

File No. 190163

Committee Item No. 7

Board Item No. 4

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: March 7, 2019

Board of Supervisors Meeting:

Date: March 12, 2019

#### Cmte Board

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Prepared by: John Carroll

Date: March 1, 2019

Prepared by: John Carroll

Date: March 11, 2019

BOARD of SUPERVISORS



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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 Gordon Mar, Chair  
Government Audit and Oversight Committee

FROM: John Carroll, Assistant Clerk

DATE: March 11, 2019

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**  
Tuesday, March 12, 2019

The following file should be presented as a COMMITTEE REPORT at the Board meeting, Tuesday, March 12, 2019. This item was acted upon at the regular Government Audit and Oversight Committee meeting on Thursday, March 7, 2019, at 10:00 a.m., by the votes indicated.

Item No. 22                      File No. 190163

Ordinance authorizing settlement of multiple lawsuits filed by 1049 Market Street, LLC, against the City and County of San Francisco, including 1049 Market Street, LLC v. City and County of San Francisco, et al. (U.S. District Court, Northern District of California, Case No. 4:15-cv-02075 filed on May 8, 2015), 1049 Market Street, LLC v. Miller, et al. (San Francisco Superior Court, Case No. CGC-15-545950 filed on May 21, 2015; 1st Circuit Court of Appeal No. A148716), 1049 Market Street, LLC v. City and County of San Francisco (San Francisco Superior Court, Case No. CPF-16-515046 filed on May 23, 2016), 1049 Market Street, LLC v. City and County of San Francisco (San Francisco Superior Court, Case No. CGC-15-547161 filed on August 3, 2015), 1049 Market Street, LLC v. City and County of San Francisco (San Francisco Superior Court, Case No. CPF-17-515754 filed on June 30, 2017), and 1049 Market Street, LLC v. City and County of San Francisco (San Francisco Superior Court, Case No. CGC-17-559890 filed on June 30, 2017); the lawsuits challenge the City's enforcement of the Planning Code's requirements for a Conditional Use Authorization for elimination of residential uses and the City's enforcement of Planning and Building Code violations against the property owners of 1049 Market Street;

Continues on next page

upon the grant of additional discretionary City approvals, the settlement would legalize commercial use of portions of the building and provide fifteen units of affordable housing, with priority for artists, at 1049 Market Street through the purchase and retrofit of the second floor of the building by Tenderloin Housing Clinic ("THC"); the settlement would provide for a loan in the amount of \$2,400,000 by the City to THC to permanently finance THC's purchase of an interest in the building for the purpose of affordable housing and additional funds to retrofit residential units.

RECOMMENDED AS A COMMITTEE REPORT Vote:

Supervisor Gordon Mar - Aye  
Supervisor Vallie Brown - Aye  
Supervisor Shamann Walton - Aye  
Supervisor Aaron Peskin - Excused

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

1 [Settlement of Lawsuit - 1049 Market Street, LLC - \$2,400,000 Loan - Tenderloin Housing  
2 Clinic]

3 Ordinance authorizing settlement of multiple lawsuits filed by 1049 Market Street, LLC,  
4 against the City and County of San Francisco, including 1049 Market Street, LLC v. City  
5 and County of San Francisco, et al. (U.S. District Court, Northern District of California,  
6 Case No. 4:15-cv-02075 filed on May 8, 2015), 1049 Market Street, LLC v. Miller, et al.  
7 (San Francisco Superior Court, Case No. CGC-15-545950 filed on May 21, 2015; 1st  
8 Circuit Court of Appeal No. A148716), 1049 Market Street, LLC v. City and County of  
9 San Francisco (San Francisco Superior Court, Case No. CPF-16-515046 filed on  
10 May 23, 2016), 1049 Market Street, LLC v. City and County of San Francisco (San  
11 Francisco Superior Court, Case No. CGC-15-547161 filed on August 3, 2015), 1049  
12 Market Street, LLC v. City and County of San Francisco (San Francisco Superior Court,  
13 Case No. CPF-17-515754 filed on June 30, 2017), and 1049 Market Street, LLC v. City  
14 and County of San Francisco (San Francisco Superior Court, Case No. CGC-17-559890  
15 filed on June 30, 2017); the lawsuits challenge the City's enforcement of the Planning  
16 Code's requirements for a Conditional Use Authorization for elimination of residential  
17 uses and the City's enforcement of Planning and Building Code violations against the  
18 property owners of 1049 Market Street; upon the grant of additional discretionary City  
19 approvals, the settlement would legalize commercial use of portions of the building  
20 and provide fifteen units of affordable housing, with priority for artists, at 1049 Market  
21 Street through the purchase and retrofit of the second floor of the building by  
22 Tenderloin Housing Clinic ("THC"); the settlement would provide for a loan in the  
23 amount of \$2,400,000 by the City to THC to permanently finance THC's purchase of an  
24 interest in the building for the purpose of affordable housing and additional funds to  
25 retrofit residential units.

1 Be it ordained by the People of the City and County of San Francisco:

2 Section 1. Pursuant to Charter Section 6.102(5), the Board of Supervisors hereby  
3 authorizes the City Attorney to settle the actions entitled *1049 Market Street, LLC v. City and*  
4 *County of San Francisco, et al.* (U.S. District Court, Northern District of California, Case No.  
5 4:15-cv-02075); *1049 Market Street, LLC v. Miller, et al.* (San Francisco Superior Court, Case  
6 No. CGC-15-545950; 1st Circuit Court of Appeal No. A148716); *1049 Market Street, LLC v.*  
7 *City and County of San Francisco* (San Francisco Superior Court, Case No. CGC-15-547161);  
8 *1049 Market Street, LLC v. City and County of San Francisco* (San Francisco Superior Court,  
9 Case No. CPF-16-515046); *1049 Market Street, LLC v. City and County of San Francisco*  
10 (San Francisco Superior Court, Case No. CPF-17-515754); *1049 Market Street, LLC v. City*  
11 *and County of San Francisco* (San Francisco Superior Court, Case No. CGC-17-559890).

12 Under the terms of the settlement agreement, 1049 Market Street, LLC will seek approval of a  
13 project that will include subdividing the property known as 1049 Market Street ("Property") into  
14 discrete legal interests; creating a single floor containing 15 residential units to be purchased  
15 and managed by THC with funding from the City, to be occupied as principal residences first  
16 by the tenants, and then as permanently affordable residential units with priority to other  
17 artists pursuant to Planning Code section 204.4(b); returning the remaining floors of the  
18 Property to commercial use; and releasing all remaining claims between the Parties that were  
19 raised in the litigation described above and additional lawsuits between 1049 Market Street,  
20 LLC and additional third party tenants. Following subdivision of the Property, THC would  
21 purchase a discrete legal interest in the residential units ("Residential Lot") with permanent  
22 loan financing in the amount of \$2,400,000 from the City for affordable housing, as well as  
23 additional funding as necessary to improve the Residential Lot for residential habitation. 1049  
24 Market Street, LLC, would undertake certain improvements to the building for the benefit of  
25 the Residential Lot, and would obtain approval for the subdivision of the Property, and

1 Conditional Use Authorization for the proposed commercial uses. All necessary permits and  
2 approvals will be subject to future discretionary actions by the Board of Supervisors, the  
3 Planning Department, the Planning Commission, the Department of Building Inspection, San  
4 Francisco Public Works, and other City departments, boards, and commissions as applicable,  
5 as further outlined in the Settlement Agreement and Mutual General Release contained in  
6 Board File No. 190163, and will be reviewed for compliance with the California Environmental  
7 Quality Act, Public Resources Code Sections 21000, et seq.

8 Section 2. The above-named actions were filed in the Northern District of California  
9 and the San Francisco Superior Court on the dates set forth above, and the following parties  
10 were named in the lawsuits: Plaintiff/Petitioner 1049 Market Street, LLC;  
11 Defendant/Respondent the City and County of San Francisco; Defendants/Real Parties in  
12 Interest Aaron Miller, Mark Tse, Steban Guevara, Andrew Greenlees, Clarence Wilson, IV,  
13 Ron Rosen, Jason Grohman, Michael Mason, Michael Greenlees; Ben Cady, Chandra  
14 Redack, Peter Taylor, Brad K. Alder, Chad Benjamin Potter, Manuel Rodriguez, Ann Cooper,  
15 Melissa Bracero, Adam Wojewidka, Chris Baker, Brendan Barthel, Carina C. Zona, Karl Hass,  
16 Juan P. Escobedo, Darren Brown, Bogdan Marcol, Christopher Figueroa, Anthony Breaux,  
17 Veronica Johnson aka Ronnie Johnson.

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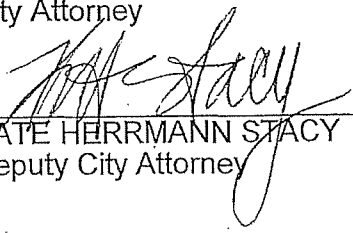
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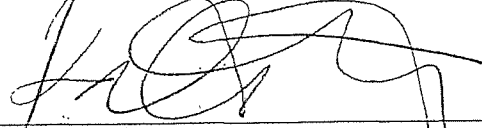
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APPROVED AS TO FORM AND  
RECOMMENDED:

DENNIS J. HERRERA  
City Attorney

  
KATE HERRMANN STACY  
Deputy City Attorney

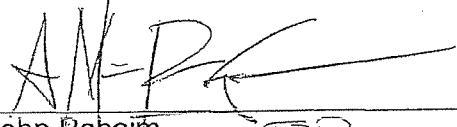
RECOMMENDED:

  
Kate Hartley  
Director  
Mayor's Office of Housing and  
Community Development

FUNDS AVAILABLE:

  
BEN ROSENFELD  
Controller

RECOMMENDED:

  
John Rahaim  
Director  
Planning Department

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Mayor Breed; Supervisor Haney

BOARD OF SUPERVISORS

TENDERLOIN HOUSING CLINIC

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RAQUEL FOX  
STEPHEN P. BOOTH  
MARGARET DEMATTEO  
TYLER ROUGEAU  
MICHAEL ZITANI

Contact:  
Email: [steve@thclinic.org](mailto:steve@thclinic.org)  
Phone: 771-9850 ext. 1122

February 1, 2019

VIA HAND DELIVERY

San Francisco Board of Supervisors  
One Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

Re: *1049 Market Street Settlement Ordinance*

Dear Members of the Board:

I represent fifteen current tenants and five former tenants at 1049 Market Street, San Francisco, CA. On behalf of my clients, I write in support of the settlement ordinance to be introduced before the Board on February 5, 2019.

The tenants are long-term, primarily low income, rent controlled tenants of 1049 Market Street, located in the mid-Market Street area of San Francisco. The tenants are artists, musicians, writers, performers and small business persons who began living in the building before mid-Market became a center for the tech industry in San Francisco. Although the first five floors of the building were permitted as offices, due to the difficulties in securing stable tenants when mid-Market was a blighted area, the previous owner of the building allowed tenants to live in these units despite the lack a permit for residential occupancy. However, in 2013, in response to City enforcement efforts, the current owner began eviction proceedings to terminate the tenancies in 77 units in the building. These efforts resulted in many tenants vacating the property. I began representing 22 of the tenants in the fall of 2013. The eviction proceedings eventually resulted in the service of Ellis Act eviction notices to the remaining tenants in February 2015, and subsequent litigation that went to trial in March of 2018.

Due to the efforts of the tenants, the owner, the Mayor's Office, the City Attorney, and Superior Court Judge Anne-Christine Massullo, the parties and the City reached a global resolution and settlement that will legalize and preserve fifteen units in the building (located on the second floor) as permanently affordable

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2019 FEB 12 PM 4:31

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: Kanishka Karunaratne Cheng *KKC*  
RE: Settlement of Lawsuit - 1049 Market Street, LLC - \$2,400,000 Loan -  
Tenderloin Housing Clinic  
DATE: February 12, 2019

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Ordinance authorizing settlement of multiple lawsuits filed by 1049 Market Street, LLC against the City and County of San Francisco, including 1049 Market Street, LLC v. City and County of San Francisco, et al. (U.S. District Court, Northern District of California, Case No. 4:15-cv-02075 filed on May 8, 2015), 1049 Market Street, LLC v. Miller, et al. (San Francisco Superior Court, Case No. CGC-15-545950 filed on May 21, 2015; 1st Circuit Court of Appeal No. A148716), 1049 Market Street, LLC v. City and County of San Francisco (San Francisco Superior Court, Case No. CPF-16-515046 filed on May 21, 2015), 1049 Market Street, LLC v. City and County of San Francisco (San Francisco Superior Court, Case No. CGC-15-547161 filed on August 3, 2015), 1049 Market Street, LLC v. City and County of San Francisco (San Francisco Superior Court, Case No. CPF-17-515754 filed on June 30, 2017), and 1049 Market Street, LLC v. City and County of San Francisco (San Francisco Superior Court, Case No. CGC-17-559890 filed on June 30, 2017); the lawsuits challenge the City's enforcement of the Planning Code's requirements for a Conditional Use Authorization for elimination of residential uses and the City's enforcement of Planning and Building Code violations against the property owners of 1049 Market Street; upon the grant of additional discretionary City approvals, the settlement would legalize commercial use of portions of the building and provide fifteen units of affordable housing, with priority for artists, at 1049 Market Street through the purchase and retrofit of the second floor of the building by Tenderloin Housing Clinic ("THC"); the settlement would provide for a loan in the amount of \$2,400,000 by the City to THC to permanently finance THC's purchase of an interest in the building for the purpose of affordable housing and additional funds to retrofit residential units.

Please note that Supervisor Haney is a co-sponsor of this legislation.

Should you have any questions, please contact Kanishka Karunaratne Cheng at 415-554-6696.

~~February 1, 2019~~

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housing for artists, and also permits the owner to return the remaining floors in the building to office use.

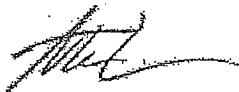
Through funding from the City's affordable housing program, these fifteen units will be renovated, legalized, and preserved as permanently affordable housing for the low-income residents and artists. Creating affordable housing in the mid-Market area is important to preserve the economic diversity in the area, as well as provide housing for artists near the cultural centers of our City.

I have represented artists facing displacement from our City for over 30 years. Artists face unique challenges in finding and affording living space that accommodates their work as artists, and unfortunately we have had an exodus of artists leaving San Francisco due to the lack of safe, affordable live/work spaces. Each of these dwelling units will be integrated into the work space for artists and artisans under Planning Code § 204.4. The building, already a fully-sprinklered Type III building, will be fire safe, with updated HVAC, remodeled bathrooms and a new elevator.

The Ellis Act is primarily used to evict long-term rent-controlled tenants who have affordable rents. Every rent-controlled unit lost due to eviction under the Ellis Act is a unit lost to the affordable rental housing stock. This settlement will preserve fifteen units of affordable housing in the rapidly gentrifying mid-Market area, and keeps fifteen tenants in their homes. I urge you to pass this Ordinance.

Thank you for your attention in this matter.

Very truly yours,



Stephen L. Collier

Attorney for Chad Potter, Karl Haas, Ann Naomi Cooper, Peter Taylor, Adam Wojewidka, Brendan Barthel, Christopher Figueroa, Bogdan Marcol, Melissa Bracero, Chris Baker, Chandra Redack, Carina Zona, Darren Brown, Benjamin Cady, Patrick Cook, Manuel Rodriguez, Brad Alder, Anthony Breaux, Stephanie Goss and Veronica Johnson.

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