

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

GOVERNMENT AUDIT AND OVERSIGHT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Aaron Peskin, Chair
Government Audit and Oversight Committee

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

DATE: December 12, 2016

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, December 13, 2016

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, December 13, 2016. This item was acted upon at the Government Audit and Oversight Committee Meeting on December 8, 2016 at 10:00 a.m., by the votes indicated.

Item No. 51 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.

AMENDED, AMENDMENT OF THE WHOLE BEARING SAME TITLE

Vote: Supervisor Aaron Peskin - Aye
Supervisor London Breed - Aye
Supervisor Norman Yee - Aye

RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

Vote: Supervisor Aaron Peskin - Aye
Supervisor London Breed - Aye
Supervisor Norman Yee - Aye

cc: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy Director
Jon Givner, Deputy City Attorney

File No. 161299

Committee Item No. 1

Board Item No. 51

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date December 8, 2016

Board of Supervisors Meeting
Cmte Board

Date DECEMBER 13, 2016

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER (Use back side if additional space is needed)

- Draft Subpoena
- Referral FYI - 12/02/2016
- Committee Report Request - 12/02/2016
- COMMITTEE REPORT MEMO - 12/12/2016
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Completed by: Erica Major

Date December 2, 2016

Completed by: JM

Date 12/9/16

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

2

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.**

10

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. 161299; 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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1 Dr. Carlton B. Goodlett Place, Room 244
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SUBPOENA

To: **Jack P. Moehle**
Department of Civil and Environmental Engineering
University of California - Berkeley
775 Davis Hall
Berkeley, CA 94720

Pursuant to Section 16.114 of the San Francisco Charter and California Government Code Sections 25170 and 37104, the San Francisco Board of Supervisors hereby commands you to appear at **9:30 a.m. on January 12, 2017** at the following location:

City Hall
1 Dr. Carlton B. Goodlett Place
Legislative Chamber, Room 250
San Francisco, CA 94102

- To provide oral information and respond to questions at a public hearing of the Board of Supervisors' Government Audit and Oversight Committee regarding your participation in and knowledge regarding the design, engineering, review, and approval process for the projects at 80 Natoma Street and 301 Mission Street in San Francisco.
- To produce and permit inspection and copying of all documents, records, and other materials in your possession related to those two projects.

If you have any questions regarding compliance with this subpoena, contact:

Angela Calvillo, Clerk of the Board of Supervisors, Tel. (415) 554-5184

Failure to comply with the commands of this subpoena may subject you to enforcement proceedings before the Superior Court of the State of California.

Date: _____

By: _____
Angela Calvillo, Clerk of the Board

161799

From: Jack MOEHLE <moehle@berkeley.edu>
Sent: Wednesday, December 07, 2016 7:01 PM
To: Peskin, Aaron (BOS)
Cc: Major, Erica (BOS); Angulo, Sunny (BOS); Givner, Jon (CAT)
Subject: Re: Attn: Professor Jack Moehle re: Millennium Hearing

Supervisor Peskin

I am sorry that I have not been able to attend your hearings. Certain contractual matters have constrained me in that regard. Assuming that you are successful in obtaining a subpoena to command my attendance, I look forward to appearing before your hearing. Please note, however, that I will be overseas attending the 16th World Conference on Earthquake Engineering starting 3 January through almost the end of January. Appearance dates should be scheduled before or after then.

Respectfully,

Jack Moehle

On Wed, Nov 16, 2016 at 3:30 PM, Peskin, Aaron (BOS) <aaron.peskin@sfgov.org> wrote:

Member, Board of Supervisors

District 3



City and County of San Francisco

AARON PESKIN

November 16, 2016

Professor Jack P. Moehle

Civil and Environmental Engineering

University of California Berkeley

775 Davis Hall, Berkeley CA

Dear Prof. Moehle:

Thank you for your initial willingness to participate in tomorrow's hearing at the Government Audit and Oversight Committee. As you know, the details of the review and approval process of both the 80 Natoma and 301 Mission projects have profound implications not only for the safety and habitability of existing high-rises in our downtown core, but also for future developments in this seismically vulnerable area.

I understand that you are no longer willing to attend the hearing. As I relayed to you in our phone conversation earlier this week, I have directed our City Attorney to draft legislation allowing the Board of Supervisors to subpoena you and any related documents in your possession relative to the 80 Natoma and 301 Mission projects, including correspondence with peer review panelists, as a result.

I believe that your institutional knowledge of both of these projects, as well as your familiarity with the civil and environmental engineering requirements necessary to ensure state-of-the-art building standards are critical for the City to consider as we move forward with our own policy reforms.

I hope that you will reconsider the valuable role that you can play in assisting the City with these reforms, and I look forward to eventually working with you toward that end. I have asked that the attached letter be included in the file for tomorrow's hearing. Please feel free to follow up with my Chief of Staff, Ms. Angulo, in the event that you are able to participate after all.

Best,

Aaron

Aaron Peskin

District 3 Supervisor

415.554.7450 – VOICE

Aaron.Peskin@sfgov.org

Member, Board of Supervisors
District 3



AARON PESKIN

COB, GAO Clerk
Leg. Dep.

City and County of San Francisco

MEMORANDUM

DATE: December 2, 2016

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Aaron Peskin
Chairperson

RE: Government Audit and Oversight Committee
COMMITTEE REPORTS

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2016 DEC - 2 PM 3:28
BY [Signature]

Pursuant to Board Rule 4.20, as Chair of the Government Audit and Oversight Committee, I have deemed the following matters are of an urgent nature and request they be considered by the full Board on December 13, 2016, as Committee Reports:

161299 Issuance of Subpoena Duces Tecum - Jack P. Moehle

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.

160478 Campaign and Governmental Conduct Code - Requiring Commissioners to File Behested Payment Reports

Ordinance amending the Campaign and Governmental Conduct Code to require members of City boards and commissions to file behested payment reports regarding the solicitation of charitable contributions.

These matters will be heard at the Special Meeting of the Government Audit and Oversight Committee on December 8, 2016, at 10:00 a.m.

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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

Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2016 NOV 29 PM 4:05
Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Supervisor Peskin

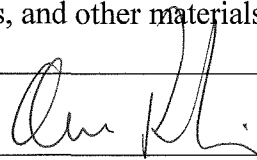
Subject:

[Issuance of subpoena - Jack P. Moehle]

The text is listed below or attached:

Motion directing the Clerk to issue a subpoena to Jack P. Moehle requiring him to appear at the Government Audit and Oversight Committee hearing at 9:30 a.m. on January 12, 2017 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.

Signature of Sponsoring Supervisor: _____



For Clerk's Use Only: