

BOARD of SUPERVISORS



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MEMORANDUM

TO: John Rahaim, Director, Planning Department
Tom Hui, Director, Department of Building Inspection
Mawuli Tugbenyoh, Liaison to the Board of Supervisors, Mayor's Office

FROM: Erica Major, Assistant Clerk, Government Audit and Oversight Committee,
Board of Supervisors

DATE: December 2, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Peskin on November 29, 2016:

File No. 161299

Motion directing the Clerk of the Board of Supervisors to issue a subpoena duces tecum to Jack P. Moehle, requiring him to appear at the Government Audit and Oversight Committee hearing on January 12, 2017, at 9:30 a.m., to provide oral information and respond to questions regarding the design, engineering, review, and approval process for the projects at 301 Mission Street and 80 Natoma Street; and requiring him to produce documents, records, and other materials in his possession related to those two projects.

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Scott Sanchez, Planning Department
Lisa Gibson, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Jeanie Poling, Planning Department
William Strawn, Department of Building Inspection

1 [Issuance of Subpoena Duces Tecum - Jack P. Moehle]

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3 **Motion directing the Clerk of the Board of Supervisors to issue a subpoena duces**
4 **tecum to Jack P. Moehle, requiring him to appear at the Government Audit and**
5 **Oversight Committee hearing on January 12, 2017, at 9:30 a.m., to provide oral**
6 **information and respond to questions regarding the design, engineering, review, and**
7 **approval process for the projects at 301 Mission Street and 80 Natoma Street; and**
8 **requiring him to produce documents, records, and other materials in his possession**
9 **related to those two projects.**

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11 WHEREAS, News accounts in August 2016 revealed that the high-rise building at 301
12 Mission Street, commonly known as Millennium Tower, has settled more, and more quickly,
13 than its designers anticipated, and that the building has settled 16 inches and now leans by
14 two inches at its base; and

15 WHEREAS, In a series of hearings over the past three months, the Board of
16 Supervisors has initiated an investigation into the causes of the settlement, its impacts on
17 residents of the building and the surrounding neighborhood, its implications for future
18 buildings in the City, and the role of the Department of Building Inspection (DBI) in reviewing
19 and permitting the project; and

20 WHEREAS, In the course of those hearings, the Government Audit and Oversight
21 Committee has inquired into and compared the review and permitting process for the 301
22 Mission project with the process for the nearby project at 80 Natoma Street; and

23 WHEREAS, During the approximate time period from 2005 through 2007, Jack P.
24 Moehle served with Hardip Pannu, Structural Engineer for Middlebrook and Louie, on a DBI
25 Structural Peer Review Panel for the 301 Mission Street project; and Mr. Moehle and Mr.

1 Pannu's primary point of contact at DBI was Hanson Tom, the City's principal engineer for
2 plan review of the project; and

3 WHEREAS, Mr. Moehle, Mr. Pannu, and Mr. Tom participated in the review of various
4 structural engineering design issues for the high-rise and mid-rise towers at 301 Mission
5 Street before DBI issued its certificate of final completion and occupancy for the project in
6 September 2009; and

7 WHEREAS, Mr. Moehle served as Chair of the peer review panel tasked with reviewing
8 the structural safety of the design of the proposed development at 80 Natoma Street; and

9 WHEREAS, Former Director of the Department of Building Inspection, Frank Y. Chiu,
10 ordered construction work stopped at the proposed project at 80 Natoma Street, in light of the
11 publicly-documented concerns from experts and geotechnical consultants that the building's
12 proposed foundation would not support the weight of said high-rise, all of which Mr. Moehle
13 was apprised of; and

14 WHEREAS, Records show that in June 2004, Jack Moehle was retained by DeSimone
15 Consulting Engineers to sit on the peer review panel of the Millennium Tower project at 301
16 Mission Street; and

17 WHEREAS, Mr. Moehle and his counterpart on the Millennium Tower review panel
18 paid for by Millennium Partners, Hardip Pannu, both signed off on the safety and design of
19 the 301 Mission Street project, even though it was a similar foundation to the 80 Natoma
20 Street project that was ultimately denied; and

21 WHEREAS, Mr. Moehle possesses information related to the subject matter under
22 investigation by the Board of Supervisors, and the Board of Supervisors is unable to acquire
23 this information from other sources because of Mr. Moehle's unique role; and

24 WHEREAS, Supervisor Aaron Peskin, Chairperson of the Government Audit and
25 Oversight Committee, has requested that Mr. Moehle attend a hearing of the Committee to

1 respond to questions regarding his knowledge of the 301 Mission and 80 Natoma projects and
2 provide the Committee with relevant records in his possession, but Mr. Moehle has indicated
3 that he will not attend a hearing or produce records unless compelled to do so by subpoena;
4 and

5 WHEREAS, On November 16, 2016, the Chairperson of the Committee sent a letter to
6 Mr. Moehle requesting that he reconsider his unwillingness to attend a hearing or produce
7 documents, a copy of which is on file with the Clerk of the Board of Supervisors in File
8 No. 160975, but Mr. Moehle has not responded to that letter; and

9 WHEREAS, A draft subpoena requiring Mr. Moehle to attend a hearing of the
10 Committee and to produce documents is on file with the Clerk of the Board of Supervisors in
11 File No. 160975; now, therefore, be it

12 MOVED, That pursuant to its authority under Charter, Section 16.114, and Government
13 Code, Sections 25170 and 37104, the Board of Supervisors hereby directs the Clerk of the
14 Board to issue a subpoena duces tecum in substantially the form and substance of the draft
15 subpoena referenced above, requiring Mr. Moehle to (1) attend the Government Audit and
16 Oversight Committee meeting at 9:30 a.m. on January 12, 2017, to provide oral information
17 and respond to questions regarding his participation in and knowledge regarding the design,
18 engineering, review, and approval process for the projects at 80 Natoma Street and 301
19 Mission Street in San Francisco; and (2) produce and permit inspection and copying of all
20 documents, records, and other materials in his possession related to those two projects; and,
21 be it

22 FURTHER MOVED, That the Clerk of the Board of Supervisors, in consultation with the
23 City Attorney, may amend the draft subpoena prior to issuing it, consistent with the direction in
24 this Motion; and, be it

1 FURTHER MOVED, That the Clerk and the Chairperson of the Government Audit and
2 Oversight Committee may in their discretion modify the time and date set forth in the
3 subpoena, and may reissue the subpoena with a modified time and date, in order to
4 accommodate Mr. Moehle's and the Committee's schedules.

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