

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST

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TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst



SUBJECT: February 16, 2017 Budget and Finance Committee Meeting

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Item 1 File 17-0052	Department: Public Utilities Commission (PUC)
EXECUTIVE SUMMARY	
<p>Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve the Purchase and Sale Agreement between the SFPUC and the City of Pleasanton for the City of Pleasanton to purchase 401 and 403 Old Bernal Avenue for \$4,200,000. <p>Key Points</p> <ul style="list-style-type: none"> • The City and County of San Francisco, under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC)'s Water Enterprise, currently owns 3.18 acres of vacant property located at 401 and 403 Old Bernal Avenue in Pleasanton, California that has not been used by SFPUC since 1949. Because the Water Enterprise was facing large budget deficits in 2015 as the drought and subsequent drought-related water-use restrictions had decreased revenue, the SFPUC decided to sell certain underutilized property. • SFPUC determined after consultation with senior management and the Public Utilities Commission to sell the property "as is" in order to expedite the sale. The property was valued at \$4,200,000 based on an independent appraisal. • After receiving three bids for the properties, the SFPUC deemed the City of Pleasanton was the highest responsible bidder at \$4,200,000 and entered into negotiations. <p>Fiscal Impact</p> <ul style="list-style-type: none"> • Net proceeds, less broker commission, to the SFPUC from the sale of the property to the City of Pleasanton are \$4,095,100. • The City's Financial Policies, approved by the Board of Supervisors in 2011 and later codified in Administrative Code, Section 10.61, restrict the use of one-time revenues from the sale of land; such revenues may only be used for one-time uses. The sale proceeds of \$4,095,100 will be used to support revenue-funded capital programs. For 2017 to 2018, the SFPUC has planned to spend \$27,800,000 of water revenues for capital programs. <p>Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(c) states that any sale of real property owned by the City and County of San Francisco is subject to Board of Supervisors approval.

BACKGROUND

The City and County of San Francisco, under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC)'s Water Enterprise, currently owns 3.18 acres of vacant property located at 401 and 403 Old Bernal Avenue in Pleasanton, California (hereafter referred to as "401 and 403 Old Bernal Avenue"). The City and County of San Francisco acquired the property in 1930 as part of a larger acquisition of the Spring Valley Water Works. The property was used to pump groundwater for sale, but has not been used for that purpose by SFPUC since 1949.

Decision to Sell 401 and 403 Old Bernal Avenue

According to Ms. Rosana Russell, SFPUC Real Estate Director, the Water Enterprise's policy is to keep most unused land in case of future needs, such as staging of pipeline projects. As 401 and 403 Old Bernal Avenue are in Alameda County, the SFPUC has been paying property taxes to Alameda County, as well as maintenance costs. Because the Water Enterprise was facing large budget deficits in 2015 as the drought and subsequent drought-related water-use restrictions had decreased revenue, the SFPUC decided to sell certain underutilized property in order to (a) eliminate property tax and maintenance costs, (b) provide a source of revenue to the Water Enterprise operations, and (c) take advantage of the current high value of the property market by selling six properties,¹ one of which is 401 and 403 Bernal Avenue. In a written statement dated December 18, 2015, the Assistant General Managers for each of the Water, Wastewater and Power Enterprises declared that 401 and 403 Old Bernal Avenue are not essential to the SFPUC's utility needs.

According to Ms. Russell, the SFPUC determined after consultation with senior management and the Public Utilities Commission to sell the property "as is" in order to expedite the sale.

The Associated Right of Way Services, Inc., an independent appraiser, in an appraisal report dated May 6, 2016 valued the property at \$4,158,000. In accordance with the Administrative Code, Chapter 23.2, CBRE, Inc. reviewed and confirmed the appraisal valuation on January 12, 2017.

Selection of Real Estate Brokers

On the SFPUC's behalf, the City's Real Estate Division selected Colliers International (Colliers) in 2015, based on a competitive process, to serve as broker for the sale of the six SFPUC properties.

¹ According to Ms. Russell, only one of the properties the SFPUC has decided to sell currently has a Purchase and Sale Agreement. That property is known as the Helen Drive lots in Millbrae, and a sale price has been negotiated for \$2,340,000 (File 17-0053 of this report).

Offering of 401 and 403 Old Bernal Avenue

In the first half of 2016, the Real Estate Division issued the required statutory notices to public entities² to offer to sell 401 and 403 Old Bernal Avenue, and at the same time, Colliers also advertised the properties to potential purchasers. Colliers solicited bids from prospective property buyers for two weeks, between October 12 and October 27, 2016. The SFPUC received bids from the City of Pleasanton, KFS Design, and Charter Properties. The bids were evaluated based on the (1) purchase price, (2) deposit amount, and (3) proof of funds, and (4) substantial adherence to the terms and conditions of the draft Purchase and Sale Agreement attached to the bid requests. Table 1 below shows a summary of the bids based on these metrics.

Table 1: Summary of Bids on 401 and 403 Old Bernal Avenue

Bidder	Purchase price	Deposit amount	Proof of funds	Request for additional terms and conditions
City of Pleasanton	\$4,200,000	\$100,000	Yes	Ability to request environmental report, grant deed instead of quit claim deed, and receive title insurance option
KFS Design	\$4,200,000	\$84,000	Partial*	The right to two extensions for due diligence phase to inspect property for 180 days total
Charter Properties	\$3,400,000	\$50,000	No	Initial deposit amount only after removal of contingencies

* KFS Design was able to show funds from the Bank of China, which still needed to be converted to US dollars.

While two of the bids (City of Pleasanton and KFS Design International) both bid \$4,200,000, KFS Design's bid had a lower deposit amount, the proof of funds was not provided in United States currency, and contained a request for an extended due diligence phase. Therefore, the SFPUC deemed the City of Pleasanton was the highest responsible bidder at \$4,200,000 and entered into negotiations.

On November 7, 2016, the SFPUC notified the City of Pleasanton that it was the selected bidder. Colliers, SFPUC Real Estate Services, and the City Attorney's Office worked with the City of Pleasanton and its counsel to finalize the Purchase and Sale Agreement, which requires a

² According to Ms. Russell, the Real Estate Division issued notices to public entities (as defined by California Government Code § 54222 and 50079) and housing sponsors (as defined by California Government Code § 5422(a) and 50074) who requested to be notified, both in accordance with the California Surplus Land Act.

quitclaim deed, rather than the requested grant deed for sale of this property.³ The Pleasanton City Council approved the Purchase and Sale Agreement on December 20, 2016.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the Purchase and Sale Agreement between the SFPUC and the City of Pleasanton for the City of Pleasanton to purchase 401 and 403 Old Bernal Avenue for \$4,200,000. Additionally, the proposed resolution:

1. Finds that the sale of 401 and 403 Old Bernal Avenue is not a project under California Environmental Quality Act (CEQA) Guidelines, Sections 15060(c) and 15378, and is consistent with the City's General Plan, and the eight priority policies of Planning Code, Section 101.1,
2. Approves the terms and conditions of the Purchase and Sale Agreement for the sale of 401 and 403 Old Bernal Avenue to the City of Pleasanton, and authorizes the SFPUC to take any and all steps to execute the Purchase and Sale Agreement in substantially the form presented to the Board,
3. Authorizes the SFPUC to enter into any amendments or modifications to the Purchase and Sale agreement and enter into ancillary agreements,
4. Authorizes the SFPUC to take any and all steps to ensure the transfer of 401 and 403 Old Bernal Avenue pursuant to the Purchase and Sale Agreement, and
5. Requires that the Director of Property to provide the Clerk of the Board of Supervisors a fully executed copy of the Purchase and Sale agreement within thirty (30) days of the Director providing his signature to the agreement.

CEQA Guidelines and City's General Plan

According to the CEQA Guidelines, Section 15378, only a project by the governmental agency is subject to CEQA. The SFPUC determined that the sale of the property does not result in a direct physical change in the environment, and therefore does not fall within the definition of a project. According to Ms. Russell, the City of Pleasanton will still have to undergo CEQA if they decide to alter the property in any way.

The proposed resolution would find that the sale of the 401 and 403 Old Bernal Avenue is consistent with the City's General Plan and eight priority policies of Planning Code, Section 101.1. According to the General Plan Referral, the proceeds from the proposed sale would further the objective of the SFPUC by contributing to miscellaneous revenue for the Water Enterprise. In addition, 401 and 403 Old Bernal Avenue are located outside of the City of San

³ A quitclaim deed, unlike a grant deed, contains no title covenant and thus offers no warranty as to the status of the property title.

Francisco and are currently vacant. The sale would therefore not have an impact on the eight priority policies.⁴

Terms and Conditions of the Purchase and Sale Agreement:

The SFPUC will sell 401 and 403 Old Bernal Avenue “as is,” meaning that the City of Pleasanton is relying solely on its independent investigation of the property and not on any representations or warranties of any kind from the City of San Francisco. The City and County of San Francisco does not guarantee the conditions of the property, nor does it assume any responsibility for the compliance of the property with any statute, ordinance or regulation. The City of Pleasanton, as part of its agreement to purchase 401 and 403 Old Bernal Avenue “as is,” waives any right to sue the City and County of San Francisco for damages.

The City of Pleasanton will have a contingency period until the earlier of either (a) ten business days after the Effective Date, or (b) sixty days after the agreement date (January 13, 2017) to review and approve the terms and conditions. The closing date of the sale will either be (a) the later of fifteen days after the expiration of the contingency period or the Effective Date, or (b) such earlier date upon which the City of Pleasanton and the City and County of San Francisco mutually agree.

FISCAL IMPACT

Net proceeds to the SFPUC from the sale of the property to the City of Pleasanton are \$4,095,100, as shown in Table 2 below.

Table2: Net Sale Proceeds to SFPUC for 401 and 403 Old Bernal Avenue

Proposed Sale Price	\$4,200,000
Independent Consideration ^a	100
Less Broker Commission ^b	<u>(105,000)</u>
Total Net Proceeds to City	\$4,095,100

^a The Purchase and Sale Agreement requires the City of Pleasanton to pay \$100 to SFPUC for independent consideration.

^b The agreement between the City and Colliers provides for Colliers to receive a 2.5 percent commission for real estate brokerage services.

As noted above, the SFPUC pays both property taxes and maintenance costs on 401 and 403 Old Bernal Avenue, resulting in savings to SFPUC from the sale of 401 and 403 Old Bernal Avenue of approximately \$5,184 per year after the sale.

The City’s Financial Policies, approved by the Board of Supervisors in 2011 and later codified in Administrative Code, Section 10.61, restrict the use of one-time revenues from the sale of land;

⁴ The eight priorities look for impacts on retail uses, resident employment, San Francisco’s housing stock or neighborhood character, public transit service, industrial or service sectors, earthquake preparedness, historical buildings, or parks and open spaces.

such revenues may only be used for one-time uses. According to Mr. Carlos Jacobo, SFPUC Budget Director, the sale proceeds of \$4,095,100 will be used to support revenue-funded capital programs. For 2017 to 2018, the SFPUC has planned to spend \$27,800,000 of water revenues for capital programs.

RECOMMENDATION

Approve the proposed resolution.

Item 2 File 17-0053	Department: Public Utilities Commission (PUC)
EXECUTIVE SUMMARY	
<p>Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve the Purchase and Sale Agreement between Pradeep Gandhi and Gabriel Gonzalez, and the SFPUC, for Pradeep Gandhi and Gabriel Gonzalez to purchase three parcels, consisting of approximately 15,341 square feet located between Helen Drive and Dexter Place in the city of Millbrae, for a purchase price of \$2,340,000. <p>Key Points</p> <ul style="list-style-type: none"> • The City and County of San Francisco, under the jurisdiction of the San Francisco Public Utilities (SFPUC), currently owns three vacant lots in Millbrae. The SFPUC purchased the Millbrae Lots in 1948 and have remained vacant the entire time they have been in the SFPUC's possession. • Because the Water Enterprise was facing large budget deficits in 2015 as the drought and subsequent drought-related water-use restrictions had decreased revenue, the SFPUC decided to sell certain underutilized property. FPUC determined after consultation with senior management and the Public Utilities Commission to sell the property "as is" in order to expedite the sale • An independent appraisal valued the properties at \$2,040,000. After receiving six bids for the property, the SFPUC determined that Pradeep Gandhi and Gabriel Gonzalez were the highest responsible bidders at \$2,340,000 and entered into negotiations. <p>Fiscal Impact</p> <ul style="list-style-type: none"> • Net proceeds, less broker commission, to the SFPUC from the sale of the property to Pradeep Gandhi and Gabriel Gonzalez are \$2,281,500. • The City's Financial Policies, approved by the Board of Supervisors in 2011 and later codified in the Administration Code, Section 10.61, restrict the use of one-time revenues from the sale of land; such revenues may only be used for one-time uses. The sale proceeds of \$2,281,500 will be used to support revenue-funded capital programs. <p>Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(c) states that any sale of real property owned by the City and County of San Francisco is subject to Board of Supervisors approval.

BACKGROUND

The City and County of San Francisco, under the jurisdiction of the San Francisco Public Utilities (SFPUC), currently owns three vacant lots in Millbrae located between 248 and 308 Helen Drive (Parcel I), between 247 and 307 Helen Drive (Parcel II), and between 12 and 16 Dexter Place (Parcel III), consisting of 15,341 total square feet. These residential-sized lots are hereafter referred to as “Millbrae Lots.” According to Ms. Rosanna Russell, SFPUC Real Estate Director, the SFPUC purchased the Millbrae Lots in 1948 for a proposed water infrastructure project that was never completed. The lots have remained vacant the entire time they have been in the SFPUC’s possession.

Decision to Sell Millbrae Lots

According to Ms. Russell, the Water Enterprise’s policy is to keep most unused land in case of future needs, such as staging of pipeline projects. As the Millbrae Lots are in San Mateo County, the SFPUC has been paying property taxes to San Mateo County, as well as maintenance costs. Because the Water Enterprise was facing large deficits in 2015 as the drought and subsequent drought-related water-use restrictions had decreased revenue, the SFPUC decided to sell underutilized property in order to (a) eliminate property tax and maintenance costs, (b) provide a source of revenue to the Water Enterprise operations, and (c) take advantage of the current high value of the property market by selling six properties,¹ one of which is the Millbrae Lots. In a written statement dated December 18, 2015, the Assistant General Manager for each of the Water, Wastewater and Power Enterprises declared that the Millbrae Lots are not essential to the SFPUC’s utility needs.

According to Ms. Russell, the SFPUC determined after consultation with senior management and the Public Utilities Commission to sell the property “as is” in order to expedite the sale.

CBRE, Inc., an independent appraiser, in an appraisal dated June 13, 2016 valued the properties at \$2,040,000. In accordance with Administrative Code Chapter 23.2, Richard Blum and Associates reviewed and confirmed the appraisal valuation on January 5, 2017.

Selection of Real Estate Brokers

On the SFPUC’s behalf, the City’s Real Estate Division selected Colliers International (Colliers) in 2015, based on a competitive process, to serve as broker for the sale of the six SFPUC properties.

¹ According to Ms. Russel only one additional property of the six properties SFPUC has decided to sell currently has a Purchase and Sale Agreement. That property is 401 and 403 Old Bernal Avenue in Pleasanton, and has been negotiated for \$4,200,000 (File 17-0052 of this report).

Offering of Millbrae Lots

In the first half of 2016, the Real Estate Division issued the required statutory notices to public entities² to offer the Millbrae Lots and also advertised the properties to private investors. Colliers solicited bids from prospective property buyers for two weeks, between October 12 and October 27, 2016. The SFPUC received six bids, but none were from any public agency or affordable housing provider during or after the expiration of the state mandated noticing period. The bids were evaluated based on the (1) purchase price, (2) deposit amount, (3) proof of funds, and (4) substantial compliance to the terms and conditions in the draft Purchase and Sale Agreement attached to the bid request. Table 1 below shows a summary of the bids based on these metrics.

Table 1: Summary of Bids on Millbrae Lots

Bidder	Purchase price	Deposit amount	Proof of funds	Request for additional terms and conditions
Pradeep Gandhi and Gabriel Gonzalez	\$2,340,000	\$70,200	Yes	None
MAAN Capital LP	2,205,000	66,150	Yes	Standard 3% earnest money deposit. Purchase contingent on receiving a licensed survey. Closing to occur 60 days subsequent to expiration of contingency date and effective date.
Tie Jin Liu	2,215,000	100,000	Partial*	Bidder requested the removal of structural encroachments.
Ironhorse Fund, LLC	2,100,888	60,000	Yes	Bidder provided a loan commitment in the amount of \$2,100,888.
Happy Ocean LLC	2,100,000	100,000	Yes	None
Wai Cheung aka Anda W. Cheung	700,000**	30,000	Yes	None

* Proof of funds does not cover full bid amount

**Bidder issued a blanket offer to purchase any one of the parcels, not all three.

According to Ms. Levy, the SFPUC considered bids for single lots and bids for a combination of two or more lots on a price per lot basis. Pradeep Gandhi and Gabriel Gonzalez together offered to buy all three lots at the highest price per lot. Therefore, the SFPUC determined that Pradeep Gandhi and Gabriel Gonzalez were the highest responsible bidders at \$2,340,000 and entered into negotiations.

² According to Ms. Russell, the Real Estate Division issued notices to public entities (as defined by California Government Code § 54222 and 50079) and housing sponsors (as defined by California Government Code § 5422(a) and 50074) who requested to be notified, both in accordance with the California Surplus Land Act.

On November 7, 2016, the SFPUC notified Pradeep Gandhi and Gabriel Gonzalez that they were the selected bidder. The buyers signed the Purchase and Sale Agreement on November 18, 2016.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the Purchase and Sale Agreement between Pradeep Gandhi and Gabriel Gonzalez, and the SFPUC, for Pradeep Gandhi and Gabriel Gonzalez to purchase three parcels, consisting of approximately 15,341 square feet located between Helen Drive and Dexter Place in the city of Millbrae, for a purchase price of \$2,340,000. The proposed resolution:

1. Finds that the sale of Millbrae Lots is not a project under California Environmental Quality Act (CEQA) Guidelines, Sections 15060(c) and 15378, and is consistent with the City's General Plan, and the eight priority policies of Planning Code, Section 101.1,
2. Approves the terms and conditions of the Purchase and Sale Agreement for the sale of the Millbrae Lots to the Pradeep Gandhi and Gabriel Gonzalez, and authorizes the SFPUC to take any and all steps to execute the Purchase and Sale Agreement in substantially the form presented to the Board,
3. Authorizes the SFPUC to enter into any amendments or modifications to the Purchase and Sale agreement and enter into ancillary agreements,
4. Authorizes the SFPUC to take any and all steps to ensure the transfer of the Millbrae Lots pursuant to the Purchase and Sale Agreement, and
5. Requires that the Director of Property to provide the Clerk of the Board of Supervisors a fully executed copy of the Purchase and Sale agreement within thirty (30) days of the Director providing his signature to the agreement.

CEQA Guidelines and City's General Plan

According to the CEQA Guidelines, Section 15378, only a project by the governmental agency is subject to CEQA. The SFPUC determined that the sale of the property does not result in a direct physical change in the environment, and therefore does not fall within the definition of a project.

The proposed resolution would find that the sale of the Millbrae Lots is consistent with the City's General Plan and eight priority policies of Planning Code, Section 101.1. According to the General Plan Referral, the proceeds from the proposed sale would further the objective of the SFPUC by contributing to miscellaneous revenue for the Water Enterprise. In addition, the Millbrae Lots are located outside of the City of San Francisco and are currently vacant. The sale would therefore not have an impact on the eight priority policies.³

³ The eight priorities look for impacts on retail uses, resident employment, San Francisco's housing stock or neighborhood character, public transit service, industrial or service sectors, earthquake preparedness, historical buildings, or parks and open spaces.

Terms and Conditions of the Purchase and Sale Agreement:

The SFPUC will sell the Millbrae Lots “as is,” meaning that Pradeep Gandhi and Gabriel Gonzalez are relying solely on its independent investigation of the property and not on any representations or warranties of any kind from the City and County of San Francisco. The City and County of San Francisco does not guarantee the conditions of the property, nor does it assume any responsibility for the compliance of the property with any statute, ordinance or regulation. Pradeep Gandhi and Gabriel Gonzalez, as part of their agreement to purchase the Millbrae Lots “as is,” waive any right to sue the City and County of San Francisco for damages.

The closing date of the sale will either be (a) the later of fifteen days after the expiration of the contingency period or the effective date, or (b) such earlier date upon which Pradeep Gandhi and Gabriel Gonzalez and the City and County of San Francisco mutually agree. There is currently no contingency period in the agreement.

FISCAL IMPACT

Net proceeds to the SFPUC from the sale of the property to Pradeep Gandhi and Gabriel Gonzalez are \$2,281,500, as shown in Table 2 below.

Table 2: Net Sale Proceeds to SFPUC for the Millbrae Lots

Proposed Sale Price	\$2,340,000
Less Broker Commission ^a	(58,500)
Total Net Proceeds to City	\$2,281,500

^a The agreement between the City and Colliers provides for Colliers to receive a 2.5 percent commission for real estate brokerage services.

Pradeep Gandhi and Gabriel Gonzalez will pay the transfer tax of \$2,574 to San Mateo County, equal to 0.11 percent of the purchase price of \$2,340,000.

As noted before, the SFPUC pays both property taxes on and maintenance costs for the Millbrae Lots, resulting in savings to SPUC from the sale of the Millbrae Lots of approximately \$2,320 per year.

The City’s Financial Policies, approved by the Board of Supervisors in 2011 and later codified in the Administration Code, Section 10.61, restrict the use of one-time revenues from the sale of land; such revenues may only be used for one-time uses. According to Mr. Carlos Jacobo, SFPUC Budget Director, the sale proceeds of \$2,281,500 will be used to support revenue-funded capital programs. For 2017 to 2018, the SFPUC has planned to spend \$27,800,000 of water revenue-funds for capital programs.

RECOMMENDATION

Approve the proposed resolution.

Items 4 and 5 Files 16-1288 and 16-1289	Department: Office of the Public Defender (OPD)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • <u>File 16-1288</u> would appropriate \$6,945,965 of General Reserve to the Public Defender’s Office to create a legal unit to defend immigrants from deportation in FY 2016-17 and FY 2017-18; and <u>File 16-1289</u> would amend the Annual Salary Ordinance to create 17 new positions in the Public Defender’s Office for the new immigrant defense unit. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The Board of Supervisors previously approved an appropriation of \$1.5 million to fund legal services to immigrants provided by community based organizations in FY 2016-17. • The Public Defender is requesting 17 new positions to process an estimated 400 to 600 cases annually, providing legal services to immigrants facing detention and deportation. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Because initial caseload will likely be less than estimated by the Public Defender’s Office, the requested number of positions should be reduced from 17 to 13 in FY 2016-17; and to 15 in FY 2017-18. • Because the Board of Supervisors previously appropriated funding of \$1.5 million, the proposed ordinance should be amended to delete \$3,442,789 allocated to community based organizations in FY 2016-17 and FY 2017-18. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • The Administrative Code provides for a General Reserve equal to 2.25 percent of General Fund revenues in FY 2017-18. According to the Five-Year Plan Update, projected deposits to the General Reserve are \$14.6 million in FY 2017-18. • The Board of Supervisors previously appropriated \$1.5 million from the General Reserve in FY 2016-17 to fund community based organizations to provide legal services to immigrants, and the proposed ordinance would appropriate \$2.4 million from the General Reserve in FY 2016-17 and FY 2017-18, totaling \$3.9 million. In order to comply with requirements of the Administrative Code, the City will need to increase the FY 2017-18 deposit to the General Reserve by \$3.9 million, from \$14.6 million to \$18.5 million. The City will need to identify revenue increases or expenditure savings in order to increase the deposit to the General Reserve by \$3.9 million in FY 2017-18. <p style="text-align: center;">Recommendations</p> <ul style="list-style-type: none"> • Amend File 16-1288 to reduce the appropriation by \$4,504,168, from \$6,945,965 to \$2,441,797. • Amend File 16-1289 to reduce the FY 2016-17 FTE by 3.83, from 7.08 FTE to 3.25 FTE; and the FY 2017-18 FTE by 2.0, from 17.0 FTE to 15.0 FTE. • Approval of the proposed ordinances, as amended, is a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

City Charter Section 9.105 states that amendments to the Annual Appropriations Ordinance, after the Controller certifies the availability of funds, are subject to Board of Supervisors approval by ordinance.

BACKGROUND

There are approximately 115,000 non-citizen residents of San Francisco¹ of which 44,000 are estimated to be undocumented immigrants². Based on Immigration Customs Enforcement (ICE) fingerprint data, since 2010, an average of approximately 7,000 immigrants were deported each year from the San Francisco Immigration Court, which falls under the jurisdiction of the Executive Office for Immigration Review under the U.S. Department of Justice. The numbers of individuals who actually appear before the San Francisco Immigration Court are lower because many deportations occur without due process and without an opportunity to appear before a judge at a hearing in order to defend against removal. Based on the stated intent of the administration of President Trump, detentions and deportations are expected to expand in 2017.

Over the past year, approximately 1,500 immigrants were detained during their deportation proceedings in San Francisco. While in detention, individuals are separated from their families and unable to access materials and evidence to prepare for their cases.

The vast majority of individuals who are deported are not represented by an attorney in their immigration court proceedings. An analysis of immigration court records, conducted by the California Coalition for Universal Representation, found that 67 percent of detained immigrants in San Francisco lacked representation by an attorney over a three-year period from 2012 to 2015. The analysis found that only 5 percent of unrepresented detainees obtained relief (i.e., asylum, cancellation of removal, or termination of case) compared to 35 percent of represented detainees as a result of their proceedings in the San Francisco Immigration Court.

Funding to Community-Based Organizations to Provide Legal Services

In January 2017, the Board of Supervisors approved a supplemental appropriation of \$1,500,000 to the Mayor's Office of Housing and Community Development (MOHCD), the City Administrator's Office of Civic Engagement and Immigrant Affairs (OCEIA), and the Human Rights Commission (HRC) to fund legal representation, pathways to citizenship, public outreach, and rapid response social services to be provided by community-based organizations in FY 2016-17 (File No. 16-1344).

The Public Defender's Office New Legal Unit for Immigration Services

The Public Defender's Office (Public Defender) currently has one attorney dedicated to handle immigration cases, including some cases in immigration court. The Public Defender is proposing

¹ U.S. Census Bureau American Community Survey (ACS) 2014 (5-Year Estimates)

² Migration Policy Institute (MPI) analysis of 2014 ACS

to create a new legal unit staffed with 17 new positions of 10 attorneys, 5 paralegals, and 2 senior legal process clerks to handle cases of detained immigrants in immigration court. The new legal unit would also handle some impact litigation cases³. In addition to handling detained deportation cases, the Public Defender will work with community-based organizations in the following:

- Advise non-citizens of the immigration consequences of criminal convictions.
- Create a standard referral form to refer cases between the Public Defender and the collaborative community-based organization members, and refer cases where appropriate.
- Begin working on clients' immigration matters while they are still in county custody to maximize the efficiency of the immigration cases.
- Collaborate on post-conviction relief, where appropriate.
- Assist community-based organizations in obtaining criminal court documents, where relevant.

Each of the 10 attorneys is expected to handle between 40 and 60 detainee cases each year, or a total of 400 to 600 detainee cases per year. According to Ms. Angela Auyong, Public Defender Office Manager, the average time expected to be spent on each detained immigrant case will be approximately 30 attorney hours, 17 paralegal hours, and 7 legal process clerk hours. The Public Defender's Office will establish criteria to determine which cases it will take.

DETAILS OF PROPOSED LEGISLATION

File 16-1288: Supplemental Appropriation Ordinance

The proposed ordinance would appropriate \$6,945,965 of General Reserve to the Public Defender's Office to create a legal unit to defend immigrants from deportation in FY 2016-17 and FY 2017-18, including 17 new positions and grants to community based organizations. The proposed ordinance would appropriate \$1,938,104 in FY 2016-17 and \$5,007,861 in FY 2017-18, totaling \$6,945,965, shown in Table 1 below. The appropriation amount for FY 2016-17 is prorated for the final five months of the year.

³ Impact litigation cases are typically class action lawsuits or individual claims with broader significance intended to influence public policy.

Table 1: Sources and Uses of Funds

Source of Funds	FY 2016-17	FY 2017-18	Total
General Reserve	\$1,938,104	\$5,007,861	\$6,945,965
Total Sources	\$1,938,104	\$5,007,861	\$6,945,965
Uses of Funds			
<u>Public Defender Positions</u>			
Permanent Salaries	\$688,361	\$1,876,810	\$2,565,171
Fringe Benefits	<u>237,158</u>	<u>700,847</u>	<u>938,005</u>
Subtotal, Public Defender Positions	\$925,519	\$2,577,657	\$3,503,176
Community-Based Organizations	1,012,585	2,430,204	3,442,789
Total Uses	\$1,938,104	\$5,007,861	\$6,945,965

File 16-1289: Annual Salary Ordinance Amendment

The proposed ordinance would amend the Annual Salary Ordinance to add 17 new positions in the Public Defender's Office, equal to 7.08 full-time equivalent (FTE) positions in FY 2016-17 and 17.00 FTE positions in FY 2017-18, as shown in Table 2 below.

Table 2: Proposed New Positions in the Public Defender's Office

		Number of Positions	FY 2016-17 FTEs	FY 2017-18 FTEs
8182	Head Attorney	1	0.42	1.00
8177	Attorneys	9	3.75	9.00
8173	Legal Assistant	5	2.08	5.00
8108	Senior Legal Process Clerk	2	0.83	2.00
Total		17	7.08	17.00

FISCAL IMPACT**17 New Positions in the Public Defender's Office**

The supplemental appropriation ordinance appropriates \$925,519 in FY 2016-17 and \$2,577,657 in FY 2017-18, totaling \$3,503,176 to create 17 new positions in the Public Defender's Office, as shown in Table 1 above.

Timeline to Hire New Positions

Since the Public Defender's Office cannot begin the hiring process until the requested appropriation is approved by the Board of Supervisors, and approval would occur on February 28, 2017, at the earliest, the Budget and Legislative Analyst assumes that all new hires will start on April 1, 2017.

The 8177 Attorney and 8182 Head Attorney positions are at-will positions exempt from the civil service hiring process. In the past, the Public Defender's Office has reported that the department can fill vacant attorney positions within about one month. The 8173 Legal Assistant

(paralegal) and 8108 Senior Legal Process Clerk positions are civil service positions. According to Ms. Auyong, the Public Defender's Office intends to use an existing eligible list to expedite the process of filling those positions.

Immigrant Defense Caseload

As noted above, the Public Defender's Office estimates immigrant defense caseload of 400 to 600 cases per year. The Budget and Legislative Analyst projects that initial caseload will be less than estimated by the Public Defender's Office because federal policy to detain undocumented immigrants is not clear,⁴ and that the caseload of the new legal unit will take time to develop. Therefore, the Budget and Legislative Analyst recommends reducing the requested number of positions from 17 to:

- 13 positions in FY 2016-17 (based on an annual caseload of 400); and
- 15 in FY 2017-18 (based on an annual caseload of 500).

The requested number of FTEs in FY 2016-17 would be reduced from 7.08 (as shown in Table 2 above) to 3.25 FTEs to account for a start date of April 1, 2017, as shown in Table 3 below.

Table 3: Proposed Reduction in Positions

FY 2016-17 FTEs						
	Hours per Case ^a	Total Hours for 400 Cases	Hours per FTE ^b	Annual FTE for 400 Cases	Annual Positions	FY 2016-17 FTEs (3 months)
8182 Head Attorney ^c				1.00	1.00	0.25
8177 Attorney	30	12,000	1820	6.59	6.00	1.5
8173 Legal Assistant	17	6,800	1840	3.70	4.00	1
8108 Senior Legal Process Clerk	7	2,800	1840	1.52	2.00	0.5
Total FTEs				12.81	13.00	3.25
FY 2017-18 FTEs						
	Hours per Case ^a	Total Hours for 500 Cases	Hours per FTE ^b	Annual FTE for 500 Cases	Annual Positions	
8182 Head Attorney ^c				1.00	1.00	
8177 Attorney	30	15,000	1820	8.24	8.00	
8173 Legal Assistant	17	8,500	1840	4.62	4.00	
Legal Process Clerk	7	3,500	1840	1.90	2.00	
Total FTEs				15.76	15.00	

^a Hours per case are based on information provided by the Public Defender's Office

^b Based on collective bargaining agreements for the respective classifications

^c Assumes that Head Attorney has no caseload but can support the work of the Attorneys

Salaries and Fringe Benefits

⁴ New federal policy on detaining undocumented immigrants will require additional funding appropriations by Congress and may face legal challenges. Implementation of the President's Executive Order on "Border Security and Immigration Enforcement Improvement", issued on January 25, 2017, calls for the hire of 10,000 officials to enforce the order.

The supplemental appropriation ordinance appropriates \$925,519 in FY 2016-17 and \$2,577,657 in FY 2017-18, totaling \$3,503,176 to create 17 new positions in the Public Defender's Office, as noted above. The Budget and Legislative Analyst's recommendation would result in 13 positions (3.25 FTEs with a start date of April 1, 2017) and salary and fringe benefits of \$418,105 in FY 2016-17 and 15 positions (15.0 FTEs) and salary and fringed benefits of \$2,023,692 in FY 2017-18, as shown in Table 4 below.

Table 4: Budget and Legislative Analyst's Recommendation

	FY 2016-17	FY 2017-18	Total
Ordinance (File 16-1288)	\$925,519	\$2,577,657	\$3,503,176
Budget and Legislative Analyst Recommendation	<u>418,105</u>	<u>2,023,692</u>	<u>2,441,797</u>
Recommended Reduction	\$507,414	\$553,965	\$1,061,379

The Budget and Legislative Analyst's reduction would reduce the appropriation for salaries and fringe benefits from \$3,503,176 to \$2,441,797, a reduction of \$1,061,379.

Appropriation for Community Based Organizations

Because the Board of Supervisors previously appropriated funding of \$1.5 million in January 2017 for community based organizations to provide legal representation and other services to immigrants in FY 2016-17, the proposed ordinance should be amended to delete \$3,442,789 allocated to community based organizations in FY 2016-17 and FY 2017-18.

Summary

The Budget and Legislative Analyst recommends amending:

- Ordinance 16-1288 to reduce the appropriation amount by \$4,504,168, from \$6,945,965 to \$2,441,797 (see Table 4 above); and
- Ordinance 16-1289 to reduce the FY 2016-17 FTE by 3.83, from 7.08 FTE to 3.25 FTE; and the FY 2017-18 FTE by 2.0, from 17.0 FTE to 15.0 FTE (see Table 3 above).

POLICY CONSIDERATION

Administrative Code Section 10.60(b) provides for a General Reserve of 2.25 percent of General Fund revenues in FY 2017-18. According to the Five-Year Plan Update, prepared jointly by the Mayor's Office, Controller's Office, and Budget and Legislative Analyst Office in December 2016, projected deposits to the General Reserve are \$14.6 million in FY 2017-18.

The Board of Supervisors previously appropriated \$1.5 million from the General Reserve in FY 2016-17 to fund community based organizations to provide legal services to immigrants, and the proposed ordinance would appropriate \$2.4 million from the General Reserve in FY 2016-17 and FY 2017-18, totaling \$3.9 million. In order to comply with requirements of the Administrative Code, the City will need to increase the FY 2017-18 deposit to the General Reserve by \$3.9 million, from \$14.6 million to \$18.5 million. The City will need to identify revenue increases or expenditure savings in order to increase the deposit to the General Reserve by \$3.9 million in FY 2017-18.

RECOMMENDATIONS

1. Amend File 16-1288 to reduce the appropriation by \$4,504,168, from \$6,945,965 to \$2,441,797 (see Table 4 above);
2. Amend File 16-1289 to reduce the FY 2016-17 FTE by 3.83, from 7.08 FTE to 3.25 FTE; and the FY 2017-18 FTE by 2.0, from 17.0 FTE to 15.0 FTE (see Table 3 above)
3. Approval of the proposed ordinances, as amended, is a policy matter for the Board of Supervisors.

Item 6 File 16-1346	Department: [Select Board, Commission, or Department]
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed ordinance would (1) de-appropriate \$38,057,546 of surplus General Fund salary and benefit expenditures and overtime in FY 2016-17, and (2) appropriate \$38,057,546 to the Department of Homelessness and Supportive Housing and General Reserve in FY 2016-17 and 2017-18. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The Department of Homelessness and Supportive Housing FY 2016-17 and FY 2017-18 budgets included expenditures for navigation centers, supportive housing, housing subsidies, and service contracts that were to be funded by the proposed 0.75 cent sales tax increase. These expenditures were placed on Budget and Finance Committee reserve, pending approval by the voters of the proposed sales tax increase in November 2016. After the failure of the sales tax increase, the Budget and Finance Committee approved \$6,486,776 in Property Transfer Tax and MediCal waiver revenues to pay for these programs and services in FY 2016-17. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The ordinance would appropriate \$6,486,776 in projected General Fund salary and fringe benefit expenditures savings in FY 2016-17 in lieu of Property Transfer Tax and MediCal waiver revenues to pay for navigation centers, supportive housing, housing subsidies, and service contracts in FY 2016-17. The ordinance would also appropriate \$11,847,000 to these programs and services in the Department of Homelessness and Supportive Housing budget in FY 2017-18 and \$11,720,770 to the General Reserve in FY 2017-18. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • The proposed ordinance appropriates \$26,333,776 in <i>one-time</i> FY 2016-17 General Fund surplus to navigation centers, supportive housing and housing subsidy programs, and homelessness service contracts in the FY 2016-17 and FY 2017-18 budgets. The City will need to identify <i>ongoing</i> sources of funds after FY 2017-18 to continue funding these programs and services. <p style="text-align: center;">Recommendations</p> <ul style="list-style-type: none"> • Amend the proposed ordinance to state that \$38,057,546 in projected General Fund surplus in FY 2016-17 will be de-appropriated from various City departments based on projections developed by the Controller for the Six Month Budget Status Report. • Amend the proposed ordinance to state that (a) \$6,486,776 (rather than \$6,500,000) is appropriated in FY 2016-17, (b) \$19,847,000 (rather than \$19,850,000) is appropriated in FY 2017-18 to the Department of Homelessness and Supportive Housing, and (c) \$11,720,770 (rather than \$11,707,546) is appropriated in FY 2017-18 to the General Reserve. • Approve the proposed ordinance as amended. 	

MANDATE STATEMENT

City Charter Section 9.105 states that amendments to the Annual Appropriation Ordinance are subject to Board of Supervisors approval by ordinance after the Controller certifies the availability of funds.

BACKGROUND

The Department of Homelessness and Supportive Housing's budget included expenditures of \$12,129,400 in FY 2016-17 and \$50,214,200 in FY 2017-18 that were to be funded by the proposed 0.75 cent sales tax on the November 2016 ballot. These expenditures were placed on Budget and Finance Committee reserve pending the outcome of the November 2016 election. However, the sales tax measure failed to pass.

The Mayor's Office subsequently identified \$6,486,776 in increased Property Transfer Tax and MediCal waiver¹ revenues to partially fund FY 2016-17 Department of Homelessness and Supportive Housing expenditures on Budget and Finance Committee reserve. As a result, on December 14, 2016, the Budget and Finance Committee approved File 16-1335, which released \$6,486,776 from the Budget and Finance Committee reserve for FY 2016-17.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would (1) de-appropriate \$38,057,546 of surplus General Fund salary and benefit expenditures and overtime in FY 2016-17 and (2) appropriate \$38,057,546 to the Department of Homelessness and Supportive Housing and General Reserve in FY 2016-17 and 2017-18, as shown in Table 1 below.

Table 1: De-Appropriation and Appropriation of \$38,057,546

De-Appropriation	FY 2016-17	FY 2017-18	Total
General Fund Salaries and Fringe Benefits and Overtime	\$36,359,248		\$38,057,546
Total De-Appropriation	\$38,057,546	\$0	\$38,057,546
Appropriation			
Homelessness and Supportive Housing	\$6,486,776	\$19,847,000	\$26,333,776
General Reserve		11,720,770	11,720,770
Total Appropriation	\$6,486,776	\$31,570,770	\$38,057,546

¹ Increased Real Property Transfer Tax revenues are due to the approval by the voters of Proposition W in November 2016, increasing the transfer tax rate on property sales of more than \$5 million. An increase in MediCal Waiver funding to the Department of Public Health in FY 2016-17 frees up General Fund revenues previously appropriated in the Department's FY 2016-17 budget.

FISCAL IMPACT**De-Appropriation**

The proposed ordinance de-appropriates \$38,057,546 in General Fund surplus salaries and fringe benefits and overtime in the FY 2016-17 budgets of various City departments.

According to the Controller's Six Month Budget Status Report, City departments' projected General Fund surplus in FY 2016-17 is \$81.7 million. The proposed ordinance should be amended to state that \$38,057,546 in projected General Fund surplus in FY 2016-17 will be de-appropriated from various City departments based on projections developed by the Controller for the Six Month Budget Status Report.

Appropriation of Funds

As noted above, the Budget and Finance Committee approved the release in December 2016 of \$6,486,776, appropriated in the Department of Homelessness and Supportive Housing FY 2016-17 budget for navigation centers, supportive housing and housing subsidy programs, and homelessness service contract increases. These expenditures of \$6,486,776 were originally to be funded by the 0.75 cent sales tax submitted to the voters on the November 2016 ballot and were placed on Budget and Finance Committee reserve pending the outcome of the November 2016 election. When the 0.75 cent sales tax was not approved by the voters, the Budget and Finance Committee approved the use of \$6,486,776 in Property Transfer Tax and MediCal waiver revenues to fund these programs and services in FY 2016-17.

The proposed ordinance would appropriate \$6,486,776 in surplus General Fund salaries and fringe benefits, rather than Property Transfer Tax and MediCal waiver revenues, to fund these programs services in FY 2016-17, as shown in Table 2 below. In addition, the proposed ordinance would appropriate \$19,847,000 in the Department of Homelessness and Supportive Housing FY 2017-18 budget to fund these programs and services, and a pilot program for Emergency Medical Services and the Homeless Outreach Team (HOT), as shown in Table 2 below. The total appropriation to the Department of Homelessness and Supportive Housing in FY 2016-17 and FY 2017-18 is \$26,333,776.

Table 2: Department of Homelessness and Supportive Housing Appropriation

	FY 2016-17	FY 2017-18	Total
Navigation Centers			
Currently Open	\$600,000	\$2,000,000	\$2,600,000
In process FY2016-17 (Central Waterfront)	1,301,194	2,500,000	3,801,194
In process FY2017-18 (SOMA)	0	2,500,000	2,500,000
Supportive Housing			
Currently Open	110,000	3,220,000	3,330,000
In process 2016-17	210,000	2,340,000	2,550,000
Housing Subsidies			
Backfill HUD reduction to housing providers	0	689,468	689,468
Rapid Rehousing for Families	0	1,400,000	1,400,000
TAY Housing Rental Subsidies	640,369	315,000	955,369
Senior and Disabled Rental Subsidies	747,000	747,000	1,494,000
HOT team/ EMS6 Partnership Pilot Continuation	0	200,000	200,000
PATH beds (emergency hotel unit)	0	100,000	100,000
Homelessness service contract increases	2,878,213	3,835,532	6,713,745
Total	\$6,486,776	\$19,847,000	\$26,333,776

The total appropriation under the proposed ordinance is \$38,057,546, of which \$26,336,776 is appropriated to the Department of Homelessness and Supportive Housing in FY 2016-17 and FY 2017-18. The balance of \$11,720,770 is allocated to the General Reserve in FY 2017-18.

The proposed ordinance should be amended to state that (a) \$6,486,776 (rather than \$650,000,000) is appropriated in FY 2016-17, (b) \$19,847,000 (rather than \$19,850,000) is appropriated in FY 2017-18 to the Department of Homelessness and Supportive Housing, and (c) \$11,720,770 (rather than \$11,707,546) is appropriated in FY 2017-18 to the General Reserve.

POLICY CONSIDERATION

The Budget and Legislative Analyst recommends approval of the proposed ordinance because the Board of Supervisors previously appropriated funds for the navigation centers, supportive housing, housing subsidies and service contracts in the Department of Homelessness and Supportive Housing budget in FY 2016-17 and FY 2017-18. The proposed ordinance appropriates \$26,333,776 in *one-time* FY 2016-17 General Fund surplus to replace the 0.75 cent sales tax revenues that were originally intended to fund these programs and services. The City will need to identify *ongoing* sources of funds after FY 2017-18 to continue funding the navigation centers, supportive housing and housing subsidy programs, and homelessness service contract increases funded by the subject ordinance in FY 2016-17 and FY 2017-18.

RECOMMENDATIONS

1. Amend the proposed ordinance to state that \$38,057,546 in projected General Fund surplus in FY 2016-17 will be de-appropriated from various City departments based on projections developed by the Controller for the Six Month Budget Status Report.
2. Amend the proposed ordinance to state that (a) \$6,486,776 (rather than \$6,500,000) is appropriated in FY 2016-17, (b) \$19,847,000 (rather than \$19,850,000) is appropriated in FY 2017-18 to the Department of Homelessness and Supportive Housing, and (c) \$11,720,770 (rather than \$11,707,546) is appropriated in FY 2017-18 to the General Reserve.
3. Approve the proposed ordinance as amended.