

File No. 111248

Committee Item No. _____

Board Item No. 11

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____ Date _____

Board of Supervisors Meeting Date 2/7/12

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- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Award Letter
- Application
- Public Correspondence

OTHER

(Use back side if additional space is needed)

- Amended w Board 1/31/12
- _____
- _____
- _____
- _____

Completed by: Arthur Khoo

Date 2/1/12

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

1 [Regulations for Jane Warner and Harvey Milk Plazas]

2

3 **Ordinance (1) approving regulations for Jane Warner Plaza at the intersection of Castro**
4 **and 17th Streets and Harvey Milk Plaza adjacent to the intersection of Castro and**
5 **Market Streets and (2) authorizing official acts in connection with the regulations.**

6 NOTE: Additions are single-underline italics Times New Roman;
7 deletions are ~~strike through italics Times New Roman~~.
8 Board amendment additions are double-underlined;
9 Board amendment deletions are ~~strikethrough normal~~.

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

10 Section 1. Findings.

11 (a) Jane Warner Plaza, formerly known as the 17th Street Plaza or Castro Commons,
12 and located at the intersection of 17th and Castro Streets, is one of the City's first "Pavement
13 to Parks" projects utilizing excess right-of-way for public park purposes.

14 (b) Harvey Milk Plaza, is located adjacent to the Castro Muni station at Castro and
15 Market Streets. ~~Said plaza is under the control of the Bay Area Rapid Transit District (BART)~~
16 ~~and the street level area is subject to the regulations of the Department of Public Works under~~
17 ~~a use agreement with BART. The Castro Street Muni station is subject to an agreement~~
18 ~~between the Bay Area Rapid Transit District (BART) and the San Francisco Municipal~~
19 ~~Transportation Agency. Said Agreement is on file with the Clerk of the Board of Supervisors~~
20 ~~in File No. _____ and is incorporated herein by reference.~~

21 (c) Both plazas play a vital role in the Castro community and act as gathering places
22 for the public and visitors to the neighborhood.

23 (d) With the extensive use of both plazas, the Board has determined that special
24 regulations should apply to the use of these plazas.

25

1 Section 2. Regulations for the use of Jane Warner and Harvey Milk Plazas for those
2 areas within the jurisdiction of the Department of Public Works.

3 A. HOURS.

4 Being adjacent to major pedestrian thoroughfares, the Jane Warner and Harvey Milk
5 Plazas are open and available for pedestrians 24 hours a day. However, ~~both Plazas should~~
6 ~~be available for sitting~~ seating on moveable chairs or moveable benches that are provided by
7 a neighborhood organization or in accordance with a Department of Public Works permit shall
8 be available only between the hours of 9:00 a.m. – 9:00 p.m., unless authorized otherwise by
9 the Director of the Department of Public Works. ~~There may be times at the discretion of the~~
10 ~~The Director of the Department of Public Works~~ may issue a permit to close that the Plazas
11 may be closed for general sitting and congregating (inclement weather, for community
12 events/festivals, other City/neighborhood functions, or other authorized uses under the Public
13 Works Code).

14 B. SLEEPING PROHIBITED DURING CERTAIN HOURS.

15 ~~No person shall remain in the Jane Warner Plaza or the Harvey Milk Plaza for the~~
16 ~~purpose of sleeping during any hours of the day.~~ The provisions of Park Code Section 3.13
17 concerning sleeping shall apply to the Jane Warner and the Harvey Milk Plazas except that
18 the Department of Public Works shall administer these provisions.

19 C. CAMPING PROHIBITED.

20 ~~(1) No person shall construct or maintain or inhabit any structure, tent, or similar~~
21 ~~shelter in either the Harvey Milk Plaza or the Jane Warner Plaza that may be used for housing~~
22 ~~accommodations or camping, nor shall any person construct or maintain any device that can~~
23 ~~be used for cooking.~~

24 ~~(2) No person shall modify the landscape in any way in order to create a shelter, or~~
25 ~~accumulate household furniture or appliances or construction debris.~~ The provisions of Park

1 Code Section 3.12 concerning camping shall apply to the Jane Warner and the Harvey Milk
2 Plazas except that the Department of Public Works shall administer these provisions.

3 **D. PEDDLING AND VENDING MERCHANDISE.**

4 No person shall bring, or cause to be brought, for the purposes of sale or barter, or
5 have for sale, or sell or exchange, or offer for sale or exchange any goods, wares, or
6 merchandise in the Jane Warner Plaza or the Harvey Milk Plaza, except for uses for which
7 that the City and County of San Francisco issues a permits. Notwithstanding the above
8 provision, the sale or distribution of newspapers, periodicals, or other printed or otherwise
9 expressive material is allowed subject to any applicable requirements of the Public Works
10 Code.

11 **E. PERFORMANCE OF LABOR.**

12 No person, other than duly authorized City personnel, shall perform any labor, on or
13 upon the Jane Warner Plaza or Harvey Milk Plaza, including, but not limited to, taking up or
14 replacing soil, turf, ground, pavement, structures, trees, shrubs, plants, grass, flowers, or
15 similar activities without prior written permission from the Director of the Department of Public
16 Works.

17 **F. NO SMOKING.**

18 Pursuant to the Municipal Code, smoking is prohibited on any unenclosed area of
19 property in the City and County of San Francisco that is under the jurisdiction of the any City
20 department if the property is a park, square, plaza, garden, sport or playing field, pier, or other
21 property used for recreational purposes, or a farmers' market. Given the use of the subject
22 areas as pedestrian plazas, this prohibition on smoking shall apply to Jane Warner and
23 Harvey Milk Plazas.

24 **G. WHEELED EQUIPMENT PROHIBITED.**

1 ~~No person, other than City employees or its agents or its contractors shall use wheeled~~
2 ~~conveyances in the Jane Warner Plaza or the Harvey Milk Plaza unless the Director of the~~
3 ~~Department of Public Works issues a permit or provides written authorization to an individual~~
4 ~~or entity to allow such use. Notwithstanding the above provision, bicycles as defined in the~~
5 ~~California Vehicle Code Section 231 or successor legislation, wheelchairs or other devices~~
6 ~~needed to accommodate persons with disabilities, 2-wheeled shopping carts, children's toys,~~
7 ~~and strollers (for the purposes of carrying children) may be brought into the Jane Warner and~~
8 ~~Harvey Milk Plazas. In addition, bicycles are authorized to use the designated bicycle lane in~~
9 ~~Jane Warner Plaza.~~

10 ~~H. VIOULATION OF REGULATIONS; PENALTIES.~~

11 (a) If any person has occupied public right-of-way in violation of these regulations,
12 the Director shall immediately order the violator to vacate the occupied area or abate the
13 violation. Should the violation not be corrected as ordered, the permittee or person shall be
14 subject to the actions and penalties set forth below for each violation.

15 (b) **Criminal Penalty.**

16 (1) Any person who shall violate any of the provisions of these regulations
17 shall be guilty of an infraction. Every violation determined to be an infraction is punishable by
18 (a) a fine not exceeding \$100 for the first violation within one year; (b) a fine not exceeding
19 \$200 for a second violation within one year from the date of the first violation; (c) a fine not
20 exceeding \$500 for the third and each additional violation within one year from the date of the
21 first violation.

22 (2) When a government official authorized to enforce this Section has
23 reasonable cause to believe that any person has committed an infraction in the official's
24 presence that is a violation of this Section, the official may issue a citation to that person
25 pursuant to California Penal Code, Part II, Title 3, Chapters 5, 5C, and 5D.

1 (c) **Administrative Penalty.** In the alternative to the criminal penalty authorized by
2 Subsection (b) of this Section, Department of Public Works officials designated in Section 38
3 of the Police Code may issue administrative citations for violations of these regulations. The
4 administrative penalty shall not exceed \$300 per day for each violation. Such penalty shall be
5 assessed, enforced, and collected in accordance with Section 39-1 of the Police Code.

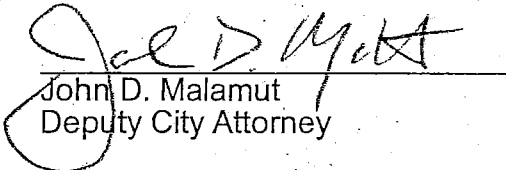
6 Section 3. (a) The Board of Supervisors urges the Director of DPW to adopt a DPW
7 Order that includes the regulations set forth in this Ordinance and any additional regulations
8 that the Department deems appropriate and necessary for the proper management and use of
9 the aforementioned plazas, such as the posting of signage setting forth the regulations. Such
10 DPW Order shall be adopted after a public hearing and thereafter made available to any
11 member of the public that requests such Order.

12 (b) Should there be any conflict between the regulations set forth in this Ordinance and
13 the BART use agreement for Harvey Milk Plaza, the agreement shall prevail. Notwithstanding
14 the above, the Board of Supervisors urges the Director of DPW, in consultation with the
15 Municipal Transportation Agency and City Attorney's Office, to coordinate with BART in order
16 to apply the regulations in this Ordinance to the maximum extent feasible.

17 Section 4. Effective Date. This ordinance shall become effective 30 days from the
18 date of passage.

19
20 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

21
22 By:


23 John D. Malamut
Deputy City Attorney

FILE NO.

LEGISLATIVE DIGEST

[Regulations for Jane Warner and Harvey Milk Plazas]

Ordinance (1) approving regulations for Jane Warner Plaza at the intersection of Castro and 17th Streets and Harvey Milk Plaza adjacent to the intersection of Castro and Market Streets and (2) authorizing official acts in connection with the regulations.

Existing Law

The Department of Public Works (DPW) regulates specified activities on the dedicated public right-of-way in accordance with the Public Works Code and other Municipal Codes. The public right-of-way consists of streets, sidewalks, and other public places such as plazas as further defined in Public Works Code Sections 2.4.4(t) and 244. Jane Warner Plaza, formerly known as the 17th Street Plaza or Castro Commons, is located at the intersection of 17th and Castro Streets and is subject to DPW regulation under the Public Works Code. Harvey Milk Plaza, is located adjacent to the Castro Muni station at Castro and Market Streets, and portions of this plaza are subject to DPW regulation under the Public Works Code.

Amendments to Current Law

This Ordinance would establish specific DPW regulations for the use of Jane Warner Plaza and those portions of Harvey Milk Plaza under DPW jurisdiction. The regulations apply to hours for specified activities, sleeping, camping, peddling and vending merchandise, performance of labor, and smoking. The Ordinance also establishes violations and penalties for activities that conflict with the regulations.



EDWIN M. LEE
MAYOR

POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO

THOMAS J. CAHILL HALL OF JUSTICE
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103-4603



GREGORY P. SUHR
CHIEF OF POLICE

December 29, 2011

Ms. Alisa Miller, Clerk
Land Use & Economic Development Committee
Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco CA 94102-4694

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2012 JAN -4 AM 9:49
abc

Dear Ms. Miller:

RE: Request for Input:
File No. 111248-2 – Substitute Legislation Introduced

After staff review of the substitute proposed legislation pertaining to Jane Warner and Harvey Milk Plazas, the San Francisco Police Department recommends inclusion of language about loitering or sitting on the pavement in the plazas between 9:00 a.m. and 9:00 p.m. The Civil Sidewalk Ordinance, which added Section 168 to the Police Code, is not enforceable in the "Pavement to Parks" projects.

If I can be of further assistance, please contact my office.

Sincerely,

G.P. Suhr
GREGORY P. SUHR
Chief of Police

/cf

Member, Board of Supervisors
District 8



City and County of San Francisco

SCOTT WIENER
威善高

January 17, 2012

Gregory P. Suhr
Chief of Police
Hall of Justice
850 Bryant Street
San Francisco, CA 94103

Ordinance - Regulations for Jane Warner and Harvey Milk Plazas (File # 111248-2)

Dear Chief Suhr:

I am in receipt of your letter dated December 29, 2011, in which you recommend that this legislation be amended to include a prohibition on sitting or loitering on the pavement of the Jane Warner Plaza from 9 a.m. to 9 p.m. Your rationale for the recommendation is that Pavement to Parks projects - including Jane Warner Plaza (but not Harvey Milk Plaza) - are not covered by the sit-lie ordinance. While I greatly appreciate your taking the time to make the recommendation, I respectfully decline to make this amendment to the legislation.

As you note in your letter, the sit-lie ordinance, as proposed by Mayor Newsom and adopted by the voters, contains a specific exclusion for the Pavement to Parks program. The rationale for that exclusion is that these plazas are different from sidewalks and instead are public gathering spaces similar in various respects to parks. We want to encourage people to gather and spend time in the plazas, which may include various forms of sitting on chairs, benches, ledges, and even the ground. Given the exclusion of Pavement to Parks from the sit-lie ordinance adopted by the voters, I am hesitant to contradict that exclusion here.

My legislation is designed to ensure that these plazas are usable by everyone. In that spirit, the legislation imports some basic rules already in place in our parks and/or our sidewalks, such as prohibiting smoking, camping, and large shopping carts and requiring permits for selling merchandise. At the same time, the legislation takes a very balanced approach by avoiding any restrictions on the community's right to assemble in the plazas to protest, celebrate, perform, hold vigils, and the like, and by categorically exempting the sale or distribution of printed material from any restrictions.

Member, Board of Supervisors
District 8



City and County of San Francisco

SCOTT WIENER

威善高

I believe that the current version of the legislation strikes the right balance in terms of use of the plaza, ensuring that no one monopolizes the plaza to the exclusion of other community members, and respecting civil rights. As a result, while I very much appreciate your recommendation, I cannot support it at this time.

Thank you, and I look forward to working together to make our civic public spaces the best they can be.

Sincerely,

A handwritten signature in black ink that reads "Scott Wiener".

Scott Wiener
Supervisor, District 8

SW:rgm

p:\wiener\correspondence\2012\01\30\117_elief_sufr.doc

66 3393
muni



FIRST SUPPLEMENTAL MUNI/BART JOINT STATION MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of JULY, 1986, by and between the CITY AND COUNTY OF SAN FRANCISCO (hereinafter called "City") and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (hereinafter called "BART").

W I T N E S S E T H: **CONFIRMED COPY**

WHEREAS, City is a municipal corporation chartered under the Constitution of the State of California and is governed pursuant to the provisions of its Charter; and

WHEREAS, BART is a rapid transit district established pursuant to Public Utilities Code Sections 28500 et seq.; and

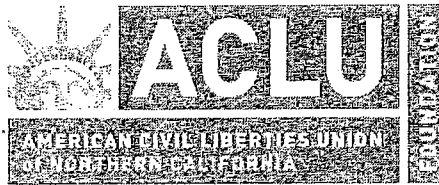
WHEREAS, Public Utilities Code Section 29037 provides that:

The district shall not interfere with or exercise any control over any transit facilities now or hereafter owned and operated wholly or partly within the district by any city or public agency, unless by consent of such city or public agency and upon such terms as are mutually agreed upon between the board and such city or public agency.

and

WHEREAS, on May 14, 1976, City and BART entered into an Agreement establishing respective duties relative to maintenance and repair of subway and other rapid transit facilities within the City and County of San Francisco; and

WHEREAS, said Agreement was entered into prior to the time MUNI commenced revenue service underground; and



January 21, 2012

Supervisor Scott Wiener
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Scott.Wiener@sfgov.org

Re: Proposed legislation re: Jane Warner and Harvey Milk Plazas

Dear Supervisor Wiener,

Thank you for reaching out to the American Civil Liberties Union of Northern California about our position on your proposed legislation regarding Jane Warner and Harvey Milk Plazas. I look forward to speaking with you about your proposed legislation. In advance of that meeting, I wanted to share with you our views on the current draft. After we shared our concerns with you in December, you amended the legislation so that the permit requirement would now only extend to the sale of "goods, wares, or merchandise" in these two plazas. It would expressly exempt the sale or distribution of newspapers and other printed materials. While we appreciate your efforts to address the free speech concerns we raised, this amendment unfortunately does not cure our constitutional concerns. Indeed, we are troubled by both the free speech and equal protection implications of the legislation.

Free speech: The proposed legislation in its current form is virtually indistinguishable from the San Francisco anti-peddling ordinance struck down as unconstitutional by the Ninth Circuit in *Gaudiya Vaishnava Society v. City and County of San Francisco*, 952 F.2d 1059 (9th Cir. 1991). The ordinance in that case prohibited the sale without a permit of merchandise for charitable purposes on public sidewalks. The ordinance at issue required a permit only for merchandise, and allowed the sale (without a permit) of books, pamphlets and other items that had "no intrinsic value or purpose other than to communicate a message." *Id.* at 1061 n. 4. First, the Court found that the ordinance – even though it regulated the sale of merchandise – "impermissibly regulates protected speech in a public forum." *Id.* at 1065.¹ Second, the Court found the ordinance unconstitutional because it burdened substantially more speech than was necessary to further the government's legitimate interests. In particular, it vested "unbridled discretion in the chief" to issue – or *not* issue – permits. *Id.* at 1065. Licensing schemes that provide "unguided discretion" "pose a real threat of censorship," by allowing the decisionmaker "to discriminate based on the content of protected expression." *Id.* at 1063.

¹ The non-profit groups were engaged in the sale of items bearing "messages affixed to the product," and their sales activities were inextricably intertwined with literature distribution and other pure speech activities. *Id.*

MICHELLE A. WELSH, CHAIRPERSON | SUSAN MIZNER, JAHAN SABAFI, FARAH BRELVI, ALLEN ASCH, VICE CHAIRPERSONS | KENNETH SUGARMAN, SECRETARY/TREASURER
ABDI SOLTANI, EXECUTIVE DIRECTOR | KELLY EVANS, ASSOCIATE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | SHAYNA GELENDER, ORGANIZING & COMMUNITY ENGAGEMENT DIRECTOR
LAURA SAPDNARA, COMMUNICATIONS DIRECTOR | ALAN SCHLOSSER, LEGAL DIRECTOR | MARGARET C. CROSBY, ELIZABETH GILL, LINDA LYE, JULIA HARUMI MASS, MICHAEL RISHER, JORY STEELE, STAFF ATTORNEYS
ALLEN HOPPER, NATASHA MINSKER, NICOLE A. OZER, DIANA TATE VERMEIRE, POLICY DIRECTORS | STEPHEN V. BOMSE, GENERAL COUNSEL

While the earlier version of the legislation violated free speech rights even more starkly than the *Gaudiya* ordinance, the current version continues to do so. A recent amendment contains an exemption for newspapers and other printed material. But so too did the unconstitutional ordinance in *Gaudiya*. Exactly like the ordinance in *Gaudiya*, the proposed ordinance requires a permit for the sale of merchandise – including merchandise like t-shirts or other items that communicate a message and may otherwise be inextricably intertwined with the expressive activity of an individual or group. And like the ordinances in *Gaudiya* and *White*, the prohibition is constitutionally infirm because it vests unbridled discretion in an undesignated decisionmaker (“except for uses that the City and County of San Francisco permits”).

We also continue to harbor the concerns we previously articulated, that the ordinance does not meet the standards for time, place, or manner restrictions on speech in a public forum. In particular, it is unclear what “harms” the proposed prohibition would prevent. *See, e.g., Bay Area Peace Navy v. U.S.*, 914 F.2d 1224, 1228 (9th Cir.1990) (“[T]he government... is not free to foreclose expressive activity in public areas on mere speculation about danger.”). Additionally, the proposed findings do not make clear the need for the speech-burdening prohibition when many existing regulations on conduct could adequately address concerns regarding, for example, pedestrian traffic flow. There is no additional need to burden expressive activity.

Equal protection: We are also troubled by the equal protection considerations raised by the legislation. Numerous prohibitions appear quite clearly to target the homeless population by focusing on the types of activities that homeless people need to engage in simply to live (for example, sleeping).

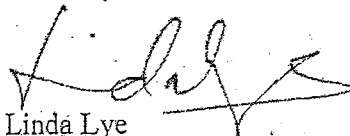
In *City of Cleburne v. Cleburne Living Center*, 473 U.S. 431 (1985), the Supreme Court upheld an equal protection challenge by the operator of a group home for the “mentally retarded” to a zoning ordinance that excluded group homes from certain uses in a zoning district. Even under a deferential “rational basis review” standard, “[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.” *Id.* at 446 (1985). The ordinance restricted group homes based on stated concerns about congestion but failed to prohibit fraternities, hospitals and many other facilities that raised the same danger without any rational justification for “singling out” the group home. *Id.* at 450. The Supreme Court found the ordinance unconstitutional because it “appears to us to rest on an irrational prejudice against the mentally retarded.” *Id.*

Similarly, here, the neutral rationale for the prohibitions in the proposed legislation is not entirely clear. For example, the ordinance prohibits “wheeled conveyances” with significant exceptions for bicycles, strollers and even 2-wheeled shopping carts. The effect of course is to single out 4-wheeled shopping carts of the kind typically used by the homeless. While the City may have a legitimate interest in preventing undue wear and tear on certain types of city property, it is wholly unclear why some but not other wheeled conveyances are singled out for prohibition, other than to restrict the activities of an unpopular group. Such singling out of unpopular groups raises core equal protection concerns.

Supervisor Wiener
January 21, 2012
Page 3

For the foregoing reasons, the proposed legislation, even after the recent amendment, raises troubling constitutional concerns. I look forward to discussing these issues with you.

Sincerely,



Linda Lye
Staff Attorney

cc: Supervisor Eric Mar (Eric.L.Mar@sfgov.org)
Supervisor Carmen Chu (Carmen.Chu@sfgov.org)



December 12, 2011

Supervisor Eric Mar
Chair, Land Use and Economic Development Committee
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Eric.L.Mar@sfgov.org

Re: Proposed legislation re: Jane Warner and Harvey Milk Plazas

Dear Supervisor Mar,

The American Civil Liberties Union of Northern California writes to you in your capacity as Chair of the Land Use and Economic Development Committee to express our grave concerns about legislation recently introduced by Supervisor Scott Wiener (File No. 111248). The proposed prohibition against the sale of merchandise or printed materials in Jane Warner Plaza and Harvey Milk Plaza would infringe on important constitutional freedoms.

In *Gaudiya Vaishnava Society v. City and County of San Francisco*, 952 F.2d 1059 (9th Cir. 1991), the United States Court of Appeals for the Ninth Circuit held unconstitutional a San Francisco ordinance that prohibited the sale without a permit of merchandise for charitable purposes on public sidewalks. The ordinance at issue required a permit only for merchandise, and allowed the sale (without a permit) of books, pamphlets and other items that had “no intrinsic value or purpose other than to communicate a message.” *Id.* at 1061 n. 4. First, the Court found that the ordinance – even though it regulated the sale of merchandise – “impermissibly regulates protected speech in a public forum.” *Id.* at 1065.¹ Second, the Court found the ordinance unconstitutional because it burdened substantially more speech than was necessary to further the government’s legitimate interests. In particular, it vested “unbridled discretion in the chief” to issue – or *not* issue – permits. *Id.* at 1065. Licensing schemes that provide “unguided discretion” “pose a real threat of censorship,” by allowing the decisionmaker “to discriminate based on the content of protected expression.” *Id.* at 1063. Similarly, in *White v. Sparks*, 500 F.3d 953 (9th Cir. 2007), the Ninth Circuit affirmed the district court’s conclusion that city ordinances prohibiting the sale of art in streets and parks without a license also violated the First Amendment.

Like the ordinances in *Gaudiya* and *White*, the proposed ordinance violates state and federal constitutional protections for speech. Even more clearly than the ordinance in *Gaudiya*, the proposed ordinance regulates speech. Unlike the *Gaudiya* ordinance, it prohibits (without a

¹ The non-profit groups were engaged in the sale of items bearing “messages affixed to the product,” and their sales activities were intrinsically intertwined with their charitable distributions and other First Amendment speech activities. *Id.*

ABDI SOLTANI, EXECUTIVE DIRECTOR | KELLI EVANS, ASSOCIATE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | SHAYNA BELENDER, ORGANIZING & COMMUNITY ENGAGEMENT DIRECTOR
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ALLEN HOPPER, NATASHA MINSKER, NICOLE A. OZER, DIANA TATE VERMEIRE, POLICY DIRECTORS | STEPHEN V. BOMSE, GENERAL COUNSEL

Supervisor Mar
Page 2

license) sales of all forms of merchandise, including for example expressive materials such as newspapers. And like the ordinances in *Gaudiya* and *White*, the prohibition is constitutionally infirm because it vests unbridled discretion in an undesignated decisionmaker ("except for uses that the City and County of San Francisco permits").

The flaws with the ordinance are deeper though, and cannot be cured simply by enumerating some criteria for the permits. Where, as here, the government seeks to regulate speech in a public forum, the government may only impose time, place, or manner restrictions that are *reasonable*. *Berger v. City of Seattle*, 569 F.3d 1029, 1041 (9th Cir. 2009). This means that the government must provide evidence that the harms it recites are real and not speculative. *Id.* at 1049 ("harms it recites [must be] real") (citation omitted). It also requires the government to establish a close fit – the essence of narrow tailoring – between the speech restriction and the stated goal. A policy that "burden[s] substantially more speech than is necessary to further the government's legitimate interests" fails narrow tailoring. *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989).

First, it is unclear what "harms" the proposed prohibition would prevent. The constitutional protections for speech prevent the government from making up excuses to burden speech. See, e.g., *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1146 (9th Cir. 1998) ("[N]o [record] evidence... support[s] an assumption that 'commercial' handbillers are the inherent cause of Clark County's pedestrian flow problems."); *Bay Area Peace Navy v. U.S.*, 914 F.2d 1224, 1228 (9th Cir. 1990) ("[T]he government... is not free to foreclose expressive activity in public areas on mere speculation about danger.").

Second, "the existence of obvious, less burdensome alternatives is 'a relevant consideration in determining whether the "fit" between ends and means is reasonable.'" *Berger*, 569 F.3d at 1041. Here, the proposed findings do not make clear the need for the speech-burdening prohibition. But San Francisco has numerous ordinances that already extensively regulate inappropriate *conduct*. There is no additional need to burden speech.

For the foregoing reasons, the proposed legislation would raise grave concerns under the federal and state constitutional protections for speech.

Sincerely,



Linda Lye
Staff Attorney

cc: Supervisor Scott Wiener (Scott.Wiener@sfgov.org)
Supervisor Malia Chen (Malia.Cohen@sfgov.org)



File 111248: Jane Warner Plaza & Harvey Milk Plaza Operating Regulations
Board of Supervisors to: Alisa Miller

01/23/2012 03:20 PM

From: "Rich Nelson" <rich@plco.net>
To: <Mark.Farrell@sfgov.org>, <Carmen.Chu@sfgov.org>, <Christina.Olague@sfgov.org>, <Jane.Kim@sfgov.org>, <Sean.Elsbernd@sfgov.org>, <Scott.Wiener@sfgov.org>, <David.Campos@sfgov.org>, <Malia.Cohen@sfgov.org>, <Eric.L.Mar@sfgov.org>, <David.Chiu@sfgov.org>, <John.Avalos@sfgov.org>, <Board.of.Supervisors@sfgov.org>, <MayorEdwinLee@sfgov.org>, <Joaquin.Torres@sfgov.org>, <MUMC-SF@earthlink.net>
Date: 01/22/2012 11:22 AM
Subject: Jane Warner Plaza & Harvey Milk Plaza Operating Regulations

Supervisors, I urge you to SUPPORT Supervisor Wiener's proposed legislation for routine operating regulations at Harvey Milk and Jane Warner Plazas in The Castro. Unfortunate opposition by homeless advocates is misguided. The proposed regulations are needed to assure nothing more than equivalent rules at these public spaces not covered by other City legislation.
Respectfully,

Richard J. Nelson

Richard J. Nelson, Esq.
Property Portfolio Manager
PLC Property Management
Paul Langley Company
4111-18th Street, Suite 1
San Francisco, CA 94114-2465
(415) 431-9104, Ext. 301

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SUPPORT File No. 111248 (Wiener) - Warner & Milk Plaza Regulations
Board of Supervisors to: Alisa Miller

01/23/2012 03:21 PM

From: Marc Dickow <marc@opni.com>
To: Mark.Farrell@sfgov.org, Carmen.Chu@sfgov.org, Christina.Olague@sfgov.org,
Jane.Kim@sfgov.org, Sean.Elsbernd@sfgov.org, Scott.Wiener@sfgov.org,
David.Campos@sfgov.org, Malia.Cohen@sfgov.org, Eric.L.Mar@SFGov.org,
MayorEdwinLee@SFGov.org, David.Chiu@SFGov.org, John.Avalos@SFGov.org,
Board.of.Supervisors@sfgov.org, Joaquin.Torres@SFGov.org, MUMC-SF@earthlink.net
Date: 01/22/2012 11:28 AM
Subject: SUPPORT File No. 111248 (Wiener) - Warner & Milk Plaza Regulations

Supervisors,

I urge you to SUPPORT Supervisor Wiener's proposed legislation for routine operating regulations at Harvey Milk and Jane Warner Plazas in The Castro. Unfortunate opposition by homeless advocates is misguided. The proposed regulations are needed to assure nothing more than equivalent rules at these public spaces not covered by other City legislation.

Respectfully,
Marc Dickow

Marc Dickow
Realtor
Herth Real Estate
555 Castro Street
San Francisco, CA 94114
www.altrockrealtor.com
www.herth.com
marc@herth.com
415-722-4018
DRE# 01870650
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The following emails were received in the BOS mailbox.

Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184
(415) 554-5163 fax
Board.of.Supervisors@sfgov.org

Complete a Board of Supervisors Customer Service Satisfaction form by clicking
<http://www.sfbos.org/index.aspx?page=104>

From: Brian Fisher <brian@fishercomm.us>
To: "Board.of.Supervisors@sfgov.org" <Board.of.Supervisors@sfgov.org>
Cc: "MUMC-SF@earthlink.net" <MUMC-SF@earthlink.net>
Date: 01/22/2012 11:51 AM
Subject: SUPPORT File No. 111248 (Wiener) - Warner & Milk Plaza Regulations

Supervisors, I urge you to SUPPORT Supervisor Wiener's proposed legislation for routine operating regulations at Harvey Milk and Jane Warner Plazas in The Castro. Unfortunate opposition by homeless advocates is misguided. The proposed regulations are needed to assure nothing more than equivalent rules at these public spaces not covered by other City legislation.
Respectfully,
Brian Fisher

From: Phantom*SF - eBay Drop Off Store <phantomssf@phantomssf.com>
To: Mark.Farrell@sfgov.org, Carmen.Chu@sfgov.org, Christina.Olague@sfgov.org, Jane.Kim@sfgov.org, Sean.Elsbernd@sfgov.org, Scott.Wiener@sfgov.org, David.Campos@sfgov.org, Malia.Cohen@sfgov.org, Eric.L.Mar@SFGov.org, David.Chiu@SFGov.org, John.Avalos@SFGov.org, Board.of.Supervisors@sfgov.org, MayorEdwinLee@SFGov.org, Joaquin.Torres@SFGov.org, MUMC-SF@earthlink.net
Date: 01/22/2012 12:54 PM
Subject: SUPPORT File No. 111248 (Wiener) - Warner & Milk Plaza Regulations

Supervisors,

I urge you to SUPPORT Supervisor Wiener's proposed legislation for routine operating regulations at Harvey Milk and Jane Warner Plazas in The Castro.

Unfortunate opposition by homeless advocates is misguided. The proposed regulations are needed to assure nothing more than equivalent rules at these public spaces not covered by other City legislation.

Respectfully,

Robert Hedric

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From: BVNA <BVNA@ix.netcom.com>
To: Mark.Farrell@sfgov.org, Carmen.Chu@sfgov.org, Christina.Olague@sfgov.org, Jane.Kim@sfgov.org, Sean.Elsbernd@sfgov.org, Scott.Wiener@sfgov.org, David.Campos@sfgov.org, Malia.Cohen@sfgov.org, Eric.L.Mar@SFGov.org, David.Chiu@SFGov.org, John.Avalos@SFGov.org, Board.of.Supervisors@sfgov.org, MayorEdwinLee@SFGov.org, Joaquin.Torres@SFGov.org
Date: 01/22/2012 12:55 PM
Subject: SUPPORT for File No. 111248 (Wiener) - Warner & Milk Plaza Regulations

Members of the San Francisco Board of Supervisors Land Use Committee and of the full Board of Supervisors:
cc: Mayor Lee, MONS

The Buena Vista Neighborhood Association (BVNA) respectfully urges you to SUPPORT Supervisor Wiener's proposed legislation for routine operating regulations at Harvey Milk and Jane Warner Plazas in The Castro, adjacent to our neighborhood. The legislation will be heard at Land Use Committee tomorrow, Monday, January 23.

BVNA has followed Sup, Wiener's development of this legislation from its earliest days. The proposed new regulations always have been intended solely as routine "housekeeping," to apply customary, commonsense rules to these public spaces, which inadvertently are not covered by other, similar City regulations (e.g. Rec/Park codes). For homeless advocacy lobbyists to now claim that these proposed regulations are punitive or otherwise unfairly targeted is simply wrong, misguided, and an example of their frequently unworthy, negative positions.

Founded in 1964, BVNA is the primary residents' association for about 4,500 households in neighborhoods around Buena Vista Park. BVNA has over 400 currently-paid Members, and a mailing list of over 700 Members and other interested neighbors and constituents, who care about our City and who VOTE. About 80% of BVNA's service area currently is in District 8, the remaining 20% in District 5.

Thank you for considering our comments.

Richard Magary
Steering Committee Chair
Buena Vista Neighborhood Association (BVNA)
415/431-2359
BVNA@ix.netcom.com
1/22/2012 12:55pst

From: Rachele Ferraro <sfholistichealth@gmail.com>
To: Mark.Farrell@sfgov.org, Carmen.Chu@sfgov.org, Christina.Olague@sfgov.org,
Jane.Kim@sfgov.org, Sean.Elsbernd@sfgov.org, Scott.Wiener@sfgov.org,
David.Campos@sfgov.org, Malia.Cohen@sfgov.org, Eric.L.Mar@SFGov.org,
David.Chiu@SFGov.org, John.Avalos@SFGov.org, Board.of.Supervisors@sfgov.org,
MayorEdwinLee@SFGov.org, Joaquin.Torres@SFGov.org
Cc: MUMC-SF@earthlink.net
Date: 01/22/2012 03:20 PM
Subject: SUPPORT File No. 111248 (Wiener)-- Warner & Milk Plaza Regulations

Supervisors,

I urge you to SUPPORT Supervisor Wiener's proposed legislation for routine operating regulations at Harvey Milk and Jane Warner Plazas in The Castro.

Unfortunate opposition by homeless advocates is misguided. The proposed regulations are needed to assure nothing more than equivalent rules at these public spaces not covered by other City legislation.

Respectfully,

Rachele Ferraro, DC
Castro Holistic Health Center
2191 Market Street, Suite D
San Francisco, CA 94114

415-864-3453

From: "Brian Rizzo, D.C." <drbrian@rizzochiro.com>
To: Mark.Farrell@sfgov.org, Carmen.Chu@sfgov.org, Christina.Olague@sfgov.org,
Jane.Kim@sfgov.org, Sean.Elsbernd@sfgov.org, Scott.Wiener@sfgov.org,
David.Campos@sfgov.org, Malia.Cohen@sfgov.org, Eric.L.Mar@SFGov.org,
David.Chiu@SFGov.org, John.Avalos@SFGov.org, Board.of.Supervisors@sfgov.org,
MayorEdwinLee@SFGov.org, Joaquin.Torres@SFGov.org, MUMC-SF@earthlink.net
Date: 01/22/2012 04:02 PM
Subject: SUPPORT File No. 111248 (Wiener) - Warner & Milk Plaza Regulations

Dear Supervisors:

I urge you to SUPPORT Supervisor Wiener's proposed legislation for routine operating regulations at Harvey Milk and Jane Warner Plazas in The Castro. Unfortunate opposition by homeless advocates is misguided. The proposed regulations are needed to assure nothing more than equivalent rules at these public spaces not covered by other City legislation.

**Respectfully,
Brian Rizzo, D.C.**

Brian Rizzo, D.C.
Rizzo Chiropractic Corp.
540 Castro Street, SF, CA 94114
415.621.5772
www.rizzochiro.com
drbrian@rizzochiro.com

M, W, F: 7a-2p
Tu, Th: 2p-7p

From: "Shelah Barr:" <happyhoundsmassage@gmail.com>
To: Mark.Farrell@sfgov.org, Carmen.Chu@sfgov.org, Christina.Olague@sfgov.org,
Jane.Kim@sfgov.org, Sean.Elsbernd@sfgov.org, Scott.Wiener@sfgov.org,
David.Campos@sfgov.org, Malia.Cohen@sfgov.org, Eric.L.Mar@SFGov.org,
David.Chiu@SFGov.org, John.Avalos@SFGov.org, Board.of.Supervisors@sfgov.org,
MayorEdwinLee@SFGov.org, Joaquin.Torres@SFGov.org, MUMC-SF@earthlink.net
Date: 01/22/2012 05:17 PM
Subject: SUPPORT File No. 111248 (Wiener) - Warner & Milk Plaza Regulations

To Whom it Concerns,

As a business owner and long-term resident of the Castro I fully support Scott Weiner's proposed legislation.

Since the inception of the 'plaza' there has been a marked increase in the homeless population in the area, as well as vandalism, crime and threats to residents and visitors in the neighborhood. Other factors to these issues notwithstanding the 'plaza' seems to be an invitation for loitering as much as recreating. Any measures that can be taken to curb the illegal activities and help the Castro get cleaned up and safer has my support.

Please do not allow a small group of non-participating people and/or non-residents make decisions about our quality of life.

Thank you.

don't forget to vote for us in the Beast of the Bay Awards! #24 for 'Best Massage' and #19 for "Best Gift"!

Shelah Barr

ONE OF SAN FRANCISCO'S FAVORITE SMALL BUSINESSES - 7x7 MAGAZINE 2011
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San Francisco, CA 94146-0296

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From: jerry cooper <jcooper68@sbcglobal.net>
To: Carmen.Chu@sfgov.org, Christina.Olague@sfgov.org, Jane.Kim@sfgov.org,
Sean.Elsbernd@sfgov.org, Scott.Wiener@sfgov.org, David.Campos@sfgov.org,
Malia.Cohen@sfgov.org, ric.L.Mar@SFGov.org, David.Chiu@SFGov.org,

John.Avalos@SFGov.org, Board.of.Supervisors@sfgov.org, MayorEdwinLee@SFGov.org,
Cc: Joaquin.Torres@SFGov.org, MUMC-SF@earthlink.net, Mark.Farrell@sfgov.org
Jerry Cooper <jcooper68@sbcglobal.net>, chris@alpharestoration.com,
Date: info@castromERCHANTS.com
01/22/2012 06:23 PM
Subject: SUPPORT File No. 111248 (Wiener) - Warner & Milk Plaza Regulations

Supervisors,

I urge you to SUPPORT Supervisor Wiener's proposed legislation for routine operating regulations at Harvey Milk and Jane Warner Plazas in The Castro. Unfortunate opposition by homeless advocates is misguided.

As a local business owner in the Castro, and San Francisco resident, and MUMC Board Member, I am favor of what this legislation establishes for our future.

It is common sense. It insures safety, and makes these plazas (and similar spaces in the future) more desirable for ALL people, whether it be naked people (on their towels), homeless people, tourists or locals alike.

Please do the right thing for ALL of us.

The proposed regulations are needed to assure nothing more than equivalent rules at these public spaces not covered by other City legislation.

Respectfully,

Jerry Cooper
Owner, Swirl on Castro
MUMC Board Member
572 Castro St.
415) 335-3615

From: "Kim Larsen" <kim@gaypocketUSA.com>
To: <Mark.Farrell@sfgov.org>, <Carmen.Chu@sfgov.org>, <Christina.Olague@sfgov.org>, <Jane.Kim@sfgov.org>, <Sean.Elsbernd@sfgov.org>
Cc: <Scott.Wiener@sfgov.org>, <David.Campos@sfgov.org>, <Malia.Cohen@sfgov.org>, <Eric.L.Mar@sfgov.org>, <David.Chiu@sfgov.org>, <John.Avalos@sfgov.org>, <Board.of.Supervisors@sfgov.org>, <MayorEdwinLee@sfgov.org>, <Joaquin.Torres@sfgov.org>, "MUMC" <MUMC-SF@earthlink.net>
Date: 01/23/2012 08:40 AM
Subject: SUPPORT File No. 111248 (Wiener) - Warner & Milk Plaza Regulations

Supervisors,

I urge you to SUPPORT Supervisor Wiener's proposed legislation for routine operating regulations at Harvey Milk and Jane Warner Plazas in The Castro. Unfortunate opposition by homeless advocates is misguided. The proposed regulations are needed to assure nothing more than equivalent rules at these public spaces not covered by other City legislation.

Respectfully,

Kim Larsen, Publisher
GayPocket San Francisco
"Get YOUR Business into Everyone's Pants"
2261 Market St., #500-A
San Francisco, CA 94114
T: 415-864-8869
F: 678-868-8869
kim@gaypocketUSA.com
www.gaypocketUSA.com

From: ArtistsGallerySF@aol.com
To: Mark.Farrell@sfgov.org, Carmen.Chu@sfgov.org, Christina.Olague@sfgov.org,
Jane.Kim@sfgov.org, Sean.Elsbernd@sfgov.org, Scott.Wiener@sfgov.org,
David.Campos@sfgov.org, Malia.Cohen@sfgov.org, Eric.L.Mar@SFGov.org,
David.Chiu@SFGov.org, John.Avalos@SFGov.org, Board.of.Supervisors@sfgov.org,
MayorEdwinLee@SFGov.org, Joaquin.Torres@SFGov.org, MUMC-SF@earthlink.net
Date: 01/23/2012 11:20 AM
Subject: SUPPORT File No. 111248 (Wiener) - Warner & Milk Plaza Regulations

Supervisors,

I urge you to SUPPORT Supervisor Wiener's proposed legislation for regulations at Harvey Milk and Jane Warner Plazas in The Castro.
Opposition by homeless advocates is misguided. The proposed regulations are needed to assure nothing more than equivalent rules at these public spaces not covered by other City legislation.
Respectfully yours,

Joseph Titi, Owner
ABMS and The Artist's Gallery

From: Great Tan SF <greattansf@gmail.com>
To: Mark.Farrell@sfgov.org, Carmen.Chu@sfgov.org, Christina.Olague@sfgov.org,
Jane.Kim@sfgov.org, Sean.Elsbernd@sfgov.org, Scott.Wiener@sfgov.org,
David.Campos@sfgov.org, Malia.Cohen@sfgov.org, Eric.L.Mar@SFGov.org,
David.Chiu@SFGov.org, John.Avalos@SFGov.org, Board.of.Supervisors@sfgov.org,
MayorEdwinLee@SFGov.org, Joaquin.Torres@SFGov.org, MUMC-SF@earthlink.net
Date: 01/23/2012 11:36 AM
Subject: SUPPORT File No. 111248 (Wiener) - Warner & Milk Plaza Regulations

Dear Supervisors,

I urge you to SUPPORT Supervisor Wiener's proposed legislation for routine operating regulations at Harvey Milk and Jane Warner Plazas in The Castro. Unfortunate opposition by homeless advocates is misguided. The proposed regulations are needed to assure nothing more than equivalent rules at these public spaces not covered by other City legislation.

Respectfully yours.

Craig Joyner
Owner
Great Tan
329 Noe Street near Market

Great Tan San Francisco

www.gr8tan.com

Top 250 USA Tanning Salons, 2008 Looking Fit Magazine



File 111248: Warner Plaza

Board of Supervisors to: Carmen Chu, David Campos, David Chiu, Eric L Mar, John Avalos, Sean Elsbernd, Malia Cohen, Scott Wiener,

01/23/2012 03:46 PM

From: James Robinson <robbiejl69@yahoo.com>
To: "Board.of.Supervisors@SFGov.org" <Board.of.Supervisors@SFGov.org>
Cc: Wayne Friday <waynefriday@aol.com>
Date: 01/22/2012 04:06 PM
Subject: Warner Plaza

Scott, First off I support you 100%. I applaud your effort to do something about Warner Plaza.

Those kids that hang there are not gay and are nothing but street people. I have ask and they make sure I know they are not gay. Ask why they hang out in the gay community and their answer nis it is an easy place to make money. I try to enjoy having lunch in the plaza but that is not too pleasant with some old fart with wrinkled ass in my face. I do wish something could be done to eliminate the nude sceane. Thank you and keep up the good work
My best to you Robbie



File 111248 Jane Warner and Harvey Milk Plazas
Board of Supervisors to: Alisa Miller

01/23/2012 03:51 PM

From: Dzbp@aol.com
To: Mark.Farrell@sfgov.org, Carmen.Chu@sfgov.org, Christina.Olague@sfgov.org,
Jane.Kim@sfgov.org, Sean.Elsbernd@sfgov.org, Scott.Wiener@sfgov.org,
David.Campos@sfgov.org, Malia.Cohen@sfgov.org, Eric.L.Mar@SFGov.org,
David.Chiu@SFGov.org, John.Avalos@SFGov.org, Board.of.Supervisors@sfgov.org,
MayorEdwinLee@SFGov.org, Joaquin.Torres@SFGov.org
Date: 01/22/2012 07:23 PM
Subject: SUPPORT Jane Warner & Harvey Milk Plaza Regulations

Dear Supervisors,

My name is Dennis Ziebell and my partner is William Pung. We are writing to express our strong support for Supervisor Wiener's legislation which proposes Rules Governing the Jane Warner and Harvey Milk Plazas.

We live directly adjacent to Jane Warner Plaza at 3993 17th street which is above our restaurant Orphan Andys .We have lived here and owned the cafe for 35 years.

We also have been actively involved with volunteering for the Castro/Upper Market CBD in maintaining Jane Warner Plaza from its inception.

These public spaces are heavily used by tourists, senior citizens, the ill and infirm, disabled and families with children. This is in addition to a lively younger crowd and late night revelers.

Jane Warner Plaza has the F line running directly through the middle of it, a bike lane, an emergency and service lane for the private property owners, a very busy cross walk and two separate emergency tracks for the Twin Peaks Tunnel.

Currently, neither of these two heavily used plazas in the Castro have any rules governing their use. The proposed rules are standard rules which are in place throughout San Francisco.

Supervisor Wiener's proposed legislation simply is applying these standard rules to these two plazas. The Castro/Upper Market Community Benefit District maintains these two spaces on a tight budget with the help of volunteers. It is critical for the City to use the tools it has available to support neighborhoods in creating and maintaining safe and welcoming public spaces, available for all. This legislation is one such tool.

We urge you to support this legislation based on the merits and needs of our community in order to sustain and maintain these two very important public spaces . The intent and goal is for everyone to be able to use the Plazas in a mutually civil and respectful way and with consideration for the property owners, residents and businesses fronting the Plazas.

Respectfully,

Dennis Ziebell

William Pung

Orphan Andy's Restaurant

3993 17th street

415-864-4889

From: Edward Huser <edward.huser@gmail.com>
To: Mark.Farrell@sfgov.org, Carmen.Chu@sfgov.org, Christina.Olague@sfgov.org,
Jane.Kim@sfgov.org, Sean.Elsbernd@sfgov.org, Scott.Wiener@sfgov.org,
David.Campos@sfgov.org, Malia.Cohen@sfgov.org, Eric.L.Mar@SFGov.org,

David.Chiu@SFGov.org, John.Avalos@SFGov.org, Board.of.Supervisors@sfgov.org,
MayorEdwinLee@SFGov.org, Joaquin.Torres@SFGov.org
Cc: Andrea Aiello <execdirector@castrocbd.org>, MUMC-SF@earthlink.net
Date: 01/22/2012 09:08 PM
Subject: Jane Warner/Harvey Milk Proposed Legislation

This letter is in response to the proposed legislation ordinance of Jane Warner and Harvey Milk Plazas in the Castro.

I am speaking to you as both a businessperson and as someone who has been an activist and fundraiser for the Castro community since 1995. I have been very active in multiple organizations with my priority emphasis being a Sister of Perpetual Indulgence for my charity/activist endeavors. I have organized and managed events including Easter in the Park, street closures, and Pink Saturday. I understand working collectively with residents, merchants, and city officials to find fair and objective solutions for everyone. Although I am a Sister, I am not representing any views on behalf of that organization, but rather as a concerned individual and hence why I am writing under my legal name and not my sister name. Likewise the Sisters have not taken an official stance.

I would also like to make note that I applaud Supervisor Weiner who submitted this legislation working closely with MUMC merchants and the Castro CBD. I believe that this is a great example of politicians working closely with community groups for the betterment of the community.

I support this legislation and urge you to vote yes on it. Jane Warner and Harvey Milk Plazas were an after-thought of standard San Francisco legislation as they do not fit the current platform covered by existing laws, and this ordinance is only bringing these plazas up to par with the standards already put forth by the City and County.

These two plazas are not public parks; but instead meeting areas that were created were by alternative methods and therefore should have the same legal consideration for rules as parks and other plazas in San Francisco, such as Union Square.

Likewise, this is not a fully commercial area, but rather a residential area that has a small business community. Please take consideration with this because as we must have rules in place to respect the members of the community that reside here. Without any legislation, we are certain to end up in chaotic situations without governing rules to protect both the residents and the small business community.

After much thought and consideration I believe the legislation is fair and partial and some key points of why I support the ordinance are:

1. **Hours:** Setting defined times for movable chairs and benches between 9:00 AM and 9:00 PM allows for standard business operations and for congregation of the public. The legislation does not prohibit anyone wanting to sit or congregate outside of these hours, but allows the Castro CBD to have these movable chairs and benches for a full 12 hours for people that want to use them. In San Francisco, my experiences are if a chair or table is not permanently mounted, these items have a tendency to be stolen or vandalized. Keeping this in mind, I worry that movable benches and chairs will be stolen and/or used by vandals causing harm to residents or business owners. I have witnessed intoxicated persons damaging property with other items on the street. I feel this could happen again if we do not put timeframes in place and 9:00 PM and twelve hours of time seems fair and reasonable.

2. **Peddling and Vending of Merchandise.** Without implementing this in the ordinance, it allows for any person or groups to open up shop in these plazas, which will cause excessive vendors and impact seating for people wanting to enjoy the plazas. This is not fair to the Castro merchants either who spend thousands of dollars on rent and pay permits and taxes to operate their businesses.

Likewise, as demonstrated in other parts of the city, these unauthorized vendors do not pay taxes on merchandise sold and usually do so without permits. I can tell you from my experiences with orchestrating events that we constantly have to chase out the vendors who did not apply for a permit and who did not pay a permit fee. If you want to do business in San Francisco, it should be permitted. I know there are opponents, who do not understand the legislation, however it will still allow non-profits to collect monies or hand out materials such as safety whistles, but I wanted to clarify that.

3. **Sleeping & Camping Prohibited:** First of all these are not public parks, they are commercial/street areas and Jane Warner Plaza has the F Line running through it. Harvey Milk Plaza is a MUNI stop that is owned by BART. These are fair rules to ensure the safety of both San Franciscans and our tourists, which are needed by both the City and the merchants.

As both an activist and a non-profit fundraiser, I understand this is probably the most sensitive area because the legislation could be perceived as anti-homeless. However, after much consideration I feel this is the best for safety of our community and these areas are not suited to attend to the needs of the City's homeless. My concern is also that the perception of the general public of excessive homeless activity will lead to loss of revenue by the merchants because their areas are in the forefront of the Castro as demonstrated by tourist reviews on virtualtourist.com. If you peruse this site and read about perceptions of tourists in San Francisco who comment about their experience, they witness crime, drug addiction and make statements about fear. Without protocol in place, my worries are this could become a campground as I have witnessed in other areas such as the Haight.

I too, am concerned about the homeless in San Francisco and crime. Pink Saturday has been an Achilles Heel for several years dealing with tourists, the bridge and tunnel crowd and violence. None of these acts was executed by our local residents, instead by outsiders. Without this legislation, my concerns are that it may turn into a campground for outsiders all over the city and other areas of the bay area and then we WILL have a major problem.

There is an ancient Proverb that says, "Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime." To me the solution for our homeless is to find other methods and resources. Allowing unauthorized camping is like giving the man a fish and feeding him one day. Passing this legislation and finding other methods to "teach a man to fish" are the solution.

Again, this legislation is about bringing up both plazas to the standards already enforce in the City of San Francisco. It allows for fair competition to MUMC merchants and the opportunity for other entrepreneurs to get a permit should they want to sell their wares. It allows rules and guidelines in place for the entire community to enjoy the spaces and it can prevent crime and vandalism. I strongly urge you to vote yes in supporting Supervisor Weiner on this legislation.

Sincerely,

Edward Huser

---From -----

Edward Huser
edward.huser@gmail.com
Mobile: (415) 314-4395
Fax: (415) 358-8321

From: "Brittney Beck" <bbeck@becksmotorlodge.com>
To: <Mark.Farrell@sfgov.org>, <Carmen.Chu@sfgov.org>, <Christina.Olague@sfgov.org>, <Jane.Kim@sfgov.org>, <Sean.Elsbernd@sfgov.org>, <Scott.Wiener@sfgov.org>, <David.Campos@sfgov.org>, <Malia.Cohen@sfgov.org>, <Eric.L.Mar@SFGov.org>, <David.Chiu@SFGov.org>, <John.Avalos@SFGov.org>, <Board.of.Supervisors@sfgov.org>, <MayorEdwinLee@SFGov.org>, <Joaquin.Torres@SFGov.org>
Date: 01/23/2012 09:57 AM
Subject: I SUPPORT Supervisor Wiener's proposed legislation for routine operating regulations at Harvey Milk and Jane Warner Plazas in The Castro.

Supervisors,

I urge you to SUPPORT Supervisor Wiener's proposed legislation for routine operating regulations at Harvey Milk and Jane Warner Plazas in The Castro. We need to keep the Castro classy and clean. Too many times I hear my guests comment on the situations at these plazas – tourism is essential to the livelihood of San Francisco and we need to keep the tourists coming.

Unfortunate opposition by homeless advocates is misguided. The proposed regulations are needed to assure nothing more than equivalent rules at these public spaces not covered by

Thank you and have a wonderful day.

Brittney Beck

Beck's Motor Lodge
2222 Market St. | CA | SF | 94114

p: 415-621-8212
f: 415-241-0435

www.BecksMotorLodge.com | *In the heart of the Castro*

From: "Dennis Wheeler" <dennis@dwheelerlaw.com>
To: <Mark.Farrell@sfgov.org>, <Carmen.Chu@sfgov.org>, <Christina.Olague@sfgov.org>, <Jane.Kim@sfgov.org>, <Sean.Elsbermd@sfgov.org>, <Scott.Wiener@sfgov.org>, <David.Campos@sfgov.org>, <Malia.Cohen@sfgov.org>, <Eric.L.Mar@SFGov.org>, <David.Chiu@SFGov.org>, <John.Avalos@SFGov.org>, <Board.of.Supervisors@sfgov.org>, <MayorEdwinLee@SFGov.org>, <Joaquin.Torres@SFGov.org>, <MUMC-SF@earthlink.net>
Date: 01/23/2012 11:50 AM
Subject: SUPPORT File No: 111248 (Wiener) - Warner & Milk Plaza Regulations

Dear Supervisors:

I urge you to SUPPORT Supervisor Wiener's proposed legislation for routine operating regulations at Harvey Milk and Jane Warner Plazas in The Castro.

The unfortunate opposition by homeless advocates is misguided. The proposed regulations are needed to assure nothing more than equivalent rules at these public spaces not covered by other City legislation.

**Respectfully
Dennis Wheeler**

*Law Offices of Dennis R. Wheeler
2358 Market Street, 2nd Floor
San Francisco, CA 94114
415-865-0212 (Office)
415-789-4284 (Fax)
dennis@dwheelerlaw.com (Email)
dwheelerlaw.com (Website)*

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Regulations for Jane Warner and Harvey Milk Plazas

Robert Arnold to: eric.l.mar, scott.wiener, malia.cohen,
carmen.chu, alisa.miller, David.Campos

01/23/2012 05:20 PM

I am writing in opposition to file number 111248, Regulations for Jane Warner and Harvey Milk Plazas.

This proposed legislation would just further the criminalization of poverty in this city. Until the city is able to provide housing to all who need it, it is just wrong to criminalize activities that result from homelessness. Harvey Milk would be appalled and offended.

Yours,
- Robert Arnold

.....
. Robert Arnold
. Lateral Films
. (415) 341-3448
. <http://www.lateralfilms.com/>
.....

January 23, 2012

Alison & Chris Drain
2425 Market St., # 11
San Francisco, CA 94111
adrain@hlmx.com

Legislation to regulate benches at Harvey Milk Plaza

As longtime homeowners who live adjacent to the above mentioned benches, we would like for our voices to be heard. We think there should be some rules governing that area. Below we offer some points on why:

They're a magnet for drug & alcohol use & skateboarders.

They weren't designed for partying at all hours of the night.

Life is full of rules that we abide by daily. We're reasonable people. We work full time, pay our mortgage & property taxes when due. Why aren't we allowed some peace & quiet & cleanliness?

Noise late at night makes it hard to get good's night sleep.
Have to get up early.

It's become so bad our next door neighbor's have sold their unit after just one year because of the conditions out front.

It's ironic that the community's "symbol" is Pride – when that plaza is nothing to be proud of.



January 23, 2012

Good Afternoon Supervisors,

I am Andrea Aiello, Executive Director for the Castro/Upper Market Community Benefit District. I am here today to express the Castro CBD's strong support for the proposed ordinance to establish rules for the Jane Warner and Harvey Milk Plazas.

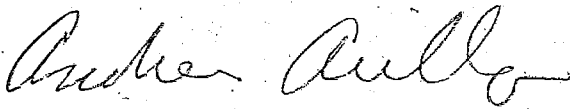
In January 2011, the Castro CBD began meeting with the merchants on 17th St. to begin brainstorming solutions to some of the challenges in the Jane Warner Plaza. (from routine drug dealing in the morning hours, cell phones getting stolen, trash and debris collection from individuals sleeping and otherwise spending 8-12 +hrs. in the plazas, etc.) Merchants agreed to step up their own watch, meetings with Mission station were held and we began working with Supervisor Wiener to bring the existing and standard rules that are in place in other public spaces in S.F. to apply to the Plaza. The proposed legislation simply assigns existing Park and Rec. code to both the Jane Warner Plaza and the Harvey Milk Plaza.....The hours for the movable seating are necessary because the CBD has volunteers that lock up the tables and chairs at night and posted hours would help these volunteers tremendously.

Protests and demonstrations will still be allowed, leafleting and political campaigning will still be allowed, commercial endeavors will be allowed with the appropriate permits, entertainment will still be allowed and even amplified sound will be allowed with the proper permits.

In considering this legislation it is important to remember that both of these plazas are in mixed use neighborhoods. People live immediately adjacent to both plazas.

The City created the Jane Warner Plaza and identified the Castro CBD as the entity to manage the space and to keep it clean and safe (we do the same for Harvey Milk Plaza). I believe that we are living up to our end of this agreement. We are requesting the City fully implement its end of the agreement. Use the tools which you already have in place to help manage public spaces, pass this legislation and continue your commitment to ensure safe and welcoming public spaces for all those who visit, shop, work and live in the Castro.

Thank You

A handwritten signature in cursive script, appearing to read "Andrea Aiello".

Andrea Aiello, MPH
Executive Director
Castro/Upper Market CBD

enclosures

**Welcome to Yerba Buena Gardens
Open Sunrise to 10PM**

▽▽▽

**In order to keep the Gardens enjoyable for everyone,
The following uses are not allowed:**

Smoking

Littering

Swimming, Wading or Bathing

Climbing

Alcoholic Beverages

Animals (Except Service & Companion Animals)

Feeding of birds and animals

Riding Bicycles

Flying Kites

Team Sports

No wheeled conveyances including:

Skateboard, Roller Skates, Roller Blades and Carts

The San Francisco Park Code is Enforced in the Gardens.

**SAN FRANCISCO RECREATION
AND PARK DEPARTMENT**

**WELCOME TO UNION SQUARE
HOURS: 6AM TO MIDNIGHT**

**FOR THE ENJOYMENT OF ALL VISITORS
PLEASE HELP US TAKE CARE OF THE SQUARE**

THE FOLLOWING ACTIVITIES ARE NOT ALLOWED:

- **DEFACING PUBLIC PROPERTY**
- **FEEDING BIRDS**
- **CAMPING OR SLEEPING**
- **LITTERING**
- **CLIMBING**
- **BICYCLING**
- **SKATING OR SKATEBOARDING**
- **PLAYING BALL OR FRISBEE**
- **REMOVAL OF FLOWERS OR PLANTS**
- **PETS OFF LEASH**

**ALCOHOL CONSUMPTION IS NOT
ALLOWED EXCEPT BY PERMIT.**

**A PERMIT IS REQUIRED FOR ANY EVENT, ASSEMBLAGE,
ENTERTAINMENT, PERFORMANCE, AMPLIFIED SOUND,
SALE OF MERCHANDISE, OR SOLICITING.**

(PARK CODE 3.02)

File 111248
1/23/12 - Distributed
in Committee

Duboce Triangle Neighborhood Association
2261 Market Street, PMB 301
San Francisco, CA 94114
415 295-1530

January 19, 2012

Board of Supervisors
City Hall
San Francisco, CA

Dear Supervisors:

The Board of Directors of Duboce Triangle Neighborhood Association (DTNA) is supportive of the Proposed Regulations for the Jane Warner and Harvey Milk Plazas. As one of the neighborhoods closest to these plazas we are aware of the problems that exist because of the lack of rules as a result of these plazas not falling under the control of any city agency. These are modest proposals designed to make the plazas available for the enjoyment for all.

Thank you



Dennis Richards
President DTNA

A quien Corresponda:

Yo no estoy de acuerdo a que desalojen a los inquilinos de los hoteles solo porque ellos fuman, yo lo que recomiendo es que les den una oportunidad para ubicarlos en una area donde viven solo fumadores, para que el humo lo compartan con personas que tambien fuman y tambien hay que darles un programa de salud a los fumadores para ayudarlos a que cuiden sus pulmones.

Espero que tomen en cuenta mi sugerencia y no saquen a la calle a las personas que fuman.

Que se haga una ley que ayude a las personas, no para dejarlos en la calle, porque todos tenemos derecho a vivir.

Atentamente:

Conzalo Guoron
Alejandrino

Friends of Harvey Milk, ACLU, LGBT Leaders Oppose Supervisor Wiener's Regulations for Harvey Milk Plaza

Contact:

Bob Offer-Westort

+1 920 216 5766

boffer-westort@cohsf.org

January 23 — Today, at 1:00 p.m., the Board of Supervisors' Land Use and Economic Development Committee will hold a hearing on legislation proposed by Supervisor Scott Wiener which would create new regulations for Harvey Milk Plaza and Jane Warner Plaza in the Castro. Supervisor Wiener has spoken about his interest in expanding this legislation citywide. The regulations are opposed by the ACLU and several of Harvey Milk's close friends.

The ACLU also wrote in opposition to the legislation: "The proposed ordinance violates state and federal constitutional protections for speech... The flaws with the ordinance are deep, and cannot be cured simply by enumerating some criteria for permits."

Several members of the Harvey Milk LGBT Democratic Club, including longtime Milk associates Cleve Jones, Harry Britt, Glenn Craig, and Tom Ammiano, have written a letter in opposition to the law. They oppose the creation of a new anti-sitting law in the plaza named after Milk: "To propose to prohibit sitting in that very plaza is not just ironic, it disrespects our community's legacy."

They also write with concern about the impacts of plaza restrictions on LGBT youth: "Homeless LGBT youth are faced with the choice of either heading to drop-in services in the Mission or Tenderloin, or using open spaces in the Castro. Harvey Milk and Jane Warner Plazas are the last open community spaces in the neighborhood. They are the last places in our community where our most marginalized youth can be."

Independently of these members, the Harvey Milk LGBT Democratic Club has also taken a position in opposition to the regulations.

###

Supervisor Wiener's Proposed Regulations for Harvey Milk and Jane Warner Plazas

In both Harvey Milk and Jane Warner Plazas, the proposed regulations would prohibit:

- the use of moveable chairs or benches between 9 p.m. and 9 a.m.;
- sleep at any hour;
- "camping" (erecting a tent or similar shelter);
- the accumulation of household furniture or appliances, or construction debris;
- bringing any goods for sale or barter into the plazas, or offering such goods for sale, or selling such goods;
- landscaping activities;
- smoking; and,
- the use of wheeled conveyances, except bicycles, wheelchairs, two-wheeled shopping carts, or strollers intended for child-carrying purposes.

Violators may be subject to citation for an infraction, and a fine of:

- \$100 for the first conviction in a year;
- \$200 for a second conviction within a year of a first conviction;
- \$500 for any subsequent convictions within a year of a first conviction.

Alternately, the Department of Public Works may levy an administrative fine of up to \$300 per day of violation.

Legal Problems with the Proposed Regulations of Harvey Milk and Jane Warner Plazas

	Duplicative	Unconstitutional	Preempted by State Law
2A: No sitting on movable seating at night			
	<i>This provision, which prohibits sitting on movable chairs between 9 p.m. and 9 a.m., is non-duplicative, and probably legal.</i>		
2B: No sleeping (ever)	✓		
	<i>Unfortunately, sleeping is already prohibited under section 647(e) of the state Penal Code as "lodging." The San Francisco Police Department regularly uses this code to cite homeless people for sleeping outdoors.</i>		
2C: No camping	✓		
	<i>Camping is similarly already citable under section 647(e) of the state Penal Code.</i>		
2D: No sales of merchandise including printed material	✓	✓	
	<i>Insofar as this is meant to regulate printed material, this section is very clearly contrary to a good body of Supreme Court precedent concerning First Amendment rights and the press. As it pertains to other merchandise, this prohibition is already covered by section 869 of the San Francisco Municipal Police Code.</i>		
2E: No landscaping	✓		
	<i>State law makes it unquestionably clear that these rights belong exclusively to the City and County of San Francisco. A host of state and local laws cover this prohibition.</i>		
2F: No smoking	✓		
	<i>Smoking in areas like Harvey Milk and Jane Warner Plazas is already prohibited under section 1009.81 of the San Francisco Health Code. Any questions in this regard could be resolved by DPW's posting a sign prohibiting smoking, which would have the same legal result as this legislation.</i>		
2G: No shopping carts or other wheeled conveyances		✓	✓
	<i>Sup. Wiener has explained this section as being about shopping carts, but it would apply equally to four-wheeled laundry carts, scooters, walkers with wheels, Radio Flyer® wagons, skateboards, Segways®, etc. Insofar as it regulates shopping carts, it's actually preempted by section 22435 et seq. of the California Business and Professions Code. Insofar as it governs a bizarre class of other wheeled conveyances, but allows others, yet shows no governmental interest in the prohibition, nor distinction between the impact on this governmental interest by these different classes of wheeled conveyances, it may lack rational basis.</i>		

So What's New?

The legislation prohibits very few activities that aren't already covered by State or local law, and that don't risk violation of State law or fundamental Constitutional rights. The new elements would be:

- the prohibition of sitting on moveable sitting between 9 p.m. and 9 a.m.; and
- the prohibition on the accumulation of furniture and appliances.

If we ignore the issues of preemption and Constitutionality, only one additional prohibition is added: the prohibition on the mere possession of a *legal* shopping cart (i.e., one whose possessor is its legally recognized owner), or other, similar, wheeled conveyance.



HARVEY MILK LGBT DEMOCRATIC CLUB

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At Large

We, the undersigned members of the Harvey Milk Club, write in opposition to the proposed new regulations for Harvey Milk and Jane Warner Plazas.

We are writing because Harvey Milk's name is attached to one of the two plazas for which this legislation was written and is a historic space that for decades has been a site of free speech. In the 1970s, Harvey Milk fought against that era's sit/lie law—a law that had been written to target the hippies of the Haight-Ashbury, but was, in Milk's day, used as an excuse to attempt to drive gay men out of the Castro. Those of us who have been around long enough, or who are at all in touch with our community's history, are familiar with the image of Harvey Milk and his megaphone at the plaza which was eventually given his name. To propose to prohibit sitting in that very plaza is not just ironic, it disrespects our community's legacy.

The interests of the LGBT community have always been united with the interests of public space. As a community that is forced—far too often and for far too long—to spend much of our collective lives "in the closet," the ability to be free in public spaces has been tremendously liberating. Harvey Milk knew that liberation was only possible if we escaped the shadows of anonymity and invisibility. When we restrict these spaces—even when those restrictions are meant, initially, to be applied to another group of people—we damage ourselves.

We must also recognize that this law does not apply, in any very meaningful way, to another group of people: It applies to us. A great many—perhaps the majority—of homeless people who spend time in the Castro are LGBT San Franciscans, who came from somewhere else, but who came here seeking community and safety. This is most especially notable for the youth of LYRIC. Cuts to the City budget have reduced LYRIC's drop-in hours to only a few every week. During the other hours, homeless LGBT youth are faced with the choice of either heading to drop-in services in the Mission or Tenderloin—services that are already so overburdened that they must turn clients away, and which likely feel to most youth to be outside of their own communities—or using open spaces in the Castro. With Collingwood Park fenced in, Harvey Milk and Jane Warner Plazas are the last open community spaces in the neighborhood. They are the last places in our community where our community's most marginalized youth can be.

We have read and share the grave concerns expressed by the ACLU. Much of the law infringes on important constitutional freedoms, and as they noted, cannot be cured. We respectfully ask the Board of Supervisors to vote no.

Sincerely,

Tom Ammiano, Assembly member
Harry Britt, Co-Founder, Harvey Milk Club, Former Supervisor who replaced
Harvey Milk on the Board of Supervisors

Cleve Jones, Co-Founder, Harvey Milk Club, Human Rights and AIDS activist, Co-founder of SF AIDS Foundation and AIDS Memorial Quilt
The Harvey Milk LGBT Democratic Club
Stephany Joy Ashley, President, Harvey Milk Club
Gabriel Haaland, Former President, Harvey Milk Club, Former Commissioner
Laura Thomas, Harvey Milk Club member, AIDS activist
Anna Glendon Conda Hyde, Executive Board, Harvey Milk Club, Commissioner
Esperanza Macias, Former Vice-President, Harvey Milk Club
Eileen Hansen, Harvey Milk Club member, Former Commissioner
Rafael Mandelman, Former President, Harvey Milk Club, Former Commissioner
Gwenn Craig, Former President, Harvey Milk Club, Former Commissioner
David Waggoner, Former President, Harvey Milk Club
Nate Albee, Former President, Current Executive Board, Harvey Milk Club
Tamara Ching, Harvey Milk Club member
Lisa Feldstein, Harvey Milk Club member, Former Commissioner
Suzanne Rueker, Executive Board, Harvey Milk Club
Carol Stuart, Vice-President, Harvey Milk Club
Kim-Shree Maufus, Vice President, Harvey Milk Club, Commissioner
Matt Dorsey, Harvey Milk Club member, SFDCCC
Brian Bassinger, Former President, Harvey Milk Club
Debra Walker, Former President, Harvey Milk Club, Former Commissioner
Tim Durning, Former Vice President, Harvey Milk Club
Kevin Bard, Executive Board Internal, Harvey Milk Club
Alex Smith, Executive Board, Harvey Milk Club
Larry-Bob Roberts, Former Vice-President, Harvey Milk Club
Tommi Avicolti Mecca, Harvey Milk Club member
Greg Shaw, Former President, Harvey Milk Club
Hale Thompson, Former Vice President, Harvey Milk Club



Jane Warner and Harvey Milk Plazas

Eric Mar, Scott Wiener, Eric.L.Mar@sfgov.org,

terrie frye to: scott.wiener@sfgov.org, carmen.chu@sfgov.org,
maila.cohen@sfgov.org, alisa.miller@sfgov.org

01/23/2012 12:10 PM

Please respond to terrie frye

Dear Land use Committee,

This proposed legislation is a travesty and a slap in the face of the memories of these two honored people who always cared about the homeless, especially in the Castro!

That this is even being thought about is unconscionable! The reasons are ridiculous and nothing more than an attack on people who already have NOTHING!!!!!!!!!!!!!!

Use your powers for things that are necessary, not this horrible legislation. What happened to the San Francisco I moved to 42 years ago?

Terrrie Frye

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



Testimony regarding Regulation of Jane Warner and Harvey Milk plazas

Colleen Rivecca to: carmen.chu, scott.wiener, alisa.Miller,
eric.mar, maila.cohen

01/23/2012 11:47 AM

Dear Supervisors Chu, Wiener, Mar, and Cohen and Land Use and Economic Development Committee clerk Alisa Miller:

January 23, 2012

Members of the San Francisco Board of Supervisors Land Use and Economic Development Committee,

I am writing to express my opposition to file number 111248, Regulations for Jane Warner and Harvey Milk Plazas.

This legislation is duplicative and unnecessary in that many of its prohibitions apply to actions that are already illegal. Sleeping and camping, for example, are already illegal under state statute. In fact, the only things that this legislation makes newly-illegal are two new proscriptions that apply specifically to homeless people who use the plaza: sitting on movable chairs between the hours of 9:00 pm - 9:00 am and possessing legally-owned 4-wheeled shopping carts in either plaza.

Perhaps homeless people and the people who care about a San Francisco that respects the rights of everyone (regardless of class or economic status) to be able to use public space should somehow feel heartened that this legislation doesn't go so far as to ban sitting on the pavement or on fixed chairs in Harvey Milk and Jane Warner plazas. You'll forgive me if I take no comfort in this fact. If this legislation were to pass, the only way for people who want to spend time in Harvey Milk and Jane Warner plazas during the hours of 9:00 pm - 9:00 am to avoid a citation and a fine would be to stand, to crowd together on the small fixed benches at Harvey Milk Plaza, or to sit on the pavement. Of course, people with resources could just choose to go in to a bar or coffee shop during those hours if they don't want to sit on the ground in the plaza - or they could choose to go home. People with no other option but to sit outside wouldn't have that choice. They have been regulated off of sitting on the sidewalks, and now we're considering regulating them off of movable chairs in two public plazas in the heart of a major transit hub in a neighborhood that has long stood for freedom, civil rights, and equality. This makes no sense.

As the Policy and Advocacy Coordinator for Homeless Youth Alliance, I would also like to share some information about the consequences of laws that restrict the ability of homeless people to use public space.

Laws that limit the ability of homeless people to use public space have many negative consequences that serve to further entrench homelessness. One result is that homeless people are forced to become hyper-mobile within and between cities in order to avoid confrontations with the police and in order to avoid fines for basic life-sustaining activities like sitting and resting -- fines that they cannot afford to pay. Legislation that criminalizes homeless peoples' presence in public spaces leads homeless people to move into less visible locations (hiding in Golden Gate Park, for example), which means that it is harder for outreach workers and other service providers to reach them and offer them the help they need that can assist them in getting off of the streets and into stable living situations.

The hiding and hyper-mobility that occur as a result of laws that limit and criminalize the use of public space by homeless people are especially common among homeless youth. Queer youth make up approximately 40% of the homeless youth population in San Francisco. Many of these homeless youth are runaways who are fleeing abusive family situations; some are throwaways who have been told that because

of their sexuality, or because of their religious beliefs that they are no longer welcome at home. Some have aged out of the foster care system into homelessness.

When we create legislation that attacks the symptoms of homelessness (the presence of homeless people in public spaces) we needlessly make criminals out of people who are on the streets because they are experiencing trauma. We drive homeless people out of the sight and minds of the public, and we drive them further away from the social services that are needed to truly address the problem of homelessness.

When we entertain legislation that criminalizes the behavior of homeless people, we turn away from real solutions to homelessness: we need more housing that is affordable to people making at or below 30% of the area median income. We need more safe places for homeless people to be able to rest and to connect with services. We especially need safe spaces for homeless youth and for queer homeless people. We need to fix our broken shelter system. We need to expand economic opportunities for the poorest people in our City. We need to take care of people who are not able to participate in the workforce.

Harvey Milk himself once said that "the true function of politics is not just to pass laws, but to give hope". I hope that we can work together to pass laws that truly address the root causes of homelessness rather than simply focusing on the presence of homeless people as some sort of nuisance. I have hope that we can work together as a city to make San Francisco a place where our response to homelessness is not just another law that encourages homeless people to "move along" but is a real investment in all of the people of our city, even those who don't know where they'll be sleeping tonight.

Colleen Rivecca, MSW
Policy and Advocacy Coordinator, Homeless Youth Alliance

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

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Supervisors Scott Weiner, Marsha Cohen, and Eric Mar
Land Use & Economic Development Committee, San Francisco Board of Supervisors
San Francisco City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

January 19, 2012

Re: Proposed Regulations for Jane Warner and Harvey Milk Plazas (No. 111248)

Dear Supervisors Weiner, Cohen, & Mar:

We are writing on behalf of the National Law Center on Homelessness & Poverty (Law Center) to express our concerns about the harmful impact Proposed Ordinance No. 111248, Regulations for Jane Warner and Harvey Milk Plazas, will have on the civil and human rights of homeless San Francisco residents. The city of San Francisco should be pursuing constructive approaches to ending homelessness – such as expanding the supply of affordable and supportive housing – rather than criminalizing some of its most vulnerable citizens. Members of the Board should vote against the ordinance.

The proposed ordinance will disproportionately impact homeless individuals. For instance, Section B of the ordinance prohibits sleeping during any hour of the day and Section C prohibits camping (including constructing or maintaining minimal shelter from the elements or cooking devices). In conjunction with other anti-sleeping regulations currently in place throughout the city,¹ the ordinance will further criminalize homeless individuals' ability to engage in basic, life-sustaining activities in public. In communities where affordable housing or shelter space is inadequate, ordinances that prohibit the public performance of activities necessary for life, such as sleeping, violate the civil and human rights of homeless persons. See *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006), *vacated per settlement agreement* 505 F.3d 1006 (9th Cir. 2007); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1583 (S.D. Fla. 1992); International Covenant on Civil and Political Rights, art. 6, Apr. 2, 1992, 138 Cong. Rec. S4781-01.

The specific prohibitions the Committee has chosen to include in the proposed ordinance strongly suggest the ordinance is intended to target homeless individuals and discourage their presence in Jane Warner and Harvey Milk Plazas, both spaces open to the general public. For instance, the wheeled conveyance prohibition (Section G) clearly targets homeless individuals, by excepting the use of two-wheeled shopping carts more likely to be used by non-homeless individuals. Additionally, the vague and confusing terminology used in several of the sections, such as those prohibiting peddling and vending merchandise or printed material and

¹ For example: SAN FRANCISCO, CA., SAN FRANCISCO POLICE CODE art. 1, § 22-24 (1979); SAN FRANCISCO, CA., SAN FRANCISCO PARK CODE art. 3, § 3.12-3.13 (2008); CAL. PEN. CODE §647(e) (2012).

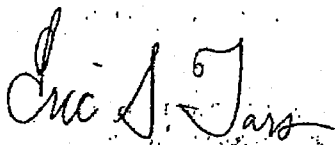
the performance of labor, increases the potential for arbitrary and discriminatory enforcement. The potential for such enforcement raises concerns regarding a lack of due process and a failure to comply with international human rights standards. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 171 (1972); International Convention on the Elimination of All Forms of Racial Discrimination, art. 2, Oct. 21, 1994, 140 Cong. Rec. S7634-02.

Laws that punish homeless people for activities they must do in order to survive perpetuate a vicious cycle that keeps people locked into homelessness. A homeless person with a criminal record for sleeping outside has more difficulty obtaining housing and employment than a peer who has never been arrested or convicted. Homeless individuals will likely lack the ability to pay the criminal and administrative penalties authorized by the ordinance, which can be as much as \$500 per violation. Criminalization also fails to address the root causes of homelessness and wastes limited resources by using money to house individuals in jail rather than providing supportive housing. In a nine-city survey of shelter, supportive housing, and jail costs, jail costs were on average two to three times the cost of supportive housing.²

We know that the City of San Francisco participates in the 100,000 Homes Campaign, which works to help communities house the most vulnerable homeless people living outdoors. We recommend expanding this effort. It would be a far more effective use of taxpayer dollars to help homeless persons living in the Jane Warner and Harvey Milk Plazas find permanent housing than to arrest them. In addition, this approach would be dramatically more humane, and would help fulfill the human right to housing for all San Francisco residents.

The Law Center would be happy to serve as a resource to help San Francisco find constructive approaches to homelessness that do not involve criminalization. Please feel free to contact us if you have any questions or would like further information. Thank you for your consideration of this letter.

Sincerely,



Eric S. Tars
Director of Human Rights
& Children's Rights Programs
etars@nlchp.org



Heather Maria Johnson
Civil Rights Attorney
hjohnson@nlchp.org



Jeremy Rosen
Policy Director
jrosen@nlchp.org

² Lewin Group, *Costs of Serving Homeless Individuals in Nine Cities: Chart Book* (2004) available at http://documents.csh.org/documents/ke/csh_lewin2004.PDF.

