuse its discretion in finding that petitioners' project would eliminate affordable housing from the rental market.

Pursuant to state and municipal law, the Board may consider the need to retain affordable housing in deciding whether to grant or deny permits. "[C]reating affordable housing for low and moderate income families" is a "legitimate state interest." (*Home Builders Assn. v. City of Napa* (2001) 90 Cal.App.4th 188, 195.) "The assistance of moderate-income households with their housing needs is recognized in this state as a legitimate government purpose. (See, e.g., Gov.Code, § 65583, subd. (c)(2) [local communities must set forth in housing elements of their general plan a program that will 'assist in the development of adequate housing to meet the needs of low-*and moderate*-income households' (italics added)].)" (*Santa Monica Beach, Ltd. v. Superior Court* (1990) 19 Cal.4th 952, 970-971.)

***9** Municipal law requires the Board to consider the City's supply of affordable housing in making its decisions. The City's Planning Code section 101.1, subdivision (b) (3), states as a "priority policy" "[t]hat the City's supply of affordable housing be preserved and enhanced," and the City's departments must comply with the Planning Code's provisions in issuing permits. (S.F. Planning Code, § 175, subds. (a), (b).)

Furthermore, the Housing Element of the City's General Plan emphasizes the importance of retaining affordable housing. Objective 2 of the Housing Element states:

"The existing housing stock is the City's major source of relatively affordable housing. It is very difficult to replace given the cost of new construction and the size of public budgets to support housing construction. Priority should be given to the retention of existing units as a primary means to provide affordable housing." (S.F. General Plan, Housing Element (adopted May 13, 2004) p. 145.)

Consistent with this emphasis on retaining affordable housing, Policy 2.1 of the Housing Element discourages the "demolition" of sound existing housing. It states:

"Demolition of existing housing often results in the loss of lower-cost rental housing units. Even if the existing housing is replaced, the new units are generally more costly. Demolition often results in displacement of residents, causing personal hardship and relocation problems. [¶] ... The City should continue to discourage the demolition of existing housing that is sound or can be rehabilitated, particularly where those units provide an affordable housing resource." (S.F. General Plan, Housing Element (adopted May 13, 2004) pp. 145-146.)

Also consistent with this emphasis, Implementation 2.1 of the Housing Element states, among other things, "[t]he feasibility of expanding the demolition definition will continue to be evaluated in order to prevent the loss of housing classified as 'alterations.' " (S.F. General Plan, Housing Element, (adopted May 13, 2004) pp. 145-146.)

The Board's decision to uphold the denial of petitioners' permit application took into account the impact of the project on the City's stock of affordable housing. This was evidenced not only by its implicit adoption of the Commission's findings, but also by Board member Knox's statement at the November 2004 rehearing:

"I'm sensitive to the fact that Mr. Morales would be displaced and ultimately what we are looking at is the denial of the permit, not the fairness of people being able to buy property and make changes. [¶] Or frankly, I don't think we are going to be able to address the lack of affordable housing in San Francisco in this Board, with this Board in any case, including this case. [¶] As long as there is the private ownership of property in a limited geographical area, housing is going to be really expensive in this town. [¶] But I am not inclined to grant the appeal and overturn the denial of the permit."

***10** There was substantial evidence that the enlarged, renovated second floor rental unit would become unaffordable to persons in Morales's modest circumstances. Morales stated to the Board at the February 2004 hearing that he already was spending "more than 30 percent" of his income in rent, which was approximately $873 a month as of July 2005. Although petitioners eventually made certain promises to accommodate Morales's income limitations and displacement concerns as a part of their appeal to the Board, [10] Ara Tehlirian acknowledged to the Board during the February 2004 hearing that he was encouraging Morales to apply for government housing assistance and to consider taking on a roommate to pay for rent increases. Among other things, Tehlirian stated:

"[I]'d be taking a hit on the existing costs, but I'll take on that extra burden for a period of time, a reasonable period of time, until such time that the tenant can perhaps get in a roommate that can pay him several hundred dollars a month, or assistance where the government will try to assist him and by being able to get that assistance that will take some of the burden off of me."

Thus, whether or not petitioners accommodated Morales's concerns and limitations for a time, this testimony suggested that the new unit would no longer be affordable to a person in Morales's circumstances.

There was also substantial evidence that the project would remove the existing first floor, 750 square foot residential unit from the housing market as well, and that it, too, was of a more affordable nature than its "replacement." Although it was apparently vacant throughout this dispute, its conversion into a parking garage would obviously eliminate it from use. Petitioners' construction of a new third floor for the building, consisting of a modernized, 1,050 square foot residential unit, does not necessarily require its destruction. It is also reasonable to conclude that the modernized and enlarged third floor unit would be significantly more expensive if offered on the rental market.

Petitioners argue that the Board's affordable housing determination was improper for a number of reasons. First, they contend that there was no substantial evidence that affordable housing would be lost to Morales or the City at large. They point to their offer to limit capital improvement pass-throughs to Morales to $43 per month, and to the lack of evidence that the project would result in "luxury" amenities. We think these arguments avoid the obvious. The Board could reasonably conclude based on substantial evidence that the project would eliminate two residential rental units that are affordable to persons of modest circumstances, as we have discussed herein.

Petitioners also assert that Morales's unit in its present state is "perhaps dangerous," and suggest that it may violate the implied warranty of habitability, and contain "defects." Petitioners do not point to anything in the record so indicating,

and there was substantial evidence to the contrary. Klonsky, the licensed contractor, reviewed Morales's living conditions and found he lived "in a small Victorian building that appeared to suffer from deferred maintenance but was far from uninhabitable."

***11** Petitioners argue further that neither the Board nor the Commission are qualified to determine what is affordable housing, and neither body has "authority to prevent property owners from making moderate improvements to their property because doing so would affect the supply of affordable housing." They also insist that there were no standards or evidence of what constituted "affordable housing," or that the project once it completed would not be affordable. These arguments presuppose that petitioners were entitled to approval of their permit application absent some definitive proof to the contrary. As we have already discussed, the Board has broad discretion in granting or denying permits. We see no reason under the circumstances of this case to question the Board's decision that the project would eliminate affordable housing because the term was not precisely defined.

In short, given our deferential standard of review, the City's stated priority of retaining affordable housing and discouraging its "demolition," and the substantial evidence reviewed herein, [11] we cannot conclude that the Board abused its discretion when it denied petitioners' appeal because, as stated in the Commission's findings, the "project would result in the de facto loss of affordable housing by improving and expanding the existing units that are currently accessible to lower-income tenants because of their size and relative lack of amenities."

D. *The Board Did Not Improperly Consider Tenancy-Related Issues*

Petitioners argue that the Board's consideration of the impact of the project on the City's stock of affordable housing was somehow precluded by the Board of Supervisors' creation of the Rent Stabilization and Arbitration Board (Rent Board) and enactment of related laws establishing certain rights and obligations between landlords and tenants (Rent Ordinance), and was beyond the Board's authority under San Francisco Business and Tax Regulations Code, article I, section 26. Petitioners contend that the Board improperly considered "tenancy-related issues," and that allowing the Board to base its decision on considerations regarding affordable housing "would undermine the creation of the Rent Ordinance and usurp the jurisdiction of the Rent Board." This argument also lacks merit.

As we have already discussed, the Board may, pursuant to Charter section 4.106, subdivision (b) of the Charter consider the "public interest" in its review of a permit. Pursuant to San Francisco Business and Tax Regulations Code, article I, section 26, it may review permits with regard to "public health, safety, and general welfare." (*Martin, supra,* 135 Cal.App.4th at p. 407.) Given these provisions and the City's stated priorities regarding affordable housing, the Board was entitled to consider the project's impact on the City's affordable housing stock in its deliberations.

Petitioners argue that the Board acted similarly to the Board in *City and County of San Francisco v. Board of Permit Appeals, supra,* 207 Cal.App.3d 1099, an opinion issued by this court. We disagree. In that case, the court held that the board acted in excess of its jurisdiction when it authorized a third unit for a property zoned for single family use. (*Id.* at p. 1102.) The court concluded that the board had effectively rezoned the property, a legislative act exclusively within the power of the board of supervisors. (*Id.* at p. 1110.) No such "legislating" occurred here. As we have discussed, the Board acted within its authority to review permits, and to consider such things as the public health, safety, and general welfare, and the City's priorities regarding its affordable housing stock, in doing so.

***12** Furthermore, the Board did not decide any issues covered by the Rent Ordinance. The Board did consider the possible impact of the project on Morales, and encouraged negotiations between petitioner and Morales to mitigate that impact. The municipal ordinances allow for the Board's consideration of the project's impact on Morales. (Charter, § 4.106, subd. (b) ["The Board shall hear and determine appeals with respect to any person who has been denied a permit ... or who believes that his or her interest ... will be adversely affected by the grant [or] denial ... of a ... permit"]; S.F. Bus. & Tax Regs.Code, art. I, § 26 ["in the granting or denying of any permit ... the granting ... power may take into consideration the effect of the proposed business or calling upon surrounding property and upon its residents, and inhabitants thereof"].) The Board inevitably considered his tenant circumstances in assessing the project's impact on him, given his status as petitioners' tenant. However, the Board did not decide any issues covered by the Rent Board or the Rent Ordinance. For example, it made no determinations related to Morales's displacement or temporary eviction, his relocation

benefits, the amount of rent to be paid should the project be completed, or the amount of capital improvement pass-through that should be allowed. [12]

E. *Petitioners' Ellis Act Notice*

Petitioners represent that, while this appeal was pending, they invoked their Ellis Act rights pursuant to Government Code section 7060 et seq. and the City's Rent Ordinance, San Francisco Administrative Code section 37.9A, and gave notice to terminate Morales's tenancy and withdraw his unit from the rental market. They contend that, as a result, "a remand should result in a determination that the building no longer contains any rental housing, thus precluding any finding that this project will affect the City's affordable housing stock," and "submit that a writ of administrative mandate should issue compelling the [Board] to make legally relevant findings, which if done, will lead to permit issuance."

The courts review the Board's decision pursuant to Code of Civil Procedure, section 1094.5, based upon the record before the Board at the time it made its decision, with limited exceptions. (Code Civ. Proc., § 1094.5, subd. (e); *Eureka Teacher's Assn. v. Board of Education* (1988) 199 Cal.App.3d 353, 366-367.) We see no reason to consider petitioners' actions and contentions regarding the Ellis Act, other than to determine whether or not this appeal is moot in light of them. We conclude that it is not, as the record indicates that petitioners have extended the date of withdrawal of the unit to April 18, 2007, as indicated by petitioners' May 17, 2006 letter, of which we have taken judicial notice at Morales's request. (See *DeLaura v. Beckett* (2006) 137 Cal.App.4th 542, 547, fn. 4 [determining the merits of a dispute after Ellis Act notice had been given because the notice could still be rescinded].)

***13** The City also argues that we should determine that petitioners' Ellis Act notice cannot effect the Board's decision because "[i]t does not necessarily alter the property's character as 'affordable housing' or change the proposed Project from a demolition to an alteration." These issues also were not before the Board and, therefore, we do not consider them.

F. *Other Arguments by Petitioners*

Petitioners make a number of additional arguments, none of which are persuasive. Petitioners repeatedly allege improprieties that have no support in the record, such as that Morales "called in political favors," the Commission and Board made findings that were "utterly pretextual" and "unfettered whim," and petitioners were "singled ... out solely for political reasons." We disregard these unsupported contentions.

Petitioners also argue that the Board's action effectively bans property owners from making any improvements to their buildings, stating: "If the City's position really is to keep housing affordable by encouraging dilapidation and preventing improvements, this court should order the City to cease issuing residential improvement permits of any kind to anyone. In fact, it should order that all permits already issued be rescinded and that all improvements ever made to any property be removed. That will undoubtedly not only prevent housing from becoming more expensive, it will ensure that it becomes truly affordable."

This hyperbole cannot obscure the substantial evidence of the dramatic overhaul called for in the petitioners' proposed project. Nothing in the record indicates that the Board barred petitioners from making any improvements to their property.

We also disagree with petitioners' assertions in their reply brief that the Board's action was "irrational" and "arbitrary" and against the "sound discretion" standard of San Francisco Business and Tax Regulations Code, article I, section 26. Petitioners' overbroad, scattershot arguments, such as their claim that the Board's action was in conflict with statutory provisions regarding the improvement and rehabilitation of property, and their contention that the City has "telegraphed" that it will continue to "retaliate" against them and "never approve any permit they seek," are unpersuasive. Petitioners repeatedly ignore the substantial evidence discussed herein that their project was a "demolition" and would eliminate affordable housing from the rental market, and the Board's broad discretion to act consistent with the City's interest in discouraging such demolitions and preserving such housing.

DISPOSITION

The superior court's denial of petitioners' petition for writ of administrative mandate is affirmed. Respondent and real party in interest are awarded costs.

We concur: KLINE, P.J., and HAERLE, J.

All Citations

Not Reported in Cal.Rptr.3d, 2007 WL 779353

Footnotes

1 The record indicates that ABT, LLC became the owner of the subject real property in 2004. To avoid unnecessary confusion, we refer to the actions of "petitioners" throughout without distinguishing between appellants.

2 All governmental entities referred to herein are part of the City and County of San Francisco, unless otherwise indicated.

3 We also take judicial notice of the City's Charter pursuant to Evidence Code section 451, subdivision (a), and of the municipal laws discussed herein pursuant to Evidence Code sections 452, subdivision (b) and 459.

4 Section 3.651 of the City Charter dealt with the Board's authority prior to Charter section 4.106, and language from that provision similar to that found in Charter section 4.106 was relied upon by the *Guinnane* court. (*Guinnane, supra*, 209 Cal.App.3d at p. 739.)

5 A zoning administrator summarizing the Commission's finding to the Board at its February 2004 hearing stated that "[t]he primary basis of the [Commission's] denial was that as a defacto demolition, this project resulted in the loss of affordable housing, and the destruction of sound housing." He later stated: "I did want to talk a little bit about the defacto demolition. While that's not an official term or part of the demolition policy, I believe the [Commission's] issue here was that by extending the building to the rear, removing the front façade and extending the front wall forward, totally remodeling the interior and removing most of the walls, it is not a technical demolition, but it was substantially the same effect from a design point of view of being a demolition."

6 The parties refer to the City's Building Code section 103.3 or 103.3.1 in their briefs for these same provisions. We refer to section 103.3.2, as the relevant provisions are presently denominated.

7 The parties do not dispute that hearsay evidence may be considered in such a municipal administrative proceeding. (See *Mohilief v. Janovici* (1996) 51 Cal.App.4th 267, 294-295 [unsworn statements and letters in the case file may be considered as evidence in municipal nuisance abatement proceedings].)

8 While Ng states in his letter that as "project engineer and architect of record, in *our* professional opinion, the subject building permit application is an alteration and not a demolition" (italics added), he merely identifies himself as a "P.E." and principal of the "BEST Design & Construction Company" (the letterhead also identifies him as a "CLC"); another individual, not a signatory to the letter, is identified as an architect on the letterhead.

9 Stoller stated, "I believe that taking into consideration items 1 through 3 above, could indicate that only 38% of the existing gravity load wall is being retained. Including items 4 & 5 into consideration, could likely indicate that 33% or less of the existing wall structure will be retained."

10 These were stated by petitioners' representative Bret Gladstone at the November 2004 rehearing.

11 We find sufficient substantial evidence without needing to determine whether or not the Board was entitled to rely on statements from the public or the Commission regarding the project's impact on affordable housing, a matter referred to by the superior court and debated between the parties in their appellate papers.

12 The Commission's findings recognized that Rent Board issues were beyond its purview, stating, "Any conditions of approval attached to the building permit relating to rental rates, relocation, tenant's right of return, and other arrangements made between the landlord and tenant would not be enforceable by the Planning Commission."

October 27, 2016

To: Planning Commission and Staff

Re: Residential Expansion Threshold Informational Hearing

Dear Commissioners and Staff:

Here is my proposal for new language to deal with Tantamount to a Demolition in Section 317 and the loss of residential housing:

"If any or all sections of the front or rear facade or wall of a structure are proposed for removal, then the project is considered Tantamount to a Demolition and must have a Conditional Use Authorization hearing. However, if a project is determined during Intake and Design Review to remove any or all sections of only the rear facade or wall of the structure for only a horizontal addition, and this horizontal addition does not exceed the rear yard requirements under Sections 134 and 136 of the Planning Code, this project will not be considered Tantamount to a Demolition, but an alteration. If a vertical addition is proposed that adds square footage, a project will be considered Tantamount to a Demolition and a CUA hearing will be required. A roof deck is considered a vertical addition. Skylights or clerestory will not trigger a CUA hearing. If any portion of the front facade is altered at any time during the construction of a project, other than replacement windows per the Planning and Building Code, a project would be considered Tantamount to a Demolition and would be subject to penalties under the Planning Code and Building Code. If a Project Sponsor wishes to add only a garage to a structure that does not currently have a garage, such an addition could be considered under the Soft Story Program and the ADU provision or a Project Sponsor may seek a Variance from the Zoning Administrator. If a Project Sponsor needs to repair a front or rear facade due to deteriorating conditions, a special Building Permit must be applied for and will be issued. This special Building Permit would require scrutiny from both the Building Department and the Enforcement Division of the Planning Department at the time of application."

I do not think you need to get rid of Section 317. The point of the revised language proposed above, is to tighten up the Tantamount to a Demolition definitions.

It has been said that the thresholds of Tantamount to a Demolition do not work as intended. Currently they are thresholds of what can be removed. The proposed RET is a threshold of what can be added.

What is the difference in getting to the goal of preserving existing housing if thresholds are the problem? What threshold do you land on under a new proposal? GSF, FAR, a Fixed number, Neighborhood Averages, etc. etc?

Tightening up Tantamount to a Demolition as I propose above, brings certainty to the process. If a project sponsor wants to do a project that would trigger Tantamount to a Demolition they know from the get-go that there will be a Conditional Use Hearing.

Also, please remove the language in Section 317 (b) (7). It is a problem because it adds to loss of housing and basically allows a unit merger.

On a personal note, Commissioners and Staff. I have been talking about this for nearly three years now. I wrote my first letter on this in January 2014. There have been many good conversations about this and I greatly appreciate the Staff's work and concern as well as the Commission's concern and interest.

This needs quick attention. We need a better way to try and preserve existing housing. Devising a new Planning Code Section and new Review Procedures will be laborious and contentious. Please revise the definition of Tantamount to a Demolition either as I proposed above or something very similar. There is no reason it cannot be fairly simple.

Sincerely,

Georgia Schuttish

Georgia Schuttish