

File No. 180355

Committee Item No. 4

Board Item No. 25

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: RULES
Board of Supervisors Meeting

Date: May 1, 2018
Date: _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>DOSW Report - 2017 Gender Analysis Executive Summary</u> |
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Prepared by: John Carroll
Prepared by: Alisa Somera

Date: April 20, 2018
Date: April 26, 2018

1 [Mayoral Reappointment, Municipal Transportation Agency Board of Directors - Gwyneth
2 Borden]

3 **Motion approving the Mayor’s nomination for the reappointment of Gwyneth Borden to**
4 **the Municipal Transportation Agency Board of Directors, for a term ending March 1,**
5 **2022.**

6
7 WHEREAS, Pursuant to Charter, Section 8A.112, Mayor Mark Farrell has submitted a
8 communication notifying the Board of Supervisors of the nomination of Gwyneth Borden to the
9 Municipal Transportation Agency Board of Directors, received by the Clerk of the Board on
10 April 5, 2018; and

11 WHEREAS, The Board of Supervisors has the authority to hold a public hearing and
12 vote on the appointment within 60 days following transmittal of the Mayor’s Notice of
13 Appointment, and the failure of the Board to act on the nomination within the 60-day period
14 shall result in the nominee being deemed approved; now, therefore, be it

15 MOVED, That the Board of Supervisors hereby approves the Mayor’s nomination for
16 the reappointment of Gwyneth Borden to the Municipal Transportation Agency Board of
17 Directors, for the unexpired portion of a four-year term ending March 1, 2022.

OFFICE OF THE MAYOR
SAN FRANCISCO



MARK E. FARRELL
MAYOR

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2018 APR -5 AM 11:41
BY _____
AK

April 3, 2018

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

Dear Ms. Calvillo,

Pursuant to Section 8A.112 of the Charter of the City and County of San Francisco, I hereby make the following nominations for reappointment:

Gwyneth Borden to the Municipal Transportation Agency Board of Directors for a term ending March 1, 2022

Cheryl Brinkman to the Municipal Transportation Agency Board of Directors for a term ending March 1, 2022

I am confident that Ms. Borden and Ms. Brinkman – both electors of the City and County – will continue to serve our community well. Attached are their qualifications, which demonstrate how these reappointments represent the communities of interest, neighborhoods and diverse populations of the City and County of San Francisco.

Should you have any questions related to these reappointments, please contact my Deputy Chief of Staff, Francis Tsang at (415) 554-6467.

Sincerely,

A handwritten signature in cursive script that reads "Mark E. Farrell".

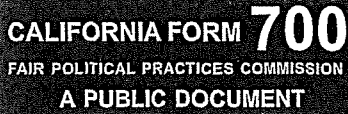
Mark E. Farrell
Mayor

Gwyneth Borden

Gwyneth Borden, appointed to the SFMTA Board of Directors in 2014, is a long time transit rider. Ms. Borden has served in a variety of civic roles including serving on San Francisco's Planning Commission and as a former aide to then Supervisor Gavin Newsom.

In 2013, she served as a member of the Mayor's 2030 Transportation Task Force and in 2003, she was appointed by the Board of Supervisors to serve on the Expenditure Plan Advisory Committee that authored the half-cent sales tax for transportation which today funds the city's transportation projects. Ms. Borden has long been active with public policy efforts at the local, state and federal level.

Ms. Borden currently serves as the Executive Director of the Golden Gate Restaurant Association.



STATEMENT OF ECONOMIC INTERESTS

COVER PAGE

Please type or print in ink.

NAME OF FILER (LAST) (FIRST) (MIDDLE)
Borden, Gwyneth Juanita

1. Office, Agency, or Court

Agency Name (Do not use acronyms)
City and County of San Francisco
Division, Board, Department, District, if applicable Your Position
Municipal Transportation Agency Member
If filing for multiple positions, list below or on an attachment. (Do not use acronyms)
Agency: Position:

2. Jurisdiction of Office (Check at least one box)

State Judge or Court Commissioner (Statewide Jurisdiction)
Multi-County County of San Francisco
City of San Francisco Other

3. Type of Statement (Check at least one box)

Annual: The period covered is January 1, 2017, through December 31, 2017
-or- The period covered is / / , through December 31, 2017
Leaving Office: Date Left / / (Check one)
The period covered is January 1, 2017, through the date of leaving office.
The period covered is / / , through the date of leaving office.
Assuming Office: Date assumed / /
Candidate: Date of Election and office sought, if different than Part 1:

4. Schedule Summary (must complete)

Total number of pages including this cover page: 2

Schedules attached

Schedule A-1 - Investments - schedule attached
Schedule A-2 - Investments - schedule attached
Schedule B - Real Property - schedule attached
Schedule C - Income, Loans, & Business Positions - schedule attached
Schedule D - Income - Gifts - schedule attached
Schedule E - Income - Gifts - Travel Payments - schedule attached

-or-

None - No reportable interests on any schedule

5. Verification

MAILING ADDRESS STREET CITY STATE ZIP CODE
(Business or Agency Address Recommended - Public Document)
San Francisco CA 94110
DAYTIME TELEPHONE NUMBER E-MAIL ADDRESS
()

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed 03/26/2018
(month, day, year)

Signature Gwyneth Juanita Borden
(File the originally signed statement with your filing official.)

Somera, Alisa (BOS)

From: Sue Vaughan <selizabethvaughan@gmail.com>
ant: Tuesday, April 24, 2018 1:30 PM
To: Safai, Ahsha (BOS); Stefani, Catherine (BOS); Yee, Norman (BOS)
Cc: Somera, Alisa (BOS)
Subject: Rules Committee 04-25-2018, Items 180354 and 180355: Please appoint people to the SFMTA Board of Directors who will engage in independent thought and oversight
Attachments: Mounsey-v-CCSF-CGC-12-525348.pdf; SC VTA Memorandum 12-07-2017.pdf; Current Chariot operations are largely based on violations of the law 03-18-2018 (1).pdf.pub; 20180424_132235.jpg

Dear Supervisors Safai, Stefani, and Yee:

I am asking you to oppose the reappointment of Cheryl Brinkman and Gwyneth Borden to the San Francisco Municipal Transportation Agency Board of Directors.

The San Francisco Municipal Transportation Agency is badly in need of better management and oversight. During the past four to five years, members of the SFMTA Board of Directors have not questioned staff or elected officials enough. Members of the Board of Directors:

- 1) Adopted the commuter shuttle pilot program on January 21, 2014, permitting private carriers to operate in public bus stops in violation of state law, California Vehicle Code 22500 (i);
- 2) Adopted the commuter shuttle pilot program without an environmental impact report that would assess the impact of commuter shuttle availability on air quality or housing prices, evictions, and displacement of lower income people to far flung suburbs where car dependency is greater and commutes longer;
- 3) Failed to question staff and city attorney contentions that state law restricted the agency to cost recovery in administering the program. Certainly members of the Board of Directors were aware in January 2014 that the agency had only recently adopted a medallion program for taxicabs, charging each cab far more than cost recovery charges for the privilege of using city streets as places of enterprise for private gain. Please see the attached Mounsey brief. The shuttle bus companies and the technology companies that they serve are taking advantage of the City of San Francisco and its public infrastructure in another way also: an unknown number of commuter shuttle passengers PAY to ride these buses (people who are employees of hiring agencies, for example, who are officially subcontractors to Google or other technology companies);
- 4) Adopted a permanent shuttle program in November 2015, again in violation of CVC 22500 (i). There are now about 1,000 commuter shuttles with placards "permitting" them to evade California law and operate in certain public bus stops. This is more than the entire number of rubber-tire revenue vehicles in the Muni fleet, according to the 2016 Annual Report (see the attached photograph below; no figures on the number of revenue vehicles were included in the 2017 Annual Report). These private carriers concentrate in particular bus stops at particular times of day -- blocking Muni buses throughout the day;
- 5) Recently allowed Chariot, a private Ford-owned transportation company operating in competition with Muni, to receive an operating permit without adequate proof that Chariot's profit model is no longer primarily based on breaking the rules of the road. A quick glance at the Chariot routes indicates that the stop locations haven't changed and are still in places where Chariot must double park, pull into crosswalks, or pull in front of garage frontages -- which, in the absence of the passage of an ordinance, is illegal. Please see that attached document on Chariot's illegal operations; and,

6) Adopted private transportation legislation to operate companies such as Uber without considering the evidence that the SFMTA can charge MARKET RATE for use of City streets as places of enterprise for private gain.

Please note that in October 2014, the Santa Clara Valley Transportation Authority considered adopting a commuter shuttle program similar to that of San Francisco -- but the SC VTA was going to charge MARKET RATE for use of VTA property until the Silicon Valley Leadership Group "expressed concerns." Please see the attached VTA memorandum.

We need better oversight at the SFMTA. We need better leadership on the SFMTA Board of Directors. It breaks my heart to have to ask this, but I must: please oppose the reappointment of Cheryl Brinkman (who was on the Board of Directors in 2014) and Gwyneth Borden, who had joined the Board of Directors by 2015.

Sincerely,

Susan Vaughan
District 1

ENDORSED
FILED
San Francisco County Superior Court

DEC 11 2013

CLERK OF THE COURT
BY: CAROLYN BALISTRERI
Deputy Clerk

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 WAYNE SNODGRASS, State Bar #148137
Deputy City Attorney
3 City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
4 San Francisco, California 94102-4682
Telephone: (415) 554-4675
5 Facsimile: (415) 554-4699
E-Mail: wayne.snodgrass@sfgov.org
6

7 Attorneys for Defendants and Respondents
SAN FRANCISCO MUNICIPAL TRANSPORTATION
8 AGENCY ("SFMTA"), EDWARD D. REISKIN, TOM
NOLAN, CHERYL BRINKMAN, MALCOLM A.
9 HEINICKE, JERRY LEE, LEONA BRIDGES, JOEL
RAMOS, CRISTINA RUBKE
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 UNLIMITED JURISDICTION

14 BILL MOUNSEY, IZA PARDINAS,
15 JEFFREY GROVE, UNITED TAXICAB
WORKERS, an unincorporated association of
16 San Francisco taxi drivers and the SAN
FRANCISCO CAB DRIVERS
17 ASSOCIATION, A California Nonprofit
Mutual Benefit Corporation,
18

19 Plaintiffs and Petitioners,

20 vs.

21 SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY ("SFMTA"),
EDWARD D. REISKIN, TOM NOLAN,
22 CHERYL BRINKMAN, MALCOLM A.
HEINICKE, JERRY LEE, LEONA
23 BRIDGES, JOEL RAMOS, CRISTINA
RUBKE, ALL PERSONS INTERESTED IN
24 THE MATTER OF THE VALIDITY OF
TAXI MEDALLION SALES TRANSFER
25 PROGRAM, and DOES 1-25,

26 Defendants and Respondents.
27
28

Case No. CGC-12-525348

**NOTICE OF HEARING OF DEFENDANTS
AND RESPONDENTS' MOTION FOR
SUMMARY JUDGMENT AND/OR SUMMARY
ADJUDICATION**

Hearing Date: February 21, 2014
Hearing Judge: Hon. Marla J. Miller
Time: 9:30 a.m.
Place: Dept. 302

Date Action Filed: October 22, 2012
Trial Date: March 24, 2014

Attached Documents: None

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NOTICE OF HEARING

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 21, 2014, at 9:30 a.m. or as soon thereafter as counsel may be heard, in Department 302 of the San Francisco Superior Court, defendants and respondents San Francisco Municipal Transportation Agency (“SFMTA”), Edward D. Reiskin, Tom Nolan, Cheryl Brinkman, Malcolm A. Heinicke, Jerry Lee, Leona Bridges, Joel Ramos, and Cristina Rubke (collectively “defendants”) will, and hereby do, move for an order granting summary judgment in defendants’ favor on all causes of action contained within the “Complaint for Reverse Validation Action, Petition for Writ of Mandate and Declaratory and Injunctive Relief” (hereinafter the “Complaint”) filed by plaintiffs and petitioners in this action on or about October 22, 2012. Specifically, defendants seek summary judgment on (1) plaintiffs and petitioners’ cause of action alleging that SFMTA Resolution 12-110 (“the Resolution”) and the Medallion Transfer Program “constitute an illegal enactment of legislation by an administrative agency” (Complaint, ¶ 18(a)); (2) their cause of action alleging that the Resolution and the Medallion Transfer Program “were enacted without due process as required by the CCSF’s charter and the California and federal constitutions” (Complaint, ¶ 18(b)); (3) their cause of action alleging that the Resolution and the Medallion Transfer Program “require a payment for a medallion that constitutes the imposition of a special tax without approval of two-thirds vote as required by article XIII C, section 2 of the California Constitution” (Complaint, ¶ 18(c)); and (4) their cause of action alleging that SFMTA Resolution 12-110 (“the Resolution”) and the Medallion Transfer Program “are contrary to promises made to the individual plaintiffs and others similarly situated who detrimentally relied on the rights afforded them by being on the Waiting List.” (Complaint, ¶ 18(d).) In the alternative, defendants seek an order summarily adjudicating the above-listed causes of action, and each of them, in defendants’ favor, as a matter of law.

Defendants’ motion will be, and is, made on the ground that there are no issues of material fact in dispute, and under applicable law and the undisputed facts and evidence before the Court, defendants are entitled to judgment on all causes of action as a matter of law.

1 Defendants' motion for summary judgment and/or adjudication will be and is based upon this
2 Notice; the accompanying Memorandum of Points and Authorities; the accompanying Separate
3 Statement of Undisputed Material Facts; the accompanying Request for Judicial Notice and exhibits
4 thereto; the accompanying Evidence and exhibits thereto; the accompanying Declarations of Wayne
5 Snodgrass and Christiane Hayashi; defendants' reply papers in support of its motion; the records and
6 pleadings in the Court's file in this case; and upon such other and further matters as may be considered
7 by the Court at the hearing on defendants' motion for summary judgment and/or adjudication.
8
9
10

11 Dated: December 11, 2013

12 DENNIS J. HERRERA
13 City Attorney
14 WAYNE SNODGRASS
15 Deputy City Attorney

16 By: 
17 WAYNE SNODGRASS

18 Attorneys for Defendants and Respondents
19 SAN FRANCISCO MUNICIPAL TRANSPORTATION
20 AGENCY, ET AL.
21
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DEC 11 2013

CLERK OF THE COURT
BY: CAROLYN BALISTRERI
Deputy Clerk

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 WAYNE SNODGRASS, State Bar #148137
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1 Dr. Carlton B. Goodlett Place
4 San Francisco, California 94102-4682
Telephone: (415) 554-4675
5 Facsimile: (415) 554-4699
E-Mail: wayne.snodgrass@sfgov.org
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7 Attorneys for Defendants and Respondents
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RAMOS, CRISTINA RUBKE
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 UNLIMITED JURISDICTION

14 BILL MOUNSEY, IZA PARDINAS,
15 JEFFREY GROVE, UNITED TAXICAB
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16 San Francisco taxi drivers and the SAN
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21 SAN FRANCISCO MUNICIPAL
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HEINICKE, JERRY LEE, LEONA
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24 THE MATTER OF THE VALIDITY OF
TAXI MEDALLION SALES TRANSFER
25 PROGRAM, and DOES 1-25,

26 Defendants and Respondents.
27
28

Case No. CGC-12-525348

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS AND RESPONDENTS'
MOTION FOR SUMMARY JUDGMENT
AND/OR SUMMARY ADJUDICATION**

Hearing Date: February 21, 2014
Hearing Judge: Hon. Marla J. Miller
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Place: Dept. 302

Date Action Filed: October 22, 2012
Trial Date: March 24, 2014

Attached Documents: None

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INTRODUCTION

This case illustrates how those who stand to benefit under a flawed regulatory system resist any reforms to that system. Plaintiffs are taxi drivers whose names are on a waiting list to receive taxi medallions, and who, under rules in place from 1978 through 2012, stood to receive those medallions virtually for free – even if not until old age, when those who finally receive medallions may be infirm or incapable of driving safely and in compliance with local requirements. Plaintiffs challenge a 2012 resolution of the San Francisco Municipal Transportation Agency (“SFMTA”), which allows elderly or disabled medallion holders to surrender their medallions to SFMTA for consideration, rather than continuing to drive and placing public safety at risk, and allows SFMTA to transfer medallions out to other applicants on the waiting list, for a specified price, so applicants can receive medallions sooner

Plaintiffs allege a variety of legal claims, but none pass muster. Defendants thus request that this Court enter summary judgment in their favor, or, failing that, that the Court summarily adjudicate that each of plaintiffs’ claims is without merit as a matter of law.

LEGAL AND FACTUAL BACKGROUND

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I. IN SAN FRANCISCO AND OTHER CITIES, TAXI MEDALLIONS ARE LEGALLY REQUIRED IN ORDER TO OPERATE A TAXI ON PUBLIC STREETS

Under California law, “[t]he use of public streets for private enterprise is a special privilege peculiarly subject to regulation, and may be withheld on reasonable grounds related to public safety, health and welfare. There is no vested or constitutional right to use a public street for conducting private business.” (*O’Connor v. Superior Court* (1979) 90 Cal.App.3d 107, 114; *Cotta v. City and County of San Francisco* (2007) 157 Cal.App.4th 1550, 1560.) This includes the private business of operating a taxi on public streets. (*O’Connor, supra*, 90 Cal.App.3d at pp. 113-114.)

In San Francisco, as in a number of other American cities, no person may operate a taxi on public streets without possessing a city-issued taxi medallion. (Separate Statement of Undisputed Facts in Support of Motion [“SSF”], Fact 8; Transp. Code¹ §§ 1105(a)(1), 1102 [defining “medallion” as a permit

¹ Relevant sections of the San Francisco Transportation Code are collectively attached as Exhibit A to Defendants’ Request for Judicial Notice (“RFJN”) in support of this motion.

1 to operate a taxi, and “taxi” as a motor vehicle “which is used for the transportation of passengers for hire
2 over and along the public streets”].)

3 **II. 1978: PROPOSITION K MAKES MEDALLIONS ENTIRELY NON-TRANSFERABLE**

4 Some cities that require taxi medallions allow such medallions to be freely bought and sold for
5 whatever price the market will bear. (*See, e.g., Harrington v. Hasan* (2002) 191 Misc.2d 617, 743
6 N.Y.S.2d 684, 687 [enforcing private parties’ contract to sell medallion].) Most such cities issue taxi
7 medallions only for a substantial sum of money, which can range as high as \$1 million per medallion.
8 (Hayashi Dec., ¶ 7; Evidence, Ex. A [listing New York City medallion auction price.]

9 In San Francisco, taxi medallions were readily transferable up until 1978. (*O’Connor, supra*, 90
10 Cal.App.3d at p. 111.) Medallions were held by corporations and partnerships as well as by natural
11 persons, and no medallion holder was obligated to actually drive his or her cab. City laws and regulators
12 treated medallions as largely private assets. (*Id.*)

13 In 1978, however, City voters adopted Proposition K, an initiative ordinance that significantly
14 changed the City’s taxi laws.² (SSF, Fact 4.) Proposition K made all taxi medallions public property, and
15 mandated that medallions automatically expire when the medallion holder dies or, in the case of a
16 corporate medallion holder, when at least 10 percent of the corporation’s stock or assets are transferred.
17 (*O’Connor, supra*, 90 Cal.App.3d at p. 110.) The initiative made all medallions “non-transferable and
18 nonassignable either expressly or by operation of law,” and barred any person from holding more than one
19 medallion. (*Id.*) New medallions could be issued only to natural persons, each of whom was required to
20 actually drive his or her taxi a specified number of hours per year. (*Id.*; Declaration of Christiane Hayashi
21 in Support of Motion [“Hayashi Dec.”], ¶ 12.) Proposition K also mandated that cabs be kept in
22 “continuous operation” each day, to ensure sufficient taxi service. (Prop. K, § 4(a) [RFJN, Ex. B].)

23 **III. PROBLEMS CAUSED BY PROPOSITION K’S TAXI REGULATIONS**

24 After Proposition K was adopted, the City issued taxi medallions free of charge, save application
25 fees and related fees. (Compl., ¶ 15.) Once an applicant received a medallion, however, he or she could
26 earn significant income from it – both by driving the taxi the medallion authorized to operate on public

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28 ² Proposition K is codified at Appendix 6 to the City’s Administrative Code (RFJN, Ex. B).

1 streets, and by leasing the medallion to a taxi company in exchange for a monthly lease fee. (Hayashi
2 Dec., ¶ 8.) Because medallions were profitable and limited in number, demand quickly outstripped supply.

3 In approximately 1983, the City created a waiting list for medallion applicants (“the waiting list”),
4 which grew to contain more than 3,000 names. (Hayashi Dec., ¶ 9.) Meanwhile, persons who received
5 medallions typically continued to hold them for the rest of their lives. (*Id.*, ¶ 10.) Consequently, applicants
6 moved up the waiting list only very slowly. By 2008, an applicant receiving a medallion would typically
7 have had his or her name on the waiting list for 14 or 15 years. (*Id.*, ¶ 11.) The waiting time continued to
8 grow: as plaintiffs acknowledged when they filed this suit in 2012, “the current wait for a Medallion is
9 approximately 17 years.” (Compl., ¶ 15.)

10 By the time an applicant eventually received a medallion, he or she typically was at least middle-
11 aged, and was often a senior citizen. In at least one case, a medallion applicant was 78 years old by the
12 time he received a medallion. (Hayashi Dec., ¶ 11.) However, because medallions could never be sold,
13 and medallion holders who relied on the income their medallion generated were legally compelled to
14 continue to drive their cabs full time, the system created an unfortunate “drive ‘til you die” incentive for
15 medallion holders to continue driving taxis, in spite of their often advanced age or disabilities. This
16 presented a threat to the safety of other drivers, bicyclists, and pedestrians. (*Id.*, ¶ 14.)

17 **IV. 2007: THE VOTERS AUTHORIZE SFMTA TO AMEND ALL TAXI ORDINANCES**

18 In 2007, San Francisco voters adopted a Charter amendment known as Proposition A. It amended
19 Article VIII A of the City Charter to increase the authority and autonomy of the San Francisco Municipal
20 Transportation Agency (“SFMTA”) over the City’s transportation system, including MUNI, automobile
21 and bicycle traffic, vehicle parking, and the local taxi industry.³

22 With respect to taxis, Proposition A amended the City Charter to lodge the City’s legislative
23 authority over the local taxi industry in the SFMTA Board of Directors, rather than in the Board of
24 Supervisors. As amended by Proposition A, Section 8A.101(b) of the Charter states as follows:

25 The Board of Supervisors shall have the power, by ordinance, to abolish the Taxi Commission ...
26 and to transfer the powers and duties of that commission to [SFMTA]. In order to fully integrate

27 ³ SFMTA is governed by a Board of Directors, whose seven members are each appointed by
28 the Mayor and confirmed, after a hearing, by the Board of Supervisors. Once appointed, members of
the Board of Directors can be removed only for cause. (Charter § 8A.102(a) [RFJN, Ex. D].)

1 taxi-related functions into the Agency should such a transfer occur, the Agency shall have the
2 same exclusive authority over taxi-related functions and taxi-related fares, fees, budgets, and
3 personnel that it has over the Municipal Railway and parking and traffic fares, fees, charges,
4 budgets, and personnel.

5 (S.F. Charter, § 8A.101(b) [RFJN, Ex. D] [emphasis added].) Moreover, the voters amended the Charter to
6 vest the SFMTA Board with the power to amend or supercede that initiative ordinance, as well as any
7 other taxi-related ordinances:

8 Once adopted, Agency regulations shall thereafter supercede all previously-adopted ordinances
9 governing motor vehicles for hire that conflict with or duplicate such regulations.

10 (*Id.*; SSF Fact 2) The voters gave SFMTA this legislative power to supercede initiative (and other)
11 ordinances by adopting Proposition A, an initiative *Charter amendment*, which is a more difficult type of
12 initiative to place on the ballot.⁴

13 The official ballot materials had expressly informed the voters that Proposition A would authorize
14 the SFMTA Board to enact regulations superseding Proposition K. A paid argument against the measure,
15 submitted by an official of plaintiff United Taxicab Workers (“UTW”) and paid for by the UTW itself,
16 warned that Proposition A would give the SFMTA Board the power to “**repeal Prop K by an**
17 **administrative rule.**” (Voter Information Pamphlet [RFJN, Ex. E] at p. 46 [emphasis original].)

18 Similarly, the official Rebuttal to Proponent’s Argument in Favor of Proposition A alerted voters that the
19 proposition would give the SFMTA Board “the power to eliminate the driving requirements for taxi
20 [medallions] mandated by the San Francisco voters for nearly thirty years.” (*Id.* at p. 40, “Rebuttal.”)

21 V. 2010: SFMTA ENACTS THE MEDALLION SALES PILOT PROGRAM

22 In 2008, the Board of Supervisors adopted Police Code Section 1075.1. That section abolished the
23 Taxi Commission and transferred its responsibilities to SFMTA, which assumed regulatory responsibility
24 for the local taxi industry on March 1, 2009. (SSF Fact 3.)

25 ⁴ As few as four of the City’s 11 Supervisors can place an initiative ordinance on the ballot,
26 while placing an initiative Charter amendment on the ballot requires the approval of at least six
27 Supervisors. (S.F. Charter, § 2.113; Cal.Elec.Code § 9255(b)(1).) An initiative ordinance also can
28 qualify for the ballot if its proponent submits signature petitions signed by at least five percent of the
number of voters who voted for mayor in the last mayoral election; in contrast, an initiative charter
amendment qualifies for the ballot only if its proponent submits signature petitions signed by at least
10% of the City’s registered voters. (S.F. Charter, § 14.101; Cal.Elec.Code § 9255(b)(3).) The Charter
may be accessed at
http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca.

1 In the next 12 months, SFMTA conducted extensive community meetings and outreach to explore
2 ways to revise the City's taxi regulations. (Hayashi Dec., ¶ 19.) The agency's staff explained to attendees
3 and stakeholder groups that it intended to introduce some form of medallion transferability, both to
4 address the problem of elderly and potentially unsafe medallion holder drivers, and to help the City raise
5 much-needed revenue. (*Id.*, ¶ 20; SSF, Fact 13.) Plaintiff UTW warned in its newsletters that SFMTA
6 sought "to introduce medallion transferability," and that the Mayor backed "the idea of selling
7 medallions." (Hayashi Dec., ¶¶ 21, 22; Evidence in Support of Defendants' Mtn. ["Evidence"], Exs. F, G.)

8 Starting in February 2010, "SFMTA incrementally enacted the Taxi Medallion Sales Pilot
9 Program," a "temporary program sanctioning the sale of a limited number of taxi medallions for a fixed
10 price of \$250,000." (Compl., ¶ 8; Hayashi Dec., ¶ 24.) As the SFMTA staff explained in their Staff Report
11 accompanying the Pilot Progra legislation, the Pilot Program was "intended to be an interim measure that
12 will move the taxi industry gradually away from the 'Prop K' system," and further legislative changes
13 could follow the Pilot Program. (Hayashi Dec., ¶ 24.) The Pilot Program lasted approximately two years.
14 Under it, approximately 250 taxi medallion applicants, drawn from the waiting list and from a related
15 driver permit list, purchased medallions for \$250,000 each. (*Id.*, ¶ 25.)

16 VI. 2012: SFMTA ENACTS THE MEDALLION TRANSFER PROGRAM

17 On August 21, 2012, SFMTA's Board of Directors adopted Resolution 12-110. That resolution
18 amended the City's Transportation Code, and particularly Section 1116 of that Code, "to transition the
19 Taxi Medallion Sales Pilot Program into a long-term medallion transfer policy." (Compl., Ex. A, at
20 "RESOLVED" clause]; *see* RFJN, Ex. F [entire agenda packet for Resolution 12-110].)

21 Section 1116, entitled "Taxi Medallion Transfer Program," generally makes medallion holders
22 who are over 60 years of age, or have a proven disability preventing them from driving full time, eligible
23 to surrender their medallions to SFMTA for a "Medallion Surrender Payment" of \$200,000. (Transp.
24 Code § 1116(a), (b) [RFJN, Ex. A].) SFMTA may then transfer a surrendered medallion to a qualified
25 medallion applicant – who must be drawn from the waiting list, and selected based first on seniority on
26 that list, and secondarily on seniority on the list of medallion applicants holding driver permits – for a
27 fixed "Medallion Transfer Price." That price is currently \$250,000, but it may be adjusted based on

1 “commercially relevant factors.”⁵ (*Id.*, § 1116(c), (e).) A person to whom SFMTA has transferred a
2 medallion may “retransfer” it to another qualified applicant – who also must be drawn from the waiting
3 list, selected first by seniority on that list and second by seniority on the driver permittee list. Such a
4 retransfer can only be for the same fixed price, and requires SFMTA’s approval. (*Id.*, § 1116(h).)

5 Even under the Medallion Transfer Program, however, medallions continue to be subject to other
6 Proposition K requirements. For example, medallions may be suspended or revoked for cause, and may
7 not be conveyed by gift or bequest. (*Id.*, § 1116(d)(1), (i).) Medallions may be issued only to natural
8 persons, and except where the Transportation Code expressly states otherwise, no medallion may be
9 transferred or assigned at all. (*Id.*, § 1105(a)(2), (4).) With limited exceptions, medallions remain subject
10 to the “continuous operation” requirement, and each holder of a medallion issued after Proposition K was
11 adopted is still required to be a working, full-time driver. (*Id.*, §§ 1105(a)(9), 1109(c)(1).) And the waiting
12 list continues to serve a central function in the distribution of taxi medallions, because SFMTA may
13 transfer medallions only to qualified applicants on the waiting list, rather than to any interested member of
14 the public. (*Hayashi Dec.*, ¶ 27.)

15 VII. PLAINTIFFS’ LAWSUIT

16 On October 22, 2012, plaintiffs filed their “Complaint for Reverse Validation Action, Petition for
17 Writ of Mandate and Declaratory and Injunctive Relief” in this suit. The individual plaintiffs allege that
18 they are City residents and taxpayers, are on the waiting list, and wish to receive taxi medallions “free of
19 charge except for [the] additional [issuance] fee.” (Compl., ¶¶ 10, 11, 15 [RFJN, Ex. C].) The
20 organizational plaintiffs allege that they represent the interests of taxi drivers. (*Id.*, ¶ 12.)

21 Plaintiffs challenge SFMTA Resolution 12-110 and its amendments to the Transportation Code
22 that establish the Taxi Medallion Transfer Program. (Compl., ¶¶ 1, 13, 16, 18.) They claim that the
23 Resolution and the Transfer Program are unlawful for four reasons: that they (1) “constitute an illegal
24 enactment of legislation by an administrative agency,” (2) “were enacted without due process as required
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26 ⁵ SFMTA has established a lower Medallion Transfer Price of \$150,000 for the first 200
27 qualified applicants on the waiting list. (Transp. Code § 1116(g).) Plaintiffs challenge the resolution
28 that made that change, and another resolution, in *Mounsey et al. v. SFMTA et al.*, No. CPF-12-512660,
filed on December 12, 2012.

1 by the CCSF's charter and the California and federal constitutions," (3) "require a payment for a
2 medallion that constitutes the imposition of a special tax without approval of two-thirds vote as required
3 by article XIII C, section 2 of the California Constitution," and (4) "are contrary to promises made to the
4 individual plaintiffs and others similarly situated who detrimentally relied on the rights afforded them by
5 being on the Waiting List." (*Id.*, ¶ 18.)

6 ARGUMENT

7 I. THIS COURT MAY ADJUDICATE EACH OF PLAINTIFFS' LEGAL CLAIMS

8 Defendants seek summary judgment, or, failing that, summary adjudication that each of plaintiffs'
9 four substantive legal claims fails as a matter of law. This Court may grant such relief, even though
10 plaintiffs label their relief requests, not their substantive legal claims, as causes of action.

11 Under California's "primary right" pleading theory, "a cause of action is comprised of a primary
12 right of the plaintiff, a corresponding primary duty of the defendant, and a wrongful act by the defendant
13 constituting a breach of that duty." (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 681 [internal quotes, cites
14 omitted].) The primary right "is simply the plaintiff's right to be free from the particular injury suffered."
15 (*Id.*) A plaintiff's "primary right must ... be distinguished from the *remedy* sought: The violation of one
16 primary right constitutes a single cause of action, though it may entitle the injured party to many forms of
17 relief, and the relief is not to be confounded with the cause of action, one not being determinative of the
18 other." (*Crowley, supra*, 8 Cal.4th. at pp. 681-682 [internal quotes, cites omitted; emphasis original].)

19 For purposes of this motion, therefore, it is immaterial that plaintiffs have organized their
20 complaint by the various types of relief they seek, rather than by the different primary rights they claim
21 were violated. "The manner in which a plaintiff elects to organize his or her claims within the body of the
22 complaint is irrelevant to determining the number of causes of action alleged under the primary right
23 theory. If a plaintiff states several purported causes of action which allege an invasion of the same primary
24 right he has actually stated only one cause of action." (*Hindin v. Rust* (2004) 118 Cal.App.4th 1247,
25 1257.)

26 Summary judgment is wholly appropriate here. There are no disputed factual issues, and indeed,
27 barely any controlling "facts" at all. This case turns almost exclusively on local Charter provisions, local
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1 legislative enactments, and applicable Constitutional and statutory provisions. There is no need for such a
2 matter to go to trial.

3 **II. PLAINTIFFS MUST PROVE THAT RESOLUTION 12-110 IS UNLAWFUL**

4 In attacking the legality of Resolution 12-110, plaintiffs bear the burden of showing that the
5 Resolution is unlawful. “Legislative enactments must be upheld unless their unconstitutionality clearly,
6 positively, and unmistakably appears.” (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1107 [internal
7 quotes omitted].) To overcome this presumption of validity, “the petitioner must bring forth evidence
8 compelling the conclusion” that the enactment is invalid. (*City of San Diego v. Hass* (2012) 207
9 Cal.App.4th 472, 496; *County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 973.) For
10 the reasons set forth below, and as a matter of law, plaintiffs cannot meet their burden.

11 **III. AS A MATTER OF LAW, RESOLUTION 12-110 IS NOT AN IMPROPER EXERCISE OF
12 LEGISLATIVE AUTHORITY BY AN ADMINISTRATIVE AGENCY**

13 In their first cause of action, plaintiffs allege that because “delegation of legislative power to an
14 administrative agency ... is impermissible,” Resolution 12-110 the Medallion Transfer Program “constitute
15 an illegal enactment of legislation by an administrative agency.” (Compl., ¶¶ 7, 18(a).) But as a matter of
16 law, this claim must fail. In adopting Resolution 12-110, SFMTA’s Board of Directors was exercising
17 legislative power that the voters had permissibly assigned to that agency.

18 **A. A Charter City’s Legislative Authority Need Not Be Lodged Exclusively In Its Board
19 of Supervisors or City Council.**

20 The principle that plaintiffs rely on – namely, that an unconstrained “delegation of legislative
21 power to an administrative agency is impermissible” – restricts statutes enacted by the Legislature, and
22 ordinances enacted by local legislative bodies. (*Hess Collection Winery v. California Agr. Labor Relations
23 Bd.* (2006) 140 Cal.App.4th 1584 [Legislature]; *Kugler v. Yocum* (1968) 69 Cal.2d 371 [local ordinance].)
24 As courts have held, “[a]n unconstitutional delegation of legislative power occurs when the Legislature
25 confers upon an administrative agency unrestricted authority to make fundamental policy decisions.”
26 (*Hess Collection Winery, supra*, 140 Cal.App.4th at p. 1604 [citing *People v. Wright* (1982) 30 Cal.3d 705,
27 712-13].) This principle rests upon the premise that the legislative body – the officials entrusted with
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1 policymaking authority – “must itself effectively resolve the truly fundamental issues. It cannot escape
2 responsibility by explicitly delegating that function to others ...” (*Kugler, supra*, 69 Cal.2d at p. 376.)

3 However, this principle does not apply to decisions by the *voters* as to how a city charter will
4 allocate the city’s legislative powers among various agencies within the city’s governmental structure.
5 Under Article 11, Section 5(a) of the California Constitution, charter cities are given broad power to
6 control their own municipal affairs, and their enactments on such subjects supersede any contrary state
7 statutes. (*Dibb. v. County of San Diego* (1994) 8 Cal.4th 1200, 1207.) As part of their control over their
8 municipal affairs, charter cities possess “broad[] authority to structure and organize their government,”
9 and extensive “authority ... over the *structure and operation* of their local government.” (*Id.*, 8 Cal.4th at
10 pp. 1207, 1211 [emphasis original].) Even for a charter county – and, therefore, all the more for a charter
11 city – “home rule,” under the Constitution, “contemplates the right of the people of a charter county to
12 create their own local government and define its powers within the limits set out by the Constitution.” (*Id.*,
13 8 Cal.4th at p. 1218.)

14 Moreover, “in establishing a governmental structure for the purpose of managing municipal affairs
15 ... local entities (through charter provisions and the like) *may combine executive, legislative, and judicial*
16 *functions in a manner different from the structure that the California Constitution prescribes for state*
17 *government.”* (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1093 fn. 23
18 [emphasis added]; *D’Amato v. Superior Court* (2008) 167 Cal.App.4th 861, 869.)

19 In structuring and organizing their governments, of course, charter cities must comply with
20 constitutional requirements. But the Constitution does not specify which boards or agencies within a
21 charter city may exercise legislative authority and enact police power measures. Instead, it states only that
22 “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances
23 and regulations not in conflict with general laws.” (Cal.Const., Art. 11, §7.)⁶ Thus, rather than mandating
24 that all such “ordinances and regulations” may only be enacted by a city council or board of supervisors,

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26 ⁶ Similarly, the Constitution states that city charters may “provide that the city governed
27 thereunder may make and enforce all ordinances and regulations in respect to municipal affairs,
28 subject only to restrictions and limitations provided in their several charters” (Cal.Const., Art. 11,
§5(a)), but does not specify *which* boards or agencies may exercise the legislative power to adopt such
“ordinances and regulations” governing municipal affairs.

1 the Constitution instead leaves it to the discretion of each charter city, and each city's voters in approving
2 a charter, to determine how legislative authority shall be allocated and apportioned within the structure of
3 local government.

4 **B. Courts Have Upheld The Exercise Of Legislative Power By Diverse Local Bodies.**

5 In approving a municipal charter, local voters may assign legislative authority over specified
6 subjects to a local administrative agency, rather than to the city council or board of supervisors.

- 7 • *City of Oakland v. Hogan* (1940) 41 Cal.App.2d 333, for example, held that Oakland's Board of
8 Port Commissioners, which the city charter grants "complete and exclusive power" over port
9 functions, "is a legislative body of the Oakland municipality." (*Id.*, 41 Cal.App.2d at pp. 341, 345.)
10 Because the Board is created by the city charter, the court held, "*whatever rights may be given to*
11 *the municipality may be bestowed upon the agency.*" (*Id.* at pp. 342-43 [emphasis added].) As the
12 court explained, "under our modern form of government, particularly in larger communities,
13 legislative functions are often bestowed upon more than one commission or board, as for instance,
14 boards of health, education, park, police, waterway or other public bodies" (*Id.*, 41 Cal.App.2d
15 at p. 344.)
- 16 • *City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898 involved San Francisco's
17 Health Service Board, which the Charter authorized "to oversee the establishment and
18 administration of all 'medical care' plans for city employees" and to "develop[] new 'medical
19 care' plans." (*Id.*, 13 Cal.3d at p. 923.) The Court invalidated an ordinance adopted by the Board of
20 Supervisors that would establish a new dental plan, explaining that it constituted "the board of
21 supervisors' entry into a field which the charter appears clearly to have delegated to the city health
22 service board." (13 Cal.3d at p. 924.)
- 23 • *Fire Fighters' Union v. City of Vallejo* (1974) 12 Cal.3d 608 held that a city charter provision
24 requiring that disputes as to wages, hours and working conditions be resolved by an unelected
25 Board of Arbitrators did not unlawfully delegate legislative power to outside arbitrators. "Through
26 section 810 [of the charter] the citizens of Vallejo delegated to a board of arbitrators the power to
27 render a final and binding decision" over labor contract negotiations, and "[t]o the extent that the
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1 arbitrators do not proceed beyond the provisions of the Vallejo charter there is no unlawful
2 delegation of legislative power.” (*Id.*, 12 Cal.3d at p. 622, fn. 13.)

- 3 • In *Creighton v. City of Santa Monica* (1984) 160 Cal.App.3d 1011, the city charter created an
4 autonomous Rent Control Board, and empowered it, *inter alia*, to enact its own budget, appropriate
5 needed funds, and enact rules governing rent control matters. The court held that “[t]he citizens of
6 Santa Monica ... resolved the fundamental policy questions in this case by enacting the charter
7 amendment provisions empowering the Board to regulate rents, finance its necessary and
8 reasonable expenses through fees, and employ and pay its own staff. (*Id.*, 160 Cal.App.3d at p.
9 1021.) There was no unlawful delegation, because “[t]he authority was delegated by the electorate
10 through the device of an initiative amendment to the charter.” (*Id.*)

11 Charter cities thus may assign legislative power to bodies other than the city council or board of
12 supervisors. Similarly, the state Legislature has authorized counties to designate agencies within their
13 governmental structure, other than the county board of supervisors, to exercise legislative power over
14 specified subjects. For example, Section 17001 of the Welfare & Institutions Code authorizes “standards
15 of aid and care” for General Assistance relief for the indigent to be adopted, within each county, by the
16 county’s board of supervisors, “or the agency authorized by county charter” to perform that task. (*Id.*)
17 Setting such standards of aid and care is clearly a legislative act. (*Pettye v. City and County of San*
18 *Francisco* (2004) 118 Cal.App.4th 233, 244 [local initiative setting standards of aid and care was
19 “quintessential[ly] legislative” in nature].) Yet the Legislature has empowered each county to designate
20 *any agency it chooses* to exercise the legislative authority needed to enact such standards.

21 In a charter city, therefore, the voters may enact charter provisions that create a governmental
22 structure which allocates the city’s legislature authority to more than one agency or body, elected or
23 otherwise. Accordingly, when San Francisco voters adopted Proposition A in 2007, they permissibly
24 assigned the City’s legislative power “over taxi-related functions and taxi-related fares, fees, budgets, and
25 personnel,” and over “motor vehicles for hire,” to SFMTA.

1 **C. In Adopting Proposition A In 2007, The Voters Authorized The SFMTA To Repeal**
2 **Or Amend Proposition K.**

3 The electorate has the power to determine whether, and under what circumstances, voter-enacted
4 initiatives may subsequently be amended by a legislative body. (*See Amwest Surety Ins. Co. v. Wilson*
5 (1995) 11 Cal.4th 1243, 1251 [“the voters have the power to decide whether or not the Legislature can
6 amend or repeal initiative statutes”] [emphasis omitted]; *Knight v. Superior Court* (2005) 128 Cal.App.4th
7 14, 22 [California Constitution “preclud[es] the Legislature from undoing what the people have done,
8 without the electorate’s consent”].) A charter city may determine the specific procedures by which the
9 local electorate may consent to the legislative body’s later amendment of an initiative, because “the local
10 exercise of the initiative power” is an “area[] that ha[s] long been considered [a] municipal affair[.]”
11 (*Trader Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 47; Cal.Const., Art. II, § 11(a)
12 [providing for local initiative and referendum powers, but stating that with exceptions not relevant, “this
13 section does not affect a city having a charter”].)

14 Here, the voters who adopted Proposition A in 2007 effectively made SFMTA the City’s
15 legislative body concerning taxi matters. They also authorized that it to adopt regulations superceding “all
16 previously-adopted ordinances governing motor vehicles for hire that conflict with or duplicate such
17 regulations,” including previously-adopted initiative ordinances. The voters knew that Proposition A
18 would give SFMTA such authority, because the official voter pamphlet repeatedly warned them that the
19 measure would have that effect. By adopting Proposition A, therefore, the voters consented to the
20 enactment of subsequent legislation by the SFMTA Board – such as Resolution 12-110, the Resolution at
21 issue in this suit – which partially amends or overrides Proposition K. Thus, in enacting Resolution 12-
22 110, SFMTA’s Board of Directors merely exercised the legislative authority that the Charter, and the
23 voters, had permissibly assigned to it. As a matter of law, plaintiffs cannot prevail on their claim that that
24 Resolution constitutes an unlawful exercise of legislative power.

25 **IV. AS A MATTER OF LAW, RESOLUTION 12-110 WAS ENACTED IN COMPLIANCE**
26 **WITH DUE PROCESS**

27 Plaintiffs admit that the SFMTA Board enacted Resolution 12-110 “after ... three days notice.”
28 (Compl., ¶8.) Nonetheless, in their second claim, plaintiffs allege that Resolution 12-110 was “enacted

1 without due process as required by the CCSF's charter and the California and federal Constitutions," and
2 "without the requisite notices and opportunity to be heard afforded other legislation enacted on behalf of
3 the Board of Supervisors." (Compl., ¶ 18(b).) As a matter of law, this claim must fail. In adopting the
4 Resolution, SFMTA complied with all applicable due process and other legal mandates.

5 **A. Plaintiffs Cannot Show Any Violation Of Procedural Due Process.**

6 **1. Resolution 12-110 did not affect any vested property right.**

7 First, neither plaintiffs, nor anyone on the medallion waiting list, had any property right in the
8 continuance of the "old," Proposition K-based system of medallion issuance, or in being awarded a
9 medallion under that old system. To possess a property right, a person "clearly must have more than an
10 abstract need or desire" for, or "a unilateral expectation of," the matter at issue. (*Board of Regents v. Roth*
11 (1972) 408 U.S. 564, 577.) "He must, instead, have a legitimate claim of entitlement to it." (*Id.*; *Lawrence*
12 *v. Hartnell Community College Dist.* (2011) 194 Cal.App.4th 687, 702.) But plaintiffs and others on the
13 waiting list were not *entitled* to the continued use of the "old" medallion issuance system, or to receive a
14 medallion under that system.

15 "Any statute may be repealed at any time," and "[p]ersons acting under any statute act in
16 contemplation of this power of repeal." (Gov.Code § 9606.) And while that rule does not apply where the
17 repeal would impair vested rights (*id.*), that exception is inapplicable here, because a change in the laws
18 that govern the issuance and transferability of taxi medallions does not impair vested rights:

19 [T]he use of public streets for private enterprise is a special privilege particularly subject to
20 regulation, and may be withheld on reasonable grounds related to public safety, health and welfare.
21 There is no vested or constitutional right to use a public street for conducting private business
22 [a] license or permit to engage in the taxicab business, issued by the city pursuant to its police
23 power, does not convey a vested property right.

24 (*O'Connor, supra*, 90 Cal.App.3d at p. 114.) "[T]axicab drivers do not obtain any vested right in the grant
25 of permission to operate taxicabs on the public roadways. Rather, that permission may be altered at the
26 discretion of the issuing authority." (*Cotta, supra*, 157 Cal.App.4th at p. 1560.) Similarly, even a person
27 who already holds a taxi medallion has no property right in the continuance of any particular regulatory
28 regime: "an ordinance adopted in the exercise of the police power does not create contract rights in the
continuation of the regulation." (*O'Connor, supra*, 90 Cal.App.3d at p. 114 [Proposition K, which

1 rendered taxi medallions wholly non-transferable, did not take existing medallion holders' property].)
2 Thus, a law such as Proposition K that regulates medallions may be repealed "at any time." All persons on
3 the waiting list "act in contemplation of this power of repeal." (Gov.Code § 9606.)

4 *O'Connor* and *Cotta* defeat any property right. If a change in the laws governing medallions does
5 not affect property rights of persons *who already hold medallions*, as those cases hold, then such a change
6 certainly cannot affect any property rights of persons *who do not already hold medallions*, and who
7 merely desire to receive medallions after their names rise to the top of a waiting list.

8 **2. The adoption of Resolution 12-110 was a legislative decision and is not subject**
9 **to procedural due process requirements.**

10 Moreover, "due process principles of notice and opportunity for hearing do not apply to legislative
11 action. Only those governmental decisions which are *adjudicative* in nature are subject to procedural due
12 process principles." (*Mission Hospital Regional Med. Ctr. v. Shewry* (2008) 168 Cal.App.4th 460, 484
13 [emphasis original] [citing *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612].) Adjudicatory
14 decisions are those "in which the government's action affecting an individual is determined by facts
15 peculiar to the individual case," while legislative decisions are those "which involve the adoption of a
16 broad, generally applicable rule of conduct on the basis of general public policy." (*Horn, supra*, 24 Cal.3d
17 at p. 613 [parentheses, internal quotes omitted].)

18 SFMTA's adoption of Resolution 12-110 was legislative, not adjudicative. Rather than applying an
19 existing standard to the facts of an individual case, the Resolution adopts a broad, new standard of conduct
20 with respect to taxi medallions in general, based on public policy concerns such as the public safety risks
21 fostered by the Proposition K waiting list system. Because the adoption of the Resolution was legislative
22 in character, it was not subject to procedural due process requirements.

23 **B. Plaintiffs cannot show any violation of other notice and hearing requirements.**

24 Plaintiffs also contend that the SFMTA Board adopted the Resolution "on an expedited basis
25 without the requisite notices and opportunity to be heard afforded other legislation enacted on behalf of
26 the Board of Supervisors." (Compl. ¶18(b).) This claim must fail.

27 "It is firmly established that the mode and manner of passing ordinances is a municipal affair ...
28 and that there can be no implied limitations upon charter powers concerning municipal affairs." (*People ex*

1 *rel. Seal Beach Police Officers Ass'n v. City of Seal Beach* (1984) 36 Cal.3d 591, 601 fn. 12; *Trader*
2 *Sports, Inc., supra*, 93 Cal.App.4th at p. 47.) Here, while the Charter specifies procedures that the Board
3 of Supervisors must follow to enact ordinances and resolutions,⁷ the Charter imposes no similar
4 requirements on SFMTA's Board of Directors when it enacts legislation within its field of legislative
5 authority. Nothing in the Charter required that the SFMTA Board follow the same procedures to enact
6 Resolution 12-110 as the Board of Supervisors employs when it enacts ordinances. And no other law
7 imposed such a requirement; indeed, state law expressly authorizes cities to adopt regulations regarding
8 "licensing and regulation of operation of vehicles for hire" – including taxis – "by ordinance *or*
9 *resolution.*" (Cal.Veh.Code § 21100(b) [emphasis added].) And while the Brown Act required the SFMTA
10 Board to provide 72 hours notice of its intent to consider adopting Resolution 12-110, plaintiffs admit that
11 the SFMTA Board did so. (Compl., ¶ 8.) In adopting the Resolution, the SFMTA complied with all
12 applicable requirements.

13 **V. RESOLUTION 12-110 DOES NOT ESTABLISH AN UNLAWFUL TAX**

14 their third claim, plaintiffs allege that Resolution 12-110 and the Medallion Transfer Program
15 are invalid because they "require a payment for a medallion" – that is, the Medallion Transfer Price –
16 which "constitutes the imposition of a special tax without approval of two-thirds vote as required by
17 article XIII C, section 2 of the California Constitution." (Compl., ¶ 18(c).) But this claim must fail,
18 because the Constitution – which places the burden of proof on this claim on the City, not on plaintiffs –
19 also makes clear that the Medallion Transfer Price is not a tax at all.

20 **A. A Charge Imposed For The Use Of Local Government Property Is Not A "Tax."**

21 Although Article XIII C, section 2 of the California Constitution requires a majority vote for a local
22 general tax and a 2/3 vote for a local special tax, it does not define or otherwise specify what constitutes a
23 "tax." However, Article XIII C, Section 1 includes a "safe harbor": it specifies seven categories of charges
24 that, for purposes of Article XIII C, are *not* taxes. And one of those categories – a charge "for the use of
25 local government property" – is directly applicable here, because a taxi medallion is the legal

26
27 ⁷ To adopt an ordinance, the Board of Supervisors must approve the ordinance at "two readings
28 at separate meetings of the Board of Supervisors, which shall be held at least five days apart." (S.F.
Charter, § 2.105.) The Board of Supervisors may adopt a resolution at a single reading. (*Id.*)

1 authorization to “use local government property” – namely, city streets – as the location for the operation
2 of a taxi business. Article XIII C, Section 1 states, in relevant part:

3 SECTION 1. Definitions. As used in this article:

4 ***

(e) As used in this article, “tax” means any levy, charge, or exaction of any kind imposed
5 by a local government, except the following:

6 ***

(4) A charge imposed for ... use of local government property, or the purchase,
7 rental, or lease of local government property.

8 (*Id.* [emphasis added].) Under the plain language of the above-quoted provision, a charge “imposed for ...
9 use of local government property” is not a tax *regardless of its amount*, and regardless of whether the
10 charge exceeds any costs the government may incur when the “use of local government property” occurs.
11 The drafters of Article XIII C Section 1, and the voters who approved it as part of Proposition 26 in
12 November 2010, chose to include such a “governmental costs” limitation in some of the other “safe
13 harbor” provisions listed in Article XIII C, Section 1(e).⁸ The fact that the drafters and the voters elected
14 not to include a similar “governmental costs” limitation in Article XIII C Section 1(e)(4) shows that they
15 intended that a charge imposed to use local government property is not a tax, regardless of whether that
16 charge is limited to, or exceeds, the government’s costs.

17 That Article XIII C Section 1(e)(4) does not contain any such “governmental costs” limitation is
18 hardly surprising. California law has long authorized local government entities to allow the private use of
19 public property, and to sell or lease public property, at market rates – that is, at the highest price the
20 market will bear – in order to protect the public fisc. For example:

- 21 • “A franchise has been defined as ‘a privilege conferred upon an individual or a corporation for use
22 of a sovereign body’s property.’” (*City of Santa Cruz v. PG&E* (2000) 82 Cal.App.4th 1167, 1171
23 fn. 2.) Franchises include, for example, the right “to collect from single family dwellings or
24 transport upon city streets any ‘solid waste’” (*Waste Management of Alameda County, Inc. v.*

25
26 ⁸ See, e.g., Art. XIII C § 1(e)(1) (a “tax” does not include “[a] charge imposed for a specific
27 benefit conferred or privilege granted directly to the payor that is not provided to those not charged,
28 and which does not exceed the reasonable costs to the local government of conferring the benefit or
granting the privilege”) (emphasis added).

1 *Biagini Waste Reduction Systems, Inc.* (1998) 63 Cal.App.4th 1488, 1492), and “the right to use
2 city streets to distribute electricity, gas, or water to the city and its inhabitants.” (*City of Santa*
3 *Cruz, supra*, 82 Cal.App.4th at p. 1171.) And “[n]ormally the utility is charged a franchise fee as
4 consideration for that privilege.” (*Id.*) Yet franchise fees are not limited to the government’s costs:
5 “fees paid for franchises are not taxes, user fees or regulatory licenses.” *Santa Barbara County*
6 *Taxpayers Association v. Board of Supervisors for the County of Santa Barbara* (1989) 209
7 Cal.App.3d 940, 950.)

- 8 • In selling or leasing county property, a county’s board of supervisors must solicit proposals, and
9 “the proposal which is the highest shall be finally accepted, unless a higher oral bid is accepted or
10 the board rejects all bids.” (Gov. Code § 25530.) Similarly, in leasing property, a city’s “legislative
11 body shall award the lease to the highest responsible bidder.” (*Id.*, § 50514.)⁹

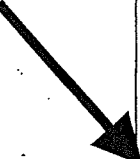
12 Moreover, nothing in the text of Article XIII C Section 1(e), or in the legislative history of 2010’s
13 Proposition 26, suggests that Section 1(e)’s definition of “tax” is intended to alter the longstanding
14 principle that public entities can charge market rates for the use, sale or lease of publicly-owned property.
15 (RFJN, Ex. G [2010 ballot pamphlet pages concerning Proposition 26].) The voters who adopted
16 Proposition 26 would reasonably have understood that they were making it harder for local governments
17 to charge regulatory fees to recover the costs of cleaning up pollution or addressing health effects of
18 dangerous products – not that they were preventing local governments from imposing realistic or market-
19 based charges on private entities who wish to use public property for private gain.

20 **B. The Medallion Transfer Price Is “A Charge Imposed For Use Of Local Government**
21 **Property.”**

22 The Medallion Transfer Price is simply “[a] charge imposed for [the] use of local government
23 property” within the meaning of Article XIII C, Section 1(e)(4) of the Constitution. This conclusion flows
24 from the unusual nature of a taxi medallion and the privilege it affords the medallion holder.

25 Rather than being merely a permit to operate a cab, a medallion grants its holder the “special
26 privilege” of “us[ing] ... public streets for private enterprise.” (*O’Connor*, 90 Cal.App.3d at p. 114.) Local

27 ⁹ Were it otherwise, private persons renting out City Hall for a private gala, or buying surplus
28 government land, would realize a windfall by paying only the government’s costs, not market rates.



1 law requires a person to possess a medallion in order to operate a taxi, and specifically defines a taxi as a
2 motor vehicle “which is used for the transportation of passengers for hire *over and along the public*
3 *streets.*” (Transp. Code § 1102 [emphasis added].) The right “to use streets in the ordinary way is quite
4 different from the right to use them as a place of business for private gain. . . . [s]uch use, when granted, is
5 a special or extraordinary privilege. It is an added easement or burden on the street, and is not comparable
6 to the right to conduct lawful business on private property.” (*Cotta*, 157 Cal.App.4th at p. 1561.)

7 A taxi medallion is required to use public streets “as a place of business for private gain.”
8 Consequently, the charge to obtain a medallion – that is, the Medallion Transfer Price” – is “imposed for
9 . . . use of local government property.” Under Article XIII C, Section 1(e)(4), it is not a tax.

10 **VI. RESOLUTION 12-110 DOES NOT VIOLATE PROMISES MADE TO PLAINTIFFS**

11 In their fourth claim, plaintiffs contend that Resolution 12-110 and the Medallion Transfer
12 Program are invalid because they “are contrary to promises made to the individual plaintiffs and other
13 similarly situated who detrimentally relied on the rights afforded them by being on the Waiting List.”
14 (Compl., ¶ 18(d).) This claim, too, fails as a matter of law.

15 **A. The Waiting List Did Not Create “Rights” In Plaintiffs Or Others.**

16 No person was afforded any “right” to a medallion, or to the continued use of the Proposition K-
17 based medallion issuance system, by their “being on the Waiting List.” “[T]he granting or withholding of
18 a privilege based upon certificates of public convenience and necessity presents no judicial controversy
19 touching on the impairment of vested rights” (*Cotta*, 157 Cal.App.4th at p. 1560), and “an ordinance
20 adopted in the exercise of the police power does not create contract rights in the continuance of the
21 regulation.” (*O’Connor*, 90 Cal.App.3d at p. 114.) Proposition K and its medallion issuance system were
22 enacted under the City’s police power to further public welfare, and the City could not divest itself of the
23 authority to later amend or repeal those measures as it deemed necessary to better promote public welfare.
24 Because no vested rights were at issue, plaintiffs, in placing their names on the waiting list and
25 maintaining their eligibility to be issued a medallion, “acted in contemplation of” the possibility that
26 Proposition K and its system of medallion issuance could be “repealed at any time.” (Gov.Code § 9606.)
27
28

1 **B. Plaintiffs Were Not Promised No Changes To The Medallion Issuance System.**

2 Plaintiffs provide no legal label for their fourth cause of action, but it appears to be a claim for
3 promissory estoppel. However, it is a “well-established proposition that an estoppel will not be applied
4 against the government if to do so would effectively nullify a strong rule of policy, adopted for the
5 benefits of the public.” (*Cotta, supra*, 157 Cal.App.4th 1550, 1567; *City of Goleta v. Superior Court*
6 (2006) 40 Cal.4th 270, 279 [no estoppel against a public entity “except in unusual instances when
7 necessary to avoid grave injustice and when the result will not defeat a strong public policy”].)

8 *Cotta*, for example, affirmed summary judgment on promissory and equitable estoppel claims
9 arising from a series of resolutions that the City’s Airport Commission had adopted in an effort to
10 incentivize taxi drivers to purchase cabs powered by compressed natural gas (CNG). After several such
11 resolutions progressively increased the competitive advantages that drivers of CNG cabs would receive,
12 and plaintiffs bought CNG cabs in order to receive those advantages, drivers of regular cabs stopped work
13 in protest, disrupting airport transportation. (*Id.*, 157 Cal.App.4th at pp. 1554-55.) The Commission then
14 rescinded its prior incentive resolutions, and adopted a new resolution offering only lesser incentives. (*Id.*
15 at pp. 1555-56.) Drivers of CNG cabs sued, and the First District affirmed summary judgment for the City.
16 It held that the Airport Commission’s resolutions had not been contracts, and would be unenforceable in
17 any event: the city “may not contract away its right to exercise the police power in the future,” and any
18 contract purporting to do so was invalid as against public policy. (*Id.*) It also rejected promissory estoppel,
19 stating that “to be binding, the promise must be clear and unambiguous.” The resolutions did not meet that
20 standard, even though they were adopted by the Commission itself, and even though they stated, with
21 specificity and without reservation, the benefits that drivers of CNG cabs would receive. As the court held,
22 “any promissory estoppel claim fails because the facts do not show that the City promised not to amend
23 the incentive program.” (*Id.*, 157 Cal.App.4th at p. 1566.) The court also refused to “apply an estoppel in
24 this situation where to do so would chill the City’s exercise of its police power.” (*Id.* at p. 1567.)

25 Here, none of the “promises” plaintiffs point to were “clear and unambiguous,” as *Cotta* requires.
26 None were even made by the SFMTA Board, the autonomous body whose legislative authority plaintiffs
27 seek to estop. (SSF 10.) And none purported to commit that the SFMTA, in the future, would not reform

1 the medallion distribution system. (SSF 12.) Plaintiffs cite a 2007 letter from the Mayor and President of
2 the Board of Supervisors, but those officials spoke of their own views, stating generally that it was “the
3 goal to respect the will of the voters on Taxi issues,” and that they were “supportive” of “protect[ing]
4 Proposition K.” Notably, they did not specifically mention medallion issuance or the use of the waiting
5 list. (Evidence, Ex. D.) Plaintiffs also cite a 2009 memo by SFMTA Taxi Director Hayashi to SFMTA’s
6 Executive Director, but that memo concerned a reform proposal *which SFMTA never adopted*. In any
7 event, Ms. Hayashi merely stated that SFMTA “should respect” the expectations of persons on the waiting
8 list. (*Id.*) Plaintiffs also cite documents issued under the Pilot Program, but those documents merely
9 explained that while the Pilot Program was in effect and some medallions were being sold, other
10 medallions would continue to be issued to persons on the waiting list under the old Proposition K system.
11 Moreover, plaintiffs cannot reasonably have believed that SFMTA was promising (or could promise) that
12 the Proposition K distribution system would never change. The voters repeatedly faced ballot initiatives
13 which would repeal Proposition K, and after SFMTA took control of taxi regulation in March 2009,
14 SFMTA staff held public meetings announcing the agency’s intention to make taxi medallions
15 transferable. (SSF 13.) The Pilot Program, begun in 2010, involved medallion sales, and its documents
16 warned that SFMTA intended to move the taxi industry “away from the ‘Prop K’ system.”

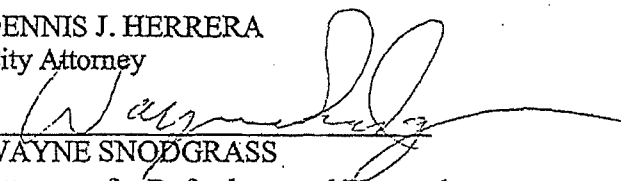
17 Finally, estoppel cannot lie because it would prevent SFMTA from exercising its police power
18 to address the safety risks that the Proposition K waiting list presented. A system under which senior
19 citizens receive medallions after decades of waiting, and then must drive their cabs full-time to retain
20 their medallions, presents genuine risks to public welfare. Public policy strongly favors allowing – not
21 barring – the SFMTA’s exercise of its police powers to address those risks.

22 CONCLUSION

23 Defendants and respondents respectfully ask that the Court grant summary judgment.

24 Dated: December 11, 2013

25 DENNIS J. HERRERA
26 City Attorney

27 By: 
28 WAYNE SNOBGRASS
Attorneys for Defendants and Respondents

20



Date: December 1, 2017
Current Meeting: December 7, 2017
Board Meeting: December 7, 2017

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors
THROUGH: General Manager, Nuria I. Fernandez
FROM: Chief of Staff, Angelique Gaeta
SUBJECT: Commuter Shuttle Program Policy

APPROVED ACCEPTED ADOPTED AMENDED DEFERRED REVIEWED
Santa Clara Valley Transportation Authority
Board of Directors
Elaine F. Balboa, Board Secretary
BY: Thali M...
DATE: 12/7/17

Policy-Related Action: Yes Government Code Section 84308 Applies: No

ACTION ITEM

RECOMMENDATION:

Adopt a policy for a Commuter Shuttle Program, which requires commuter shuttle operators to adhere to a set of rules and regulations, as amended from time to time by the General Manager, in order to access VTA-owned real property and/or VTA-controlled areas, including VTA facilities.

BACKGROUND:

Employer-provided shuttles (commuter shuttles), which transport workers from their neighborhoods to places of work or transportation hubs, have become increasingly common in recent years. A shuttle ride to a job location has become an integral part of the working conditions of thousands of workers in the Bay Area and, in particular, Silicon Valley. While commuter shuttles support local and regional transportation goals by decreasing single occupancy vehicle (SOV) trips, as the number of commuter shuttles continues to grow, it is important for the public and private sector to work together to maximize their benefit while minimizing any negative impact.

To date, a lack of rules regarding loading and unloading of passengers has resulted in confusion for shuttle operators and VTA operators, inconsistent enforcement, conflicts with other transportation modes, and public safety concerns. Until recently, public transportation agencies, including VTA, have addressed these issues on an ad hoc basis. For example, in August 2014, the San Francisco Municipal Transportation Agency (SFMTA) initiated an 18-month pilot program to create a network of shared stops for use by Muni and commuter shuttles. In November 2015, the SFMTA Board of Directors approved an ongoing Commuter Shuttle

Program. The SFMTA Commuter Shuttle Program regulates commuter shuttles operating in San Francisco by requiring shuttles to operate along a specific designated route, adhere to a set of rules and regulations in their operations, and pay a fee for each stop used in a network of shared Muni zones and shuttle-only white zones.

In October 2014, VTA initiated a policy for Third Party Use of VTA Property. This particular policy was designed to require third parties to apply for licenses and pay license fees, based on market rates, to use VTA Property. The policy was presented to the Board of Directors as an informational item on October 2, 2014. In January 2015, the Silicon Valley Leadership Group (SVLG) reached out to VTA staff with concerns regarding the commuter shuttle portion of the policy. Subsequently, VTA put the policy on hold and decided to re-evaluate commuter shuttles at a later date.

In January 2017, VTA reinitiated efforts to establish a partnership with commuter shuttle providers by creating a comprehensive Commuter Shuttle Program that furthered VTA’s commitment to safety and environmental sustainability. Initially, VTA staff identified its park and ride lots as appropriate and available for commuter shuttles to pick up and drop off passengers. However, after a number of meetings and discussions with members of the SVLG and with commuter shuttle providers, VTA staff learned that there was an interest in the use of VTA’s on-street bus stops as well. VTA staff then engaged in conversations with the County of Santa Clara and each of the 15 cities within the County to discuss the use of bus stops, as these stops were located on their streets and in their public right of way. A number of cities expressed concern with commuter shuttles operating in residential neighborhoods or too close to what they deemed sensitive uses (pre-schools, parks, etc.) and felt bus stops were appropriate locations for the commuter shuttles to pick up and drop off passengers. The County and most of the cities then indicated an interest in allowing commuter shuttles to continue the use of on-street bus stops provided that they coordinate such use with VTA so as to avoid interference with VTA operations and to improve their own operations on public streets. The goals and concerns outlined above by VTA and various stakeholders are the subject of the policy described herein.

DISCUSSION:

VTA currently owns, leases, operates and controls approximately 4,000 bus stops, 39 park and rides and 24 transit centers (collectively “VTA Property”) throughout the County of Santa Clara. To support commuter shuttle operations at these facilities and avoid public safety hazards and transportation conflicts with other modes, VTA is proposing a policy for a Commuter Shuttle Program. That policy is included as Attachment A to this memorandum.

Specifically, the policy requires commuter shuttle providers wanting to access VTA Property to obtain a permit and follow certain rules and regulations. In addition, commuter shuttle providers would be required to work with VTA to determine the appropriateness of locations within VTA Property they desire to use, the best times for use of those locations and the area within those locations that would best accommodate their use. Commuter shuttle providers would also be required to affix a VTA issued decal to each vehicle in their fleet so that they could be easily identified as a provider authorized to access VTA Property.

The policy further authorizes the creation of a Commuter Shuttle Program (Program) which,

among other things, will provide the process by which a permit is obtained, details around operational training required to access VTA Property, and a formula for the permit fee. The policy requires stakeholder engagement on the specifics of the Program which VTA staff will bring back to the VTA Board of Directors for approval before the Program will go into effect.

The Program itself will designate staff responsible for processing permit applications; issuing permits and decals; managing signage, accessibility and safety of areas designated for commuter shuttle use; ensuring operational safety requirements are met; coordinating commuter shuttle pick ups and drop off times; and, enforcing the provisions of the policy, the program and the permit.

To recover the costs of the administering the Commuter Shuttle Program, VTA will charge a fee for the permit. That fee will be based on both a cost recovery model and the number of locations within VTA Property that the commuter shuttle provider desires to use. Although the policy would apply to both private and public transportation services, commuter shuttles that are free and open to the public may not be required to pay a fee for the permit.

The policy also provides that VTA may suspend or revoke permits if there are repeated violations of the provisions of the policy or permit terms and conditions, or if the continued use of VTA property would result in harm to the public or a violation of local, state or federal law.

Following program implementation, the policy authorizes the General Manager/CEO of VTA to make adjustments to the program, as needed, to enhance the goals of the policy and respond to stakeholder concerns.

ALTERNATIVES:

The VTA Board of Directors could decide not to adopt the policy, or request staff to provide additional information or re-evaluate certain aspects of the policy.

FISCAL IMPACT:

Revenue received from the permit fees will be used to recover the fully allocated costs incurred by VTA in support of the permit, the decals and monitoring the program, which includes labor and non-labor costs that would otherwise be paid from general VTA Transit Fund revenues.

ADVISORY COMMITTEES DISCUSSION/RECOMMENDATION:

The Technical Advisory Committee (TAC) considered this item at its November 8, 2017, meeting and approved the following amended recommendation: Recommend that the VTA Board of Directors adopt a policy for a Commuter Shuttle Program, which requires commuter shuttle operators to adhere to a set of rules and regulations, as amended from time to time by the General Manager, in order to access VTA-owned real property; and staff return to working groups to develop an agreement with cities to jointly regulate shuttles outside of VTA-owned real property. Members Kim and Ristow opposed.

The Citizens Advisory Committee (CAC) met as a Committee of the Whole at their November 8, 2017 meeting and no action was taken.

The Policy Advisory Committee (PAC) considered this item at their November 9, 2017 meeting and unanimously approved staff recommendation.

STANDING COMMITTEES DISCUSSION/RECOMMENDATION:

The Congestion Management Program & Planning Committee considered this item on November 16, 2017 and unanimously approved the staff recommendation.

The Administration & Finance Committee considered this item on November 16, 2017. There was some discussion about the purpose for requiring a service disruption plan from the shuttle companies to avoid impact to VTA operations. For the next phase that includes the development of the permit process, Committee members requested that the following be considered:

1. Safety be made the highest priority.
2. The permit process not be burdensome for either the shuttle companies or VTA.
3. The fee structure and cost implications be clearly defined.

Staff also confirmed that the permit program process will be presented to the Advisory Committees, Standing Committees and the Board before the program is approved for implementation.

The Administration & Finance Committee unanimously recommended the item be forwarded to the VTA Board of Directors for approval.

Prepared by: Angelique Gaeta
Memo No. 6091

ATTACHMENTS:

- Delete - Commuter Shuttle Policy November 2017 - Proposed Final Draft (PDF)
- 12-1-17 - REDLINE VERSION - Commuter Shuttle Policy November 2017 - Proposed Final Draft v3 - UPDATED for BOD meeting (PDF)
- 12-1-17 - Commuter Shuttle Policy November 2017 - Proposed Final Draft v3 - UPDATED for BOD meeting (PDF)

POLICY COMMUTER SHUTTLE PROGRAM POLICY	Document Number:	COS-PL-002
	Version Number:	First Version
	Date:	12/1/2017

1. Purpose

This document sets forth the policy for the implementation of a program regulating Commuter Shuttles (Commuter Shuttle Program) on property owned, leased, controlled and/or operated by VTA (VTA Property). This policy also sets forth the rules and regulations that Commuter Shuttle Providers must adhere to in order to access VTA Property. Those rules and regulations support the following goals:

- Increasing safety on and around VTA Property for all users;
- Reducing single-occupancy vehicle (SOV) commuter trips, vehicle miles traveled (VMT) and associated emissions and congestion;
- Avoiding and/or minimizing impacts on the environment;
- Ensuring that Commuter Shuttle operations do not interfere with VTA operations;
- Consistently applying and enforcing guidelines for Commuter Shuttle loading and unloading of passengers;
- Working collaboratively with Commuter Shuttle Providers to resolve concerns and conflicts;
- Establishing a structure that meets current needs and has the potential to evolve as the sector grows; and
- Improving data sharing with agencies and private sector transportation partners to support VTA's role as Santa Clara County's Congestion Management Agency.

2. Scope

This policy applies to transportation services that move commuters to and from VTA Property. These services warrant the creation of a Commuter Shuttle Program because they are routine, involve a relatively uniform number of vehicles, and operators are commercially licensed and subject to regulation, including safety and insurance requirements. Commuter Shuttle Providers hired by an employer, agency, or institution (individually or collectively, "Hiring Party") to provide transportation for the Hiring Party's agents or employees from home to work, work to home, last-mile to work, last-mile to home, or work site to work site, where said transportation begins or ends on VTA property are eligible to participate in the Commuter Shuttle Program established by this policy.



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3. *Responsibilities*

VTA will designate a division within VTA that will accept, manage and review all applications and issue all permits and Decals described in this policy. VTA will also designate specific divisions within VTA that will enforce the rules and regulations set forth in this policy, address signage necessary for designation of appropriate locations for Commuter Shuttles Providers to pick up and drop off passengers, ensure safety requirements are met, coordinate operations between the Commuter Shuttle Providers and VTA, and monitor the Commuter Shuttle Program as a whole.

4. *Policy*

This section provides a brief overview of the Commuter Shuttle Program authorized by this policy, followed by a detailed description of each provision.

4.1. *Commuter Shuttle Program Overview*

VTA currently owns, leases, controls and/or operates approximately 4,000 bus stops, 39 park and rides and 24 transit centers throughout the County of Santa Clara. This policy authorizes VTA to establish a Commuter Shuttle Program that will allow Commuter Shuttle Providers to apply for a permit that would allow them to use specific locations within VTA's Property to pick up and drop off their passengers. Upon receipt of such an application, VTA will work with each applicant to evaluate space needed, capacity at a particular location or locations requested, and optimum time for drop off and pickup of passengers so as not to interfere with VTA operations. The fee for the permit will be based on a cost recovery model. Commuter Shuttle Providers will be required to comply with the terms and conditions of their permit and VTA enforcement officers may enforce those terms and conditions.

4.2. *Permit Application Process*

To participate in the Commuter Shuttle Program, each Commuter Shuttle Provider must apply for a permit in accordance with the procedures set forth in the Commuter Shuttle Program. As part of the application process, Commuter Shuttle Providers must identify each vehicle they intend to operate on VTA Property. Upon VTA's approval of an application for a permit, VTA will issue the Commuter Shuttle Provider a permit to use VTA Property and Decals to affix to each of the vehicles it intends to operate on VTA Property.

4.3. *Permit Renewal*

Permits must be renewed every (2) two years in accordance with the procedures set forth in the Commuter Shuttle Program. Permit renewal shall take place based on the calendar year;



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as a result, Commuter Shuttle Providers that join the program mid-term will be required to renew their permits during the general renewal period.

4.4 Vehicle Decal

Decals will be used to identify Commuter Shuttle Providers as permitted users of VTA Property. These Decals must be displayed in visible locations on the front, rear, and sides of permitted vehicles, as set forth in the permit.

The Decals associated with each permit shall bear a unique identification number that is associated with the Commuter Shuttle Provider who holds the permit.

Decals must immediately be surrendered to VTA in the event that the Permit is suspended, revoked, or otherwise canceled by VTA.

4.5 Permit Fee

VTA will charge each Commuter Shuttle Provider a permit fee that will be both based on the number of locations within VTA Property it desires to access and designed to cover the costs of administering the program, including:

- Construction of any improvements to the extent required by the use of VTA Property by the Commuter Shuttle Provider participating in the Commuter Shuttle Program;
- Identification of designated areas for shuttle use;
- Enforcement of the program on VTA Property;
- Signage and Decal design, production, and installation;
- Data management;
- Permit application processing and renewals; and
- Fee collection.

This policy applies to both private and public transportation services. However, fees may be waived for shuttle services that are free and open to the public provided that those providers acquire a permit pursuant to the requirements set forth herein and in the Commuter Shuttle Program. VTA may periodically evaluate the costs of the program and, if necessary, update the permit fee to reflect a program that is cost recovery.



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4.6 Review of Requested Locations

VTA will review each location requested for use in the application and will make a decision based on legality of the proposed use, conformance of proposed use with existing VTA policies, existing capacity, parking space, bus bay utilization, and internal circulation of vehicles.

If VTA determines, in its reasonable discretion, that the requested sites are acceptable, VTA will include use of such sites in its permit to the Commuter Shuttle Provider.

Notwithstanding the foregoing, if use of any particular parcel of VTA Property (or portion thereof) constitutes a risk to persons or property, VTA may deny the Commuter Shuttle Provider(s) request to use such property. In such event, VTA will work with the affected Commuter Shuttle Provider(s) to determine whether other suitable sites are available for its/their use.

4.7 Grounds for Suspension or Revocation of Permit

VTA may suspend or revoke a permit upon written notice and opportunity for hearing. Upon revocation or suspension, the Commuter Shuttle Provider shall surrender such permit and the Decals authorized under the permit in accordance with the instructions in the notice of suspension or revocation.

Where the VTA determines that public safety is at risk, or where the continued operation of the Commuter Shuttle Provider on VTA Property would be in violation of the California Public Utilities Code, the California Vehicle Code, or VTA's rules and/or policies, VTA is authorized to suspend a permit immediately upon written notice of suspension to the Shuttle Operator, provided that VTA shall provide the Shuttle Operator with the opportunity for a hearing on the suspension within five (5) business days of the date of notice of suspension.

A permit may be suspended or revoked following a determination that:

- The Commuter Shuttle Provider has failed to abide by any permit term or condition, including but not limited to the requirement that it follow VTA rules, policies and procedures and the Commuter Shuttle Program process;
- The Commuter Shuttle Provider knowingly or intentionally provided false or inaccurate information on a permit application;
- The Commuter Shuttle Provider has used, for Commuter Shuttle operations or parking, VTA Property that it has not been authorized by VTA to use.



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- One or more of the Commuter Shuttle Provider's shuttle vehicles have, in the course of providing commuter transportation services, repeatedly violated parking or traffic laws;
- The Commuter Shuttle Provider's continued operation on VTA Property would constitute a public safety risk; or
- The Commuter Shuttle Provider's continued operation on VTA Property would be in violation of federal, state, or local laws.

4.8 Operational Rules for Commuter Shuttle Providers

Commuter Shuttle Providers are subject to the following operating rules:

4.8.1 VTA Priority

VTA vehicles shall have priority at, approaching, or departing VTA Property. Commuter Shuttle Providers shall yield to VTA vehicles and patrons and shall not cause or contribute to disruptions of VTA service.

4.8.2 Parking at VTA Lots

On VTA Property containing parking lots, where parking capacity is constrained, VTA transit users will have priority for parking. VTA reserves the right to restrict or limit Commuter Shuttle Providers' passenger parking on VTA parking lots.

4.8.3 Use Designated Locations for Commuter Service

While using VTA Property, Commuter Shuttle Providers shall use locations designated for shuttle use and for active loading and unloading of passengers only.

4.8.4 No Staging or Parking

Staging or parking of a Commuter Shuttle on VTA Property without the prior written authorization from VTA is prohibited.

4.8.5 No Unnecessary Idling

Idling a Commuter Shuttle for longer than five consecutive minutes on VTA Property is prohibited.

4.8.6 Move Forward



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Commuter Shuttle Providers shall pull forward into designated spaces to leave room for other shuttles to pull in behind and for the safe passage of other vehicles through the area.

4.8.7 Pull In

Commuter Shuttle Providers shall pull all the way to, and parallel with, the curb for passenger boarding and alighting. Commuter Shuttles must not be stopped or parked in a manner that obstructs the flow of vehicular, pedestrian or bicycle traffic.

4.8.8 Comply with Applicable Traffic Laws

Commuter Shuttle Providers shall operate in accordance with all applicable federal, state, and local laws, rules, and regulations, including VTA Regulation 98.11.2 governing the use, traffic, and vehicles operated or parked on VTA Property. Commuter Shuttle Providers shall operate in a safe manner and maintain awareness of speed, pedestrians, bicyclists, other vehicles and roadway hazards at all times.

4.8.9 Follow Instructions from Officials and Traffic Control Devices

Commuter Shuttle Providers shall follow instructions from law enforcement personnel, VTA staff, and traffic control devices in the event of emergencies, construction work, special events, or other unusual traffic conditions.

4.8.10 Maintain Vehicles

Commuter Shuttle Providers shall ensure that their Commuter Shuttles are properly maintained to prevent oil, fuel, and other materials from entering VTA Property and local waterways.

4.8.11 Location Limitations

Commuter Shuttle Providers shall comply with access guidelines, including but not limited to vehicle size limitations and designated hours of operation at specific locations, as instructed by VTA.

4.8.12 Fleet Limitations



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All Commuter Shuttles shall comply with California emissions standards and have a valid California registration. VTA will not issue Decals to Commuter Shuttles with out-of-state registration.

4.8.13 Size Restriction

Operating Commuter Shuttles with an axle weight exceeding 18,000 lbs. on VTA Property without prior written authorization from VTA is prohibited.

4.8.14 Provide Training

Each Commuter Shuttle Provider shall designate one of its employees who is either an operations supervisor or training manager to participate in an orientation with VTA on the use of VTA Property and the operating rules provided herein. The Commuter Shuttle Provider shall then ensure that said employee will share the content of the orientation with each driver working for the Commuter Shuttle Provider prior to each driver operating a Commuter Shuttle on VTA Property.

4.8.15 Use of Decal

A Decal may only be used on the vehicle listed on the application for the permit and may not be transferred to any other vehicle. Any transference of a Decal shall be considered a violation of this section and grounds for immediate permit revocation.

4.8.16 Indemnify / Hold Harmless

Commuter Shuttle Providers wanting to participate in the Commuter Shuttle Program shall indemnify and hold VTA, its departments, board, officers, employees and agents ("Indemnitees") harmless from and against any and all claims, demands, action or causes of action which may be made against the Indemnitees for the recovery of damages for the injury to or death of any person or persons or for the damage to any property resulting directly or indirectly from the activity authorized by the permit issued hereunder, regardless of the negligence of the Indemnitees.

4.8.17 Exception to the Rules

Commuter Shuttle Providers may deviate from the operating rules set forth in this Section and permit terms and conditions only if granted express written authorization from VTA. Failure to comply with these operating rules or the permit terms and conditions may result in denial or revocation of a permit, as well as any penalty provided in VTA Regulation 98.11.2, as applicable.



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4.9 Enforcement

VTA may establish procedures for the enforcement of this policy consistent with the provisions contained in VTA Ordinance 98.1. Enforcement personnel are responsible for enforcing compliance with this policy and the Commuter Shuttle Program and issuing citations as applicable. Enforcement personnel may rely on permits and signage at and on VTA Property to verify permitted users of that property.

4.10 Acts of Employees and Agents Deemed Acts of Commuter Shuttle Provider

For purposes of this policy and the Commuter Shuttle Program, acts of a Commuter Shuttle Provider's agent and/or employee shall be deemed to be the acts of the Commuter Shuttle Provider.

5. Effective Date of Commuter Shuttle Program

Following adoption of this policy, VTA will engage stakeholders regarding a Commuter Shuttle Program that is consistent with the goals of this policy. VTA will then return to the VTA Board of Directors with a proposed Commuter Shuttle Program. The Commuter Shuttle Program will go into effect upon approval by the VTA Board of Directors. Once in effect, the General Manager/CEO of VTA is authorized to amend the Commuter Shuttle Program, as needed, in order to further enhance the goals of this policy and respond to stakeholder concerns.

6. Definitions

The following terms shall have the assigned definitions for all purposes under this policy:

- 6.1. Commuter Shuttle* means a vehicle used to regularly transport commuting passengers to and from VTA Property to specific business, employment, or educational locations.
- 6.2. Commuter Shuttle Program* means the program authorized by this policy and by which VTA will regulate the use of VTA Property by Commuter Shuttles.
- 6.3. Commuter Shuttle Provider* means a company that provides Commuter Shuttles to regularly transport commuting passengers to and from VTA Property to and from specific business, employment or educational locations.



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6.4. *Decal* means a sticker issued by VTA and required to be affixed to Commuter Shuttles in order to identify those shuttles as participants in the Commuter Shuttle Program.

6.5. *Hiring Party* means the employer, agency or institution that hires Commuter Shuttle Providers eligible to take part in the Commuter Shuttle Program. For purposes of this policy, a Hiring Party may also be a Commuter Shuttle Provider if the Hiring Party uses its own fleet of Commuter Shuttles to provide transportation for its employees and agents.

6.6. *SOV* means a single-occupancy vehicle where the only occupant of the vehicle is the driver.


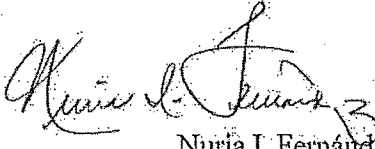

6.7. *VTA* means the Santa Clara Valley Transportation Authority.

6.8. *VTA Property* means real property owned, leased, operated or controlled by VTA, including but not limited to Bus Stops, Transit Facilities and Administrative Facilities as defined in VTA Ordinance 98.1.

7. *Summary of Changes*

None, new policy.

8. *Approval Information*

<i>Prepared by</i>	<i>Reviewed by</i>	<i>Approved by</i>
 Angelique Gaeta, Chief of Staff	 Nuria I. Fernandez General Manager/CEO	 VTA Board of Directors

Date Approved: _____



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March 17, 2018: Current Chariot Operations Are Largely Based on CVC Violations

Current Chariot operations are largely based on violations of the law -- as witnessed by residents of San Francisco and as noted in the August 24, 2016 *Protest of the San Francisco Municipal Transportation Agency to Application No. A.16-08-015*, Chariot's application with the California Public Utilities Commission for status as a passenger stage corporation operating between San Francisco and surrounding counties.

In that document, San Francisco City Attorneys Susan Cleveland-Knowles and David Greenburg note "Chariot's record of repeated violations" of the California Vehicle Code and the San Francisco Transportation Code, among other codes. On page 9 of this document, they write:

Chariot's current operations in San Francisco have shown a consistent and ongoing disregard for other City parking and traffic laws, including but not limited to the following: a) Staging and stopping in residential driveways. ... b) Double parking, blocking traffic ... in the travel lane to load passengers. ... Chariot lists stops [along major Muni corridors such as Geary Boulevard and California Street] on its website with no apparent legal curb space, where vehicles would have to double park to unload passengers. c) Stopping in Muni "red zones" ... along Pine Street in the Financial District and California Street in the Richmond. ... d) Driver behavior: SFMTA Parking Control Officers have reported Chariot drivers being verbally and physically aggressive, including one instance in which a Chariot driver hit the window of the officer's vehicle. ... e) Responsiveness: The SFMTA has repeatedly brought these and other issues to the attention of Chariot. While Chariot staff have often responded pledging to resolve individual issues, the SFMTA has not observed an overall improvement in Chariot's behavior.

Chariot now has around 100 vehicles in its San Francisco fleet, with carrying capacities of 14 passengers each. It is unknown if any are yet wheelchair accessible, and, in fact, Chariot restricts its ridership for insurance purposes. It appears to be a service that has been, at least initially, created to cater to a very narrow demographic, those who work in the Financial District of San Francisco or who take Caltrain to points south for their work.

Observations by members of the general public more than a year since the protest was filed reveal that Chariot's violations continue on a regular and seemingly deliberate basis. Since its inception, Chariot vehicles continue to be observed:

- **Boarding passengers in front of driveways to garages.** Chariot has such stops on Gough Street at Sacramento in front of a driveway frontage, another one on Geary Boulevard at Funston, and a third one on California at Arguello. It may have others. Such stops violate **CVC 22500**: *A person shall not stop, park, or leave standing any vehicle whether attended or unattended, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or official traffic control device, in any of the following places: (e) (1) In front of a public or private driveway; except that a bus engaged as a common carrier, schoolbus, or a taxicab may stop to load or unload passengers when authorized by local authorities pursuant to an ordinance;*
- **Staging/parking in front of garage frontages, violating CVC 22507.2:** *Notwithstanding subdivision (e)*

between Arguello and Second Avenue, and on Second Avenue and/or Third Avenue between Cornwall and California;

Stopping in crosswalks to board and discharge passengers, in violation of CVC 22500 (b):

On a crosswalk, except that a bus engaged as a common carrier or a taxicab may stop in an unmarked crosswalk to load or unload passengers when authorized by the legislative body of a city pursuant to an ordinance; and CVC 22500 (l) In front of or upon that portion of a curb that has been cut down, lowered, or constructed to provide wheelchair accessibility to the sidewalk;

Stopping in public bus stops (California at Presidio, Geary at Arguello, Haight Street at Masonic, and elsewhere) to pick up and discharge passengers in violation of CVC 22500 (i):

Except as provided under Section 22500.5, alongside curb space authorized for the loading and unloading of passengers of a bus engaged as a common carrier in local transportation when indicated by a sign or red paint on the curb erected or painted by local authorities pursuant to an ordinance. CVC 22500.5 permits school buses to operate in a public bus stop, pursuant to the passage of an ordinance, but that's it;

Parking in a handicap zones, such as the one on Fillmore at O'Farrell, in violation of CVC

22507.8.a: *It is unlawful for any person to park or leave standing any vehicle in a stall or space designated for disabled persons and disabled veterans pursuant to Section 22511.7 or 22511.8 of this code or Section 14679 of the Government Code, unless the vehicle displays either a special identification license plate issued pursuant to Section 5007 or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59; and,*

Parking in bicycle lanes, such as the one on Howard Street, in violation of CVC 21211(a): *No person may stop, stand, sit, or loiter upon any class I bikeway, as defined in subdivision (a) of Section 890.4 of the Streets and Highways Code, or any other public or private bicycle path or trail, if the stopping, standing, sitting, or loitering impedes or blocks the normal and reasonable movement of any bicyclist. This particular part of the vehicle code makes exceptions for utility vehicles, newspaper delivery vehicles, garbage trucks, or tow trucks, but NOT private transportation vehicles.*

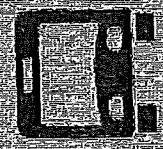
We question whether or not this business, whose profit model is currently based largely on law breaking, can get fully into compliance with the law by the time the SF Board of Supervisors passes operating-without-a-permit infraction legislation, and by the time the Mayor signs that legislation. We are also concerned that the SFMTA and the SFPD do not have the capacity and/or perhaps the will to engage in the level of enforcement that is currently necessary and will be necessary in the future to get Chariot and other PTV companies into compliance. Adding to concerns about compliance with the vehicle code, there are no limits on the number of PTV companies that can operate in San Francisco, or the number of vehicles that can operate in a company fleet.

We also question why the SFMTA is not charging fair market value for use of City streets as places of enterprise for private gain, as is the case with the sale of medallions for taxicabs.

At a Glance

We are the San Francisco Municipal Transportation Agency and we are responsible for moving San Francisco. Together we:

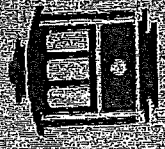
- Run the buses, light rail vehicles, cable cars and historic streetcars of Muni
- Actively manage city roads, traffic and publicly available parking spaces
- Make it safer and easier to walk and bicycle
- Make sure that transportation is accessible and affordable for everyone
- Regulate taxis



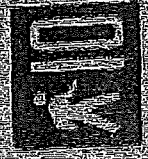
827 Buses
 163 Miles of Overhead Wires
 26 Miles of Transit-Only Lanes



3,837 Bike Racks on Sidewalks
 346 Bike Parks in On-Street Corridors
 35 Bike Sharing Stations with 351 Bikes



56 Cable Cars
 149 Light Rail Vehicles
 42 Historic Streetcars
 99 Miles of Rail Tracks



1,212 Signalized Intersections
 360 Pedestrian Countdown Signals
 191 School Crossing Signals



441,850 Public Parking Spaces

69 Miles of Transitways

Somera, Alisa (BOS)

From: LARRY BUSH <sfwtrail@mac.com>
ent: Tuesday, April 24, 2018 1:51 PM
To: Sue Vaughan
Cc: Safai, Ahsha (BOS); Stefani, Catherine (BOS); Yee, Norman (BOS); Somera, Alisa (BOS)
Subject: Re: Rules Committee 04-25-2018, Items 180354 and 180355: Please appoint people to the SFMTA Board of Directors who will engage in independent thought and oversight

I endorse the message in this email and also urge the Board to take them seriously.

It will be noted by many that the scofflaw companies may ignore standard city fees but show up with considerable campaign contributions.

It is illegal for city officials to accept contributions of \$250 or more from entities affected by the vote of the officials.

Under recent changes in law this also requires disclosure of contributions solicited for others.

I urge you to examine the law and any contributions involving you and recuse yourself from any votes.

Larry Bush

Sent by Larry Bush

On Apr 24, 2018, at 1:30 PM, Sue Vaughan <selizabethvaughan@gmail.com> wrote:

Dear Supervisors Safai, Stefani, and Yee:

I am asking you to oppose the reappointment of Cheryl Brinkman and Gwyneth Borden to the San Francisco Municipal Transportation Agency Board of Directors.

The San Francisco Municipal Transportation Agency is badly in need of better management and oversight. During the past four to five years, members of the SFMTA Board of Directors have not questioned staff or elected officials enough. Members of the Board of Directors:

- 1) Adopted the commuter shuttle pilot program on January 21, 2014, permitting private carriers to operate in public bus stops in violation of state law, California Vehicle Code 22500 (i);
- 2) Adopted the commuter shuttle pilot program without an environmental impact report that would assess the impact of commuter shuttle availability on air quality or housing prices, evictions, and displacement of lower income people to far flung suburbs where car dependency is greater and commutes longer;
- 3) Failed to question staff and city attorney contentions that state law restricted the agency to cost recovery in administering the program. Certainly members of the Board of Directors were aware in January 2014 that the agency had only recently adopted a medallion program for taxicabs, charging each cab far more than cost recovery charges for the privilege of using city streets as places of enterprise for private gain. Please see the attached Mounsey brief. The shuttle bus companies and the technology companies that they serve are taking advantage of the City of San Francisco and its public infrastructure in another way also: an unknown number of commuter shuttle passengers PAY to ride these buses (people who are employees of hiring agencies, for example, who are officially subcontractors to Google or other technology companies);
- 4) Adopted a permanent shuttle program in November 2015, again in violation of CVC 22500 (i). There are now about 1,000 commuter shuttles with placards "permitting" them to evade

California law and operate certain public bus stops. This is more than the entire number of rubber-tire revenue vehicles in the Muni fleet, according to the 2016 Annual Report (see the attached photograph below; no figures on the number of revenue vehicles were included in the 2017 Annual Report). These private carriers concentrate in particular bus stops at particular times of day -- blocking Muni buses throughout the day;

5) Recently allowed Chariot, a private Ford-owned transportation company operating in competition with Muni, to receive an operating permit without adequate proof that Chariot's profit model is no longer primarily based on breaking the rules of the road. A quick glance at the Chariot routes indicates that the stop locations haven't changed and are still in places where Chariot must double park, pull into crosswalks, or pull in front of garage frontages -- which, in the absence of the passage of an ordinance, is illegal. Please see that attached document on Chariot's illegal operations; and,

6) Adopted private transportation legislation to operate companies such as Chariot without considering the evidence that the SFMTA can charge MARKET RATE for use of City streets as places of enterprise for private gain.

Please note that in October 2014, the Santa Clara Valley Transportation Authority considered adopting a commuter shuttle program similar to that of San Francisco -- but the SC VTA was going to charge MARKET RATE for use of VTA property until the Silicon Valley Leadership Group "expressed concerns." Please see the attached VTA memorandum.

We need better oversight at the SFMTA. We need better leadership on the SFMTA Board of Directors. It breaks my heart to have to ask this, but I must: please oppose the reappointment of Cheryl Brinkman (who was on the Board of Directors in 2014) and Gwyneth Borden, who had joined the Board of Directors by 2015.

Sincerely,

Susan Vaughan
District 1

<Mounsey-v-CCSF-CGC-12-525348.pdf>

<SC VTA Memorandum 12-07-2017.pdf>

<Current Chariot operations are largely based on violations of the law 03-18-2018 (1).pdf.pub>

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City and County of San Francisco
Department on the Status of Women



Emily M. Murase, PhD
 Director

City and County of
 San Francisco

2017 Gender Analysis of Commissions and Boards: Executive Summary

Overview

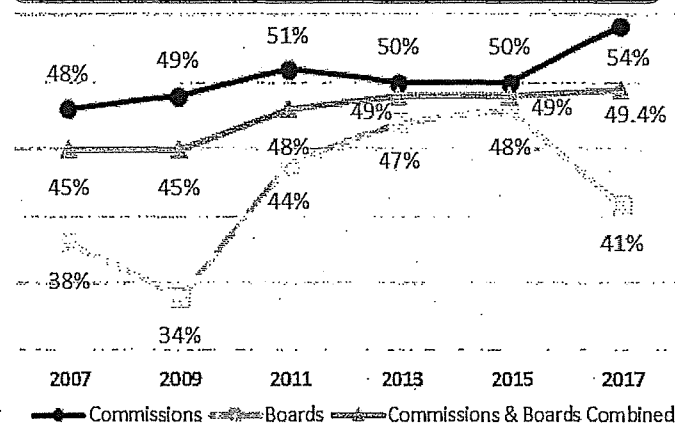
A 2008 City Charter Amendment passed by the voters of San Francisco enacted a city policy that membership of Commissions and Boards reflect the diversity of the population. As part of this measure, the Department on the Status of Women is required to conduct a biennial gender analysis of Commissions and Boards. Data was collected from 57 policy bodies with a total of 540 members primarily appointed by the Mayor and Board of Supervisors.

Gender Analysis Findings

Gender

- Women’s representation on Commissions and Boards in 2017 is 49%, equal to the female population in San Francisco.
- Since 2007 there has been an overall increase of women on Commissions with women comprising 54% of Commissioners in 2017.
- Women’s representation on Boards has declined to 41% this year following a period of steady increases over the past 3 reports.

Figure 1: 10-Year Comparison of Women’s Representation on Commissions and Boards

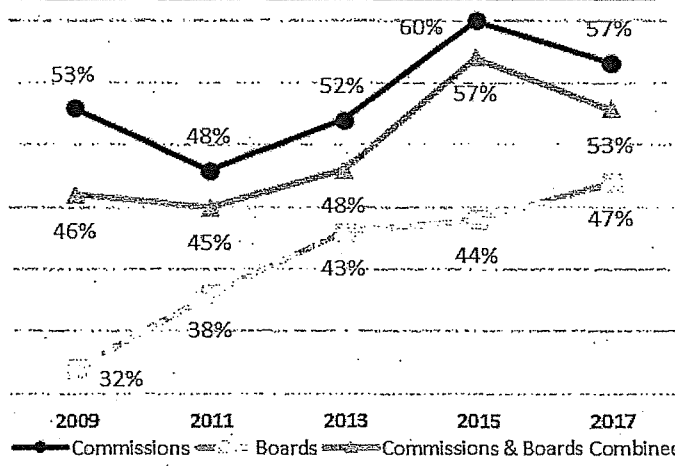


Sources: Department Survey, Mayor’s Office, 311.

Race and Ethnicity

- While 60% of San Franciscans are people of color, 53% of appointees are racial and ethnic minorities.
- Minority representation on Commissions decreased from 60% in 2015 to 57% in 2017.
- Despite a steady increase of people of color on Boards since 2009, minority representation on Boards, at 47%, remains below parity with the population.
- Asian, Latinx/Hispanic, and multiracial individuals are underrepresented on Commissions and Boards.
- There is a higher representation of White and Black/African American members on policy bodies than in the San Francisco population.

Figure 2: 8-Year Comparison of Minority Representation on Commissions and Boards



Sources: Department Survey, Mayor’s Office, 311.

Race and Ethnicity by Gender

- In San Francisco, 31% of the population are women of color. Although representation of women of color on Commissions reaches parity with the population, only 19% of Board members are women of color.
- Men of color comprise 26% of both Commissioners and Board members compared to 29% of the San Francisco population.
- The representation of White men on policy bodies is 28%, exceeding the 22% of the San Francisco population, while White women are at parity with the population at 19%.
- Underrepresentation of Asian and Latinx/Hispanic individuals is seen among both men and women.
 - One-tenth of Commissioners and Board members are Asian men and 12% are Asian women compared to 16% and 18% of the population, respectively.
 - Latinos are 6% of Commissioners and Board members and Latinas are 4% of Commissioners and Board members compared to 8% and 7% of San Franciscans, respectively.

Additional Demographics

- Among Commissioners and Board members, 17% identify as lesbian, gay, bisexual, or transgender (LGBT).
- Individuals with a disability comprise 11% of appointees on policy bodies, just below the 12% of the adult population with a disability in San Francisco.
- Representation of veterans on Commissions and Boards is 13%, exceeding the 4% of San Franciscans that have served in the military.

Budget

- Women and women of color, in particular, are underrepresented on the policy bodies with the largest budgets while exceeding or nearing parity on policy bodies with the smallest budgets.
- Minority representation on policy bodies with both the largest and smallest budgets is at least 60%, equal to the population.

Table 1: Demographics of Appointees to San Francisco Commissions and Boards, 2017

	Women	Minority	Women of Color	LGBT	Disabilities	Veterans
San Francisco Population	49%	60%	31%	5%-7%	12%	4%
Commissions and Boards Combined	49%	53%	27%	17%	11%	13%
Commissions	54%	57%	31%	18%	10%	15%
Boards	41%	47%	19%	17%	14%	10%
10 Largest Budgeted Bodies	35%	60%	18%			
10 Smallest Budgeted Bodies	58%	66%	30%			

Sources: 2015 American Community Survey 5-Year Estimates, Department Survey, Mayor's Office, 311, FY17-18 Annual Appropriation Ordinance, FY17-18 Mayor's Budget Book.

The full report is available at the San Francisco Department on the Status of Women website, <http://sfgov.org/dosw/>.



Emily M. Murase, PhD
Director

City and County of San Francisco
Department on the Status of Women



City and County of
San Francisco

Gender Analysis of San Francisco Commissions and Boards

December 2017

Acknowledgements

This report is dedicated in memory of the late Mayor Edwin M. Lee, who made an inclusive San Francisco a priority, including through the appointment of numerous women to public policy bodies throughout the City.

The San Francisco Department on the Status of Women would like to thank the various commission secretaries and department staff who graciously assisted in collecting and providing information about their respective commissions and boards. We also want to thank Francis Tsang, Deputy Chief of Staff for the Office of Mayor Edwin M. Lee, as well as the 311 Information Directory Department ("311") for providing much of the data necessary for the completion of this report.

The data collection and analysis for this report was conducted by Public Policy Fellow Nami Yokogi with support from Workplace Policy and Legislative Director Elizabeth Newman, Associate Director Carol Sacco, and Director Emily Murase, PhD, at the San Francisco Department on the Status of Women.

This document was presented to and adopted by the San Francisco Commission on the Status of Women in December 2017.

San Francisco Commission on the Status of Women

President Debbie Mesloh

Vice President Breanna Zwart

Commissioner Marjan Philhour

Commissioner Olga Ryerson

Commissioner Carrie Schwab-Pomerantz

Commissioner Andrea Shorter

Commissioner Julie D. Soo

The full report is available at the San Francisco Department on the Status of Women website, <http://sfgov.org/dosw/>.

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Executive Summary

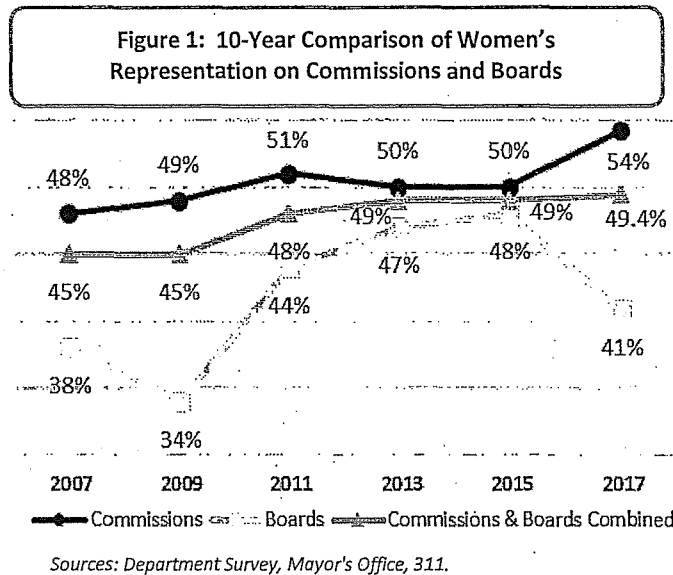
Overview

A 2008 City Charter Amendment passed by the voters of San Francisco enacted a city policy that membership of Commissions and Boards reflect the diversity of the population. As part of this measure, the Department on the Status of Women is required to conduct a biennial gender analysis of Commissions and Boards. Data was collected from 57 policy bodies with a total of 540 members primarily appointed by the Mayor and Board of Supervisors.

Key Findings

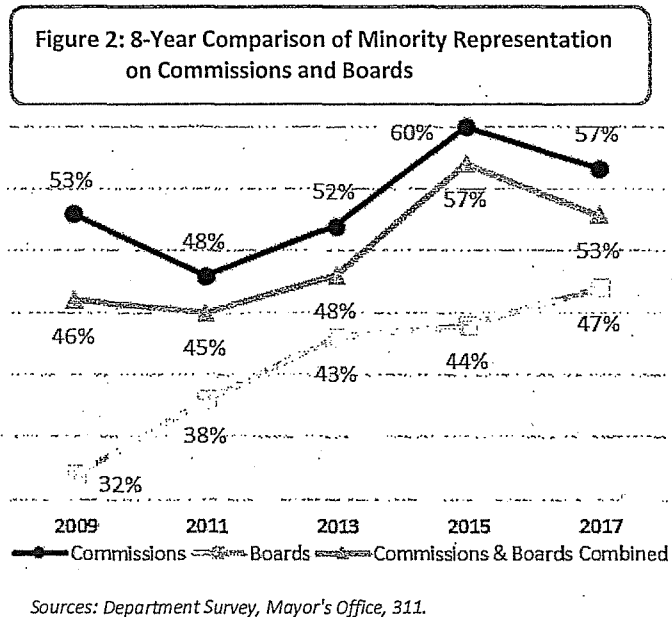
Gender

- Women’s representation on Commissions and Boards in 2017 is 49%, equal to the female population in San Francisco.
- Since 2007, there has been an overall increase of women on Commissions: women compose 54% of Commissioners in 2017.
- Women’s representation on Boards has declined to 41% this year following a period of steady increases over the past 3 reports.



Race and Ethnicity

- While 60% of San Franciscans are people of color, 53% of appointees are racial and ethnic minorities.
- Minority representation on Commissions decreased from 60% in 2015 to 57% in 2017.
- Despite a steady increase of people of color on Boards since 2009, minority representation on Boards, at 47%, remains below parity with the population.
- Asian, Latinx/Hispanic, and multiracial individuals are underrepresented on Commissions and Boards.
- There is a higher representation of White and Black or African American members on policy bodies than in the San Francisco population.



Race and Ethnicity by Gender

- In San Francisco, 31% of the population are women of color. Although representation of women of color on Commissions reaches parity with the population, only 19% of Board members are women of color.
- Men of color comprise 26% of both Commissioners and Board members compared to 29% of the San Francisco population.
- The representation of White men on policy bodies is 28%, exceeding the 22% of the San Francisco population, while White women are at parity with the population at 19%.
- Underrepresentation of Asian and Latinx/Hispanic individuals exists among both men and women.
 - One-tenth of Commissioners and Board members are Asian men and 12% are Asian women compared to 16% and 18% of the population, respectively.
 - Latinos are 6% of Commissioners and Board members and Latinas are 4% of Commissioners and Board members compared to 8% and 7% of San Franciscans, respectively.

Additional Demographics

- Among Commissioners and Board members, 17% identify as lesbian, gay, bisexual, or transgender (LGBT).
- Individuals with a disability comprise 11% of appointees on policy bodies, just below the 12% of the adult population with a disability in San Francisco.
- Representation of veterans on Commissions and Boards is 13%, exceeding the 4% of San Franciscans that have served in the military.

Representation on Policy Bodies by Budget

- Women and women of color, in particular, are underrepresented on the policy bodies with the largest budgets while exceeding or nearing parity on policy bodies with the smallest budgets.
- Minority representation on policy bodies with both the largest and smallest budgets is at least 60%, equal to the population.

Table 1: Demographics of Appointees to San Francisco Commissions and Boards, 2017

	Women	Minority	Women of Color	LGBT	Disabilities	Veterans
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10 Smallest Budgeted Bodies	58%	66%	30%			

Sources: 2015 American Community Survey 5-Year Estimates, Department Survey, Mayor's Office, 311, FY17-18 Annual Appropriation Ordinance, FY17-18 Mayor's Budget Book.

I. Introduction

The central question of this report is whether appointments to public policy bodies of the City and County of San Francisco are reflective of the population at large.

In 1998, San Francisco became the first city in the world to pass a local ordinance reflecting the principles of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), also known as the "Women's Human Rights Treaty."¹ The Ordinance requires City government to take proactive steps to ensure gender equality and specifies "gender analysis" as a preventive tool to identify and address discrimination.² Since 1998, the Department on the Status of Women (Department) has used this tool to analyze operations of 11 City departments.

In 2007, the Department used gender analysis to analyze the number of women appointed to City Commissions, Boards, and Task Forces.³ Based on these findings, a City Charter Amendment was developed by the Board of Supervisors for the June 2008 election. The Amendment, which voters approved overwhelmingly, made it City policy that:

1. Membership of Commissions and Boards reflect the diversity of the San Francisco population;
2. Appointing officials be urged to support the nomination, appointment, and confirmation of these candidates; and
3. The San Francisco Department on the Status of Women is required to conduct a gender analysis of Commissions and Boards to be published every 2 years.⁴

This 2017 gender analysis assesses the representation of women; racial and ethnic minorities; lesbian, gay, bisexual, and transgender (LGBT) individuals; people with disabilities; and veterans on San Francisco Commissions and Boards appointed by the Mayor and the Board of Supervisors.⁵

¹ While 188 of the 193 member states of the United Nations, including all other industrialized countries, have ratified the Women's Human Rights Treaty, the U.S. has not. President Jimmy Carter signed the treaty in 1980, but it has been languishing in the Senate ever since, due to jurisdictional concerns and other issues. For further information, see the United Nations website, available at www.ohchr.org/english/bodies/cedaw/index.htm.

² The gender analysis guidelines are available at the San Francisco Department on the Status of Women website, under Women's Human Rights, at www.sfgov.org/dosw.

³ *The 2007 Gender Analysis of Commissions, Boards, and Task Forces* is available online at the Department website, under Women's Human Rights, at www.sfgov.org/dosw.

⁴ The full text of the charter amendment is available at https://sfpl.org/pdf/main/gic/elections/June3_2008.pdf.

⁵ Appointees in some policy bodies are elected or appointed by other entities.

II. Methodology and Limitations

This report focuses on City and County of San Francisco Commissions and Boards whose jurisdiction is limited to the City, that have a majority of members appointed by the Mayor and Board of Supervisors, and that are permanent policy bodies.⁶ Generally, *Commission* appointments are made by the Mayor and *Board* appointments are made by members of the Board of Supervisors. For some policy bodies, however, the appointments are divided between the Mayor, the Board of Supervisors, and other agencies. *Commissions* tend to be permanent policy bodies that are part of the City Charter and oversee a department or agency. *Boards* are typically policy bodies created legislatively to address specific issues.

The gender analysis in this report reflects data from the Commissions and Boards that provided information to the Department through survey, the Mayor's Office, and the Information Directory Department (311), which collects and disseminates information about City appointments to policy bodies. Based on the list of Commissions and Boards that are reported by 311, data was compiled from 57 policy bodies with a total of 540 appointees. A Commissioner or Board member's gender identity, race/ethnicity, sexual orientation, disability status, and veteran status were among data elements collected on a voluntary basis. In many cases, identities are vastly underreported due to concerns about social stigma and discrimination. Thus, data on lesbian, gay, bisexual, transgender (LGBT) identity, disability, and veteran status of appointees were limited, incomplete, and/or unavailable for many appointees, but included to the extent possible. As the fundamental objective of this report is to surface patterns of underrepresentation, every attempt has been made to reflect accurate and complete information in this report.

For the purposes of comparison in this report, data from the *U.S. Census 2011-2015 American Community Survey 5-Year Estimates* is used to reflect the current San Francisco population. Charts 1 and 2 in the Appendix show these population estimates by race/ethnicity and gender.

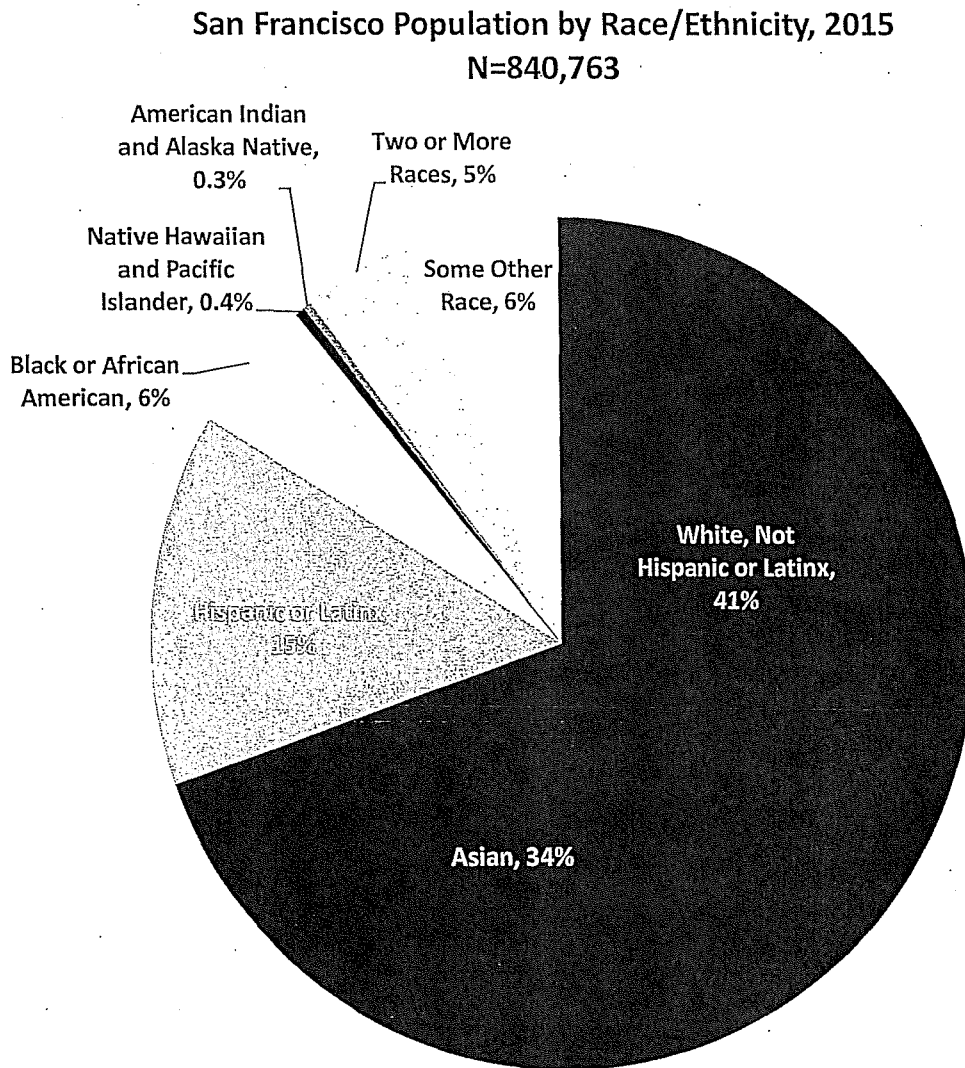
⁶ It is important to note that San Francisco is the only jurisdiction in the State of California that is both a city and a county. Therefore, while in other jurisdictions, the Human Services Commission is typically a county commission that governs services across multiple cities and is composed of members appointed by those cities, the San Francisco case is much simpler. All members of Commissioner and Boards are appointed either by the San Francisco Mayor or the San Francisco County Board of Supervisors which functions as a city council.

III. San Francisco Population Demographics

An estimated 49% of the population in San Francisco are women and approximately 60% of residents identify as a race or ethnicity other than White. Four in ten San Franciscans are White, one-third are Asian, 15% are Hispanic or Latinx, and 6% are Black or African American.

The racial and ethnic breakdown of San Francisco's population is shown in the chart below. Note that the percentages do not add up to 100% since individuals may be counted more than once.

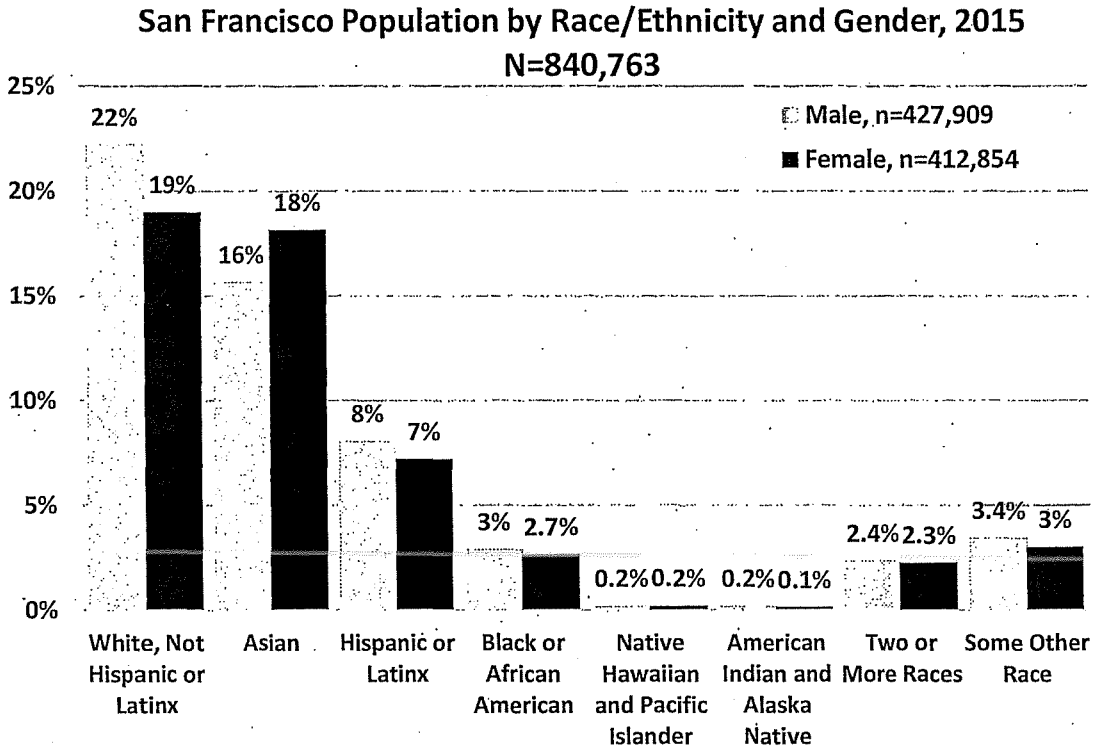
Figure 1: San Francisco Population by Race/Ethnicity



Source: 2011-2015 American Community Survey 5-Year Estimates.

A more nuanced view of San Francisco’s population can be seen in the chart below, which shows race and ethnicity by gender. Most racial and ethnic groups have a similar representation of men and women in San Francisco, though there are about 15% more White men than women (22% vs. 19%) and 12% more Asian women than men (18% vs. 16%). Overall, 29% of San Franciscans are men of color and 31% are women of color.

Figure 2: San Francisco Population by Race/Ethnicity and Gender

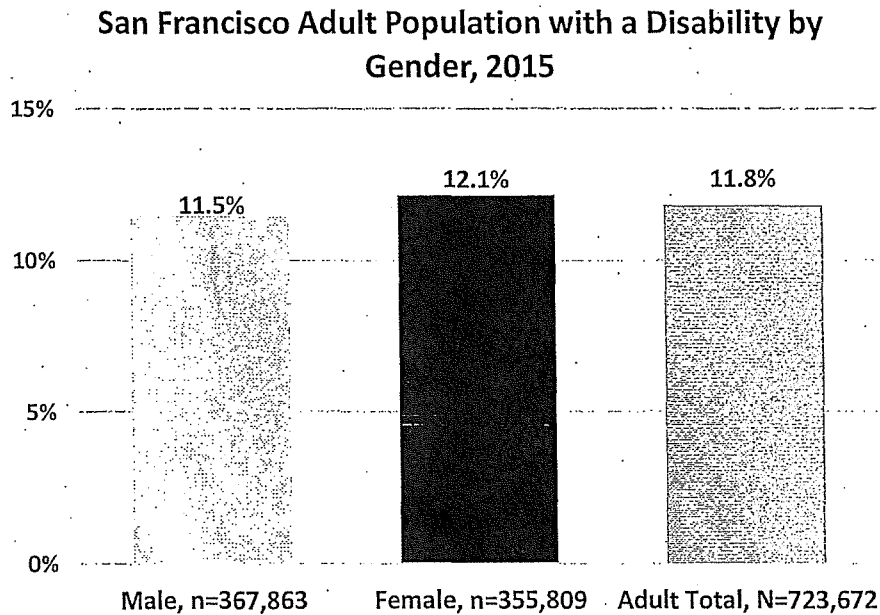


Source: 2011-2015 American Community Survey 5-Year Estimates.

The U.S. Census and *American Community Survey* do not count the number of individuals who identify as lesbian, gay, bisexual, or transgender (LGBT). However, there are several reputable data sources that estimate San Francisco has one of the highest concentrations of LGBT individuals in the nation. A 2015 Gallup poll found that among employed adults in the San Francisco Metropolitan Area, which includes San Francisco, Alameda, Contra Costa, Marin, and San Mateo counties, 6.2% identify as LGBT, the largest percentage of any populous area in the U.S. The 2010 U.S. Census reported 34,000 same-sex couples in the Bay Area, with an estimated 7,600 male same-sex couples and 2,700 female same-sex couples in the City of San Francisco, approximately 7% of all households. In addition, the Williams Institute at the University of California Los Angeles estimates that 4.6% of Californians identify as LGBT, which is similar across gender (4.6% of males vs. 4.5% of females). The Williams Institute also reported that roughly 92,000 adults ages 18-70 in California, or 0.35% of the population, are transgender. These sources suggest between 5-7% of the San Francisco adult population, or approximately 36,000-50,000 San Franciscans, identify as LGBT.

Women are slightly more likely than men to have one or more disabilities. For women 18 years and older, 12.1% have at least one disability, compared to 11.5% of adult men. Overall, about 12% of adults in San Francisco live with a disability.

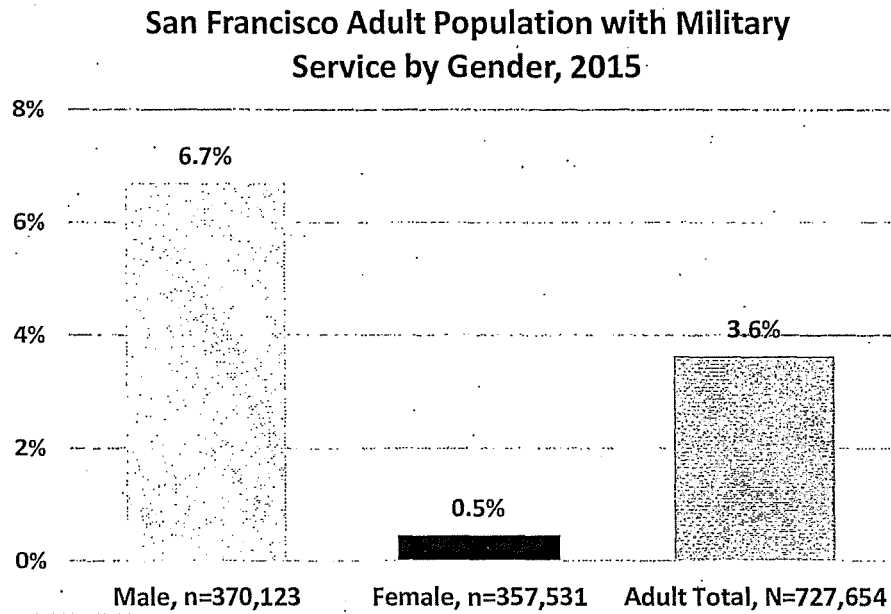
Figure 3: San Francisco Adults with a Disability by Gender



Source: 2011-2015 American Community Survey 5-Year Estimates.

In terms of veterans, according to the U.S. Census, 3.6% of the adult population in San Francisco has served in the military. There is a drastic difference by gender. More than 12 times as many men are veterans, at nearly 7% of adult males, than women, with less than 1%.

Figure 4: Veterans in San Francisco by Gender



Source: 2011-2015 American Community Survey 5-Year Estimates.

IV. Gender Analysis Findings

On the whole, appointees to Commissions and Boards reflect many aspects of the diversity of San Francisco. Among Commissioners and Board members, nearly half are women, more than 50% are people of color, 17% are LGBT, 11% have a disability, and 13% are veterans. However, Board appointees are less diverse than Commission appointees. Below is a summary of key indicators, comparing them between Commissions and Boards. Refer to Appendix II for a complete table of demographics by Commissions and Boards.

Figure 5: Summary Data Comparing Representation on Commissions and Boards, 2017

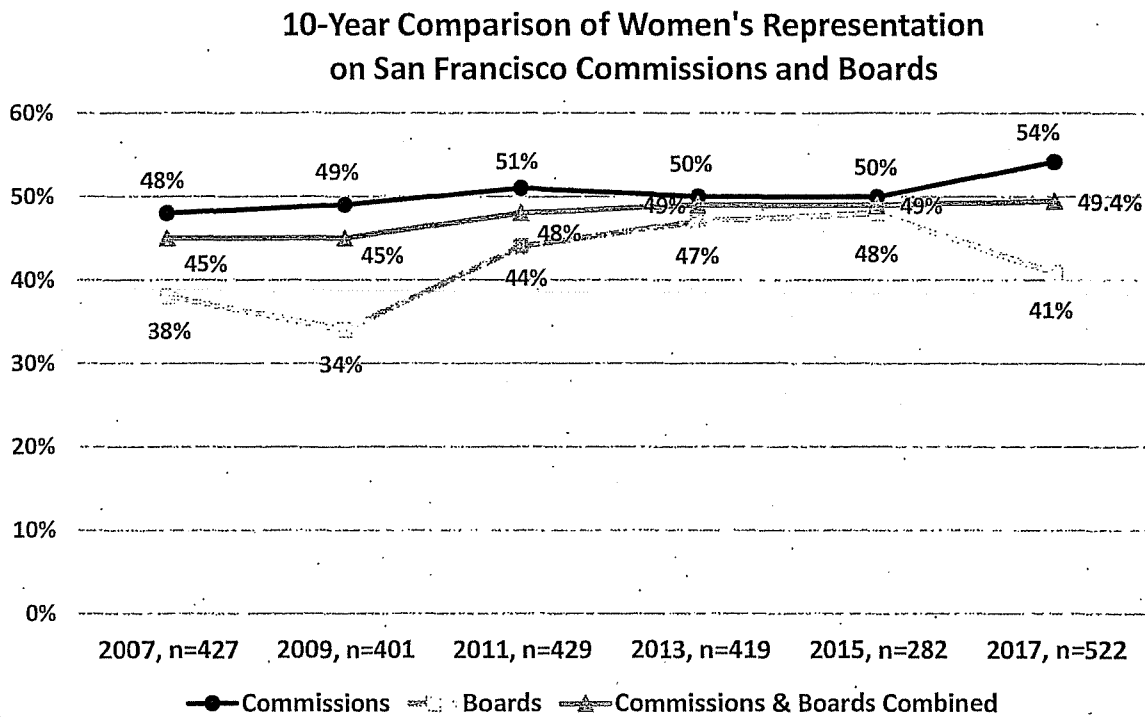
	Commissions	Boards
Number of Policy Bodies Included	40	17
Filled Seats	350/373 (6% vacant)	190/213 (11% vacant)
Female Appointees	54%	41%
Racial/Ethnic Minority	57%	47%
LGBT	17.5%	17%
With Disability	10%	14%
Veterans	15%	10%

The next sections will present detailed data, compared to previous years, along the key variables of gender, ethnicity, race/ethnicity by gender, sexual orientation, disability, veterans, and policy bodies by budget size.

A. Gender

Overall, the percentage of female appointees to City Commissions and Boards is 49%, equal to the female percentage of the San Francisco population. A 10-year comparison of the gender diversity on Commissions and Boards shows that the percentage of female Commissioners has increased over the 10 years since the first gender analysis of Commissions and Boards in 2007. At 54%, the representation of women on Commissions currently exceeds the percentage of women in San Francisco (49%). The percentage of female Board appointees declined 15% from the last gender analysis in 2015. Women make up 41% of Board appointees in 2017, whereas women were 48% of Board members in 2015. A greater number of Boards were included this year than in 2015, which may contribute to the stark difference from the previous report. This dip represents a departure from the previous trend of increasing women’s representation on Boards.

Figure 6: 10-Year Comparison of Women’s Representation on Commissions and Boards

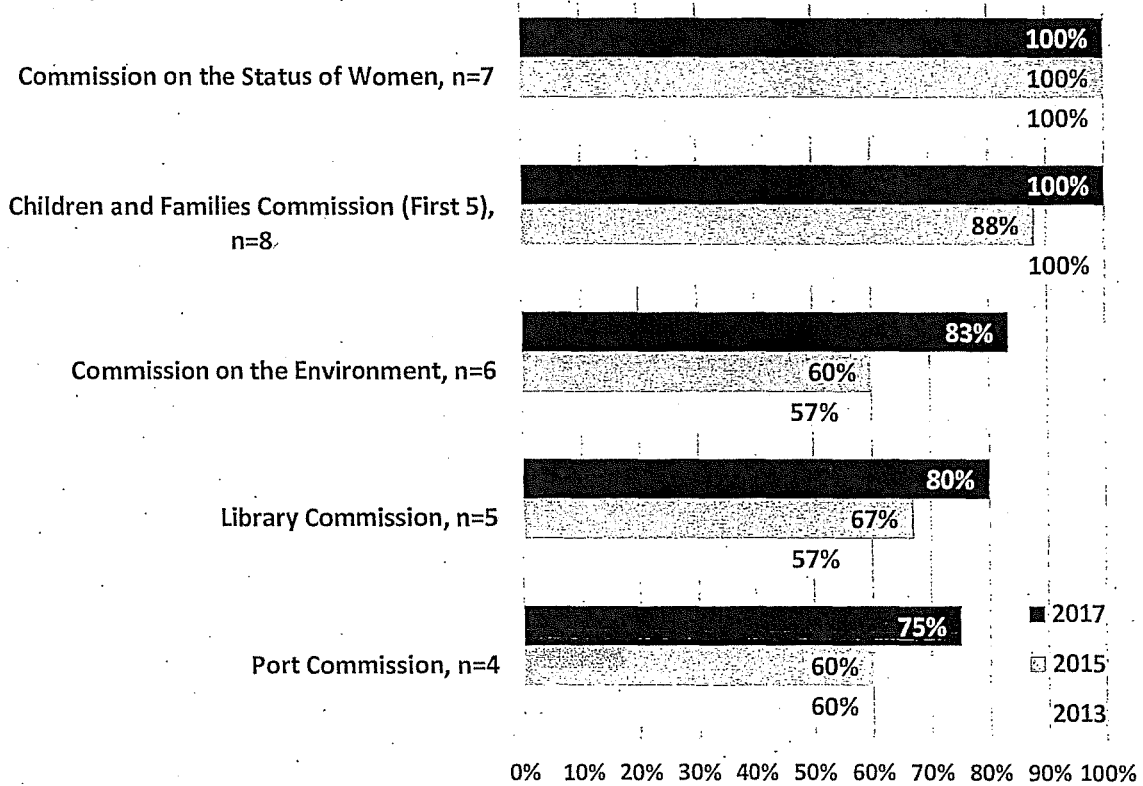


Sources: Department Survey, Mayor’s Office, 311.

The next two charts illustrate the Commissions and Boards with the highest and lowest percentage of female appointees in 2017. Data from the two previous gender analyses for these Commissions and Boards is also included for comparison purposes. Of 54 policy bodies with data on gender, roughly one-third (20 Commissions and Boards) have more than 50% representation of women. The greatest women's representation is found on the Commission on the Status of Women and the Children and Families Commission (First 5) at 100%. The Long Term Care Coordinating Council and the Mayor's Disability Council also have some of the highest percentages of women, at 78% and 75%, respectively. However, the latter two policy bodies are not included in the chart due to lack of prior data.

Figure 7: Commissions and Boards with Most Women

**Commissions and Boards with Highest Percentage of Women,
2017 Compared to 2015, 2013**

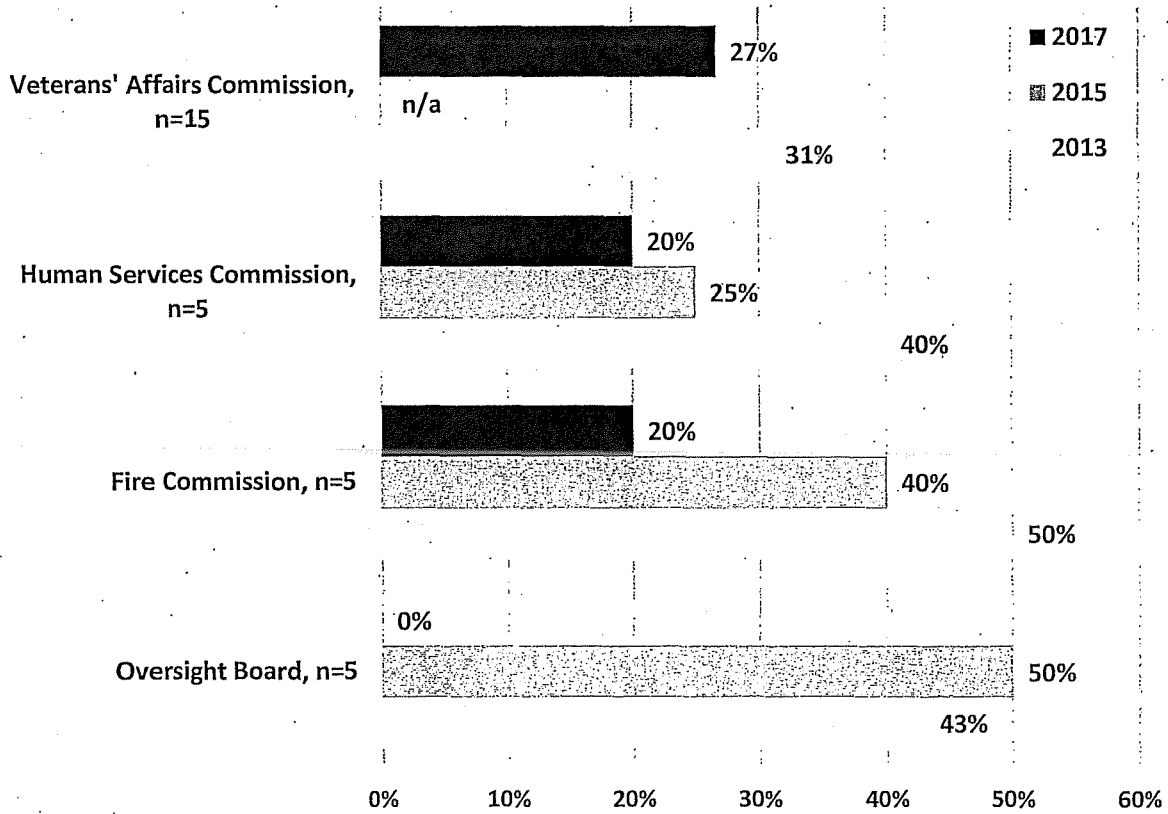


Sources: Department Survey, Mayor's Office, 311.

There are 14 Commissions and Boards that have 30% or less women. The lowest percentage is found on the Oversight Board of the Office of Community Investment & Infrastructure where currently none of the five appointees are women. The Urban Forestry Council and the Workforce Investment Board also have some of the lowest percentages of women members at 20% and 26%, respectively, but are not included in the chart below due to lack of prior data.

Figure 8: Commissions and Boards with Least Women

**Commissions and Boards with Lowest Percentage of Women,
2017 Compared to 2015, 2013**

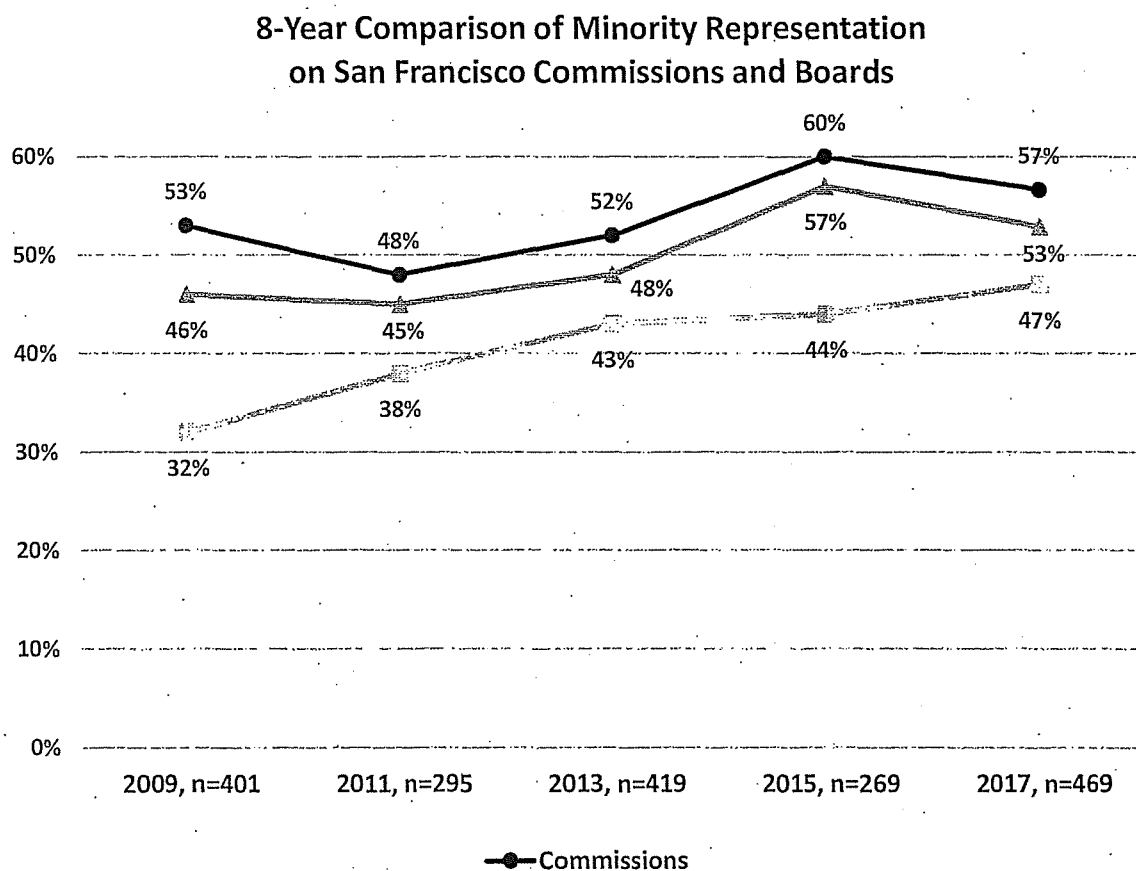


Sources: Department Survey, Mayor's Office, 311.

B. Ethnicity

Data on racial and ethnic background were available for 286 Commissioners and 183 Board members. More than half of these appointees identify as people of color. However, representation of people of color on Commissions and Boards falls short of parity with the approximately 60% minority population in San Francisco. In total, 53% of appointees identify as racial and ethnic minorities. The percentage of minority Commissioners decreased from 2015, while the percentage of minority Board members has been steadily increasing since 2009. Yet, communities of color are represented in greater numbers on Commissions, at 57%, than Boards, at 47%, of appointees. Below is the 8-year comparison of minority representation on Commissions and Boards. Data on race and ethnicity were not collected in 2007.

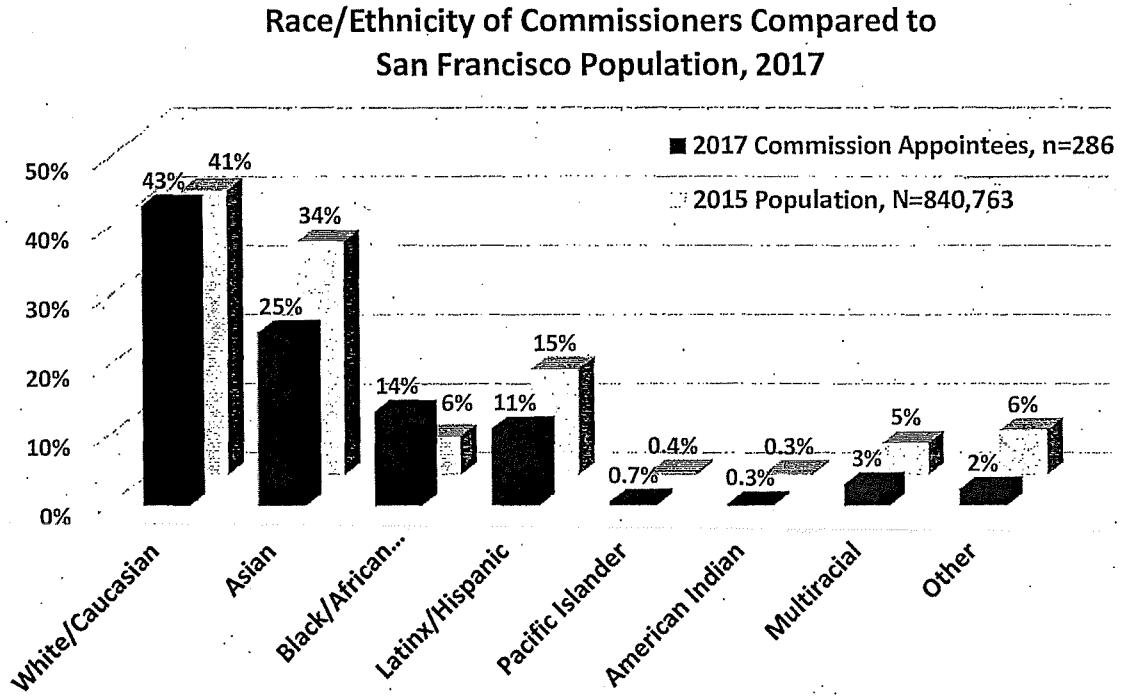
Figure 9: 8-Year Comparison of Minority Representation on Commissions and Boards



Sources: Department Survey, Mayor's Office, 311.

The racial and ethnic breakdown of Commissioners and Board members as compared to the San Francisco population is presented in the next two charts. There is a greater number of White and Black/African American Commissioners in comparison to the general population, in contrast to individuals identifying as Asian, Latinx/Hispanic, multiracial, and other races who are underrepresented on Commissions. One-quarter of Commissioners are Asian compared to more than one-third of the population. Similarly, 11% of Commissioners are Latinx compared to 15% of the population.

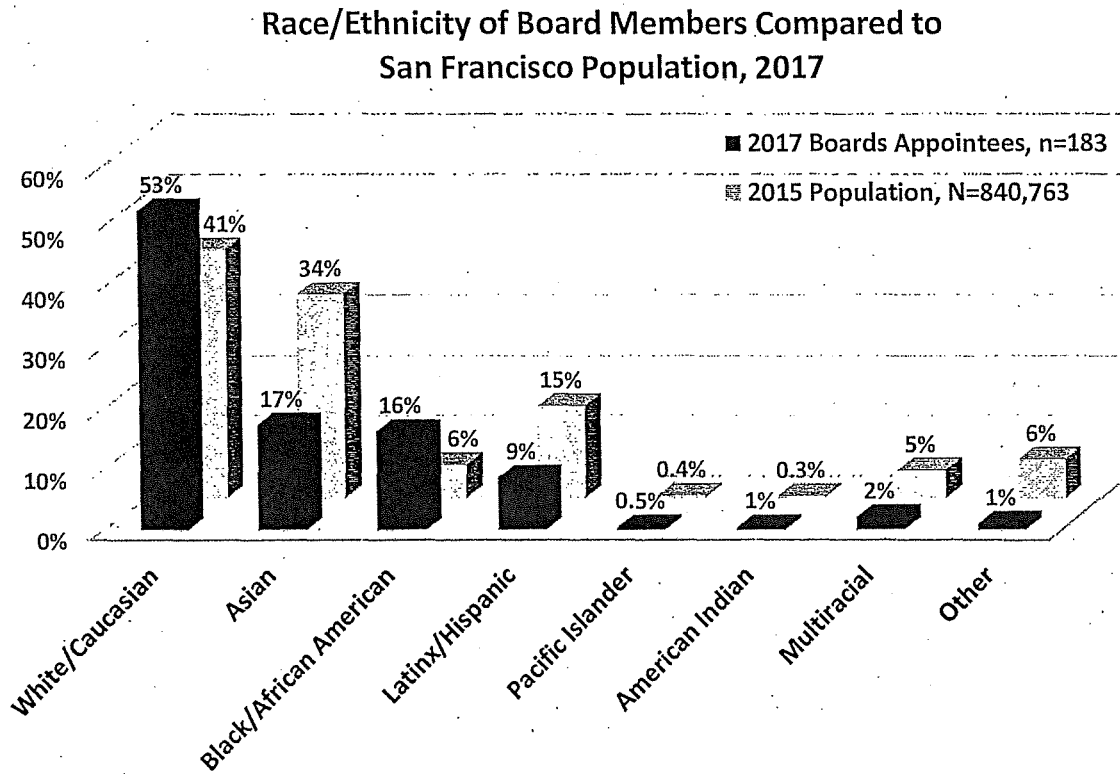
Figure 10: Race/Ethnicity of Commissioners Compared to San Francisco Population



Sources: Department Survey, Mayor's Office, 311.

A similar pattern emerges for Board appointees. In general, racial and ethnic minorities are underrepresented on Boards, except for the Black/African American population with 16% of Board appointees compared to 6% of the population. White appointees far exceed the White population with more than half of appointees identifying as White compared to about 40% of the population. Meanwhile, there are considerably fewer Board members who identify as Asian, Latinx/Hispanic, multiracial, and other races than in the population. Particularly striking is the underrepresentation of Asians, where 17% of Board members identified as Asian compared to 34% of the population. Additionally, 9% of Board appointees are Latinx compared to 15% of the population.

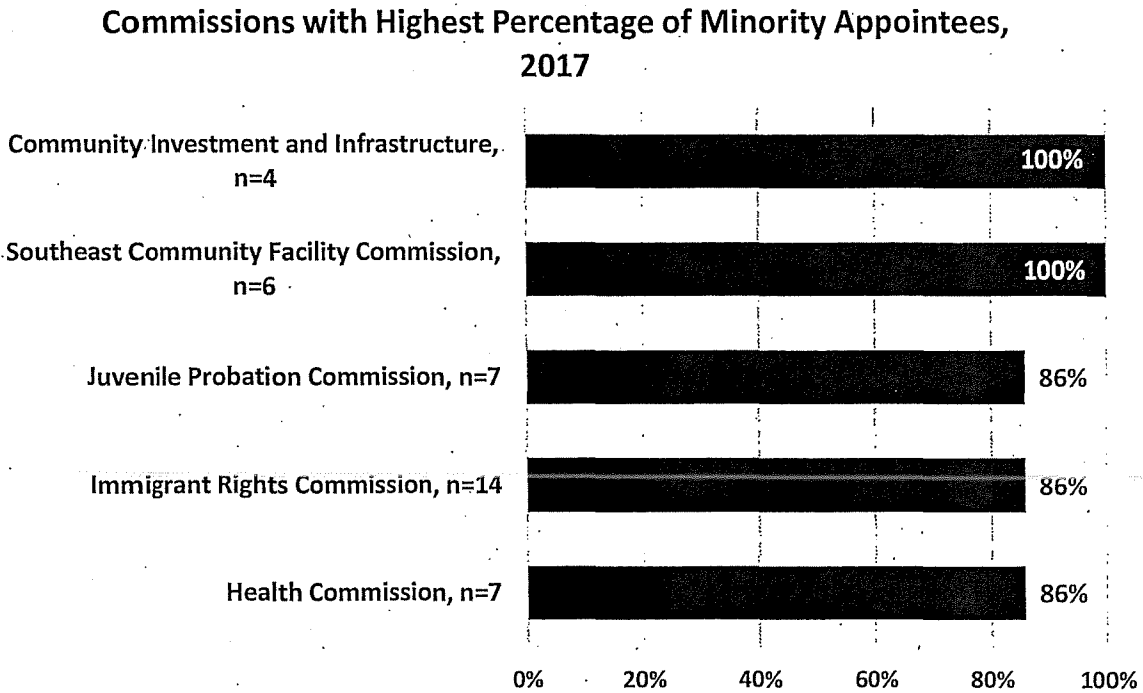
Figure 11: Race/Ethnicity of Board Members Compared to San Francisco Population



Sources: Department Survey, Mayor's Office, 311.

Of the 37 Commissions with information on ethnicity, more than two-thirds (26 Commissions) have at least 50% of appointees identifying as persons of color and more than half (19 Commissions) reach or exceed parity with the nearly 60% minority population. The Commissions with the highest percentage of minority appointees are shown in the chart below. The Commission on Community Investment and Infrastructure and the Southeast Community Facility Commission both are comprised entirely of people of color. Meanwhile, 86% of Commissioners are minorities on the Juvenile Probation Commission, Immigrant Rights Commission, and Health Commission.

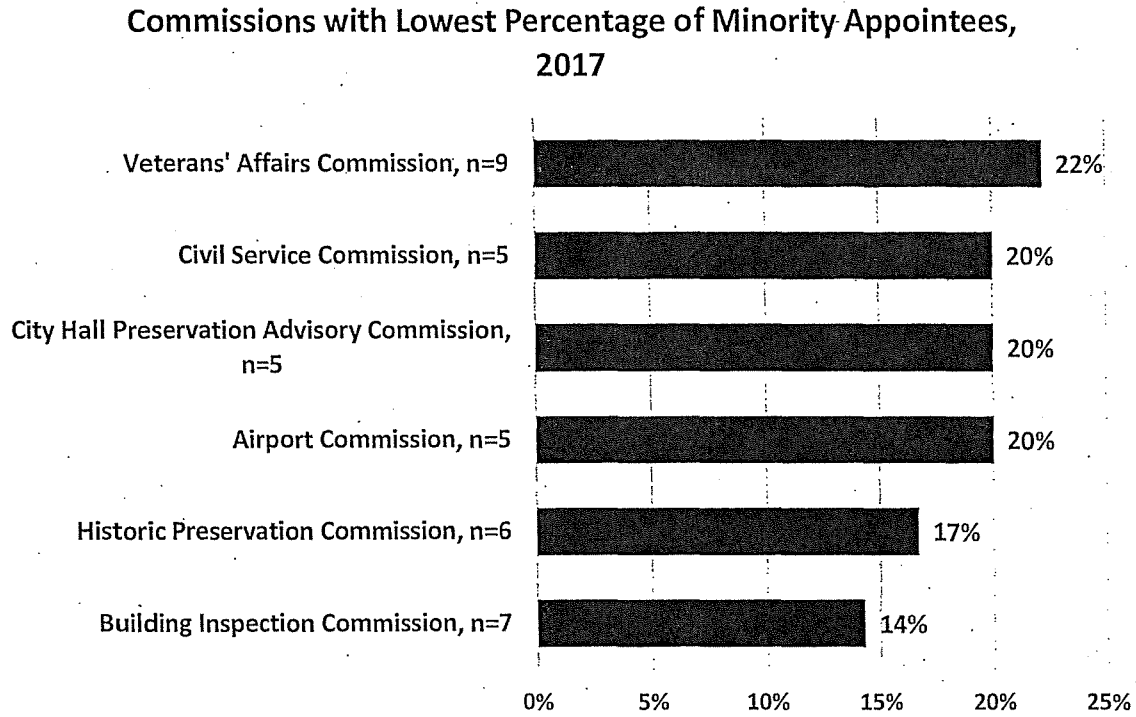
Figure 12: Commissions with Most Minority Appointees



Sources: Department Survey, Mayor's Office, 311.

Seven Commissions have fewer than 30% minority appointees, with the lowest percentage of minority appointees being found on the Building Inspection Commission at 14% and the Historic Preservation Commission at 17%. The Commissions with the lowest percentage of minority appointees are shown in the chart below.

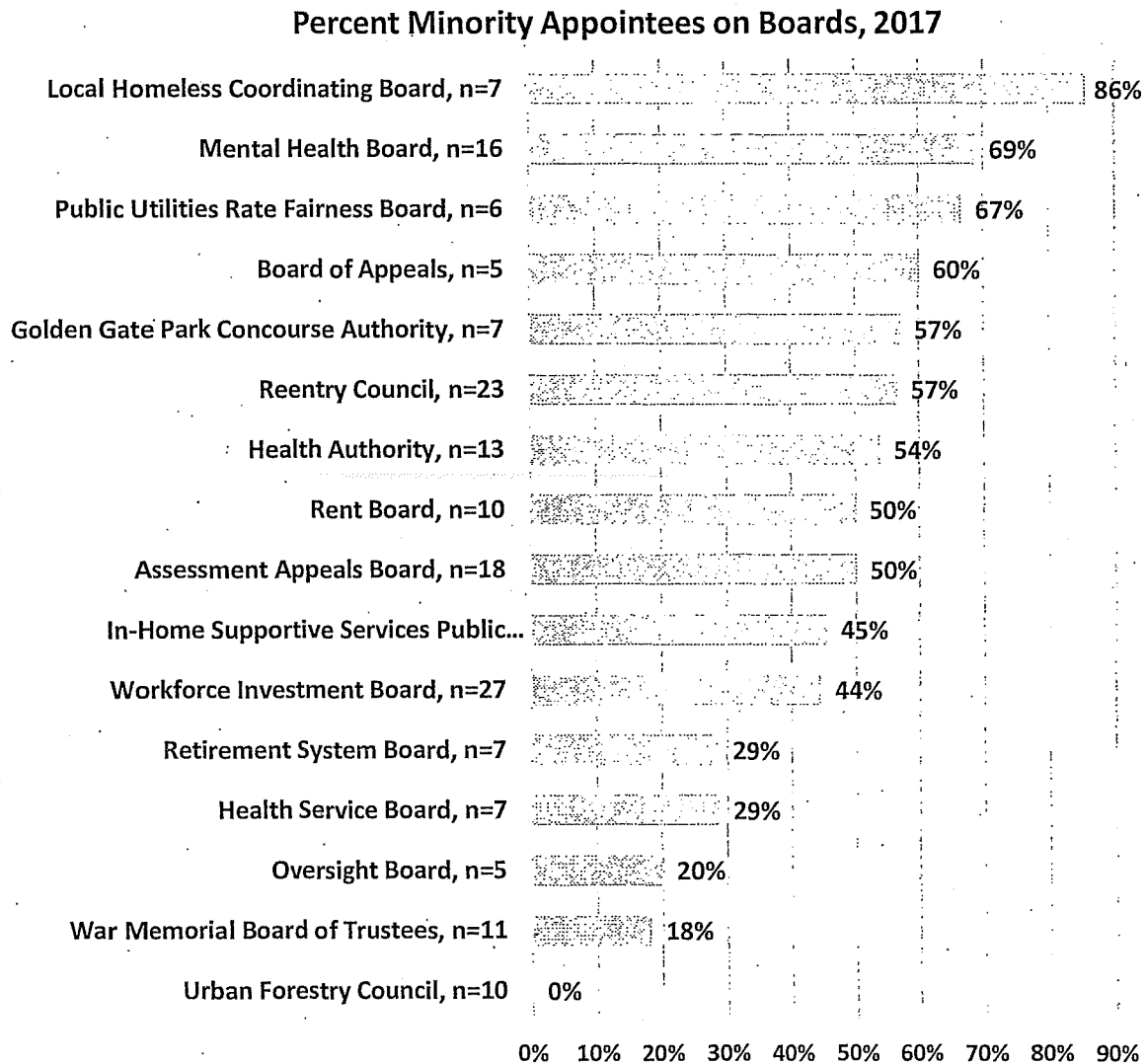
Figure 13: Commissions with Least Minority Appointees



Sources: Department Survey, Mayor's Office, 311.

For the 16 Boards with information on race and ethnicity, nine have at least 50% minority appointees. The Local Homeless Coordinating Board has the greatest percentage of members of color with 86%. The Mental Health Board and the Public Utilities Rate Fairness Board also have a large representation of people of color at 69% and 67%, respectively. Meanwhile, seven Boards have a majority of White members, with the lowest representation of people of color on the Oversight Board at 20% minority members, the War Memorial Board of Trustees at 18% minority members, and the Urban Forestry Council with no members of color.

Figure 14: Minority Representation on Boards

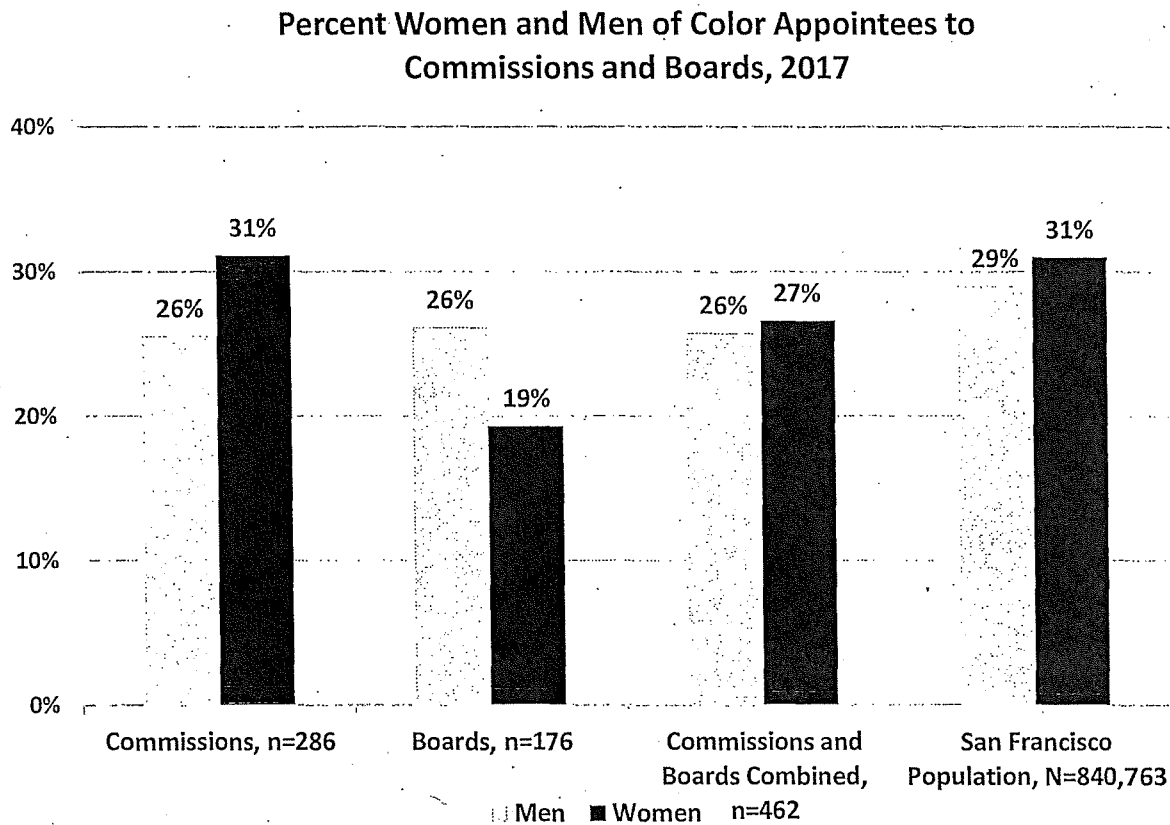


Sources: Department Survey, Mayor's Office, 311.

C. Race/Ethnicity by Gender

Minorities comprise 57% of Commission appointees and 47% of Board appointees. The total percentage of minority appointees on Commissions and Boards in 2017 is 53% compared to about 60% of the population. There are slightly more women of color on Commissions and Boards at 27% than men of color at 26%. Women of color appointees to Commissions reach parity with the population at 31%, while women of color are 19% of Board members, far from parity with the population. Men of color are 26% of appointees to both Commissions and Boards, below the 29% men of color in the San Francisco population.

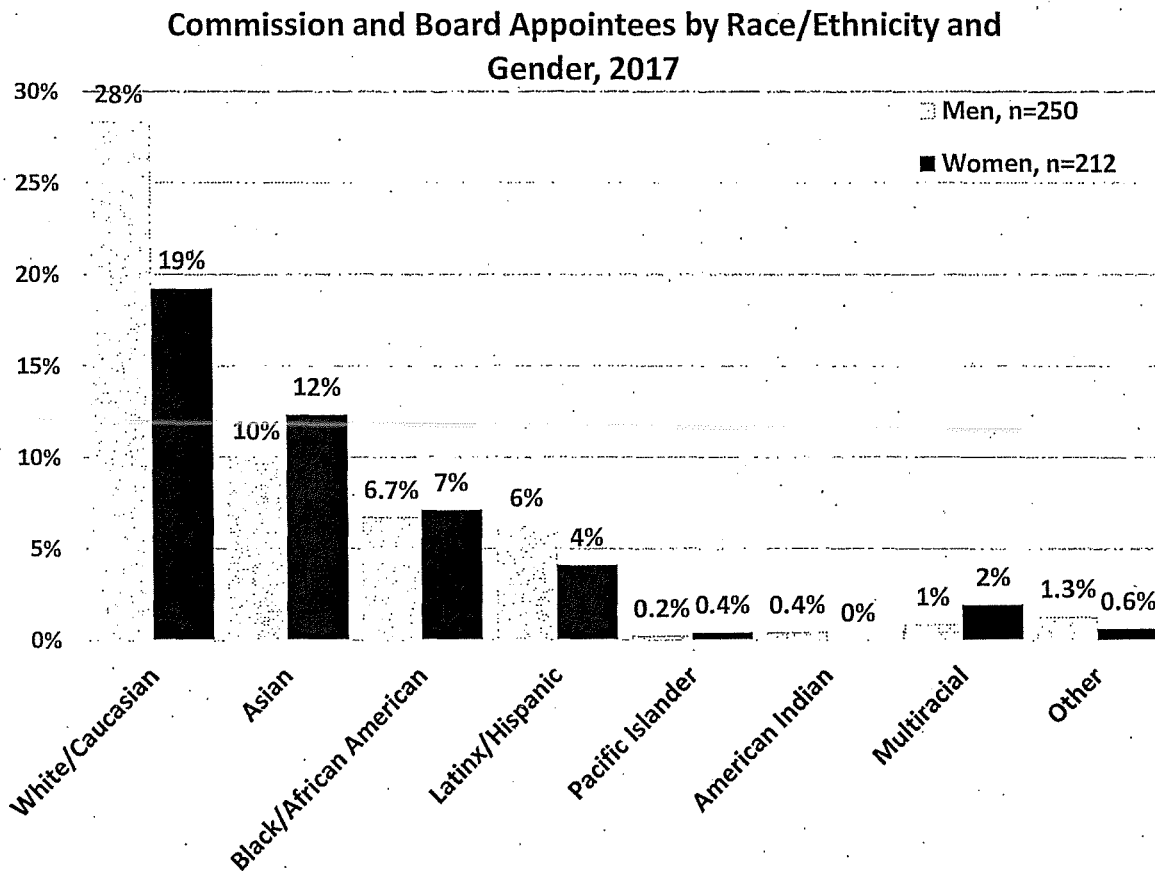
Figure 15: Women and Men of Color on Commissions and Boards



Sources: Department Survey, Mayor’s Office, 311, 2011-2015 American Community Survey 5-Year Estimates.

The next chart illustrates appointees' race and ethnicity by gender. The gender distribution in most racial and ethnic groups on policy bodies is similar to the representation of men and women in minority groups in San Francisco except for the White population. White men represent 22% of San Francisco population, yet 28% of Commission and Board appointees are White men. Meanwhile, White women are at parity with the population at 19%. Women and men of color are underrepresented across all racial and ethnic groups, except for Black/African American appointees. Asian women are 12% of appointees, but 18% of the population. Asian men are 10% of appointees compared to 16% of the population. Latina women are 4% of Commissioners and Board members, yet 7% of the population, while 6% of appointees are Latino men compared to 8% of San Franciscans.

Figure 16: Commission and Board Appointees by Race/Ethnicity and Gender

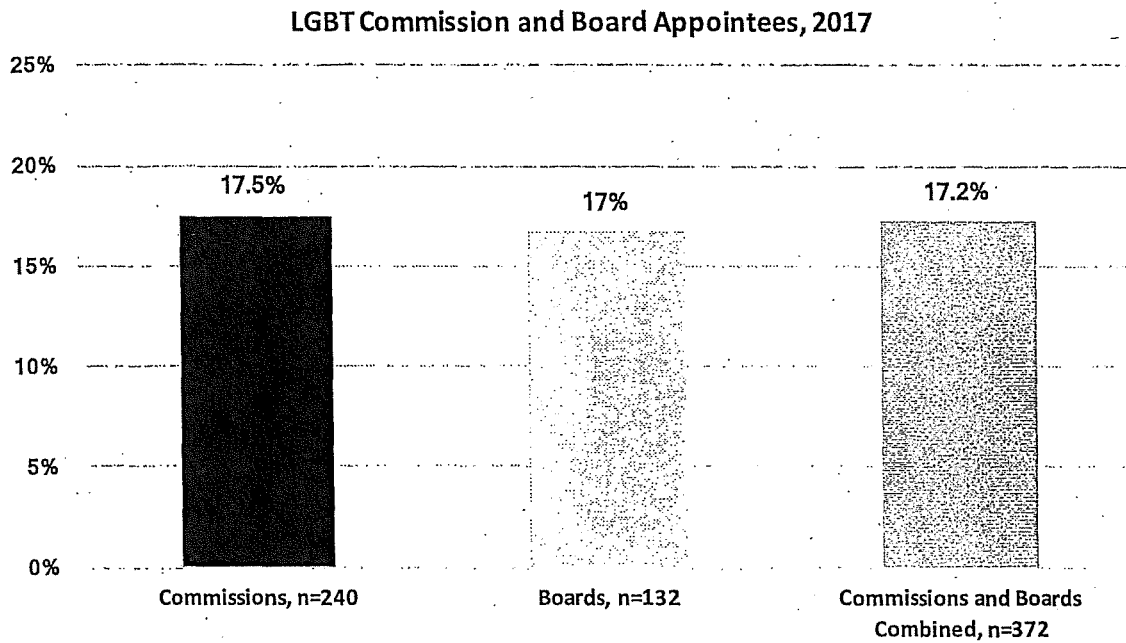


Sources: Department Survey, Mayor's Office, 311.

D. Sexual Orientation

While it is challenging to find accurate counts of the number of lesbian, gay, bisexual, and transgender (LGBT) individuals, a combination of sources, noted in the demographics section, suggests between 4.6% and 7% of the San Francisco population is LGBT. Data on sexual orientation and gender identity was available for 240 Commission appointees and 132 Board appointees. Overall, about 17% of appointees to Commissions and Boards are LGBT. There is a large LGBT representation across both Commissioners and Board members. Three Commissioners identified as transgender.

Figure 17: LGBT Commission and Board Appointees

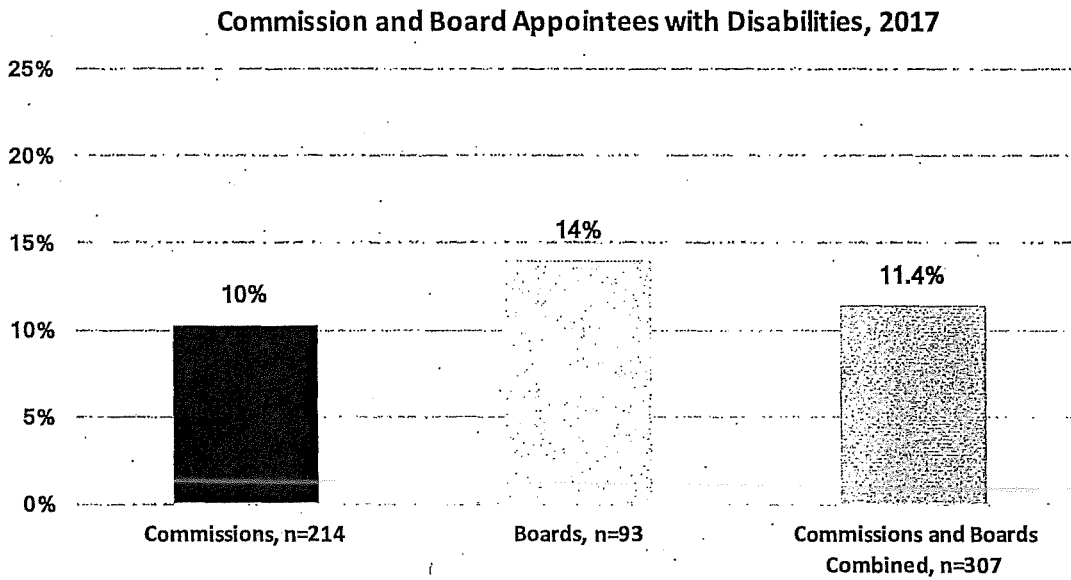


Sources: Department Survey, Mayor's Office, 311.

E. Disability

An estimated 12% of San Franciscans have a disability. Data on disability was available for 214 Commission appointees and 93 Board appointees. The percentage of Commission and Board appointees with a disability is 11.4% and almost reaches parity with the 11.8% of the adult population in San Francisco that has a disability. There is a much greater representation of people with a disability on Boards at 14% than on Commissions at 10%.

Figure 18: Commission and Board Appointees with Disabilities

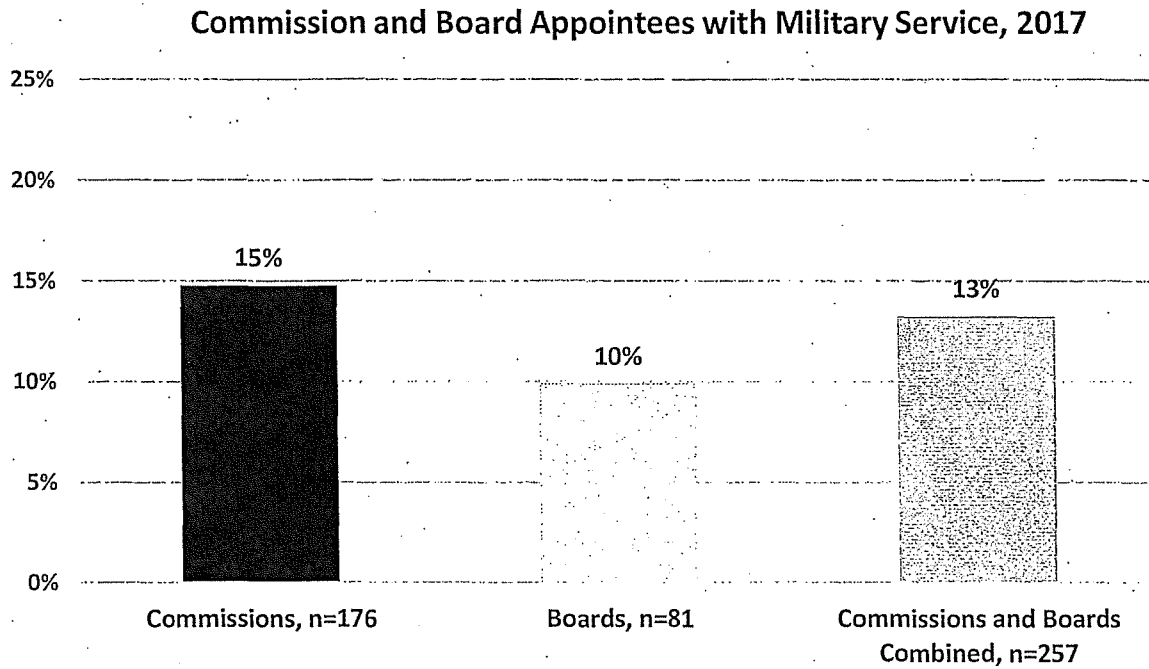


Sources: Department Survey, Mayor's Office, 311.

F. Veterans

Veterans are 3.6% of the adult population in San Francisco. Data on military service was available for 176 Commission appointees and 81 Board appointees. Overall, veterans are well represented on Commissions and Boards with 13% of appointees having served in the military. However, there is a large difference in the representation of veterans on Commissions at 15% compared to Boards at 10%. This is likely due to the 17 members of Veterans Affairs Commission of which all members must be veterans.

Figure 19: Commission and Board Appointees with Military Service



Sources: Department Survey, Mayor's Office, 311.

G. Policy Bodies by Budget Size

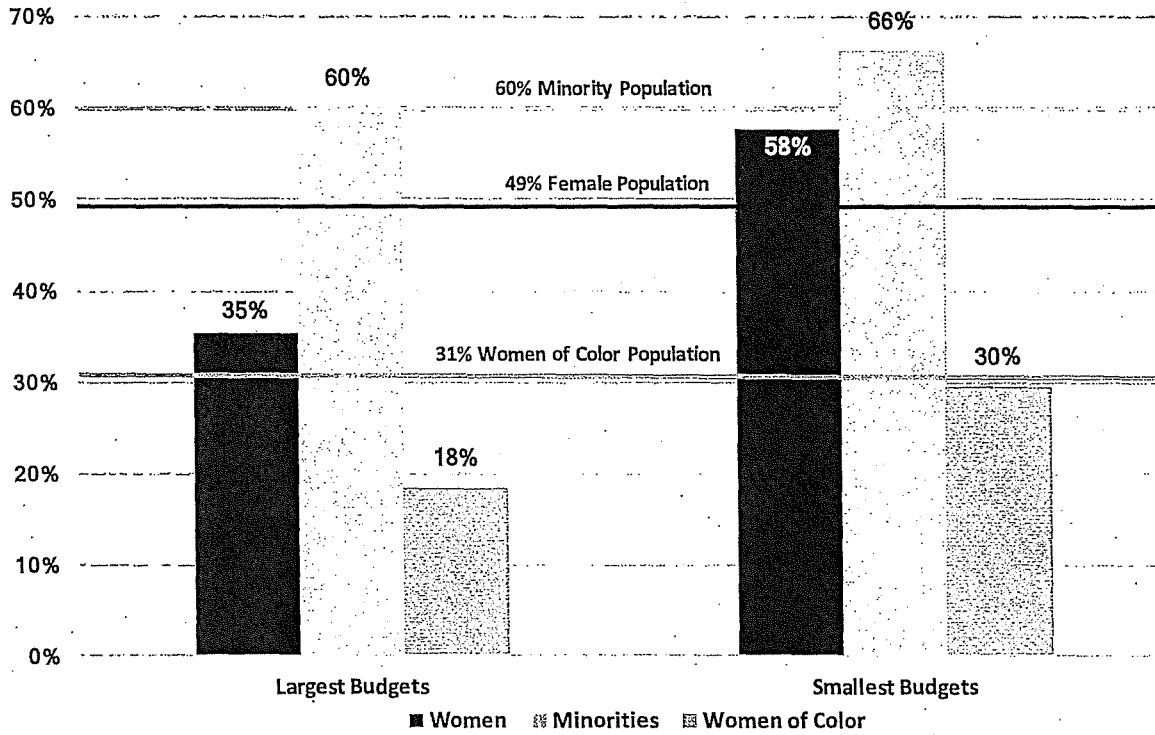
In addition to data on the appointment of women and minorities to Commissions and Boards, this report examines whether the demographic make-up of policy bodies with the largest budget (which is often proportional to the amount of influence in the City) are representative of the community. On the following page, Figure 19 shows the representation of women, people of color, and women of color on the policy bodies with the largest and smallest budgets.

Though the overall representation of female appointees (49%) is equal to the City's population, Commissions and Boards with the highest female representation have fairly low influence as measured by budget size. Although women's representation on the ten policy bodies with the largest budgets increased from 30% in 2015 to 35% this year, it is still far below parity with the population. The percentage of women on the ten bodies with the smallest budgets grew from 45% in 2015 to 58% in 2017.

With respect to minority representation, the bodies with both the largest and smallest budgets exceed parity with the population. On the ten Commissions and Boards with the largest budgets, 60% of appointees identify as a racial or ethnic minority; meanwhile 66% of appointees identify as a racial or ethnic minority on the ten Commissions and Boards with the smallest budgets. Minority representation on the ten largest budgeted policy bodies was slightly greater in 2015 at 62%, while there was a 21% increase of minority representation on the ten smallest budgeted policy bodies from 52% in 2015.

Percentage of women of color on the policy bodies with the smallest budgets is 30% and almost reaches parity with the population in San Francisco. However, women of color are considerably underrepresented on the ten policy bodies with the largest budgets at 18% compared to 31% of the population.

Figure 20: Women, Minorities, and Women of Color on Largest and Smallest Budget Bodies
Percent Women, Minorities and Women of Color on Commissions and Boards with Largest and Smallest Budgets in Fiscal Year 2017-2018



Sources: Department Survey, Mayor's Office, 311, FY17-18 Annual Appropriation Ordinance, FY17-18 Mayor's Budget Book.

The following two tables present the demographics of the Commissions and Boards overseeing some of the City's largest and smallest budgets.

Of the ten Commissions and Boards that oversee the largest budgets, women make up 35% and women of color are 18% of the appointees. The Commission on Community Investment and Infrastructure is the most diverse with people of color in all appointed seats and women comprising half of the members. The Municipal Transportation Agency (MTA) Board of Directors and Parking Authority Commission has the next largest representation of women with 43%. Four of the ten bodies have less than 30% female appointees. Women of color are near parity on the Police Commission at 29% compared to 31% of the population. Meanwhile, the Public Utilities Commission and Human Services Commission have no women of color.

Overall, the representation of minorities on policy bodies with the largest budgets is equal to that of the minority population in San Francisco at 60% and four of the ten largest budgeted bodies have greater minority representation. Following the Commission on Community Investment and Infrastructure with 100% minority appointees, the Health Commission at 86% minority appointees, the Aging and Adult Services Commission at 80% minority appointees, and the Police Commission with 71% minority appointees have the next highest minority representation. In contrast, the Airport Commission has the lowest minority representation at 20%.

Table 1: Demographics of Commissions and Boards with Largest Budgets

Body	FY17-18 Budget	Total Seats	Filled Seats	% Women	% Minority	% Women of Color
Health Commission	\$ 2,198,181,178	7	7	29%	86%	14%
MTA Board of Directors and Parking Authority Commission	\$ 1,183,468,406	7	7	43%	57%	14%
Public Utilities Commission	\$ 1,052,841,388	5	5	40%	40%	0%
Airport Commission	\$ 987,785,877	5	5	40%	20%	20%
Human Services Commission	\$ 913,783,257	5	5	20%	60%	0%
Health Authority (SF Health Plan Governing Board)	\$ 637,000,000	19	15	40%	54%	23%
Police Commission	\$ 588,276,484	7	7	29%	71%	29%
Commission on Community Investment and Infrastructure	\$ 536,796,000	5	4	50%	100%	50%
Fire Commission	\$ 381,557,710	5	5	20%	60%	20%
Aging and Adult Services Commission	\$ 285,000,000	7	5	40%	80%	14%
Total	\$ 8,764,690,300	72	65	35%	60%	18%

Sources: Department Survey, Mayor's Office, 311, FY17-18 Annual Appropriation Ordinance, FY17-18 Mayor's Budget Book.

Commissions and Boards with the smallest budgets exceed parity with the population for women's and minority representation with 58% women and 66% minority appointees and are near parity with 30% women of color appointees compared to 31% of the population. The Long Term Care Coordinating Council has the greatest representation of women at 78%, followed by the Youth Commission at 64%, and the City Hall Preservation Advisory Commission at 60%. Five of the ten smallest budgeted bodies have less than 50% women appointees. The Southeast Community Facility Commission, the Youth Commission, the Housing Authority Commission, and the Public Utilities Rate Fairness Board have more than 30% women of color members.

Of the eight smallest budgeted policy bodies with data on race and ethnicity, more than half have greater representation of racial and ethnic minority and women of color than the population. The Southeast Community Facility Commission has 100% members of color, followed by the Housing Authority Commission at 83%, the Sentencing Commission at 73%, and the Public Utilities Rate Fairness Board at 67% minority appointees. Only the Historic Preservation Commission with 17% minority members, the City Hall Preservation Advisory Commission at 20% minority members, and the Reentry Council with 57% minority members fall below parity with the population.

Table 2: Demographics of Commissions and Boards with Smallest Budgets

Body	FY17-18 Budget	Total Seats	Filled Seats	% Women	% Minority	% Women of Color
Historic Preservation Commission	\$ 45,000	7	6	33%	17%	17%
City Hall Preservation Advisory Commission	\$ -	5	5	60%	20%	20%
Housing Authority Commission	\$ -	7	6	33%	83%	33%
Local Homeless Coordinating Board	\$ -	9	7	43%	n/a	n/a
Long Term Care Coordinating Council	\$ -	40	40	78%	n/a	n/a
Public Utilities Rate Fairness Board	\$ -	7	6	33%	67%	33%
Reentry Council	\$ -	24	23	52%	57%	22%
Sentencing Commission	\$ -	12	12	42%	73%	18%
Southeast Community Facility Commission	\$ -	7	6	50%	100%	50%
Youth Commission	\$ -	17	16	64%	64%	43%
Totals	\$ 45,000	135	127	58%	66%	30%

Sources: Department Survey, Mayor's Office, 311, FY17-18 Annual Appropriation Ordinance, FY17-18 Mayor's Budget Book.

V. Conclusion

Per the 2008 Charter Amendment, the Mayor and Board of Supervisors are encouraged to make appointments to Commissions, Boards, and other policy bodies that reflect the diverse population of San Francisco. While state law prohibits public appointments based solely on gender, race and ethnicity, sexual orientation, or disability status, an awareness of these factors is important when appointing individuals to serve on policy bodies, particularly where they may have been historically underrepresented.

Since the first gender analysis of appointees to San Francisco policy bodies in 2007, there has been a steady increase of female appointees. There has also been a greater representation of women on Commissions as compared to Boards. This continued in 2017 with 54% female Commissioners. However, it is concerning that the percentage of female Board members has dropped from 48% in 2015 to 41% in 2017.

People of color represent 60% of the San Francisco population, yet only represent 53% of appointees to San Francisco Commissions and Boards. There is a greater representation of people of color on Commissions than Boards. However, Commissions have fewer appointees identified as ethnic minorities this year, 57%, than the 60% in 2015, while the representation of people of color on Boards increased from 44% in 2015 to 47% in 2017. There is still a disparity between race and ethnicity on public policy bodies and in the population. Especially Asians and Latinx/Hispanic individuals are underrepresented across Commissions and Boards while there is a higher representation of White and Black/African American appointees than in the general population. Women of color are 31% of the population and comprise 31% of Commissioners compared to 19% of Board members. Meanwhile, men of color are 29% of the population and 26% of Commissioners and Board members.

This year there is more data available on sexual orientation, veteran status, and disability than previous gender analyses. The 2017 gender analysis found that there is a relatively high representation of LGBT individuals on the policy bodies for which there was data at 17%. Veterans are also highly represented at 13%, and the representation of people with a disability in policy bodies almost reaches parity with the population with 11.4% compared to 11.8%.

Finally, the policy bodies with larger budgets have a smaller representation of women at 35% while Commissions and Boards with smallest budgets are 58% female appointees. While minority representation exceeds the population on the policy bodies with both the smallest and largest budgets, women of color are considerably underrepresented on the largest budgeted policy bodies at 18% compared to 31% of the population.

This report is intended to inform appointing authorities, including the Mayor and the Board of Supervisors, as they carefully select their designees on key policy bodies of the City & County of San Francisco. In the spirit of the charter amendment that mandated this report, diversity and inclusion should be the hallmark of these important appointments.

Appendix I. 2015 Population Estimates for San Francisco County

The following 2015 San Francisco population statistics were obtained from the U.S. Census Bureau's *2011-2015 American Community Survey 5-Year Estimates*.

Chart 1: 2015 Total Population by Race/Ethnicity

Race/Ethnicity	Total	
	Estimate	Percent
San Francisco County California	840,763	
White, Not Hispanic or Latino	346,732	41%
Asian	284,426	34%
Hispanic or Latino	128,619	15%
Some Other Race	54,388	6%
Black or African American	46,825	6%
Two or More Races	38,940	5%
Native Hawaiian and Pacific Islander	3,649	0.4%
American Indian and Alaska Native	2,854	0.3%

Chart 2: 2015 Total Population by Race/Ethnicity and Gender

Race/Ethnicity	Total		Male		Female	
	Estimate	Percent	Estimate	Percent	Estimate	Percent
San Francisco County California	840,763	-	427,909	50.9%	412,854	49.1%
White, Not Hispanic or Latino	346,732	41%	186,949	22%	159,783	19%
Asian	284,426	34%	131,641	16%	152,785	18%
Hispanic or Latino	128,619	15%	67,978	8%	60,641	7%
Some Other Race	54,388	6%	28,980	3.4%	25,408	3%
Black or African American	46,825	6%	24,388	3%	22,437	2.7%
Two or More Races	38,940	5%	19,868	2%	19,072	2%
Native Hawaiian and Pacific Islander	3,649	0.4%	1,742	0.2%	1,907	0.2%
American Indian and Alaska Native	2,854	0.3%	1,666	0.2%	1,188	0.1%

Appendix II. Commissions and Boards Demographics

Commission	Total Seats	Filled Seats	FY17-18 Budget	% Women	% Minority	% Women of Color
1 Aging and Adult Services Commission	7	5	\$285,000,000	40%	80%	40%
2 Airport Commission	5	5	\$987,785,877	40%	20%	20%
3 Animal Control and Welfare Commission	10	9	\$-			
4 Arts Commission	15	15	\$17,975,575	60%	53%	27%
5 Asian Art Commission	27	27	\$10,962,397	63%	59%	44%
6 Building Inspection Commission	7	7	\$76,533,699	29%	14%	0%
7 Children and Families Commission (First 5)	9	8	\$31,830,264	100%	63%	63%
8 City Hall Preservation Advisory Commission	5	5	\$-	60%	20%	20%
9 Civil Service Commission	5	5	\$1,250,582	40%	20%	0%
10 Commission on Community Investment and Infrastructure	5	4	\$536,796,000	50%	100%	50%
11 Commission on the Environment	7	6	\$23,081,438	83%	67%	50%
12 Commission on the Status of Women	7	7	\$8,048,712	100%	71%	71%
13 Elections Commission	7	7	\$14,847,232	33%	50%	33%
14 Entertainment Commission	7	7	\$987,102	29%	57%	14%
15 Ethics Commission	5	5	\$4,787,508	33%	67%	33%
16 Film Commission	11	11	\$1,475,000	55%	36%	36%
17 Fire Commission	5	5	\$381,557,710	20%	60%	20%
18 Health Commission	7	7	\$2,198,181,178	29%	86%	14%
19 Historic Preservation Commission	7	6	\$45,000	33%	17%	17%
20 Housing Authority Commission	7	6	\$-	33%	83%	33%
21 Human Rights Commission	11	10	\$4,299,600	60%	60%	50%
22 Human Services Commission	5	5	\$913,783,257	20%	60%	0%
23 Immigrant Rights Commission	15	14	\$5,686,611	64%	86%	50%
24 Juvenile Probation Commission	7	7	\$41,683,918	29%	86%	29%
25 Library Commission	7	5	\$137,850,825	80%	60%	40%
26 Local Agency Formation Commission	7	4	\$193,168			
27 Long Term Care Coordinating Council	40	40	\$-	78%		
28 Mayor's Disability Council	11	8	\$4,136,890	75%	25%	13%
29 MTA Board of Directors and Parking Authority Commission	7	7	\$1,183,468,406	43%	57%	14%
30 Planning Commission	7	7	\$54,501,361	43%	43%	29%
31 Police Commission	7	7	\$588,276,484	29%	71%	29%
32 Port Commission	5	4	\$133,202,027	75%	75%	50%
33 Public Utilities Commission	5	5	\$1,052,841,388	40%	40%	0%

Commission	Total Seats	Filled Seats	FY17-18 Budget	% Women	% Minority	% Women of Color
34 Recreation and Park Commission	7	7	\$221,545,353	29%	43%	14%
35 Sentencing Commission	12	12	\$-	42%	73%	18%
36 Small Business Commission	7	7	\$1,548,034	43%	50%	25%
37 Southeast Community Facility Commission	7	6	\$-	50%	100%	50%
38 Treasure Island Development Authority	7	7	\$2,079,405	43%	57%	43%
39 Veterans' Affairs Commission	17	15	\$865,518	27%	22%	0%
40 Youth Commission	17	16	\$-	64%	64%	43%
Total	373	350		54%	57%	31%

Board	Total Seats	Filled Seats	FY17-18 Budget	% Women	% Minority	% Women of Color
1 Assessment Appeals Board	24	18	\$653,780	39%	50%	22%
2 Board of Appeals	5	5	\$1,038,570	40%	60%	20%
3 Golden Gate Park Concourse Authority	7	7	\$11,662,000	43%	57%	29%
4 Health Authority (SF Health Plan Governing Board)	19	15	\$637,000,000	40%	54%	23%
5 Health Service Board	7	7	\$11,444,255	29%	29%	0%
6 In-Home Supportive Services Public Authority	12	12	\$207,835,715	58%	45%	18%
7 Local Homeless Coordinating Board	9	7	\$-	43%	86%	
8 Mental Health Board	17	16	\$218,000	69%	69%	50%
9 Oversight Board	7	5	\$152,902	0%	20%	0%
10 Public Utilities Rate Fairness Board	7	6	\$-	33%	67%	33%
11 Reentry Council	24	23	\$-	52%	57%	22%
13 Relocation Appeals Board	5	0	\$-			
12 Rent Board	10	10	\$8,074,900	30%	50%	10%
14 Retirement System Board	7	7	\$97,622,827	43%	29%	29%
15 Urban Forestry Council	15	14	\$92,713	20%	0%	0%
16 War Memorial Board of Trustees	11	11	\$26,910,642	55%	18%	18%
17 Workforce Investment Board	27	27	\$62,341,959	26%	44%	7%
Total	213	190		41%	47%	19%

	Total Seats	Filled Seats	FY17-18 Budget	% Women	% Minority	% Women of Color
Commissions and Boards Total	586	540		49.4%	53%	27%

