

From: [Board of Supervisors \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Cabrera, Stephanie \(BOS\)](#); [Major, Erica \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [De Asis, Edward \(BOS\)](#); [Entezari, Mehran \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: PUBLIC COMMENT 7-18-23 BOS AGENDA ITEM 62, BOS FILE 211163, 98 FRANKLIN DEVELOPMENT AGREEMENT
Date: Tuesday, July 18, 2023 8:51:47 AM

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From: Mary Miles <page364@earthlink.net>
Sent: Monday, July 17, 2023 4:03 PM
To: Board of Supervisors (BOS) <board.of.supervisors@sfgov.org>; Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>
Subject: PUBLIC COMMENT 7-18-23 BOS AGENDA ITEM 62, BOS FILE 211163, 98 FRANKLIN DEVELOPMENT AGREEMENT

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FROM:
Mary Miles
Attorney at Law
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TO:
Angela Calvillo, Clerk of the Board and

Members of the San Francisco Board of Supervisors

BY E-MAIL TO: bos@sfgov.org; Angela.Calvillo@sfgov.org

BOS JULY 18, 2023 AGENDA ITEM 55: Proposed Ordinance allowing amendment of Planning Code, Zoning Maps, and statutory requirements for affordable housing; adopting material changes in height and land use; affirming Planning Department’s CEQA determination and finding of consistency with General Plan and Planning Code secs. 101.1 and 302;

and

AGENDA ITEM 62: Development Agreement between Supervisor Dean Preston, Mayor’s Office of Housing, and 98 Franklin, LLC, and waivers

BOS FILES 221163 (Development Agreement) AND 221164 (98 Franklin Street Project)

**PUBLIC COMMENT OPPOSING APPROVAL OF THE 98 FRANKLIN STREET PROJECT;
OPPOSING THE PROPOSED DEVELOPMENT AGREEMENT; OPPOSING A 400-PLUS FOOT HIGHRISE WITH NO AFFORDABLE HOUSING AT 98 FRANKLIN STREET;
OPPOSING ADOPTION OF CEQA FINDINGS;
OPPOSING FINDINGS OF CONFORMITY WITH GENERAL PLAN, AND PLANNING CODE;
OPPOSING WAIVERS OF DEVELOPMENT FEES, STATUTORY, AND CODE REQUIREMENTS; AND OPPOSING WAIVER OF AFFORDABLE HOUSING REQUIREMENTS**

AND

DEMAND FOR RECUSAL OF SUPERVISOR DEAN PRESTON ON ALL PROCEEDINGS ON THE 98 FRANKLIN STREET PROJECT

This Comment **opposes** ALL actions proposed under Agenda Item 55 and Agenda Item 62, including the proposed development of a 400-plus foot highrise at 98 Franklin Street with 385 housing units at MARKET RATE with **NO affordable** units. (the “Project”), and the Development Agreement waiving affordable housing requirements and developer fees for the Project.

Please distribute this Comment to all Members of the Government Audit and Oversight Committee and the Board of Supervisors and place it in all relevant Board files.

The Project and its Development Agreement were brokered by Supervisor Dean Preston between the City and “98 Franklin, LLC.”

The recently “amended” Project allows an increase in height from the original proposal to more than 400 feet, and adds 40 more market rate housing units, waiving zoning and Planning Code requirements, AND waives all requirements for affordable housing. (**7/13/23 BOS Packet, Proposed Ordinance at 1(a).**)

The height of the Project is so extreme that it will **cast shadows more than one-half mile away** on residential neighborhoods and the few tiny open spaces in the area. The Project would increase the severe congestion and lack of parking in the square mile area of the “Market-Octavia” Project and the historic Civic Center employment and cultural hub.

The Project and Development Agreement **waive nearly all the development fees** required under the Code and statutory requirements, including but not limited to developer fees required by the Market-Octavia project. Instead of the more-than \$55 million for those fees, the Project requires only \$1-million. Other development fees mandated by the Van Ness and Market Special Use District, the Market-Octavia Project and its Community Improvements Program, transportation and other developer fees mandated by City codes are also waived.

In return for those code requirement and windfall fee waivers, the Project described in the Development Agreement, the privately-negotiated agreement initially gave the City a parcel located at 600 Van Ness Avenue (former McDonald's site), allegedly for developing affordable housing, though **neither the City nor the developer are required to fund any affordable development on that site or any other. THERE IS NO COMMITMENT BY EITHER THE DEVELOPER OR THE CITY TO FUND OR BUILD ANY AFFORDABLE HOUSING.**

Unnoticed to the public, on June 16, 2023, the Developer's lawyer and the Mayor's Office of Housing ("MOH") privately negotiated material changes that allow the developer to give to the City a parcel at **600 McAllister Street**, valued at \$598,000, **instead of the 600 Van Ness Avenue property**. The 600 McAllister site is now a parking lot that is fully occupied providing parking for Civic Center workers and visitors to nearby cultural amenities and courts. The alleged CEQA review under the City's 2008 Market-Octavia Project and its many amendments did *not* include, describe, analyze, or mitigate these unnoticed material change in the Project's location and description. Therefore, the significant impacts and mitigation of the separate UNFUNDED "affordable" project's 196 units are unanalyzed in any document.

The Project and Development Agreement were negotiated by Supervisor Dean Preston. On July 10, 2023, Mr. Preston then presided over the Board's Land Use Committee proceeding on the Project and moved to recommend its approval to the full Board. Mr. Preston's advocacy and his private brokering of this deal with the developer clearly disqualify him from any proceedings on the 98 Franklin Project and Development Agreement before this Board.

1. NO "Affordable" Units Exist In This Project, Since NONE ARE FUNDED BY THE CITY OR THE DEVELOPER

The proposed Project is misleading, since there is NO commitment from the City to build *any* affordable housing on the "affordable housing" site at 600 McAllister Street.

Where is the evidence that *any* affordable housing will be built?

Nevertheless, under a misleading and unenforceable claim of City's "Mayor's Office of Housing" ("MOH"), the Project **waives the statutory and Planning Code requirement of AFFORDABLE HOUSING.**

The Project also waives zoning, height, Market-Octavia, Van Ness Special Use District, inclusionary zoning, and requirements. The Project also waives MILLIONS in developer, transportation, and community improvement fees for this Project.

The Project and Development Agreement should not be approved unless the "affordable housing" at the "Affordable Housing Site" is **completely funded, so that the affordable housing will be available no later than the market rate units at 98 Franklin Street.**

2. The Project Description And The Development Agreement Have Been Materially Changed Violating CEQA And Public Notice Requirements Under The Brown Act

Both the Project and the Developer's Agreement contain no accurate or adequate Project

Description, violating CEQA. The earlier Project description has been changed on the 98 Franklin high-rise, which has been expanded in height, density, units, and physical space.

The Development Agreement, has now also changed the *location* of the **unfunded** “Affordable Housing,” its size, height, occupation density, number of units, with more “studio” (one-room) apartments, and fewer one-bedroom apartments at 600 McAllister than at the former 600 Van Ness location. (Memo, July 7, 2023 from Budget and Legislative Analyst to GAO Committee.)

If the City contends this large Project has been addressed in the “Market-Octavia” or “Hub” documents, the Project’s changes at minimum require reevaluation with up-to-date Project description, analyses, mitigation and alternatives. The change of location and density of the alleged “affordable housing site” does not comply with CEQA’s requirements of an accurate, stable and finite Project description.

The Project and the Development Agreement will clearly have significant direct, indirect, and cumulative impacts on transportation, parking, air quality, energy consumption, GHG, noise, public safety, and emergency services and evacuation.

The 600 McAllister location removes a parking lot for Civic Center travelers to jobs, cultural facilities and the courts. Parking is now scarce throughout the Civic Center area with the City underground parking garage often full. The CEQA analysis and mitigation must take into account transportation and parking impacts, which it fails to do, and the Project and Development Agreement even waive developer transportation fees.

3. Waiving Affordable Housing Requirements, Height, And Development Fees Violates The Public Interest

The purpose of developer fees is to mitigate impacts of large high-rise projects like 98 Franklin/660 McAllister, *not* claims of **unfunded off-site** “affordable” units to a different location from the Project. **THE PUBLIC RECEIVES NOTHING FROM THIS PROJECT, SINCE THERE IS NO FUNDING OF AFFORDABLE HOUSING, only significant negative impacts on the environment from another oversized market-rate development.**

The public is deprived of the benefits such as transportation impacts mitigation, open space, and of course affordable housing.

4. The Development Fee Waivers Place A Disproportionate Burden On Those Paying Fees

By waiving developer fees for the Project, the Project developer benefits from fees paid by other developments, without any fair share contribution to the fees paid by other developments.

5. The “Market-Octavia” Zoning Requirements Have Again Been Waived And Adulterated

The Agreement’s waiver of millions in developer fees for a pie-in-the-sky promise of **unfunded** “affordable housing” project is inadequate.

That unsubstantiated promise typifies the Market-Octavia Project’s false promises. Residents of the “Market-Octavia” development free-for-all now face traffic congestion, the removal of more than 10,000 parking spaces, vacant or nonpublic “ground floor retail,” inadequate or nonexistent open space, no mitigation of transportation impacts, and most importantly, **the false promise of “affordable housing.”**

One example: After **15 years**, the promised full-service grocery store at 555 Fulton has NOT materialized, while Planning has issued one waiver after another and allowed a full block of condominiums to be sold *without* fulfilling that agreement that it memorialized in an Ordinance in 2008.

To date, less than 10 percent of new housing constructed in the entire Market-Octavia Project area has been “affordable,” with high-rise, *market-rate* housing both contrary to the Market-Octavia’s promises of affordable housing and violating the inclusionary affordable housing **REQUIRED BY THE PLANNING CODE**.

The 98 Franklin Project and the fact that the City has allocated ZERO dollars to fund “affordable housing” on the 600 McAllister “Affordable Housing Site” highlight the inadequacy of the Development Agreement.

6. The Lack Of An Accurate Project Description Requires Updated Analyses And Mitigation Of The Project’s And The Development Agreement’s Impacts.

The Project changes, including the location of the “Affordable Housing Site” **with no funded affordable housing**, the increase in the height and other physical characteristics of the market rate 98 Franklin proposed structure, and other changes require at minimum re-evaluation to comply with CEQA.

7. Supervisor Dean Preston Must Be Recused From All Deliberations On The 98 Franklin Street Project

Supervisor Preston must be recused from all proceedings on the 98 Franklin Project and Development Agreement, since he has held an insider’s material and non-public role with the developer in the planning and approval of the Project.

CONCLUSION

This Committee should not approve the Development Agreement or the 98 Franklin Project.

Mary Miles