

FILE NO. 211027

Petitions and Communications received from September 23, 2021, through September 30, 2021, for reference by the President to Committee considering related matters, or to be ordered filed by the Clerk on October 5, 2021.

Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information will not be redacted.

From the Office of the City Attorney, submitting updated advice regarding meetings of policy bodies during the COVID emergency. Copy: Each Supervisor. (1)

From the California Fish and Game Commission, submitting notices on the proposed changes in Regulations concerning the Experimental Fishing Permit Program (Phase II) and consideration of the petition to list the Pacific leatherback sea turtle as an endangered species. Copy: Each Supervisor. (2)

From the Department of Public Health, submitting a Budget Revision Notification Memo and documentation for Grant Tuberculosis Epidemiologic Studies Consortium. Copy: Each Supervisor. (3)

From Shireen McSpadden; Executive Director, Department of Disability and Aging Services, submitting the Community Living Fund, program for case management and purchase of resources and services, 6-month report, July-December 2020. Copy: Each Supervisor. (4)

From San Francisco Public Utilities Commission, submitting a quarterly report on the status of applications to PG&E for electric service per Board of Supervisors' Resolution No. 227-18. Copy: Each Supervisor. (5)

From San Francisco Public Utilities Commission's Citizens' Advisory Committee, regarding continued support and budget for the SFPUC Racial Equity Plan and Community Benefits. Copy: Each Supervisor. (6)

From Verizon Wireless, submitting notice of antenna installations at 3979 Sacramento St and 3695 Jackson Street. Copy: Each Supervisor. (7)

From Robert Biedron, regarding street name changes in San Francisco. Copy: Each Supervisor. (8)

From Aaron Goodman, regarding the number 44 Muni bus in San Francisco. Copy: Each Supervisor. (9)

From concerned citizens, regarding parking fees in all Golden Gate National Recreational Areas in San Francisco. 2 letters. Copy: Each Supervisor. (10)

From Jeff Tindle, regarding restaurant chains in San Francisco. Copy: Each Supervisor. (11)

From Grover Cleveland Democratic Club, regarding public comment at the Board of Supervisors meeting. Copy: Each Supervisor. (12)

From Steve Ward, regarding the quality of life in San Francisco. Copy: Each Supervisor. (13)

From Eileen Boken, regarding various items on the Board of Supervisors Meeting Agenda for September 28, 2021. File Nos. 211011 and 211012. Copy: Each Supervisor. (14)

From concerned citizens, regarding a Hearing of an Appeal for Conditional Use Authorization Approval at 575 Vermont Street. 4 letters. File No. 210709. Copy: Each Supervisor. (15)

From concerned citizens, regarding supportive housing. 6 letters. Copy: Each Supervisor. (16)

From Moscone Emblidge & Rubens, regarding the filing of a writ petition and complaint. Copy: Each Supervisor. (17)

From concerned citizens, regarding a Hearing of an Appeal for Conditional Use Authorization Approval at 249 Texas Street. 5 letters. File No. 210709. Copy: Each Supervisor. (18)

From concerned citizens, regarding a Hearing of an Appeal for Conditional Use Authorization Approval at 450 O'Farrell Street. 12 letters. File No. 210858. Copy: Each Supervisor. (19)

From concerned citizens, regarding a Hearing of a Final Mitigated Negative Declaration at 1525 Pine Street. 52 letters. File No. 210901. Copy: Each Supervisor. (20)

From concerned citizens, regarding a proposed resolution calling for a Creation of a "Beach to Bay" Car-Free Connection and Equitable Access to Golden Gate Park. 2 letters. File No. 210944. Copy: Each Supervisor. (21)

From concerned citizens, regarding a proposed resolution for a Sublease Agreement - California State Lands Commission - Candlestick Point State Recreation Area - Vehicle Triage Center. 2 letters. File No. 210966. Copy: Each Supervisor. (22)

From George McGlynn, regarding a Hearing of an Appeal for a Categorical Exemption at 35 Ventura Avenue. File No. 210927. Copy: Each Supervisor. (23)

From Sycopated Architecture, regarding a new residence at 1230 Revere Avenue. Copy: Each Supervisor. (24)

From concerned citizens, regarding cyclists blocking the Great Highway. 6 letters. Copy: Each Supervisor. (25)

From concerned citizens, regarding the Great Highway. 5 letters. Copy: Each Supervisor. (26)

From Taz Auto Detailing, regarding City and County of San Francisco vehicle washing contract. Copy: Each Supervisor. (27)

From Kaylee Stein, regarding the number 19 Muni bus route in San Francisco. Copy: Each Supervisor. (28)

From the Office of the Mayor, submitting an Acting Mayor Notice designating Supervisor Myrna Melgar as Acting-Mayor from Wednesday, September 29, 2021, at 1:25 p.m. until Friday, October 1, 2021, at 11:59 p.m. Further designation Supervisor Rafael Mandelman as Acting-Mayor from Saturday, October 2, 2021, at 12:00 a.m. until October 4, 2021, at 9:25 p.m. Copy: Each Supervisor. (29)

From Mary Miles, regarding Civil Grand Jury Report, "Van Ness Avenue: What Lies Beneath". Files Nos. 210702 and 210703. Copy: Each Supervisor. (30)

From Janis Reed, regarding noise and air pollution. Copy: Each Supervisor. (31)

From Bhanu Vikram, regarding SFMTA's hiring process. Copy: Each Supervisor. (32)

From concerned citizens, regarding a whistleblower complaint against the San Francisco Fire Department. Copy: Each Supervisor. (33)

From Ellen Zhou, regarding the COVID-19 vaccination mandate. Copy: Each Supervisor. (34)

From concerned citizens, regarding the 24th and Mission Bart Station. 4 letters. Copy: Each Supervisor. (35)

From John Smith, regarding various concerns in San Francisco. Copy: Each Supervisor. (36)

From Kenneth Frank, regarding the State Water Resource Control Board. Copy: Each Supervisor. (37)

From Wynship Hillier, regarding access to public comment at the full Board of Supervisors meeting. Copy: Each Supervisor. (38)

From the Office of the Board President Shamann Walton, submitting a memo appointing Supervisor Connie Chan and himself to the vacant seats of the Disaster Council. Copy: Each Supervisor. (39)

From the Office of the Mayor, submitting the 37th Supplemental to the Mayoral Proclamation declaring the existence of a local emergency. Copy: Each Supervisor. (40)

From San Francisco Public Utilities Commission, regarding adopting rates and charges for the San Francisco CleanPowerSF Community Choice Aggregation Program pursuant to Charter Section 8B.125. Copy: Each Supervisor. (41)



DENNIS J. HERRERA
City Attorney

JON GIVNER
Deputy City Attorney

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MEMORANDUM

TO: Honorable London N. Breed, Mayor
Honorable Members, Board of Supervisors
Carmen Chu, City Administrator
Angela Calvillo, Clerk of the Board of Supervisors

FROM: Jon Givner, Deputy City Attorney
Anne Pearson, Deputy City Attorney
Bradley Russi, Deputy City Attorney
Paul Zarefsky, Deputy City Attorney

DATE: September 28, 2021

RE: Updated Advice Regarding Meetings of Policy Bodies during COVID-19 Emergency

Over the past 18 months, the City Attorney's Office has issued a series of public memoranda summarizing the evolving laws that apply to meetings of policy bodies during the ongoing COVID-19 pandemic. Based on recently enacted State legislation and other developments, in this memorandum we update and supersede our memorandum of June 5, 2020 on the same subject, which itself updated and superseded earlier memoranda dated March 13, 2020, March 24, 2020, and April 10, 2020. We will continue to update this memorandum as appropriate to address other significant changes in the law around public meetings while the pandemic continues.

On February 25, 2020, Mayor London N. Breed declared the existence of a local emergency relating to COVID-19. Since that declaration, the County Health Officer has issued a number of public health orders relating to COVID-19, the Governor and State Health Officer have issued overlay state orders, and the Mayor and Governor have issued emergency orders suspending select laws applicable to boards, commissions, and other policy bodies, including advisory bodies (collectively, "policy bodies"). As background, we summarize those orders in a brief chronology, in subsection A below.

Then, in subsection B of this memorandum, we address and update a number of legal questions that have arisen regarding policy body meetings during the emergency. The main change since our June 5, 2020 memorandum is that the Legislature recently enacted AB 361, a bill that facilitates the ability of policy bodies to meet remotely during a state of emergency. Most notably, beginning on October 1, 2021, policy bodies must make specific findings at least once every 30 days to continue holding remote meetings without complying with restrictions in State law that would otherwise apply. In this memorandum, we summarize AB 361 at the end of subsection A, and discuss that new requirement in Question 1 in subsection B.

In this memorandum, we do not address the laws and rules that will apply when policy bodies return to in-person meetings. We will issue additional public guidance at that time.

MEMORANDUM

TO: Honorable London N. Breed, Mayor
Honorable Members, Board of Supervisors
Carmen Chu, City Administrator
Angela Calvillo, Clerk of the Board of Supervisors
DATE: September 28, 2021
PAGE: 2
RE: Updated Advice Regarding Meetings of Policy Bodies during COVID-19 Emergency

A. Chronology of Orders and Recommendations of the Mayor, Governor, County Health Officer, and State Legislation, Relating to Public Meetings

The Mayor, the Governor, and the County Health Officer have issued the following emergency orders that specifically relate to meetings of policy bodies:

- On March 11, 2020, the Mayor supplemented her initial declaration of local emergency with an order to suspend select provisions of local law, including sections of the City Charter that prohibit teleconferencing by members of policy bodies, and extended deadlines in local law by which policy bodies must act. This order will remain in place until the Mayor or the Board of Supervisors terminates it.
- On March 12, 2020, the Governor issued an executive order suspending provisions of the Brown Act to allow members of policy bodies to participate in public meetings remotely and without noticing their remote locations, but requiring that there be a physical meeting place for members of the public. On March 18, 2020, the Governor issued another executive order superseding the previous order and authorizing policy bodies to meet by teleconference without having a physical meeting place for members of the public. The Governor superseded that order with a similar executive order on June 11, 2021 (the “Brown Act Suspension Order”). As stated in executive orders dated June 11, 2021 and September 20, 2021, the Brown Act Suspension Order will terminate on October 1, 2021.
- On March 16, 2020, the County Health Officer ordered City residents to stay safe in their homes except for certain essential needs and services, and prohibited all public and private meetings and travel, with certain exceptions. The Health Officer modified and extended the order several times, and replaced it on June 11, 2021 with a new Safer Return Together order. The Health Officer’s current order does not specify an end date.
- On March 17, 2020, the Mayor issued another supplemental order prohibiting all City policy bodies from holding public meetings without prior authorization from the Board of Supervisors, the Mayor, or the Mayor’s designee. This order applied to all policy bodies other than the Board of Supervisors and its committees. The Mayor twice extended that order on April 1 and 30, 2020, and replaced it with subsequent orders on May 29, June 20, and July 31, 2020, as summarized below.
- On March 21, 2020, the Governor issued another executive order, suspending provisions of the Brown Act to allow a majority of members of a policy body to simultaneously receive briefings from local, state, or federal officials concerning information relevant to the COVID-19 emergency outside of a meeting of the policy body and to ask questions of such officials, so long as the members of the policy body do not discuss the COVID-19 emergency among themselves or take any action (the “Private Briefing Order”). In a subsequent executive order on June 11, 2021, the Governor announced that the Private Briefing Order will terminate on September 30, 2021.
- On March 23, 2020, the Mayor issued another supplemental order suspending several provisions of local law regarding policy body meetings, including, among others: (1) the requirement for policy bodies to provide more than 24 hours’ notice of special meetings; (2) the requirement for policy bodies to post their agendas and other information at the Main

MEMORANDUM

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DATE: September 28, 2021

PAGE: 3

RE: Updated Advice Regarding Meetings of Policy Bodies during COVID-19 Emergency

Library; (3) any requirement to televise meetings if televising is not reasonably feasible; (4) the requirement to provide a physical location for members of the public to attend or make public comment when all members of the policy body are teleconferencing from remote locations; (5) the requirement that each member of the public be provided an equal amount of time for public comment; and (6) other requirements that would impede policy bodies' compliance with the Governor's executive orders. The supplemental order also waived all requirements in the Sunshine Ordinance regarding gatherings of passive meeting bodies.

- On May 29, 2020, the Mayor issued another supplemental order allowing policy bodies to meet without prior approval starting June 1, with three conditions. First, the meetings must occur by teleconference or other electronic means without providing a physical meeting place, in compliance with all applicable laws regarding public attendance and comment. Second, policy body meetings must prioritize any urgent action items necessary for public health, safety, and essential government functions. Third, before scheduling a meeting, a policy body that is not established in the Charter must confer with the department that provides administrative and clerical support to the body, to ensure that the meeting will not unreasonably require the time of staff who are otherwise responding to the COVID-19 pandemic.
- On June 20, 2020, the Mayor issued another order allowing a narrow exception to the prohibition on in-person meetings. The June 20 order allows policy body members to meet in-person without members of the public to consider a personnel-related item with advance permission from the Mayor. Finally, on July 31, 2020, the Mayor extended the prohibition on in-person meetings, and the narrow exception. The Mayor's July 31, 2020 order will remain in place until the Mayor or the Board of Supervisors terminates it. The Mayor's order does not apply to meetings of the Board of Supervisors and its committees.

On September 16, 2021, the Governor signed AB 361, a bill amending State law to allow policy bodies under certain circumstances to meet remotely without complying with the Brown Act's normal rules regarding teleconferencing. The bill authorizes modified Brown Act teleconferencing rules to allow remote meetings without providing a physical meeting place for members of the public to attend when the Governor has proclaimed a state of emergency and either (1) state or local officials have imposed or recommended measures to promote social distancing, or (2) meeting in person would present imminent risks to the health or safety of attendees. The bill requires each policy body to make two findings at least once every 30 days to allow the body to continue meeting remotely without complying with the Brown Act's teleconferencing rules: (1) that the policy body has considered the circumstances of the state of emergency, and (2) that one of the following circumstances exists: (a) the state of emergency continues to directly impact the ability of members to meet safely in person, or (b) state or local officials continue to impose or recommend measures to promote social distancing. AB 361 technically took effect on September 16, but the Governor subsequently issued an executive order that suspended AB 361 until October 1, 2021. AB 361 will remain in effect until January 1, 2024.

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Honorable Members, Board of Supervisors
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DATE: September 28, 2021
PAGE: 4
RE: Updated Advice Regarding Meetings of Policy Bodies during COVID-19 Emergency

B. Questions and Answers Regarding Policy Body Meetings during the Emergency

The orders and legislation described above have changed or suspended a number of rules that normally apply to policy body meetings. In this section of the memorandum we answer questions arising from the orders and legislation.

1. May policy bodies hold remote meetings during the emergency?

Yes. Under the Mayor's July 31, 2020 order, policy bodies may meet remotely without advance approval from the Mayor or the Board of Supervisors. But beginning on October 1, 2021, policy bodies must regularly adopt findings to continue holding remote meetings. Under normal circumstances, the Brown Act imposes special requirements for remote (teleconferenced) meetings—including requirements to provide special notice to the public and to allow members of the public to attend each teleconference location and observe each policy body member at the location calling into the meeting. AB 361 suspends those requirements if the Governor has proclaimed a state of emergency, provided that the policy body makes certain findings. Specifically, to invoke AB 361's provisions, so long as the Governor's emergency proclamation remains in effect, a policy body must make two findings at least once every 30 days:

- (1) it has considered (or reconsidered) the circumstances of the state of emergency; and either
- (2a) the state of emergency continues to directly impact the ability of policy body members to meet safely in person, or
- (2b) state or local officials continue to impose or recommend measures to promote social distancing.

Each policy body should adopt finding 1 and either finding 2a or 2b (or it could adopt both 2a and 2b) at its first meeting after September 30, 2021 and again every 30 days thereafter as long as the body continues to meet remotely. Policy bodies that meet less frequently than every 30 days should adopt the findings at the start of every meeting. If a policy body has subcommittees, the policy body may adopt findings governing the body and its subcommittees, so the subcommittees do not need to separately adopt findings.

A sample motion adopting findings is attached at the end of this memorandum. Policy bodies may modify the sample motion in consultation with the City Attorney's Office before adopting it. The City's Health Officer has confirmed the accuracy of the finding regarding social distancing recommendations.

Additionally, under the Mayor's orders, before scheduling a meeting, a policy body that is not established in the Charter must confer with the department that provides administrative support to the body, to ensure that the meeting will not unreasonably require the time of staff who are otherwise deployed or participating in the City's response to the COVID-19 pandemic.

2. May policy bodies hold meetings in-person at a physical meeting space?

No. With two exceptions described below, the Mayor's July 31, 2020 emergency order prohibits policy bodies from meeting in person, so policy body meetings must occur by teleconference or other electronic means (whether audio, video, or both) such as Zoom, Cisco

MEMORANDUM

TO: Honorable London N. Breed, Mayor
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DATE: September 28, 2021
PAGE: 5
RE: Updated Advice Regarding Meetings of Policy Bodies during COVID-19 Emergency

WebEx, or Microsoft Teams without providing a physical meeting place. The Mayor's emergency orders and AB 361 temporarily suspend laws that would otherwise require members of policy bodies to attend meetings in person and provide a physical space for members of the public to attend.

The first exception: Under the Mayor's July 31, 2020 order, policy bodies may meet in person for the limited purpose of considering a personnel-related item, with advance permission from the Mayor. Members of the public cannot attend such a meeting in person.

The second exception: The Mayor's orders do not prohibit the Board of Supervisors or its committees from holding meetings in person at City Hall or another meeting space. The Board of Supervisors has held in-person meetings without members of the public on-site since July 2021 in compliance with local and State health orders.

3. Should policy body meeting agendas provide special information regarding public access to remote meetings?

When policy bodies hold remote meetings, they must ensure that the public is able to observe or listen and to offer public comment telephonically or through other electronic means. The policy body must disclose on any required meeting notice, and on the meeting agenda, the means by which the public may observe or listen and offer public comment in the meeting. The agenda should prominently provide precise information explaining how members of the public can offer public comment during the meeting. And as with any meeting, the policy body must have a process for a member of the public to request a reasonable modification or accommodation under the Americans with Disabilities Act to observe or listen and offer public comment in the meeting, and that process must be disclosed on meeting notices and agendas.

4. Where must notice and agendas of meetings of policy bodies be posted?

A policy body must post the notice and agenda for a meeting on the policy body's website. Also, the policy body must post the notice and agenda at the Main Library. This notice requirement was infeasible during the first year of the pandemic when the Main Library was largely closed, but the requirement applies now that the building is accessible to the public.

5. When must notice and agendas of policy body meetings be posted?

Under the Mayor's March 23, 2020 order, policy bodies must post a notice and agenda at least 72 hours before any regular meeting and at least 24 hours before any special meeting. And policy bodies are not required to post a special meeting notice 15 days in advance of holding a meeting at a location other than the building where the policy body holds regular meetings, including when a policy body meets by teleconference without providing a physical meeting place.

6. Can members of the public provide public comment by telephone, video call, email, or similar means?

As discussed above, policy bodies holding remote meetings must offer a means to allow the public to provide public comment telephonically or through other electronic means in real time. Policy bodies may allow members of the public to comment by telephone, Zoom, Cisco

MEMORANDUM

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Angela Calvillo, Clerk of the Board of Supervisors
DATE: September 28, 2021
PAGE: 6
RE: Updated Advice Regarding Meetings of Policy Bodies during COVID-19 Emergency

WebEx, Microsoft Teams, or similar electronic means. Policy bodies should take steps to ensure that members of the public providing remote public comment have an opportunity to access the meeting and be recognized. For example, the policy body should pause briefly before closing public comment to ensure that no remaining commenters are seeking to speak on an item. Policy bodies also may, but are not required to, allow members of the public to send email messages for the clerk or chairperson to read aloud during the meeting; but the opportunity for members of the public to submit written comments cannot replace their opportunity to provide comment in real time.

7. Must a policy body allow all members of the public the same amount of time to speak during public comment?

No. Under the Mayor's March 23, 2020 order, policy bodies are not required to provide equal time for members of the public to speak during public comment, provided that any departure from the equal time rule is not designed to favor or discriminate against a particular viewpoint. Suspension of the equal time rule gives policy bodies greater flexibility in managing periods for public comment in the face of challenges that may be presented by telephonic or other electronic means of public comment, or if the emergency presents a need to shorten meetings. But to our knowledge, no policy body has needed to depart from the equal time rule during the pandemic. If a policy body is interested in departing from the equal time rule, the chairperson should first confer with the City Attorney's Office.

8. May a policy body continue to meet if technical challenges disrupt public comment?

Remote meetings sometimes present unique challenges caused by malfunctioning technology. If a policy body discovers during a meeting that members of the public generally are not able to provide comment in the manner described in the agenda, then the body should consult with the City Attorney's Office immediately. The policy body cannot take any action on an agenda item until public comment on that item is complete; and even a discussion item may not be concluded without an opportunity for public comment.

While the staff attempts to correct the technical problem hindering public comment, the policy body may recess the meeting temporarily, may continue to discuss the agenda item (assuming the public is still able to observe or listen to the meeting), or may move on and discuss another agenda item, returning later in the meeting to the item that was interrupted. In no case may an agenda item be completed if there has not been an opportunity for public comment. If the staff cannot correct the problem, then the policy body should take no action on any outstanding items as to which there has not been an opportunity for public comment, and should recess the meeting to a later time or date and allow public comment when the meeting resumes.

9. Must a policy body televise meetings at which members are teleconferencing or videoconferencing from remote locations?

No. Under the Mayor's March 23, 2020 order, policy body meetings need not be televised if the chairperson of the body has determined that televising the meeting is not reasonably feasible. Before making that decision, the chairperson must consult with the Mayor's office or the staff of SFGovTV.

MEMORANDUM

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Angela Calvillo, Clerk of the Board of Supervisors
DATE: September 28, 2021
PAGE: 7
RE: Updated Advice Regarding Meetings of Policy Bodies during COVID-19 Emergency

10. Must a policy body holding a remote meeting act by roll call votes?

Yes. Under the Brown Act, policy bodies must take a roll call vote on every action during a remote meeting. Policy bodies may not approve actions “without objection” or “same house same call.”

11. May a policy body receive a briefing regarding the emergency outside a meeting?

No, beginning October 1, 2021. The Governor’s March 23, 2020 Private Briefing Order allowed policy bodies to receive briefings from local, state, or federal officials concerning information relevant to the COVID-19 emergency without compliance with the Brown Act. But that order terminates on September 30, 2021.

12. Do legal deadlines for action by the policy body apply during the emergency?

State and local laws impose various deadlines on policy bodies. For example, many policy bodies are required to hold hearings on appeals within a specific number of days from the date of the notice of appeal. In her March 11, 2020 order, the Mayor suspended deadlines imposed by City law during the emergency and for 14 days following the termination of the emergency, if the policy body is unable to meet and take the required action due to the emergency. But as remote meetings have become commonplace and policy bodies have become familiar with the technology for video meetings, policy bodies have not needed to invoke this rule. And deadlines imposed by state law are still in effect. Policy bodies that are bound by legal deadlines under City law should consult in advance with the City Attorney’s Office if they believe the Mayor’s order may have waived those deadlines.

13. May there be remote gatherings of passive meeting bodies during the emergency?

Yes. In this memorandum, we discuss rules that apply to the City’s policy bodies during the emergency. The Sunshine Ordinance also normally requires limited public notice and public access to gatherings of “passive meeting bodies” that are not policy bodies, such as, for example, gatherings of advisory committees or other multimember bodies created by the initiative of a member of a policy body, the Mayor, the City Administrator, a department head, or an elective officer. But the Mayor’s March 23, 2020 order suspended the notice and access rules that normally apply to gatherings of passive meeting bodies. Under the Mayor’s order, these gatherings may occur, but public notice and attendance rules do not apply. Even though these gatherings are legally permissible under the Mayor’s order, members generally should not meet in person for the same reasons reflected in the Mayor’s order prohibiting in-person meetings of policy bodies.

**RESOLUTION MAKING FINDINGS TO ALLOW TELECONFERENCED
MEETINGS UNDER CALIFORNIA GOVERNMENT CODE SECTION
54953(e)**

WHEREAS, California Government Code Section 54953(e) empowers local policy bodies to convene by teleconferencing technology during a proclaimed state of emergency under the State Emergency Services Act so long as certain conditions are met; and

WHEREAS, In March, 2020, the Governor of the State of California proclaimed a state of emergency in California in connection with the Coronavirus Disease 2019 (“COVID-19”) pandemic, and that state of emergency remains in effect; and

WHEREAS, In February 25, 2020, the Mayor of the City and County of San Francisco (the “City”) declared a local emergency, and on March 6, 2020 the City’s Health Officer declared a local health emergency, and both those declarations also remain in effect; and

WHEREAS, On March 11 and March 23, 2020, the Mayor issued emergency orders suspending select provisions of local law, including sections of the City Charter, that restrict teleconferencing by members of policy bodies; those orders remain in effect, so City law currently allows policy bodies to meet remotely if they comply with restrictions in State law regarding teleconference meetings; and

WHEREAS, On September 16, 2021, the Governor signed AB 361, a bill that amends the Brown Act to allow local policy bodies to continue to meet by teleconferencing during a state of emergency without complying with restrictions in State law that would otherwise apply, provided that the policy bodies make certain findings at least once every 30 days; and

WHEREAS, While federal, State, and local health officials emphasize the critical importance of vaccination and consistent mask-wearing to prevent the spread of COVID-19, the City’s Health Officer has issued at least one order (Health Officer Order No. C19-07y, available online at www.sfdph.org/healthorders) and one directive (Health Officer Directive No. 2020-33i, available online at www.sfdph.org/directives) that continue to recommend measures to promote physical distancing and other social distancing measures, such as masking, in certain contexts; and

WHEREAS, The California Department of Industrial Relations Division of Occupational Safety and Health (“Cal/OSHA”) has promulgated Section 3205 of Title 8 of the California Code of Regulations, which requires most employers in California, including in the City, to train and instruct employees about measures that can decrease the spread of COVID-19, including physical distancing and other social distancing measures; and

WHEREAS, Without limiting any requirements under applicable federal, state, or local pandemic-related rules, orders, or directives, the City’s Department of Public Health, in coordination with the City’s Health Officer, has advised that for group gatherings indoors, such as meetings of boards and commissions, people can increase safety and greatly reduce risks to the health and safety of attendees from COVID-19 by maximizing ventilation, wearing well-fitting masks (as required by Health Officer Order No. C19-07), using physical distancing where the vaccination status of attendees is not known, and considering holding the meeting remotely if feasible, especially for long meetings, with any attendees with unknown vaccination status and where ventilation may not be optimal; and

WHEREAS, On July 31, 2020, the Mayor issued an emergency order that, with limited exceptions, prohibited policy bodies other than the Board of Supervisors and its committees from meeting in person under any circumstances, so as to ensure the safety of policy body members, City staff, and the public; and

WHEREAS, [Insert name of Board/Commission] has met remotely during the COVID-19 pandemic and can continue to do so in a manner that allows public participation and transparency while minimizing health risks to members, staff, and the public that would be present with in-person meetings while this emergency continues; now, therefore, be it

RESOLVED, That [insert name of Board/Commission] finds as follows:

1. As described above, the State of California and the City remain in a state of emergency due to the COVID-19 pandemic. At this meeting, [Insert name of Board/Commission] has considered the circumstances of the state of emergency.
2. As described above, State and City officials continue to recommend measures to promote physical distancing and other social distancing measures, in some settings.

3. As described above, because of the COVID-19 pandemic, conducting meetings of this body [and its committees] in person would present imminent risks to the safety of attendees, and the state of emergency continues to directly impact the ability of members to meet safely in person; and, be it

FURTHER RESOLVED, That for at least the next 30 days meetings of [insert name of Board/Commission] [and its committees] will continue to occur exclusively by teleconferencing technology (and not by any in-person meetings or any other meetings with public access to the places where any policy body member is present for the meeting). Such meetings of [insert name of Board/Commission] [and its committees] that occur by teleconferencing technology will provide an opportunity for members of the public to address this body [and its committees] and will otherwise occur in a manner that protects the statutory and constitutional rights of parties and the members of the public attending the meeting via teleconferencing; and, be it

FURTHER RESOLVED, That the [clerk/secretary/staff] of [insert name of Board/Commission] is directed to place a resolution substantially similar to this resolution on the agenda of a future meeting of [insert name of Board/Commission] within the next 30 days. If [insert name of Board/Commission] does not meet within the next 30 days, the [clerk/secretary/staff] is directed to place a such resolution on the agenda of the next meeting of [insert name of Board/Commission].

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)
Subject: Fish and Game Commission communications
Date: Thursday, September 23, 2021 2:44:00 PM
Attachments: [092321 Fish and Game Commission Notice of Proposed Changes in Regulations.pdf](#)
[092321 Fish and Game Commission Notice of Final Consideration.pdf](#)

Hello,

Please see attached two communications from the Fish and Game Commission.

Office of the Clerk of the Board of Supervisors

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

(415) 554-5184

Commissioners
Peter S. Silva, President
Jamul

Samantha Murray, Vice President
Del Mar

Jacque Hostler-Carmesin, Member
McKinleyville

Eric Sklar, Member
Saint Helena

Erika Zavaleta, Member
Santa Cruz

STATE OF CALIFORNIA
Gavin Newsom, Governor

Fish and Game Commission



Wildlife Heritage and Conservation
Since 1870

Melissa Miller-Henson
Executive Director
P.O. Box 944209
Sacramento, CA 94244-2090
(916) 653-4899
fgc@fgc.ca.gov
www.fgc.ca.gov

September 24, 2021

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a copy of the Notice of Proposed Changes in Regulations concerning the Experimental Fishing Permit Program (Phase II). This notice will be published in the California Notice Register on September 24, 2021.

Sincerely,

Jenn Greaves
Associate Governmental Program Analyst

Attachment

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BOARD OF SUPERVISORS
SAN FRANCISCO
2021 SEP 23 PM 2:21
BY JK

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 205, 713, 1022, 1050, 7071, 7078, 7701, 7708, 8026, 8425, 8429.5, 8491, 8500, 8591, 8841 and 8842 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 713, 1022, 1050, 7070, 7071, 7075, 7078, 7083, 7700, 7701, 7702, 7702.1, 7703, 7704, 7705, 7706, 7707, 7708, 7709, 7710.1, 7710.5, 8026, 8425, 8429.5, 8429.7, 8490, 8491, 8500, 8591, 8841, 8842, 9000, 9000.5, 9001, 9001.6, 9001.7, 9001.8, 9002, 9002.5, 9003, 9004, 9005, 9006, 9007, 9008, 9010, 9011, 9015, 12159 and 12160 of said Code, proposes to amend sections 90, 120.1, 149, 180 and 704, add Section 91 and repeal Section 149.3, Title 14, California Code of Regulations (CCR), relating to implementation of Experimental Fishing Permit (EFP) Program (Phase II) and repeal of nonoperational experimental market squid vessel permits.

Informative Digest/Policy Statement Overview

Unless otherwise specified, all section references in this document are to Title 14, CCR.

The California Department of Fish and Wildlife (Department) is recommending that Commission add new Section 91, which will establish a state Experimental Fishing Permit (EFP) Program for marine fisheries. This regulatory proposal will also amend current regulations in sections 90, 120.1, 180, and 704 for consistency with recent changes in the Fish and Game Code (FGC) pertaining experimental marine fishing activities and amend Section 149 and repeal Section 149.3 to remove nonoperational experimental market squid vessel permit provisions to harmonize the regulations associated with experimental fishing activities and avoid confusion with the use of the term “experimental” in reference to other permits outside the scope of the EFP Program.

The proposed regulations will implement Assembly Bill (AB) 1573, also known as the California Fisheries Innovation Act of 2018, which became effective on January 1, 2019. This legislative action repealed the experimental gear permit (EGP) provisions in FGC Section 8606 and added new FGC Section 1022, providing for an EFP program to facilitate fishery-related exploration and experimentation to inform state management of commercial and recreational fisheries.

Under current regulations (Section 90), EFPs may be issued only to those applicants previously approved by the Commission in 2018 to receive an experimental gear permit to participate in a collaborative research program evaluating the potential of a brown box crab fishery in California (box crab program). Section 90 regulations (EFP Program Phase I) implement, in part, AB 1573, ensuring that the current experimental box crab fishery research program can continue while a larger programmatic rulemaking (EFP Program Phase II) can be developed to build out an EFP program pursuant to FGC Section 1022. Requests for new EFPs cannot be accommodated until EFP Program Phase II regulations (this rulemaking) are in place.

The proposed regulations will add new Section 91, “Marine Fisheries: Experimental Fishing Permit Program,” which will establish the procedures for application submittal, Department review, public notice and comment, Commission approval, and Department issuance and administration of new EFPs. Specifically, Section 91 will:

- describe the purposes and scope of the EFP Program (subsection 91(a));

- define terms and phrases used within the proposed regulations (subsection 91(b));
- establish the application procedures and fees, including pre-application consultation and application requirements (subsection 91(c));
- establish the process for reviewing and accepting EFP applications by the Department (subsection 91(d));
- establish the process for public notice of and comment on an EFP application (subsection 91(e));
- establish the process for Commission action on an EFP application, including the requirement for grounds for permit denial (subsection 91(f));
- establish the process for Department issuance of an EFP (subsection 91(g));
- establish the permit standard terms are set forth on form DFW 1103 (subsections 91(h));
- establish that permit special conditions may be placed on an EFP for research purposes and the conservation of marine resources and the environment and are specified on form DFW 1103 (subsection 91(i));
- establish that it is unlawful to operate an EFP in violation of the permit standard terms and special conditions (subsection 91(j));
- describe the types of updates and amendments that may be made to an approved EFP (subsection 91(k));
- describe the annual and final reporting requirements for EFPs (subsection 91(l));
- establish the permit tiers and annual permit fees, including a permit fee reduction option (subsection 91(m));
- describe the term of the EFP and the permit renewal process (subsection 91(n));
- describe the causes and procedures for permit suspension, revocation, cancellation, or non-renewal (subsection 91(o)); and
- establish the process for reconsideration (subsection 91(p)).

In addition, Section 90 is proposed to be amended to add a sunset provision (subsection 90(f)) specifying that this section shall expire on April 1, 2023, which is the project end date of the Box Crab EFPs. Additionally, the title of Section 90 will be amended to read "Issuance of Box Crab Experimental Fishing Permits" and a new provision will be added (subsection 90(g)) to make clear

that Section 90 applies only to the EFPs issued for the box crab program, and that the requirements of proposed Section 91 will not affect the Box Crab EFPs.

Section 704 will be amended to add fee items to the EFP fee schedule pertaining to Phase II, which includes an application fee, initial permit issuance fee, annual permit fees for Tiers 1–4 EFPs, and minor and major amendment fees. In addition, new form DFW 1103 (NEW 04/06/21), Marine Fisheries: Experimental Fishing Permit Terms and Conditions, is proposed to be incorporated by reference in Section 704 as it would be unduly expensive and impractical to publish in Title 14, CCR. This form, containing the EFP number, a description of the authorized activity, a list of all persons and vessels conducting activities under the EFP, and a list of the permit standard terms and special conditions, is required for all EFPs and is necessary for compliance with Section 91 and FGC Section 1022.

Amendments to regulations in sections 120.1, and 180 are necessary to reflect changes in the FGC pursuant to AB 1573 and ensure consistency with the proposed regulations.

Amendments to regulations in Section 149 would eliminate cross reference to Section 149.3 for experimental market squid vessel permits and nonoperational provisions of Section 149.3 would be repealed. Future experimental fishing for market squid will be subject to the Phase II aspect of the EFP Program.

Other minor, non-substantive editorial changes (subsection renumbering) to Section 704 are proposed to improve clarity and consistency of the regulations. Non-substantive updates are proposed to the authority and reference citations for Section 180 to list sections individually.

Benefit of the Regulations

The Legislature has declared that well-supervised, strategic experimentation that tests hypotheses and/or new management approaches and that aligns with overarching state management goals and research priorities would likely accelerate the development of innovative scientific and technology tools for improving state fisheries management. It is the policy of the state to establish an EFP Program that fosters collaborative and cooperative marine fisheries research that renders critical information for designing policies and management strategies to better protect California's ocean ecosystems and the fisheries and coastal communities they support. The proposed regulations would establish a state process for integrating innovation, science, management, and leveraging collaboration with the fishing industry and research entities to fill data gaps and address priority research questions necessary to manage the long-term sustainability of state fisheries and other marine living resources. This rulemaking would provide a path for innovation and research in the existing management system by permitting limited exemptions from state fishing law and regulations for experimental fishing activities.

The benefits of the proposed regulations include valuable and productive fisheries research for state managed fisheries to meet the challenges of rapid changes in ocean conditions and the climate; promotion of collaboration with stakeholders to develop information available for management and, in some cases, inform the development of fisheries management plans; and consistency with the goals of the Marine Life Management Act (FGC Section 7050 et seq.). The proposed regulations will provide benefits by reducing the regulatory burden for stakeholders to pursue on-the-water

experimentation and exploration that will improve or provide for new opportunities for fishing, provide stronger protections for marine habitats, and ensure long-term sustainable fisheries in California.

Consistency and Compatibility with Existing Regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the state Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the review, approval, and issuance of experimental fishing permits that authorize commercial or recreational marine fishing activity that is otherwise prohibited by law (FGC Section 1022). No other state agency has the authority to promulgate experimental fishing permit regulations. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the CCR for any regulations regarding the review, approval, and issuance of experimental fishing permits and has found no such regulation; therefore, the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Public Participation

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on Thursday, October 14, 2021, at 8:30 a.m. or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on Thursday, December 16, 2021, at 8:30 a.m. or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899.

It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on December 2, 2021 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on December 10, 2021. All comments must be received no later than December 16, 2021, during the webinar/teleconference hearing. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P Street, Box 944209,

Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or Jenn Greaves at FGC@fgc.ca.gov or at the preceding address or phone number. **Marina Som, Environmental Scientist, Department of Fish and Wildlife, has been designated to respond to questions on the substance of the proposed regulations. Ms. Som can be reached at (858) 467-4229 or Marina.som@wildlife.ca.gov.**

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Assessment

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

No businesses are expected to be negatively impacted by the proposed regulations because the regulations are voluntary to those who will seek an EFP. The actual number of businesses that may be impacted by the proposed regulations is unknown, but based on estimates and interest from stakeholders may range around 100 businesses amongst commercial fisheries, commercial passenger fishing vessels (CPFVs), or partnerships of these types of business with research organizations. The proposed regulations implement a process for the Commission to authorize and the Department to issue EFPs. The economic impact to the state is anticipated to be unchanged with no adverse impacts to California businesses or their ability to compete with other businesses in other states.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of

businesses in California. The proposed regulations would establish a framework for permitting marine fishing activities that are otherwise prohibited under the FGC or state regulations that can improve the management of state fisheries, including but not limited to improving the sustainability of state marine fisheries, efficiency of fishing effort, and reducing capture/discard of non-target species. Any future management action stemming from the outcome of the EFP research will need to be addressed in a separate rulemaking process.

The Commission anticipates indirect benefits to the health and welfare of California residents. Providing opportunities for experimental fishing activities promotes the development of information available for the conservation and sustainable use of California's marine resources which provide valuable economic, aesthetic, recreational, educational, scientific, nutritional, social, and historic benefits to the people of the state.

The Commission does not anticipate any benefits to worker safety because the proposed regulations would not have any impact on working conditions.

The Commission anticipates benefits to the state's environment in the sustainable management of natural resources.

(c) Cost Impacts on a Representative Private Person or Business:

The proposed regulations are necessary to fully implement a state EFP Program in accordance with FGC Section 1022. California businesses may elect to participate in the EFP program and will likely do so if they perceive that the cost of the EFP fees will yield an economically beneficial result from the authorized experimental marine fishing activities. Applicants and EFP holders will incur costs related to application review, EFP issuance, and oversight on EFP implementation by the Department. The proposed EFP fee items include application fee (\$153.25), initial permit issuance fee (\$880.50), permit fee based on the specific permit tier (Tier 1 \$450.50, Tier 2 \$1,063.50, Tier 3 \$4,471.00, Tier 4 \$9,786.50), and amendment fees (minor \$191.50, major \$455.75). The proposed fees are necessary to recovery a portion of the implementation and administrative costs of the Department relating to the EFP, as provided under FGC subdivision 1022(g).

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

There will be ongoing costs for the Department to implement the EFP Program. A portion of these costs would be offset by the proposed EFP Program fees which were determined using a "minimum" cost recovery approach. The Department conducted a Cost Recovery Analysis (Attachment 1 to the Initial Statement of Reasons) to evaluate the full range of cost recovery for Department and Commission staff time. The analysis includes a "minimum," "mid," and "high" cost recovery for permit fees. Recognizing the potential benefit of the EFP Program to the state, the Department opted for "minimum" cost recovery of permanent staff time and enforcement (i.e., recovery of only certain aspects of costs at the lowest level of functioning service) and not to pursue full cost recovery as provided by Fish and Game Code subdivision 1022(g).

There are no cost or savings in federal funding to the state.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

(h) Effect on Housing Costs:

None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: September 10, 2021

Melissa Miller-Henson
Executive Director

Commissioners
Peter S. Silva, President
Jamul

Samantha Murray, Vice President
Del Mar

Jacque Hostler-Carmesin, Member
McKinleyville

Eric Sklar, Member
Saint Helena

Erika Zavaleta, Member
Santa Cruz

STATE OF CALIFORNIA
Gavin Newsom, Governor

Fish and Game Commission



Wildlife Heritage and Conservation
Since 1870

Melissa Miller-Henson
Executive Director
P.O. Box 944209
Sacramento, CA 94244-2090
(916) 653-4899
fgc@fgc.ca.gov
www.fgc.ca.gov

September 24, 2021

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a Notice of Final Consideration concerning the petition to list Pacific leatherback sea turtle (*Dermochelys coriacea*) as an endangered species under the California Endangered Species Act. This notice will be published in the California Notice Register on September 24, 2021.

Sincerely,

Jenn Greaves
Associate Governmental Program Analyst

Attachment

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BOARD OF SUPERVISORS
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2021 SEP 23 PM 2:11
BY QA

Commissioners
Peter S. Silva, President
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Samantha Murray, Vice President
Del Mar

Jacque Hostler-Carmesin, Member
McKinleyville

Eric Sklar, Member
Saint Helena

Erika Zavaleta, Member
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Fish and Game Commission



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Since 1870*

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Executive Director
P.O. Box 944209
Sacramento, CA 94244-2090
(916) 653-4899
fgc@fgc.ca.gov
www.fgc.ca.gov

CALIFORNIA FISH AND GAME COMMISSION NOTICE OF FINAL CONSIDERATION OF PETITION

NOTICE IS HEREBY GIVEN pursuant to the provisions of Fish and Game Code Section 2078, that the California Fish and Game Commission (Commission), has scheduled final consideration of the petition to list Pacific leatherback sea turtle (*Dermochelys coriacea*) as an endangered species for its October 13-14, 2021 meeting. Consideration of the petition will be heard October 14, 2021 via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899.

The agenda of the October 13-14, 2021 meeting, and the agendas and video archive of previous meetings where actions were taken on Pacific leatherback sea turtle are available online at <http://www.fgc.ca.gov/meetings/>.

Pursuant to the provisions of Fish and Game Code, sections 2075 and 2075.5, the Commission will consider the petition and all other information in the record before the Commission to determine whether listing Pacific leatherback sea turtle as an endangered species is warranted.

The petition, the California Department of Fish and Wildlife's evaluation report, and other information in the records before the Commission are posted on the Commission website at <https://fgc.ca.gov/CESA#plst>.

California Fish and Game Commission

September 10, 2021

Melissa Miller-Henson
Executive Director

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: Budget Revision Notification - Grant Tuberculosis Epidemiologic Studies Consortium
Date: Tuesday, September 28, 2021 8:58:00 AM
Attachments: [BOS Budget Revision Notification Letter.pdf](#)
[CCSF 2090TBES10 Budget-Revision-Request FY20-21 Approved 09-21-2021.pdf](#)

From: Cen, Danna (DPH) <danna.cen@sfdph.org>
Sent: Thursday, September 23, 2021 2:35 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Quinonez, Miguel (DPH) <miguel.quinonez@sfdph.org>
Subject: Budget Revision Notification - Grant Tuberculosis Epidemiologic Studies Consortium

Hi,

Attached are the Budget Revision Notification Memo and the approved Budget Revision documentation for Grant Tuberculosis Epidemiologic Studies Consortium. Please feel free to contact me if you have any questions. Thanks!

Danna Cen
Fiscal Unit-Grant
Department of Public Health
[1380 Howard Street #413b](#)
San Francisco, CA 94103
Phone: 415.255-3461

Date: September 23rd 2021
To: Clerk of the Board of Supervisors
CC: Controller's Office Operations Unit
From: SF Department of Public Health, Grant Unit
Subject: Grant Budget Revision
Tuberculosis Epidemiologic Studies Consortium

In accordance with Administrative Code Section 10.170-1(H), this memo serves to notify the Board of Supervisors of a State grant line item budget revision in excess of 15% requiring funding agency approval.

We have attached a copy of budget revision documentation submitted to the funding agency.

Attachment: Budget Revision documentation

Local Assistance Budget Revision Request FY 2020-2021

JURISDICTION		AWARD NUMBER			
San Francisco		2090TBES10			
TELEPHONE NUMBER	FAX NUMBER	AWARD PERIOD			
		FROM : 9/29/2020	TO: 9/28/2021		
BUDGET REVISION #	1	SUBMISSION DATE:	9/8/2021		
CATEGORY	CURRENT BUDGET	PROPOSED CHANGE	REVISED BUDGET		
A. PERSONNEL					
Investigator - Susannah Graves (Capped at Federal Executive Level II)	\$ 5,919.00	\$ 45.00	\$5,964		
Investigator - Janice Louie (Capped at Executive Level II)	\$ 3,946.00	\$ 30.00	\$3,976		
Epidemiologist II - Laura Romo	\$ 37,221.60	\$ 778.00	\$38,000		
Research Nurse - Ana LI	\$ 46,050.50	\$ 3,649.50	\$49,700		
Budget Analyst - Perry Zhou	\$ 8,013.20	\$ (2,003.30)	\$6,010		
Senior Budget Analyst - Rita Watt	\$ -	\$ 6,570.00	\$6,570		
SALARIES SUB-TOTAL	\$ 101,150.30	\$ 9,069.20	\$110,220		
B. BENEFITS	\$ 30,344.50	\$ (3,603.00)	\$26,742		
C. PERSONNEL (No Benefits)	\$ -	\$ -	\$0		
D. TRAVEL (In State)	\$ -	\$ -	\$0		
E. TRAVEL (Out of State)	\$ 2,000.00	\$ (2,000.00)	\$0		
F. SUPPLIES	\$ 3,466.00	\$ (3,466.00)	\$0		
G. EQUIPMENT	\$ -	\$ -	\$0		
G. SUBCONTRACTS	\$ 77,507.00	\$ -	\$77,507		
H. COMMUNICATIONS	\$ -	\$ -	\$0		
I. ANTI-TB MEDICATIONS	\$ -	\$ -	\$0		
J. OTHER DIRECT COSTS	\$ -	\$ -	\$0		
K. INDIRECT COST	\$ -	\$ -	\$0		
TOTAL	\$214,468	\$0	\$214,468		
JUSTIFICATION - Please complete line item justification worksheet for line items that will change.					
Local Jurisdiction Signatures	Date	CDPH TBCB Signatures	Approved	Not Approved	Date
(A) Program Director Susannah Graves <small>DocuSigned by: Susannah Graves</small>	9/9/2021 11:45 AM PDT	(A) Fiscal Analyst <i>Kevin Crawford</i>	X		09/13/21
(B) Financial Officer Maggie Han <small>DocuSigned by: Maggie Han</small>	9/9/2021 11:49 AM PDT	(B) Program Liaison			
(C) Other		(C) Other <i>Janice Louie</i>	X		9/21/2021

- Submit to the CDPH TBCB Fiscal Analyst for approval prior to implementation of the proposed revision and expenditure.

- Attach revised summary and detail budgets.

- See the Tuberculosis Control Local Assistance Standards and Procedures Manual Part 3, Section 1.6C for

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By Kevin Crawford at 4:25 pm, Sep 13, 2021

California Department of Public Health

Tuberculosis Control Branch

instructions.

Local Assistance Base Award Revision Request FY 2020-2021

Line Item Justification

Jurisdiction: San Francisco

Submission I 9/8/2021

Please complete justification for those items that will change.

PERSONNEL - With Benefits
Investigator Susannah Graves's Federal Executive Level II increased to \$199,300 starting July 1st 2021, requesting a total of 3% x (\$197,300 x 3 months + \$199,300 x 9 months) = \$5,964
Investigator Janice Louie's Federal Executive Level II increased to \$199,300 starting July 1st 2021, requesting a total of 2% x (\$197,300 x 3 months + \$199,300 x 9 months) = \$3,976
Epidemiologist II Laura Romo's salary increased to \$134,451 starting July 1st 2021, requesting a total of 30% x (\$124,072 x 9 months + \$134,451 x 3 months) = \$38,000.
Research Nurse Ana Li's hourly rate was \$94.99 from 9/29/20 to 6/30/21 and increased to \$99.03 from 7/1/21 to 9/28/21, capped at Federal Executive Level II, requesting a total of 25% x (\$197,300 x 3 months + \$199,300 x 9 months) = \$49,700
Budget Analyst Perry Zhou left the program starting July 1st 2021, requesting a decrease of \$2,003
Senior Budget Analyst Rita Watt joined the program starting July 1st 2021, requesting a total of 25% x (Annual Salary \$105,118 x 3 months) = 6,570
BENEFITS
Average fringe benefit should be 24.26%, requesting a total of \$110,220 x 24.26% = \$26,742
PERSONNEL - Salaries Only No benefits
TRAVEL
Reduced travel budget to \$0. No travel necessary during the Pandemic, moved \$2,000 to salaries budget.
EQUIPMENT
SUPPLIES
Reduced supplies budget to \$0. Salaries increase because of COLA, moved \$3,466 to salaries budget.
ANTI-TB MEDICATION
SUBCONTRACTS
OTHER
INDIRECT COST

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Ng, Wilson \(BOS\)](#)
Subject: FW: CLF Reports to the BOS
Date: Monday, September 27, 2021 2:34:00 PM
Attachments: [CLF 6mo report Jul-Dec20 Final.pdf](#)
[CLF Annual Plan FY21-22.pdf](#)

Hello,

Please see the attached is the CLF report for the Board of Supervisors.

Thank you,

Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184
(415) 554-5163 fax
Board.of.Supervisors@sfgov.org

Complete a Board of Supervisors Customer Service Satisfaction form by clicking
<http://www.sfbos.org/index.aspx?page=104>

MEMORANDUM

DATE: April 7, 2021

TO: Angela Calvillo, Clerk of the San Francisco Board of Supervisors

THROUGH: Disability and Aging Services Commission

FROM: Shireen McSpadden, Executive Director, Department of Disability and Aging Services (DAS)
Michael Zaugg, Director, Office of Community Partnerships

SUBJECT: Community Living Fund (CLF), Program for Case Management and Purchase of Resources and Services, Six-Month Report (July-December 2020)

OVERVIEW

The San Francisco Administrative Code, Section 10.100-12, created the Community Living Fund (CLF) to support aging in place and community placement alternatives for individuals who may otherwise require care within an institution. This report fulfills the Administrative Code requirement that the Department of Disability and Aging Services (formerly Department of Aging and Adult Services) report to the Board of Supervisors every six months detailing the level of services provided and costs incurred in connection with the duties and services associated with this fund.

The CLF Program provides for home- and community-based services, or a combination of equipment and services, that will help individuals who are currently or at risk of being institutionalized, to continue living independently in their homes or to return to community living. This program, using a two-pronged approach of coordinated case management and purchased services, provides the needed resources not available through any other mechanism, to vulnerable older adults and adults with disabilities.

The CLF Six-Month Report provides an overview of trends. The attached data tables and charts show key program trends for each six-month period, along with project-to-date figures where appropriate.

KEY FINDINGS

Referrals & Service Levels

- ❖ The CLF Program received a total of 125 new referrals; a lower volume of referrals than in the prior period and broader trends over the history of the program. Approximately 59% of clients referred were eligible, and 45% were approved to receive services.
- ❖ A total of 344 clients were served with most (248) receiving intensive case management through the Institute on Aging (IOA). This is consistent with IOA

enrollment trends over the life of the program. Of the total served, 97 clients also received services from Brilliant Corners through the Scattered Site Housing and Rental Subsidy program.¹

Demographics

Trends in CLF referrals are relatively consistent with slight shifts over time:

- ❖ Nearly eight out of every 10 referred clients were seniors aged 60 and up, a significant increase when compared to overall program trends to date. In 2011 and 2012, referred clients were more equally split between seniors and younger adults with disabilities (aged 18-59), but seniors typically represent the majority of referrals.
- ❖ Trends in the ethnic profile of new referrals remain generally consistent with prior periods with some slight changes. Referrals for White clients remain steady as the largest group (40%). Referrals made on behalf of African-Americans remained steady at about a quarter (24%) and referrals for Latino clients increased to 20% of all referrals. Referrals for Asian/Pacific Islanders decreased to 9% compared to 14% of referrals in the prior period.
- ❖ Referrals for English-speaking clients remain the most common, making up 76% of referrals in the current reporting period. The second most common primary language remains Spanish (14%). Approximately 5% speak Asian/Pacific Islander languages, a decrease that mirrors the ethnicity trends described above.
- ❖ Males represented over half (58%) of referrals, consistent with the past several periods. One percent of referred clients identified as transgender or gender non-conforming.
- ❖ Referred clients most commonly identify as heterosexual (69% of all referrals; 74% of referrals with a documented response to the sexual orientation question). Five percent of all referrals were for persons identifying as gay/lesbian/same-sex loving. Approximately one in five (20%) referrals were missing sexual orientation data in their application for CLF services.
- ❖ The most frequent zip code for referred clients in this period was 94109 (12% of referrals), which includes the Polk Gulch, Russian Hill, and Nob Hill neighborhoods. Other common areas were the 94102 (Hayes Valley/Tenderloin) and 94103 (South of Market) zip codes, which each accounted for 9% of referrals, and the 94116 (Parkside, Laguna Honda) zip code, which accounted for 8% of referrals.

¹ This program was integrated into the data portion of the CLF Six Month Report in December 2018. Historic data was populated back to the July – December 2017 period based on when the program data was fully transitioned into a DAS-managed data system.

- ❖ Referrals from Laguna Honda Hospital represent 14% of all referrals. This is consistent with recent periods but remains lower than trends over the entire program history. Between 2010 and 2016, 35% of referrals on average came from Laguna Honda Hospital. This likely reflects broader trends in the Laguna Honda Hospital client population and availability of appropriate housing to support safe discharge and stability in the community. Many Laguna Honda Hospital residents need supportive housing, such as Direct Access to Housing (DAH), but there is a waitlist for this type of housing.

Service Requests

- ❖ Self-reported service needs remain generally consistent with prior periods, though there was a notable increase in requests for case management, in-home support, money management, assistive devices, and home repairs/modifications, and a steep decline in food needs. The most commonly requested services at intake include case management (85%), in-home support (77%), and housing-related services (59%).

Program Costs

The six-month period ending in December 2020 shows a net decrease of \$174,861 in CLF program costs over the prior six-month period.

- ❖ Total monthly program costs per client² averaged \$1,984 per month in the latest six-month period, a decrease of \$49 per month over the prior six-month period. Excluding costs for home care and rental subsidies, average monthly purchase of service costs for CLF clients who received any purchased services was \$167 per month in the latest reporting period, an increase of \$32 per client from the previous six-month period.

Performance Measures

DAS is committed to measuring the impact of its investments in community services. The CLF program has consistently met and exceeded its goals to support successful community living for those discharged from institution or at imminent risk of institutionalization. Given this demonstrated success, DAS shifted focus to the below two new performance measures beginning in FY 15/16:

- ❖ Percent of clients with one or fewer unplanned (“acute”) hospital admissions within a six-month period (excludes “banked” clients). *Goal: 80%.*
With **91%** of clients having one or fewer unplanned admissions, the CLF program exceeded the performance measure target. DAS will continue to monitor this measure and evaluate the goal threshold.

² This calculation = [Grand Total of CLF expenditures (from Section 3-1)]/[All Active Cases (from Section 1-1)]/6.

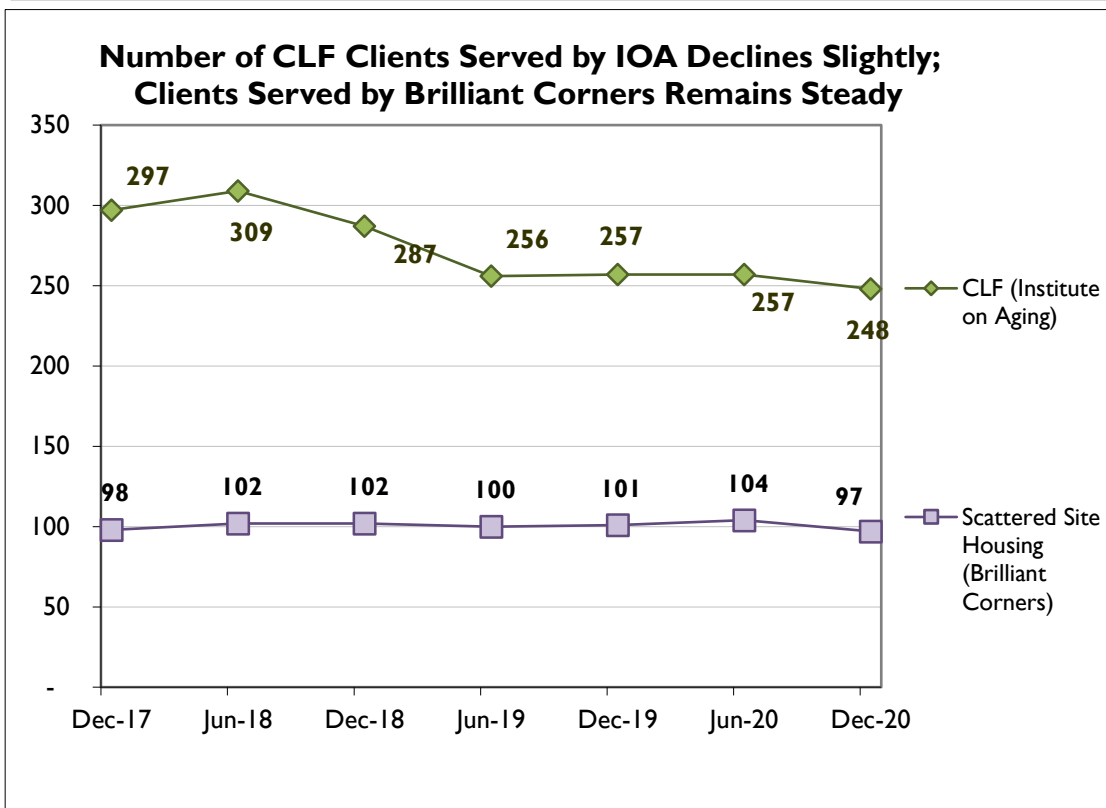
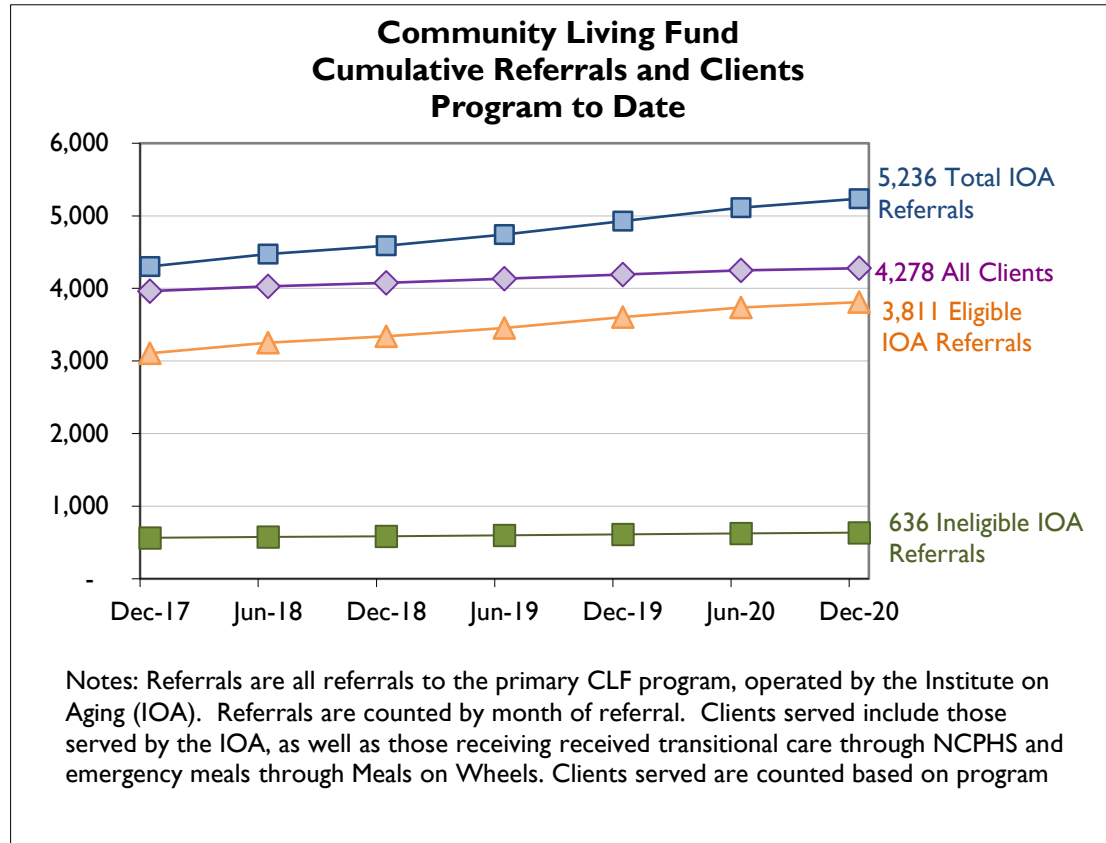
- ❖ Percent of care plan problems resolved, on average, after one year of enrollment in the CLF Program (excludes “banked” clients). *Goal: 80%*
 On average, 51% of service plan items were marked as resolved or transferred. This performance reflects the recent adoption of a revised, more streamlined service plan tool in IOA’s database. With input from DAS, IOA has begun – but not completed – implementation of enhanced reporting to support proactive service plan monitoring and staff supervision. Once fully implemented, these tools and practices will ensure progress is made towards service plan completion to support client stabilization.

Systemic changes / Trends affecting CLF

- ❖ As of March 2021, there are 54 referrals awaiting assignment. On average, these clients have been waiting for 202 days. Approximately 67% of clients are waiting for intensive case management; the others have been referred for a purchase of service (and have separate community case management). While this waitlist is slightly shorter than the waitlist in the prior period, clients have been waiting approximately one-and-a-half times as long to be enrolled. Clients waiting for purchases of service have spent on average about one-and-a-half times as long waiting for services than those waiting for intensive case management (an average of 271 days waiting compared to 167 days waiting).
- ❖ During this reporting period, the CLF Program transitioned six (6) participants into Scattered Site Housing units managed by Brilliant Corners. Of the six, five were discharged from Laguna Honda Hospital and one was discharged from Zuckerberg San Francisco General Hospital. The CLF Program facilitates monthly Multi-Disciplinary Team (MDT) meetings hosted at IOA to review the prospective referrals from Laguna Honda Hospital for clinical appropriateness of independent community living. CLF-eligible individuals living in institutional care who have no appropriate housing alternatives and meet Scattered Site Housing criteria are considered for these units.
- ❖ In February 2020, CLF developed an outreach plan to be implemented in FY 20/21 with focus on the API and LGBTQ communities. However, due to COVID-19, the resulting Rapid Transitions Initiative, staff vacancies, and long waitlist times, the outreach plan was put on hold. CLF continues to partner with Self Help for the Elderly (SHE) to dedicate a caseload for bilingual staff to serve the API population. However, the case management position has been open since November 2020. SHE and CLF have begun conversations around agency collaboration and partnering to better serve this population through both outreach and education. CLF and the partner agencies are working to fill staff vacancies and enroll off the waitlist to decrease waitlist times. CLF will then be able to explore an outreach plan that focuses on the diverse communities of San Francisco for the next reporting period as appropriate due to a lower waitlist. Additionally, CLF is partnering with Openhouse to provide additional staff training in cultural humility and issues facing LGBTQ+ seniors and is exploring an outreach opportunity with the agency.

- ❖ Due to the COVID-19 pandemic and the shelter-in-place orders, the CLF program continues to modify its service delivery to provide telephonic and virtual assessment, monthly contacts, care coordination and support to ensure that clients continue to receive appropriate services. Recognizing the complexities of each participant, CLF continues to follow an essential home visit protocol to allow for face to face visits, if assessed to be necessary for service provision. CLF staff have been trained on COVID-19 safety, Personal Protective Equipment protocols and engaged in case consultation to ensure staff and client safety in meeting clients in the community.
- ❖ In March 2020, CLF through its Rapid Transitions Team collaborated with SF DPH Transitions Care Coordination and Placement, In-Home Supportive Services (IHSS), and Homebridge to assist individuals transitioning from Laguna Honda Hospital and Zuckerberg San Francisco General Hospital to Shelter-in-Place (SIP) hotel sites throughout the city. The CLF Rapid Transitions Team uses a modified fast-tracked process to assess and enroll clients and provide care coordination and purchase of goods to meet urgent needs. In addition, CLF's collaboration with Homebridge, Adult Protective Services, and IHSS formed the CHAI team to assist the transition and stabilization of homeless and vulnerable individuals also placed in SIP hotel sites. A total of 13 individuals were referred to the CLF Rapid Transitions during this reporting period.
- ❖ CLF continues to support the DAS Public Guardian (PG) Office through the PG Housing Fund which provides individuals conserved by the PG, who also meet CLF eligibility criteria, with housing subsidies and assistance with move-related costs to licensed Assisted Living Facilities (ALF), supportive housing, or other similar types of housing. Due to insufficient financial resources and declining health, many individuals under PG conservatorship are marginally housed for prolonged periods of time while waiting for appropriate housing options. The PG Housing Fund through CLF is used to support their safety and housing stability. Since 2019, a total of 14 individuals have been referred to the PG Housing Fund. Referrals during the pandemic has been slow due to delays in the court process for conservatorship and the shelter-in-place mandate.

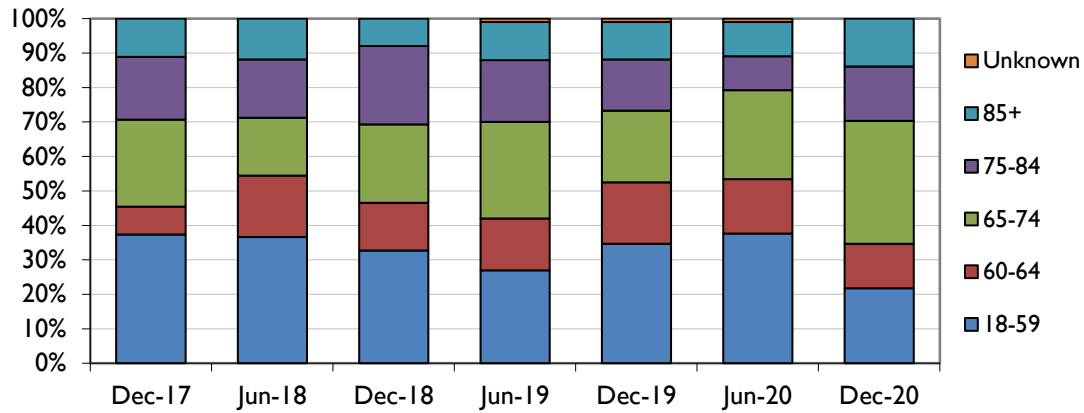
Community Living Fund Six-Month Report



Community Living Fund Six-Month Report

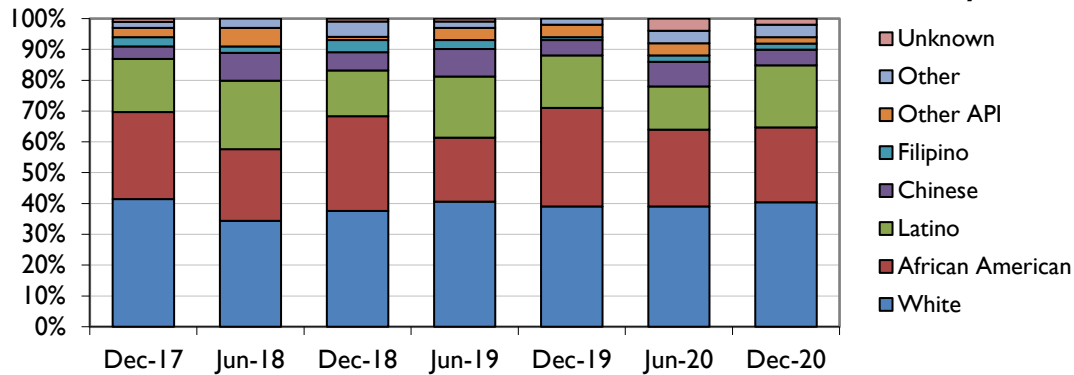
CLF Referrals by Age

Increase in % Older Adults Age 65-74; Decrease in % Adults with Disabilities Age 18-59



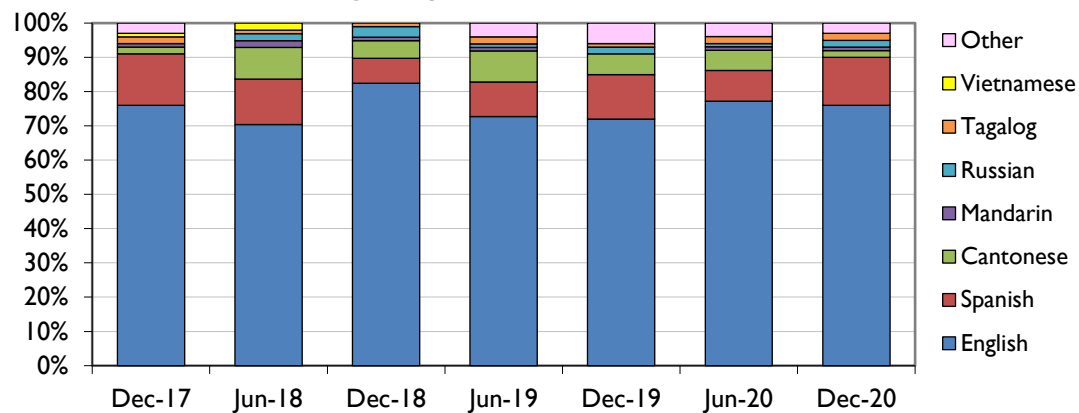
CLF Referrals by Ethnicity

Decrease in % API; Increase in % Latino; Other Trends Remain Steady



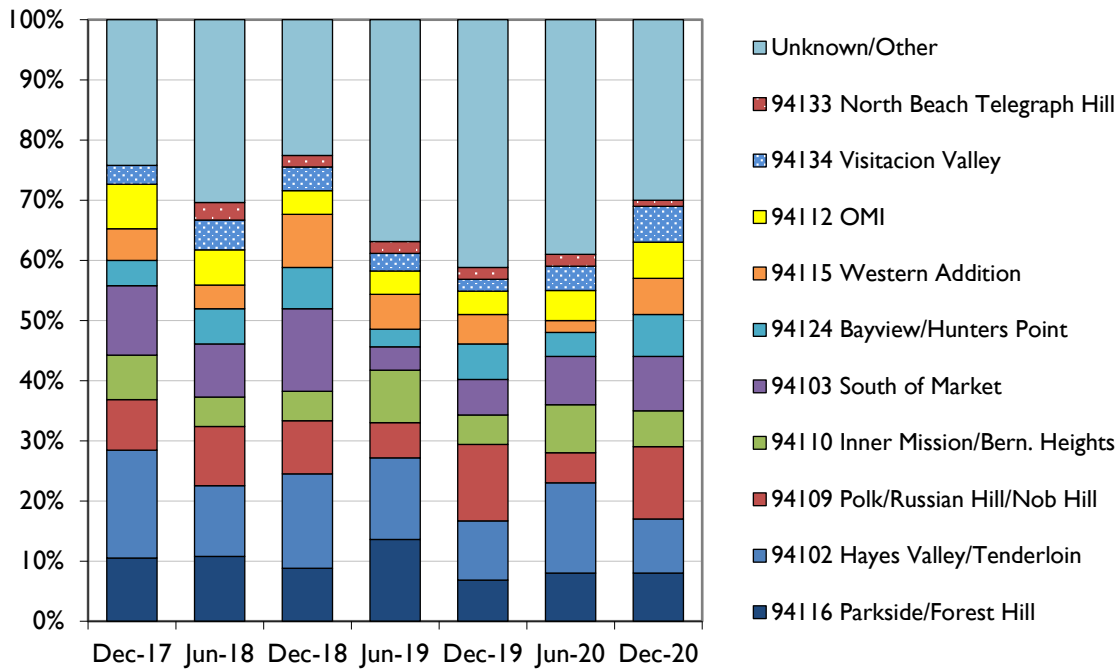
CLF Referrals by Language

% English Speakers Remains Predominant

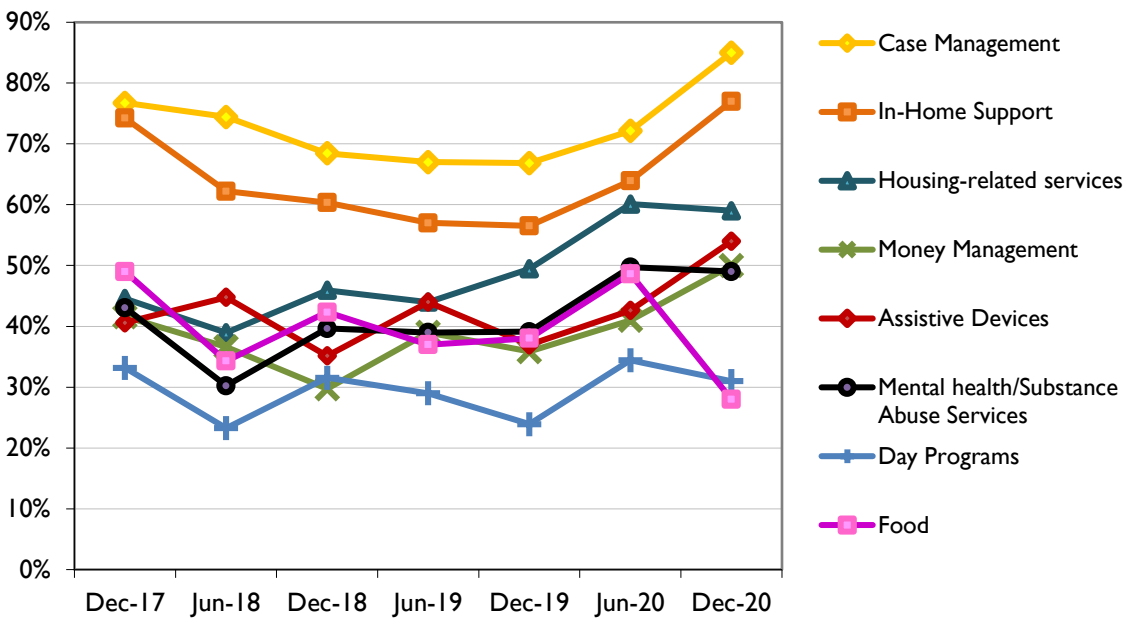


Community Living Fund Six-Month Report

CLF Referrals by Zip Code

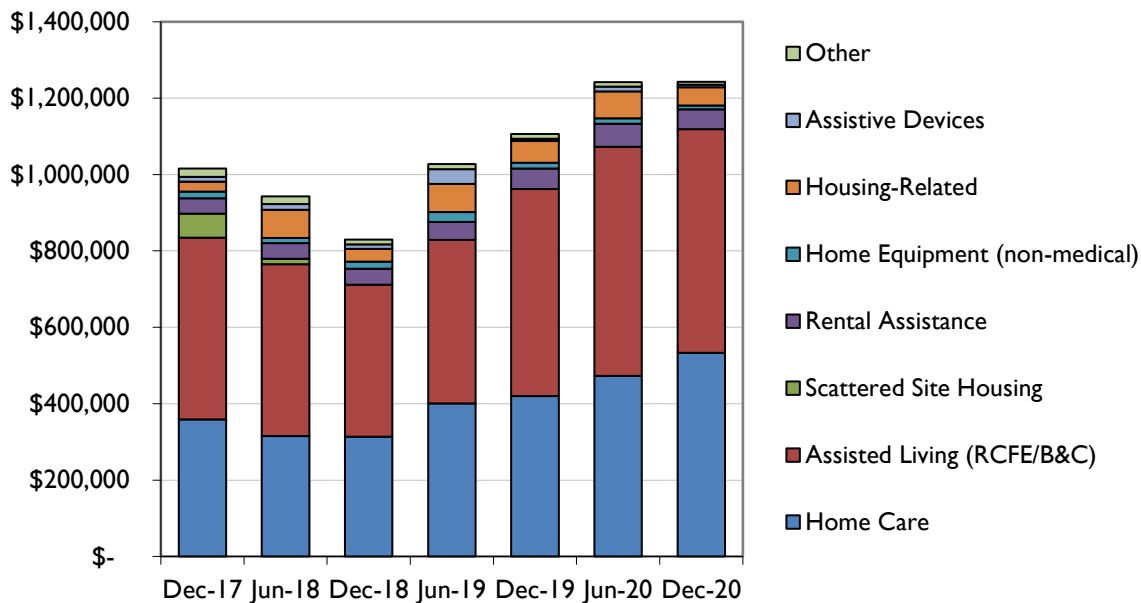


Self-Reported Need for Services at Referral Case Management & In-Home Support Remain Among the Most Frequent Requests

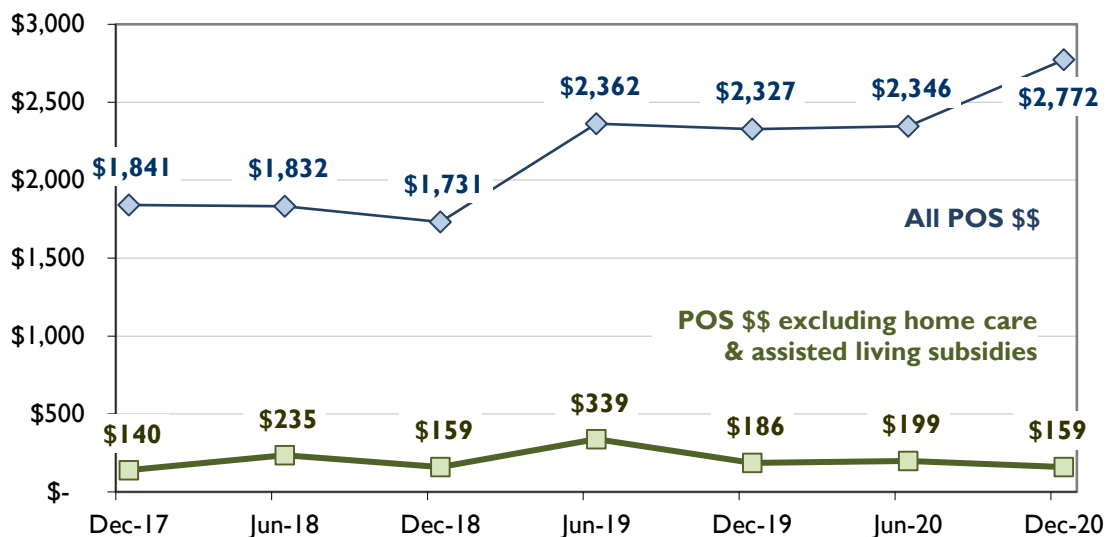


Community Living Fund Six-Month Report

Expenditures at CLF increase, primarily due to growth in Home Care and Assisted Living costs

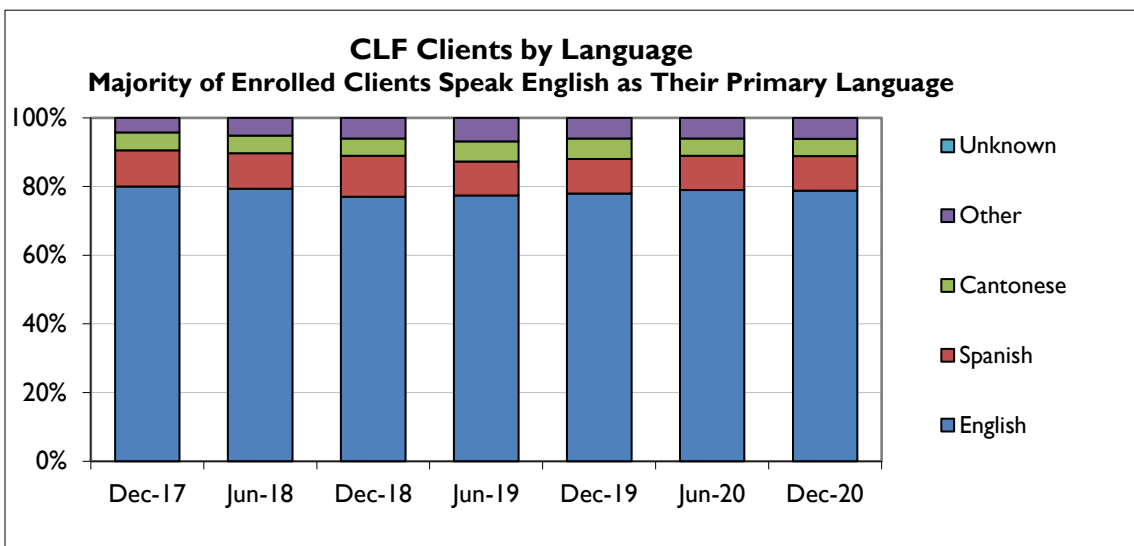
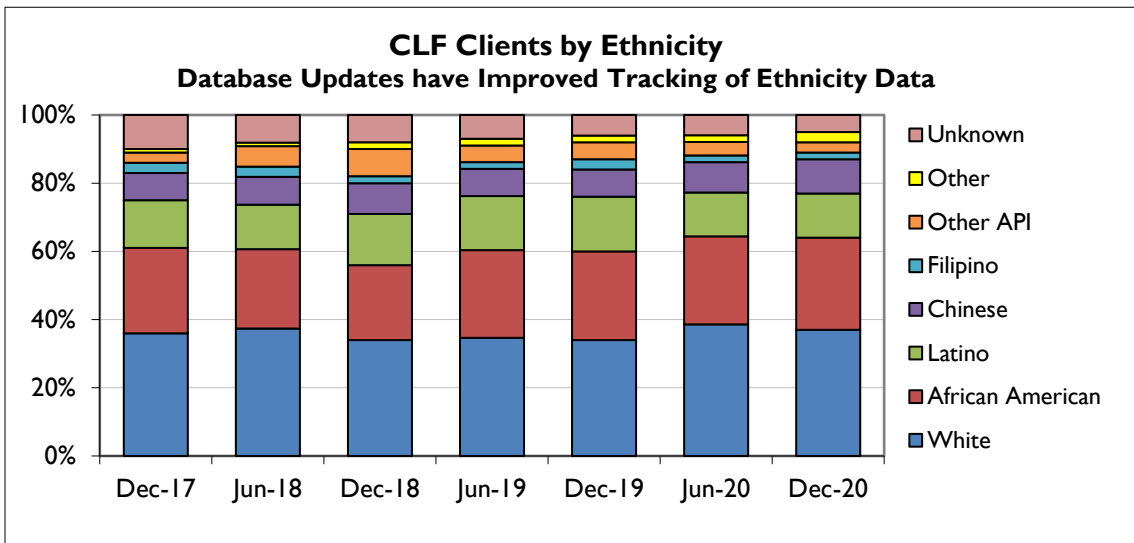
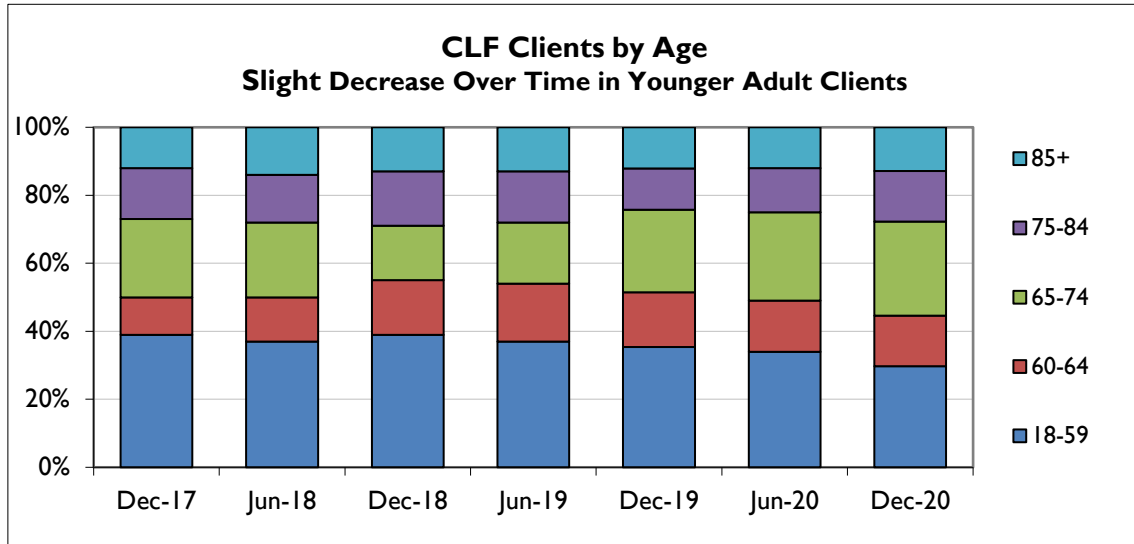


Average Monthly Purchase of Service (POS) Cost Per Client for CLF Clients with Any Purchases:
Rates higher than prior years due to increase in Home Care and Assisted Living, as well as a number of higher cost home modifications and assistive devices

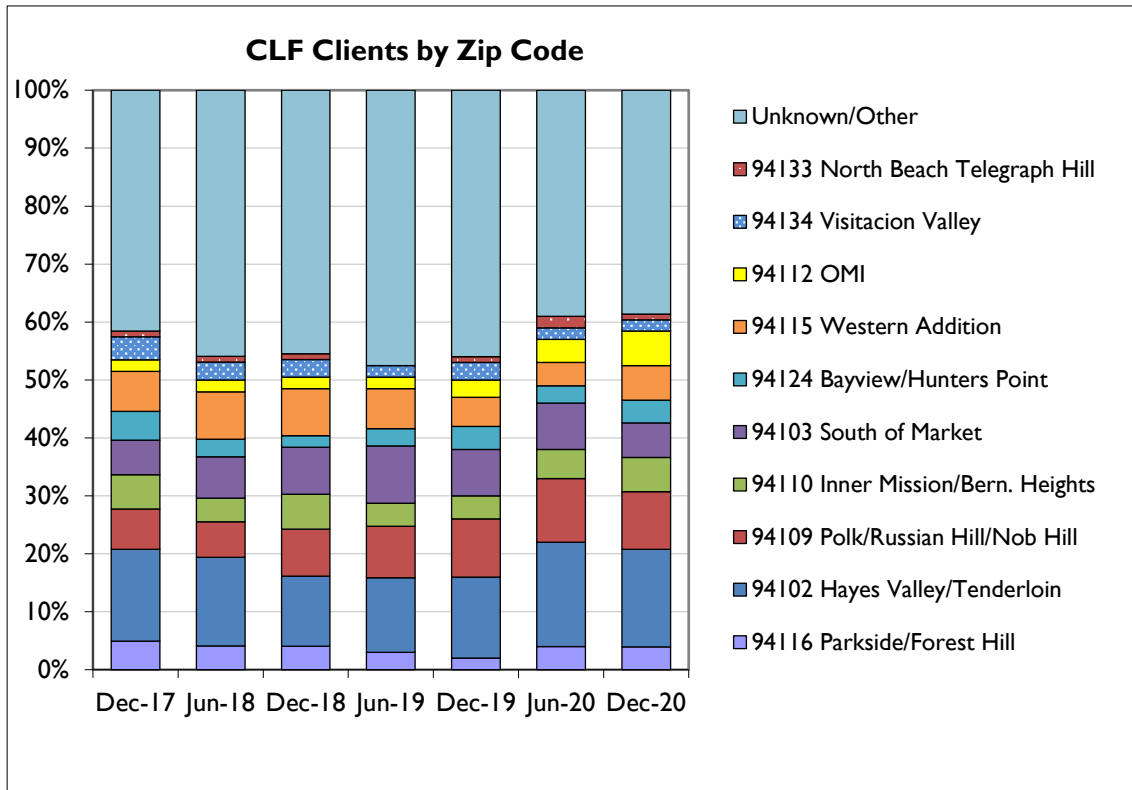


Note: Purchases in this chart represent those from the Institute on Aging sub-program of CLF.

Community Living Fund Six-Month Report



Community Living Fund Six-Month Report



Community Living Fund Six-Month Report

Enrollment and Referral Trends

Active Caseload	Jun-18		Dec-18		Jun-19		Dec-19		Jun-20		Dec-20	
	#	%	#	%	#	%	#	%	#	%	#	%
All Active Cases*	388		370		343		340		350		344	
Change from Prior 6 Months	11	2.9%	(18)	-4.6%	(27)	-7.3%	(3)	-0.9%	10	2.9%	(6)	-1.7%
Change from Previous Year	72	22.8%	(7)	-1.9%	(45)	-11.6%	(30)	-8.1%	(20)	-5.8%	4	1.2%
Change from 2 Years	97	33.3%	91	32.6%	27	8.5%	(37)	-9.8%	(38)	-9.8%	(26)	-7.0%
Program Enrollment												
CLF at Institute on Aging	309	80%	287	78%	256	75%	257	76%	257	73%	248	72%
with any service purchases	156	50%	143	50%	138	54%	143	56%	159	62%	122	49%
with no purchases	153	50%	144	50%	118	46%	114	44%	98	38%	126	51%
Scattered Site Housing (Brilliant Corner)	102	26%	102	28%	100	29%	101	30%	104	30%	97	28%
Program to Date												
All CLF Enrollment*	4,030		4,076		4,133		4,193		4,247		4,278	
CLF at Institute on Aging Enrollment	1,883	47%	1,929	47%	1,989	48%	2,048	49%	2,106	50%	2,135	50%
with any service purchases	1,341	71%	1,383	72%	1,434	72%	1,482	72%	1,538	73%	1,559	73%
Average monthly \$/client (all clients, all \$)	\$ 1,656		\$ 1,591		\$ 2,012		\$ 2,050		\$ 2,033		\$ 1,984	
Average monthly purchase of service \$/client for CLF IOA purchase clients	\$ 1,832		\$ 1,731		\$ 2,362		\$ 2,327		\$ 2,346		\$ 2,772	
Average monthly purchase of service \$/client for CLF IOA purchase clients, excluding home care, housing subsidies	\$ 235		\$ 159		\$ 339		\$ 186		\$ 199		\$ 159	

*Includes clients enrolled with Institute on Aging, Brilliant Corners (beginning Dec-2017), Homecoming (through June-2015), and Emergency Meals (through Dec-2015).

Community Living Fund Six-Month Report

Referrals	Jun-18		Dec-18		Jun-19		Dec-19		Jun-20		Dec-20	
	#	%	#	%	#	%	#	%	#	%	#	%
New Referrals**	172		111		158		184		183		125	
Change from previous six months	(30)	-15%	(61)	-35%	47	42%	26	16%	(1)	-1%	(58)	-32%
Change from previous year	(29)	-14%	(91)	-45%	(14)	-8%	73	66%	25	16%	(59)	-32%
Status After Initial Screening												
Eligible:	144	84%	88	79%	117	74%	148	80%	133	73%	74	59%
Approved to Receive Service	95	66%	55	63%	103	88%	117	79%	78	59%	33	45%
Wait List	45	31%	31	35%	11	9%	24	16%	47	35%	38	51%
Pending Final Review	4	3%	2	2%	3	3%	7	5%	8	6%	3	4%
Ineligible	13	8%	6	5%	15	9%	15	8%	13	7%	9	7%
Withdrew Application	15	9%	17	15%	14	9%	11	6%	32	17%	28	22%
Pending Initial Determination	0	0%	0	0%	0	0%	0	0%	0	0%	14	11%
Program to Date												
Total Referrals	4,475		4,586		4,744		4,928		5,111		5,236	
Eligible Referrals	3,251	73%	3,339	73%	3,456	73%	3,604	73%	3,737	73%	3,811	73%
Ineligible Referrals	578	13%	584	13%	599	13%	614	12%	627	12%	636	12%

** New Referrals include all referrals received by the DAAS Intake and Screening Unit for CLF services at IOA in the six-month period.

Community Living Fund Six-Month Report

Referral Demographics

Age (in years)	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
18-59	43%	37%	34%	33%	37%	37%	33%	27%	35%	38%	22%
60-64	13%	15%	18%	12%	8%	18%	14%	15%	18%	16%	13%
65-74	22%	26%	21%	24%	25%	17%	23%	28%	21%	26%	36%
75-84	13%	13%	15%	21%	18%	17%	23%	18%	15%	10%	16%
85+	10%	8%	11%	9%	11%	12%	8%	11%	11%	10%	14%
Unknown	0%	0%	1%	0%	0%	0%	0%	1%	1%	1%	0%

Ethnicity	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
White	45%	37%	43%	40%	41%	34%	38%	41%	39%	39%	40%
African American	28%	29%	25%	21%	28%	23%	31%	21%	32%	25%	24%
Latino	13%	13%	17%	12%	17%	22%	15%	20%	17%	14%	20%
Chinese	6%	7%	3%	9%	4%	9%	6%	9%	5%	8%	5%
Filipino	2%	2%	1%	3%	3%	2%	4%	3%	1%	2%	2%
Other API	3%	7%	5%	9%	3%	6%	1%	4%	4%	4%	2%
Other	3%	3%	3%	4%	2%	3%	5%	2%	2%	4%	4%
Unknown	1%	1%	3%	0%	1%	0%	1%	1%	0%	4%	2%

Language	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
English	85%	86%	86%	75%	76%	69%	80%	72%	72%	78%	76%
Spanish	7%	5%	8%	8%	15%	13%	7%	10%	13%	9%	14%
Cantonese	5%	8%	1%	6%	2%	9%	5%	9%	6%	6%	2%
Mandarin	1%	0%	1%	0%	1%	2%	1%	1%	0%	1%	1%
Russian	1%	1%	0%	2%	0%	2%	3%	1%	2%	1%	2%
Tagalog	0%	2%	1%	2%	2%	1%	1%	2%	1%	2%	2%
Vietnamese	0%	0%	0%	0%	1%	2%	0%	0%	0%	0%	0%
Other	1%	0%	3%	6%	3%	0%	0%	4%	6%	4%	3%

Percentages may not sum to 100% due to rounding

Community Living Fund Six-Month Report

Gender	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
Male	58%	60%	55%	53%	56%	59%	55%	50%	54%	63%	58%
Female	40%	40%	45%	47%	43%	40%	40%	49%	43%	36%	42%
Transgender MtF	2%	0%	0%	0%	0%	1%	3%	1%	2%	1%	1%
Transgender FtM	0%	0%	0%	0%	0%	0%	0%	0%	1%	0%	0%
All Other (Genderqueer, Not listed)	0%	0%	0%	0%	0%	0%	1%	0%	0%	1%	0%
Incomplete/Missing data	1%	0%	0%	0%	0%	0%	1%	0%	0%	0%	0%
Sexual Orientation	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
Heterosexual	46%	48%	50%	55%	69%	69%	65%	68%	68%	64%	69%
Gay/Lesbian/Same Gender-Loving	8%	8%	5%	6%	7%	9%	7%	8%	5%	7%	5%
Bisexual	1%	0%	3%	0%	2%	1%	5%	1%	2%	1%	0%
All Other (Questioning/Unsure, Not Listed)	0%	0%	1%	3%	0%	1%	1%	1%	1%	1%	0%
Declined to State	2%	0%	1%	1%	3%	3%	2%	1%	5%	4%	6%
Incomplete/Missing data/Not asked	43%	44%	41%	33%	17%	17%	20%	22%	18%	23%	20%
Zipcode	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
94102 Hayes Valley/Tenderloin	16%	17%	16%	12%	17%	12%	16%	14%	10%	15%	9%
94103 South of Market	9%	9%	9%	9%	11%	9%	14%	4%	6%	8%	9%
94109 Polk/Russian Hill/Nob Hill	9%	9%	10%	7%	8%	10%	9%	6%	13%	5%	12%
94110 Inner Mission/Bernal Heights	0%	8%	8%	10%	7%	5%	5%	9%	5%	8%	6%
94112 Outer Mission/Excelsior/Ingleside	4%	3%	3%	4%	7%	6%	4%	4%	4%	5%	6%
94115 Western Addition	5%	6%	5%	6%	5%	4%	9%	6%	5%	2%	6%
94116 Parkside/Forest Hill	21%	11%	9%	7%	10%	11%	9%	14%	7%	8%	8%
94117 Haight/Western Addition/Fillmore	2%	3%	1%	3%	3%	2%	5%	1%	1%	3%	0%
94118 Inner Richmond/Presidio/Laurel	2%	2%	3%	4%	2%	3%	3%	1%	3%	2%	1%
94122 Sunset	5%	3%	2%	4%	2%	2%	4%	5%	3%	7%	1%
94124 Bayview/Hunters Point	5%	7%	4%	4%	4%	6%	7%	3%	6%	4%	7%
94133 North Beach Telegraph Hill	3%	1%	1%	4%	0%	3%	2%	2%	2%	2%	1%
94134 Visitacion Valley	3%	4%	3%	4%	3%	5%	4%	3%	2%	4%	6%
Unknown/Other	19%	25%	26%	19%	16%	24%	11%	31%	35%	27%	28%
Referral Source = Laguna Honda Hospital/TCM	31%	30%	26%	18%	20%	22%	25%	21%	18%	13%	14%

Percentages may not sum to 100% due to rounding

Community Living Fund Six-Month Report

Services Needed at Intake (Self-Reported)	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
Case Management	75%	68%	74%	75%	77%	74%	68%	67%	67%	72%	85%
In-Home Support	54%	54%	61%	64%	74%	62%	60%	57%	57%	64%	77%
Housing-related services	46%	41%	33%	38%	45%	39%	46%	44%	49%	60%	59%
Money Management	26%	21%	40%	34%	42%	37%	30%	39%	36%	41%	50%
Assistive Devices	25%	27%	30%	34%	41%	45%	35%	44%	37%	43%	54%
Mental health/Substance Abuse Services	32%	30%	36%	39%	43%	30%	40%	39%	39%	50%	49%
Day Programs	13%	20%	23%	26%	33%	23%	32%	29%	24%	34%	31%
Food	36%	29%	39%	37%	49%	34%	42%	37%	38%	49%	28%
Caregiver Support	18%	19%	24%	25%	25%	20%	20%	25%	24%	20%	31%
Home repairs/Modifications	18%	20%	15%	23%	29%	37%	28%	28%	33%	22%	43%
Other Services	17%	13%	16%	23%	20%	23%	25%	27%	28%	35%	39%

Program Performance Measurement

Active Performance Measures	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
Percent of CLF clients with 1 or less acute hospital admissions in six month period	93%	89%	89%	89%	96%	92%	93%	91%	90%	94%	91%
Percent of care plan problems resolved on average after first year of enrollment in CLF	55%	61%	73%	75%	63%	65%	72%	*	*	*	51%

*Data unavailable due to database system updates

Community Living Fund Six-Month Report

Expenditures and Budget

Expenditures	Dec-19	Jun-20	Dec-20	Project to Date
IOA Contract				
Purchase of Service *	\$ 1,069,508	\$ 1,168,066	\$ 1,136,573	\$ 19,858,246
Case Management	\$ 805,320	\$ 831,853	\$ 887,315	\$ 17,585,666
Capital & Equipment	\$ 13,071	\$ 46,082	\$ -	\$ 237,870
Operations	\$ 265,129	\$ 198,472	\$ 293,327	\$ 5,565,600
Indirect	\$ 159,844	\$ 169,009	\$ 175,633	\$ 3,004,250
Housing and Disability Advocacy Program (HSH Work Order)	\$ 70,707	\$ 79,659	\$ 38,516	\$ 295,888
CCT Reimbursement	\$ (1,045)	\$ (1,590)	\$ (363)	\$ (1,603,959)
SF Health Plan Reimbursement for CBAS	\$ -	\$ -		\$ (976,840)
CBAS Assessments for SF Health Plan	\$ -	\$ -		\$ 676,042
Historical Expenditures within IOA Contract****	\$ -	\$ -		\$ 483,568
<i>Subtotal</i>	\$ 2,382,534	\$ 2,491,551	\$ 2,531,001	\$ 45,126,331
DPH Work Orders				
RTZ – DCIP	\$ 59,376	\$ 36,624	\$ 48,000	\$ 1,196,000
DAS Internal (Salaries & Fringe)	\$ 265,599	\$ 229,500	\$ 226,079	\$ 5,723,668
Homecoming Services Network & Research (SFSC)				\$ 274,575
Emergency Meals (Meals on Wheels)				\$ 807,029
MSO Consultant (Meals on Wheels)				\$ 199,711
Case Management Training Institute (FSA)				\$ 679,906
Scattered Site Housing (Brilliant Corners)	\$ 1,440,134	\$ 1,476,595	\$ 1,254,329	\$ 12,282,598
Shanti / PAWS (Pets are Wonderful Support)	\$ 35,000	\$ 35,000	\$ 35,000	\$ 330,000
Historical Expenditures within CLF Program****				\$ 1,447,669
Grand Total	\$ 4,182,643	\$ 4,269,270	\$ 4,094,409	\$ 69,563,156
	FY1920		FY2021	Project to Date
Total CLF Fund Budget***	\$ 8,716,570		\$ 8,838,557	\$ 78,494,262
% DAS Internal of Total CLF Fund**	6%			7%
* This figure does not match the figure in Section 4 of this report because this figure reflects the date of invoice to HSA, while the other reflects the date of service to the client.				
** According to the CLF's establishing ordinance, "In no event shall the cost of department staffing associated with the duties and services associated with this fund exceed 15% [...] of the total amount of the fund." When the most recent six-month period falls in July-December, total funds available are pro-rated to reflect half of the total annual fund.				
*** FY14/15 Budget includes \$200K of one-time addback funding for Management Services Organizations project that will be spent outside of CLF, which will not be included in the cost per client.				
**** Historical Expenditures from December 2014 and previously.				

Community Living Fund Six-Month Report

Purchased Items and Services

CLF @ IOA Purchased Services	Dec-18		Jun-19		Dec-19		Jun-20		Dec-20		Project-to-Date	
	\$	Clients	\$	Clients	\$	Clients	\$	Clients	\$	Clients	\$	UDC
Grand Total	\$829,574	143	\$1,027,753	140	\$1,105,931	143	\$1,241,843	156	\$1,243,221	122	\$20,087,610	1,559
Home Care	\$313,632	42	\$400,704	35	\$419,991	42	\$473,156	52	\$533,373	39	\$7,953,662	368
Assisted Living (RCFE/B&C)	\$397,866	26	\$428,352	25	\$542,104	30	\$599,470	30	\$585,240	27	\$7,803,659	96
Scattered Site Housing											\$209,372	4
Rental Assistance (General)	\$41,594	27	\$46,751	23	\$53,727	18	\$60,845	17	\$51,931	17	\$1,283,919	431
Non-Medical Home Equipment	\$19,175	39	\$26,386	32	\$15,130	32	\$13,669	39	\$10,232	29	\$676,899	841
Housing-Related	\$33,461	6	\$73,056	7	\$56,923	9	\$70,463	18	\$48,245	12	\$863,099	374
Assistive Devices	\$11,806	26	\$38,616	27	\$5,926	31	\$12,986	29	\$6,366	20	\$607,546	648
Adult Day Programs											\$110,375	20
Communication/Translation	\$5,230	19	\$4,661	17	\$7,289	27	\$4,491	23	\$3,457	18	\$162,516	425
Respite											\$48,686	10
Health Care	\$5	1	\$149	1	\$30	1					\$92,509	99
Other Special Needs	\$423	1	\$1,962	5	\$856	4	\$359	2	\$4,111	3	\$43,422	105
Counseling	\$4,250	16	\$5,950	19	\$3,100	11	\$4,140	12			\$126,476	204
Professional Care Assistance											\$20,418	15
Habilitation											\$22,788	10
Transportation	\$932	13	\$618	14	\$727	14	\$2,194	12	\$266	9	\$35,690	190
Legal Assistance	\$1,200	1	\$168	3	\$90	1	\$70	1			\$10,284	26
Others			\$381	1	\$39	1					\$16,293	54

Note: Historical figures may change slightly from report to report. "Other" services have historically included purchases such as employment, recreation, education, food, social reassurance, caregiver training, clothing, furniture, and other one-time purchases. In June 2016, the Medical Services category was incorporated into Health Care. In December 2016, the Scattered Site Housing category was added to track spending of the FY 15/16 CLF growth (prior to this time, CLF funded a very limited number of ongoing SSH patches).
 Note: CLF must contract year-round with a non-profit housing agency to reserve these units and ensure options are available when clients discharge from SNFs. Therefore, the total purchase amount listed may not be an accurate reflection of average cost per client served.

Client counts reflect unique clients with any transaction of that type.

Community Living Fund Six-Month Report

Enrolled Client Demographics

Age (in years)	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
18-59	40%	40%	38%	37%	39%	37%	39%	37%	35%	34%	30%
60-64	17%	15%	16%	15%	11%	13%	16%	17%	16%	15%	15%
65-74	20%	23%	22%	21%	23%	22%	16%	18%	24%	26%	28%
75-84	14%	13%	15%	17%	15%	14%	16%	15%	12%	13%	15%
85+	9%	9%	9%	11%	12%	14%	13%	13%	12%	12%	13%
Ethnicity	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
White	31%	35%	37%	38%	36%	37%	34%	35%	34%	39%	37%
African American	23%	24%	23%	23%	25%	23%	22%	26%	26%	26%	27%
Latino	13%	13%	13%	13%	14%	13%	15%	16%	16%	13%	13%
Chinese	4%	6%	6%	7%	8%	8%	9%	8%	8%	9%	10%
Filipino	1%	1%	1%	2%	3%	3%	2%	2%	3%	2%	2%
Other API	3%	2%	3%	5%	3%	6%	8%	5%	5%	4%	3%
Other	15%	10%	9%	1%	1%	1%	2%	2%	2%	2%	3%
Unknown	10%	8%	9%	10%	10%	8%	8%	7%	6%	6%	5%
Language	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
English	76%	79%	80%	79%	76%	77%	77%	79%	78%	79%	78%
Spanish	11%	11%	10%	10%	12%	10%	10%	10%	10%	9%	11%
Cantonese	6%	4%	5%	5%	5%	6%	6%	5%	5%	5%	6%
Mandarin	0%	0%	0%	0%	0%	0%	1%	1%	1%	1%	1%
Russian	1%	1%	0%	1%	1%	1%	0%	0%	0%	1%	0%
Tagalog	1%	1%	1%	1%	2%	2%	1%	1%	1%	0%	1%
Vietnamese	1%	0%	0%	0%	0%	0%	1%	0%	0%	0%	0%
Other	2%	4%	3%	3%	3%	4%	3%	4%	4%	4%	3%
Unknown	1%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%

Community Living Fund Six-Month Report

Gender	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
Male	57%	60%	59%	54%	55%	59%	59%	54%	51%	53%	54%
Female	42%	39%	38%	41%	44%	40%	40%	45%	48%	47%	46%
Transgender MtF	1%	1%	1%	1%	1%	1%	1%	1%	1%	0%	0%
Transgender FtM	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
All Other (Genderqueer, Not listed)	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Incomplete/Missing data	0%	0%	2%	4%	0%	0%	0%	0%	0%	0%	0%
Sexual Orientation	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
Heterosexual	81%	82%	78%	79%	78%	78%	79%	79%	80%	81%	83%
Gay/Lesbian/Same Gender-Loving	8%	11%	10%	10%	11%	12%	12%	12%	11%	10%	9%
Bisexual	3%	2%	3%	3%	2%	2%	2%	4%	4%	4%	2%
All Other (Questioning/Unsure, Not Listed)	0%	1%	2%	2%	2%	1%	1%	1%	1%	1%	0%
Declined to State	5%	5%	5%	3%	5%	5%	5%	3%	3%	3%	4%
Incomplete/Missing data/Not asked	2%	0%	2%	3%	3%	3%	0%	1%	2%	1%	1%
Zip Code	Dec-15	Jun-16	Dec-16	Jun-17	Dec-17	Jun-18	Dec-18	Jun-19	Dec-19	Jun-20	Dec-20
94102 Hayes Valley/Tenderloin	16%	19%	18%	17%	16%	15%	12%	13%	14%	18%	17%
94103 South of Market	7%	7%	7%	7%	6%	7%	8%	10%	8%	8%	6%
94109 Polk/Russian Hill/Nob Hill	7%	9%	11%	10%	7%	6%	8%	9%	10%	11%	10%
94110 Inner Mission/Bernal Heights	8%	10%	9%	6%	6%	4%	6%	4%	4%	5%	6%
94112 Outer Mission/Excelsior/Ingleside	5%	3%	3%	3%	2%	2%	2%	2%	3%	4%	6%
94115 Western Addition	8%	8%	9%	8%	7%	8%	8%	7%	5%	4%	6%
94116 Parkside/Forest Hill	7%	6%	7%	8%	5%	4%	4%	3%	2%	4%	4%
94117 Haight/Western Addition/Fillmore	4%	3%	3%	4%	3%	2%	3%	3%	4%	4%	5%
94118 Inner Richmond/Presidio/Laurel	2%	2%	1%	2%	2%	2%	3%	4%	3%	4%	4%
94122 Sunset	5%	4%	5%	3%	2%	2%	2%	2%	2%	4%	4%
94124 Bayview/Hunters Point	4%	4%	6%	5%	5%	3%	2%	3%	4%	3%	4%
94133 North Beach Telegraph Hill	1%	1%	1%	1%	1%	1%	1%	0%	1%	2%	1%
94134 Visitacion Valley	5%	4%	2%	4%	4%	3%	3%	2%	3%	2%	2%
Unknown/Other	20%	19%	19%	22%	35%	39%	37%	39%	37%	27%	26%
Referral Source = Laguna Honda Hospital/TCM	49%	46%	41%	31%	28%	27%	25%	29%	28%	25%	25%

MEMORANDUM

DATE: April 7, 2021

TO: Disability and Aging Services Commission

FROM: Department of Disability and Aging Services (DAS)
Shireen McSpadden, Executive Director
Michael Zaugg, Director of Office of Community Partnerships

SUBJECT: **Community Living Fund (CLF) Program for Case Management and Purchase of Resources and Services**

Annual Plan for July 2021 to June 2022

Section 10.100-12 of the San Francisco Administrative Code created the Community Living Fund (CLF) to fund aging in place and community placement alternatives for individuals who may otherwise require care within an institution. The Administrative Code requires that the Department of Disability and Aging Services (formerly Department of Aging and Adult Services) prepare a CLF Annual Plan that will be submitted to the Disability and Aging Services Commission after a public hearing process, which will have input from the Department of Public Health (DPH) and the Long Term Care Coordinating Council (LTCCC). Attached is the CLF Annual Plan for FY 21/22, which has been prepared by the Department of Disability and Aging Services (DAS) for the continuing implementation of the CLF Program.

The Director of Office of Community Partnerships at DAS, Michael Zaugg, continues to actively develop and maintain relationships with key stakeholders at the Department of Public Health, including:

- ❖ Dr. Grant Colfax, Director of Public Health;
- ❖ Michael Phillips, Chief Executive Officer, Laguna Honda Hospital (LHH) and Rehabilitation Center;
- ❖ Irin Blanco, Assistant Hospital Administrator-Clinical Services, LHH;
- ❖ Janet Gillen, Director of Social Services, LHH;
- ❖ Dr. Wilmie Hathaway, Medical Director, LHH;
- ❖ Luis Calderon, Director of Placement, Targeted Case Management;
- ❖ Edwin Batongbacal, Director of Adult and Older Adult Services, Community Behavioral Health Services;
- ❖ Salvador Menjivar, Director of Housing, Department of Homelessness and Supportive Housing;
- ❖ Roland Pickens, Director, San Francisco Health Network

COMMUNITY LIVING FUND ANNUAL PLAN FY 2021/2022

PROGRAM PURPOSE, TARGET POPULATION, AND ELIGIBILITY	3
PROGRAM IMPLEMENTATION PLAN	3
ANTICIPATED BUDGET AND POLICY CONSIDERATIONS.....	4
ACCOUNTABILITY: REPORTING, EVALUATION, AND COMMUNITY INPUT	6
Data Collection & Reporting	6
Consumer Input	7
TIMELINE	7
ANTICIPATED EXPENDITURES	8
APPENDIX A: ELIGIBILITY CRITERIA	9
APPENDIX B: CLF CONTRACTORS	10

PROGRAM PURPOSE, TARGET POPULATION, AND ELIGIBILITY

The CLF Program reduces unnecessary institutionalization by providing older adults and younger adults with disabilities or significant medical conditions with options for where and how they receive assistance, care, and support. No individual willing and able to live in the community need be institutionalized because of a lack of community-based long-term care and supportive services.

The CLF Program serves adults whose incomes are up to 300% of the federal poverty level and unable to live safely in the community without existing supports and funding sources (for detailed eligibility criteria, see Appendix A). The target population includes two primary sub-populations: (1) Patients of Laguna Honda Hospital (LHH), Zuckerberg San Francisco General Hospital (ZSFG), and other San Francisco skilled nursing facilities (SNFs) who are willing and able to live in the community and ready for discharge; and (2) Individuals who are at imminent risk for nursing home or institutional placement, but are willing and able to remain living in the community with appropriate supports.

PROGRAM IMPLEMENTATION PLAN

The basic structure of the CLF Program remains unchanged from FY 20/21, as follows.

Overview

The CLF Program provides the resources and services necessary to sustain community living when those services are not available through any other mechanism. Most CLF participants receive case management and/or purchased services from the CLF lead contractor, the Institute on Aging (IOA), and its subcontractors.

Program Access and Service Delivery

Prospective participants are screened by the DAS Intake and Screening Unit for program eligibility and offered referrals for alternative resources when they are available. For example, if participants need emergency meals, they are referred on to Meals on Wheels for expedited services. Participants who meet initial CLF eligibility criteria are referred on to IOA for a final review. Participants are accepted for service or placed on the wait list, depending on their emergent needs and program capacity at that time. When the referral is accepted, the IOA CLF Director will determine which care manager is best able to serve the needs of the individual, which will be based on language, culture and/or service needs (see Appendix B for a summary of partner agencies and their specialties).

The CLF Care Manager then contacts the participant, confirms the participant's desire to participate in the program, completes a formal application, and conducts an in-home or in-hospital assessment. The initial assessment is the tool with which the CLF Care Manager, the participant and family, or other informal support systems, determine what is needed in order for the participant to remain living safely in the community or return to living in the community. A plan to address those needs is also developed. If the participant is already working with another community care manager, the CLF Care Manager will coordinate the home assessment with him/her. The entire assessment process should be completed within one month.

CLF Care Managers make referrals to other services and follow-up on those referrals to be sure the participant receives the services required. When there are no alternative resources available to provide identified services or goods, the CLF Care Manager purchases the necessary services or items, with approval from the CLF Clinical Supervisor.

Once services are in place, the CLF Care Manager monitors the situation by maintaining regular contact with the participant and/or family and primary community care manager, if there is one. CLF Care Managers see clients as often as necessary to ensure they are receiving the services they need to remain living safely in the community. Participants are expected to have a minimum of one home visit per month. For individuals who are discharged from Laguna Honda Hospital and other San Francisco skilled nursing facilities (SNFs), CLF Care Managers have weekly face-to-face contact for the first month post-discharge, then every other week for the next two months, and then monthly thereafter. Should new problems arise, they are incorporated into the existing service plan and addressed.

The CLF Program continues with ongoing efforts to address the challenges of participants with substance abuse and mental health needs. Every CLF Care Manager participates in psychologist-facilitated care conferences twice a month. These include an in-depth case review, follow-up on progress from previous case recommendations, and skill building training. CLF Care Managers continue to make notable progress in connecting participants to mental health treatment.

In addition to the traditional CLF model of intensive case management with purchase of services, there are many participants who already have a community care manager but need tangible goods and purchases to remain stably housed in the community. The CLF Care Coordinator role, which is a purchasing care manager at Catholic Charities, can assist these participants who have a purchase-only need. With a caseload size of about 30-40 clients, the CLF Care Coordinator completes a modified assessment for expedited enrollment which allow participants who meet CLF eligibility and are enrolled in other case management to access the purchase of goods and services more efficiently. This flexibility allows CLF to serve more clients and have a more extensive community reach to prevent premature institutionalization.

ANTICIPATED BUDGET AND POLICY CONSIDERATIONS

Going into FY 21/22, CLF expenditures have continued to be stable. The plans for this upcoming year include:

- The Integrated Housing Model continues into FY 21/22 and will facilitate care coordination for CLF referrals who meet criteria for Scattered Site Housing (SSH) through the Brilliant Corners (BC) contract. IOA hosts the monthly multi-disciplinary team including BC, DAS, and LHH to discuss referrals and transition issues. A robust pipeline is essential for effective and efficient transitioning of individuals from LHH and other SNFs to the community. Access to the SSH slots are only available after CLF approval and are based on participant needs and placement appropriateness. The SSH housing units continue to add flexibility to the CLF housing portfolio in transitioning individuals who would have otherwise not been able to return to the community due to lack of appropriate housing options.

- CLF continues to support the contract with Shanti Project/PAWS (Pets are Wonderful Support) Animal Bonding Services for Isolated LGBT Seniors and Adults with Disabilities. For many, pets are considered family members, and individuals will often delay or forego own needs in order to meet their pet's needs. CLF helps increase the Shanti Project/PAWS capacity to assist low-income and frail individuals who meet CLF criteria by funding the purchases of tangible goods and services such as pet food, pet supplies, medication, and pet health services. Previous outcomes from FY19/20 included self-reports of positive health impacts and affirmation that the CLF-funded goods and services have reduced participants' risk for hospitalization (94%) and prevented isolation (98%). While FY 20/21 outcomes are not yet available, CLF anticipates continuing support in FY 21/22.
- The CLF Program continues to partner with the DAS Public Guardian (PG) Office to pilot the PG Housing Fund which provides individuals conserved by the PG, who also meet CLF eligibility criteria, with housing subsidies and assistance with move-related costs to licensed Assisted Living Facilities (ALF), supportive housing, or other similar types of housing. Due to insufficient financial resources and declining health, many individuals under PG conservatorship are marginally housed for prolonged periods of time while waiting for appropriate housing options. The PG Housing Fund through CLF is used to support their safety and housing stability. Approximately 5-10 individuals are anticipated to be served annually by this partnership.
- The CLF Program aims to serve a population that is representative of San Francisco's diverse population. CLF developed an outreach plan to be implemented in FY 20/21 with focus on the API and LGBTQ communities. However, due to the COVID-19 pandemic, the Rapid Transitions Initiative, staff vacancies and long waitlist times, the outreach plan was put on hold. CLF has identified API and LGBTQ community service providers to expand outreach and anticipates working with the providers in FY 21/22 to increase the API & LGBTQ community's access to CLF.
- In response to meeting the growing needs of clients in the community and the COVID-19 pandemic, IOA implemented a mobile/remote workforce initiative in FY 20/21 and will continue into FY 21/22. The initiative provides CLF case managers with dedicated cellular phones, mobile printers, and a HIPPA compliant cloud-base storage system. The field-based and remote nature of the work both under normal circumstances and during the pandemic requires reliable technology and a secure connection to IOA networks and electronic healthcare records.
- Since the beginning of the COVID-19 pandemic in March 2020, CLF collaborated with SF DPH Transitions Care Coordination and Placement, In-Home Supportive Services (IHSS), and Homebridge to assist individuals transitioning from Laguna Honda Hospital and Zuckerberg San Francisco General Hospital to Shelter-in-Place (SIP) hotel sites throughout the city. The CLF Rapid Transitions Team was formed to provide a modified fast-tracked process for assessment and enrollment of clients and provide care coordination and purchase of goods to meet urgent needs. This effort will continue through FY 21/22 until the CLF Rapid Transitions Team is no longer needed as a response to the pandemic.

- CLF continues to be a core partner of the San Francisco Aging and Disability Resource Connection (ADRC) and serves on the ADRC advisory committee. The goal of the ADRC is to develop long-term support infrastructure to increase consumer access to home and community-based long-term services and supports and to divert persons with disabilities and older adults from unnecessary institutionalization. The ADRC brings together key stakeholders in an effort to streamline community-based services for older adults and people with disabilities, educate the public about the rich array of services available to support community-based living and aging in place, and provide human service organizations with an avenue through which knowledge, resources, and opportunities can be shared.

ACCOUNTABILITY: REPORTING, EVALUATION, AND COMMUNITY INPUT

DAS's plans for reporting and evaluation of the CLF Program are detailed below.

Data Collection & Reporting

DAS is committed to measuring the impact of its investments in community services. The CLF Program consistently met and exceeded its goals to support successful community living for those discharged or at imminent risk of institutionalization. Beginning FY 15/16, DAAS shifted to focus on the measures below:

- ❖ Percent of clients with one or fewer admissions to an acute care hospital within a six-month period. Target: 80%.

The CLF Program is anticipated to continue to exceed this performance measure target of clients having one or fewer unplanned admissions.

- ❖ Percent of care plan problems resolved, on average, after one year of enrollment in the CLF Program (excludes clients with ongoing purchases). Target: 80%.

The CLF Program will continue to make progress towards this performance measure target in FY 21/22. This measure reflects the complexity of the population served as participants tend to have complex needs that take time to resolve or develop new care needs to remain stable in the community. However, while a subset of participants will always have less than 100% of their care plan problems resolved due to ongoing care needs, review of participant records has identified that staff training and enhanced supervision related to database utilization is needed to ensure care plan items are updated throughout enrollment. In FY 20/21, DAS and the CLF Program continued prior years' efforts to enhance staff training to ensure that documentation and operational processes support data integrity and accuracy of these performance measurements. This includes upgrades to the care plan tool implemented in FY 18/19 that care managers use to set goals with participants and track progress toward these goals.

CLF has been meeting the city ordinance that requires collection of sexual orientation and gender identity data effective July 2017. IOA has adopted DAS' standardized demographic indicators and the reporting of sexual orientation and gender identity.

Consumer Input

The CLF Advisory Council first met in January 2009 and continues to meet quarterly. The Council is comprised of representatives from consumers, partner agencies, and community representatives. The Advisory Council reviews the consumer satisfaction surveys, waiting list statistics, program changes and other issues which may affect service delivery.

IOA obtains consumer input through the Satisfaction Survey for CLF participants. On an annual basis, clients who are enrolled in the CLF Program are asked to complete a satisfaction survey that covers satisfaction with general services, social worker satisfaction, service impact, and overall satisfaction with the entire CLF Program. In 2019, clients overall reported that the CLF Program meets or exceeds (96%) their needs and expectations with 95% having recommended the program to others. For 2020, the Satisfaction Survey will be administered in March 2021 and results from the responses will be available in the next public reporting.

TIMELINE

The DAS Office of Community Partnerships and IOA will review monthly reports of service utilization and referral trends, as described in the reporting section above. The following table highlights other important dates for public reporting.

Timeline of Public Reporting – FY 2021/2022	
Quarter 1: July – September 2021	<ul style="list-style-type: none">▪ <i>August:</i> Prepare Six-Month Report on CLF activities from January through June 2021.
Quarter 2: October – December 2021	<ul style="list-style-type: none">▪ <i>October:</i> Submit Six-Month Report to Disability and Aging Services Commission for review and forward to the Board of Supervisors, Mayor's Office, LTCCC, and DPH.
Quarter 3: January – March 2022	<ul style="list-style-type: none">▪ <i>February:</i> Prepare Six-Month Report on CLF activities from July through December 2021.▪ <i>March:</i> Prepare FY22/23 CLF Annual Plan draft, seeking input from the LTCCC and DPH.
Quarter 4: April – June 2022	<ul style="list-style-type: none">▪ <i>April:</i> Submit Six-Month Report and FY22/23 CLF Annual Plan to Disability and Aging Services Commission for review and forward to the Board of Supervisors, Mayor's Office, LTCCC, and DPH.

ANTICIPATED EXPENDITURES

At the conclusion of FY 20/21, it is estimated that the CLF Program will have spent a total of \$78 million since the program's inception. For FY 21/22, the CLF Program is projecting a total of \$8.86 million in expenditures.

IOA Contract	\$ 4,544,379
Brilliant Corners Contract	\$ 3,091,349
DAS Internal Staff Positions	\$ 667,998
PG Housing Fund	\$ 350,000
RTZ Contract	\$ 96,000
Shanti Project/PAWS	\$ 75,000
Unprogrammed Funds	\$ 42,149
TOTAL	\$ 8,859,369

APPENDIX A: ELIGIBILITY CRITERIA

To receive services under the CLF Program, participants must meet all of the following criteria:

1. Be 18 years or older.
2. Be a resident of San Francisco.
3. Be willing and able to live in the community with appropriate supports.
4. Have income of no more than 300% of federal poverty level for a single adult: \$38,280 plus savings/assets of no more than \$6,000 (excluding assets allowed under Medi-Cal). Reflects the 2020 Federal Poverty guideline of \$ 12,760 for individuals.
5. Have a demonstrated need for a service and/or resource that will serve to prevent institutionalization or will enable community living.
6. Be institutionalized or be deemed at assessment to be at imminent risk of being institutionalized. In order to be considered “at imminent risk”, an individual must have, at a minimum, one of the following:
 - a. A functional impairment in a minimum of two Activities of Daily Living (ADL): eating, dressing, transfer, bathing, toileting, and grooming; or
 - b. A medical condition to the extent requiring the level of care that would be provided in a nursing facility; or
 - c. Inability to manage one’s own affairs due to emotional and/or cognitive impairment; and a functional impairment in a minimum of 3 Instrumental Activities of Daily Living (IADL): taking medications, stair climbing, mobility, housework, laundry, shopping, meal preparation, transportation, telephone usage and money management.

Specific conditions or situations such as substance abuse or chronic mental illness shall not be a deterrent to services if the eligibility criteria are met.

APPENDIX B: CLF CONTRACTORS

Agency	Specialty	Average Caseload per Care Manager
Institute on Aging	Program and case management supervision, 11 city-wide intensive Care Managers	15–22 intensive
IOA Subcontractors:		
Catholic Charities CYO	1 Care Manager	15-22 intensive
	1 Care Coordinator	30-40 cases
Conard House	1 Money Management Care Manager	40-50 cases
Self Help for the Elderly	1 Care Manager/Social Worker	15-22 intensive

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: Quarterly Power Report - September 2021
Date: Friday, September 24, 2021 3:59:00 PM
Attachments: [image001.png](#)
[9-24-21 Memo for Quarterly Report Sept. 2021.pdf](#)
[9-24-21 Attachment A1 - List of Interconnection Issues Sept. 2021.pdf](#)
[9-24-21 Attachment A2 - WDT3 Projects Released to PGE Retail Sept. 2021.pdf](#)
[9-24-21 Attachment B - Map of Interconnection Issues.pdf](#)
[9-24-21 Attachment C - Cost impacts Sept. 2021.pdf](#)

From: Castorena, Edith <ECastorena@sfgwater.org>
Sent: Friday, September 24, 2021 2:30 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>; Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Scarpulla, John (PUC) <JScarpulla@sfgwater.org>
Subject: Quarterly Power Report - September 2021

Dear Board of Supervisors staff,

Please see the attached San Francisco Public Utilities Commission's Quarterly Report to the Board of Supervisors (dated September 24, 2021) on the Status of Applications to PG&E for Electric Service. This report is being submitted in accordance with Resolution No. 227-18.

The following is a list of the accompanying documents:

1. Quarterly Power Report Memo
2. Attachment A1 – List of Interconnection Applications to PG&E for electric service
3. Attachment A2 –Projects Released to PG&E Retail
4. Attachment B – Map of PG&E power connection delays
5. Attachment C – Cost Impacts

Thank you,
Edith

Edith Castorena (she/her/hers & they/them/theirs)
Policy & Government Affairs
San Francisco Public Utilities Commission
ecastorena@sfgwater.org



September 24, 2021

Ms. Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: San Francisco Public Utilities Commission's Quarterly Report to the Board of Supervisors on the Status of Applications to PG&E for Electric Service.

Dear Ms. Calvillo:

The attached quarterly report has been prepared for the Board of Supervisors (Board) in accordance with Resolution No. 227-18, approved by the Board on July 10, 2018 (File No. 180693), adopted on July 20, 2018 and re-affirmed on April 6, 2021. Pursuant to Resolution No. 227-18, the San Francisco Public Utilities Commission (SFPUC) is required to "provide the Board a quarterly report for the next two years that identifies the following: status of all City projects with applications to SFPUC for electric service, including project schedules and financing and other deadlines; project sponsor and SFPUC concerns in securing temporary and permanent power, including obstacles that could increase costs or delay service to City customers; and the status of disputes with PG&E before the Federal Energy Regulatory Commission (FERC) or in other forums."

BACKGROUND AND RECENT DEVELOPMENTS:

The SFPUC provides retail electric service from our Hetch Hetchy Power public utility to over 4,000 accounts, relying on our Hetch Hetchy generation and other sources for supply. The City pays PG&E to provide transmission and distribution services regulated by FERC. The terms and conditions of the purchased distribution services are described in PG&E's Wholesale Distribution Tariff (WDT).

In September 2020, PG&E filed an update to the WDT (WDT3) seeking to significantly increase wholesale distribution rates and amend the terms and conditions of service. San Francisco, California Public Utilities Commission, and other customers and agencies have intervened in the FERC proceeding to challenge many of PG&E's proposed amendments to the WDT. Despite these challenges, under FERC rules WDT3 is now in effect. If FERC rejects any of PG&E's proposed revisions, it can order PG&E to provide refunds to the City and its other wholesale customers.

London N. Breed
Mayor

Sophie Maxwell
President

Anson Moran
Vice President

Tim Paulson
Commissioner

Ed Harrington
Commissioner

Newsha Ajami
Commissioner

Michael Carlin
Acting
General Manager

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.



Prior to this filing, San Francisco was paying \$10 million per year for distribution service. Under an interim agreement with PG&E and its wholesale customers, San Francisco is now paying nearly double that amount.

The amendments PG&E has proposed in its WDT3 filing are concerning to the City due to the following anti-competitive requirements and restrictions:

- **Elimination of unmetered load** – all unmetered load such as streetlights, traffic signals, and bus shelters would have to be served by primary equipment or be converted to PG&E retail service by January 31, 2022.
- **Elimination of any interconnections to PG&E’s “downtown network”** – prohibits any new load or upgrades to existing load in SF’s downtown area (includes all of Market St. from Embarcadero through Civic Center).
- **Elimination of all new secondary interconnections** – prohibits the connection of any loads at secondary despite the size. This would also prohibit the City from providing secondary service to any existing customers with secondary interconnections if their facilities are being modified for reasons such as building renovations or decarbonization (increased electrification) of existing buildings.
- **Major Increase in Distribution Rates** – the City must now pay double in distribution costs and may face further increases under PG&E’s newly filed rates. There are also major concerns about how PG&E’s proposed rate design inequitably over-allocates costs to wholesale customers.

For some months now, and as required by FERC, the City and PG&E’s other wholesale customers have been discussing settlement of their disputes over PG&E’s revisions to the WDT. The settlement discussions are supervised by a FERC Administrative Law Judge (ALJ). The settlement discussions will continue until the ALJ finds that the parties have reached an impasse on one or more issues. At which time, FERC will set the matter for hearing on those issues that cannot be settled.

AFFORDABLE HOUSING AGREEMENT:

After months of negotiations, the City and PG&E have come to an agreement in principle on interconnections for new affordable housing developments that meet certain conditions. PG&E will allow affordable housing projects to connect at secondary voltage. This agreement will be presented to the Commission on September 28, 2021. If approved by the Commission, the agreement will then be introduced at the Board for the Board’s approval.

VALUATION PETITION:

On July 27, 2021, the City submitted a petition to the California Public Utilities Commission (CPUC), requesting a formal determination of the value of PG&E’s electric assets in San Francisco. This petition serves as an important step in the City’s efforts to acquire PG&E’s local electric infrastructure to complete the City’s transition to full public power. Owning the grid would allow San Francisco to deliver clean,

reliable and affordable electricity throughout the City. The City would have control over climate goals and equity in electric service and workforce development, while providing transparency and public accountability in rates, service and safety.

While the CPUC has yet to act on the City's petition, on September 14, 2021 PG&E filed a motion with the CPUC asking the CPUC to exercise its discretion to decline to hear the petition. The City intends to vigorously oppose PG&E's motion.

REPORT SUMMARY:

As the City continues its efforts in fighting for fair access to the grid and decreasing dependence on PG&E, important City projects are still being delayed by PG&E's obstruction. PG&E continues to impose unnecessary requirements on projects resulting in delays and additional costs.

Since October 2018, the City has reported on 110 projects that have experienced obstruction by PG&E. Out of those projects, 36 have been energized, and 6 have been cancelled due to PG&E's unnecessary requirements. The total cost impact (additional project costs and loss of revenue to the City) of PG&E's obstructions since October 2018 has been over \$18M.

For the reporting period of May 2021 through August 2021, the SFPUC has identified 60 projects that have experienced interconnection delays, arbitrary requests for additional and/or unnecessary information, or increased project costs, as listed in **Attachment A1**. Since the last quarterly report, 1 project has been added and 3 projects have been energized. Updates and changes to projects since the previous quarterly report are detailed in Column P of Attachment A1.

With the implementation of PG&E's new WDT, many projects can no longer receive service from the SFPUC and must apply to PG&E for retail service where they are charged higher rates. These projects are listed in **Attachment A2**.

Attachment B contains a map providing the location of each project.

Attachment C contains a detailed report of each category of additional incurred costs and impacts to the City per project, such as redesign costs, construction and equipment costs, and additional staff time (also included in the 'Impacts' column of Attachment A). The total cost impacts to the City for these projects is more than \$8 million. Total costs do not include estimated costs for projects that are at a standstill as those costs are still to be determined.

STATUS OF DISPUTES WITH PG&E BEFORE FERC:

As we previously informed you, on November 21, 2019, FERC issued an order in the City's 2014 complaint and related cases rejecting the City's claim that all of its load is

eligible for service under the Federal Power Act without adding new facilities because the City had been serving the same customers for decades. On December 20, 2019, the City filed a request for rehearing of FERC's order. On June 4, 2020, FERC issued an order on rehearing that, for the most part, affirmed its prior order. The City has filed petitions to review these FERC orders with the Court of Appeals for the District of Columbia Circuit. These matters have been fully briefed. We anticipate that the Court will schedule an oral argument in these matters sometime this year.

In January 2020, the City and PG&E participated in an evidentiary hearing before a FERC ALJ in a dispute over WDT service to an SFMTA substation at 6 Berry Street. The issues in that proceeding are: (i) whether PG&E is wrongfully charging the City for upgrades to its system; and (ii) whether PG&E's cost estimates lack sufficient detail. On July 2, 2020, the ALJ issued an initial decision in which the ALJ found for PG&E on the issue concerning the cost of upgrades and for the City on the issue concerning the cost estimates. Both the City and PG&E have filed exceptions to the initial decision asking FERC to reject the ALJ's rulings against them. We await a FERC decision.

On April 16, 2020, FERC issued an order dismissing the City's second complaint against PG&E in which the City claimed that PG&E violated its WDT by demanding primary service for small loads. FERC found that PG&E has the discretion to grant or deny a request for secondary service based on the specifics of each particular request. On May 18, 2020, the City filed a request for rehearing of FERC's order. On September 17, 2020, FERC issued an order on rehearing sustaining its dismissal of the complaint. The City has filed petitions to review these FERC orders with the Court of Appeals for the District of Columbia Circuit. These matters have been fully briefed. The Court has ordered that the oral argument in these matters will be on the same day as the prior appeal discussed above.

The City received a favorable ruling from FERC following the City's protest over PG&E's rejection of the City's request to serve a customer that had requested a transfer from PG&E retail service to SFPUC service. FERC found that "PG&E's WDT does not permit it to refuse to grant a customer's requested reserved capacity when available distribution capacity exists to meet the request."

As noted earlier, under WDT3 PG&E will no longer offer secondary service to the City and other wholesale customers. PG&E has stopped taking applications for secondary service. In addition, as of January 31, 2022, PG&E will no longer provide wholesale service to the City's unmetered loads, which consist primarily of streetlights, traffic signal lights, and similar small, predictable municipal loads that are billed based on agreed-upon, FERC-approved usage formulas rather than metered usage. PG&E is already requiring the City to apply for retail service from PG&E for new streetlights and other unmetered loads.

The City is now taking steps to obtain FERC orders requiring PG&E to continue to provide these services, despite the changes to the WDT in WDT3. Under the Federal Power Act and FERC rules, FERC has the authority to issue such orders to PG&E where the request for service meets the requirements of federal law and is the public interest. In this regard, on August 20, 2021, the City filed an application with FERC for an order requiring PG&E to provide, starting January 1, 2022: (i) wholesale distribution service to the unmetered loads that currently receive service under the WDT; and (2) wholesale distribution service and interconnections for future unmetered load that would satisfy the criteria for unmetered service. The City is considering filing similar applications for other services PG&E has denied.

On August 25, 2021, FERC ordered PG&E to file a response to the City's application by September 10, 2021. On September 7, 2021, PG&E filed a motion for an extension of time to respond, which FERC granted and extended to September 30, 2021. In connection with PG&E's motion, on September 10, 2021 PG&E and the City agreed that PG&E would not seek to terminate unmetered load service until January 31, 2022, in order to allow FERC sufficient time to issue an order on this matter. We understand that PG&E intends to file a notice of termination of unmetered service with FERC, in addition to filing an Advice Letter with the CPUC to establish a new retail tariff for the City's unmetered loads.

Please find attached copies of the following documents related to this report:

- **Attachment A1:** List of projects with active interconnection applications to PG&E for electric service as of September 2021
- **Attachment A2:** List of projects that were released to PG&E retail as of September 2021
- **Attachment B:** Map of projects with PG&E power connection delays as of September 2021
- **Attachment C:** Cost impacts

Should you have any questions, please contact Barbara Hale, SFPUC Assistant General Manager for Power, at BHale@sfwater.org and 415-613-6341.

Sincerely,



Michael Carlin

Acting General Manager

Attachment A1: List of Interconnection Issues

	PG&E NN#	Project Location	District #	Client Organization	Project Description (what SF applied for)	Project Status		Initial Application Submittal Date	App Deemed Complete Date	Initial Service Need Date	Did PG&E require Primary?	Load Size/Can Be Served at Secondary	PG&E committed to work w/ SF to energize in 2018	Impacts	Updates/Changes since Last Report (April 2021)
1	120533309	600 Arguello Blvd. - Rossi Pool	1	SFRPD	Request for shutdown (for meter replacement)	Delays caused by PG&E providing the Service Agreement late.	Final shutdown scheduled.	12/11/2020	2/12/2021	4/4/2021	N/A	N/A		Overhead/delays costs TBD. Pool will also not be available for public use until work is done.	No impacts update.
2	112434942	3455 Van Ness Avenue - AWSS Pump Station No. 2	2	SFPUC - Water	Remove two existing services and replace with one secondary service	Delays caused by dispute over primary vs. secondary. Project moving forward with low-side metering. (See Note 1)	In construction	12/9/2016	1/5/2017	8/1/2017	Yes	144 kW/Yes	X	Seismic improvements and architectural upgrades to increase reliability of the pumping station have been delayed. Additional project costs - \$75k (interrupter, #7 box, & installation) Further delays caused by PG&E not providing necessary cost detail to the Service Agreement (7 month delay).	No impacts update.
3	114713666	2110 Greenwich Street - Tule Elk Elementary	2	SFUSD	Upgrading and relocating existing secondary service	Delays caused by dispute over primary vs. secondary. Project moving forward with low-side metering. (See Note 1)	Energized	6/15/2018	4/2/2020	6/1/2019	Yes	300 kW/Yes		Project delayed - project was in dispute from Jun. 2018 - Oct. 2019 (14-15 months) Additional project costs - \$150k (2 interrupters, 2 #7 boxes, & installation)	Project energized in Aug. 2021. Will be removed off of next quarter's report.
4	115675911	2445 Hyde St. - Francisco Park	2	SFRPD	New secondary service	Delays caused by dispute over primary vs. secondary. Project moving forward with low-side metering. (See Note 1)	In construction	1/9/2019	4/7/2020	12/27/2019	Yes	70 kW/Yes		Project delayed - project was in dispute from Jun. 2019 - Oct. 2019 (3-4 months). Additional project costs - \$75k (interrupter, #7 box, & installation) The project expects overhead/delay costs of at least \$168k (assuming a 30-day delay).	No impacts update.
5	PG&E withholding NN#	102 Marina Blvd. - Fort Mason (EVGo)	2	EVGo	New secondary service	Delays caused by dispute over primary vs. secondary. Project is still in dispute.	Project is at a standstill.	12/13/2018		7/15/2019	Yes	600 kW/Yes		Project delayed - project has been in dispute since Dec. 2018 (20-21 months). If required, primary switchgear would cost the project an additional \$500k.	PG&E has cancelled this application.
6	114088011	Lake Merced Blvd & Sunset Blvd - Restroom	4	SFRPD	New secondary service	Delays caused by dispute over primary vs. secondary.	Project Cancelled	12/8/2017		1/15/2019	Yes	10 kW/Yes		Project delayed - project has been in dispute since late Aug. 2018. (4-5 months) Bathroom will not be available for public use at Lake Merced. Primary switchgear will cost the project an additional \$500k in equipment costs and take the space of parking spots.	Project cancelled due to PG&E's new policy of requiring underground service for the area. The extensive costs of underground service for this bathroom is not feasible. Project will be removed in next quarter's report.
7	Several applications submitted	L Taraval - Streetlights	4	SFMTA	New secondary service (several streetlights)	Delays caused by PG&E being unresponsive.	In construction	3/19/2019	4/27/2019	1/1/2020	No	9.6 kW (per service point)/Yes		Pedestrian and traffic safety is at risk as PG&E delays the energization of these streetlights. Delays continue as SF has not received construction drawings form PG&E. Project delayed - impacts TBD.	Further delays caused by PG&E.
8	PG&E withholding NN#	1351 42nd Ave - Francis Scott Key Educator Housing (Construction and Perm. Power)	4	MOHCD (MidPen Housing)	New secondary service for perm. Construction power released to PG&E retail.	Delays caused by dispute over primary vs. secondary. Project will be moving forward with secondary.	SF to submit updated application for secondary.	3/30/2020 (temp) 2/24/2020 (perm)		12/7/2020 (temp) 12/6/2021 (perm)	Yes	417 kW/Yes (temp) 678 kW/Yes (perm)		Project delayed - project was in dispute from Apr. 2020 to Sept. 2021 (15-16 months). Temp. construction power service by PG&E at retail - \$118k in lost gross revenue to SFPUC. \$25k in additional power costs to the project due to PG&E's higher rates.	No impacts update.
9	PG&E withholding NN#	78 Haight Street - Affordable Housing (63 units)	5	MOHCD (TNDC)	New secondary service for perm. Construction power released to PG&E retail.	Delays caused by dispute over primary vs. secondary. Project will be moving forward with secondary.	SF to submit updated application for secondary.	6/15/2020		12/15/2021	Yes	315 kW/Yes		Project delayed - project was in dispute from Jun. 2020 to Sept. 2021 (14-15 months). Temp. construction power service by PG&E at retail - \$38k in lost gross revenue to SFPUC. \$6k in additional power costs to the project due to PG&E's higher rates.	No impacts update.
10	Several applications submitted	Haight Street Traffic Signals	5	SFMTA	New secondary services (several traffic signals)	Delays caused by PG&E cancelling the initial applications.	In construction	4/22/2020	7/16/2020	11/30/2020	Yes			Project delayed as PG&E cancelled the original applications. Public safety is at risk as the traffic signal infrastructure is completed and are just awaiting energization. The public has been inquiring about signal activation status. The traffic signals are moving forward, but there are disagreements on whether or not unmetetered holiday lighting can be added to these poles.	No impacts update.
11	111729695	6 Berry Street - Substation	6	SFMTA	Upgrade existing primary service	Delays caused by PG&E being unresponsive, changing requirements, and being non-transparent with costs and design changes.	Energized	6/17/2016	12/12/2016	5/1/2017	N/A	3000 kW/Yes		SFMTA completed the conduit boring under the rails prior to PG&E's approval. As such, parties disagree on costs and design requirements. SFMTA claims that they are incurring delay claims costs from contractor due to PG&E's failure to approve design and equipment submittals. (actual costs are still to be determined, but the costs continue to increase on a daily basis)	No impacts update. Project was energized in June 2020. The project team will be reaching out to connect the power to the permanent substation in 2021.
12	113826990	750 Brannan - Main Library Repository	6	SFPW for SFPL	Increase load request (237 kW to 500 kW)	Dispute over how to process increase in load request.	Service Agreement returned with payment by SFPUC.	11/14/2017	1/18/2018	1/1/2018	No	500 kW/Yes		Plans for a new HVAC system at the library repository have been delayed. No monetary impact - however, SF believes that PG&E's requirements for approving load increase for muni loads is extensive and will cause delays to projects.	No impacts update.
13	118152147	399 The Embarcadero - Fire Boat #35	6	SFFD	New secondary service	Delays caused by dispute over primary vs. secondary. Project moving forward with low-side metering. (See Note 1)	In construction	1/14/2019	2/8/2020	12/27/2019	Yes	430 kW/Yes		Project delayed - project was in dispute from Jan. 2019 - Oct. 2019 (8-9 months). Additional project costs - \$150k (2 interrupters, 2 #7 boxes, & installation)	No impacts update.

Attachment A: List of Interconnection Issues

	PG&E NN#	Project Location	District #	Client Organization	Project Description (what SF applied for)	Project Status		Initial Application Submittal Date	App Deemed Complete Date	Initial Service Need Date	Did PG&E require Primary?	Load Size/Can Be Served at Secondary	PG&E committed to work w/ SF to energize in 2018	Impacts	Updates/Changes since Last Report (April 2021)
14	115071498	555 Larkin (formerly 500 Turk) - Affordable Housing (108 units)	6	MOHCD (TNDC)	New secondary service for perm. Construction power released to PG&E retail.	Delays caused by dispute over primary vs. secondary. Project moving forward with low-side metering. (See Note 1)	In construction	10/15/2018	12/18/2019	7/1/2020	Yes	890 kW/Yes		Project delayed - project was in dispute from Nov. 2018 - Oct. 2019 (11-12 months). Temp. construction power service by PG&E at retail - \$196k in lost gross revenue to SFPUC. \$24k in additional power costs to the project due to PG&E's higher rates. Additional project costs - \$150k (2 interrupters, 2 #7 boxes, & installation) 243,000 lbs. of CO2 emissions (construction period of 22 months)	No impacts update.
15	116790877	Market St. & 7th St - BMS Switch	6	SFMTA	New secondary service	Delays caused by PG&E not following WDT timelines and not providing cost explanations.	Service Agreement returned with payment by SFPUC.	3/6/2019	4/9/2019	1/4/2021	No	48 kW/Yes		Project delayed - PG&E was late in providing the service agreement and was unresponsive in providing further cost explanation.	No impacts update.
16	TBD	1064 Mission St. - Affordable Housing (256 units)	6	MOHCD (Mercy Housing)	New secondary service for perm. Construction power released to PG&E retail.	Delays caused by dispute over primary vs. secondary. Project moving forward with low-side metering. (See Note 1)	In construction	3/28/2019	12/18/2019	4/1/2021	Yes	678 kW/Yes		Project delayed - project was in dispute from Feb. 2019 to Oct. 2019 (7-8 months). Additional project costs - \$150k (2 interrupters, 2 #7 boxes, & installation) Temp. construction power service by PG&E at retail - \$105k in lost gross revenue to SFPUC. \$23k in additional power costs to the project due to PG&E's higher rates. 142,000 lbs. of CO2 emissions (construction period of 18 months)	No impacts up date.
17	N/A	Transbay Transit Center - Transbay Joint Powers Authority	6	SFPUC - Power	Two new primary services (5 MW each)	Potential dispute over reserved capacity.	Energized - PG&E reviewing SF's request.	9/12/2018	2/6/2019	10/1/2018	N/A	10 MW/No		PG&E is currently reviewing SF's request to use 10 MW of reserved capacity that SF applied and paid for. If PG&E denies request, SF may incur additional costs or have to limit the tenants. PG&E is holding up the project by not explaining the discrepancies between its System Impact Study draft agreement to what SF had requested.	Delays continue as PG&E has still not adequately responded to SF's questions regarding load calculations in the System Impact Study draft agreement.
18	117795024	16 Sherman Street - Victoria Park Lighting	6	SFRPD	Upgrading existing secondary service	Delays caused by PG&E providing the Service Agreement late.	In construction	10/30/2019	11/20/2019	2/15/2020	N/A	42 kW/Yes		Park safety is at risk as PG&E caused delays to the energization of these lighting fixtures. Further delays will prevent re-opening of the park and leave SFUSD students without a playground.	No impacts update.
19	PG&E withholding NN#	180 Jones Street - Affordable Housing (70 units)	6	MOHCD (TNDC)	New secondary service for perm. Construction power released to PG&E retail.	Delays caused by dispute over primary vs. secondary. Project will be moving forward with secondary.	SF to submit updated application for secondary.	4/28/2020		9/5/2022	Yes	576 kW/Yes		Project delayed - project was in dispute from May 2020 to Sept.2021 (15-16 months). Temp. construction power service by PG&E at retail - \$89k in lost gross revenue to SFPUC. \$20k in additional power costs to the project due to PG&E's higher rates.	No impacts update.
20	PG&E withholding NN#	266 4th Street - Affordable Housing (70 units)	6	MOHCD (TNDC)	New secondary service	Delays caused by dispute over primary vs. secondary. Project will be moving forward with secondary.	SF to submit updated application for secondary.	6/15/2020		12/1/2021	Yes	700 kW/Yes		Project delayed - project was in dispute from June 2020 to Sept. 2021 (14-15 months).	No impacts update.
21	PG&E withholding NN#	750 Eddy Street - City College Building	6	CCSF	Upgrade and relocation of existing secondary service	Delays caused by dispute over primary vs. secondary. Project is still in dispute.	Project is at a standstill.	11/9/2020		12/30/2021	Yes	258 kW/Yes		Project delayed - project has been in dispute since Nov. 2020 (8-9 months)	No impacts update.
22	PG&E withholding NN#	600 7th Street - Affordable Housing (70 units)	6	MOHCD	New secondary service	Delays caused by dispute over primary vs. secondary. Project will be moving forward with secondary.	SF to submit updated application for secondary.	1/19/2021		5/21/2023	Yes	847 kW/Yes		Project delayed - project was in dispute from Feb. 2021 to Sept. 2021 (6-7 months)	No impacts update.
23	PG&E withholding NN#	2685 Ocean Ave. - EV Charging Station	7	SFMTA & EVGo	New secondary service	Delays caused by dispute over primary vs. secondary. Project is still in dispute.	Project is at a standstill.	2/4/2019		7/22/2019	Yes	600 kW/Yes		Project delayed - project has been in dispute since Feb. 2019 (30-31 months). If required, primary switchgear would cost the project an additional \$500k.	PG&E has cancelled this application.
24	PG&E withholding NN#	2101 Sloat Boulevard - Construction Trailers (Westside Pump Station)	7	SFPUC	New secondary service	Delays caused by dispute over primary vs. secondary.	Project Cancelled	12/17/2020		2/1/2021	Yes	75 kW/Yes		Project delayed - project was in dispute from Jan. 2021-Mar.2021 (2-3 months)	The project has been cancelled by SF and will be removed from next quarter's report.
25	TBD	2814 Great Highway - Westside Pump Station	7	SFPUC	Remove one existing secondary service and replace with two (2) primary services	Delays caused by PG&E cancelling the original design and requiring SF to re-apply.	In construction			9/27/2022	N/A	4000 kW/No		Project delayed - cost impacts TBD. PG&E has already given SF notice that the project will be further delayed due to resource issues on PG&E's end.	Project added.
26	113135782	350 Amber Drive - Police Academy	8	SFPW for SFPD	Upgrade existing secondary service	Delays caused by dispute over primary vs. secondary. Project moving forward with low-side metering. (See Note 1)	Service Agreement returned with payment by SFPUC.	8/8/2017	5/22/2018	TBD FYE22	Yes	160 kW/Yes	X	Project delayed - project was in dispute from Dec. 2017 - May 2018 (6 months). Additional project costs - \$75k (interrupter, #7 box, & installation)	No impacts update. This project is currently on hold (SF paid PG&E for an extension).

Attachment A: List of Interconnection Issues

	PG&E NN#	Project Location	District #	Client Organization	Project Description (what SF applied for)	Project Status		Initial Application Submittal Date	App Deemed Complete Date	Initial Service Need Date	Did PG&E require Primary?	Load Size/Can Be Served at Secondary	PG&E committed to work w/ SF to energize in 2018	Impacts	Updates/Changes since Last Report (April 2021)
27	PG&E withholding NN#	681 Florida Street - Affordable Housing (131 units)	9	MOHCD (MEDA)	New secondary service for perm. Construction power released to PG&E retail.	Delays caused by dispute over primary vs. secondary. Project moving forward with low-side metering. (See Note 1)	In construction	2/6/2019		8/3/2020	Yes	785 kW/Yes		Project delayed - project was in dispute from Feb. 2019 - Oct. 2019 (7-8 months). Temp. construction power service by PG&E at retail - \$59k in lost gross revenue to SFPUC. \$12k in additional power costs to project due to PG&E's higher rates. Additional project costs - \$150k (2 interrupters, 2 #7 boxes, & installation) 77,000 lbs. of CO2 emissions (construction period of 15 months)	No impacts update.
28	114345033	1990 Folsom Street - Affordable Housing (143 units)	9	MOHCD (MEDA)	New secondary service for perm. Construction power released to PG&E retail.	Delays caused by dispute over primary vs. secondary. Project moving forward with low-side metering. (See Note 1)	Energized	2/26/2018	3/14/2019	9/1/2020	Yes	920 kW/Yes		Project delayed - project was in dispute from Mar. 2018 - Nov. 2018. (7-8 months) Costs for redesign (primary service with low-side metering) - \$2-3k Temp. construction power service by PG&E at retail - \$181k in lost gross revenue to SFPUC. \$38k in additional power costs to project due to PG&E's higher rates. Additional project costs - \$150k (2 interrupters, 2 #7 boxes, & installation) 247,000 lbs. of CO2 emissions (construction period of 21 months)	Project was energized in April 2021 and will be removed on next quarter's report.
29	115148446	3001-3021 24th St. - Affordable Housing (44 units)	9	MOHCD (Mercy Housing)	New secondary service	Delays caused by dispute over primary vs. secondary. Project moving forward with low-side metering. (See Note 1)	Project went to PG&E retail.	11/1/2018		9/1/2020	Yes	362 kW/Yes		Project delayed - project was in dispute from Nov. 2018 to Oct. 2019 (10-11 months).	No impacts update.
30	PG&E withholding NN#	300 Bartlett Street - Mission Branch Library	9	SFPL	New secondary service	Delays caused by dispute over primary vs. secondary. Project is moving forward with primary service.	SF redesigning for primary service.	2/26/2020		9/1/2020	Yes	190 kW/Yes		Project delayed - project was in dispute since from Feb. 2020 - Jun. 2021 Additional project costs - \$250k for overhead primary service	Impacts updated to show estimated costs of overhead primary service.
31	111975801	800 Amador Street - Pier 94 - Backlands	10	SFPORT	New secondary service	PG&E required primary. Project is moving forward with primary service.	Service Agreement issued by PG&E, but issues remain on land rights. (Project now on hold due to COVID emergency response)	8/19/2016	8/28/2018	2/1/2017	Yes	166 kW/Yes	X	Added costs for primary equipment (overhead) - \$500k Additional staff time for Port - \$50k Costs of redesign - \$50k	This project is now on hold. This location has been used for the emergency shelters for the homeless in response to COVID. The issues regarding the permanent power service still remain. The Port plans to maintain the temporary service until the permanent service is available.
32	112774763	Illinois St. & Terry Francois - Mariposa Pump Station	10	SFPUC - Wastewater	Relocate existing secondary service (for construction)	Delays caused by PG&E requiring primary. Project went to PG&E retail to avoid anymore delays.	Due to the delays, the project is going to take PG&E retail service.	4/13/2017		6/1/2018	Yes	169 kW/Yes	X	Temp. construction power service by PG&E at retail - \$526k in lost gross revenue to SFPUC. \$245k in additional equipment, labor, and construction costs due to PG&E not providing retail power in a timely manner \$281k in additional costs for a generator rental while waiting for PG&E retail temp power to be energized \$22k in additional power costs to the project due to PG&E's higher rates. 554,000 lbs. of CO2 emissions (construction period of 36 months)	Further delays - PG&E is not providing temporary power on time. The project team is looking into mitigating construction contract delay costs by using a generator.
33	114408260	684 23rd Street - Potrero North	10	SFPUC - Power	New primary service	Delays caused by PG&E cancelling the application.	Project is at a standstill.	3/12/2018		10/1/2018	N/A	12,000 kW/No		Project delayed - PG&E denied this service request citing inadequate capacity and cancelled the application.	No impacts update - PG&E refuses to provide service.
34	114408263	638 23rd Street - Potrero South	10	SFPUC - Power	New primary service	Delays caused by PG&E cancelling the application.	Project is at a standstill.	3/12/2018		10/1/2018	N/A	12,000 kW/No		Project delayed - PG&E denied this service request citing inadequate capacity and cancelled the application.	No impacts update - PG&E refuses to provide service.
35	114713787	1001 22nd Street - Bus Electrification Pilot	10	SFMTA	New primary service	Delays caused by PG&E being late in providing the Service Agreement.	In construction	6/18/2018	2/14/2019	5/1/2019	N/A	2400 kW/Yes		Initially, PG&E was unresponsive in scheduling a pre-application meeting which has caused some delays. PG&E was also late in providing a deemed complete date for the application and several months late in providing the Service Agreement. PG&E caused another 4-month delay to redesign for a PG&E error in the original design.	No impacts update.
36	114671200	1995 Evans - Traffic Controls and Forensics	10	SFPW for SFPD	New secondary service	Delays caused by dispute over primary vs. secondary. Project moving forward with low-side metering. (See Note 1)	Energized	5/18/2018	9/3/2019	3/1/2020	Yes	2100 kW/Yes		Project delayed - project was in dispute from Jun. 2018 to August. 2019 (13-14 months). Temp. construction power service by PG&E at retail has been delayed causing the project team to use generators Additional project costs - \$75k (interrupter, #7 box, & installation) Generator costs for temp power: \$578k Additional delays caused by pole location issues.	Project was energized in Mar. 2021, but construction is stalled as PG&E continues to delay moving a pole that is obstructing construction.
37	110162018	750 Phelps - Southeast Plant	10	SFPUC- Wastewater	New primary service	Potential delay as PG&E is late in providing SIS agreement.	Service agreement issued by PG&E.	IN FLIGHT (Prior to July 2015)	7/14/2018	5/20/2020	N/A	12000 kW/no		If delays continue and jeopardize the project energization date, the project team will incur a liquidated damage amount of \$3000/day. Further delays caused by PG&E not providing enough design detail with the Service Agreement.	No impacts update.
38	114546573	2401/2403 Keith Street - Southeast Health Center	10	SFPW for SFDPH	New secondary service	Delays caused by dispute over primary vs. secondary. Project moving forward with low-side metering. (See Note 1)	In construction	4/27/2018	11/14/2019	7/26/2020	Yes	200 kW/Yes		Project delayed - project was in dispute from May 2018 - Oct. 2019 (16-17 months). Additional project costs - \$150k (2 interrupters, #7 box, & installation)	No impacts update.
39	115415116	1550 Evans Ave. - Southeast Community Center	10	SFPUC	Relocation and upgrade of existing secondary service	Delays caused by dispute over primary vs. secondary. Project moving forward at low-side metering. (See Note 1)	In construction	11/26/2018	5/22/2019	1/4/2021	Yes	800 kW/Yes		Project delayed - project was in dispute from Dec. 2018 - Oct. 2019 (8-9 months). PG&E is now 2 months late in providing the Service Agreement. Added costs for primary equipment - \$500k Temp. construction power service by PG&E at retail - \$187k in lost gross revenue to SFPUC. \$9k in additional power costs to project due to PG&E's higher rates.	No impacts update.

Attachment A: List of Interconnection Issues

	PG&E NN#	Project Location	District #	Client Organization	Project Description (what SF applied for)	Project Status		Initial Application Submittal Date	App Deemed Complete Date	Initial Service Need Date	Did PG&E require Primary?	Load Size/Can Be Served at Secondary	PG&E committed to work w/ SF to energize in 2018	Impacts	Updates/Changes since Last Report (April 2021)
40	TBD	Islais Creek Bridge Rehab (3rd Street)	10	SFPW	New secondary service	Delays caused by dispute over primary vs. secondary. Project moving forward with low-side metering. (See Note 1)	Project Cancelled	4/2/2019		5/1/2021	Yes	104 kW/Yes		Project delayed - project was in dispute from Mar. 2019 - Oct. 2019 (6-7 months).	Project cancelled - the additional costs of low-side metering made the project re-consider its options. The project has now been cancelled as PG&E was requiring payment and the project team needed more time to re-evaluate design options. Project will be removed next quarter.
41	PG&E withholding NN#	1150 Phelps - Construction Trailers	10	SFPUC	New secondary service	Delays caused by dispute over primary vs. secondary. Project is still in dispute.	Project went to PG&E retail.	5/1/2019		6/1/2019	N/A	472 kW/Yes		Project delayed - project was been in dispute from May 2019 to May 2021 (23-24 months). Temp. construction power service by PG&E at retail - \$2M in lost gross revenue to SFPUC. \$286k in additional power costs due to PG&E's higher rates. (assuming temp. power for 5 years)	Impacts updated to show additional energy costs since PUC released the project to apply for PG&E retail service to avoid further delays.
42	114721804	480 22nd Street - Pier 70 Pump Station	10	SFPUC - Power	New primary service	Delays caused by PG&E being late in providing Service Agreement.	Engineering estimation by PG&E.	6/14/2018	10/26/2018	1/1/2019	N/A	2000 kW/Yes		Project delayed - PG&E should have provided Service Agreement by end of August 2019.	PG&E has cancelled this application.
43	112875227	1601 Griffith Street - Griffith Pump Station	10	SFPUC - Water	Shutdown & re-energization	Delays caused by PG&E providing energization late.	Energized - Cost impacts due to delay in energization.	N/A	N/A	N/A	N/A	N/A		Project delayed - PG&E pushed back the energization date by 2 weeks. Due to PG&E's delay, the project had to use generators for an additional 2 weeks costing \$27k.	No impacts update.
44	114919920	Harmonia Street - Sunnydale HOPE	10	SFPUC - Power	New primary service	Potential dispute over reserved capacity.	Service Agreement returned with payment by SFPUC. PG&E performing engineering/design.	8/16/2018	4/4/2019	8/1/2020	N/A	1000 kW/Yes		Delays caused by PG&E not responding to SF's questions regarding load calculations in the System Impact Study draft agreement. Due to the urgency of the project, SF has agreed to move forward with PG&E's lower load calcs and will apply to PG&E for additional capacity when the load ramps up. Costs of this are TBD.	No impacts update.
45	115583820	1101 Connecticut Street - HOPE Potrero	10	SFPUC - Power	New primary service	Potential dispute over reserved capacity.	Service Agreement returned with payment by SFPUC. PG&E performing engineering/design.	12/13/2018	4/4/2019	6/1/2019	N/A	4000 kW/No		Delays caused by PG&E not responding to SF's questions regarding load calculations in the System Impact Study draft agreement. Due to the urgency of the project, SF has agreed to move forward with PG&E's lower load calcs and will apply to PG&E for additional capacity when the load ramps up. Costs of this are TBD.	No impacts update.
46	113804831	603 Jamestown Avenue - Redevelopment Project	10	SFPUC-Power	New primary service	Delays caused by PG&E being late in providing Service Agreement.	Service Agreement returned with payment by SFPUC. PG&E performing engineering/design.	11/2/2017	2/26/2018	10/1/2018	N/A	8000 kW/No		Delays caused by PG&E not providing the Service Agreement on time. Further delays caused by PG&E not providing enough design detail with the Service Agreement.	No impacts update.
47	116967240	702 Phelps Street - SFMTA Substation	10	SFMTA	Request to increase loads	Delays caused by PG&E being late in providing the System Impact Study report.	Service agreement issued by PG&E. (SF does not agree that PG&E has provided sufficient info).	2/26/2019	6/28/2019	5/1/2019	N/A	4000 kW/No		Delays caused by PG&E not providing the System Impact Study report on time. More delays caused by PG&E not providing the Service Agreement on time. Further delays caused by PG&E not providing enough design detail with the Service Agreement.	No impacts update.
48	11742971	1800 Jerrold Avenue - Biosolids (Temp. power)	10	SFPUC-Wastewater	New primary service	Delays caused by PG&E being late in providing the Service Agreement.	In construction	5/16/2019	6/28/2019	10/1/2019	N/A	1441 kW/No		Delays caused by PG&E not providing the Service Agreement on time.	No impacts update.
49	117974199	901 Tennessee Street - Streetlights	10	SFMTA	New secondary service	Delays caused by PG&E providing the Service Agreement late.	In construction	2/1/2019	11/20/2019	8/1/2019	No	1 kW/Yes		Pedestrian and traffic safety is at risk as PG&E delays the energization of these streetlights and traffic signals.	No impacts update.
50	N/A	1508 Bancroft Ave. - Sustainable Streets Shops	10	SFMTA	Request for information on existing PG&E power supply and approval from PG&E to use the current breakers	Delays caused by PG&E being unresponsive.	Information received from PG&E.	4/6/2018	N/A	10/21/2019	No	N/A		Potential power issue - SF cannot confirm that the current power system is properly protected without PG&E's response to the information requested.	No impacts update.
51	PG&E withholding NN#	1001 Potrero Avenue - UCSF/SFGH Research & Academic Building Construction and Perm Power	10	UCSF/SFGH	New primary service for perm. Construction power released to PG&E retail.	Delays caused by dispute over primary vs. secondary for construction power. Construction power moving forward with PG&E retail.	Service Agreement returned with payment by SFPUC. PG&E performing engineering/design.	5/20/2020 (temp) 4/1/2020 (perm)		1/1/2021	Yes	1356 kW/Yes		Project delayed - construction power was in dispute from Jun. 2020 to Sept. 2020 (4 months). Temp. construction power service by PG&E at retail - \$287k in lost gross revenue to SFPUC. \$30k in additional power costs to the project due to PG&E's higher rates.	No impacts update.
52	114529750	1920 Evans - Arborist Trailer/BUF Yard	10	DPW	New secondary service	Delays caused by issues with overhead poles.	Engineering estimation by PG&E.	4/16/2018	8/10/2018	10/1/2018	No	37 kW/Yes		Project has been delayed due to issues with an overhead pole. PG&E's proposed design was not feasible as it required overhead poles to be installed above underground sewer utilities. Project is now further delayed as SF has been waiting for PG&E's re-design for several months.	Further delays caused by PG&E not providing a redesign in a timely manner.
53	PG&E withholding NN#	4840 Mission Street - Affordable Housing (137 units) (Construction and Perm. power)	11	MOHCD (BRIDGE Housing)	New secondary service for perm. Construction power released to PG&E retail.	Delays caused by dispute over primary vs. secondary. Project will be moving forward with secondary.	SF to submit updated application for secondary.	2/5/2020		11/1/2022	Yes	1621 kW/Yes		Project delayed - project was in dispute from Feb. 2020 to Sept. 2021 (18-19 months). Temp. construction power service by PG&E at retail - \$301k in lost gross revenue to SFPUC. \$47k in additional power costs to the project due to PG&E's higher rates.	No impacts update.
54	PG&E withholding NN#	35-45 Onondaga Avenue - Health Clinic	11	Real Estate (for DPH)	Upgrade and relocation of existing secondary service	Delays caused by dispute over primary vs. secondary. Project is moving forward at secondary.	Service Agreement returned with payment by SFPUC. PG&E performing engineering/design.	6/1/2020		3/8/2021	Yes	144 kW/Yes		Project delayed - project was in dispute from Jun. 2020 - Mar. 2020 (8-9 months).	No impacts update.

Attachment A: List of Interconnection Issues															
	PG&E NN#	Project Location	District #	Client Organization	Project Description (what SF applied for)	Project Status		Initial Application Submittal Date	App Deemed Complete Date	Initial Service Need Date	Did PG&E require Primary?	Load Size/Can Be Served at Secondary	PG&E committed to work w/ SF to energize in 2018	Impacts	Updates/Changes since Last Report (April 2021)
55	PG&E withholding NN#	455 Athens Street - Cleveland Elementary School	11	SFUSD	Upgrade and relocation of existing secondary service	Delays caused by dispute over primary vs. secondary. Project is still in dispute.	Project is at a standstill.	10/26/2020		6/1/2021	Yes	305 kW/Yes		Project delayed - project has been in dispute since Nov. 2020 (9-10 months)	No impacts update.
56	PG&E withholding NN#	2340 San Jose Ave. - Affordable Housing (138 units)	12	MOHCD (Mission Housing)	New secondary service	Delays caused by dispute over primary vs. secondary. Project will be moving forward with secondary.	PG&E reviewing application.	11/21/2019		5/1/2020	Yes	800 kW/Yes		Project delayed - project was in dispute from Jan. 2020 to Sept. 2021 (20-21 months). Temp. construction power service by PG&E at retail - \$191k in lost gross revenue to SFPUC. \$34k in additional power costs to the project due to PG&E's higher rates.	No impacts update.
57	N/A	Multiple Locations - Guy Wires (Franchise Issue)	N/A	SFMTA, SFPW, & SFPUC	PG&E's guy wires are impeding on SF projects.	Franchise dispute	Project is moving forward.	N/A	N/A	N/A	N/A	N/A		PG&E's unresponsiveness in removing guy wires is an obstruction to SF projects. 1) SFMTA cannot install a pole replacement to promote safety. 2) SFPW cannot construct a new ADA curb ramp. 3) SFPUC cannot finish parts of construction at the Southeast Water Treatment Plant.	Delay continues for two of the requests. SF and PG&E will continue to work together to get these resolved.
58	N/A	Multiple Service Transfers	N/A	Various City Depts.	Service Transfers	Delays caused by PG&E requiring unnecessary equipment or information for service transfer requests.	Project is at a standstill.	N/A	N/A	N/A	N/A	N/A		Additional costs and staff resources can be incurred if PG&E continues to create barriers for SF service transfer requests. SF continues to experience loss of revenue and increased greenhouse gas emissions as PG&E is refusing to transfer over City department loads.	Delays continue as projects remain at a standstill.
59	N/A	10501 Warnerville Road - Substation Rehabilitation Project	N/A - Oakdale	SFPUC	Remove two existing services and replace with one secondary service	Delays caused by dispute over primary vs. secondary. Project is still in dispute.	Project went to PG&E retail.	12/26/2018	N/A	3/1/2019	Yes	160 kW/Yes		Project delayed - project was in dispute from Jan.- May 2019 (4 - 5 months).	Project was released to PG&E retail service to avoid delays. Cost impacts and greenhouse gas emission impacts are TBD.
60	N/A	951 Antoinette Lane - Well Pump & Control Panel	N/A - South SF	SFPUC	Remove two existing services and replace with one secondary service	Delays caused by dispute over primary vs. secondary. Project is still in dispute.	Engineering estimation by PG&E.	11/20/2020	N/A	12/6/2021	Yes	50 kW/Yes		Project delayed - project was in dispute from Feb. - April 2021 (1-2 months).	No impacts update.

Notes:

1. Low-side metering is not the same as secondary service. Low-side metering requires extra equipment costs (i.e. an interrupter, approx. \$75k). The SFPUC believes that many of these loads should be served with secondary service, but has compromised with PG&E to move projects forward.
2. Cost impacts related to lost revenue are estimates calculated off of projected load values.
3. Not all cost impacts are reflected here as increased facility and construction costs are still to be determined.
3. CO₂ emissions are calculated using estimated loads with PG&E's 2016 emissions factor.
4. Delay impacts are only calculated off of the time in which PG&E and SF were in dispute. (Other delays are not included)
5. Primary switchgear is estimated to cost an additional \$500k.

Key

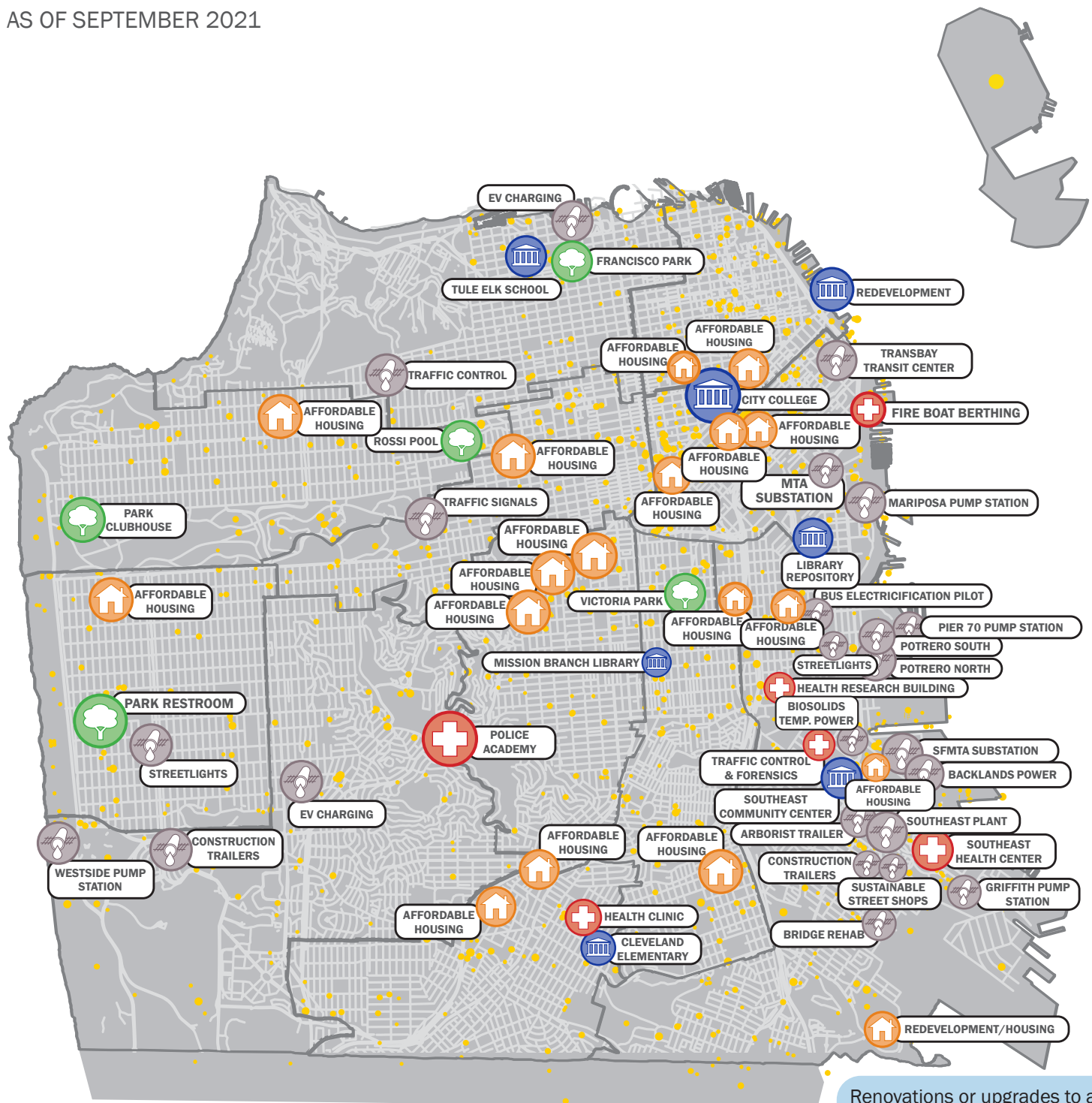
- Project is currently being disputed or has been delayed due to a dispute/issue and is past the Initial Service Need Date (Column K).
- Energized, but still facing issues.
- Project is moving forward, but not yet energized. Some are still facing major delays. Please review the impact column for further descriptions.
- Project has been energized - no outstanding issues.

Attachment A2: WDT3 Projects Released to PG&E Retail

A	B	C	D	E	F	G
	Project Location	District #	Client Organization	Project Description (what SF applied for)	Impacts	Updates/Changes since Last Report (April 2021)
1	970 47th Ave. - Golden Gate Park Clubhouse (temporary trailer)	1	SFRPD	New temporary secondary service	Project has been delayed several months. SF originally applied for service before WDT3 and after months of back and forth, PG&E stated they could not provide the service. Temp. construction power service by PG&E at retail - \$21k in lost gross revenue to SFPUC. \$33k in additional power costs to the project due to PG&E's higher rates.	Project added.
2	4200 Geary Blvd.- Affordable Housing (construction power)	1	MOHCD	New temporary secondary service	Temp. construction power service by PG&E at retail - \$45k in lost gross revenue to SFPUC. \$8k in additional power costs to the project due to PG&E's higher rates.	Project added.
3	Seawall Lots 323 & 324 - Hotel & Theater (construction power)	3	Teatro Zinzanni	New temporary secondary service	Temp. construction power service by PG&E at retail - \$132k in lost gross revenue to SFPUC. \$4k in additional power costs to the project due to PG&E's higher rates.	Project added.
4	730 Stanyan St. - Affordable Housing (construction power)	5	MOHCD	New temporary secondary service	Temp. construction power service by PG&E at retail - \$148k in lost gross revenue to SFPUC. \$28k in additional power costs to the project due to PG&E's higher rates.	Project added.
5	240 Van Ness Ave. - Affordable Housing (construction power)	6	MOHCD	New temporary secondary service	Temp. construction power service by PG&E at retail - \$87k in lost gross revenue to SFPUC. \$15k in additional power costs to the project due to PG&E's higher rates.	Project added.
6	600 7th St. - Affordable Housing (construction power)	6	MOHCD	New temporary secondary service	Temp. construction power service by PG&E at retail - \$189k in lost gross revenue to SFPUC. \$20k in additional power costs to the project due to PG&E's higher rates.	Project added.
7	Streetlights	N/A	SFPUC	New unmetered service	Cost impact TBD. New streetlights have had to apply to PG&E for retail service and will have to pay PG&E's higher rates.	Project added.
8	Traffic Controllers	N/A	SFMTA	New unmetered service	Cost impact TBD. New traffic controllers have had to apply to PG&E for retail service and will incur additional costs due to PG&E now requiring traffic controllers to have meters.	Project added.

ATTACHMENT B – MAP OF INTERCONNECTION ISSUES

AS OF SEPTEMBER 2021



HOUSING



INFRASTRUCTURE



HEALTH
AND SAFETY



INSTITUTION



RECREATION

SFPUC METERED
SERVICE POINT

Attachment C: Cost Impacts

		Additional Costs to Project						Other Impacts to SF		
	Project Location	Redesign Costs	Primary or Low-side Metering Equipment Costs	Additional Construction Costs	Additional Costs to Project for PG&E retail service	Additional Const./Project Mgmt Costs Due to Delay	Additional Staff Time Costs	Total Additional Project Costs (B+C+D+E+F+G)	Lost gross revenue to SFPUC	CO2 Emissions (lbs.) from PG&E retail service
38	2401/2403 Keith Street - Southeast Health Center		\$ 150,000					\$ 150,000		
39	1550 Evans Ave - Southeast Community Center		\$ 500,000		\$ 9,000			\$ 509,000	\$ 187,000	
40	Islais Creek Bridge Rehab (3rd Street)							\$ -		
41	1150 Phelps - Construction Trailers				\$ 286,000			\$ 286,000	\$ 2,000,000	
42	480 22nd Street - Pier 70 Pump Station							\$ -		
43	1601 Griffith Street - Griffith Pump Station				\$ 27,000			\$ 27,000		
44	Harmonia Street - Sunnydale HOPE							\$ -		
45	1101 Connecticut Street - HOPE Potrero							\$ -		
46	603 Jamestown Avenue - Redevelopment Project							\$ -		
47	702 Phelps Street - SFMTA Substation							\$ -		
48	1800 Jerrold Avenue - Biosolids (Temp. Power)							\$ -		
49	901 Tennessee Street							\$ -		
50	1508 Bancroft Avenue - Sustainable Streets Shop							\$ -		
51	1001 Potrero Avenue - UCSF/SFGH Research & Academic Building Construction and Permanent Power				\$ 30,000			\$ 30,000	\$ 287,000	
52	1920 Evans - Arborist Trailer/BUF Yard							\$ -		
53	4840 Mission Street - Affordable Housing				\$ 47,000			\$ 47,000	\$ 301,000	
54	35-45 Onondaga Avenue - Health Clinic							\$ -		
55	455 Athens Street - Cleveland Elementary School									
56	2340 San Jose Avenue - Affordable Housing				\$ 35,000			\$ 35,000	\$ 191,000	
57	Multiple Locations - Guy Wires (Franchise Issue)							\$ -		
58	Multiple Service Transfers							\$ -		
59	10501 Warnerville Road - Substation Rehabilitation Project							\$ -		
60	951 Antoinette Lane - Well Pump & Control Panel							\$ -		
61	970 47th Avenue - Golden Gate Park Clubhouse (Temp)				\$ 33,000			\$ 33,000	\$ 21,000	
62	4200 Geary Blvd.- Affordable Housing (construction)				\$ 8,000			\$ 8,000	\$ 45,000	
63	Seawall Lots 323 & 324 - Hotel & Theater (construction)				\$ 4,000			\$ 4,000	\$ 132,000	
64	730 Stanyan St. - Affordable Housing (construction)				\$ 28,000			\$ 28,000	\$ 1,480	
65	240 Van Ness Ave. - Affordable Housing (construction power)				\$ 15,000			\$ 15,000	\$ 87,000	
66	600 7th St. - Affordable Housing (construction power)				\$ 20,000			\$ 20,000	\$ 189,000	
67	Streetlights							\$ -		
68	Traffic Controllers							\$ -		
	TOTAL	\$ 52,000	\$ 2,600,000	\$ 251,000	\$ 1,571,000	\$ 168,000	\$ 50,000	\$ 4,692,000	\$ 4,753,480	\$ 1,263,000

Total Additional Project Costs	\$ 4,692,000.00
Total Lost Gross Revenue to SFPUC	\$ 4,753,480.00
Total Cost Impact to SF (Project Costs + Lost Revenue)	\$ 9,445,480.00
Total CO2 Emissions (lbs.)	1,263,000

Attachment C: Cost Impacts

	Additional Costs to Project							Other Impacts to SF	
Project Location	Redesign Costs	Primary or Low-side Metering Equipment Costs	Additional Construction Costs	Additional Costs to Project for PG&E retail service	Additional Const./Project Mgmt Costs Due to Delay	Additional Staff Time Costs	Total Additional Project Costs (B+C+D+E+F+G)	Lost gross revenue to SFPUC	CO2 Emissions (lbs.) from PG&E retail service

Note: These represent estimates of the costs that the City is aware of at the moment. The projects may incur additional costs going forward.
The projects in **RED** are projects that are currently at a standstill and may face financial impacts that are TBD depending on how long they will be delayed and how they will move forward.

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: SFPUC CAC Resolution for Continued Support and Budget for SFPUC Racial Equity Plan and CB
Date: Thursday, September 23, 2021 3:21:00 PM
Attachments: [image001.png](#)
[SFPUC CAC Equity Resolution.pdf](#)
[image002.png](#)

From: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Sent: Thursday, September 23, 2021 2:33 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Subject: FW: SFPUC CAC Resolution for Continued Support and Budget for SFPUC Racial Equity Plan and CB

Hello,

For distribution and c-pages. Thank you.

Jocelyn Wong

San Francisco Board of Supervisors
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San Francisco, CA 94102
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(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services



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The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.

From: Young, Victor (BOS) <victor.young@sfgov.org>
Sent: Thursday, September 23, 2021 12:03 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>; Mchugh, Eileen (BOS) <eileen.e.mchugh@sfgov.org>; Somera, Alisa (BOS) <alisa.somera@sfgov.org>
Subject: FW: SFPUC CAC Resolution for Continued Support and Budget for SFPUC Racial Equity Plan and CB

Morning all:

I received the attached sFPUC resolution with suggestions to forward it to Supervisors.

Thanks.

Victor Young

Assistant Clerk

Board of Supervisors

phone 415-554-7723 | fax 415-554-5163

victor.young@sfgov.org | www.sfbos.org

From: Ruski Augusto Sa, Mayara <MRuskiAugustoSa@sfgwater.org>
Sent: Thursday, September 23, 2021 11:59 AM
To: Young, Victor (BOS) <victor.young@sfgov.org>
Cc: Scarpulla, John (PUC) <JScarpulla@sfgwater.org>
Subject: SFPUC CAC Resolution for Continued Support and Budget for SFPUC Racial Equity Plan and CB

Dear Mr. Young,

The SFPUC CAC has adopted the attached resolution on September 21, 2021. This resolution supports the SFPUC Racial Equity Plan, Community Benefits, Environmental Justice and Condemning Systemic Racism policies approved by the SFPUC Commission, as well as the SIP program, among other requests.

Please forward the resolution to the Supervisors.

Best Regards,

Mayara Ruski Augusto Sa

SFPUC CAC Liaison

Cell: 415-680-6683

Pronouns: she, her, hers



Resolution for Continued Support and Budget for SFPUC Racial Equity Plan and Community Benefits

WHEREAS, The Mayor of the city and county of San Francisco has urged “Each city department to develop a Racial Equity Action Plan in alignment with ORE Citywide Racial Equity Framework Per Ordinance No 188-19; and

WHEREAS, the SFPUC has done extensive work on their racial equity plan over the past 12 months to highlight needed changes and disparities, and develop solutions to combat them which includes hiring and investment in infrastructure to support the racial equity work; and

WHEREAS, A 2018 report by the Brookings Metropolitan Policy Program concluded that the national water and wastewater workforce is 85 percent white and two-thirds male, indicating a severe lack of gender and racial diversity within the industry; and

WHEREAS, The SFPUC’s senior management team is in flux, a number of BiPoc employees and women are leaving the field, management, and upper management, and the SFPUC leadership has only one person of color; now, therefore, be it

RESOLVED, the SFPUC Citizens’ Advisory Committee reiterates its strong support for the SFPUC’s Racial Equity Plan; and, be it

RESOLVED, the CAC requests that the SFPUC Commission pledges to fully fund the needed changes, support the creation of positions to support the equity work, to quickly post the positions, and to fully staff them as soon as possible; and, be it

RESOLVED, the CAC requests the SFPUC Commission instructs the GM to fully comply, implement, and to report back monthly to both the Commission and the CAC on equity goals related to this resolution; and, be it

RESOLVED, the CAC requests that the Commission implements fully the Community Benefits, Environmental Justice and Condemning Systemic Racism policies approved by the SFPUC Commission; and, be it

RESOLVED, the CAC requests that the Commission continues to improve the SFPUC’s practices as a good neighbor to communities negatively impacted by the agency’s operations, particularly low-income communities and communities of color; and, be it

RESOLVED, the CAC requests that the Commission follows through, with all of the necessary resources, on promises made to the Bayview Hunter’s Point community through the Mitigation Agreement and beyond; and, be it

RESOLVED, the CAC requests that the Commission deepens the SFPUC’s pledge in inviting its partners/contractors, through the Social Impact Partnership program, to contribute in positive

ways to local communities impacted by the agency's projects and that the Commission support expanding the budget for the Social Impact Partnership program to address growing community needs; and, be it

RESOLVED, the CAC requests that the Commission follows through on the agency's commitment to addressing racial inequities and disparities both inside and outside the agency, for workers and the community; and, be it

RESOLVED, the CAC requests that the Commission ensures that agency leadership is diverse and representative of the agency's values as stated in the Racial Equity Action Plan, and also has a proven track record of doing work in/for the community; and, be it

RESOLVED, the CAC requests that the Commission implements measures for transparency and accountability across the agency to rebuild trust from the public; and, be it

RESOLVED, the CAC requests that the Commission ensures that all SFPUC employees are treated with respect and dignity especially by senior leadership.

As adopted by the Full Citizens' Advisory Committee on September 21, 2021.

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: CPUC - Verizon Wireless - City of San Francisco-SF_PACHT010 - A-414902
Date: Tuesday, September 28, 2021 9:26:00 AM
Attachments: [CPUC_1980.pdf](#)

From: CPUC Team <westareacpuc@vzwnet.com>
Sent: Tuesday, September 28, 2021 9:06 AM
To: GO159Areports@cpuc.ca.gov
Cc: westareacpuc@verizonwireless.com; CPC.Wireless <CPC.Wireless@sfgov.org>; Administrator, City (ADM) <city.administrator@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; jennifer.navarro@verizonwireless.com
Subject: CPUC - Verizon Wireless - City of San Francisco-SF_PACHT010 - A-414902

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

This is to provide your agency with notice according to the provisions of General Order No. 159A of the Public Utilities Commission of the State of California (CPUC) see attachment.
This notice is being provided pursuant to Section IV.C.2.

Sep 28, 2021

Consumer Protection and Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
GO159Areports@cpuc.ca.gov

RE: Notification Letter for SF_PACHT010 - A
 SF_PACHT011 - A
 SF PAC HEIGHTS 052 - A
 SF PAC HEIGHTS 065 - A
 SF LM PH2 SC 109 - A
 SF LM PH2 SC 112 - A
 SF LM PH2 SC 113 - A

San Francisco, CA /GTE Mobilnet California LP

This is to provide the Commission with notice according to the provisions of General Order No. 159A of the Public Utilities Commission of the State of California ("CPUC") for the project described in Attachment A.

A copy of this notification letter is also being provided to the appropriate local government agency for its information. Should there be any questions regarding this project, or if you disagree with any of the information contained herein, please contact the representative below.

Verizon Wireless

Ann Goldstein
Coordinator RE & Compliance - West Territory
1515 Woodfield Road, #1400
Schaumburg, IL 60173
WestAreaCPUC@VerizonWireless.com



JURISDICTION	PLANNING MANAGER	CITY MANAGER	CITY CLERK	DIRECTOR OF SCHOOL BOARD	COUNTY
City of San Francisco	CPC.Wireless@sfgov.org	city.administrator@sfgov.org	Board.of.Supervisors@sfgov.org		San Francisco

VZW Legal Entity		Site Name		Site Address		Tower Design	Size of Building or NA
GTE Mobilnet California LP		SF_PACHT010 - A		3979 Sacramento St, San Francisco , CA94118		Public Lighting Structure (free standing)	N/A
Site Latitude	Site Longitude	PS Location Code	Tower Appearance	Tower Height (in feet)	Type of Approval	Approval Issue Date	
37°47'11.93"N	122°27'31.169"W	414902	Antenna Rad: 35'	36.16'	Permitting	09/23/2021	

Project Description: Installation (2) Ericsson SM 6701 Antenna; (1) Radio on SFMTA steel light pole

VZW Legal Entity		Site Name		Site Address		Tower Design	Size of Building or NA
GTE Mobilnet California LP		SF_PACHT011 - A		3695 JACKSON ST, San Francisco , CA94118		Public Lighting Structure (free standing)	N/A
Site Latitude	Site Longitude	PS Location Code	Tower Appearance	Tower Height (in feet)	Type of Approval	Approval Issue Date	
37°47'23.05"N	122°27'20.301"W	414903	Antenna Rad: 26.91'	31.83'	Permitting	09/23/2021	

Project Description: Installation (3) Ericsson SM 6701 Antenna on SFPUC steel light pole



VZW Legal Entity		Site Name		Site Address		Tower Design	Size of Building or NA
GTE Mobilnet California LP		SF PAC HEIGHTS 052 - A		1940 BROADWAY, San Francisco , CA94109		Public Lighting Structure (free standing)	N/A
Site Latitude	Site Longitude	PS Location Code	Tower Appearance	Tower Height (in feet)	Type of Approval	Approval Issue Date	
37°47'42.421"N	122°25'44.57"W	414942	Antenna Rad: 26'	31'	Permitting	09/20/2021	
Project Description: Installation (2) Ericsson SM 6701 Antenna on SFPUC concrete light pole							

VZW Legal Entity		Site Name		Site Address		Tower Design	Size of Building or NA
GTE Mobilnet California LP		SF PAC HEIGHTS 065 - A		1933 CALIFORNIA ST, San Francisco , CA94109		Traffic Control structure	N/A
Site Latitude	Site Longitude	PS Location Code	Tower Appearance	Tower Height (in feet)	Type of Approval	Approval Issue Date	
37°47'23.26"N	122°25'34.281"W	414959	Antenna Rad: 26.83'	31.66'	Permitting	9/20/2021	
Project Description: Installation (2) Ericsson SM 6701 Antenna on SFPUC concrete light pole							



VZW Legal Entity		Site Name		Site Address		Tower Design	Size of Building or NA
GTE Mobilnet California LP		SF LM PH2 SC 109 - A		1680 Mission Street, San Francisco , CA94103		Public Lighting Structure (free standing)	N/A
Site Latitude	Site Longitude	PS Location Code	Tower Appearance	Tower Height (in feet)	Type of Approval	Approval Issue Date	
37°46'13.941"N	122°25'11.651"W	302024	Antenna Rad: 32.08'	36.16'	Permitting	09/23/2021	
Project Description: Installation (1) Ericsson SM 6701 Antenna on SFMTA steel light pole							

VZW Legal Entity		Site Name		Site Address		Tower Design	Size of Building or NA
GTE Mobilnet California LP		SF LM PH2 SC 112 - A		131 10th Street, San Francisco , CA94103		Public Lighting Structure (free standing)	N/A
Site Latitude	Site Longitude	PS Location Code	Tower Appearance	Tower Height (in feet)	Type of Approval	Approval Issue Date	
37°46'29.752"N	122°24'55.17"W	302028	Antenna Rad: 34.66'	35.83'	Permitting	09/23/2021	
Project Description: Installation (2) Ericsson SM 6701 Antenna on SFPUC concrete light pole							



VZW Legal Entity		Site Name		Site Address		Tower Design	Size of Building or NA
GTE Mobilnet California LP		SF LM PH2 SC 113 - A		33 Gough Street, San Francisco , CA94103		Public Lighting Structure (free standing)	N/A
Site Latitude	Site Longitude	PS Location Code	Tower Appearance	Tower Height (in feet)	Type of Approval	Approval Issue Date	
37°46'18.48"N	122°25'14.34"W	302029	Antenna Rad: 32.08'	36.16'	Permitting	09/23/2021	
Project Description: Installation (3) Ericsson SM 6701 Antenna on SFMTA steel light pole							

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: Letter from the Member of the European Parliament - Robert Biedron to the Board of Supervisors of San Francisco
Date: Tuesday, September 28, 2021 9:28:00 AM
Attachments: [image001.png](#)
[List_Skan.pdf](#)

From: RATAJCZAK Jakub Stanislaw <jakub.ratajczak@europarl.europa.eu>
Sent: Monday, September 27, 2021 4:34 AM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Letter from the Member of the European Parliament - Robert Biedron to the Board of Supervisors of San Francisco

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honourable Members of the Board of Supervisors of San Francisco,

On behalf of the member of the European Parliament – Robert Biedron, please see attached a letter to your kind attention. The paper version will follow.

Kind regards,

Jakub Ratajczak

Parliamentary Advisor to R. Biedron MEP
Doradca Parlamentarny Posła R. Biedronia
□ Rue Wiertz 60 ASP 14G206 / ☎ +32(0)22838141
✉ jakub.ratajczak@europarl.europa.eu



Robert Biedroń

Member of the European Parliament

**Board of Supervisors of San Francisco
1 Dr. Carlton B. Goodlett Place,
City Hall, Room 244, San Francisco,
CA 94102-4689
board.of.supervisors@sfgov.org**

Honourable Members of the Board of Supervisors of San Francisco,

I am writing to you because I feel concerned about the past street name changes in San Francisco. A San Francisco supervisor said in 2013 that she was considering introducing legislation to change the name of a street named after a former Polish president, leader of Solidarity movement, a Nobel Peace Prize winner - Lech Walesa. This action was a clear repercussion of the insulting anti-gay comments made by Me Walesa in March 2013.

In that period, Lech Walesa made a controversial comment during a TV interview, claiming that gay people "should not be allowed to hold prominent political posts". As a gay person myself, who has been active in Polish politics for many years, I found these words offensive and completely unjustified. I received this news with great sadness especially since Lech Walesa for Poles and many other nations, is a symbol of the fight for freedom and democracy¹.

Following these unjust words on 29th July 2014, the Board of Supervisors of San Francisco unanimously voted to change the name of Lech Walesa Street to Dr. Tom Waddell Place. Let me assure you that, at the time, I was supportive to this decision, especially since Dr. Waddell was the founder of the Gay Olympics in the United States².

However, I would like to make the case that everyone has a right to make mistakes. I have talked to Lech Walesa many times after the incident and he has repeatedly apologized and assured me that he had not intended to offend anyone and to date does not think that gay people should not hold prominent political positions.

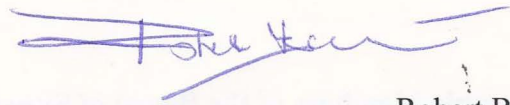
¹<https://www.reuters.com/article/us-walesa-gays-idUSBRE92209N20130303>

²<https://sanfrancisco.cbslocal.com/2013/03/13/san-francisco-street-may-be-renamed-after-walesas-anti-gay-remarks/>

What is more, Lech Walesa has made public comments on LGBT rights, for instance, he has stated that "Homosexuality should be respected, and we should not fight against it"³ and many times have met publicly with representatives of LGBT community (for instance: Elton John).

As one of the representatives of Polish gay politicians, I would like to assure you of the sincerity of our former President's apologies and kindly ask you to consider restoring the street name to Lech Walesa Street, as for all us Poles and for many other nations, he still represents a beacon of democracy.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Robert Biedroń', with a stylized flourish at the end.

Robert Biedroń
Member of the European Parliament

³<https://www.equaltimes.org/lech-walesa-if-we-don-t-give?lang=en#.YUDAX50zY2w>

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: Muni Customer Service Case 444781 Completed [ref:_00Dt0Cmd2._500t0qoPVq:ref]
Date: Tuesday, September 28, 2021 8:55:00 AM

From: Aaron Goodman <amgodman@yahoo.com>
Sent: Friday, September 24, 2021 8:55 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Fw: Muni Customer Service Case 444781 Completed [ref:_00Dt0Cmd2._500t0qoPVq:ref]

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Sorry but this is not acceptable.

We have a covid-19 situation and with multiple kids from multiple schools having to take the 44 bus to get from one side of the city to another in very crowded conditions daily, it is an incubator vs. a safe trip for all riders currently in the prime peak commute hours. It was completely overpacked with no ability to separate 6'-0" and no marked seats or limits to how many people boarded or were allowed on. Film footage of the bus today can easily show where and which stations are impacted daily during school hours.

Have staff or the SFBOS district supervisors ride the 44 bus when crowded and see why they need to include the 44 in the emergency services. Too many kids and parents take it daily inbound and outbound from mission street to san bruno ave and the adjacent schools to the bayshore.

Sincerely

Aaron Goodman D11

----- Forwarded Message -----

From: MuniFeedback <munifedback@sfmta.com>
To: amgodman@yahoo.com <amgodman@yahoo.com>
Sent: Friday, September 24, 2021, 02:16:26 PM PDT
Subject: RE: Muni Customer Service Case 444781 Completed [ref:_00Dt0Cmd2._500t0qoPVq:ref]

Dear Aaron,

Thank you for contacting the SFMTA regarding the overcrowding on the 44 O'Shaughnessy and the need to increase frequency. Your feedback has been documented and forwarded to appropriate staff.

As you have been experiencing, Muni vehicle and staff resources continue to be heavily impacted by the pandemic. One of the persistent impacts is that we are not able to run higher frequencies during what had been the AM or PM peak travel periods prior to COVID-19. While we do have supplemental service scheduled in the afternoons for schools, we are not currently able to deliver the same capacity in the mornings. We expect that our next major service change will be in early 2022, where we will aim to add service to our network to help increase coverage, reduce overcrowding, and improve Muni frequencies and reliability as resources allow.

We have documented your feedback about the need to increase service for students living along the 44, but we

would also greatly appreciate your [feedback on the three potential options](#) we have developed for how we can best restore and improve Muni service with the resources we expect to have in early 2022. For detailed information about the proposals, please visit [SFMTA.com/2022Network](https://sfmta.com/2022Network).

You can also stay up to date on [Twitter page](#) @sfmta_muni?or sign up for real-time alerts to stay apprised of any service developments.

Thank you for riding Muni. We appreciate your patience as we get through this together.

Sincerely,

Muni Customer Service

ref: _00Dt0Cmd2._500t0qoPVq:ref

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: Oppose parking fees in GGNRA parking lots in San Francisco
Date: Friday, September 24, 2021 3:53:00 PM
Attachments: [2021-08-23 SPEAK - Oppose GGNRA parking fees.pdf](#)

From: Kathy Howard <kathyhoward@earthlink.net>

Sent: Friday, September 24, 2021 3:24 PM

To: goga_business@nps.gov

Cc: ChanStaff (BOS) <chanstaff@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; MelgarStaff (BOS) <melgarstaff@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>

Subject: Oppose parking fees in GGNRA parking lots in San Francisco

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

SPEAK SUNSET PARKSIDE EDUCATION AND ACTION COMMITTEE 1329 7th Avenue, San Francisco, CA 94122-2507
(415) 976-4816

September 24, 2021

To: Golden Gate National Recreation Area (goga_business@nps.gov)

CC: San Francisco Board of Supervisors

Re: Oppose parking fees in GGNRA parking lots in San Francisco

The Sunset-Parkside Education and Action Committee (SPEAK) is a 501(c)3 organization which has been an active voice in the Sunset-Parkside district for over 50 years. We represent residents in this area that borders Ocean Beach and Golden Gate Park.

We oppose the proposal by the GGNRA to charge for parking at various nearby national parks in San Francisco.

The GGNRA has proposed to charge \$3.00 an hour to park a car to visit these parks with a maximum charge of \$10. We support our parks, but we also support access to our parks by San Francisco residents. This fee will discourage San Franciscans from coming to these parks to enjoy the magnificent ocean views, to experience wildlife in a natural setting, and to get a respite from the stresses of urban life, made even more difficult during the

COVID pandemic.

We also wonder why there have been no public notices posted in the proposed fee areas. At any time, but especially during the COVID pandemic, it is vital that government agencies make every effort to inform the public of any proposed changes that will impact access to their public lands. Notices should be posted at all of the proposed fee locations, and the comment period should be extended 30 days from the posting of the notices.

According to the GGNRA website,

"The proposal calls for parking fees to be in effect at these locations between 8 a.m. and 5 p.m., which means that people visiting outside these hours would not be charged for parking. Many visitors to the park travel by bicycle or foot, and public transit which operates in close vicinity to many of the affected parking lots, including Stinson Beach, Lands End and Baker Beach, offers an inexpensive alternative to driving."

Let's unpack this statement.

It is accompanied by a photo of a healthy, relatively young person on a bicycle. However, the majority of people in SF do not bike from one end of the city to the other because of various reasons -- disabilities, dangerous streets, the cost of a good bicycle, and due to the hilly nature of the City - a bicyclist has to be in good shape to get around.

"People visiting outside [the hours of 8 a.m. and 5 p.m.] would not be charged for parking." It gets dark at 5:00 p.m. during the winter months and the sun at times does not rise until 7:30 a.m. So the public might have ½ hour in the early morning to park for free. And really, how many families visit parks in the early morning or in the evening?

Bus service in San Francisco has been severely curtailed during COVID. It is not clear when it will recover or which lines will survive.

Many people still do not want to expose their health to others on a bus.

Parking fees will also limit access for residents from the southeastern part of San Francisco, who may have to drive to these areas - especially families with small children. Many are lower-income. They deserve the opportunity to enjoy parkland without impediments such as fees. And riding MUNI will cost at least as much as the parking, for 2 adults. It is not an 'inexpensive' alternative. (These families may already own cars to get their children to school and other events and to drive to work.)

MUNI service is not back to full service, due to COVID. Even when - and if - MUNI service is restored, being forced to go across town by bus is going to make park visitation more difficult for most San Francisco residents.

Charging fees at the GGNRA lots will force residents to park in the lots at Ocean Beach, filling up those lots and further limiting access. These fees set a precedent for charging San Franciscans for access to our beaches. Fees may spread to other park sites, including City parks such as Ocean Beach.

We therefore oppose these fees and ask you to discontinue this proposal.

Thank you for your consideration.

Sincerely,

Eileen Boken

Eileen Boken

President

September 24, 2021

To: Golden Gate National Recreation Area (goga_business@nps.gov)
CC: San Francisco Board of Supervisors
Re: Oppose parking fees in GGNRA parking lots in San Francisco

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We also wonder why there have been no public notices posted in the proposed fee areas. At any time, but especially during the COVID pandemic, it is vital that government agencies make every effort to inform the public of any proposed changes that will impact access to their public lands. Notices should be posted at all of the proposed fee locations, and the comment period should be extended 30 days from the posting of the notices.

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"The proposal calls for parking fees to be in effect at these locations between 8 a.m. and 5 p.m., which means that people visiting outside these hours would not be charged for parking. Many visitors to the park travel by bicycle or foot, and public transit which operates in close vicinity to many of the affected parking lots, including Stinson Beach, Lands End and Baker Beach, offers an inexpensive alternative to driving."

Let's unpack this statement.

1. It is accompanied by a photo of a healthy, relatively young person on a bicycle. However, the majority of people in SF do not bike from one end of the city to the other because of various reasons -- disabilities, dangerous streets, the cost of a good bicycle, and due to the hilly nature of the City - a bicyclist has to be in good shape to get around.

2. "People visiting outside [the hours of 8 a.m. and 5 p.m.] would not be charged for parking." It gets dark at 5:00 p.m. during the winter months and the sun at times does not rise until 7:30 a.m. So the public might have ½ hour in the early morning to park for free. And really, how many families visit parks in the early morning or in the evening?
3. Bus service in San Francisco has been severely curtailed during COVID. It is not clear when it will recover or which lines will survive.
4. Many people still do not want to expose their health to others on a bus.
5. Parking fees will also limit access for residents from the southeastern part of San Francisco, who may have to drive to these areas - especially families with small children. Many are lower-income. They deserve the opportunity to enjoy parkland without impediments such as fees. And riding MUNI will cost at least as much as the parking, for 2 adults. It is not an 'inexpensive' alternative. (These families may already own cars to get their children to school and other events and to drive to work.)
6. MUNI service is not back to full service, due to COVID. Even when - and if - MUNI service is restored, being forced to go across town by bus is going to make park visitation more difficult for most San Francisco residents.
7. Charging fees at the GGNRA lots will force residents to park in the lots at Ocean Beach, filling up those lots and further limiting access. These fees set a precedent for charging San Franciscans for access to our beaches. Fees may spread to other park sites, including City parks such as Ocean Beach.

We therefore oppose these fees and ask you to discontinue this proposal.

Thank you for your consideration.

Sincerely,

Eileen Boken

Eileen Boken

President

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: Proposed Parking Fees - OPPOSE
Date: Tuesday, September 28, 2021 8:56:00 AM
Attachments: [GGNRA - Oppose Parking Fees.docx](#)

From: D4ward SF <d4wardsf@gmail.com>

Sent: Friday, September 24, 2021 9:34 AM

To: Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; ChanStaff (BOS) <chanstaff@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; MelgarStaff (BOS) <melgarstaff@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>

Subject: Proposed Parking Fees - OPPOSE

This message is from outside the City email system. Do not open links or attachments from untrusted sources.



Sunset Rises to Action
www.facebook.com/D4wardSF
D4wardSF@gmail.com

September 24, 2021

To: Golden Gate National Recreation Area

Subject: Proposed Parking Fees - OPPOSE

D4ward is a residents' forward-thinking advocacy group dedicated to meeting the challenges of the future while preserving and enhancing the unique character of District 4 and San Francisco.

As neighbors to District 1 and residents of the western part of San Francisco, D4ward opposes the proposal by the GGNRA to charge for parking at various nearby national parks. In San Francisco Sutro Heights Park, Merrie Way and the Naval Memorial lots at Land's End, China Beach, and Baker Beach will all become less available to the public due to these fees. We support parks, but we also support access to parks by San Francisco residents. The fees will discourage San Franciscans from coming to these parks to enjoy the magnificent ocean views, to experience wildlife in a natural setting, and to get a respite from the stresses of urban life, made even more difficult during the COVID pandemic.

We find the lack of public notice for such a sweeping change to access to public lands to be disturbing. D4ward learned about this proposal by accident, as there has been no notice posted at the lots closest to District 4. During COVID, when the public is often cut off from community meetings and other news sources, it is vital that government agencies make every effort to inform of any proposed changes, especially those involving fees. Therefore, at a minimum, notices should be posted at all of the proposed fee locations, and the comment period should be extended 30 days from the posting of the notices.

Located at the farthest northwestern corner of San Francisco, the national parks are not central to the homes of the majority of the City's population. Fees will be especially onerous for people from the southeastern part of San Francisco, which contains a large number of under-served communities. Due to the distance to these parks, their most likely form of transportation is a car - especially for families with children. They deserve the opportunity to enjoy parkland without impediments such as fees. MUNI service is not back to full service, due to COVID. Even when - and if - MUNI service is restored, being forced to go across town by bus is going to make park visitation more difficult for these families. If a fee is allowed, it sets a precedent. Fees will rise and will spread to other park sites, including City parks such as Ocean Beach. We therefore oppose these fees and ask you to discontinue this proposal.

cc: SF Board of Supervisors



Sunset Rises to Action

www.facebook.com/D4wardSF

D4wardSF@gmail.com

September 24, 2021

To: Golden Gate National Recreation Area

Subject: Proposed Parking Fees - OPPOSE

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We therefore oppose these fees and ask you to discontinue this proposal.

cc: SF Board of Supervisors

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: SF Chain Restaurant
Date: Tuesday, September 28, 2021 8:55:00 AM

-----Original Message-----

From: Jeff Tindle <jtindle2003@yahoo.com>
Sent: Friday, September 24, 2021 5:16 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: SF Chain Restaurant

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supes,

A local chain wants to open a new location, but they can't because they have many locations.

Since the purpose of the law is to keep a local feel, I think amending the law to make an exception for "chains" which have most of their locations in SF would keep out national chains and allow for the local feel that SF wants.

From: [Board of Supervisors, \(BOS\)](#)
To: [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Cc: [Jalipa, Brent \(BOS\)](#); [Khoo, Arthur \(BOS\)](#); [Tse, John \(BOS\)](#); [Adkins, Joe \(BOS\)](#)
Subject: FW: Statement Of Condemnation Of Censorship Of Public Comment in SF t
Date: Tuesday, September 28, 2021 8:32:00 AM

From: Grover Cleveland Democratic Club <groverdemssf@tutanota.com>

Sent: Monday, September 27, 2021 5:00 PM

To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Chan, Connie (BOS) <connie.chan@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; Melgar, Myrna (BOS) <myrna.melgar@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; anne.pearson@sfgov.org; dennis.herrera@sfgov.org; Major, Erica (BOS) <erica.major@sfgov.org>; Somera, Alisa (BOS) <alisa.somera@sfgov.org>; Young, Victor (BOS) <victor.young@sfgov.org>; Carroll, John (BOS) <john.carroll@sfgov.org>; Wong, Linda (BOS) <linda.wong@sfgov.org>

Cc: nury.martinez@lacity.org; mike.feuer@lacity.org

Subject: Statement Of Condemnation Of Censorship Of Public Comment in SF t

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

The Grover Cleveland Democratic Club unequivocally opposes the recent pervasive practice of the Board of Supervisors and their clerks muting public comments that they deem to be "offensive"

While we do not always agree with the comments or the language used, first amendment jurisprudence at the state and federal level proscribes prior restraint on all comment made by non-city employees unless the comment is not germane to the specific comment period or is illegal. There is nothing illicit about using "discriminatory" language during speech which falls within the subject parameters of the comment period. Nobody was threatened by such language.

Please be advised that legal action may be taken by these commenters, none of us have made these comments so we don't have standing; we would also like to point out that the city of Los Angeles was sued by people who had their comment censored for considerably more odious speech than what has been censored by the Board of Supervisors. I have copied Nury Martinez, President of the Los Angeles City Council for insight on public comment censorship.

The Grover Cleveland Democratic Club Of San Francisco is a forum for moderate and conservative Democrats who feel left out of the elite circles of the city we call home. We support clean streets, toughness on crime, business friendly taxation and regulations, common sense, and a better quality of life for all in this city. We must secure a safe and

prosperous future for our children in San Francisco.

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: Undermining quality of life for San Francisco
Date: Friday, September 24, 2021 4:09:00 PM

From: Steve Ward <seaward94133@yahoo.com>

Sent: Thursday, September 23, 2021 3:24 PM

To: Breed, Mayor London (MYR) <mayorlondonbreed@sfgov.org>; Shaw, Eric (MYR) <eric.shaw@sfgov.org>; Quan, Daisy (BOS) <daisy.quan@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; AIA Thomas Soper <tsaia@sbcglobal.net>; Kathy Howard <kathyhoward@earthlink.net>; Geo Kimmerling <geokimm@sbcglobal.net>; Rachel Grant <rgrant06@gmail.com>; Bill McLaughlin <local415@gmail.com>; Livable California <contact@livableca.org>; Buffy Maguire <buffy@javabeachcafe.com>; Great Scot <blueskydelivery@gmail.com>; Alan Perlman <alan@perlmanguitars.com>; Diane Rivera <dianariver@aol.com>; Emily S. LaTourrette <esatterstrom@gmail.com>; Maren Larsen <foggyquilter@gmail.com>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Jen Gasang <jengasang@gmail.com>; Gerald Hurtado <gphurtado@yahoo.com>; Andres Chavez <chef.andy@icloud.com>; Steve Ward <seaward94133@yahoo.com>; Paul Simpson <psimpson@sgijlaw.com>; Patrick Maguire <sirpatrickmaguire@gmail.com>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>

Subject: Undermining quality of life for San Francisco

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Over the last 40 years the quality of life and appearance of San Francisco has declined dramatically and the policy of increasing density is exacerbating that trend. As a 69 year old life long second generation San Franciscan I haven't met one person with extended life experience here that doesn't decry the continuing demise of our loved city. Market Street was a place where my grand parents and my mother would dress up to visit now it's a place to be avoided. It appears that our government wants to extend the conditions of congestion and degradation to the Sunset under the false flags of affordable housing and equity. This is especially galling while 16 million sq. ft of office space downtown can be rezoned and retrofitted for mixed residential use. This vacancy is more likely to see deterioration than re-occupancy (see "Abandoned" on YouTube). Repurposing is likely less costly and certainly less environmentally destructive than demolition and over building

As the most dense city in the US, second only to New York, development here should proceed with discretion, benefit the local residents, preserve neighborhood character and respect the environment.

We urge you to (and contact your own supervisor and/or) support Supervisor Mar and his amendment to the BOS vote for land acquisition, for the developer to find a "solution for a compromise" of about 80 units. Because the 97 units proposed cost are estimated at about \$ 1 m per unit, this clearly demonstrates a mismanagement of public funds. There is an over-reach by Government in this case to

fulfill absurd RHNA goals through the singular lens of densification. There is a better way. Please recognize the necessity for a compromise solution that has been presented to the Director of MOHCD and Supervisor Mar.

Please stop this stack and pack insanity I know my neighborhood is next on the chopping block. Other alternatives are available.

Sincerely,

As a member of the La Playa Park Council

Steve Ward

La Playa Park Village an Outer Sunset Neighborhood

<http://www.laplayapark.info>

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: 2 Letters from Eileen Boken regarding items #43&44 on agenda 092821
Date: Tuesday, September 28, 2021 8:51:00 AM
Attachments: [2 Letters from Eileen Boken regarding items #43&44 on agenda 092821.pdf](#)

Hello,

Please see attached 2 Letters from Eileen Boken regarding items #43&44 File Nos. 211011 & 211012 respectively on agenda 092821.

Regards,

John Bullock

Board of Supervisors - Clerk's Office

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

(415) 554-5184

Disclosures: *Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

From: [aeboken](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#)
Subject: BOS Agenda Item #43 re AB701 (Gonzalez) Has Already Been Signed by the Governor
Date: Sunday, September 26, 2021 8:58:55 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

TO: Board of Supervisors members

Please be aware that Governor Newsom has already signed AB701 (Gonzalez).

That being said, I do support it.

Eileen Boken

Coalition for San Francisco Neighborhoods*

* For identification purposes only.

Sent from my Verizon, Samsung Galaxy smartphone

From: [aeboken](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#)
Subject: SUPPORTING BOS Agenda Item #44 [Urging the Governor to Sign California State Senate Bill No. 62 (Durazo) - The Garment Worker Protection Act] File #211012
Date: Sunday, September 26, 2021 9:14:41 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

TO: Board of Supervisors members

I am supporting the Board of Supervisors resolution urging the Governor to sign SB62 (Durazo), The Garment Worker Protection Act.

Eileen Boken

Coalition for San Francisco Neighborhoods*

* For identification purposes only.

Sent from my Verizon, Samsung Galaxy smartphone

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: 4 Letters for File No. 210709
Date: Tuesday, September 28, 2021 1:20:00 PM
Attachments: [4 Letters regarding File No. 210709.pdf](#)

Hello,

Please see attached 4 letters for File No. 210709.

File No. 210709 – Hearing of persons interested in or objecting to the approval of a Conditional Use Authorization pursuant to Sections 209.1, 303, and 307 of the Planning Code, for a proposed project at 575 Vermont Street, Assessor's Parcel Block No. 4010, Lot No. 006, identified in Planning Case No. 2020-000886CUA, issued by the Planning Commission by Motion No. 20921, dated May 13, 2021, to allow demolition of an existing single family home and construction of a new, four-story, 40-foot tall residential building containing two dwelling units, one accessory dwelling unit, one off-street automobile parking space, and three class one bicycle parking spaces within the RH-2 (Residential, House, Two-Family) Zoning District and a 40-X Height and Bulk District. (District 10) (Appellants: Marion Parr, Scott Carr, Ron Altoonian, Victoria Carradero, and Chris Stephens) (Filed June 11, 2021).

Regards,

John Bullock
Board of Supervisors - Clerk's Office
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184

Disclosures: *Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: 3 Letters regarding File No. 210709
Date: Tuesday, September 28, 2021 9:09:00 AM
Attachments: [3 Letters regarding File No. 210709.pdf](#)

Hello,

Please see attached 3 Letters regarding File No. 210709.

File No. 210709 – Hearing of persons interested in or objecting to the approval of a Conditional Use Authorization pursuant to Sections 209.1, 303, and 307 of the Planning Code, for a proposed project at 575 Vermont Street, Assessor's Parcel Block No. 4010, Lot No. 006, identified in Planning Case No. 2020-000886CUA, issued by the Planning Commission by Motion No. 20921, dated May 13, 2021, to allow demolition of an existing single family home and construction of a new, four-story, 40-foot tall residential building containing two dwelling units, one accessory dwelling unit, one off-street automobile parking space, and three class one bicycle parking spaces within the RH-2 (Residential, House, Two-Family) Zoning District and a 40-X Height and Bulk District. (District 10) (Appellants: Marion Parr, Scott Carr, Ron Altoonian, Victoria Carradero, and Chris Stephens) (Filed June 11, 2021).

Regards,

John Bullock
Board of Supervisors - Clerk's Office
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-7706

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From: [Gee, Natalie \(BOS\)](#)
To: [Sudha Prathikanti MD](#); [Walton, Shamann \(BOS\)](#); [Board of Supervisors, \(BOS\)](#)
Subject: Re: objection to construction at 575 Vermonth
Date: Monday, September 27, 2021 6:08:23 PM

Thank you for your comments, Dr. Prathikanti. I'm including the Office of the Clerk to include this in the communications regarding 575 Vermont Street / File No. 210709 [Hearing - Appeal of Conditional Use Authorization Approval - 575 Vermont Street].

Natalie Gee 朱凱勤, Chief of Staff

Supervisor Shamann Walton, District 10

President, Board of Supervisors

1 Dr. Carlton B. Goodlett Pl, San Francisco | Room 282

Direct: 415.554.7672 | **Office:** 415.554.7670

From: Sudha Prathikanti MD <sudha@prathikanti.com>
Date: Monday, September 27, 2021 at 12:16 PM
To: Walton, Shamann (BOS) <shamann.walton@sfgov.org>
Cc: Gee, Natalie (BOS) <natalie.gee@sfgov.org>
Subject: objection to construction at 575 Vermonth

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Walton and Chief of Staff Natalie Gee,

My husband and I are homeowners at 2116 18th Street on Potrero Hill. We are neighbors with Ron Altoonian at 2136 18th Street.

We are very upset about the proposed construction project around the corner at 575 Vermont. The current project at 575 Vermont will build right over Ron's only bedroom window on the lot-line of 575 Vermont!

A compromise solution (see attached) has been put forth by our neighborhood group, and we hope the builders will take the offer seriously.

If the builders don't accept our compromise, we will be presenting an appeal on 9/28/21, and we sincerely hope you will honor our request to have the building project at 575 Vermont re-designed to preserve the light and view from Ron's only bedroom window.

with concern,
Sudha Prathikanti and Mark Anderson

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: Objection to building project at 575 Vermont Street
Date: Monday, September 27, 2021 10:08:00 AM

From: Gee, Natalie (BOS) <natalie.gee@sfgov.org>
Sent: Sunday, September 26, 2021 7:21 PM
To: Paul McDonald <pmcdon0000@aol.com>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Re: Objection to building project at 575 Vermont Street

Thank you for your comments, Mr. McDonald. I'm including the Office of the Clerk to include this in the communications regarding 575 Vermont Street / File No. 210709 [Hearing - Appeal of Conditional Use Authorization Approval - 575 Vermont Street].

Natalie Gee 朱凱勤, Chief of Staff
Supervisor Shamann Walton, District 10
President, Board of Supervisors
1 Dr. Carlton B. Goodlett Pl, San Francisco | Room 282
Direct: 415.554.7672 | **Office:** 415.554.7670

From: Paul McDonald <pmcdon0000@aol.com>
Date: Saturday, September 25, 2021 at 2:07 PM
To: Walton, Shamann (BOS) <shamann.walton@sfgov.org>
Cc: Gee, Natalie (BOS) <natalie.gee@sfgov.org>
Subject: Objection to building project at 575 Vermont Street

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Mr. Walton and Ms. Gee -

My name is Paul McDonald and I live at 555 Vermont Street in Potrero Hill.

I am sending you a note to object to a proposal to build a four story residential building at 575 Vermont Street, just 4 houses from mine. The proposed plan not only will block a sole bedroom window on 18th street, but will be wildly out of sync with the houses on the street.

We have a tight-knit community on the 500 block of Vermont and we cannot approve of such an outlandish structure wrecking the harmony of the houses on our street.

Lastly, I have lived on the block for over 30 years and the few homes that have been modified

thus far have been so with an eye to neighboring houses...not this one. An additional story may be acceptable, but not FOUR.

Respectfully , Paul McDonald.

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: 575 Vermont Street
Date: Monday, September 27, 2021 10:07:00 AM

For the File

From: Gee, Natalie (BOS) <natalie.gee@sfgov.org>
Sent: Sunday, September 26, 2021 7:20 PM
To: DANIEL BACON <daniel_bacon@prodigy.net>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Re: 575 Vermont Street

Thank you for your comments, Mr. Bacon. I'm including the Office of the Clerk to include this in the communications regarding 575 Vermont Street / File No. 210709 [Hearing - Appeal of Conditional Use Authorization Approval - 575 Vermont Street].

Natalie Gee 朱凱勤, Chief of Staff
Supervisor Shamann Walton, District 10
President, Board of Supervisors
1 Dr. Carlton B. Goodlett Pl, San Francisco | Room 282
Direct: 415.554.7672 | **Office:** 415.554.7670

From: DANIEL BACON <daniel_bacon@prodigy.net>
Date: Saturday, September 25, 2021 at 2:45 PM
To: Gee, Natalie (BOS) <natalie.gee@sfgov.org>, Walton, Shamann (BOS) <shamann.walton@sfgov.org>
Subject: 575 Vermont Street

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

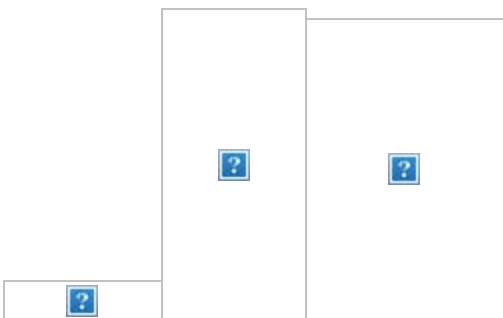
Dear Supervisor Walton and Natalie Gee

I'm writing to ask you to consider an alternative to the proposed project at 575 Vermont. It's terribly wrong to cover a neighbor's only bedroom window on the lot line of 575 Vermont! A compromise solution has been put forth by the appellants, and we hope the Project will take the offer seriously. If they don't, please listen to the appeal presented on 09/28 and require the project to respect the neighbor's only bedroom window and build a more respectful design.

Thank you for your attention.

Daniel Bacon

www.daniel-bacon.com
www.barbarycoasttrail.org
415-246-2027



From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: 575 Vermont Street, proposed project
Date: Friday, September 24, 2021 3:56:00 PM

From: Gee, Natalie (BOS) <natalie.gee@sfgov.org>
Sent: Friday, September 24, 2021 3:06 PM
To: Lana Sandahl <lanasandahl@gmail.com>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Re: 575 Vermont Street, proposed project

Thank you for your comments, Ms. Sandahl. I'm including the Office of the Clerk to include this in the communications regarding 575 Vermont Street / File No. 210709 [Hearing - Appeal of Conditional Use Authorization Approval - 575 Vermont Street].

Natalie Gee 朱凱勤, Chief of Staff
Supervisor Shamann Walton, District 10
President, Board of Supervisors
1 Dr. Carlton B. Goodlett Pl, San Francisco | Room 282
Direct: 415.554.7672 | **Office:** 415.554.7670

-----Original Message-----

From: Lana Sandahl <lanasandahl@gmail.com>
Sent: Thursday, September 23, 2021 5:08 PM
To: Walton, Shamann (BOS) <shamann.walton@sfgov.org>
Subject: 575 Vermont Street, proposed project

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

> Dear Supervisor Walton:

>

> The above proposed project will negatively impact our neighborhood as well as impinge on the neighbors who live on either side of 575 Vermont Street. Our neighborhood is asking for your help.

> My partner has attended all of the Planning Commission meetings where this issue has been on the agenda. As you are aware, the San Francisco Chronicle has published several, recent articles that highlight the corruption within the Department of Building Inspection.

>

> Be aware, during the Planning Commission meetings, the Board was presented incorrect information about our neighborhood. They were told "many 4 story buildings" surround this area. Untrue. There are NO 4-story buildings for several blocks around us. As construction boomed on Potrero Hill and Dogpatch, that changed of course. Many 4 story apartments and condos were built 4 and more blocks away; unfortunately many are still vacant. A four story structure in our neighborhood is unwarranted.

>

> The project is wrong for our neighborhood, and most certainly wrong for the immediate neighbors who will lose significant light and air. Most of the homes in our neighborhood are early 1900's. They are part of the character and history of San Francisco. We really care about that, and I know you do too. Advocate for us, work to preserve San Francisco neighborhoods!

> Your advocacy and consideration of the many people in our neighborhood is appreciated to preserve another SF Potrero neighborhood. The 575 project will negatively impact the neighborhood we love. Preserve the San Francisco working-class.

>

> Respectfully,

Lana Sandahl

> 559 Vermont

Sent from my iPad

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)
Subject: 2 Letters Regarding
Date: Thursday, September 30, 2021 8:59:00 AM
Attachments: [2 Letters Regarding 30% Public Housing.pdf](#)

Hello Supervisors,

Attached, please find 2 letters regarding 30% rent contribution on supportive housing.

Thanks,

Board of Supervisors - Clerk's Office

1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184 | (415) 554-5163
board.of.supervisors@sfgov.org | www.sfbos.org

Complete a Board of Supervisors Customer Service Satisfaction Form by clicking
<http://www.sfbos.org/index.aspx?page=104>

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From: [Nurit B](#)
To: [Board of Supervisors, \(BOS\)](#)
Subject: DPH and 30%
Date: Wednesday, September 29, 2021 1:12:36 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board Of Supervisors,

Thank you for the support and funding of the 30% rent contribution Standard in supportive housing. While it is being implemented in all buildings under HSH purview, the few remaining buildings under DPH will not see rent relief due to the department's failure to implement.

In a letter to a Conard House tenant, a staffer wrote that "Initial feedback from DPH...is that they are not implementing the 30% of income at this time. Advocacy and focus should be directed (as it is internally at Conard House) towards DPH. I believe that other agencies as well are pushing for this to happen with DPH funded sites."

This is why we must urge the Department Of Public Health to do the right thing by tenants, who in their housing are paying more than 70% of their income on rent. High rent burdens for extremely low income people are a public health issue.

Sincerely,
Nurit Baruch
District 2

From: [Shiba Bandeeba](#)
To: [Board of Supervisors, \(BOS\)](#)
Subject: DPH to fund #30RightNow For Tenants In DPH Housing
Date: Tuesday, September 28, 2021 12:23:10 PM
Attachments: [Dear Board Of Supervisors. \(1\).pdf](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To Board of Supervisors,

On behalf of our resident community here at HomeRise SF, we urgently ask that the Board of Supervisors take action and address the mishandling of such a significant need from our community members. We hope that the Board can bring perspective to how this can be better addressed in the future.

Best,
Shiba

Shiba Bandeeba, M. A, M.Ed (she/her) | Public Policy Manager

HomeRise (Formerly Community Housing Partnership)

D: 415.852.5393 | Ext. 20193

P: 818.987.9121

E: sbandeeba@chp-sf.org

www.HomeRise.org

20 Jones Street, Suite 200
San Francisco, CA 94102

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)
Subject: 3 Letters Regarding 30% Public Housing
Date: Wednesday, September 29, 2021 9:47:00 AM
Attachments: [3 letters Regarding 30 Percent Public Housing.pdf](#)

Hello Supervisors,

Attached, please find 3 letters regarding 30% rent contribution on supportive housing.

Thanks,

Board of Supervisors - Clerk's Office

1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184 | (415) 554-5163
board.of.supervisors@sfgov.org | www.sfbos.org

Complete a Board of Supervisors Customer Service Satisfaction Form by clicking
<http://www.sfbos.org/index.aspx?page=104>

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From: [Rick Girling](#)
To: [Board of Supervisors, \(BOS\)](#)
Subject: 30% standard for public housing
Date: Monday, September 27, 2021 1:42:53 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board Of Supervisors,

Thank you for the support and funding of the 30% rent contribution Standard in supportive housing. While it is being implemented in all buildings under HSH purview, the few remaining buildings under DPH will not see rent relief due to the department's failure to implement.

In a letter to a Conard House tenant, a staffer wrote that "Initial feedback from DPH...is that they are not implementing the 30% of income at this time. Advocacy and focus should be directed (as it is internally at Conard House) towards DPH. I believe that other agencies as well are pushing for this to happen with DPH funded sites."

This is why we must urge the Department Of Public Health to do the right thing by tenants, who in their housing are paying more than 70% of their income on rent. High rent burdens for extremely low income people are a public health issue.

Sincerely,

Rick Girling
District 9

From: [Laksh Bhasin](#)
To: [Board of Supervisors, \(BOS\)](#); [Breed, Mayor London \(MYR\)](#)
Subject: Funding 30RightNow for Tenants in DPH Housing
Date: Monday, September 27, 2021 10:43:26 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Mayor Breed and Board Of Supervisors,

Thank you for supporting and funding a 30% of income rent contribution standard in supportive housing (30RightNow). While this standard is being implemented in all buildings under HSH's purview, the few remaining buildings under DPH will not see rent relief due to the department's failure to implement.

In a letter to a Conard House tenant, a staffer wrote that "Initial feedback from DPH...is that they are not implementing the 30% of income at this time. Advocacy and focus should be directed (as it is internally at Conard House) towards DPH. I believe that other agencies as well are pushing for this to happen with DPH funded sites."

We must urge the Department of Public Health to do the right thing by tenants, some of whom are paying more than 70% of their income on rent. High rent burdens for extremely low-income tenants are a public health issue and economic issue.

Sincerely,
Laksh Bhasin

From: [C. Tucker](#)
To: [Board of Supervisors, \(BOS\)](#)
Subject: 30%
Date: Tuesday, September 28, 2021 1:33:47 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board Of Supervisors,

Thank you for the support and funding of the 30% rent contribution Standard in supportive housing. While it is being implemented in all buildings under HSH purview, the few remaining buildings under DPH will not see rent relief due to the department's failure to implement.

In a letter to a Conard House tenant, a staffer wrote that "Initial feedback from DPH...is that they are not implementing the 30% of income at this time. Advocacy and focus should be directed (as it is internally at Conard House) towards DPH. I believe that other agencies as well are pushing for this to happen with DPH funded sites."

This is why we must urge the Department Of Public Health to do the right thing by tenants, who in their housing are paying more than 70% of their income on rent. High rent burdens for extremely low income people are a public health issue.

Sincerely,
Christina Tucker District 6

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: Demand that DPH implement the 30% rent standard
Date: Monday, September 27, 2021 1:56:00 PM

From: Todd <todd.clark.snyder@gmail.com>
Sent: Monday, September 27, 2021 1:42 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Breed, Mayor London (MYR) <mayorlondonbreed@sfgov.org>
Subject: Demand that DPH implement the 30% rent standard

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

Thank you for the support and funding of the 30% rent contribution Standard in supportive housing. While it is being implemented in all buildings under HSH purview, the few remaining buildings under DPH will not see rent relief due to the department's failure to implement.

In a letter to a Conard House tenant, a staffer wrote that "Initial feedback from DPH...is that they are not implementing the 30% of income at this time. Advocacy and focus should be directed (as it is internally at Conard House) towards DPH. I believe that other agencies as well are pushing for this to happen with DPH funded sites."

This is why we must urge the Department Of Public Health to do the right thing by tenants, who in their housing are paying more than 70% of their income on rent. High rent burdens for extremely low income people are a public health issue.

Sincerely,
Todd Snyder
1941 Turk street
District 5

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [BOS Legislation, \(BOS\)](#)
Subject: Communication from Moscone Emblidge & Rubens
Date: Monday, September 27, 2021 4:15:00 PM
Attachments: [092721 Moscone Emblidge & Rubens.pdf](#)

Hello,

Please see attached communication from Moscone Emblidge & Rubens regarding 424-434 Francisco Street.

Sincerely,

Office of the Clerk of the Board of Supervisors

1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184

Moscone Emblidge & Rubens

220 Montgomery Street, Suite 2100, San Francisco, California 94104
Phone: (415) 362-3599 | Fax: (415) 362-2006 | www.mosconelaw.com

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

SEP 27 PM 4:06

September 23, 2021

BY JA Scott Emblidge
Partner
emblidge@mosconelaw.com
Direct: 415-362-3591

Via Email and U.S. Mail

Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
Board.of.Supervisors@sfgov.org

Re: Disapproval of Tentative Map for 424, 426, 428, 430, 432, 434 Francisco Street
Board File Numbers 210746 and 201379

Dear Madam Clerk:

This office represents the owners of 424-434 Francisco Street who are filing an writ petition and complaint in San Francisco Superior Court regarding the Board's action taken on June 29, 2021 disapproving the application for a tentative map for 424-434 Francisco Street.

We hereby request that the Board prepare the administrative record relating to this matter so that we can submit that record to the Superior Court. Please contact this office, or have the City Attorney contact this office, to discuss the cost and timing of the preparation of the Administrative Record.

Sincerely,

G. Scott Emblidge

G. Scott Emblidge

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: 3 Letters regarding File No. 210791
Date: Tuesday, September 28, 2021 1:19:00 PM
Attachments: [3 Letters regarding File No. 210791.pdf](#)

Hello,

Please see attached 3 Letters regarding File No. 210791.

File No. 210791 – Hearing of persons interested in or objecting to the approval of a Conditional Use Authorization pursuant to Sections 303 and 317 of the Planning Code, for a proposed project at 249 Texas Street, Assessor's Parcel Block No. 4001, Lot No. 017A, identified in Planning Case No. 2020-003223CUA, issued by the Planning Commission by Motion No. 20930, dated June 3, 2021, to demolish the existing 3,908 square-foot three-story single-family dwelling with an unauthorized dwelling unit and construct a new three-story 4,864 square-foot residential building containing two dwelling units above a garage with two off-street parking spaces, within the RH-2 (Residential House, Two-Family) Zoning District and a 40-X Height and Bulk District. (District 10) (Appellants: Kathleen Roberts-Block and Sasha Gala) (Filed July 6, 2021).

Regards,

John Bullock
Board of Supervisors - Clerk's Office
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184

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From: [Forrest Phillips](#)
To: [ChanStaff \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [MelgarStaff \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Ronen, Hillary](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Walton, Shamann \(BOS\)](#); [Board of Supervisors, \(BOS\)](#)
Subject: Appeal of CUA for 249 Texas Street
Date: Friday, September 24, 2021 12:25:50 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

I am a neighbor of 249 Texas whose CUA for demolition of a two-unit Victorian home in my neighborhood of Potrero Hill is up for appeal. This property, 249 Texas Street, has been a source of affordable housing for our neighborhood, and evidence suggests that the current owner's plan to rebuild a giant single-family mansion with a token basement unit. This is not only contrary to the nature of our mixed-income neighborhood but also needlessly disruptive to myself and other neighbors.

My issues with this demolition and build are as follows:

1. The sponsor has refused communication and, more importantly, compromise with neighbors, including suggestions that would greatly reduce the building's impact on surrounding houses and not change their ability to create their dream home.
2. Their architect has been caught lying multiple times to the planning commission to gain a favorable ruling for their project. At the first CUA hearing on March 4th, the architect knowingly lied multiple times claiming that the house was a 1 unit single-family home and that their project would therefore be ADDING housing to our neighborhood in a bid to gain approval. When this patently false lie was exposed to the commission by neighbors calling in that very meeting, the only recourse that occurred was that they had to re-submit their project. How are neighbors and the commission to believe that this architect and family will be honest and truthful about other necessary conditions of the build concerning safety and environmental impacts given that there are no repercussions for lying?
3. This architect, John Maniscalco, is responsible for 40% of demolitions of two-unit homes to build giant single-family homes with token second units. The planning commission's refusal to enact any sort of consequence for his lies is clear evidence that he is being hired specifically because he can get approvals for these types of projects that are counter to our city's perseverance of affordable housing.
4. This project also directly contradicts the spirit of the San Francisco General Plan's edict to preserve "naturally affordable housing" such as this 2 unit home. This is not "affordable by design" as specifically mandated by the San Francisco General Plan.
5. Neighbors within a 300ft radius were not kept updated about hearing extensions (of which there were two, the first because the sponsor violated the Sunshine Ordinance by not pasting a public sign concerning the hearing on the building, the second because the sponsor had to submit information concerning the second unit they had omitted from

their paperwork). This limited the neighbors' ability to organize and attend these meetings, resulting in the loss of their rights to be heard by the city government.

I ask that you please listen to the appeal with an open mind and look at the reason these policies were enacted and whether this project supports or opposes those outcomes.

Forrest Phillips
Potrero Hill

From: [Glenn Galang](#)
To: [Walton, Shamann \(BOS\)](#)
Cc: [Board of Supervisors, \(BOS\)](#)
Subject: Support for Conditional Use Authorization for 249 Texas Street
Date: Saturday, September 25, 2021 1:08:23 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

REFERENCE:

**BOARD FILE: 210791; PLANNING CASE No. 2020-003223CUA
APPEAL OF CONDITIONAL USE AUTHORIZATION FOR 249 TEXAS STREET**

Dear Board of Supervisors President Walton,

I'm writing in support of the demolition and rebuilding on **249 Texas Street**. I've lived in San Francisco and Daly City since 1977 (immigrated from the Philippines with my family when I was a child). I'm a proud homeowner and resident in the Bayview District (since 2015). Prior to that, I was a homeowner and resident in the Crocker Amazon/Visitacion Valley (since 2000).

I learned of the issues surrounding this project through the homeowners sponsoring the project Joanne Siu and Kerry Shapiro so I looked into. Our kids have gone to the same school since they were both in kindergarten (2014) at the nearby at Live Oak School on Mariposa St. where they are now in 7th grade.

I understand that this has already been previously reviewed and approved by the planning department. I looked into what they're trying to build on **249 Texas Street** and I think it is reasonable for what they are trying to accomplish. They want to **keep** their home and their roots in San Francisco by building a multi-generational housing for their mother which I think is a need in San Francisco, I do not think the size of what they are trying to build is out of line. I'm in the Potrero Hill neighborhood all the time and just blocks away there are much larger homes and complexes being built.

I especially like the fact that it will be subject to the existing rent stabilization ordinances, will have 2 off street parking and eliminate an unauthorized unit while introducing a legal one. The family are already active members of the Potrero Hill community and allowing them to build on **249 Texas St.** will allow that to continue instead of having them look elsewhere so they can adequately care for their family.

Please allow the project to continue as previously reviewed and approved.

Thank you for your time,

Glenn Galang

From: [joanne lee](#)
To: [Walton, Shamann \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haney, Matt \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [Peskin, Aaron \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Preston, Dean \(BOS\)](#); hilary.ronen@sfgov.org; [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)
Cc: [Board of Supervisors, \(BOS\)](#)
Subject: BOARD FILE: 210791; PLANNING CASE No. 2020-003223CUA CU APPEAL FOR 249 TEXAS STREET
Date: Sunday, September 26, 2021 7:14:46 PM
Attachments: [J.Siu letter of support.pdf](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

September 20, 2021

Shamann Walton, President
San Francisco Board of Supervisors
City Hall, San Francisco

Cc: Angela Calvillo, Clerk, Board of Supervisors

RE: BOARD FILE: 210791; PLANNING CASE No. 2020-003223CUA
APPEAL OF CONDITIONAL USE AUTHORIZATION FOR 249 TEXAS STREET

Dear President Walton,

I am writing in support of the project at 249 Texas Street. I live next door to the project sponsors, Kerry Shapiro and Joanne Siu at their current home in Noe Valley. We've been neighbors for 13 years and I'm truly sorry to see them move. They have been wonderful neighbors – participating in the neighborhood watch and social activities to strengthen our community.

Their project has been approved by the Planning Commission on June 3, 2021 and I urge you to support the Commission's decision.

The project, at 30 feet, is well below SF allowable height range of 40 feet. The structure meets all SF planning code and residential design guidelines, as determined by the Planning Department which has been working with sponsor's architect on the project and reviewed and approved by the Planning Commission. The sponsors did not seek permission for any variance from these regulations and guidelines.

The project provides more code-compliant bedrooms than currently existing. The Appellants allege that the existing unauthorized bottom unit has three bedrooms while the top authorized unit has two bedrooms. However, the rooms in the existing unauthorized bottom unit are not code compliant bedrooms even though they may have been used by the prior owner as bedrooms. Therefore, the proposed project actually increases the number of compliant bedrooms.

This house will be a multi-generational home for the Shapiro-Siu family and keep them in San Francisco as they raise their daughter and care for Joanne's elderly mother. Too many families are leaving our City in search of more affordable housing as their families grow. This project will prevent one more family from leaving.

Please support this project and uphold the Planning Commission's actions.

Thank you for your consideration,

Joanne Lee
3770 22nd Street, SF 94114

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)
Subject: FW: 249 Texas St
Date: Wednesday, September 29, 2021 9:53:00 AM

From: Valencia, Ernesto <Ernesto.Valencia@ucsf.edu>
Sent: Wednesday, September 29, 2021 7:19 AM
To: Shamman.walton@sfgov.org; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Subject: 249 Texas St

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear President Walton and Board of Supervisors,

On October 19th you will be listening to the CUA appeal for 249 Texas - I am the FORMER owner of that building ***opposed*** to the CUA. I stand with Commissioner Imperial and Commissioner Moore, and the many neighbors and advocacy group and Tenants Union in opposition. **There was many (1) misrepresentations of facts, (2) violations of law, or (3) unethical use of loopholes that the sponsors used to justify this project that reduces affordable housing in San Francisco despite the General Plan's Policy objectives and mandates.** The sponsor is now misusing a state law intended to benefit Californians by adding housing stock to take away two units of housing and build a mansion for a 3 person family on a middle and working class block (rare, for these days) in San Francisco.

The sponsors are well-connected and well-resourced attorneys with another \$3M home in Noe Valley, yet they are saying they need a "safe" additional place for their family. When I sold my home to them, I chose them because they said they loved our home and neighborhood and wanted to remodel it - not destroy it. Their claims to love the neighborhood are questionable as evidenced by the fact that they have not collaborated with anyone in the neighborhood and seem completely tone-deaf to the concerns of those opposing. Furthermore, they have manipulated the perception of the current state of the house and used outlandish claims to justify the demolition so they can have a single family mansion. First, the Sponsors lied multiple times saying there was no second home in the building but this lie was exposed at March 4th hearing, triggering a continuance. Contrary to Sponsors claims, I spent decades with my family, first in the top unit, and later in the bottom unit which I also rented to low income folks. It is not dilapidated, the ceiling heights of the 3 bedrooms are above what is required in SF, and I sent in pictures of the remodel to the Planning Department that were ignored. There is also a 40 foot, fruit bearing Hass avocado tree that deserves to be preserved too in the backyard if there is a remodel.

It is unfortunate that despite the mountain of evidence presented to the Planning Commission, they did not do their job and allowed this CUA to move forward and now we have to take up your

precious time now at the Board of Supervisors. However, I ask that you listen with a careful ear with what has happened in this case. Approving this CUA continues to set a precedent of wealthy sponsors railroading neighborhoods with their own elitism.

Sincerely,

Ernesto Valencia and family

Regards,

Ernesto Valencia

Administrative Assistant

Microbiology and Immunology

513 Parnassus, HSW 1542, Box 0552

San Francisco, CA 94143

Tel: 415-506-9913

Fax: 415-476-6185

Ernesto.Valencia@ucsf.edu

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)
Subject: FW: Letter of support for owners of 249 Texas St
Date: Thursday, September 30, 2021 9:01:00 AM
Attachments: [Support letter.pdf](#)

From: Peter K <peterksf@gmail.com>
Sent: Wednesday, September 29, 2021 9:55 PM
To: Walton, Shamann (BOS) <shamann.walton@sfgov.org>
Cc: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Letter of support for owners of 249 Texas St

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors

Please find my letter of support for Joanne and Kerry. It is really unfortunate they are having to experience this uncertainty.

Kind regards
Peter Kuebler and Martin Babler

October 7, 2021

President Shamann Walton
Board of Supervisors
San Francisco, California

BOARD FILE: 210791; PLANNING CASE No. 2020-003223CUA
APPEAL OF CONDITIONAL USE AUTHORIZATION FOR 249 TEXAS STREET

President Walton:

Please support SF Planning Commission's approval of the CUA for 249 Texas Street.

We have known Joanne Siu & Kerry Shapiro for 7 years since our daughters attend the same school in Potrero Hill.

We renovated our home in SF in the past few years so we know how tough SF planning and residential design guidelines are. Each aspect of your home - the front, back, and side setbacks and height limits, egress limits, etc. is subject to very specific rules, and planning a home project is truly like threading a needle. The rules are applied strictly by the SF Planning department with active review by the SF Planning Commission.


Our friends Joanne & Kerry worked with their architect to present a project that meets all SF building codes and residential guidelines. They revised their project design in response to requests from the building department staff and from the Planning Commissioners. They have even agreed to record a restriction to apply SF Rent Ordinance to their two-unit building. The planning department recommended approval of their project, and the Planning Commission voted to approve their project 5-2.


Joanne & Kerry followed all the rules in order to build a home for their family and for Joanne's mother. Joanne grew up in Los Angeles City, and Kerry grew up in Boston. They want to raise their daughter in San Francisco, which both have called home for 30+ years. Joanne & Kerry want to build a home that could accommodate Joanne's mother dementia and decrease mobility and for them to age in place. They are San Franciscans and do not want to relocate to the suburbs.

Please support the Planning Commission approval of the CUA for 249 Texas Street so Joanne & Kerry could build their fully code-compliant home.

Thank you.

Regards,


PETER KUEBLER


Martin Tabler

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)
Subject: 4 Letters Regarding the 450 O'Farrell Appeal - File No. 210858
Date: Wednesday, September 29, 2021 9:58:00 AM
Attachments: [4 letters.pdf](#)

Hello Supervisors,

Please find attached 4 letters regarding the appeal at 450 O'Farrell, File No. 210858.

Regards,

Board of Supervisors - Clerk's Office

1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184 | (415) 554-5163
board.of.supervisors@sfgov.org | www.sfbos.org

Complete a Board of Supervisors Customer Service Satisfaction Form by clicking
<http://www.sfbos.org/index.aspx?page=104>

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

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From: [Sara Shortt](#)
To: [Haney, Matt \(BOS\)](#)
Cc: [Mahogany, Honey \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); [BOS-Legislative Aides](#)
Subject: 450 OFarrell Appeal
Date: Tuesday, September 28, 2021 2:52:47 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor,

I wanted to share our many reservations about the group housing project proposed by Forge development slated for 450 OFarrell. As a member of Market Street for the Masses land use committee, HomeRise has been aware of this project for many months now. We have observed prior planning commission hearings, attended community presentations from the developer and have been continuously briefed on the status of discussions and attempted negotiations with the developer, by member organizations who have been closely involved. We have also reviewed the appeal filed by Pacific Bay Inn and Tenderloin Housing Clinic.

After consideration, we urge your support in supporting this appeal and sending Forge back to the drawing board. Here is why:

- The outreach, education and consultation with the community has been sadly lacking. We have witnessed how few organizations and residents have awareness of the project and its changing developments, how unreceptive Forge has been to overtures from community groups and the unwillingness to compromise and consider changes to the project that would better fit the community needs.
- The last thing the Tenderloin neighborhood needs is market rate group housing. These units will not be affordable to members of our community. We should do all that we can to address their affordability needs (while they remain overcrowded, rent burdened and living on the streets) first.
- Group housing by definition is considered non-permanent housing by the planning department itself. We should prioritize creating opportunities where people can be part of building the TL community for the long term, rather than create a revolving door of students and short term corporate workers.
- We need more family housing in the Tenderloin, yet Forge has done very little to explore the possibility of enlarging units, nor have they seriously considered alternative proposals. We believe they should be pushed a little harder to do so.
- As a Tenderloin based supportive housing provider, we very much understand the concerns of Pacific Bay Inn and the DISH program and would need much more assurance that those residents and the residences themselves will be adequately protected from the various impacts of such major construction so very near to the

building.

- We need a higher affordability set aside. This project should provide at least the 20.5% inclusionary units that current law requires, rather than fall back on the prior 13.5% just because legally they can. The owner could have decided to make a good faith showing that they care about the affordability issues in the neighborhood, but they have chosen not to.

We hope you take into account our concerns as you vote on the appeal today. Please feel free to contact me with any questions. Sara

Sara Shortt (she/her) | Director of Public Policy & Community Organizing

HomeRise (Formerly Community Housing Partnership)

m: 415.846.0750

www.HomeRisesf.org

20 Jones Street, Suite 200
San Francisco, CA 94102

From: [Felecia Smith](#)
To: [Walton, Shamann \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Ronen, Hillary](#); [Peskin, Aaron \(BOS\)](#); [MelgarStaff \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [Board of Supervisors, \(BOS\)](#); [ChanStaff \(BOS\)](#)
Cc: [Pratibha Tekkey](#); [Sarah Abdeslahian](#)
Subject: In Opposition to the Project at 450 O'Farrell
Date: Tuesday, September 28, 2021 1:59:59 PM

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Dear Supervisor Haney,

Matt, this is Felecia. As you already know I am a resident of the Tenderloin and have been off and on for 42 years, this time around is 10 years. I am also the Tenant Organizer at The Union Hotel. I am against the project at 450 O'Farrell.

As a resident in District 6 I am asking that you take into consideration my experiences living in this community. The tenderloin already has an abundance of SRO's and group housing with very little affordable family units. We do not need more units like the ones projected for 450 O'Farrell. There are families of 4 and more living in places that should have no more than 2 if that. This project is not what we need. The Tenderloin deserves housing that respects the dignity of families and their children. This Project will not do that. We know we need more housing but not the type they are proposing. The TL is treated differently than other parts of the city. We deserve proper engagement with developers and we deserve adequate and affordable housing. Most of the residents I've spoken with are in 100% agreement and we hope you will take how we feel into consideration tomorrow.

Thanks for your time,

Felecia Smith
Tenant Organizer
Union Hotel

From: [Priya Prabhakar](#)
To: [Board of Supervisors, \(BOS\)](#)
Subject: Opposition to Project Proposal
Date: Tuesday, September 28, 2021 12:33:54 PM

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Dear Supervisors,

My name is Priya Prabhakar and I am a Tenant Rights Organizer at the Mission SRO Collaborative. I am also a member of the SRO Families United (SROFU) and Race and Equity in all Planning (REP) coalitions. I am writing in opposition to the project proposed for 450 O'Farrell.

SRO tenants, most of whom are immigrant, working-class communities, will be directly impacted by this proposal, along with the tenant clinics that support them in the Tenderloin. There is already a high need and demand for housing for families in the community, and it is wholly unacceptable that there is no adequate infrastructure of housing for SRO families. This project is not adequate and does not center the needs of SRO tenants. The Tenderloin is a neighborhood that deserves dignity and respect.

Best,

Priya Prabhakar
MSROC Tenant Organizer
Dolores Street Community Services
938 Valencia Street, San Francisco, CA 94110

From: [Aaron McNelis](#)
To: [Board of Supervisors, \(BOS\)](#)
Subject: 450 O'Farrell Appeal
Date: Tuesday, September 28, 2021 1:27:00 PM

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Dear Supervisors,

My name is Aaron McNelis. I'm a resident of District 9 and a tenant's rights counselor with the Mission SRO Collaborative. I'm an active participant in the Anti-Displacement Coalition, the Race and Equity in all Planning coalition, and the SRO Families United (SROFU) coalition. I oppose the project proposed for 450 O'Farrell and support Pacific Bay Inn and the Tenderloin Housing Clinic's appeal of the project.

I ask that you consider the lived experiences of the residents of the district. The Tenderloin already contains a majority of the SRO and group housing facilities in San Francisco. They need housing for families. The community is severely lacking adequately sized units for Tenderloin families. It is unacceptable that there is little to no housing for families with children. Tenderloin children need affordable housing too.

We agree that we need more housing in the Tenderloin. The neighborhood feels the impacts of the housing crisis. However, this project is not adequate. The Tenderloin deserves housing that respects the dignity of the families and children in the community. The Tenderloin is not treated equally with other neighborhoods in the City. The Tenderloin deserves better than this. The Tenderloin and this project deserve a developer who will negotiate in good faith with the community and organizations that represent them. Until that happens, I oppose the proposed development at 450 O'Farrell.

Best,

Aaron McNelis (he/elle)
MSROC Tenants Rights Counselor
Dolores Street Community Services
[938 Valencia Street, San Francisco, CA 94110](#)

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: 7 Letters regarding File No. 210858
Date: Tuesday, September 28, 2021 1:19:00 PM
Attachments: [7 Letters regarding File No. 210858.pdf](#)

Hello,

Please see attached 7 Letters regarding File No. 210858.

File No. 210858 – Hearing of persons interested in or objecting to the approval of a Conditional Use Authorization pursuant to Sections 303, 304, 415, 166, and 155 of the Planning Code, for a proposed project at 450-474 O'Farrell Street and 532 Jones Street, Assessor's Parcel Block No. 0317, Lot Nos. 007, 009, and 011, identified in Planning Case No. 2013.1535CUA-02, issued by the Planning Commission by Motion No. 20935, dated June 24, 2021, to amend the Conditions of Approval Nos. 24, 25, 26, and 32 of Planning Commission Motion No. 20281, adopted on September 13, 2018, for a revised project scope to include demolition of three buildings, construction of a 13-story mixed-use building with similar massing, ground floor commercial and a new church, and up to 316 group housing rooms instead of 176 residential units located in a RC-4 (Residential-Commercial, High Density) Zoning District, North of Market Residential Special Use District and 80-130-T Height and Bulk District. (District 6) (Appellants: Pratibha Tekkey, on behalf of the Tenderloin Housing Clinic, and Michael Shonafelt and Gregory Tross of Newmeyer & Dillion LLP, on behalf of the Pacific Bay Inn, Inc.) (Filed July 21, 2021).

Regards,

John Bullock
Board of Supervisors - Clerk's Office
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184

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From: [Tenderloin Tenants](#)
To: [Board of Supervisors, \(BOS\)](#)
Cc: [Haneystaff \(BOS\)](#)
Subject: File # 210859 450–474 O'Farrell Street/532 Jones Street Project CUA
Date: Thursday, September 23, 2021 4:00:47 PM

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Subject: 450–474 O'Farrell Street/532 Jones Street Project

Public Comment

September 23, 2021

Dear Honorable San Francisco Board of Supervisors:

On behalf of Tenderloin Tenants, we are writing in support of the appeal of a proposed project at 450 O'Farrell Street group housing.

Tenderloin Tenants and several of our coalition partners have expressed severe issues with the proposed project at 450 O'Farrell Street.

This development proposes the revision of over 300 group housing units targeting middle-class family housing onsite.

Our issues are:

-Outreach has been minimal, and we believe the developer, by their actions, are disrespecting the neighborhood stakeholders.

-The design of the project proposes overcrowding and minimum standards for family housing.

-The residential units are not proposed to include proper cooking facilities. This something Middle-income families will find it hard to cope with.

-Bicycle parking is in the basement, and this is unacceptable for proper accessibility.

-This project fails to address the potential racial and social inequities that it may create. The project sponsor has failed to study which of these potential inequities and offer mitigation.

-Removal of all previously approved parking spaces for residents is unwarranted.

-Project reduces open space and adds more residents.

-The use of private security that uses bullying tactics to the surrounding neighbors and neighborhood.

-The loss of four business storefronts being replaced by only two.

Tenderloin Tenants supports the following:

Conditionally Disapproving the Conditional Use Authorization - 450-474 O'Farrell Street and 532 Jones Street

Preparation of Findings Related to Conditional Use Authorization - 450-474 O'Farrell Street and 532 Jones Street

Motion directing the Clerk of the Board to prepare findings in support of the Board of Supervisors' disapproval of the proposed Conditional Use Authorization, identified as Planning Case No. 2013.1535CUA-02 for a proposed project at 450-474 O'Farrell Street and 532 Jones Street.

Tenderloin Tenants seek to protect and maximize the quality of life for current and future residents.

Wilma Gurwork

Tenderloin Tenants

From: [Michael Nulty](#)
To: [Board of Supervisors, \(BOS\)](#)
Subject: Subject: 450-474 O'Farrell Street/532 Jones Street Project Public Comment 539 signature Online Petition (attachments)
Date: Thursday, September 23, 2021 7:58:22 PM
Attachments: [Our concerns for 450 O'Farrell Street development OnlinePetition.pdf](#)
[petition comments jobs 27391480 20210414172437.pdf](#)
[petition signatures jobs 27391480 20210414172037.pdf](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Subject: 450-474 O'Farrell Street/532 Jones Street Project

Public Comment 539 signature Online Petition

September 23, 2021

San Francisco Board of Supervisors::

On behalf of Alliance for a Better District 6 (ABD6) and our community partners, we write to express grave concerns about the proposed project at 450 O'Farrell St.

Since 1999, ABD6 has served as a planning and land use entity within the central city neighborhoods. Our membership includes a cross-section of working-class, very low-income residents, seniors, disabled, and families. We try to balance their current and future needs. We work with stakeholders, decision-makers, and elected officials to raise public awareness on issues that impact their quality of life.

This development proposes revising housing from 176 residential dwelling units to 302 group housing units.

Once the developer proposed group housing units stakeholders became concerned about the potential impacts and the lack of proper community outreach. The attached online petition allows the broader community and others around the project to comment.

The Online Petition was created to get feedback and generate community responses. Because the developer has altered their project several times many are not sure what is actually being proposed.

<https://www.change.org/p/san-francisco-planning-commission-our-concerns-for-450-o-farrell-street-development>

Additionally, the Alliance for a Better District 6 supports the Motion directing the Clerk of the Board to prepare findings in support of the Board of Supervisors' disapproval of the proposed Conditional Use Authorization, identified as Planning Case No. 2013.1535CUA-02 for a proposed project at 450-474 O'Farrell Street and 532 Jones Street.

If there are any questions, please do not hesitate to reach out at sf_district6@yahoo.com. Thank you for your

consideration.

Michael Nulty

Executive Director

Alliance for a Better District 6

Michael Nulty

P.O. Box 420782


San Francisco, CA 94142-0782

(415) 339-8779 - Alliance for a Better District 6

<http://abd6.cfsites.org/>

Our concerns for 450 O'Farrell Street development



 **Michael Nulty** started this petition to [San Francisco Planning Commission](#) and [3 others](#)

The Project Sponsor failed to engage the community, seeking to secure approval from the San Francisco Planning Commission without interacting with stakeholders in the neighborhood.

Most of the 302 units in this proposed project will range from 318 square feet to 477 square feet, designed for 'essential workers' and 'families.' As an illustration, according to their plans, two twin beds and a third fold-up bed constitute a one-room "family" unit. All of these dwelling units lack full kitchens and private bedrooms. These plans represent new units that would replicate overcrowding. This development fails to meet current standards for Inclusionary Housing.

We urge the San Francisco Planning Commission to consider this community feedback and reject this joint venture between Forge Development Partners, a privately-held local development firm, and Fifth Church of Christ, Scientist. Should the developer wish to revise their plans and demonstrate respect for the community engagement process, including giving genuine consideration to the feedback generated through it, We would reconsider our opposition.

项目发起人未能与社区互动，试图在不与社区利益相关者互动的情况下获得旧金山计划委员会的批准。

该拟议项目中的302个单位中，大多数面积为318平方英尺至477平方英尺，专为“基本工人”和“家庭”设计。作为说明，根据他们的计划，两张单人床和第三张折叠床构成一个单间“家庭”单元。所有这些居住单元都没有完整的厨房和私人卧室。这些计划代表了将重复拥挤的新单位。这一发展不符合现行的包容性住房标准。

我们敦促旧金山计划委员会考虑社区的反馈意见，并拒绝由私有的本地开发公司Forge Development Partners与科学家第五基督教堂之间的合资企业。如果开发者希望修改其计划并表现出对社区参与过程的尊重，包括真正考虑通过该过程产生的反馈，我们将重新考虑我们的反对意见。

Xiàngmù fāqǐ rén wèi néng yǔ shèqū hùdòng, shítú zài bù yǔ shèqū liyì xiāngguān zhě hùdòng de qíngkuàng xià huòdé jiùjīnshān jìhuà wěiyuánhui de pīzhǔn.

Gāi nǐyì xiàngmù zhōng de 302 gè dānwèi zhōng, dà duōshù miǎnjī wèi 318 píngfāng yíngchǐ zhī 477 píngfāng yíngchǐ, zhuān wèi “jīběn gōngrén” hé “jiātíng” shèjì. Zuòwéi shuōmíng, gēnjù tāmen de jìhuà, liǎng zhāng dān rén chuáng hé dì sān zhāng zhédié chuáng gòuchéng yīgè dānjiān “jiātíng” dānyuán. Suǒyǒu zhèxiē jūzhù dānyuán dōu méiyǒu wánzhěng de chúfáng hé sīrén wòshì. Zhèxiē jìhuà dàibiǎole jiāng chóngfù yǒngjǐ de xīn dānwèi. Zhè yì fā zhān bù fúhé xiànxíng de bāoróng xìng zhǔfáng biāozhǔn.

Wǒmen dūncù jiùjīnshān jìhuà wěiyuánhui kǎolǚ shèqū de fǎnkui yìjiàn, bǐng jùjué yǒu sìyǒu de bēndì kāifā gōngsī Forge Development Partners yǔ kēxuégāi dì wǔ jīdù jiàotáng zhī jiān de hézī qīyè. Rúguǒ kāifā zhě xīwàng xiūgǎi qí jìhuà bǐng biǎoxiàn chū duì shèqū cǎnyǔ guòchéng de zūnzhòng, bǎokuò zhēnzhèng kǎolǚ tóngguò gāi guòchéng chǎnshēng de fǎnkui, wǒmen jiāng chóngxīn kǎolǚ wǒmen de fǎndui yìjiàn.

El patrocinador del proyecto no logró involucrar a la comunidad, buscando obtener la aprobación de la Comisión de Planificación de San Francisco sin interactuar con las partes interesadas en el vecindario.

La mayoría de las 302 unidades en este proyecto propuesto variarán de 318 pies cuadrados a 477 pies cuadrados, diseñadas para 'trabajadores esenciales' y 'familias'. A modo de ilustración, según sus planes, dos camas individuales y una tercera cama plegable constituyen una unidad "familiar" de una habitación. Todas estas unidades de vivienda carecen de cocinas completas y dormitorios privados. Estos planes representan nuevas unidades que replicarían el hacinamiento. Este desarrollo no cumple con los estándares actuales para viviendas inclusivas.

Instamos a la Comisión de Planificación de San Francisco a considerar esta retroalimentación de la comunidad y rechazar esta empresa conjunta entre Forge Development Partners, una firma de desarrollo local de propiedad privada, y la Quinta Iglesia de Cristo, Científica. Si el desarrollador desea revisar sus planes y demostrar respeto por el proceso de participación de la comunidad, incluida la consideración genuina de los comentarios generados a través de él, reconsideraríamos nuestra oposición.

Nabigo ang Sponsor ng Proyekto na makisali sa pamayanan, naghahangad na ma-secure ang pag-apruba mula sa Komisyon ng Plano ng San Francisco nang hindi nakikipag-ugnay sa mga stakeholder sa kapitbahayan.

Karamihan sa 302 na yunit sa iminungkahing proyekto na ito ay mula 318 square paa hanggang 477 square square, na idinisenyo para sa 'mahahalagang manggagawa' at 'pamilya.' Bilang isang paglalarawan, ayon sa kanilang mga plano, ang dalawang kambal na kama at isang pangatlong tiklop na kama ay bumubuo ng isang silid na "pamilya" na yunit. Ang lahat ng mga yunit na ito ay walang mga kusina at pribadong silid-tulugan. Ang mga planong ito ay kumakatawan sa mga bagong yunit na maaaring magtiklop sa sobrang dami ng tao. Nabigo ang pag-unlad na ito upang matugunan ang mga kasalukuyang pamantayan para sa Kasamang Pabahay.

Hinihimok namin ang Komisyon ng Plano ng San Francisco na isaalang-alang ang puna ng komunidad na ito at tanggihan ang magkasanib na pakikipagsapalaran sa pagitan ng Forge Development Partners, isang pribadong pag-unlad na lokal na firm ng pag-unlad, at Fifth Church of Christ, Scientist. Kung nais ng developer na baguhin ang kanilang mga plano at ipakita ang paggalang sa proseso ng pakikipag-ugnayan sa pamayanan, kabilang ang pagbibigay ng tunay na pagsasaalang-alang sa feedback na nabuo sa pamamagitan nito, Isasaalang-alang namin muli ang aming pagsalungat.

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Updates


[Post an update](#) Keep your supporters engaged with a news update. Every update you post will be sent as a separate email to signers of your petition.

500 supporters 20 hours ago

Michael Nulty started this petition 2 months ago

Reasons for signing

 I'm signing because...

 **AJ Guest** · 2 months ago

I support affordable clean housing.

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 **Jan Chespeke** · 2 months ago

The homeless situation is dire in California

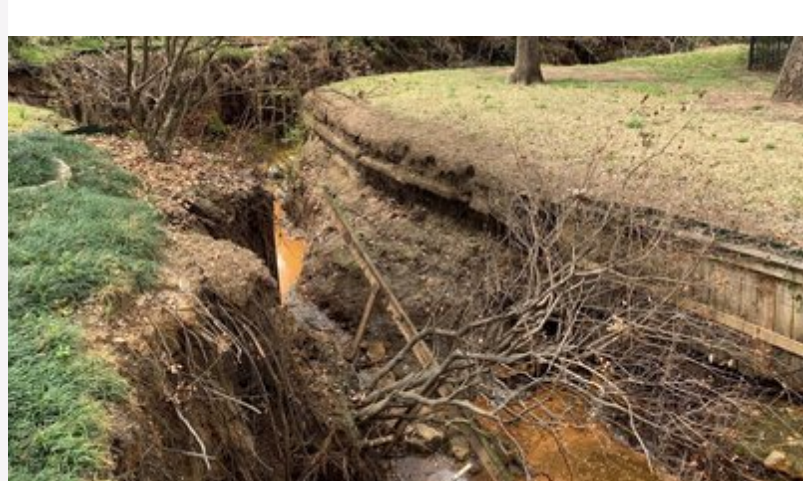
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Our neighborhood in danger of being washed out!

South Arlington neighborhoods in danger of being washed away! Dear Citizens of Arlington, Texas: We ask you for... [Read more](#)

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Save the Andrew Akin House (c.1746) in Silvermine

I support the preservation of the historic home at 1 Old Kings Highway in Silvermine. It was built by Andrew Akin in about... [Read more](#)

[Sign the petition](#)

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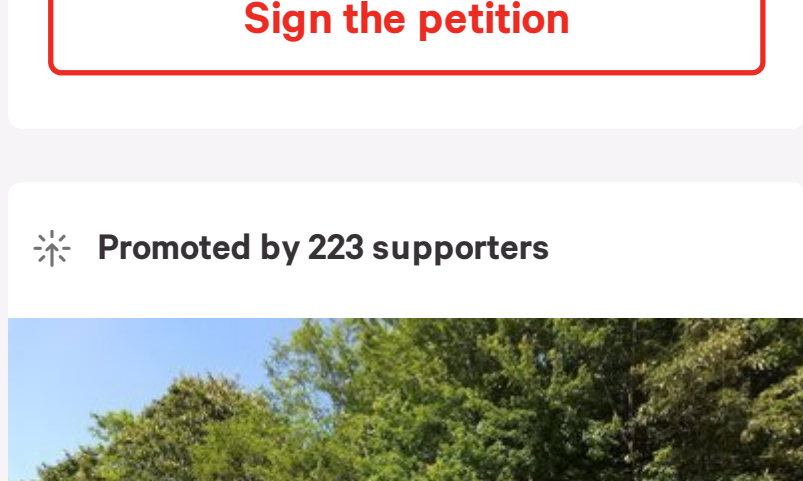


Put Fitness Equipment on the East River Esplanade in A.H. Green Park

COVID-19 has changed the way we live. Since the spring of 2020, the East River Esplanade

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Promoted by 223 supporters

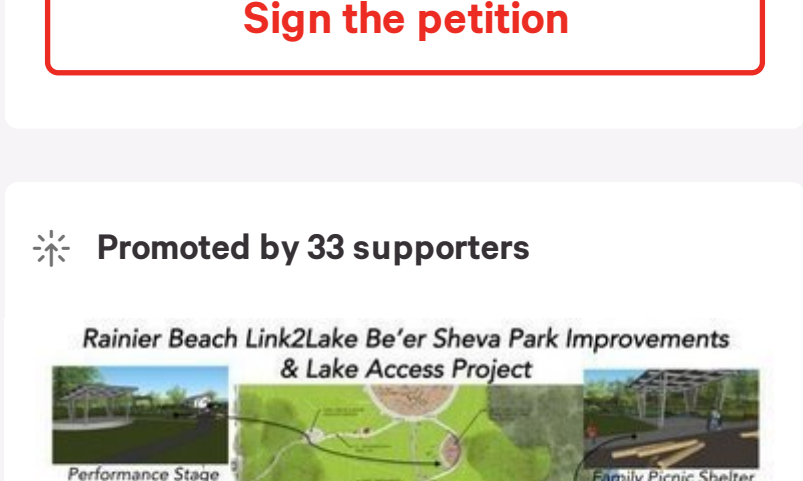


SAY NO TO EAST FLAT ROCK ASPHALT PLANT

PROPOSED NEW ASPHALT PLANT PROJECT CONDITIONAL REZONING #R-2020-03-C PROTEST PETITION We... [Read more](#)

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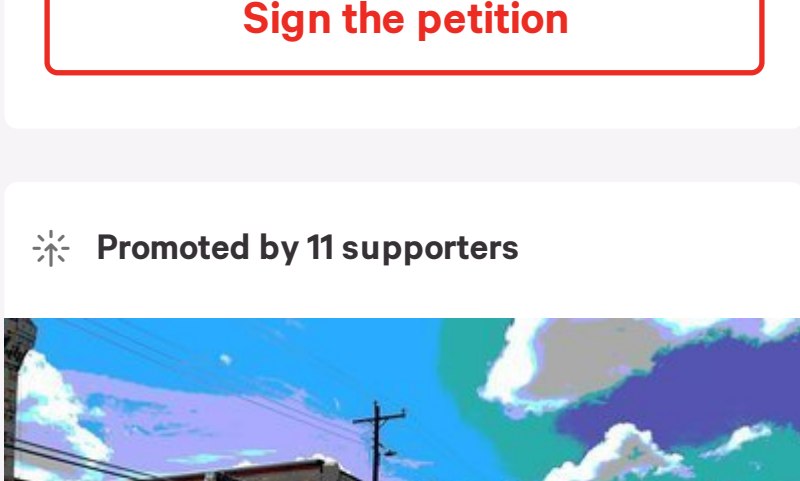


Seattle Parks Department, Fully Fund Be'er Sheva Park Improvements with MPD

Residents of Rainier Beach have designed park improvements at Be'er Sheva park, and

[Sign the petition](#)

Promoted by 11 supporters




Save Liberty Hill, Stop the 29 Bypass

The history of Liberty Hill, like Texas, is one of dedication and persistence. Prior to 1900, the town of Liberty Hill moved three... [Read more](#)

[Sign the petition](#)

Promoted by 18 supporters




Allow Glenview Community Input on Scott Foresman | Pearson Property Discussions!

Dear Glenview Neighbors, If you were not

[Sign the petition](#)

Promoted by 17 supporters

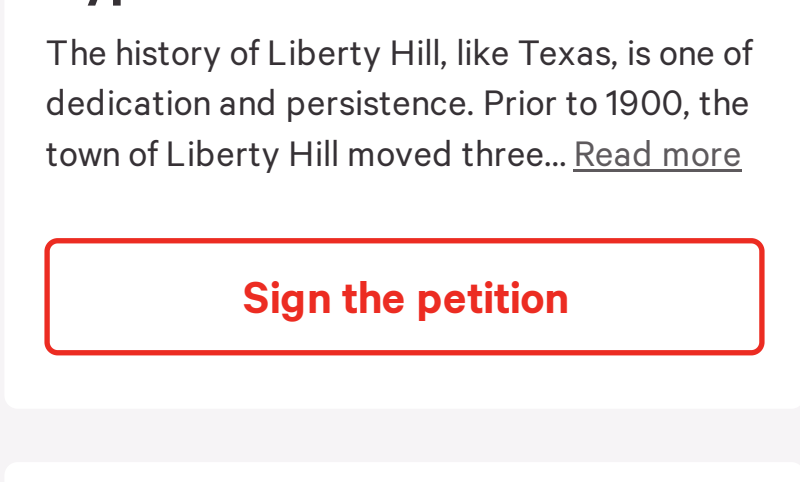


Opposition to the 4,000 apartments for West Flower Mound

While Flower Mound is a great spot to live, adding apartments and high density living is

[Sign the petition](#)

Promoted by 2 supporters



UMB changes to MLK/Baltimore/Fremont

The history of Hollins Roundhouse Association, We, the undersigned residents of the 800 block of Hollins Street and others, write to... [Read more](#)

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English (United States)



Recipient: San Francisco Planning Commission, San Francisco Board of Supervisors,
Forge Development Partners, Fifth Church of Christ, Scientist

Letter: Greetings,

Our concerns for 450 O'Farrell Street development:

Comments

Name	Location	Date	Comment
Jan Chepeska	Belleville, MI	2021-02-16	"The homeless situation is dire in California"
AJ Guest	San Francisco, CA	2021-02-18	"I support affordable clean housing."
David Carpenter	San Francisco, CA	2021-02-18	"Cramming humans into tiny spaces is ridiculous and not a solution."
Wilma Gurwork	San Francisco, CA	2021-02-21	"Safe and healthy housing needs to be built, with little impact to traffic and the existing residents and businesses. I support a different configuration of unit amenities. Let's do a better job Forge Development."
Beryl Shields	Miami, FL	2021-02-22	"🙏🏾"
Gerald Benson	Miami, FL	2021-02-22	"I support this petition"
George Hawkins	Miami, FL	2021-02-22	"I am for safe and comfortable housing"
Peter Wells	San Francisco, CA	2021-02-22	"💎💎"
Vivien Caldwell	Los Angeles, CA	2021-02-22	"I fully support everyone who signed the petition, thanks to Michael there is faith in humanity💎"
Njon Sanders	San Francisco, CA	2021-02-26	"Christian Science is a dying sect whose anti-medical dogma is the source of prolonged unnecessary pain and suffering for many. Please sell this property and end the claims of "healing" the community."
Erin Lambert	San Francisco, CA	2021-04-08	"excellent"
Beatrice McBride	San Francisco, CA	2021-04-08	"good offer to work on, i am with you."
Juniper Ford	San Francisco, CA	2021-04-08	"the developer must reconsider their plans and expect respect for the process."
Maximilian Bridges	San Francisco, CA	2021-04-08	"ok"
Emma Shields	San Francisco, CA	2021-04-12	"glad I was able to sign this petition"
Margaret Carr	San Francisco, CA	2021-04-13	"the project sponsor needs to provide better community outreach."
Jeffery Barber	San Francisco, CA	2021-04-13	"this project as proposed needs to be changed!!!!!!"
Mark Porter	San Francisco, CA	2021-04-13	"housing for essential workers needs to meet their needs including parking."
Amy Page	San Francisco, CA	2021-04-13	"the BMR units should be at least 25 percent of the project, just my opinion."

Name	Location	Date	Comment
Mary Shields	San Francisco, CA	2021-04-13	"WHY ARE ALL THE BATHROOMS IN THE UNITS IN THE MIDDLE OF THE UNIT WHICH CREATES SMALL HALLWAYS AND EMPTY SPACE?????"
Helen Tyler	San Francisco, CA	2021-04-13	"Middle-class workforce households need a large refrigerator in their apartment to feed their family..."
Maximilian Jones	San Francisco, CA	2021-04-13	"it seems the church gets parking but the residents will not have any parking. Why is that?"
Willis White	San Francisco, CA	2021-04-13	"I hope smart people will make the right decision and support this petition"
Ashlee Patterson	San Francisco, CA	2021-04-13	"all will be good/ i know"

Recipient: San Francisco Planning Commission, San Francisco Board of Supervisors,
Forge Development Partners, Fifth Church of Christ, Scientist

Letter: Greetings,

Our concerns for 450 O'Farrell Street development:

Signatures

Name	Location	Date
Michael Nulty	San Francisco, CA	2021-02-16
Susan Bryan	San Francisco, CA	2021-02-16
Laura Sinai	San Francusco, CA	2021-02-16
Cody Thompson	El Paso, US	2021-02-16
Susan Phillips	San Rafael, CA	2021-02-16
lorenzo morales	Columbia, US	2021-02-16
Katie Elenbaas	Cadillac, US	2021-02-16
Jeffrey Clay Barcus	San Francisco, CA	2021-02-16
Jan Chepeska	Belleville, MI	2021-02-16
Tony Wise	North Augusta, SC	2021-02-16
Cheryl Shanks	San Francisco, CA	2021-02-16
Liza Murawski	San Francisco, CA	2021-02-17
Maggie Lambert	Fort Wayne, IN	2021-02-17
WAYNE KILLINGER	MELBOURNE, FL	2021-02-17
AJ Guest	San Francisco, CA	2021-02-18
Deetje Boler	San Francisco, CA	2021-02-18
David Carpenter	San Francisco, CA	2021-02-18
Jeff Warner	San Francisco, CA	2021-02-18
Yernat Shpekbayev	Frankfurt Am Main, Germany	2021-02-19
Vyacheslav Malinin	Atlanta, GA	2021-02-19

Name	Location	Date
Urbiegato Morbidendus	Gilbert, AZ	2021-02-19
Mary Rush	San Francisco, US	2021-02-20
Daniel Bettencourt	Fremont, CA	2021-02-20
Wilma Gurwork	San Francisco, CA	2021-02-21
Vyacheslav Kalinin	New York, NY	2021-02-22
Michael miller	New York, NY	2021-02-22
Dean Keller	Бородулиха, Kazakhstan	2021-02-22
Dean Keller	Ctvtq, Kazakhstan	2021-02-22
John Nulty	London, UK	2021-02-22
Chris Gordon	Москва, Russia	2021-02-22
Rube Lane	San-Francisco, CA	2021-02-22
Christopher Black	San Francisco, CA	2021-02-22
Brian Fox	San Francisco, CA	2021-02-22
Joseph Greer	San Francisco, CA	2021-02-22
Julius Martin	Semey, Kazakhstan	2021-02-22
Anthony Tyler	San-Francisco, CA	2021-02-22
Myra Craig	Ukraine	2021-02-22
Justina Gilmore	Ukraine	2021-02-22
Patricia Gross	Ukraine	2021-02-22
Dinah Wells	New York, NY	2021-02-22
Dorcas Warner	New York, NY	2021-02-22
Judith Bailey	New York, NY	2021-02-22

Name	Location	Date
William Goodman	New York, NY	2021-02-22
August Flowers	New York, NY	2021-02-22
Debra Hines	San Francisco, CA	2021-02-22
David Thornton	San Francisco, CA	2021-02-22
Eileen Elliott	San Francisco, CA	2021-02-22
Molly Reeves	San Francisco, CA	2021-02-22
Dayna May	San Francisco, CA	2021-02-22
Silvester Cummings	San Francisco, CA	2021-02-22
Ronald Benson	San Francisco, CA	2021-02-22
Christopher Kennedy	San Francisco, CA	2021-02-22
William Logan	San Francisco, CA	2021-02-22
Lindsey Floyd	Miami, FL	2021-02-22
Patience Patience	Miami, FL	2021-02-22
Beryl Shields	Miami, FL	2021-02-22
Tamsin Long	Miami, FL	2021-02-22
Gerald Benson	Miami, FL	2021-02-22
George Hawkins	Miami, FL	2021-02-22
Jasmine Terry	Miami, FL	2021-02-22
Alice Blair	San Francisco, CA	2021-02-22
Rosa Howard	San Francisco, CA	2021-02-22
Lily Martin	San Francisco, CA	2021-02-22
Alexandrina Franklin	San Francisco, CA	2021-02-22

Name	Location	Date
Caroline Clarke	San Francisco, CA	2021-02-22
Morgan Stanley	San Francisco, CA	2021-02-22
Ami Henry	San Francisco, CA	2021-02-22
Jack Hodges	San Francisco, CA	2021-02-22
Jesse Gardner	San Francisco, CA	2021-02-22
Peter Wells	San Francisco, CA	2021-02-22
Lynette Francis	San Francisco, CA	2021-02-22
Amelia Tyler	San Francisco, CA	2021-02-22
Candace Craig	San Francisco, CA	2021-02-22
Anabel Hunt	San Francisco, CA	2021-02-22
Georgina Jackson	San Francisco, CA	2021-02-22
Ashlee Hopkins	San Francisco, CA	2021-02-22
Diane Cole	San Francisco, CA	2021-02-22
Dorothy Fletcher	San Francisco, CA	2021-02-22
Charles Mills	San Francisco, CA	2021-02-22
Marshall Chandler	Chicago, IL	2021-02-22
Prudence Stone	Chicago, IL	2021-02-22
Peter Wells	Chicago, IL	2021-02-22
Christiana Greene	Boston, MA	2021-02-22
Ruth Johnson	Boston, MA	2021-02-22
Marianna Garrett	San Francisco, CA	2021-02-22
Reynold Potter	San Francisco, CA	2021-02-22

Name	Location	Date
Ronald Harrison	San Francisco, CA	2021-02-22
Edward Bond	San Francisco, CA	2021-02-22
Mark Parsons	San Francisco, CA	2021-02-22
Edward Booker	San Francisco, CA	2021-02-22
Chastity Bruce	San Francisco, CA	2021-02-22
Garey Porter	San Francisco, CA	2021-02-22
Alexandra Francis	San Francisco, CA	2021-02-22
Mark Stokes	San Francisco, CA	2021-02-22
Morgan Holmes	Los Angeles, CA	2021-02-22
Corey Atkinson	Los Angeles, CA	2021-02-22
Christopher Miles	Los Angeles, CA	2021-02-22
Robert Sutton	Los Angeles, CA	2021-02-22
Vivien Caldwell	Los Angeles, CA	2021-02-22
Audra Heath	San Francisco, CA	2021-02-22
Allyson Washington	San Francisco, CA	2021-02-22
Nora Golden	San Francisco, CA	2021-02-22
Rajbir Singh	Nashville, US	2021-02-22
Daisy Miranda	San Tan Valley, US	2021-02-22
kyle rumbo	Mesquite, US	2021-02-22
Maya Jabak	Clermont, US	2021-02-22
Ann Plimpton	Colorado Springs, US	2021-02-22
Cierra Albright	Layton, US	2021-02-22

Name	Location	Date
Dea Bryant	Wake Forest, US	2021-02-22
Cindy Paredes	Silver Spring, US	2021-02-22
STEVEN Cromie	Liverpool, US	2021-02-22
Vivian Fahey	Niles, US	2021-02-22
Marcello Vitale	US	2021-02-22
Matthew Campbell	Nogales, US	2021-02-22
raegan smith	Arlington, US	2021-02-22
Hannah Amick	Boise, US	2021-02-22
David Marks	Amsterdam, Netherlands	2021-02-22
RADOGO ULUINADAVE	San Francisco, CA	2021-02-22
Dan Grabau	Oronoco, US	2021-02-22
John Nulty	San Francisco, CA	2021-02-22
Fred Koopper	San Francisco, CA	2021-02-22
Mary Kasse	San Francisco, CA	2021-02-22
Louise Bret	San Francisco, CA	2021-02-22
Arthur Goeke	San Francisco, CA	2021-02-22
Anakh Sul Rama	San Francisco, CA	2021-02-22
Yolanda Nava	Lynwood, US	2021-02-23
e .	Lindsay, US	2021-02-23
Maria Alexandra Rugero	Winter Garden, US	2021-02-23
Charley Fry	Loon lake, US	2021-02-23
Halle Robider	Fort Mill, US	2021-02-23

Name	Location	Date
zach dyar	Marietta, US	2021-02-23
hannah strader	Weston, US	2021-02-23
Yasmine Horton	Bessemer, US	2021-02-23
Jamie Russell	Kannapolis, US	2021-02-23
Tami Lukachy	Henderson, US	2021-02-23
Davae Skinner	Alameda, US	2021-02-23
Samantha Tartaglino	Watertown, US	2021-02-23
Joshua Sturgeon	Fort Mill, US	2021-02-23
Andrew Killion	Fort Mill, US	2021-02-23
CJ Magnett	Jacksonville, US	2021-02-23
Giampiero Mariani	Brooklyn, US	2021-02-23
Alla Pines	US	2021-02-23
Mari Doro	Downers Grove, US	2021-02-23
Jean Chagnon	Montréal, US	2021-02-23
Maribel Marulanda	New York, US	2021-02-23
Robert Evans	Erie, PA	2021-02-23
Jose G	Fort mill, US	2021-02-23
Darrell Valdez	Thousand Oaks, US	2021-02-23
KANITA MOON	Hoopla, US	2021-02-23
Sanai Butler	Petersburg, US	2021-02-23
Dean Turpin	Sparta Township, US	2021-02-23
natalie fuellenbach	san francisco, US	2021-02-23

Name	Location	Date
Kayla Rhoad	Bowman, US	2021-02-23
Paula Bell	Alabaster, US	2021-02-23
Lucky Lucy	Paso Robles, US	2021-02-23
Grace Weeks	Flushing, US	2021-02-23
Katherine Byrne	Belmont, US	2021-02-23
Morgan Huelskamp	Marietta, GA	2021-02-23
T. Daher	Niagara Falls, Canada	2021-02-23
amos gregory	San Francisco, CA	2021-02-23
Sarah Mitchell	San Francisco, CA	2021-02-23
Vaughn Banks	San Jose, CA	2021-02-23
Will Hyde	San Francisco, CA	2021-02-23
Thomasine Francis	San Francisco, CA	2021-02-24
Christiana Bradford	San Francisco, CA	2021-02-24
Molly Riley	San Francisco, CA	2021-02-24
Lorraine Osborne	San Francisco, CA	2021-02-24
Margaret Ray	San Francisco, CA	2021-02-24
Carol Caldwell	San Francisco, CA	2021-02-24
Elfrieda Cook	San Francisco, CA	2021-02-24
Arabella Atkinson	San Francisco, CA	2021-02-24
Teresa Houston	San Francisco, CA	2021-02-24
Gavin Osborne	San Francisco, CA	2021-02-24
Mark Price	San Francisco, CA	2021-02-24

Name	Location	Date
Logan O'Brien	San Francisco, CA	2021-02-24
Walter Doyle	San Francisco, CA	2021-02-24
Chloe Phelps	San Francisco, CA	2021-02-24
Tracey Horn	San Francisco, CA	2021-02-24
Linette Underwood	San Francisco, CA	2021-02-24
Anne Bailey	San Francisco, CA	2021-02-24
Matthew Harris	San Francisco, CA	2021-02-24
Chester Fields	San Francisco, CA	2021-02-24
Jacob Charles	San Francisco, CA	2021-02-24
George Horton	San Francisco, CA	2021-02-24
Norma Short	San Francisco, CA	2021-02-24
Zoe Elliott	San Francisco, CA	2021-02-24
Anastasia Wade	San Francisco, CA	2021-02-24
Olivia May	San Francisco, CA	2021-02-24
Chloe Cunningham	San Francisco, CA	2021-02-24
Lauren Johnston	San Francisco, CA	2021-02-24
Kerry Smith	San Francisco, CA	2021-02-24
Thomas Palmer	San Francisco, CA	2021-02-24
Wendy Cobb	San Francisco, CA	2021-02-24
Abigail Mosley	San Francisco, CA	2021-02-24
Karen Fox Фокс	San Francisco, CA	2021-02-24
Lee Chandler	San Francisco, CA	2021-02-24

Name	Location	Date
John Simmons	San Francisco, CA	2021-02-24
Paul Burns	San Francisco, CA	2021-02-24
Bertram Wells	San Francisco, CA	2021-02-24
Kristina Knight	San Francisco, CA	2021-02-24
Sharlene Welch	San Francisco, CA	2021-02-24
Melissa Heithaus	Mckinney, US	2021-02-24
Paul Zimmerman	San Francisco, CA	2021-02-24
Nigel Pieloth	Victoria, Canada	2021-02-24
Peter Franks	San Francisco, CA	2021-02-24
Betty Luce	San Francisco, CA	2021-02-24
Francis Smithe	San Francisco, CA	2021-02-24
Lora McLaugh	San Francisco, CA	2021-02-24
Albert James	San Francisco, CA	2021-02-25
Joseph Hopper	San Francisco, CA	2021-02-25
George E Marshall	San Francisco, CA	2021-02-25
Njon Sanders	San Francisco, CA	2021-02-26
Scott Dignan	San Francisco, CA	2021-02-26
Helen Strain	San Francisco, CA	2021-02-26
Edgar M	San Francisco, CA	2021-02-26
Hank Gee	San Francisco, CA	2021-02-27
Anton Chan	San Francisco, CA	2021-02-27
Dan Willis	San Francisco, CA	2021-02-27

Name	Location	Date
Patricia Wong	San Francisco, CA	2021-02-27
Peter Lee	San Francisco, CA	2021-02-28
carlos medina	san francisco, CA	2021-02-28
Monique Koller	San Francisco, CA	2021-02-28
Denise Dorey	San Francisco, CA	2021-02-28
Andrew Trabulsi	San Anselmo, CA	2021-03-01
Dona Losett	Helena, US	2021-03-06
Lance Best	Chattanooga, TN	2021-03-09
Steve Ongerth	Richmond, CA	2021-03-12
Jesse Johnson	San Francisco, CA	2021-03-23
Larry Williamson	San Francisco, CA	2021-03-23
Paul Young	New York, NY	2021-03-27
John Carson	New York, NY	2021-03-27
Anis Park	New York, NY	2021-03-27
Dorcas Lamb	New York, NY	2021-03-27
Jack Garrison	New York, NY	2021-03-27
Emily Hamilton	New York, NY	2021-03-27
Ellis Crystal	New York, NY	2021-03-27
Lorraine Fitzgerald	New York, NY	2021-03-27
Calvin Allen	New York, NY	2021-03-27
Ronald Randall	New York, NY	2021-03-27
Hortense Shaw	New York, NY	2021-03-27

Name	Location	Date
Abigail Campbell	New York, NY	2021-03-27
Theodore Underwood	New York, NY	2021-03-27
George Quinn	New York, NY	2021-03-27
Denis Campbell	New York, NY	2021-03-27
Robert Hancock	New York, NY	2021-03-27
Madeleine Fields	New York, NY	2021-03-27
Katrina Sims	New York, NY	2021-03-27
Meagan Hart	New York, NY	2021-03-27
Helen Sharp	New York, NY	2021-03-27
Ann McKenzie	New York, NY	2021-03-27
Amberlynn Dean	New York, NY	2021-03-27
Arron Watson	New York, NY	2021-03-27
Joshua Cook	New York, NY	2021-03-27
Kenneth Singleton	New York, NY	2021-03-27
Curtis Mathews	New York, NY	2021-03-27
Chloe Norman	New York, NY	2021-03-27
John Sparks	New York, NY	2021-03-27
Robert Chase	New York, NY	2021-03-27
Sandra Gray	New York, NY	2021-03-27
Joseph Ferguson	New York, NY	2021-03-27
Laurence Atkins	New York, NY	2021-03-27
Andreyia Allen	San Francisco, CA	2021-03-31

Name	Location	Date
Latasha Tisby	Long Beach, US	2021-04-02
Oscar Parsons	San Francisco, CA	2021-04-08
Clyde Stevenson	San Francisco, CA	2021-04-08
Alicia Armstrong	San Francisco, CA	2021-04-08
Imogen Cross	San Francisco, CA	2021-04-08
Cornelia Blake	San Francisco, CA	2021-04-08
Erin Lambert	San Francisco, CA	2021-04-08
Beatrice McBride	San Francisco, CA	2021-04-08
Juniper Ford	San Francisco, CA	2021-04-08
Matthew McDaniel	San Francisco, CA	2021-04-08
Robert Woods	San Francisco, CA	2021-04-08
Carmel Fox	San Francisco, CA	2021-04-08
Beatrix Stafford	San Francisco, CA	2021-04-08
Kenneth Sherman	San Francisco, CA	2021-04-08
Ruth Simon	San Francisco, CA	2021-04-08
Vernon Johnston	San Francisco, CA	2021-04-08
Augustine Daniel	San Francisco, CA	2021-04-08
Janel Spencer	San Francisco, CA	2021-04-08
Lizbeth Lee	San Francisco, CA	2021-04-08
Kerry Day	San Francisco, CA	2021-04-08
Bryce Harris	San Francisco, CA	2021-04-08
Antony Rogers	San Francisco, CA	2021-04-08

Name	Location	Date
David Quinn	San Francisco, CA	2021-04-08
Judith Joseph	San Francisco, CA	2021-04-08
Peter Cooper	San Francisco, CA	2021-04-08
Charles Rice	San Francisco, CA	2021-04-08
Timothy McGee	San Francisco, CA	2021-04-08
Leslie Arnold	San Francisco, CA	2021-04-08
John Miller	San Francisco, CA	2021-04-08
Emery Robbins	San Francisco, CA	2021-04-08
Edward Carr	San Francisco, CA	2021-04-08
Agnes Goodwin	San Francisco, CA	2021-04-08
Robert Carson	San Francisco, CA	2021-04-08
Brian Hart	San Francisco, CA	2021-04-08
Hart Simon	San Francisco, CA	2021-04-08
Paul Ward	San Francisco, CA	2021-04-08
Baldwin Jones	San Francisco, CA	2021-04-08
Eileen Carr	San Francisco, CA	2021-04-08
Ursula Craig	San Francisco, CA	2021-04-08
Jean Robertson	San Francisco, CA	2021-04-08
Robert Welch	San Francisco, CA	2021-04-08
Joshua McCormick	San Francisco, CA	2021-04-08
Christopher Baker	San Francisco, CA	2021-04-08
Winfred McCormick	San Francisco, CA	2021-04-08

Name	Location	Date
Maximilian Bridges	San Francisco, CA	2021-04-08
Mariah Matthews	San Francisco, CA	2021-04-08
Bernadette Wilson	San Francisco, CA	2021-04-08
Amanda French	San Francisco, CA	2021-04-08
Lionel Lloyd	San Francisco, CA	2021-04-08
Rodger Hamilton	San Francisco, CA	2021-04-08
Brian Sharp	San Francisco, CA	2021-04-08
Jeremy Brooks	San Francisco, CA	2021-04-08
Hilary Wilkins	San Francisco, CA	2021-04-08
William Manning	San Francisco, CA	2021-04-08
Samuel Charles	San Francisco, CA	2021-04-08
Anis Park	San Francisco, CA	2021-04-08
Simon Stafford	San Francisco, CA	2021-04-08
Aubrey Thornton	San Francisco, CA	2021-04-08
Thomas Jones	San Francisco, CA	2021-04-08
Easter Glenn	San Francisco, CA	2021-04-08
Peter Craig	San Francisco, CA	2021-04-11
Michael Matthews	San Francisco, CA	2021-04-11
Myra Golden	San Francisco, CA	2021-04-11
Nancy Chapman	San Francisco, CA	2021-04-11
Emily Harris	San Francisco, CA	2021-04-11
Robert McKenzie	San Francisco, CA	2021-04-11

Name	Location	Date
Gordon Owens	San Francisco, CA	2021-04-11
Joseph Byrd	San Francisco, CA	2021-04-11
Virgil Sanders	San Francisco, CA	2021-04-11
Anastasia Stevenson	San Francisco, CA	2021-04-11
Pamela Bennett	San Francisco, CA	2021-04-11
Eustacia Baker	San Francisco, CA	2021-04-11
Michael Freeman	San Francisco, CA	2021-04-11
Joshua Dorsey	San Francisco, CA	2021-04-11
Emily Randall	San Francisco, CA	2021-04-11
Clare Russell	San Francisco, CA	2021-04-11
Jack Gaines	San Francisco, CA	2021-04-11
Judith Houston	San Francisco, CA	2021-04-11
Barrie Spencer	San Francisco, CA	2021-04-11
Richard York	San Francisco, CA	2021-04-11
David Wilkerson	San Francisco, CA	2021-04-11
Frank O'Connor	San Francisco, CA	2021-04-11
Steven Cooper	San Francisco, CA	2021-04-11
Peter Lyons	San Francisco, CA	2021-04-11
Britney Booker	San Francisco, CA	2021-04-11
Claude Thomas	San Francisco, CA	2021-04-11
Amie Bishop	San Francisco, CA	2021-04-11
Paul Blair	San Francisco, CA	2021-04-11

Name	Location	Date
Allan Melton	San Francisco, CA	2021-04-11
Edgar Horton	San Francisco, CA	2021-04-11
David Ellis	San Francisco, CA	2021-04-12
Robert Neal	San Francisco, CA	2021-04-12
Paul McCormick	San Francisco, CA	2021-04-12
Buddy Brown	San Francisco, CA	2021-04-12
Simon Hutchinson	San Francisco, CA	2021-04-12
Emma Carson	San Francisco, CA	2021-04-12
Stephanie Barrett	San Francisco, CA	2021-04-12
Mary Goodwin	San Francisco, CA	2021-04-12
Emma Shields	San Francisco, CA	2021-04-12
Chester Green	San Francisco, CA	2021-04-12
Charles Gray	San Francisco, CA	2021-04-12
Jayson Hensley	San Francisco, CA	2021-04-12
Claire Stevenson	San Francisco, CA	2021-04-12
Jane Morgan	San Francisco, CA	2021-04-12
Joella Gregory	San Francisco, CA	2021-04-12
Prudence Paul	San Francisco, CA	2021-04-12
Simon Carson	San Francisco, CA	2021-04-12
Peter Harrell	San Francisco, CA	2021-04-12
Roger Potter	San Francisco, CA	2021-04-12
Michael Robertson	San Francisco, CA	2021-04-12

Name	Location	Date
Peter Adams	San Francisco, CA	2021-04-12
Amelia Freeman	San Francisco, CA	2021-04-12
Margaret Wilkins	San Francisco, CA	2021-04-12
Corey Lindsey	San Francisco, CA	2021-04-12
Olivia Phillips	San Francisco, CA	2021-04-12
Peter Walters	San Francisco, CA	2021-04-12
Matthew Robertson	San Francisco, CA	2021-04-12
Philip Lewis	San Francisco, CA	2021-04-12
Stewart Paul	San Francisco, CA	2021-04-12
June Ferguson	San Francisco, CA	2021-04-12
Annis Wade	San Francisco, CA	2021-04-12
Emma Morris	San Francisco, CA	2021-04-12
Gerald Higgins	San Francisco, CA	2021-04-12
Shon Sutton	San Francisco, CA	2021-04-12
Steven Watkins	San Francisco, CA	2021-04-12
Paul Morton	San Francisco, CA	2021-04-12
Letitia Hodge	San Francisco, CA	2021-04-12
Caroline Baldwin	San Francisco, CA	2021-04-12
Charlene Ramsey	San Francisco, CA	2021-04-12
Karen Gray	San Francisco, CA	2021-04-12
Robert Hunter	San Francisco, CA	2021-04-12
Hilda Lindsey	San Francisco, CA	2021-04-12

Name	Location	Date
Peter Hines	San Francisco, CA	2021-04-12
Matthew Stevenson	San Francisco, CA	2021-04-12
Reynold Ford	San Francisco, CA	2021-04-12
Peter Barrett	San Francisco, CA	2021-04-12
Madeline Griffin	San Francisco, CA	2021-04-12
Ami Wells	San Francisco, CA	2021-04-12
Jack Cummings	San Francisco, CA	2021-04-12
Alisha Gregory	San Francisco, CA	2021-04-12
Susan Douglas	San Francisco, CA	2021-04-12
Leslie Dickerson	San Francisco, CA	2021-04-12
Mary McDowell	San Francisco, CA	2021-04-12
Martha Pearson	San Francisco, CA	2021-04-12
Chad Owens	San Francisco, CA	2021-04-12
Anthony Bradley	San Francisco, CA	2021-04-13
Joshua Pearson	San Francisco, CA	2021-04-13
Robert Welch	San Francisco, CA	2021-04-13
Katherine Warren	San Francisco, CA	2021-04-13
Merilyn Horn	San Francisco, CA	2021-04-13
Helen Greer	San Francisco, CA	2021-04-13
John Fields	San Francisco, CA	2021-04-13
Patrick Doyle	San Francisco, CA	2021-04-13
Ruth Johnson	San Francisco, CA	2021-04-13

Name	Location	Date
Rosalyn Melton	San Francisco, CA	2021-04-13
Sophie Shepherd	San Francisco, CA	2021-04-13
Grace Chandler	San Francisco, CA	2021-04-13
Erica Woods	San Francisco, CA	2021-04-13
Collin Marsh	San Francisco, CA	2021-04-13
Peter Benson	San Francisco, CA	2021-04-13
Antony Underwood	San Francisco, CA	2021-04-13
Robert Robertson	San Francisco, CA	2021-04-13
Godfrey Marsh	San Francisco, CA	2021-04-13
Alfred Stewart	San Francisco, CA	2021-04-13
Mary Dorsey	San Francisco, CA	2021-04-13
Justina Hodge	San Francisco, CA	2021-04-13
Sandra Carroll	San Francisco, CA	2021-04-13
Joan Blair	San Francisco, CA	2021-04-13
Abigail Sanders	San Francisco, CA	2021-04-13
Shauna Hodges	San Francisco, CA	2021-04-13
Ruth Banks	San Francisco, CA	2021-04-13
Elfrieda Elfrieda	San Francisco, CA	2021-04-13
Jasper Shaw	San Francisco, CA	2021-04-13
Brett Hensley	San Francisco, CA	2021-04-13
Colin Stevens	San Francisco, CA	2021-04-13
Christopher Short	San Francisco, CA	2021-04-13

Name	Location	Date
Sandra York	San Francisco, CA	2021-04-13
Annabel Walters	San Francisco, CA	2021-04-13
Olivia Brown	San Francisco, CA	2021-04-13
Mark Holland	San Francisco, CA	2021-04-13
Agatha Stafford	San Francisco, CA	2021-04-13
Oliver Hopkins	San Francisco, CA	2021-04-13
Richard Bates	San Francisco, CA	2021-04-13
Linda Small	San Francisco, CA	2021-04-13
Sheila Brooks	San Francisco, CA	2021-04-13
Cora Chambers	San Francisco, CA	2021-04-13
Adelia Carr	San Francisco, CA	2021-04-13
Elinor Wade	San Francisco, CA	2021-04-13
Margaret Carr	San Francisco, CA	2021-04-13
Derek Cox	San Francisco, CA	2021-04-13
Jeffery Barber	San Francisco, CA	2021-04-13
Mark Porter	San Francisco, CA	2021-04-13
Dwight Wheeler	San Francisco, CA	2021-04-13
Cordelia Douglas	San Francisco, CA	2021-04-13
Amy Page	San Francisco, CA	2021-04-13
Jennifer Jefferson	San Francisco, CA	2021-04-13
Michael Chase	San Francisco, CA	2021-04-13
John Todd	San Francisco, CA	2021-04-13

Name	Location	Date
David Dixon	San Francisco, CA	2021-04-13
Prosper Davis	San Francisco, CA	2021-04-13
Ronald Bishop	San Francisco, CA	2021-04-13
Posy Atkins	San Francisco, CA	2021-04-13
Doreen Simpson	San Francisco, CA	2021-04-13
Karin Russell	San Francisco, CA	2021-04-13
Mark Richards	San Francisco, CA	2021-04-13
Scott Dalton	San Francisco, CA	2021-04-13
Matthew Cummings	San Francisco, CA	2021-04-13
Emily Pierce	San Francisco, CA	2021-04-13
Daisy Hampton	San Francisco, CA	2021-04-13
Dortha Underwood	San Francisco, CA	2021-04-13
Mary Shields	San Francisco, CA	2021-04-13
Spencer Henderson	San Francisco, CA	2021-04-13
Mervin Nash	San Francisco, CA	2021-04-13
Reynold Farmer	San Francisco, CA	2021-04-13
Clare Bell	San Francisco, CA	2021-04-13
Matilda Walker	San Francisco, CA	2021-04-13
Julia Hunt	San Francisco, CA	2021-04-13
Joshua O'Neal	San Francisco, CA	2021-04-13
Kenneth Morton	San Francisco, CA	2021-04-13
Joseph Foster	San Francisco, CA	2021-04-13

Name	Location	Date
Barbara Townsend	San Francisco, CA	2021-04-13
Winifred Hancock	San Francisco, CA	2021-04-13
Helen Tyler	San Francisco, CA	2021-04-13
Dorothy Preston	San Francisco, CA	2021-04-13
Paul Grant	San Francisco, CA	2021-04-13
Matthew Watts	San Francisco, CA	2021-04-13
Jeremy Jenkins	San Francisco, CA	2021-04-13
Baldrick Holmes	San Francisco, CA	2021-04-13
Ophelia Greer	San Francisco, CA	2021-04-13
Emily Norman	San Francisco, CA	2021-04-13
Julia Bond	San Francisco, CA	2021-04-13
Maximilian Jones	San Francisco, CA	2021-04-13
Annice West	San Francisco, CA	2021-04-13
Geraldine Lucas	San Francisco, CA	2021-04-13
Jacob Ball	San Francisco, CA	2021-04-13
Dominic Short	San Francisco, CA	2021-04-13
Claude Hill	San Francisco, CA	2021-04-13
Randell Brooks	San Francisco, CA	2021-04-13
Maurice Evans	San Francisco, CA	2021-04-13
Herbert Austin	San Francisco, CA	2021-04-13
Rebecca Hunt	San Francisco, CA	2021-04-13
Kathleen Wright	San Francisco, CA	2021-04-13

Name	Location	Date
Clifton Miller	San Francisco, CA	2021-04-13
Willis White	San Francisco, CA	2021-04-13
Marjory Cummings	San Francisco, CA	2021-04-13
Diane Dalton	San Francisco, CA	2021-04-13
Jane Nelson	San Francisco, CA	2021-04-13
Job Summers	San Francisco, CA	2021-04-13
Mark McCormick	San Francisco, CA	2021-04-13
David Cannon	San Francisco, CA	2021-04-13
Richard Dean	San Francisco, CA	2021-04-13
Aron Martin	San Francisco, CA	2021-04-13
Thomas Peters	San Francisco, CA	2021-04-13
Charlotte Jefferson	San Francisco, CA	2021-04-13
Sandra Kennedy	San Francisco, CA	2021-04-13
Chloe Murphy	San Francisco, CA	2021-04-13
Cody Hunt	San Francisco, CA	2021-04-13
Scot Rogers	San Francisco, CA	2021-04-13
Ruth Morgan	San Francisco, CA	2021-04-13
Grace Day	San Francisco, CA	2021-04-13
Geraldine Armstrong	San Francisco, CA	2021-04-13
Joseph Hutchinson	San Francisco, CA	2021-04-13
Howard Doyle	San Francisco, CA	2021-04-13
Ashlee Patterson	San Francisco, CA	2021-04-13

Name	Location	Date
Henry Shepherd	San Francisco, CA	2021-04-13
Belinda Dobbs	San Francisco, CA	2021-04-14
Katherine Vaughn	San Francisco, CA	2021-04-14
Christina Tucker	San Francisco, CA	2021-04-14
David Warren	San Francisco, CA	2021-04-14
Jasmine Rios	San Francisco, CA	2021-04-14
Cirrena Troutt	Daly City, CA	2021-04-14
Lorenzo Listana	San Francisco, CA	2021-04-14
Angela Jangar	South San Francisco, CA	2021-04-14

From: [Dana Huffstutler](#)
To: [Board of Supervisors, \(BOS\)](#)
Subject: Appeal of 450 O'Farrell project
Date: Monday, September 27, 2021 3:26:33 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

My name is Dana Huffstutler. I am writing in opposition to the project proposed for 450 O'Farrell.

I ask that you consider the lived experiences of the residents of the district. The Tenderloin already contains the majority of the SRO and group housing facilities in San Francisco. They need housing for families. The community is severely lacking adequately sized units for Tenderloin families. It is unacceptable that there is little to no housing for families with children. Tenderloin children need affordable housing too.

We agree that we need more housing in the Tenderloin. We feel the impacts of the housing crisis. However, this project is not adequate. The Tenderloin deserves housing that respects the dignity of the families and children in the community. The Tenderloin is not treated equally with other neighborhoods in the City. The Tenderloin deserves better than this. The Tenderloin deserve proper engagement from the developer. The Tenderloin deserve adequate and affordable housing.

Regards,
Dana

--

Dana Huffstutler ([she/her](#))
dana.huffstutler@gmail.com

From: [Cynthia Gómez](#)
To: [Board of Supervisors, \(BOS\)](#)
Cc: [Haneystaff \(BOS\)](#)
Subject: Letter regarding 450 O'Farrell (scheduled for hearing on Tuesday 9/28)
Date: Monday, September 27, 2021 2:16:46 PM

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Dear Supervisor,

Unite Here, Local 2 wants to echo the concerns of many community organizations and Tenderloin neighbors who have expressed opposition to the current proposal for 450 O'Farrell Street. Our concerns are twofold: one, we want to lift up the concern over the project as currently proposed, and the need for family-supportive housing in the Tenderloin; two, we think that extra scrutiny is warranted when a project's definition changes radically from what was originally proposed.

Our members struggle from the same difficulty finding affordable, family-supporting housing that is common for so many San Franciscans. In just over a decade, the percentage of Local 2 members who lived in San Francisco fell by ten percentage points, and now fewer than half of our members can afford to live in the city where they work. The original proposal for the development at 450 O'Farrell provided larger apartments for families, which the Tenderloin so desperately needs. The new proposal would scrap family-style housing and instead bring SRO-type housing to a neighborhood that already hosts a large share of such housing. Allies have expressed that they have attempted to work with the developer to at least provide more larger units, more community kitchens, and more affordable units. These efforts have reportedly not borne fruit. Our allies have also expressed concerns about the impact of this proposed project on two adjacent supportive housing sites: the Pacific Bay Inn and the Pierre Hotel. They are asking for analysis of construction impacts on these buildings and have asked how the needs of tenants will be met if the proposed project is constructed.

We also have seen projects, such as the "youth hostel turned tourist hotel" at 7th and Market, that change radically from approval to execution, and we want to continue to ask for close scrutiny of such radical changes to ensure that the needs of the city and its communities are still met with any revised projects. Our allies have expressed much concern with the ability of this project to meet the needs of the Tenderloin neighborhood, and we want to echo these and advocate for projects that continue to make it possible for working families to thrive.

Sincerely,

--

Cynthia Gómez
Senior Research Analyst
she/her/hers
UNITE/HERE, Local 2
209 Golden Gate Avenue
San Francisco, CA 94102
cgomez@unitehere2.org
[415.864.8770](tel:415.864.8770), ext. 763

From: [Donna Fletcher](#)
To: [Board of Supervisors, \(BOS\)](#)
Cc: [David Murray](#); alexander@forgedevelopmentpartners.com; jessica@craig-communications.com
Subject: Please allow approval of the 450 O'Farrell Essential Housing Project to stand!
Date: Sunday, September 26, 2021 9:05:24 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

September 26, 2021

Dear Honorable San Francisco Board of Supervisors,

I have been following the protracted course of this project for many months, and am now writing you at this critical juncture to **urge your continued support** of the 450 O'Farrell Church and Essential Housing Project.

I understand the project, which was recently approved by the Planning Commission, has been appealed. Although, the approval process provides for such appeals, I urge you to allow the project to move forward and **benefit the people of the Tenderloin and San Francisco as intended.**

The State of California is currently experiencing a housing crisis of monumental proportions. In fact, **every city in the State of California must identify viable housing sites to meet a mandated Regional Housing Needs Allocation (RHNA).** The 450 O'Farrell Church and Essential Housing Project **provides 316 units of flexible multi-family housing and 48 units of below market rate housing towards this mandate.** Just as important, The 450 O'Farrell Church and Essential Housing Project **allows San Francisco's Essential Working households to live in San Francisco. The below market rate housing is vital to provide** for the most economically vulnerable populations in San Francisco.

The members of Fifth Church of Christ Scientist, and the entire project team, have been **thoughtful and thorough in working with the community** and responding to requests for design changes. The result is a project that will meet the needs of hundreds of families who currently don't have viable housing options in the City. The project is well-designed, flexible, adaptable, and innovative in its design amenities. It is a housing project that **San Francisco can truly be proud of and that other cities will want to replicate.**

Please don't allow this project to be delayed any further. **San Francisco and the Tenderloin neighborhood desperately need this housing!** Please allow the 450 O'Farrell Essential Housing Project to move forward with all speed.

Please vote to allow the Planning Commission's approval of this important project to stand!
Thank you for your consideration.

Respectfully Submitted,

DonnaToutjian Fletcher
112 Centre Court
Alameda, CA 94502
510-368-1188

From: [Sarah Abdeslahian](#)
To: [Board of Supervisors, \(BOS\)](#); [Haneystaff \(BOS\)](#); [Mahogany, Honey \(BOS\)](#)
Cc: [Pratibha Tekkey](#)
Subject: Petition in Opposition to 450 O'Farrell
Date: Tuesday, September 28, 2021 9:40:02 AM
Attachments: [PetitionInOppositionTo450O'Farrell.pdf](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

Attached is a petition in opposition to the development proposed for 450 O'Farrell, the appeal of which will be heard at today's meeting. There are 136 signatures from Tenderloin SRO tenants. The community overwhelmingly opposes this project.

Please do not hesitate to reach out if you have any questions.

Thanks,

Sarah Abdeslahian

Pronouns: She/Her

Campaign Manager

Tenderloin Housing Clinic

126 Hyde Street

San Francisco, CA 94102

Office: (415) 885-3286, ext. 1106

www.thclinic.org

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14 September, 2021

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

To the San Francisco Board of Supervisors.

We, the undersigned residents of the Tenderloin, urge you to reject the current proposal for 450 O'Farrell and grant the appeal from the Pacific Bay Inn owners and the Tenderloin Housing Clinic.

The original proposal for the development at 450 O'Farrell provided larger apartments for families, which the Tenderloin so desperately needs. Our community was largely in support of this original proposal in 2018. However, we are disappointed that the new developer decided to majorly transform the proposal without any community input, all while grandfathering in the original proposal's 13.5% affordability requirement when the current requirement would be 20.5% affordable units. The developer has ignored requests to meet our community demands for more larger units, more community kitchens, and more affordable units. They have failed to work cooperatively with us.

The new proposal adds housing for single adults. There will be 317 units housing 632 people, but only 3 community kitchens. The Tenderloin already contains the majority of the SRO and group housing facilities in San Francisco. What we need is housing for families. Our community is severely lacking adequately sized units for Tenderloin families. It is unacceptable that we have little to no housing for families with children. Tenderloin children need affordable housing too.

The proposal will also impact two adjacent supportive housing sites: the Pacific Bay Inn and the Pierre Hotel. There has been no analysis of construction impacts on these buildings. The needs of these tenants have to be taken into consideration before moving forward with this proposal.

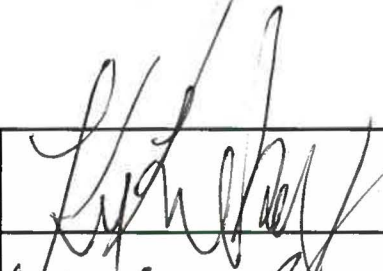
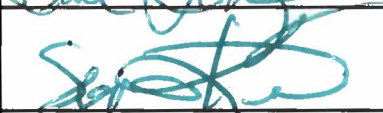







We agree that we need more housing in the Tenderloin. We feel the impacts of the housing crisis. However, this project is not adequate. The Tenderloin deserves housing that respects the dignity of the families and children in the community. We are not treated equally with other neighborhoods in the City. We deserve better than this. We deserve proper engagement from the developer. We deserve adequate and affordable housing.

Sincerely,

NAME

SIGNATURE

ZIP CODE

Kerna Khong		94109
Melissa Bray	Melissa Bray	94109
R. Pietra Larin R.		94109
Julia D. Cortez	Julia D. Cortez	94109
Sam Roberto	Sam Roberto	94109
Dan Long	Dan Long	94102
Sara Hail		94109
Janie Richards		94102
Jonathan Dove		94109
Adriel Lively		94109
Zir Ben		94114
APKT		94107
ALWA		94109
Cassidy Walkerstein		94109
Andy Cooper	Andy Cooper	94114

NAME

SIGNATURE

ZIP CODE

Charles Green	Charles Green	94102
Ramona Hughes	RH	94102
WENDALL DAVIS	Wendall Davis	94102
STEVEN KIRBY	Steven Kirby	94102
T. King	T. King	94102
José Sosa.	José Sosa	94102
OLGA ADABA	Olga Adaba	94102
Victor Adams	Victor Adams	94108
John Millard	John Millard	94108
Charon	Charon	94108
J. Suggs	J. Suggs	94102
IRVING SERRANO	Irving Serrano	94102
VIXEN	Vixen	94102
Kimber Welch	Kimber Welch	94103
Karen T	Karen T	94102

NAME

SIGNATURE

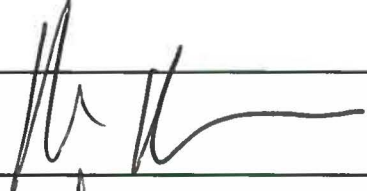


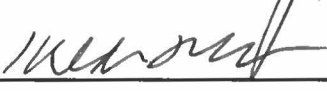
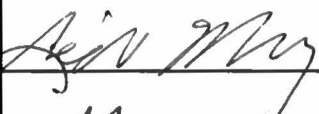


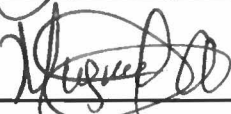

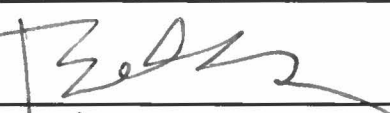
ZIP CODE

MATTHEW J KOSKAK	<i>[Signature]</i>	94102
Gina Flanagan	<i>[Signature]</i>	94102
Carlton Allen	<i>[Signature]</i>	94102
DAVID McPherson	<i>[Signature]</i>	94102
Ed ANT	<i>[Signature]</i>	94102
MARK KROBOTH	<i>[Signature]</i>	94102
Jane	<i>[Signature]</i>	94102
DAVID M	<i>[Signature]</i>	94102
Jesse Anderson	<i>[Signature]</i>	94102
Sophy M	<i>[Signature]</i>	94102
Rose Barron	<i>[Signature]</i>	94102
L. Schmitt	<i>[Signature]</i>	94102
Gary G. Smith	<i>[Signature]</i>	94102
Steve Walker	<i>[Signature]</i>	94102
mm mm	mm mm	9-4102

NAME

SIGNATURE

ZIP CODE

PETER RAKET		94102
Miriam Aspajo		94103
Rosa Alvarado	Rosa Alvarado	94109
Tatiana Alabsi		94115
Janine Iran	Janine Iran	94102
JAMES HOLLAND	John Holland	94102
Pedro Taison JR.	Pedro Taison Jr.	94102
Keith Hoize		94103
Lewis Murphy		94102
STEPHEN TERNIA		94102
Lisa Whitman		94103
Niguel Almeida		94103
J. C.		94102
Bacilia Bran		94102
Alayna Crespo	Alayna C.	94131

NAME

SIGNATURE

ZIP CODE

Jackson S	Sherry Jackson	94103
T. Smith	T. Smith	94109
FRANCINE	Francine Smith	94103
Bay Lewis	Bay Lewis	94103
Monique Webb	M.P. Webb	94103
TYRONNE COOPER	Sydney Cooper	9167
Debra Obison	Debra Obison	94103
Bursey C	Charles Bursey	94103
Smith L	Smith L	94103
Silbarto	Silbarto	94103
Wills	Griffin	94103.
Shelby	Griffin	
Monica Walker	Monica Walker	94103.
Richard Gantenbein	Richard Gantenbein	94103
Kentzer by Millhorn	Kentzer by Millhorn	94103

NAME



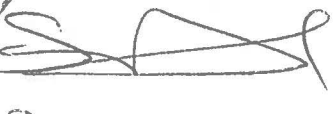

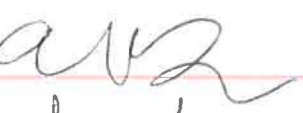






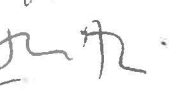





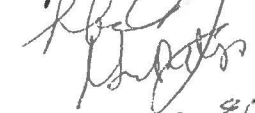


SIGNATURE

ZIP CODE

Name	Sig	Zip Code
Linda	[Signature]	94109
Peter Kerk	[Signature]	94109
Quinn Kalar	[Signature]	94109
John Connolly	[Signature]	94109
Robert T. [unclear]	[Signature]	
Christina Tucker	[Signature]	94109
Brenda Harris	[Signature]	94109
Dale White	[Signature]	94109
Aaron B.	[Signature]	94109
Virgil Owens	[Signature]	94109
Kristin Acevedo	[Signature]	94109
Patrick Hagan	[Signature]	94109
Jon Whiteman	[Signature]	94109
R. Belton	[Signature]	94109
Gerald Johnson	[Signature]	94109

ZIP CODE

[illegible]

Scott Fogle		94015
Zach Fischer		94117
Sean Drimmer		94105
Stacy M...		94102
Alex Bogdan		94122
Lara Sylva		94118
Drake Vandam		
RYAN SAULS		94110
KAREN RAD		94103
Aurora Golden-Appleton		94123
Autumn Kleinman		94110 94110
Jasmine Tsui		94110
Alyssa Moreno		94110
Robin Yang		94109
Neil McKinnon		94109
Brossi Lezanne		94109
Eugene Melin		94109
Steven Arceneaux Jr		94109
Gordon O. Phillips		94109
Walter ...		94109
George Mann		94109

NAME _____

SIGNATURE

ZIP CODE

Jason Crossland	Jim Leland	94110
AMOS HARRIS	AMOS HARRIS	94032
JAMES RYAN	JAMES RYAN	94103
Mr. Alexander Light	Mr. Alexander Light	94103
Ry. H. Reggie Reed	Ry. H. Reggie Reed	94103
Charles Monk	Charles Monk	94100
Helena Burke	Helena Burke	94102
Jennifer Heun	Jennifer Heun	94110
John Healey	John Healey	94103

ZIP CODE

[illegible]

From: [Michelle Rolon](#)
To: [Board of Supervisors, \(BOS\)](#)
Subject: Opposition of 450 O'Farrell
Date: Tuesday, September 28, 2021 11:21:57 AM

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Dear Supervisors,

My name is Michelle Rolon, and I am the Program Manager of the Mission SRO Collaborative. I am also a member of the SRO Families United (SROFU) and Race and Equity in all Planning (REP) coalitions. I am writing in opposition to the project proposed for 450 O'Farrell.

I ask that you consider the lived experiences and true needs of the residents of the district. The Tenderloin already contains the majority of the SRO and group housing facilities in San Francisco. There is a high need housing for families as the community is severely lacking adequately sized units for Tenderloin families. It is unacceptable that there is little to no housing for families with children. Tenderloin children need affordable housing too where they can grow up and enjoy being in community.

We agree that we need more housing in the Tenderloin. We feel the impacts of the housing crisis. However, this project is not adequate. The Tenderloin deserves housing that respects the dignity of the families and children in the community. The Tenderloin is not treated equally with other neighborhoods in the City. The Tenderloin deserves better than this. The Tenderloin deserve proper engagement from the developer. The Tenderloin deserve adequate and affordable housing.

Best
Michelle Rolon
MSROC Program Manager
Dolores Street Community Services
938 Valencia Street, San Francisco, CA 94110

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [BOS Legislation, \(BOS\)](#)
Subject: FW: 450 OFarrell Appeal
Date: Tuesday, September 28, 2021 4:02:00 PM

From: Sara Shortt <sshortt@HomeRiseSF.org>
Sent: Tuesday, September 28, 2021 2:52 PM
To: Haney, Matt (BOS) <matt.haney@sfgov.org>
Cc: Mahogany, Honey (BOS) <honey.mahogany@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; BOS-Legislative Aides <bos-legislative_aides@sfgov.org>
Subject: 450 OFarrell Appeal

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor,

I wanted to share our many reservations about the group housing project proposed by Forge development slated for 450 OFarrell. As a member of Market Street for the Masses land use committee, HomeRise has been aware of this project for many months now. We have observed prior planning commission hearings, attended community presentations from the developer and have been continuously briefed on the status of discussions and attempted negotiations with the developer, by member organizations who have been closely involved. We have also reviewed the appeal filed by Pacific Bay Inn and Tenderloin Housing Clinic.

After consideration, we urge your support in supporting this appeal and sending Forge back to the drawing board. Here is why:

- The outreach, education and consultation with the community has been sadly lacking. We have witnessed how few organizations and residents have awareness of the project and its changing developments, how unreceptive Forge has been to overtures from community groups and the unwillingness to compromise and consider changes to the project that would better fit the community needs.
- The last thing the Tenderloin neighborhood needs is market rate group housing. These units will not be affordable to members of our community. We should do all that we can to address their affordability needs (while they remain overcrowded, rent burdened and living on the streets) first.
- Group housing by definition is considered non-permanent housing by the planning department itself. We should prioritize creating opportunities where people can be

part of building the TL community for the long term, rather than create a revolving door of students and short term corporate workers.

- We need more family housing in the Tenderloin, yet Forge has done very little to explore the possibility of enlarging units, nor have they seriously considered alternative proposals. We believe they should be pushed a little harder to do so.
- As a Tenderloin based supportive housing provider, we very much understand the concerns of Pacific Bay Inn and the DISH program and would need much more assurance that those residents and the residences themselves will be adequately protected from the various impacts of such major construction so very near to the building.
- We need a higher affordability set aside. This project should provide at least the 20.5% inclusionary units that current law requires, rather than fall back on the prior 13.5% just because legally they can. The owner could have decided to make a good faith showing that they care about the affordability issues in the neighborhood, but they have chosen not to.

We hope you take into account our concerns as you vote on the appeal today. Please feel free to contact me with any questions. Sara

Sara Shortt (she/her) | Director of Public Policy & Community Organizing

HomeRise (Formerly Community Housing Partnership)

m: 415.846.0750

www.HomeRisesf.org

20 Jones Street, Suite 200
San Francisco, CA 94102

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)
Subject: 5 Letters Regarding File No. 210901
Date: Thursday, September 30, 2021 9:06:00 AM
Attachments: [5 Letters regarding File No. 210901.pdf](#)

Hello,

Please see attached 45 Letters regarding File No. 210901.

File No. 210901 – Hearing of persons interested in or objecting to the approval of a Final Mitigated Negative Declaration under the California Environmental Quality Act for the 1525 Pine Street Project, identified in Planning Case No. 2015-009955ENV, and affirmed on appeal by the Planning Commission and issued on May 6, 2021. (District 3) (Appellant: David P. Cincotta of Law Offices of David P. Cincotta, on behalf of Patricia Rose and Claire Rose and other neighbors of 1545 Pine Street) (Filed August 20, 2021).

Regards,

Arthur Khoo

Board of Supervisors - Clerk's Office
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184 | (415) 554-5163
board.of.supervisors@sfgov.org | www.sfbos.org

Complete a Board of Supervisors Customer Service Satisfaction Form by clicking
<http://www.sfbos.org/index.aspx?page=104>

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: *Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

From: [NICK...](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Wednesday, September 29, 2021 9:22:10 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

The Grubstake team has worked tirelessly to address its next-door neighbors' concerns, including having a light analysis prepared that found the project meets CEQA requirements and the units would still receive light from the interior courtyard which with a matching lightwell on the project would be greater than 25 by 25 feet. Additionally, even though residents of the Austin will receive sufficient sunlight and the project does not pose a health and safety hazard, the project sponsor has in good faith voluntarily added UV lights to its building, timed to match daylight hours to enhance the light in the interior courtyard further.

Despite these efforts, some owners at the Austin have continued their years-long abuse of the City's land use entitlement process, appealing the Mitigated Negative Declaration granted for the project by the Planning Commission, citing the impact on the light, air, and private terraces of the existing building's units, as well as the project's lack of parking, and the "over-supply of housing in the neighborhood."

The residents of the neighboring Austin condominium building have tried in every way possible to file appeals to various aspects of the project while their sole intent is to block any additional height adjacent to their building. It is important to note that all owners at the Austin were required to sign pre-sale disclosures stating the Grubstake site would be developed, and that light, air, and views on the eastern side of the building where the lightwell exists would be impacted.

The project sponsor is using the State Density Bonus Program (SDBP), which encourages developers to elevate the height and development capacity of a project in order to generate increased housing in urban neighborhoods. The SDBP provides more flexibility in planning and financing new home development and will help ensure the viability of this important LGBTQ+ preservation project.

The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Sent from my iPhone

From: [James Nickolopoulos](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Wednesday, September 29, 2021 9:22:51 AM

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Sent from my iPhone

From: [James Nickolopoulos](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Wednesday, September 29, 2021 9:23:33 AM

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Dear Supervisor Peskin and Supervisors,

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Sent from my iPhone

From: iddefusco@gmail.com
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Tuesday, September 28, 2021 3:22:34 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

SAVE GRUBSTAKE DINER!! This city has lost one cultural landmark and institution after another!! Save our city! Save our history! Save Grubstake Diner!

Listen!!! Peoples hearts keep breaking over and over again. First the Red Vick closed, then All You Need Diner, and on and on! New York, and other cities all around America get to have diners and fun cool old spots... SF is losing all of It's charm and history! Every time one of these places closes part of San Francisco dies. You don't have to make it worse by taking away the last old diner in San Francisco. Do the right thing and preserve this restaurant!

PLEASE!

-Isa

Dear Supervisor Peskin and Supervisors,

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

From: [bc](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#)
Cc: sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Tuesday, September 28, 2021 5:11:46 PM

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Dear Supervisors,

In March, 1913, Mayor James Rolfe broke ground on San Francisco's New City Hall. Three years later, in April, 1916, the building was completely finished down to its last detail and open for business in all departments. No wonder President William Howard Taft dubbed us, "The City that knows how."

Now, after six years and counting, the people who work in that building still have not approved construction of a new Grubstake at 1525 Pine Street that includes 21 apartments our community desperately needs. It's time they approved it.

This property is not the home of an endangered species of frogs. It's not a sacred religious site. Birds don't winter on it on their way from the Yukon to Yucatan. Neither George Washington nor Pio Pico slept there. It's a commercial parcel in an area zoned for multi-story buildings. We need that building and the public and residential space it will provide.

If we can build a new City Hall in three years, while simultaneously constructing a new streetcar line on Van Ness Avenue, ahead of time and under budget; completing the Stockton Street Tunnel (a major engineering feat); building Exposition Auditorium; and erecting the entire Panama Pacific International Exposition, with out modern tools and technologies, certainly we can at least approve a new building in twice that amount of time.

Our community needs these apartments. As one of America's great philosophers, Larry the Cable Guy said, "Git-r-done."

Thank you.

Regards,

Bill Lipsky
Author, *Gay and Lesbian San Francisco*

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: 45 Letters regarding File No. 210901
Date: Tuesday, September 28, 2021 1:20:00 PM
Attachments: [45 Letters regarding File No. 210901.pdf](#)

Hello,

Please see attached 45 Letters regarding File No. 210901.

File No. 210901 – Hearing of persons interested in or objecting to the approval of a Final Mitigated Negative Declaration under the California Environmental Quality Act for the 1525 Pine Street Project, identified in Planning Case No. 2015-009955ENV, and affirmed on appeal by the Planning Commission and issued on May 6, 2021. (District 3) (Appellant: David P. Cincotta of Law Offices of David P. Cincotta, on behalf of Patricia Rose and Claire Rose and other neighbors of 1545 Pine Street) (Filed August 20, 2021).

Regards,

John Bullock
Board of Supervisors - Clerk's Office
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184

Disclosures: *Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

From: [Madeline Snyder](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Saturday, September 25, 2021 10:07:26 PM

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Dear Supervisor Peskin and Supervisors,

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Sent from my iPhone

From: [Cassy Alepoudakis](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Saturday, September 25, 2021 4:52:43 PM

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Dear Supervisor Peskin and Supervisors,

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From: [Mark Langan](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Saturday, September 25, 2021 3:52:28 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

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Mark Langan
SF District 9 homeowner

Sent from my iPhone

From: [Anastasia Fourakis](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com; anastasia65f@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Saturday, September 25, 2021 1:07:30 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

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The project sponsor is using the State Density Bonus Program (SDBP), which encourages developers to elevate the height and development capacity of a project in order to generate increased housing in urban neighborhoods. The SDBP provides more flexibility in planning and financing new home development and will help ensure the viability of this important LGBTQ+ preservation project.

The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

From: [Daisy Gideon](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Saturday, September 25, 2021 11:38:09 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

The Grubstake team has worked tirelessly to address its next-door neighbors' concerns, including having a light analysis prepared that found the project meets CEQA requirements and the units would still receive light from the interior courtyard which with a matching lightwell on the project would be greater than 25 by 25 feet. Additionally, even though residents of the Austin will receive sufficient sunlight and the project does not pose a health and safety hazard, the project sponsor has in good faith voluntarily added UV lights to its building, timed to match daylight hours to enhance the light in the interior courtyard further.

Despite these efforts, some owners at the Austin have continued their years-long abuse of the City's land use entitlement process, appealing the Mitigated Negative Declaration granted for the project by the Planning Commission, citing the impact on the light, air, and private terraces of the existing building's units, as well as the project's lack of parking, and the "over-supply of housing in the neighborhood."

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The project sponsor is using the State Density Bonus Program (SDBP), which encourages developers to elevate the height and development capacity of a project in order to generate increased housing in urban neighborhoods. The SDBP provides more flexibility in planning and financing new home development and will help ensure the viability of this important LGBTQ+ preservation project.

The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Sent from my iPhone

From: [Daisy Gideon](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Saturday, September 25, 2021 11:26:56 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

The Grubstake team has worked tirelessly to address its next-door neighbors' concerns, including having a light analysis prepared that found the project meets CEQA requirements and the units would still receive light from the interior courtyard which with a matching lightwell on the project would be greater than 25 by 25 feet. Additionally, even though residents of the Austin will receive sufficient sunlight and the project does not pose a health and safety hazard, the project sponsor has in good faith voluntarily added UV lights to its building, timed to match daylight hours to enhance the light in the interior courtyard further.

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The project sponsor is using the State Density Bonus Program (SDBP), which encourages developers to elevate the height and development capacity of a project in order to generate increased housing in urban neighborhoods. The SDBP provides more flexibility in planning and financing new home development and will help ensure the viability of this important LGBTQ+ preservation project.

The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Sent from my iPhone

From: [Marilynn Bean](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Saturday, September 25, 2021 10:05:31 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

The Grubstake team has worked tirelessly to address its next-door neighbors' concerns, including having a light analysis prepared that found the project meets CEQA requirements and the units would still receive light from the interior courtyard which with a matching lightwell on the project would be greater than 25 by 25 feet. Additionally, even though residents of the Austin will receive sufficient sunlight and the project does not pose a health and safety hazard, the project sponsor has in good faith voluntarily added UV lights to its building, timed to match daylight hours to enhance the light in the interior courtyard further.

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The project sponsor is using the State Density Bonus Program (SDBP), which encourages developers to elevate the height and development capacity of a project in order to generate increased housing in urban neighborhoods. The SDBP provides more flexibility in planning and financing new home development and will help ensure the viability of this important LGBTQ+ preservation project.

The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Marilynn Bean
1626 Northpoint St
San Francisco Ca 94123

Sent from my iPhone

From: [Deborah Gehlen](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Monday, September 27, 2021 6:54:34 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood. The Grubstake team has worked tirelessly to address its next-door neighbors' concerns, including having a light analysis prepared that found the project meets CEQA requirements and the units would still receive light from the interior courtyard which with a matching lightwell on the project would be greater than 25 by 25 feet. Additionally, even though residents of the Austin will receive sufficient sunlight and the project does not pose a health and safety hazard, the project sponsor has in good faith voluntarily added UV lights to its building, timed to match daylight hours to enhance the light in the interior courtyard further. Despite these efforts, some owners at the Austin have continued their years-long abuse of the City's land use entitlement process, appealing the Mitigated Negative Declaration granted for the project by the Planning Commission, citing the impact on the light, air, and private terraces of the existing building's units, as well as the project's lack of parking, and the "over-supply of housing in the neighborhood." The residents of the neighboring Austin condominium building have tried in every way possible to file appeals to various aspects of the project while their sole intent is to block any additional height adjacent to their building. It is important to note that all owners at the Austin were required to sign pre-sale disclosures stating the Grubstake site would be developed, and that light, air, and views on the eastern side of the building where the lightwell exists would be impacted. The project sponsor is using the State Density Bonus Program (SDBP), which encourages developers to elevate the height and development capacity of a project in order to generate increased housing in urban neighborhoods. The SDBP provides more flexibility in planning and financing new home development and will help ensure the viability of this important LGBTQ+ preservation project. The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Save the Grubstake! It is a national treasure and should be a protected landmark!

Yours truly,

Deborah Gehlen

From: [Thea Harvey-Brown](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Monday, September 27, 2021 5:21:54 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

The Grubstake team has worked tirelessly to address its next-door neighbors' concerns, including having a light analysis prepared that found the project meets CEQA requirements and the units would still receive light from the interior courtyard which with a matching lightwell on the project would be greater than 25 by 25 feet. Additionally, even though residents of the Austin will receive sufficient sunlight and the project does not pose a health and safety hazard, the project sponsor has in good faith voluntarily added UV lights to its building, timed to match daylight hours to enhance the light in the interior courtyard further.

Despite these efforts, some owners at the Austin have continued their years-long abuse of the City's land use entitlement process, appealing the Mitigated Negative Declaration granted for the project by the Planning Commission, citing the impact on the light, air, and private terraces of the existing building's units, as well as the project's lack of parking, and the "over-supply of housing in the neighborhood."

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Sent from my iPhone

From: [Brad Kayal](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Supporting Grubstake Diner / More Housing in SF
Date: Monday, September 27, 2021 4:55:48 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to me (a late-night staple for potato skins and their Portuguese soup) and also the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

The Grubstake team has worked tirelessly to address its next-door neighbors' concerns, including having a light analysis prepared that found the project meets CEQA requirements and the units would still receive light from the interior courtyard which with a matching lightwell on the project would be greater than 25 by 25 feet. Additionally, even though residents of the Austin will receive sufficient sunlight and the project does not pose a health and safety hazard, the project sponsor has in good faith voluntarily added UV lights to its building, timed to match daylight hours to enhance the light in the interior courtyard further.

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The residents of the neighboring Austin condominium building have tried in every way possible to file appeals to various aspects of the project while their sole intent is to block any additional height adjacent to their building. It is important to note that all owners at the Austin were required to sign pre-sale disclosures stating the Grubstake site would be developed, and that light, air, and views on the eastern side of the building where the lightwell exists would be impacted.

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Thank you,
Brandun Kayal
1790 Broadway, SF 94109

From: [Bernadine Calaguas](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Monday, September 27, 2021 2:44:33 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

The Grubstake team has worked tirelessly to address its next-door neighbors' concerns, including having a light analysis prepared that found the project meets CEQA requirements and the units would still receive light from the interior courtyard which with a matching lightwell on the project would be greater than 25 by 25 feet. Additionally, even though residents of the Austin will receive sufficient sunlight and the project does not pose a health and safety hazard, the project sponsor has in good faith voluntarily added UV lights to its building, timed to match daylight hours to enhance the light in the interior courtyard further.

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The project sponsor is using the State Density Bonus Program (SDBP), which encourages developers to elevate the height and development capacity of a project in order to generate increased housing in urban neighborhoods. The SDBP provides more flexibility in planning and financing new home development and will help ensure the viability of this important LGBTQ+ preservation project.

The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Best,
Bernadine Posadas
(650) 892-7188

From: [Mara Martin](#)
To: [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [RonenStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [Marstaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); sfgrubstake@gmail.com; [Waltonstaff \(BOS\)](#)
Subject: I Support Rebuilding Grubstake Diner!
Date: Monday, September 27, 2021 2:41:02 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and the entire BoS,

The Grubstake Diner holds great importance to the LGBTQ+ community, and as a queer resident of District 3 I am pleased to express my full support for the rebuilding of this community treasure. I am also in full support of the mission to create more middle income housing in the neighborhood.

I hope you will support the District 3 community in helping maintain our LGBTQ+ space and preserving the history for the community. The time has come for this proposal to move forward so we can benefit the entire neighborhood for years to come.

Thank you for your time and consideration!

Mara Martin

--

Mara Martin

*Pronouns: She/Her

Mobile +1 970-430-8425

*Safe self-expression and self-identification is one of my professional and personal values. One way to practice these values is to share your gender pronouns. My name is Mara and I use she/her pronouns. What pronouns do you use?
Learn more about why pronouns matter at mypronouns.org.

From: [Ian Ho-Wong](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Monday, September 27, 2021 1:41:12 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Sincerely,

Ian Ho-Wong
Grubstake aficionado

From: [Marc Lewis](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Monday, September 27, 2021 12:58:32 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

From: [Tessa Jorgensen](#)
To: [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [RonenStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [Marstaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); sfgrubstake@gmail.com; [Waltonstaff \(BOS\)](#)
Subject: Support Rebuilding Grubstake Diner
Date: Monday, September 27, 2021 12:46:55 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

--

Tessa Jorgensen

Unforeseen Events and Marketing

P: 916.532.8377

E: tessajorg@gmail.com

From: [LynnMcA](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Monday, September 27, 2021 12:45:54 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

The Grubstake team has worked tirelessly to address its next-door neighbors' concerns, including having a light analysis prepared that found the project meets CEQA requirements and the units would still receive light from the interior courtyard which with a matching lightwell on the project would be greater than 25 by 25 feet. Additionally, even though residents of the Austin will receive sufficient sunlight and the project does not pose a health and safety hazard, the project sponsor has in good faith voluntarily added UV lights to its building, timed to match daylight hours to enhance the light in the interior courtyard further.

Despite these efforts, some owners at the Austin have continued their years-long abuse of the City's land use entitlement process, appealing the Mitigated Negative Declaration granted for the project by the Planning Commission, citing the impact on the light, air, and private terraces of the existing building's units, as well as the project's lack of parking, and the "over-supply of housing in the neighborhood."

The residents of the neighboring Austin condominium building have tried in every way possible to file appeals to various aspects of the project while their sole intent is to block any additional height adjacent to their building. It is important to note that all owners at the Austin were required to sign pre-sale disclosures stating the Grubstake site would be developed, and that light, air, and views on the eastern side of the building where the lightwell exists would be impacted.

The project sponsor is using the State Density Bonus Program (SDBP), which encourages developers to elevate the height and development capacity of a project in order to generate increased housing in urban neighborhoods. The SDBP provides more flexibility in planning and financing new home development and will help ensure the viability of this important LGBTQ+ preservation project.

The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Lynn McArdle

225 Lincoln Way
SF, CA 94122

From: [Jessica Perla](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Monday, September 27, 2021 12:45:36 PM

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Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Jessica Perla
Real Estate Broker
jessicaperla.com
Nexusschools.com

From: [Tanya Zimbardo](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Monday, September 27, 2021 11:16:53 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Sent from my iPhone

From: [Tevon Strand-Brown](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner (from an Austin condo resident)
Date: Monday, September 27, 2021 9:19:37 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

I am a resident of the Austin condo adjacent to the Grubstake location. I want to write to express my firm support of their proposal to redevelop the restaurant as well as add much needed housing to our city.

We were informed when we bought our units that this development would take place, and additionally the Austin building is *designed* to take the Grubstake development into account. Its time to let them move forward.

My family lives in three of the units of the Austin, and I speak for all of us that we support Grubstake's development. Thank you for your consideration.

Tevon Strand-Brown

From: [Rebecca Michael](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Monday, September 27, 2021 8:36:33 AM

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Dear Supervisor Peskin and Supervisors,

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Sent from my iPhone

From: [Holly Haraguchi](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Please Support Grubstake Diner
Date: Sunday, September 26, 2021 9:46:42 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I want to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and I hope that you see the value of this project in its proposed form and deny this appeal.

Thank you,
Holly

From: [Hebert Lucio](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Sunday, September 26, 2021 9:00:09 PM

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Dear Supervisor Peskin and Supervisors,

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Sent from my iPhone

From: [Chad Heimann](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Sunday, September 26, 2021 8:23:02 PM

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Dear Supervisor Peskin and Supervisors,

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Sent from my iPhone

From: [Jaclyn Epter](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Sunday, September 26, 2021 8:15:47 PM

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Dear Supervisor Peskin and Supervisors,

I'm writing because the Grubstake Diner holds great importance to the queer community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

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Warmly,

Jaclyn Epter

From: [WALTER GAYTAN](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Sunday, September 26, 2021 7:52:49 PM

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Dear Supervisor Peskin and Supervisors,

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From: [Noelani Piters](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: !! Support Rebuilding Grubstake Diner
Date: Sunday, September 26, 2021 7:22:55 PM

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Sincerely,
Noelani Piters

From: [Megan Tabel](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Sunday, September 26, 2021 7:13:17 PM

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The project sponsor is using the State Density Bonus Program (SDBP), which encourages developers to elevate the height and development capacity of a project in order to generate increased housing in urban neighborhoods. The SDBP provides more flexibility in planning and financing new home development and will help ensure the viability of this important LGBTQ+ preservation project.

The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

From: [Liz J Miller](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Sunday, September 26, 2021 6:53:07 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six years to redevelop the site with 21 units of middle income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Sincerely,
Elizabeth J. Miller
San Francisco Voter

Sent from my iPhone

From: [Ann Wolf](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Sunday, September 26, 2021 6:29:18 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

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Sent from my iPhone

From: [Liz Torres](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Saturday, September 25, 2021 12:55:34 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

SiDear Supervisor Peskin and Supervisors,

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Sincerely
Liz Torres San Francisco Voter
Sent from my iPhone

From: [Allyson Baker](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Friday, September 24, 2021 8:08:13 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

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From: [Judith Baker](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Friday, September 24, 2021 6:41:52 PM

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Dear Supervisor Peskin and Supervisors,

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Sent from my iPhone

Judith Baker
415-518-4052
judith_baker@att.net

From: [Roberto Arce](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Cc: [Roberto Arce](#)
Subject: Support Rebuilding Grubstake Diner
Date: Friday, September 24, 2021 6:01:38 PM

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Sent from my iPad

From: [Andy Gutierrez](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Friday, September 24, 2021 4:33:21 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

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Sincerely,

Andy Gutierrez

From: [Amanda Staight](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Friday, September 24, 2021 3:05:20 PM

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Sincerely,
Amanda Staight

From: [Vivek Krishnan](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Friday, September 24, 2021 12:20:19 AM

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Sent from [Mail](#) for Windows

From: [Brett Jones](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Thursday, September 23, 2021 8:41:05 PM

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Sent from my iPhone

From: [Lisa](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Thursday, September 23, 2021 8:12:51 PM

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Dear Supervisor Peskin and Supervisors, The Grubstake Diner holds great importance to the LGBTQ+ community, and I am pleased to express my support for the rebuilding of this community treasure. After waiting over six-years to redevelop the site with 21-units of middle-income housing over a new Grubstake Diner, the project continues to face opposition from adjacent residents who only recently moved into the neighborhood.

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From: malindakai@gmail.com
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Thursday, September 23, 2021 6:36:45 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Peskin and Supervisors,

I have written the Board in the past with concerns about building new housing and am a member of the NOPAWN community organization that opposed the project at 1846 Grove Street. Thank you very much for placing limits on that Conditional Use permit such that it was no longer financially lucrative for the developers to build on that landlocked lot where there is only one small egress which would make it extremely dangerous for residents to escape an emergency. I remind you of this because I want you to see I am not in any way anti-housing or NIMBY and that I recognize there is a dire need for housing in the City. I support building new housing because our City desperately needs it but I cannot support new housing that would be unsafe. This project is well-researched, well-planned, and the project sponsors have done everything they can to accommodate the neighbors.

As a proud member of the LGBTQ+ community, I also know our historically significant gathering places are languishing and, even worse, being taken over for new developments. This is quickly becoming a city that is no longer welcoming to members of my community. The City has the opportunity to save a historic safe space for my community and build the housing we desperately need. 21 units of middle-income housing is a great start.

This City is a place I love because of its welcoming spirit and acceptance of so many types of people. The opponents of this project appear to be fighting this project to protect their own interests without thinking of the collective good this building could achieve.

I urge you to support this project to help achieve the public good you were elected to do.

Thank you very much!

-Malinda Tuazon

From: [Rebecca Hardberger](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Thursday, September 23, 2021 6:08:32 PM

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Rebecca

Sent from my iPhone

From: [Shoshanah Dobry](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Thursday, September 23, 2021 5:16:41 PM

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

From: [Cesar Abella](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Thursday, September 23, 2021 5:00:10 PM

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Best,

Cesar Abella
Sent from my iPhone

From: [Sharon Edelson](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Thursday, September 23, 2021 4:42:00 PM

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The Grubstake team has made every attempt possible to address any issues brought forth by the Austin residents and we hope that you see the value of this project in its proposed form and deny this frivolous appeal.

Get [Outlook for iOS](#)

From: [Cathy Asmus](#)
To: [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [RonenStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [Marstaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); sfgrubstake@gmail.com; [Waltonstaff \(BOS\)](#)
Subject: Support Rebuilding Grubstake Diner
Date: Thursday, September 23, 2021 1:45:00 PM

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deny this frivolous appeal.

Resident Cathy Asmus

From: [Will Castañeda](#)
To: [Peskin, Aaron \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Marstaff \(BOS\)](#); [PrestonStaff \(BOS\)](#); [ChanStaff \(BOS\)](#); [Haneystaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \[BOS\]](#); [RonenStaff \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Waltonstaff \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner
Date: Thursday, September 23, 2021 9:44:13 AM

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From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)
Subject: FW: Support Rebuilding Grubstake Diner
Date: Thursday, September 30, 2021 12:04:00 PM

From: Mario Estrada <me@mario.ec>
Sent: Thursday, September 30, 2021 10:34 AM
To: Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Marstaff (BOS) <marstaff@sfgov.org>; PrestonStaff (BOS) <prestonstaff@sfgov.org>; ChanStaff (BOS) <chanstaff@sfgov.org>; Haneystaff (BOS) <haneystaff@sfgov.org>; MelgarStaff (BOS) <melgarstaff@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; RonenStaff (BOS) <ronenstaff@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Waltonstaff (BOS) <waltonstaff@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner

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Mario Estrada
San Francisco Resident

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)
Subject: FW: Support Rebuilding Grubstake Diner
Date: Wednesday, September 29, 2021 9:53:00 AM

-----Original Message-----

From: Choppy Oshiro <chopshopimages@yahoo.com>
Sent: Tuesday, September 28, 2021 5:20 PM
To: Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Marstaff (BOS) <marstaff@sfgov.org>; PrestonStaff (BOS) <prestonstaff@sfgov.org>; ChanStaff (BOS) <chanstaff@sfgov.org>; Haneystaff (BOS) <haneystaff@sfgov.org>; MelgarStaff (BOS) <melgarstaff@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; RonenStaff (BOS) <ronenstaff@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Waltonstaff (BOS) <waltonstaff@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; sfgrubstake@gmail.com
Subject: Support Rebuilding Grubstake Diner

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Best regards,
Cherilyn Oshiro
SF resident since 1982, and also a customer since then

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Major, Erica \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: 2 Letters regarding File No. 210944
Date: Tuesday, September 28, 2021 1:20:00 PM
Attachments: [2 Letters regarding File No. 210944.pdf](#)

Hello,

Please see attached 2 Letters regarding File No. 210944

File No. 210944 – Resolution calling for the creation of a “Beach to Bay” car-free connection and urging the Recreation and Park Department and San Francisco Municipal Transportation Agency to improve park accessibility and create equitable access to Golden Gate Park.

Version 2.

Amendment

9/20/2021 - AMENDED in Committee, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE, on Page 1, Lines 18-20, by changing ‘the Recreation and Park Department (RPD)’ to ‘then-Supervisor Jake McGoldrick in File No. 070489, on file with the Clerk of the Board of Supervisors in File No. 210944, which is hereby declared to be a part of this resolution as if set forth fully herein’; on Page 1, Line 23, through Page 2, Line 2, by adding ‘WHEREAS, In 2005, the Board of Supervisors passed a Resolution File No. 051247, on file with the Clerk of the Board of Supervisors in File No. 210944, which is hereby declared to be a part of this resolution as if set forth fully herein, approving the Golden Gate Park Music Concourse Surface Circulation Plan which prohibited the use of the Music Concourse for cut-through automobile traffic’; on Page 4, Lines 16-17, by adding ‘the Recreation and Park Department (RPD)’; on Page 5, Lines 13-14, by adding ‘such as park shuttle stops, garage signage with parking availability for the Concourse garage’, Lines 18-19, by changing ‘improved’ to ‘accessible, affordable, timely, and reliable’; on Page 5, Line 24, through Page 6, Line 1, by adding ‘, restoration of the 21 Hayes which provides the Western Addition and other city residents with a direct connection to Golden Gate Park at Fulton and Stanyan Street during the weekday and 8th Avenue and Fulton on weekends’; on Page 6, Line 3, by adding ‘accessible park border sidewalks on Lincoln Way’, Line 13, by adding ‘94108’, Lines 17-18, by adding ‘such as providing designated weekend public transit to the Music Concourse for San Francisco residents including 94124, 94112, 94108, 94134, and 94133’; and on Page 7, Lines 4-9, by changing ‘manage access at 8th Avenue and Fulton Street and around the Music Concourse to allow for vehicles to enter and exit 8th Avenue, allowing for disabled, senior, and limited mobility visitors to access the ADA parking behind the bandshell, or for those with limited mobility who may not have a placard to be dropped off along the Music Concourse’ to ‘develop options for considering managed access at 8th Avenue and Fulton Street to allow for vehicles actively transporting seniors, people with disabilities, and visitors with limited mobility’.

Regards,

John Bullock

Board of Supervisors - Clerk's Office

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

(415) 554-5184

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From: [Major, Erica \(BOS\)](#)
To: [Board of Supervisors, \(BOS\)](#)
Subject: FW: Please save Kid Safe JFK and amend the resolution to remove the private car cut-through at 8th Avenue...
Date: Thursday, September 23, 2021 3:23:38 PM

C pages.

ERICA MAJOR

Assistant Clerk

Board of Supervisors

1 Dr. Carlton B. Goodlett Place, City Hall, Room 244 San Francisco, CA 94102

Phone: (415) 554-4441 | Fax: (415) 554-5163

Erica.Major@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services.

Click [HERE](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

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---

**From:** A Fiorini <aafiorini@gmail.com>

**Sent:** Thursday, September 23, 2021 12:04 PM

**To:** Melgar, Myrna (BOS) <myrna.melgar@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Major, Erica (BOS) <erica.major@sfgov.org>; ChanStaff (BOS) <chanstaff@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; clerk@sfcta.org; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Ginsburg, Phil (REC) <phil.ginsburg@sfgov.org>; Tumlin, Jeffrey (MTA) <Jeffrey.Tumlin@sfmta.com>; Commission, Recpark (REC) <recpark.commission@sfgov.org>;



Breed, Mayor London (MYR) <mayorlondonbreed@sfgov.org>; MTABoard@sfmta.com;  
hello@kidsafesf.com

**Subject:** Please save Kid Safe JFK and amend the resolution to remove the private car cut-through at 8th Avenue...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Supervisors Melgar, Peskin, and Preston,

I love Kid Safe JFK, and want it to become permanent without a private car cut-through at 8th Avenue. I support Kid Safe SF's efforts to save this serene, safe, and joyous space in the middle of Golden Gate Park.

Most of Supervisor Chan's resolution is excellent — improving Muni connections and the park shuttle, taking full advantage of the underutilized 836-space Music Concourse Garage, adding more parking for people with disabilities, and providing free garage parking to drivers with disabilities and underserved residents will make the park more accessible and equitable for all.

However, I strongly oppose the section calling for private-car traffic entering JFK Drive at 8th Avenue.

Adding private-car traffic to this busy area at the heart of the park would rip this beach-to-bay car-free connection in half, put children at risk of traffic violence in our pedestrian oasis, slow Muni service, and lead to cut-through traffic.

Muni's 44-O'Shaughnessy, a Muni equity strategy route which connects the southeastern neighborhoods directly to Golden Gate Park, will be slowed by car traffic if the 8th Avenue entrance is opened to cars. Over the last 18 months as 8th Avenue has been a transit-only entrance, the 44 has seen 3 minute travel time improvements through the park.

The park and the museums are still just as accessible to all, including people with disabilities, without cars on car-free JFK at 8th Avenue, because drivers can still drive around the Music Concourse and have direct access to the museums through the garage. For museum visitors with disabilities, the closest access to the museums is the garage.

I, along with Kid Safe SF, ask that the resolution be amended to:

- 1) Prohibit private vehicles entering JFK Drive at 8th Avenue. Make this whole entrance a transit-only red lane, which would include access for taxis and paratransit. Those who need to drive to the park already have great access to the Music Concourse via the garage and surrounding streets.

- 2) Include a commitment that all the existing sections of car-free JFK be maintained as-is, without compromises that put cars back on any of this peaceful & safe section of Golden Gate Park. All



access issues are being addressed without destroying this peaceful promenade with the noise, danger and exhaust of cars.

Will you speak up for me and countless others asking for these amendments to the JFK resolution?

Alexandria



**From:** [A Fiorini](#)  
**To:** [Melgar, Myrna \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Major, Erica \(BOS\)](#); [ChanStaff \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Haney, Matt \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [Ronen, Hillary](#); [Walton, Shamann \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [clerk@sfcta.org](#); [Board of Supervisors, \(BOS\)](#); [Ginsburg, Phil \(REC\)](#); [Tumlin, Jeffrey \(MTA\)](#); [Commission, Recpark \(REC\)](#); [Breed, Mayor London \(MYR\)](#); [MTABoard@sfmta.com](#); [hello@kidsafesf.com](#)  
**Subject:** Please save Kid Safe JFK and amend the resolution to remove the private car cut-through at 8th Avenue...  
**Date:** Thursday, September 23, 2021 12:05:08 PM

---

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the noise, danger and exhaust of cars.

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Alexandria



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** FW: Closure of JFK and other park access  
**Date:** Wednesday, September 29, 2021 9:52:00 AM

---

**From:** DAWN GRIFFIN <[griffindawn2@aol.com](mailto:griffindawn2@aol.com)>  
**Sent:** Tuesday, September 28, 2021 3:41 PM  
**To:** Board of Supervisors, (BOS) <[board.of.supervisors@sfgov.org](mailto:board.of.supervisors@sfgov.org)>  
**Subject:** Fwd: Closure of JFK and other park access

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Sent from my iPad

Begin forwarded message:

**From:** DAWN GRIFFIN <[griffindawn2@aol.com](mailto:griffindawn2@aol.com)>  
**Date:** September 28, 2021 at 3:19:24 PM PDT  
**To:** [Editor@richmondsunsetnews.com](mailto:Editor@richmondsunsetnews.com)  
**Subject:** Closure of JFK and other park access

The SF Board of Supervisors and the SFMTA want to go ahead and keep roads closed in Golden Gate Park despite the outcry from disabled and seniors. Why are we always the ignored demographic? Those folks will be in our shoes one day and they'll shake their heads and say "what were we thinking?". In the meantime, those of us with mobility issues, most of whom have paid taxes in this City for most of our long lives are denied access to museums and the Conservatory because the able-bodied youngsters who run the City refuse to hear our voices and respect our needs!

Sent from my iPad



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Wong, Linda \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)  
**Subject:** 2 Letters Regarding File No. 210966  
**Date:** Tuesday, September 28, 2021 1:20:00 PM  
**Attachments:** [2 Letters regarding File No. 210966.pdf](#)

---

Hello,

Please see attached 2 Letters Regarding File No. 210966.

**File No. 210966** – Resolution authorizing and approving the Director of Property, on behalf of the Department of Homelessness and Supportive Housing, to negotiate and enter into a sublease agreement for 312,000 square feet of property owned by the California State Lands Commission and leased to the California Department of Parks and Recreation, for the City's use as a Vehicle Triage Center at Candlestick Point State Recreation Area, for an initial term of two years, commencing on or about November 1, 2021, for the base rent of \$312,000 per year to be paid through in-kind, public services with an estimated value of \$2,143,920; authorizing the Director of Property to execute documents, make certain modifications and take certain actions in furtherance of the sublease, as defined herein; adopting findings under the California Environmental Quality Act; and finding the proposed sublease is in conformance with the General Plan, and the eight priorities of Planning Code, Section 101.1.

Regards,

John Bullock  
Board of Supervisors - Clerk's Office  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102  
(415) 554-5184

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**From:** [Cliff Bargar](#)  
**To:** [Walton, Shamann \(BOS\)](#); [Waltonstaff \(BOS\)](#)  
**Cc:** [Board of Supervisors \(BOS\)](#)  
**Subject:** In support of 210966 + more services for the vehicularly housed  
**Date:** Friday, September 24, 2021 5:08:39 PM

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board President Walton,

As a constituent I'd like to express my support for the proposed Vehicle Triage Center (file number 210966) at Candlestick Point and for your continued focus on helping our neighbors who are most in need. I also hope that the City can find more locations to provide similar services and reverse the trend of moving people sleeping in RVs from neighborhood to neighborhood.

In my corner of D10 the relatively recently implemented parking management plan for Northern Potrero Hill included provisions that unfortunately displaced residents who had parking on 17th or Carolina Streets along the edges of Jackson Park. I'm generally very supportive of MTA's expansion of RPP zones and addition of meters to commercial areas but in this case it had an unfortunate side effect. The closest thing to a negative impact that these people ever had which I observed was that I could hear a generator running while reading a book in the park.

In recent years other members of the Board of Supervisors have advocated for parking changes which displaced people living in RVs, which only further concentrates the issue in the parts of the City where it is still allowed. I hope that we can lessen the stigma here while providing these neighbors with dignity and much needed services. And of course I also hope that we can see more housing built across San Francisco so fewer people end up living in their vehicles to begin with.

Best,  
Cliff  
Connecticut Street



**From:** [Walton, Shamann \(BOS\)](#)  
**To:** [Cliff Bargar](#); [Waltonstaff \(BOS\)](#)  
**Cc:** [Board of Supervisors, \(BOS\)](#)  
**Subject:** Re: In support of 210966 + more services for the vehicularly housed  
**Date:** Saturday, September 25, 2021 11:58:51 AM

---

Thank you for your email Cliff.

Sent from my mobile device. Please excuse typos.

Supervisor Shamann Walton  
President, San Francisco Board of Supervisors  
District 10  
1 Dr. Carlton B. Goodlett Pl, Room 282  
Office: 415.554.7670

---

**From:** Cliff Bargar <cliff.bargar@gmail.com>  
**Sent:** Friday, September 24, 2021 5:07:52 PM  
**To:** Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Waltonstaff (BOS) <waltonstaff@sfgov.org>  
**Cc:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** In support of 210966 + more services for the vehicularly housed

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vehicles to begin with.

Best,  
Cliff  
Connecticut Street



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** Letter regarding 35 Ventura Avenue  
**Date:** Wednesday, September 29, 2021 4:33:00 PM  
**Attachments:** [09-29-21 35 Ventura Avenue.pdf](#)

---

Hello,

Please see attached a letter regarding 35 Ventura Avenue.

Sincerely,

**Office of the Clerk of the Board of Supervisors**

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

(415) 554-5184



RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2021 SEP 29 PM 4:22

BY JA

Angela Calvillo  
Clerk of the Board, City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA, 94102

September 23, 2021

Subject: File No. 210927, 35 Ventura Avenue

We are back-yard neighbors of the proposed project at 35 Ventura Avenue. The developers of the project have applied for permits to substantially increase the size of the existing home. The homes in this area of Forest Hills were all designed to respect the area of the hilly topography. The new increased height and over- all size of the project will have a marked environmental effect on my home as well as neighboring homes.

The added height (15 feet) on top of a house presently at the top of the hill will increase the shade in our yard, will look straight down onto our patio, back and side of our house windows and severely limit our privacy. Our patio and garden that we have cherished for its quiet privacy for almost fifty years will be severely impaired. In addition the intrusion of the additional height hovering over our property will certainly reduce its value. We respectfully recommend a discretionary review be granted with a redesigned modification.

Enclosed is a recent photo taken from our back-yard with a 15 foot attachment that is planned for 35 Ventura Avenue.

Sincerely,

  
George H. McGlynn

Ingeborg McGlynn







**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** Letter regarding 1230 Revere Avenue  
**Date:** Wednesday, September 29, 2021 4:32:00 PM  
**Attachments:** [09-29-21 1230 Revere Ave...pdf](#)

---

Hello,

Please see attached a letter regarding 1230 Revere Avenue.

Sincerely,

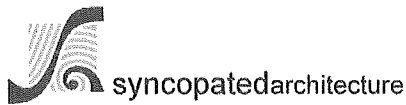
**Office of the Clerk of the Board of Supervisors**

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

(415) 554-5184





RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2021 SEP 29 PM 4: 22

Dear neighbor,

BY JA

Our client is planning to build a new residence at 1230 Revere Avenue. The project includes a new 3 story, 3-unit home which includes an attached Accessory Dwelling Unit. Setbacks will be observed in front and rear to comply with San Francisco Planning Code.

You are receiving this notice because SF Planning has required us to hold a public meeting for the properties that directly abut or face our property. This project includes the issuance of several public notices. In the next few months or so you will receive additional mailers related to this project.

We would like to share with you our plans for the property and answer any questions/concerns you may have about our project.

**PLEASE JOIN US FOR A DISCUSSION!**  
**THE MEETING WILL BE HELD ON RING CENTRAL ON:**

**Thursday, October 14th @ 6:00 p.m.**

If you are not able to attend, but have questions or would like additional information, please email us at:

[jason@sync-arch.com](mailto:jason@sync-arch.com)

Topic: 1230 Revere Pre-Application Meeting with Neighborhood

Time: Oct 14, 2021 06:00 PM Pacific Time (US and Canada)

Join from PC, Mac, Linux, iOS or Android:

<https://meetings.ringcentral.com/j/1460759287>

For the best audio experience, please use computer audio.

**Or iPhone one-tap :**

US: +1(650)2424929,,1460759287#

+1(213)2505700,,1460759287#

+1(720)9027700,,1460759287# (US Central)









+1(346)9804201,,1460759287#  
+1(623)4049000,,1460759287# (US West)  
+1(646)3573664,,1460759287#  
+1(773)2319226,,1460759287# (US North)  
+1(312)2630281,,1460759287#  
+1(469)4450100,,1460759287# (US South)  
+1(470)8692200,,1460759287# (US East)

## Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1(650)2424929

+1(213)2505700  
+1(720)9027700 (US Central)  
+1(346)9804201  
+1(623)4049000 (US West)  
+1(646)3573664  
+1(773)2319226 (US North)  
+1(312)2630281  
+1(469)4450100 (US South)  
+1(470)8692200 (US East)

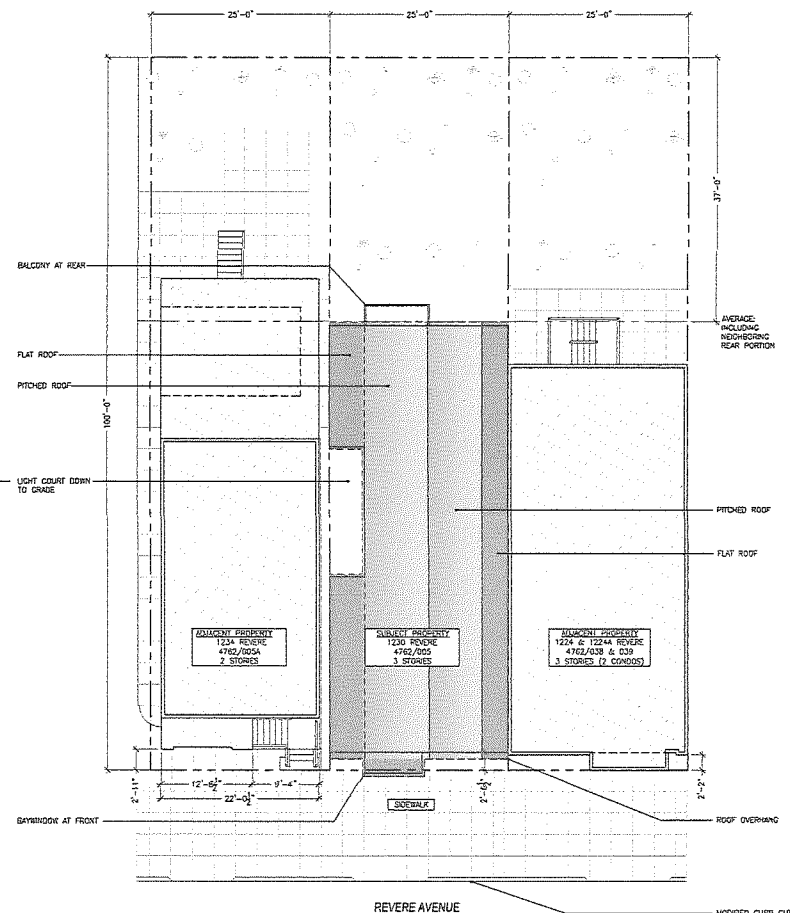
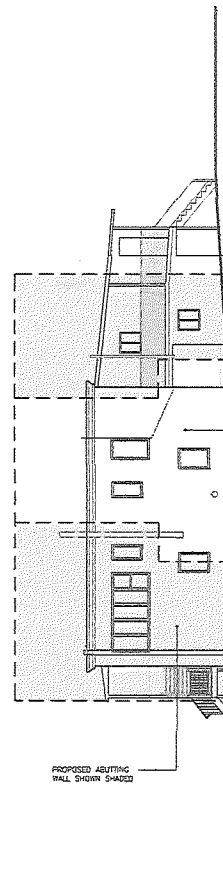
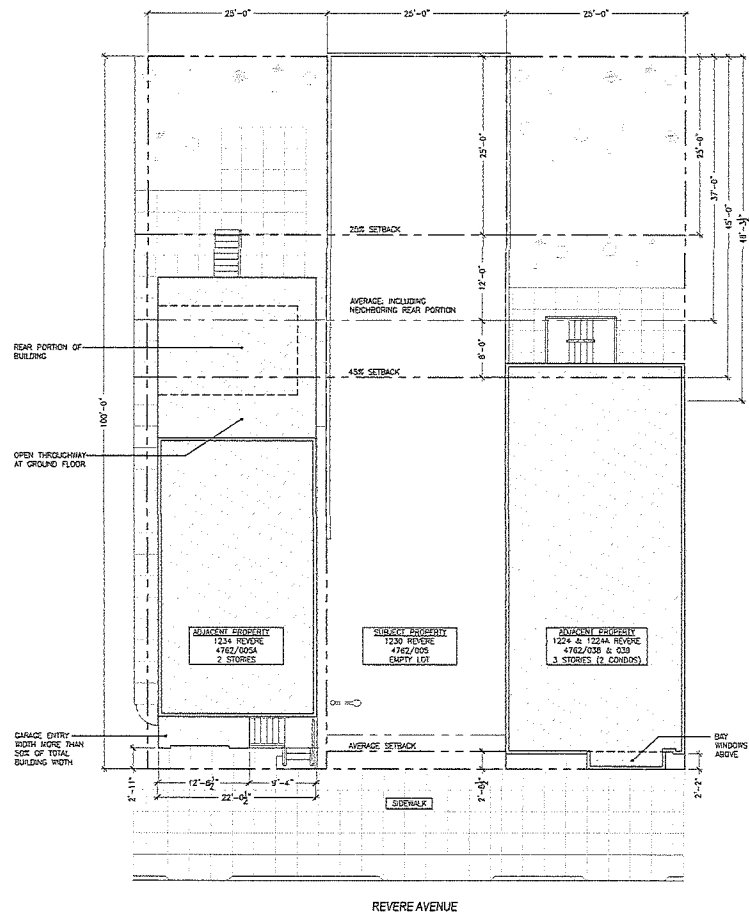
# Meeting ID: 146 075 9287

International numbers available: <https://meetings.ringcentral.com/teleconference>

Sincerely,

Jason Gates  
*Junior Associate*  
**syncopated** architecture  
415-558-9843  
[jason@sync-arch.com](mailto:jason@sync-arch.com)





1 SITE PLAN: EXISTING  
1/8"=1'-0"



2 NEIGHBOR ELEVATION: 1234 REVERE  
1/8"=1'-0"

3 SITE PLAN: PROPOSED  
1/8"=1'-0"



# 1230 Revere Ave. San Francisco, CA



1230 Revere Ave.  
San Francisco, CA  
PROJECT NO. 21-02

DATE SET ISSUE  
10-14-2021 NDC-EDR-002 TYPE AFF

CONTACT:  
SERINA CALHOUN  
(415) 555-8843 P  
serina@sync-arch.com

SCALE: 1/8"=1'-0"

SITE PLAN

A0.1





# 1230 Revere Ave. San Francisco, CA



1230 Revere Ave.  
San Francisco, CA  
PROJECT NO. 21-02

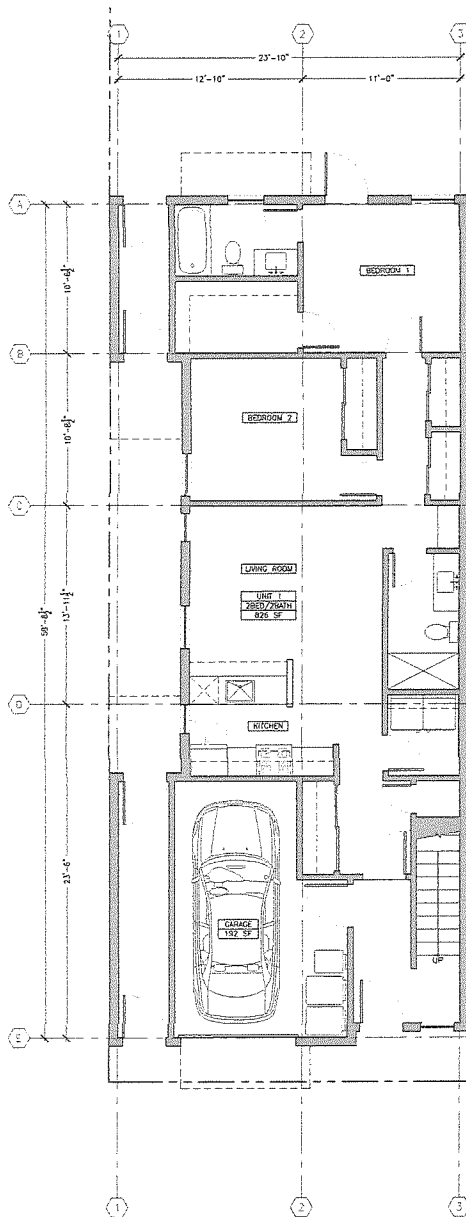
DATE: 07/16/10  
SET: 10/16/10

CONTACT:  
SERINA CALHOUN  
(415) 558-0843 P  
serina@ryno-arch.com

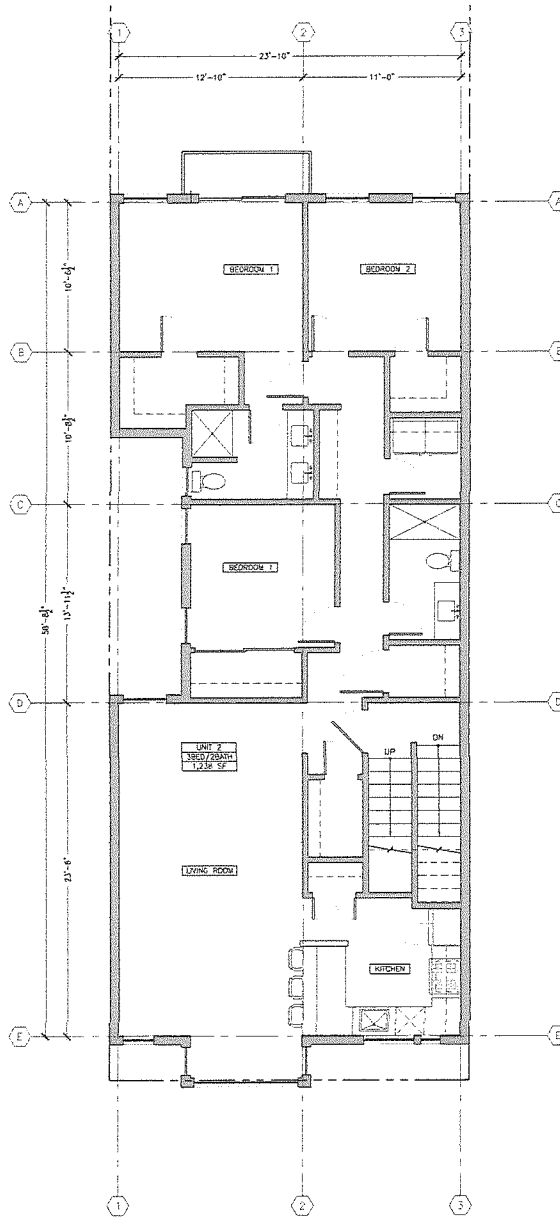
SCALE: AS NOTED

NEW CONSTR.:  
GROUND, 2ND,  
3RD FLOOR

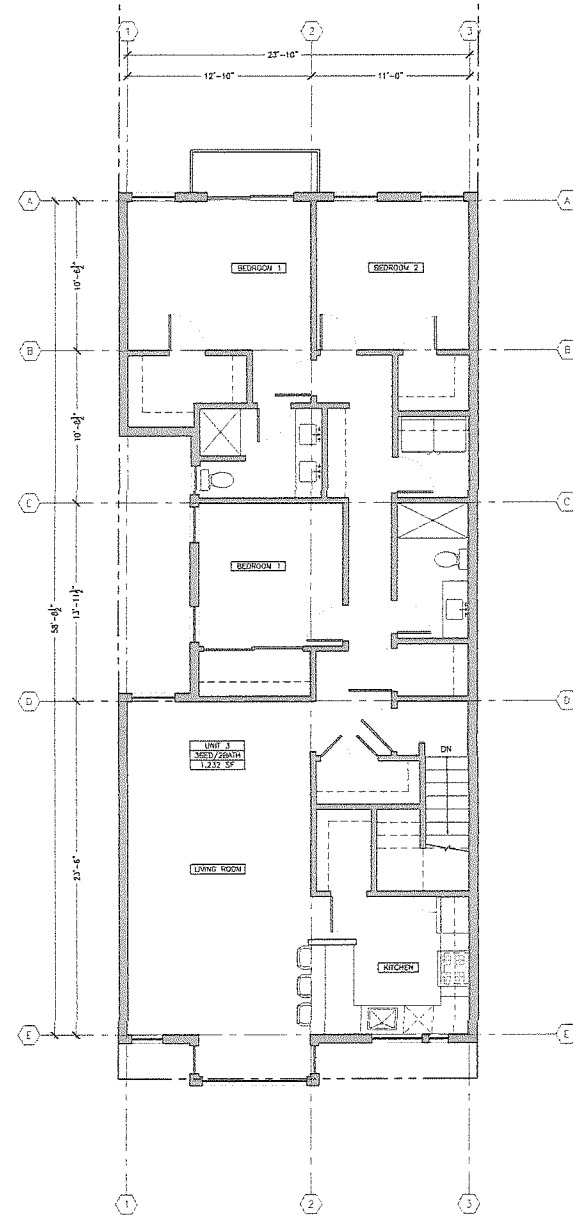
## A2.0



1 GROUND FLOOR: NEW CONSTRUCTION  
1/4"=1'-0"



2 SECOND FLOOR: NEW CONSTRUCTION  
1/4"=1'-0"



3 THIRD FLOOR: NEW CONSTRUCTION  
1/4"=1'-0"



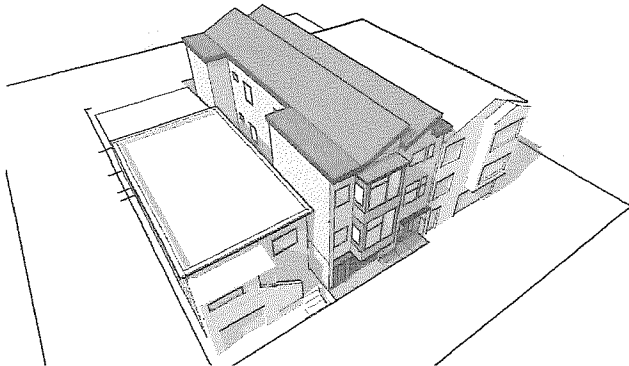




1 FRONT ELEVATION  
1/8"=1'-0"



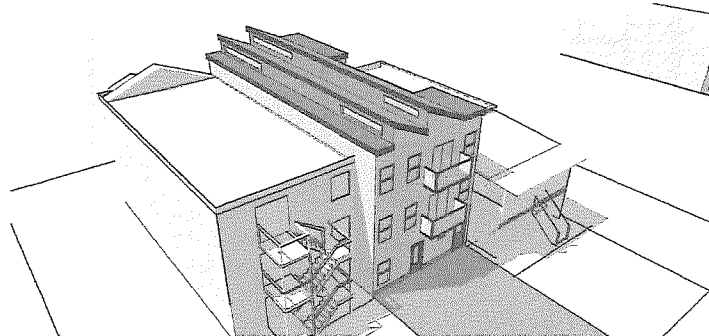
3 SIDEWALK VIEW  
1/8"=1'-0"



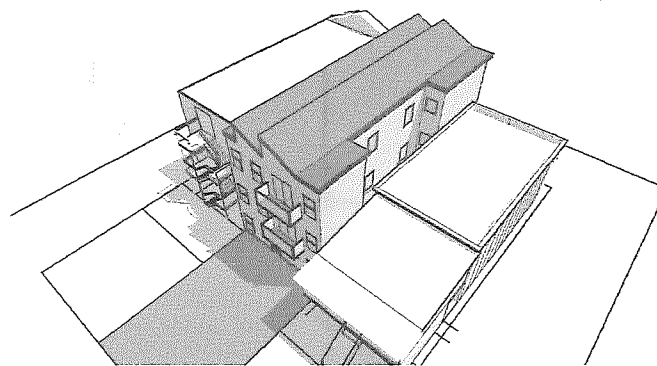
5 3D FRONT VIEW  
1/8"=1'-0"



2 REAR ELEVATION  
1/8"=1'-0"



4 3D REAR VIEW  
1/8"=1'-0"



6 3D REAR VIEW  
1/8"=1'-0"



1230 Revere Ave.  
San Francisco, CA



1230 Revere Ave.  
San Francisco, CA  
PROJECT NO. 21-02

DATE: SET 6/2016  
1/8"=1'-0" 1/8"=1'-0" 1/8"=1'-0" 1/8"=1'-0"

CONTACT:  
SERINA CALHOUN  
(415) 558-8843 P  
serina@tyro-arch.com

SCALE: 1/8"=1'-0"

RENDERS

A3.0



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** Letter regarding 1230 Revere Avenue  
**Date:** Wednesday, September 29, 2021 4:32:00 PM  
**Attachments:** [09-29-21 1230 Revere Ave...pdf](#)

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Sincerely,

**Office of the Clerk of the Board of Supervisors**

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

(415) 554-5184



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)  
**Subject:** 5 Letters regarding bicyclist blocking the Great Highway  
**Date:** Tuesday, September 28, 2021 1:20:00 PM  
**Attachments:** [5 Letters regarding bicyclist blocking the Great Highway.pdf](#)

---

Hello,

Please see attached 5 Letters regarding bicyclist blocking the Great Highway.

Regards,

John Bullock

Board of Supervisors - Clerk's Office

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

(415) 554-5184

**Disclosures:** *Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*



**From:** [David Lew](#)  
**To:** [Breed, Mayor London \(MYR\)](#); [Board of Supervisors \(BOS\)](#); [Chan, Connie \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Ronen, Hillary](#); [Walton, Shamann \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [ChanStaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff \(BOS\)](#); [Commission, Recpark \(REC\)](#); [Ginsburg, Phil \(REC\)](#); [clerk@sfcta.org](#); [SFPD, Chief \(POL\)](#); [Rainsford, Nicholas \(POL\)](#); [info@openthegreathighway.com](#)  
**Subject:** Re: Bicyclists block Great Highway and Sup. Dean Preston thinks it's "Beautiful to see" from David Lew  
**Date:** Tuesday, September 28, 2021 10:39:56 AM

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.



My name is **David Lew**  
My email address is **mze505@aol.com**

Dear Mayor Breed, BOS, SF City Attorney, Capt. Nicholas Rainsford of Taraval Station, SFPD Chief of Police

On Tuesday, August 24, 2021, 26 entitled Great Walkway Civil Disobedience Society (twitter: @safestreetrebel) bicyclists took over the Great Highway during the evening commute between 6 and 7 pm, completely blocking the passage of hundreds of vehicles driven by working people, taxpayers, and voters on their way home for the evening. This act was illegal, violating the CA vehicle traffic code and other laws. The bikers also refused to comply with peace officers following who instructed them to move to the right of the roadway to let faster vehicles pass. Traveling at 5 miles an hour, this group refused to move to the right of the entire north-south route, blocking all traffic. They then repeated this stunt going south-north, again backing up more commuter traffic. No city official has condemned these actions. (see YouTube video footnoted to this letter.)

We are concerned that not one elected or appointed city official has condemned these lawless cyclists. These illegal actions make a mockery of the Mayor, Supervisors Mar, Chan, and Melgar, the tax-paying and voting commuters trying to get home, the police (following in a police van as a buffer between



bikers and cars, trying to keep all safe) and members of the public impacted by the closure of the Great Highway. Not one official has recognized and condemned the danger from the escalation of "civil disobedience" by these bike fanatics and been brave enough to speak out against these "protests," which will undoubtedly re-occur. This is clearly indicated by a Twitter post by one of the Aug. 24 bikers:

8/24/21 Twitter post by self-described "complete closure zealot" (@bambipotf) : "cop told us to move over to the right lane twice, we did not. they gave up very quickly. the more of us there are, the more successful we're going to be at taking our space back and holding it. drivers can take Sunset."

It's clear these bicyclists consider the Great Highway "our space" with zero consideration of the harm this closure has done to the safety of many thousands of commuters and residents in the Sunset and Richmond. Their entitled actions are offensive, illegal, dangerous, disruptive, unacceptable, and childish. They reveal zero consideration for children, seniors, the disabled, and families who have to negotiate the intersections of nearby neighborhoods now periodically populated with 18,000-20,000 more vehicles. The videos of the bunched-up cars on the Great Highway on Tuesday clearly demonstrate that hundreds of vehicles were prevented from their rightful use of the highway. These hundreds of cars and trucks would have been in front of our houses on neighborhood streets if not for the decision to reopen the highway during the workweek.

Of course, you will hear "Free speech! First Amendment! Right to protest!" There is no right for any citizen, protesting or not, to willfully break laws. The bicyclists violated two sections of the CA Vehicle Code, two sections of the San Francisco Police Code, and two sections of the San Francisco Park Code. Yet there have been no consequences, or even acknowledgment, of these offenses by San Francisco officials.

### Supervisor Preston Thinks It's Beautiful

In fact, the only official speaking out about this illegal blocking of traffic has been Supervisor Dean Preston, on Twitter (@DeanPreston), not condemning these scofflaws, but actually **CONDONING** their illegal acts, and by implication, encouraging future similar events. Preston retweeted a photo of the miscreant bikers with the caption, "Beautiful to see."



This is an official who is a member of the California State Bar who took an oath to uphold the law. He took an oath when he was sworn in as Supervisor to uphold the law. Preston is clearly demonstrating his bias, which is against BOS policy, in a matter that will be placed before the Board of Supervisors in a few months for a vote on the future of the Great Highway. He displayed a complete lack of ethics and a clear disregard for the law and for hundreds of commuters who were denied their rightful use of the road. He should be censured by the BOS and disallowed to vote on the Great Highway decision. He should be reported to the State Bar and the SF Ethics Commission for his outrageous incitement of illegal and dangerous acts.

Why the silence from elected officials about this matter? It appears that transactional politics with special interest groups in San Francisco are more important than upholding the law. Transactional politics are more important than allowing residents and working people to have safety on the streets. Transactional politics are more important than the much-ballyhooed Vision Zero. It's time San Francisco officials stop pandering to these special interest groups and start taking care of working people who must commute and the pedestrians in the Sunset and the Richmond who deserve safe streets.

Please, would just one of you speak out against this illegal Great Walkway action and the dangerous post of Supervisor Dean Preston that incites more lawlessness? We are waiting.

Update: The Open the Great Highway online petition now has over 14,000 signatures.

Thank you for your time.

Sincerely,  
David Lew

---

<https://www.openthegreathighway.com/gh-blocked-deanpreston>

<https://youtu.be/UESLxb5azAw>



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[Open the Great Highway Petition](#)



**From:** [Patrick Skain](#)  
**To:** [Breed, Mayor London \(MYR\)](#); [Board of Supervisors. \(BOS\)](#); [Chan, Connie \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Ronen, Hillary](#); [Walton, Shamann \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [ChanStaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff. \(BOS\)](#); [Commission, Recpark \(REC\)](#); [Ginsburg, Phil \(REC\)](#); [clerk@sfcta.org](#); [SFPD, Chief \(POL\)](#); [Rainsford, Nicholas \(POL\)](#); [Cityattorney](#); [SFPD Taraval Station. \(POL\)](#); [info@openthegreathighway.com](#)  
**Subject:** Re: Bicyclists trap commuters on Great Highway during Rush Hour from Patrick Skain  
**Date:** Monday, September 27, 2021 10:07:06 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.



My name is **Patrick Skain**  
My email address is **patskain@att.net**

Dear City Attorney Herrera,

On Thursday, September 9th, a group of bicyclists took over the Upper Great Highway for the third time in as many weeks, blocking cars and preventing thousands of people from arriving at their destinations in a timely manner. At the first two events, the police created a buffer zone between those in automobiles and those on bikes, with a police car separating the two as they rode down the Highway. This time, however, the department's response was to take a more hands-off approach. Three police cars were present at Murphy's Windmill where the bicyclists gathered before the event, but they left as soon as the event began. There was no police car and no police presence between bikes and cars. This created an extremely dangerous situation, and it was only because of the remarkable restraint shown by drivers that situation didn't escalate and turn violent.

The Mayor and the Board of Supervisors, and now the police, have been informed numerous times that bicyclists are taking over the Highway and tempers are running short. It is a powder keg in District Four right now, and no one seems to care.



It is now time for the City Attorney's office to step in to ensure that no one is harmed when this happens again (and it will). It is your responsibility, as the legal counsel for the city of San Francisco, to notify the appropriate agencies of the urgency in resolving and stopping this disruptive behavior on the part of bicyclists. Their failure to do will likely result in violent confrontations in which people could suffer preventable injuries and unnecessary property damages. It is within the realm of possibility that lawsuits will be filed against the city for its failure to mitigate. You have been put on notice.

Please advise as to what action the City Attorney's Office will be taking to resolve this precarious situation.

Thank you for your time.

Sincerely,  
Patrick Skain

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<https://www.openthegreathighway.com/trapped>

[YouTube: Bicyclists trap commuters on Great Highway during Rush Hour](#)

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[Open the Great Highway Petition](#)



**From:** [Saw Lim-Skain](#)  
**To:** [Breed, Mayor London \(MYR\)](#); [Board of Supervisors \(BOS\)](#); [Chan, Connie \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Ronen, Hillary](#); [Walton, Shamann \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [ChanStaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff \(BOS\)](#); [Commission, Recpark \(REC\)](#); [Ginsburg, Phil \(REC\)](#); [clerk@sfcta.org](#); [SFPD, Chief \(POL\)](#); [Rainsford, Nicholas \(POL\)](#); [Cityattorney](#); [SFPD Taraval Station \(POL\)](#); [info@openthegreathighway.com](#)  
**Subject:** Re: Bicyclists trap commuters on Great Highway during Rush Hour from Saw Lim-Skain  
**Date:** Monday, September 27, 2021 9:59:22 AM

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My name is **Saw Lim-Skain**  
My email address is **sawlim@att.net**

Dear City Attorney Herrera,

On Thursday, September 9th, a group of bicyclists took over the Upper Great Highway for the third time in as many weeks, blocking cars and preventing thousands of people from arriving at their destinations in a timely manner. At the first two events, the police created a buffer zone between those in automobiles and those on bikes, with a police car separating the two as they rode down the Highway. This time, however, the department's response was to take a more hands-off approach. Three police cars were present at Murphy's Windmill where the bicyclists gathered before the event, but they left as soon as the event began. There was no police car and no police presence between bikes and cars. This created an extremely dangerous situation, and it was only because of the remarkable restraint shown by drivers that situation didn't escalate and turn violent.

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Thank you for your time.

Sincerely,  
Saw Lim-Skain

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<https://www.openthegreathighway.com/trapped>

[YouTube: Bicyclists trap commuters on Great Highway during Rush Hour](#)

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[Open the Great Highway Petition](#)



**From:** [Lauren Kamiya](#)  
**To:** [Breed, Mayor London \(MYR\)](#); [Board of Supervisors \(BOS\)](#); [Chan, Connie \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Ronen, Hillary](#); [Walton, Shamann \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [ChanStaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff \(BOS\)](#); [Commission, Recpark \(REC\)](#); [Ginsburg, Phil \(REC\)](#); [clerk@sfcta.org](#); [SFPD, Chief \(POL\)](#); [Rainsford, Nicholas \(POL\)](#); [Cityattorney](#); [SFPD Taraval Station \(POL\)](#); [info@openthegreathighway.com](#)  
**Subject:** Re: Bicyclists trap commuters on Great Highway during Rush Hour from Lauren Kamiya  
**Date:** Saturday, September 25, 2021 8:33:36 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.



My name is **Lauren Kamiya**  
My email address is **lkamiya@gmail.com**

Dear City Attorney Herrera,

On Thursday, September 9th, a group of bicyclists took over the Upper Great Highway for the third time in as many weeks, blocking cars and preventing thousands of people from arriving at their destinations in a timely manner. At the first two events, the police created a buffer zone between those in automobiles and those on bikes, with a police car separating the two as they rode down the Highway. This time, however, the department's response was to take a more hands-off approach. Three police cars were present at Murphy's Windmill where the bicyclists gathered before the event, but they left as soon as the event began. There was no police car and no police presence between bikes and cars. This created an extremely dangerous situation, and it was only because of the remarkable restraint shown by drivers that situation didn't escalate and turn violent.

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---

<https://www.openthegreathighway.com/trapped>

[YouTube: Bicyclists trap commuters on Great Highway during Rush Hour](#)

---

[Open the Great Highway Petition](#)



**From:** [Debra Ferreira](#)  
**To:** [Breed, Mayor London \(MYR\)](#); [Board of Supervisors \(BOS\)](#); [Chan, Connie \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Ronen, Hillary](#); [Walton, Shamann \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [ChanStaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff \(BOS\)](#); [Commission, Recpark \(REC\)](#); [Ginsburg, Phil \(REC\)](#); [clerk@sfcta.org](#); [SFPD, Chief \(POL\)](#); [Rainsford, Nicholas \(POL\)](#); [info@openthegreathighway.com](#)  
**Subject:** Re: Bicyclists block Great Highway and Sup. Dean Preston thinks it's "Beautiful to see" from Debra Ferreira  
**Date:** Thursday, September 23, 2021 6:13:11 PM

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.



My name is **Debra Ferreira**  
My email address is **deferrei@comcast.net**

Dear Mayor Breed, BOS, SF City Attorney, Capt. Nicholas Rainsford of Taraval Station, SFPD Chief of Police

On Tuesday, August 24, 2021, 26 entitled Great Walkway Civil Disobedience Society (twitter: @safestreetrebel) bicyclists took over the Great Highway during the evening commute between 6 and 7 pm, completely blocking the passage of hundreds of vehicles driven by working people, taxpayers, and voters on their way home for the evening. This act was illegal, violating the CA vehicle traffic code and other laws. The bikers also refused to comply with peace officers following who instructed them to move to the right of the roadway to let faster vehicles pass. Traveling at 5 miles an hour, this group refused to move to the right of the entire north-south route, blocking all traffic. They then repeated this stunt going south-north, again backing up more commuter traffic. No city official has condemned these actions. (see YouTube video footnoted to this letter.)

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8/24/21 Twitter post by self-described "complete closure zealot" (@bambipotf) : "cop told us to move over to the right lane twice, we did not. they gave up very quickly. the more of us there are, the more successful we're going to be at taking our space back and holding it. drivers can take Sunset."

It's clear these bicyclists consider the Great Highway "our space" with zero consideration of the harm this closure has done to the safety of many thousands of commuters and residents in the Sunset and Richmond. Their entitled actions are offensive, illegal, dangerous, disruptive, unacceptable, and childish. They reveal zero consideration for children, seniors, the disabled, and families who have to negotiate the intersections of nearby neighborhoods now periodically populated with 18,000-20,000 more vehicles. The videos of the bunched-up cars on the Great Highway on Tuesday clearly demonstrate that hundreds of vehicles were prevented from their rightful use of the highway. These hundreds of cars and trucks would have been in front of our houses on neighborhood streets if not for the decision to reopen the highway during the workweek.

Of course, you will hear "Free speech! First Amendment! Right to protest!" There is no right for any citizen, protesting or not, to willfully break laws. The bicyclists violated two sections of the CA Vehicle Code, two sections of the San Francisco Police Code, and two sections of the San Francisco Park Code. Yet there have been no consequences, or even acknowledgment, of these offenses by San Francisco officials.

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Update: The Open the Great Highway online petition now has over 13,000 signatures.

Thank you for your time.

Sincerely,  
Debra Ferreira

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<https://www.openthegreathighway.com/gh-blocked-deanpreston>

<https://youtu.be/UESLxb5azAw>



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[Open the Great Highway Petition](#)



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** FW: Great Highway  
**Date:** Thursday, September 30, 2021 12:04:00 PM  
**Attachments:** [image.png](#)

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**From:** S Garrett <shigar16@gmail.com>

**Sent:** Thursday, September 30, 2021 9:08 AM

**To:** Breed, Mayor London (MYR) <mayorlondonbreed@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Chan, Connie (BOS) <connie.chan@sfgov.org>; mtaboard@sfmta.com; Commission, Recpark (REC) <recpark.commission@sfgov.org>; Ginsburg, Phil (REC) <phil.ginsburg@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; clerk@sfcta.org; MelgarStaff (BOS) <melgarstaff@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; ChanStaff (BOS) <chanstaff@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; scott.wiener@sen.ca.gov

**Subject:** Great Highway

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"So because the bicyclists were allowed to impede traffic on the Great Highway the last three times, they are now recruiting skate boarders, skaters, joggers, scooters, walkers to join them and assuring them they would be going about 4-5 mph. This is what the current "compromise" looks like with a group that refuses to cooperate with any "compromise". It just provokes the opposition to further closure to refuse any compromise as well.

The police take their direction from the Mayor and the supervisors. Direct calls to them have resulted in merely "escorting" them with a single police car whose orders to pull to the right have been ignored. This needs to stop.

Scott Weiner, you applauded the (un)Civil Obedience action in the past. Do you also applaud the recruitment of skateboarders, joggers, scooter riders, walkers etc on a highway? Did you applaud the blockage of the GG Bridge and Hwy 101 this morning as well although was with cars at least and didn't include non-vehicular protestors on a highway (which is banned)"





Open the Great Highway

Sherry Bijari · 7m · 🌐

...



Great Walkway Civil Disobedience...

...

@safestreetrebel

🚶 🚲 🏃 SLOW RIDE & WALK  
TODAY 🏃 🚲 🚶

Thursday - Meet at 5:30 - Roll out at  
6:00

Gather at Murphy Windmill

Non-joggers and non-riders can  
participate to take back the Great  
Walkway!

7:16 AM · 9/30/21 · [Twitter Web App](#)

1 Retweet 8 Likes



2

2 Comments

Sent from my iPhone



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)  
**Subject:** 5 Letters regarding the Great Highway  
**Date:** Tuesday, September 28, 2021 1:35:00 PM  
**Attachments:** [5 Letters regarding the Great Highway.pdf](#)

---

Hello,

Please see attached 5 Letters regarding the Great Highway.

Regards,

John Bullock  
Board of Supervisors - Clerk's Office  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102  
(415) 554-5184

**Disclosures:** *Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*



**From:** [Susan Wolff](#)  
**To:** [Breed, Mayor London \(MYR\)](#); [Board of Supervisors, \(BOS\)](#); [Chan, Connie \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Ronen, Hillary](#); [Walton, Shamann \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [ChanStaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [Commission, Recpark \(REC\)](#); [Ginsburg, Phil \(REC\)](#); [clerk@sfcta.org](#); [info@openthegreathighway.com](#)  
**Subject:** Re: Great Highway: A Temporary Success Story -  
**Date:** Monday, September 27, 2021 1:22:44 AM

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

My name is Susan Wolff  
My email address is [Yellowsunrose8@gmail.com](mailto:Yellowsunrose8@gmail.com)

Hello Mayor Breed, District Supervisors, SFCTA and SFMTA

I am writing in response to Mayor London Breed's recent decision to reopen the Upper Great Highway. I appreciate this first step to relieving the distress and inconvenience that many residents in the Sunset and Richmond Districts, as well as others throughout the city and beyond, have experienced since the Highway was abruptly closed sixteen months ago. This may be a good start, but it is not enough.

The Upper Great Highway will still remain closed from Friday afternoon until Monday morning and on holidays, during which time all of the impacts of diverting thousands of cars into a quiet, residential neighborhood, and traffic congestion in Golden Gate Park will continue. Cars and trucks will clog quiet streets; pedestrian and traffic safety will be at risk; greenhouse gas emissions due to drivers spending more time in their cars while they detour around the Great Highway will increase; and emergency vehicle response will be slowed, when a few seconds can mean the difference between life and death.

Additionally, there are plans to replace this temporary Emergency Order with a pilot program that could again completely close the Great Highway for two more years, continuing the problems that have plagued the Western part of San Francisco for over a year. And this pilot program will be conducted without an Environmental Impact Report as mandated by the California Environmental Quality Act.

Please resist those who do not want the highway shared, and who have proposed introducing a skatepark, food trucks, and entertainment on the Upper Great Highway in total disregard of the impacts that will be suffered by the residential community, the pristine quiet beach, and the National Wildlife Sanctuary.

I urge you to fully reopen the Upper Great Highway as soon as possible and to keep it open until the City conducts an EIR to study the impacts of any pilot project. Any change to its use should be done only after a full and fair review of all of the impacts resulting from a closure.

As the Sierra Club has written: "Evaluating environmental damage after a Pilot Project has been in place for two years - or in this case a potential total of over 3 years - is a bit like closing the barn door after the horse has escaped."

Please, stop this Highway Robbery. I want you to personally visit the Great Highway on a wet day, when there are no spandex wearing bikers on the road. I want you to stop and start 50 times to



get to your destination. I want you to visit the Great Highway at 2:00 am on a Friday, Saturday or Sunday night when it is empty. TRY IT I DARE YOU!!!!!!!!!!

Thank you for your time.

Sincerely,  
Susan Wolff

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<https://www.openthegreathighway.com/ugh-next-steps>



**From:** [Susan Wolff](#)  
**To:** [Breed, Mayor London \(MYR\)](#); [Board of Supervisors \(BOS\)](#); [Chan, Connie \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Ronen, Hillary](#); [Walton, Shamann \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [ChanStaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff \(BOS\)](#); [Commission, Recpark \(REC\)](#); [Ginsburg, Phil \(REC\)](#); [clerk@sfcta.org](#); [info@openthegreathighway.com](#)  
**Subject:** Re: Great Highway: A Temporary Success Story -  
**Date:** Monday, September 27, 2021 1:17:30 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

My name is Susan Wolff  
My email address is [Yellowsunrose8@gmail.com](mailto:Yellowsunrose8@gmail.com)

Hello Mayor Breed, District Supervisors, SFCTA and SFMTA

I am writing in response to Mayor London Breed's recent decision to reopen the Upper Great Highway. I appreciate this first step to relieving the distress and inconvenience that many residents in the Sunset and Richmond Districts, as well as others throughout the city and beyond, have experienced since the Highway was abruptly closed sixteen months ago. This may be a good start, but it is not enough.

The Upper Great Highway will still remain closed from Friday afternoon until Monday morning and on holidays, during which time all of the impacts of diverting thousands of cars into a quiet, residential neighborhood, and traffic congestion in Golden Gate Park will continue. Cars and trucks will clog quiet streets; pedestrian and traffic safety will be at risk; greenhouse gas emissions due to drivers spending more time in their cars while they detour around the Great Highway will increase; and emergency vehicle response will be slowed, when a few seconds can mean the difference between life and death.

Additionally, there are plans to replace this temporary Emergency Order with a pilot program that could again completely close the Great Highway for two more years, continuing the problems that have plagued the Western part of San Francisco for over a year. And this pilot program will be conducted without an Environmental Impact Report as mandated by the California Environmental Quality Act.

Please resist those who do not want the highway shared, and who have proposed introducing a skatepark, food trucks, and entertainment on the Upper Great Highway in total disregard of the impacts that will be suffered by the residential community, the pristine quiet beach, and the National Wildlife Sanctuary.

I urge you to fully reopen the Upper Great Highway as soon as possible and to keep it open until the City conducts an EIR to study the impacts of any pilot project. Any change to its use should be done only after a full and fair review of all of the impacts resulting from a closure.

As the Sierra Club has written: "Evaluating environmental damage after a Pilot Project has been in place for two years - or in this case a potential total of over 3 years - is a bit like closing the barn door after the horse has escaped."

Please, stop this Highway Robbery.



Thank you for your time.

Sincerely,  
Susan Wolff

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<https://www.openthegreathighway.com/ugh-next-steps>



**From:** [Gee, Natalie \(BOS\)](#)  
**To:** [bglindauer@icloud.com](mailto:bglindauer@icloud.com); [Board of Supervisors, \(BOS\)](#)  
**Subject:** Re: Transportation - Keeping the Great Highway Open to Cars  
**Date:** Friday, September 24, 2021 3:04:01 PM

---

Thank you for your comments, Ms. Lindauer. I'm including the Office of the Clerk to include this in the communications regarding the Great Highway.

**Natalie Gee** 朱凱勤, Chief of Staff  
**Supervisor Shamann Walton, District 10**  
**President, Board of Supervisors**

1 Dr. Carlton B. Goodlett Pl, San Francisco | Room 282  
**Direct:** 415.554.7672 | **Office:** 415.554.7670

-----Original Message-----

From: Bonnie Lindauer <bglindauer@icloud.com>  
Sent: Thursday, September 23, 2021 4:34 PM  
To: Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>  
Subject: Transportation - Keeping the Great Highway Open to Cars

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors Walton, Safai, and Ronen (for zip code 94134):

I just sent in a letter to the editor for the SF Chronicle and I now want to share my strong opinion about keeping the Great Highway open to cars.

I'm as avid a walker as many, and I did enjoy walking on the Great Highway several times while it was closed to cars for almost two years. Now that it's open again to cars, I want to go on record to request that you support keeping it open to cars for the following reasons:

1. the Great Highway is an important north-south artery to relieve traffic from 19th Ave. and Sunset Blvd. It's also not that congested.
2. Walkers and bikers have a paved walkway along the Great Highway to use and walkers always have our magnificent beach to walk on, but cars have nothing except the Great Highway to enjoy the ocean view. I recently had out-of-town guests from Pacific Grove, CA and was unable to get close to the ocean except from Lincoln to the Cliff House.
3. Having the Great Highway open to cars and buses is good for tourism and relieves traffic on the avenues that are close to the ocean.



Thank you for considering my request,  
Bonnie Lindauer, 1408 Birchwood Ct, SF 94134



**From:** [Kira Tabachnik](#)  
**To:** [Breed, Mayor London \(MYR\)](#); [Board of Supervisors, \(BOS\)](#); [Chan, Connie \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Ronen, Hillary](#); [Walton, Shamann \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [ChanStaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [Commission, Recpark \(REC\)](#); [Ginsburg, Phil \(REC\)](#); [clerk@sfcta.org](#); [info@openthegreathighway.com](#)  
**Subject:** Re: Great Highway: A Temporary Success Story -  
**Date:** Thursday, September 23, 2021 5:27:20 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

My name is Kira Tabachnik  
My email address is kirs@gmail.com

Hello Mayor Breed, District Supervisors, SFCTA and SFMTA

I am writing in response to Mayor London Breed's recent decision to reopen the Upper Great Highway. I appreciate this first step to relieving the distress and inconvenience that many residents in the Sunset and Richmond Districts, as well as others throughout the city and beyond, have experienced since the Highway was abruptly closed sixteen months ago. This may be a good start, but it is not enough.

The Upper Great Highway will still remain closed from Friday afternoon until Monday morning and on holidays, during which time all of the impacts of diverting thousands of cars into a quiet, residential neighborhood, and traffic congestion in Golden Gate Park will continue. Cars and trucks will clog quiet streets; pedestrian and traffic safety will be at risk; greenhouse gas emissions due to drivers spending more time in their cars while they detour around the Great Highway will increase; and emergency vehicle response will be slowed, when a few seconds can mean the difference between life and death.

Additionally, there are plans to replace this temporary Emergency Order with a pilot program that could again completely close the Great Highway for two more years, continuing the problems that have plagued the Western part of San Francisco for over a year. And this pilot program will be conducted without an Environmental Impact Report as mandated by the California Environmental Quality Act.

Please resist those who do not want the highway shared, and who have proposed introducing a skatepark, food trucks, and entertainment on the Upper Great Highway in total disregard of the impacts that will be suffered by the residential community, the pristine quiet beach, and the National Wildlife Sanctuary.

I urge you to fully reopen the Upper Great Highway as soon as possible and to keep it open until the City conducts an EIR to study the impacts of any pilot project. Any change to its use should be done only after a full and fair review of all of the impacts resulting from a closure.

As the Sierra Club has written: "Evaluating environmental damage after a Pilot Project has been in place for two years - or in this case a potential total of over 3 years - is a bit like closing the barn door after the horse has escaped."

Please, stop this Highway Robbery.



Thank you for your time.

Sincerely,  
Kira Tabachnik

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<https://www.openthegreathighway.com/ugh-next-steps>



**From:** [Lyuba Sapozhnikova](#)  
**To:** [Breed, Mayor London \(MYR\)](#); [Board of Supervisors, \(BOS\)](#); [Chan, Connie \(BOS\)](#); [Melgar, Myrna \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Ronen, Hillary](#); [Walton, Shamann \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [ChanStaff \(BOS\)](#); [MelgarStaff \(BOS\)](#); [MandelmanStaff, \(BOS\)](#); [Commission, Recpark \(REC\)](#); [Ginsburg, Phil \(REC\)](#); [clerk@sfcta.org](#); [info@openthegreathighway.com](#)  
**Subject:** Re: Great Highway: A Temporary Success Story -  
**Date:** Thursday, September 23, 2021 5:26:37 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

My name is Lyuba Sapozhnikova  
My email address is lyubasap@gmail.com

Hello Mayor Breed, District Supervisors, SFCTA and SFMTA

I am writing in response to Mayor London Breed's recent decision to reopen the Upper Great Highway. I appreciate this first step to relieving the distress and inconvenience that many residents in the Sunset and Richmond Districts, as well as others throughout the city and beyond, have experienced since the Highway was abruptly closed sixteen months ago. This may be a good start, but it is not enough.

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As the Sierra Club has written: "Evaluating environmental damage after a Pilot Project has been in place for two years - or in this case a potential total of over 3 years - is a bit like closing the barn door after the horse has escaped."

Please, stop this Highway Robbery.



Thank you for your time.

Sincerely,  
Lyuba Sapozhnikova

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<https://www.openthegreathighway.com/ugh-next-steps>



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** FW:  
**Date:** Thursday, September 30, 2021 9:15:00 AM

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**From:** Taz Auto Detailing <tazautodetailing@gmail.com>  
**Sent:** Wednesday, September 29, 2021 4:30 PM  
**To:** Haneystaff (BOS) <haneystaff@sfgov.org>; Shamann Walton <info@shamannwalton.com>  
**Cc:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Elsbernd, Sean (MYR) <sean.elsbernd@sfgov.org>; Breed, Mayor London (MYR) <mayorlondonbreed@sfgov.org>; jjmross <jjmross@knoxcrosslaw.com>  
**Subject:**

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

San Francisco Board of Supervisors:  
Attn: Shaman Walton , President  
1 Dr. Carlton B. Goodlett Drive, Rm. 244  
San Francisco CA 94102

September 29,

2021

Dear Honorable Supervisor Shaman Walton & Board:

I come before you today in a response to concerns that have arisen as a result of the most recently issued and executed City of SF vehicle washing contract. I have a more detailed letter outlining my concerns in greater detail, but for the purposes of public comment period today I am summarizing my concerns very briefly. Please see the more complete written documentation for a more detailed view.

I am a local business owner. I own Taz car wash and detail. After more than a decade of patronizing the same car wash vendor (Tower Car Wash), a new bid for services was finally introduced. When I read the new bid requirements, it became clear that this would be a different process than what was previously



done. However, my business is centrally located in a quadrant with sufficient resources to maintain profit for my business. I decided to respond to the bid request.

In securing and reviewing 100's of documents and emails related to this bid through the Freedom of Information Act, I found a number of things peculiar. The things I discovered led me to believe members of the purchasing department, including Mark Farley and members of the Police Department including Rick Yick were working together to serve the goal of undermining and slowing my business, while boosting those of vendors of their personal choice.

Now that a contract has finally been awarded to my business, a new tactic is being employed. Questions about receipt issuance has led purchasing to instruct my clients to have wash services provided outside their assigned quadrant, or to utilize the Concord based mobile wash service. This action negates the new quadrant system before it can ever even be implemented.

I urge you to read my full letter outlining my concerns. I intend to file complaints with the Police Department, Purchasing Department and Ethics Department. I hope you will consider my concerns and ask the departments and individuals involved to be accountable.

My questions for the BOS are summarized below:

1. Why did Mark Farley change the way the Car Wash contract 722121 is administered changed so drastically?
2. What are the implementation instructions for this contract722121?
3. Why was Jay's Auto Body and Sam's On-Site Mobile consulted on the bid language, then allowed to bid on and be awarded the same bid?
4. Why was Mark Farley (Purchasing) and Rick Yick (SFPD Fleet Manger) allowed to share pricing, and so involved in securing and encouraging vendors of their choice?
5. Why was I told I needed a 1 Million dollar bond that I did not need?



6. What was the reason for the delay in contract signing number 722121?
7. If the contract says the vendor "shall" service the vehicles in their quadrant, how does the purchasing department override that?
8. I would like Dana Ketchum and David Dunham come in front of the San Francisco Board of Supervisors to answer why Park and Rec would charge a vendor 6% of their gross revenues, and why Mr. Dunham is allowed to bully the vendors, destroy their property and to make racial comments.

I look forward to a response to these outlined concerns. Please respond within 5 business days.

Sincerely,

Lamont Johnson  
Owner, Taz Auto Detail

CC: Mayor's Office



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** FW: 19 route.  
**Date:** Thursday, September 30, 2021 9:16:00 AM

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**From:** Kaylee Stein <klasz2019@gmail.com>  
**Sent:** Saturday, September 25, 2021 4:57 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** 19 route.

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How they have the 19 route being detoured to Polk via Turk. I elect to permanently keep the route the way it detours up through Polk from Larkin.



**From:** [Mchugh, Eileen \(BOS\)](#)  
**To:** [BOS-Supervisors](#); [BOS-Legislative Aides](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [PEARSON, ANNE \(CAT\)](#)  
**Subject:** Acting Mayor Notice September 29, 2021 - October 4, 2021  
**Date:** Tuesday, September 28, 2021 7:28:00 PM  
**Attachments:** [09.29-10.4 Melgar Mandelman.pdf](#)

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Hello,

The Office of the Mayor submitted the attached Memo designating Supervisor Myrna Melgar as Acting-Mayor from Wednesday, September 29, 2021, at 1:25 p.m. until Friday, October 1, 2021, at 11:59 p.m. Further designation Supervisor Rafael Mandelman as Acting-Mayor from Saturday, October 2, 2021, at 12:00 a.m. until October 4, 2021 at 9:25 p.m.

In the event the Mayor is delayed, Supervisor Mandelman will continue to be Acting-Mayor until the Mayor returns to California.

Thank you,

Eileen McHugh  
Executive Assistant  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244  
San Francisco, CA 94102-4689  
Phone: (415) 554-7703 | Fax: (415) 554-5163  
[eileen.e.mchugh@sfgov.org](mailto:eileen.e.mchugh@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)

---

**From:** Kittler, Sophia (MYR) <sophia.kittler@sfgov.org>  
**Sent:** Tuesday, September 28, 2021 6:04 PM  
**To:** BOS-Operations <bos-operations@sfgov.org>  
**Cc:** Elsbernd, Sean (MYR) <sean.elsbernd@sfgov.org>; Melgar, Myrna (BOS) <myrna.melgar@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Temprano, Tom (BOS) <tom.temprano@sfgov.org>; Low, Jen (BOS) <jen.low@sfgov.org>; Sun, Selina (MYR) <selina.sun@sfgov.org>; Bruss, Andrea (MYR) <andrea.bruss@sfgov.org>  
**Subject:** Acting Mayor Notice 9/29 - 10/4

Hello Clerks and Department Heads,

Please see the attached letter designating Supervisor Myrna Melgar as Acting-Mayor effective Wednesday, September 29 at 1:25 p.m. until 11:59 p.m. on Friday, October 1, 2021. I further designate Supervisor Rafael Mandelman as Acting-Mayor from 12:00 a.m. on Saturday, October 2 until 9:25 p.m. on Monday, October 4.



Sophia

Sophia Kittler

Liaison to the Board of Supervisors

Office of Mayor London N. Breed

(415) 554 6153 | [Sophia.kittler@sfgov.org](mailto:Sophia.kittler@sfgov.org)



OFFICE OF THE MAYOR  
SAN FRANCISCO



LONDON N. BREED  
MAYOR

September 28, 2021

Ms. Angela Calvillo  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

Dear Ms. Calvillo,

Pursuant to Charter Section 3.100, I hereby designate Supervisor Myrna Melgar as Acting-Mayor effective Wednesday, September 29, 2021 at 1:25 p.m. until 11:59 p.m. on Friday, October 1, 2021. I further designate Supervisor Rafael Mandelman as Acting-Mayor from 12:00 a.m. on Saturday, October 2, 2021 until 9:25 p.m. on Monday, October 4, 2021.

In the event I am delayed, I designate Supervisor Rafael Mandelman to continue to be the Acting-Mayor until my return to California.

Sincerely,

A handwritten signature in blue ink that reads "London Breed".

London N. Breed  
Mayor

cc: Mr. Dennis Herrera, City Attorney



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Carroll, John \(BOS\)](#)  
**Subject:** FW: 9-30-21 GAO BOS PUBLIC COMMENT VNBRT GRAND JURY REPORT  
**Date:** Thursday, September 30, 2021 11:18:00 AM  
**Attachments:** [9-30-21 GAO BOS PUBLIC COMMENT VNBRT GRAND JURY REPORT.pdf](#)

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**From:** Mary Miles <page364@earthlink.net>  
**Sent:** Thursday, September 30, 2021 7:17 AM  
**To:** Carroll, John (BOS) <john.carroll@sfgov.org>  
**Cc:** ChanStaff (BOS) <chanstaff@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** 9-30-21 GAO BOS PUBLIC COMMENT VNBRT GRAND JURY REPORT

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

**FROM:**  
Mary Miles (SB #230395)  
Attorney at Law for Coalition for Adequate Review  
364 Page St., #36  
San Francisco, CA 94102

**TO:**  
John Carroll, Clerk, and Members of  
Government Audit and Oversight Committee  
San Francisco Board of Supervisors  
Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

**BY EMAIL TO:** [john.carroll@sfgov.org](mailto:john.carroll@sfgov.org)

**DATE:** September 30, 2021

Dear Mr. Carroll and Committee Members:

Attached is Public Comment on GA&O Agenda Items 8 and 9 on today's Committee Agenda (File Nos. 210702 and 210703). This Comment supports and asks this Committee and the Board to approve all of the Grand Jury Report Recommendations and Findings on the 2020-2021 Civil Grand Jury Report entitled "Van Ness Avenue: What Lies Beneath," and to order their implementation.

This Commenter is told it is too late to include these items in the Committee Packet for today, but asks that the Comment be added to the file and distributed with the Board Packet, and considered by this Committee and the Board. Thank you.



Mary Miles



FROM:

Mary Miles (SB #230395)  
Attorney at Law for Coalition for Adequate Review  
364 Page St., #36  
San Francisco, CA 94102

TO:

John Carroll, Clerk, and Members of  
Government Audit and Oversight Committee  
San Francisco Board of Supervisors  
Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

BY EMAIL TO: [john.carroll@sfgov.org](mailto:john.carroll@sfgov.org)

DATE: September 30, 2021

**PUBLIC COMMENT SUPPORTING APPROVAL OF ALL GRAND JURY REPORT  
RECOMMENDATIONS AND FINDINGS ON THE 2020-2021 CIVIL GRAND JURY  
REPORT ENTITLED "VAN NESS AVENUE: WHAT LIES BENEATH"  
GOVERNMENT AUDIT AND OVERSIGHT COMMITTEE, SEPTEMBER 30, 2021,  
AGENDA ITEMS 8 AND 9**

This Comment SUPPORTS approval of all recommendations and findings of the Grand Jury's Report entitled "Van Ness Avenue: What Lies Beneath." Due to time constraints, the documents supporting this Comment are not all included, but as time permits will be submitted to the Board before its final disposition.

The Grand Jury's meticulous, fact-supported investigation has resulted in a valuable document of the errors that have resulted in the disaster of the City's Van Ness Bus Rapid Transit ("VNBRT") Project. Those errors fall squarely on the San Francisco Municipal Transportation Agency ("MTA"), which designed, contracted, and implemented the VNBRT Project that cuts through the cultural and geographic center of San Francisco, killing businesses, cultural amenities, restaurants, and quality of life for every resident, visitor and traveler on Van Ness Avenue/US Highway 101.

Incredibly, MTA, through its Director, Jeffrey Tumlin, disagrees with and refuses to adopt several of the Grand Jury's Recommendations, and, as to those he agrees with, provides no timeline for when they will be implemented.

Mr. Tumlin refuses to implement Grand Jury Recommendations R2, R4, R5, R6, and R10. This Board should assure that those Recommendations are adopted and implemented. The Board should also support and recommend adoption of the Grand Jury's Findings.



**I. THIS BOARD SHOULD APPROVE AND ORDER MTA TO IMPLEMENT ALL OF THE GRAND JURY'S RECOMMENDATIONS REGARDLESS OF MR. TUMLIN'S REFUSAL TO DO SO**

This Board should approve and order MTA to implement all of the Grand Jury's Recommendations, including those that Mr. Tumlin refuses to implement as follows.

**R2: "By June 2022, the City should adopt a policy that all capital project sponsors publish, before proceeding to their construction phase, an itemized assessment of derisking activities actually performed." (Ref. to Findings F1, F2, F3, F4, F6, F9]**

**TUMLIN RESPONSE:** "Will not be implemented...Speaking for the Agency and not the City as a whole, the SFMTA believes that such information may allow bidders to take advantage of the bid process, as it could allow contractors to unbalance bids or give them an unfair advantage in negotiations."

**PUBLIC COMMENT:** Mr. Tumlin's answer is dead wrong, and even contradicts his own answers, which blame the contractor instead of MTA for the failure to notice the risks involved in the MTA's "LPA" project. Tumlin falsely claims that MTA "gave significant consideration to the potential impacts of utility replacement during the planning process." Tumlin then blames the contractor for not doing "significant amounts of potholing 30 days in advance of any installation."

In 2013 MTA created its Locally Preferred Alternative ("LPA") of the VNBRT Project, long before it contracted for implementation of the Project. The LPA received *no* environmental review, since MTA planned it in total secrecy and announced it *after* the close of public comment on the Project EIR/EIS. (EXH. A.)

The "LPA," unlike other alternatives, planned a center-running BRT instead of a side-running BRT. The LPA thus required removing all of the utilities located in the center of Van Ness Avenue/US Highway 101, including water, sewer, and other lines that would have to be replaced because of the weight of buses running in the center of the highway. (EXH. A.)

The LPA also required removing all of the unique, 100-year-old street lamps that lined Van Ness, and installation of ugly generic poles with faux deco lamps in their place so that trolley wires could be supported to the center (instead of the sides) of Van Ness. The LPA also required removing all of the trees in the median and on the sidewalks, and nearly all of the parking on Van Ness. MTA was directly responsible for the delays caused by MTA's LPA "option," which was shoved down the public's throat by MTA and City's SFCTA with no opportunity for public comment or accountability. MTA made no effort to accurately account for the additional time and expense of its disastrous LPA BRT on Van Ness, before, during, or after the Walsh Contract, signed in 2015.

Mr. Tumlin's worry about the possibility that contractors might "take advantage of the bid process" or get "an unfair advantage in negotiations" is exactly what happened here-- *without* the Grand Jury's excellent recommendation that City agencies, including MTA should, before proceeding with construction publish "an itemized assessment of derisking activities actually performed." (R2)

Here, the Walsh Corporation took advantage of the flawed CM/GC contract to take advantage of the entire process by submitting a low bid for a first phase consisting of *no*



construction but only paper planning, assuring award of both phases of the Contract, and only after that submitting a high bid for the actual construction work with *no competitive bidding for the actual construction*, a bid that Walsh (and MTA) later claimed did not cover the full additional cost of constructing MTA's LPA VNBRT.

The fact that Walsh took advantage of MTA's inexperience at CM/GC contracts, is precisely why the Grand Jury's Recommendation R2 is important and necessary, contrary to Tumlin's claim.

This Board should protect the public from any repetition of MTA's mistakes by adopting the Grand Jury's Recommendation R2.

**R4: "The Board of Supervisors should direct all City departments to adopt a policy that all projects that involve underground work in the City's main corridors include, as part of the design process, the use of exploratory potholing, or another equivalent industry best-practice to identify unknown underground obstructions adhering to CI/ASCE 38-02 ("Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data Quality Level A. This policy should take effect for all contracts signed after January 1, 2022, and the work should be required to be performed before final construction terms or prices are agreed to." (Ref: F1, F4, F6, F7.)**

**TUMLIN RESPONSE:** "Will not be implemented because it is not warranted or is not reasonable. Speaking for the Agency, and not the Board of Supervisors, the SFMTA believes that one policy for all projects, across all departments, is impractical. Each department must make a determination on a project-by-project bases based on the risk assessment. Currently, all major City projects that involve underground work in main corridors do incorporate potholing, or other equivalent appropriate industry practices to identify unknown underground obstructions. The City also works closely with private utilities (e.g., PG&E, Comcast, ATT) during design phase of major projects to account for their utilities, whether active, deactivated, or abandoned."

**PUBLIC COMMENT:** Tumlin rejects the Grand Jury's highly reasonable and completely warranted Recommendations, which recommend that finding out where the underground utilities are must occur at the design level and precede any agreement on construction terms or prices.

The problem of *not* doing so is painfully illustrated by the saga of claimed *surprises* encountered underneath the surface of Van Ness Avenue, requiring years of delay and tens of millions to deal with, *after* Walsh had torn apart the entire surface of Van Ness. At that point neither Walsh nor MTA apparently had a clue of what lay beneath that devastated landscape. Due to MTA's LPA, that entire landscape and everything below it had to be replaced and moved so that MTA could have its LPA VNBRT Project.

Mr. Tumlin provides no justification for not adopting the protective safeguards in RF, and this Board should adopt R4 over his senseless refusal and order MTA and other City agencies to implement it to avoid another disaster like the VNBRT Project.

**R5: "By June 2022, and before entering into future CMGC relationships, the Board of Supervisors should direct all City departments to adopt, publish, and enforce all future contracts industry-standard best practices for management of CMGC projects." (Refs. F8, F10, F11, F12, F13.)**

**TUMLIN RESPONSE:** "Will not be implemented because it is not warranted or is not reasonable. 'Best practices' are a list of general recommendations based on general industry



practices. Speaking for the Agency, and not the Board of Supervisors, the SFMTA will review recommended best practices for future CM/GC projects and apply them, as applicable and appropriate. It is up to the individual department to determine the applicability of 'best practices' to their projects."

**PUBLIC COMMENT:** After blaming the Contractor for delays and expenses that were caused by adopting MTA's "LPA" without knowing or disclosing what lay beneath the surface of Van Ness Avenue, and MTA's CM/GC Contract with Walsh, Tumlin now refuses to implement the common sense R-5 Recommendation of the Grand Jury to assure best practices *before* any future CM/GC contracts.

This Board should adopt Recommendation R5 and require MTA to implement it to prevent further disastrous errors by MTA on major construction contracts.

**R10 "By June 2022, the City should adopt a policy that any public communication about planned or in-progress capital project that includes disruption of public services or right-of-way should include itemized assessments of risk to projected costs and duration." (Ref. F1, F2, F6, F9)**

**TUMLIN RESPONSE:** "Will not be implemented because it is not warranted or is not reasonable. A majority of SFMTA projects are funded by the FTA, which requires the project to assess and monitor project risks in construction on a periodic basis. The department can provide a general list of project risks in public communications, to inform the public of the project status and projected substantial completion. Publishing itemized costs association with changes risk or project duration could negatively impact the bidding or negotiation process." (*sic*)

**PUBLIC COMMENT:** Mr. Tumlin, an unelected official with zero accountability to the public, refuses to implement the Grand Jury's Recommendation R10 to make MTA accountable on this Project and other large capital projects by itemized assessments of risk to projected costs and duration. This Board should overrule Mr. Tumlin, adopt Grand Jury Recommendation R10, and order MTA to comply with it forthwith.

**SUMMARY:** The Grand Jury's excellent Report and reasoned recommendations should be taken as an accurate and constructive summation of the mess MTA has made of the Van Ness corridor, why MTA is to blame, and why the Grand Jury's recommendations should be approved and implemented as directed. This Board should reject Mr. Tumlin's refusal to implement several Grand Jury Recommendations, should adopt those recommendations, and should order MTA to implement those recommendations as directed or sooner.

## **II. MTA'S CONTENTIOUS DISAGREEMENT WITH THE GRAND JURY'S FINDINGS IS WITHOUT MERIT OR SUPPORT IN THE FACTUAL RECORD OF THE VAN NESS BRT PROJECT. THIS BOARD SHOULD ADOPT AND IMPLEMENT ALL OF THE GRAND JURY'S FINDINGS**

This Comment OBJECTS to MTA's "Finding Responses" to the Grand Jury Report. For the following reasons MTA's responses to the Grand Jury Report should be rejected, and those Findings should be adopted by this Board.

**A. MTA'S Responses Should Have Been Drafted By A Neutral Entity With Expertise, Not By The Director Of The MTA**



The contentious and argumentative "responses" of MTA Director Jeffrey Tumlin are inappropriate on their face and fail to address the documented and valid findings and recommendations of the Grand Jury.

In view of Mr. Tumlin's role in the Van Ness BRT Project that is the subject of the Grand Jury's Report, his responses conflict with his ethical obligations and the neutrality required to objectively respond to the Grand Jury's findings and they fail to serve the public.

### **1. Tumlin Has A Conflict Of Interest On The Van Ness BRT Project**

Before being appointed MTA Director in November, 2019, Mr. Tumlin was the director and principal of a private profit-making entity, Nelson\Nygaard global consulting firm that was instrumental in creating studies of transportation, traffic, transit, and parking studies under contract and/or subcontract for the City and County of San Francisco's ("City's") Planning Department on their Market-Octavia Project.

City Planning's Market-Octavia Project first proposed the Van Ness BRT Project as part of the "community benefits plan" of the Market-Octavia Project. Mr. Tumlin signed several of those Nelson\Nygaard studies. (See, e.g., *Better Neighborhoods 2002 Market/Octavia Study Area Existing Conditions Report*, August 2001.) Nelson\Nygaard also prepared the transit analyses in the *Market & Octavia Plan EIR Transportation Study*, pages 15-50. That Study recommended the VNBRT Project. (*Id.*, Appendix, Market & Octavia Neighborhood Plan Transportation Project List, page 3.)

In 2020, in his new role as Director of MTA, while riding his electric bicycle, flipping off and cursing at drivers stuck in the congested traffic there that resulted from the Market-Octavia Project, Mr. Tumlin denounced the transportation centerpiece of that Project, "Octavia Boulevard."<sup>1</sup>

### **2. Since Being Appointed MTA Director, Tumlin Has Himself Signed Contracts Extending The Time And Agreeing To Millions More Under The CM/GC Contract For The Van Ness BRT Project**

Remarkably, Mr. Tumlin, while still at the helm of the private for-profit Nelson\Nygaard consulting firm, was hired by the City in November, 2019, as Director of SFMTA at a base salary of \$342,483 per year in public money. (See MTA Board, Nov. 19, 2019, Staff Report and Res. No. 191119-44; Form 700 (Statement of Economic Interests), January 15, 2020, Jeffrey Tumlin, [showing income of more than \$100,000 from Nelson\Nygaard].)

MTA originally insisted on the flawed CM/GC Contract with a Chicago-based contractor Walsh Construction ("Walsh"). MTA had no prior experience with a CM/GC Contract for a capital Project as large as the VNBRT Project.

The CM/GC Contract was a recipe for disaster, since it issued an RFP only for its initial phase, which was to spend a year creating a paper plan for the later construction phase. The

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<sup>1</sup> (San Francisco Chronicle, April 2, 2020: Michael Rosen, "'We screwed this one up' SFMTA director Jeffrey Tumlin weighs in on Octavia Boulevard," ['We screwed this one up': SFMTA director Jeffrey Tumlin weighs in on Octavia Boulevard \(sfgate.com\)](https://www.wired.com/story/cities-without-cars-san-francisco-jeff-tumlin/?utm_source=onsite-share&utm_medium=email&utm_campaign=onsite-share&utm_brand=wired); *Wired*, April 1, 2020: Adam Rogers, "Build Cities for Bikes, Buses, and Feet--Not Cars," [HTTPS://WWW.WIRED.COM/STORY/CITIES-WITHOUT-CARS-SAN-FRANCISCO-JEFF-TUMLIN/?UTM\\_SOURCE=ONSITE-SHARE&UTM\\_MEDIUM=EMAIL&UTM\\_CAMPAIGN=ONSITE-SHARE&UTM\\_BRAND=WIRED](https://www.wired.com/story/cities-without-cars-san-francisco-jeff-tumlin/?utm_source=onsite-share&utm_medium=email&utm_campaign=onsite-share&utm_brand=wired)



Contract would then proceed to the construction phase, for which there was *no competitive bidding*. By bidding low on the first, "planning" phase of the Contract, Walsh cleverly secured from MTA the lucrative second (construction phase) of the CM/GC Contract.

The Grand Jury recommends that MTA should not again use a CM/GC contract. Yet Tumlin now rejects that recommendation. (MTA Responses, R5, R6.)

That Contract with Walsh was awarded to the lowest bidder for an initial year-long "study," which included *no construction*. MTA then awarded Walsh the second part of the CM/GC Contract for the actual construction of the Project with *no competitive bidding* as a "modification" of the CM/GC Contract.

In the long, fantastically destructive and expensive saga of the VNBRT Project, Tumlin's status as MTA Director enabled him to sign contracts *extending the time and awarding more public money* to the Walsh Construction Corporation, long after it was clear that Walsh construction had misled MTA with the CM/GC contract. Incredibly, the Board of Directors of MTA unanimously approved all of Tumlin's actions amending the Walsh Contract. (See, "Contract Modification No. 9," February 18, 2020 [awarding Walsh another \$633,003.16]; "Contract Modification No. 10," May 19, 2020 [another \$2,187,655.23 to Walsh].)

The Walsh Contract, of course, does *not* include the *thousands* of staff hours of City's MTA, SFCTA, PUC, DPW, and City Attorneys, and it does *not* include the cost of the consultants hired to do the environmental impact report/statement ("EIR/EIS") and City attorneys. If those expenses were included, the cost of the VNBRT Project would easily exceed a half billion public dollars.

Now, Mr. Tumlin defends the delays resulting from the construction of the VNBRT Project, ignoring MTA's central role in them and the additional cost of the Project that was directly due to MTA's demand that the Project be placed in the *center* of Van Ness Avenue/US Highway 101 instead of on the sides of Van Ness. MTA's demand for a "Locally Preferred Alternative" ("LPA"), was a political decision that directly resulted in removing all of the water, sewer, and electrical infrastructure on the full two miles of the VNBRT Project, from Lombard to Mission Street.

MTA further insisted on the flawed and later botched CM/GC Contract with Walsh. That Contract with Walsh Construction was awarded to the lowest bidder on the initial part, which included *no construction*, and then awarded with *no competitive bidding* Walsh hundreds of millions for the construction work.

Mr. Tumlin should be recused from any participation in responding to the Grand Jury findings. In view of the above circumstances, he should play no role in responding to the Grand Jury's findings.

## **B. MTA'S Responses To The Grand Jury's Findings Are Inaccurate And Unsupported By the Factual Record Of The Van Ness BRT Project**

**F1 Finding:** "The delays in completion of the Van Ness BRT Project were caused primarily by avoidable setbacks in replacement of the water and sewer infrastructure.

**TUMLIN'S RESPONSE:** "Disagree partially. Many of the initial delays on the Project occurred during construction of the underground phase of the Project; however, some of these delays were avoidable and some were unavoidable."



**COMMENT: All of the delays and higher costs were clearly avoidable, since they were built into MTA's design and were disclosed long before the Walsh CM/GC Contract**

MTA was fully aware of the expense and delays, because they were disclosed both in the EIR/EIS on the VNBRT Project and in public comment on the Project in 2013-- long before the contract with Walsh in 2015. (See EXHIBIT A, Public Comment; see also SFCTA Res. No. 14-18, September 10, 2013 [adopting VNBRT Project]; MTA Board Resolution 15-108, awarding CM/GC Contract No. 1289 to Walsh on July 7, 2015.)

The BRT Project was never accurately described, but instead was promoted initially as "alternatives." *After* environmental review was closed, MTA came up with what it called a "Locally Preferred Alternative" ("LPA"), a variation with a center-running alternative devised in secrecy and never included in the Project's environmental review. (EXH. A, pp. 5-9, 13, 17, 33, 34.)

The LPA required the total wreckage of Van Ness Avenue/US Highway 101 that ensued, since it required the (otherwise unnecessary) removal of water and sewer lines running through the center of Van Ness Avenue. The EIS states that existing center infrastructure would not stand the weight of the proposed LPA in the center.

The LPA also required replacement of the electrical infrastructure, so that trolley wires could reach transit in the center instead of on the sides of Van Ness.

Thus, for MTA's LPA BRT, the graceful 100-year-old lamp posts were to be demolished and replaced with ugly generic metal posts to accommodate lines to the center instead of sides of the highway for the buses. The LPA also required removing all of the vegetation in the center medial of Van Ness, many of the trees on both sides of Van Ness, and nearly all of the parking on Van Ness.

These facts were well-known to the City's MTA (which devised the LPA), the SFCTA (the lead agency), and this Board, since public comment was submitted *before* the Project approval by both MTA and SFCTA in 2013. (See EXHIBIT A.)

The Grand Jury's Finding F1 is correct, since all of the delays caused by replacement of the water and sewer lines could have been avoided by choosing the option of a side-running BRT instead of the LPA.

The LPA was approved in 2013, *before* the flawed contract with Walsh was signed in 2015.

**TUMLIN'S RESPONSE (cont'd):** "The City and the contractor often share responsibility for delays, and some of the delays were due to third parties."

**COMMENT:** What third parties does Mr. Tumlin blame? And why? The LPA VNBRT Project was highly controversial. Indeed the City's Public Utilities Commission and Department of public Works raised serious concerns and repeatedly stated their opposition to a center median BRT. The Mayor's Office of ADA/Disability Access also raised significant concerns and opposed it. (EXH. A, p. 10.) But those were City agencies, not "third parties."

**TUMLIN'S RESPONSE (cont'd):** "Understanding the delay on this project involves looking at the contractor's initial claim for 279 days of delay and its pending claim for 344 days. As to the initial claim for 279 days, the parties agreed that 135 were compensable (City's responsibility) and 144 were noncompensable (not the City's sole responsibility). In other words, the contractor



acknowledged that it shared responsibility for more than half of the delay days. As to the pending claim for 344 days, the contractor failed to provide the required scheduling analysis; thus, the City has been required to undertake its own analysis of the delay. This analysis is *currently underway*."

**COMMENT: This Board should not approve MTA's response without receiving the complete "analysis" that is "currently underway" referred to by Tumlin.**

In fact, this Board should carefully examine the entire history of the award of the Walsh contract, which was unlike other MTA contracts that preceded it on major capital projects. Instead, the contract began as a CM/GC contract that would have two phases. In the first phase the contract recipient would bid on an initial phase to come up with its approach to the actual construction. In its bid, Walsh, unlike the other bidder, planned to tear up the entire two-mile length of Van Ness Avenue from Lombard to Mission Street for the entire duration of the construction, instead of working on block-long segments. That proposal alone should have given MTA/the City pause in awarding Walsh the contract.

Walsh slightly underbid its competitor for the first phase, with MTA awarding the *whole* CM/GC contract based solely on Walsh's low bid for the first phase. Thus, by submitting the lower of two bids or the initial paper phase, Walsh enjoyed a year of drawing pictures of Van Ness Avenue at \$800,000 in public expense, but did no actual work on the construction.

Under the CM/GC Contract, MTA then awarded Walsh the lucrative construction contract ***with no competitive bidding***. Instead, the MTA Board adopted a Resolution No. 16-110 to simply "*modify*" the CM/GC Contract to award Walsh another \$193,027,555 for the construction. (See MTA Board Resolution No. 16-110, August 16, 2016.)

Thereafter, the trashing of two miles through the center of San Francisco ensued for six long years, while businesses failed, including restaurants, movie theaters, and other businesses where no one could park or approach. MTA chose that course by designing and approving its LPA, instead of the much less impactful side-running alternative, or the No-Project alternative.

At least one knowledgeable MTA official reported on Walsh's failure to timely fulfill its contractual obligations. Incredibly, MTA paid compensation to Walsh for that failure.

This Board should *not* approve MTA's/Tumlin's response and should agree and adopt the Grand Jury's Finding F1.

**F2: Finding: "The potential impact of utility replacement on the cost and duration of the overall project was given insufficient consideration in the initial planning process."**

**TUMLIN RESPONSE:** "Disagree partially The SFMTA gave significant consideration to the potential impacts of utility replacement during the planning process."

**COMMENT: Tumlin's response is false. MTA adopted the LPA *after* the planning and environmental review process, with full knowledge of its drawbacks**

The Project's false goal was to slow vehicle traffic and cause congestion so that buses would compete in speed with the slowed vehicle transportation. (EXH. A.)

Mr. Tumlin falsely claims that the contractor participated in the design of the "Locally Preferred Alternative" ("LPA"). The LPA was the result of a collaboration in total secrecy between the MTA and SFCTA.



The LPA received *no* environmental review and was proposed and adopted *after* the close of public comment on the EIS/EIR on the Project.

The LPA was approved by SFCTA in September, 2013, which dictated the course of the construction of the Van Ness BRT Project.

The CM/GC Contract with Walsh was approved by the MTA Board on July 7, 2015. MTA though MTA had *no* experience with that type of contract on any comparably large capital project. The CM/GC contract was flawed on its face. MTA issued an RFP on the initial phase of the Project and awarded it to Walsh based not on a construction bid but on a bid for planning the construction on paper with no on-ground excavation or planning.

MTA then awarded another nearly \$200 million to Walsh for the construction phase on August 16, 2016, with *no competitive bidding*, but under the CM/GC contract, only a "modification" of the 2015 Contract. Thus, under MTA's CM/GC Contract, by submitting the lowest bid for the initial phase, the Chicago-based Walsh corporation would get the second (construction) phase regardless of costs for the second phase.

Mr. Tumlin's responses entirely ignore that MTA manufactured their "LPA," which was *not* reviewed in SFCTA's EIS/EIR, and was *not* publicly released until after public comment was closed on the EIR. Endorsed by the San Francisco Bicycle Coalition, the "LPA" demanded that four travel lanes on Van Ness Avenue (Highway 101) and the entire center median would be converted into a red-painted 4-lane expanse of pavement, the Van Ness BRT.

According to the EIS/EIR on this Project, the replacement of the pipelines located in the center of Van Ness Avenue would not have required replacement if the side-running alternatives had been adopted. By creating its LPA, MTA assured massive reconstruction and relocation of sewer and water lines, which would not have been necessary with the side-running alternatives, or the no project alternative.

This Board should approve the Grand Jury's F2 Finding and reject Mr. Tumlin's unsupported disagreements.

**F3 Finding: "The potential impact of utility replacement was known to City engineers to be a major risk, but was only considered a moderate risk and assigned no effective mitigation in the official risk register."**

**TUMLIN RESPONSE:** "Disagree partially. The Contractor, City Staff, and an independent consultant cooperated in preparing the risk register and because of the mitigation measures being taken this was classified as a moderate risk. Several mitigation measures were included in the Specifications, such as requiring potholing 30 days in advance of the work, and providing the contractor with copies of deactivated utility drawings as reference documents. The Contractor failed to perform the required potholing in a timely fashion, at times attempting to dig potholes within hours of trenching to install utilities. Contractor's inability to properly anticipate/manage/mitigate utility issues during construction was the primary contributor to added contract costs and duration."

**COMMENT:** It is true that the contractor knew the overall LPA Project design from the start, since that was the Project approved by MTA and SFCTA. The LPA Project, however, was the reason why vast infrastructure replacement was required, including relocating two miles of sewer and water lines, electrical infrastructure and streetlamps, removal of trees and irreplaceable artifacts, to place the BRT in the center of Van Ness/US Highway 101, instead of on the sides.



The LPA, unlike the side-running alternatives, also required destruction of the historic lampposts that had lined Van Ness for 100 years, to replace them with generic higher posts to support wires reaching buses in the center instead of the sides of Van Ness Avenue. Thus the delays were built into City's LPA.

That huge restructuring would not have been necessary with the side-running BRT alternatives or with the No Project alternatives. However, the City, not the contractor was responsible for that mistaken decision.

*MTA's creation of the LPA design* should itself have been preceded by specific exploration and perfect understanding of where those pipes were located. Instead of that necessary knowledge, MTA chose the LPA alternative *without* that critical knowledge, and *without* the input of City engineers, and then MTA proceeded to contract its implementation with a risky CM/GC Contract.

Even the City's Public Utilities agency ("SFPUC") and Department of Public Works expressed grave misgivings about the LPA design early in the process. (EXH. A, p. 10.) The lack of funding for the much more expensive LPA Project, was also apparent, *before* Walsh (the chosen Contractor) began its full-scale tearing up of the entire two miles of Van Ness Avenue from Lombard to Mission Street, beginning with bulldozing the entire center median.

After Walsh's immediate and rapid destruction of the entire Project area, actual construction came to a halt.

The City failed to enforce and continued to "modify" the Contract at least 10 times, it allowing delays and awarding more millions, and even funded bonds. Construction was delayed for *years* due to Walsh's disagreement about who would pay electrical and other subcontractors.

**F4 Finding: "Project timelines could not be estimated accurately because documents did not reflect the extent and location of underground utilities accurately."**

**TUMLIN:** "Disagree partially. Project timelines for projects with extensive underground utilities are often difficult to estimate because no matter how extensive the pre-construction investigation, there will always be unknowns. Contractors experienced in such work know that they must often deal with the unexpected. The project timeline prepared during pre-construction was a product of City staff, Contractor, and an independent consulting team based on the best information available."

**COMMENT:** See Comment to F1, F2, and F3, *ante*. The design of the Project that was a "product of City staff" dictated the expense, delays and "timeline" of the construction.

The CM/GC contract then contributed to the disastrous result of the City's foolish, politically motivated planning, which had nothing to do with infrastructure, but only delaying cars. There should have been no "unknowns" when City approved the LPA in 2013 and signed the Contract in 2015.

**TUMLIN:** "As construction started, the project team realized that some third party utilities, such as PG&E, provided inaccurate or incomplete information on their existing utilities. The contract contained an action plan to instruct the contractor for dealing with unknown utilities, as well as contingency for different site conditions. However, the Contractor did not take the lead in field investigation and coordination with third party utilities, although they were contractually



obligated to do so as a CM/GC...Contractor's initial construction sequence plan was also unrealistic. All these issues contributed to an inaccurate project timeline projection."

**COMMENT:** There is no excuse for Mr. Tumlin's unsubstantiated claim that MTA suddenly "realized" it had inaccurate and incomplete information before MTA created, promoted, and approved the LPA. As noted, MTA was fully aware that the LPA required total excavation and replacement of water, sewer, and electrical infrastructure on Van Ness *before* it approved the Project in 2013, and *before the City approved the CM/GC contract with Walsh* in 2015, and *before* construction began. (EXH. A, p 10.)

After MTA released the RFP for the CM/GC Contract, two bids were received, one from Ghilotti, and one from Walsh. The RFP is only for the first phase of a two-part CM/GC contract. By underbidding Ghilotti on the *first* phase, which included *no construction* but only design drawings and public relations, Walsh won the contract. The actual *construction* contract was never released for bidding but was **awarded to Walsh with no competitive bidding** under the CM/GC contract, as a contract "modification."

MTA's politically-motivated rush to begin constructing the Project and its lack of experience with CM/GC contracts directly led to the ensuing disaster on Van Ness. As the Grand Jury notes, MTA should bear the blame for getting the City into a hopeless position requiring the City (the public) to pay and pay again for 10 contract modifications.

Meanwhile restaurants and businesses, and cultural amenities, including a premier art movie theater, closed, nearly all the trees were removed, irreplaceable artifacts were demolished, and the historic streetlamps were demolished to make way for the garish 4-lane red-cement BRT expanse, with generic ugly stock fixtures marking San Francisco as permanently tasteless.

**F5 Finding:** "The evaluation rubric for preconstruction contract bids weighted cost too heavily, as compared to technical expertise, even after project-specific legislation allowed for a lower weight to be assigned for cost."

**TUMLIN:** "Agree. Such contracts should be evaluated using a best value rubric, with technical expertise weighted high. At the time, the Agency was unable to lower the points given to cost in the legislation submitted to the Board of Supervisors."

**COMMENT:** Although Tumlin agrees, as should this Board, MTA was fully aware of what it was getting into with the CM/GC contract. Indeed, public comment warned of the inevitable problem with the contract.

**F6 Finding:** "Practical work during preconstruction that could have derisked the subsequent construction phase of the project was insufficient."

**TUMLIN:** "Disagree partially. The majority of the utility conflicts that resulted in additional contract time were at intersections. Potholing within intersections typically requires the intersection to be closed in order to provide a safe barrier for the workers from traffic. Given that Van Ness Avenue is a State highway, this would have been extremely difficult to occur. Typically, this level of potholing is reserved for the construction phase when traffic can be effectively closed/diverted. Ground-penetrating radar (GPR) during the design phase had several issues with accuracy and reliability of the data. Recent improvements in GPR provide for a more reliable tool for future projects."



**COMMENT:** Tumlin's claim ignores that 1) MTA failed to do the necessary exploratory work *before approving the LPA*; and 2) Walsh had a full year under the paid CM/GC contract to do exploratory work.

After approving the Project in 2013, and after approving the Walsh Contract in 2015, with its year of public funding, Walsh held meetings in pizzerias on Van Ness with MTA's official spokesperson, Kate McCarthy,<sup>2</sup> in which Walsh's public relations flack, Jay Sims, rolled out 8-foot-long colored maps of the *surface* of Van Ness Avenue.

In those gatherings, both Walsh's representative and Ms. McCarthy refused and failed to answer any questions about the actual on-ground construction, infrastructure beneath Van Ness, timeline, expense, and funding of the Project, or Walsh's "plan" to bulldoze the entire length and every single intersection of Van Ness Avenue from Lombard to Mission Street, reducing the median strip and the entire Avenue to rubble and making it largely impassable with no turning at any intersections for the past six years.

**F7 Finding:** "Review of preconstruction deliverables did not sufficiently measure the contractor's preparedness for construction, which resulted in both inaccurate cost estimates and timelines."

**TUMLIN:** "Disagree partially. It is correct that the contractor may not have adequately prepared itself for construction during the year-long preconstruction period. The timeline for underground work provided by the contractor's subcontractor during preconstruction did not align with the timeline provided by the subcontractor who eventually performed the work. It is unclear to what extent better preparedness by the contractor would have resulted in more accurate cost estimates and timelines. In addition, other key issues listed in F4 contributed to the challenge to forecast accurate cost estimates and timeliness."

**COMMENT:** MTA entered into a CM/GC Contract with Walsh that *paid* Walsh for a full-year to prepare to construct MTA's new "LPA" Project. Both parties were aware of what that LPA Project involved vast excavation and construction of new pipelines, electrical utilities, and anti-car features such as bulbouts. MTA failed to assess Walsh's total *failure* to create an accurate estimate of the construction costs of the Project.

A timeline of at least five years was stated in the EIR on the LPA Project, and MTA was fully aware of that, even if the CM/GC Contract stated *no* time deadline. When Walsh failed to deliver, MTA then signed more 10 more Contract modifications *extending* the time and *increasing the cost*, and incredibly even paid Walsh for the delays.

This Board should approve Finding F7.

**F8 Finding:** "The effectiveness of the CMGC contract was greatly reduced because the general contractor was brought into the design process too late."

**TUMLIN:** "Disagree partially. While it would have been better to have the contractor on board earlier in the design phase, the contractor did have a year (during pre-construction) to review the

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<sup>2</sup> Ms. McCarthy's only "transportation" experience consisted of being an officer of the San Francisco Bicycle Coalition, a private corporation advocating against motor vehicles and for bicycle riding.



construction documents, provide comments, and familiarize itself with the conditions along the corridor. The CMGC construction contract with the Guaranteed Maximum Price was issued by SFMTA with the Contractor's concerns and input addressed. Since the prime did not involve the subcontractors directly with the City in the preconstruction process the City may not have received the full benefit of the subs' technical expertise and local knowledge. Contractor did not make the best use of its subcontractors."

**COMMENT.** See Comment on F9.

**F9 Finding:** "Underspecification in technical requirements led to additional costs for work that could have been predicted and included in the original contract."

**TUMLIN:** "Disagree partially. In an effort to continually improve our contract documents, we review the project specifications, in particular with multi-agency projects where various sets of specifications are merged."

**COMMENT:** Mr. Tumlin fails to state that MTA had NO experience with CM/GC contracts, which were not the usual contract on major infrastructure projects like the Van Ness BRT LPA Project.

MTA's LPA Project was designed by MTA "engineers." That incredible expenditure of staff time, the expenditures for MTA's years of "public relations," even leasing an office on Van Ness.

The time spent by staff of MTA and SFCTA on the EIS/EIR have never been accounted for on the Project. With those expenditures, the cost is close to one billion dollars, including the millions paid to Walsh. The time/expense of the Walsh contract for the "pre-construction" phase) and for demolishing Van Ness Avenue for the BRT Project, certainly should have and still should be accurately accounted for. Further, Walsh's battle with its subcontractors should have early on led to cancellation of the contract by MTA.

**TUMLIN (cont'd):** "The Van Ness project also had the challenge of coordinating City specifications with Caltrans requirements. Specifically, in the case of the potholing and pedestrian control specifications, the contractor settled claims on these issues for less than 20% of its costs incurred, illustrating that its claims arising from purported ambiguity in the specifications had little merit. Moreover, Contractor had access to the specifications for many months during the pre-Construction period and did not request any clarification/changes at that time. Contractor raised issues with technical requirements after the construction started."

**COMMENT:** Both MTA and Walsh were or should have been well aware of Caltrans requirements. MTA actually *paid* Walsh 20% of Walsh's demands for costs, more after Walsh failed to deliver due to its disagreement with its subcontractors on costs.

This Board should adopt the Grand Jury's F9 Finding.

**F10 Finding:** "Contention over underspecified or unclear contract terms and technical requirements led to a deterioration in the relationship between the City and Walsh, the general contractor."

**TUMLIN:** "Disagree wholly. Language that was used in the contract was standard to all City contracts. The City worked diligently to enforce the contract in a fair and reasonable manner. The contractor did not raise any concerns about ambiguity or confusion during the year of pre-construction services or during negotiations. The CM/GC has the responsibility to raise and



resolve such concerns during pre-construction. What actually led to deterioration in the relationship was the contractor's concerns about the bid for the utility work being substantially higher than originally estimated and thereby reducing its profit margin."

**COMMENT:** MTA knew or should have known the estimated cost of the "utility work," *i.e.*, removing and completely replacing water, sewer and electrical utilities in the center and sides of Van Ness Avenue/US Highway 101. Instead those figures were not brought to bear because the CM/GC contract when signed contained no construction specifications, but bound MTA to Walsh doing the construction without those cost estimates and with no competitive bidding for the construction work. As a result, Walsh underbid the initial (non-construction phase), knowing the City was bound to a general total for the construction phase. Any good-faith negotiation should have had a realistic cost estimate of the construction, and there should have been competitive bidding on the construction.

**F11 Finding:** "The removal of Synergy, the underground subcontractor, from the project, partially as a result of poor cost estimates, contributed to the deterioration of the relationship between Walsh, the general contractor, and the City."

**TUMLIN:** "Disagree wholly. The City supported the contractor's decision to remove its underground utility contractor, Synergy. The relationship began to deteriorate when the contractor bid out Synergy's work and received a bid substantially more than Synergy's estimate. Over a year after Synergy was removed, Walsh filed a claim under penalty of perjury for \$11.9M arising from damages it purportedly incurred relating to Synergy's removal. That claim was resolved by the City paying Walsh nothing on this issue. The price difference was not due to poor cost estimating, but to unexpected market conditions."

**COMMENT:** The failure to make reality-based estimates of the cost of the work to be done, whether by Walsh or its subcontractors, or, as noted in F13 by the City itself, places the blame on MTA and Walsh. Whether or not Walsh delivered, as Mr. Tumlin admits (F13), the City had to pay for its own staff to deal with Walsh's failure. ("City staff had to supplement the contractor's team directly, performing contractor work") [Tumlin Response F13] Thus the taxpayer paid for the failure of both parties to make a reality-based contract.

The City with its vast experience should have been well aware of the cost of replacing water, sewer and electrical utilities to implement its LPA Van Ness BRT project, *before it approved that Project*. Indeed, under the law the City was required to obtain full funding for the Project *before approving it*, which took place in 2013, *before* the CM/GC contract with Walsh.

**F12 Finding:** "The contentious relationship between Walsh, the general contractor, and the City made it difficult to resolve problems as they arose, despite close collaboration being one of the potential advantages of the CMGC contract."

**TUMLIN:** "Disagree partially. Once the contractor realized that its guaranteed maximum price would not cover the cost of the utility work, the relationship became strained and the contractor became uncooperative. It appeared that the contractor was more focused on recovering the potential loss from the increased utility costs than performing a collaborative and successful project."

**COMMENT:** Why would a private profit-oriented contractor collaborate on a potential loss? The statement makes an absurd presumption.



**TUMLIN (cont'd):** "To illustrate this, the contractor hired additional personnel to focus on claims, and used field staff to assist with the claims process rather than devoting resources to the project. The contractor's lack of experienced field staff required the City to hire a utility coordinator and other staff to facilitate the contractor's coordination with third party utilities and to resolve basic field issues. As a CM/GC, it was the contractor's responsibility to coordinate day-to-day activities with third party utilities. In spite of the challenging situation, field staff maintained a professional relationship."

**COMMENT:** See COMMENT on F11.

**F13 Finding: "Lack of an in-the-field point of contact between Walsh and the City during early stages of construction led to delays and increased costs on the project."**

**TUMLIN:** "Disagree wholly. The City's Resident Engineer (RE) was (and is) the point of contact with the contractor. The RE, who has been on the Project from the beginning, along with the owner's construction management team, have always been co-located with the contractor's team. Notably, the high turnover of the contractor's management team made it difficult to coordinate with the contractor, and necessitated the City bringing the contractor up to speed at various times (and likely contributed to the delay and increased costs on the Project)."

**COMMENT:** Mr. Tumlin offers no names and no support for this statement. See also, Comment on F6.

**TUMLIN (cont'd.):** "The unwillingness to pothole and perform other advance investigation in a timely fashion contributed more to delays in resolving field challenges than any lack of City staff."

**COMMENT:** If Walsh was unwilling to "pothole and perform investigation" at the pre-construction stage, the City should have terminated the contract with Walsh for the construction phase of the Project.

**TUMLIN (cont'd):** "The CM/GC should lead the field fact-finding and discovery with very little owner assistance to resolve basic field issues and coordination matters." "During the construction, City staff had to supplement the contractor's team directly, performing contractor work..."

**COMMENT:** And where is the accounting of the public expense of that City staff work?

**N. F14 Finding: "Confusion related to the contractual requirements for pedestrian monitoring contributed to the deterioration of the relationship between Walsh, the general contractor, and the City."**

**TUMLIN:** "Disagree partially. The City does not believe that the contractual requirements for pedestrian monitoring and flaggers are confusing. In the interest of public safety, the City agreed to reimburse Walsh for pedestrian monitors if (1) the contractor provided the flaggers required under the contract for pedestrian control and (2) the contractor provided advance notice to the City of the need for pedestrian monitors to support the flaggers at a particular location."

**COMMENT:** Because Walsh proposed during the preconstruction phase to tear up of all of Van Ness Avenue at once for the duration of the work, instead of working block-by-block, pedestrian monitoring and flaggers were necessary for the entire length of the Project construction area, obviously increasing costs for the dangerous, ugly disaster.



The "Finding Response Text" ignores that MTA and SFCTA's LPA, which required excavation of water, sewer, and utility lines to implement its most environmentally damaging "alternative."

## **CONCLUSION**

The Grand Jury's Report on the Van Ness BRT Project presents a factual expose of many events that have gone wrong, both with failure of MTA to realistically and efficiently plan and contract for a major capital Project, and pinpoints MTA's failure to understand or even try to find out what lay beneath the surface of the once-grand Highway. The result has been years of delay, visual blight, and traffic congestion impacts that will negatively affect travel in the center of San Francisco for generations.

The Board of Supervisors and this Committee should approve all of the Grand Jury's recommendations and order MTA to implement them.

DATED: September 30, 2021

  
\_\_\_\_\_  
Mary Miles



## **EXHIBIT A**



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TO:  
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Erika Cheng, Clerk of the SFCTA Board  
and  
Board of the San Francisco County Transportation Authority  
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Federal Transit Administration  
U.S. Department of Transportation  
201 Mission Street, Suite 1650  
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**BY E-MAIL**

DATE: September 10, 2013

RE: San Francisco County Transportation Board Meeting, September 10, 2013, Agenda Item #3

**PUBLIC COMMENT ON FINAL ENVIRONMENTAL IMPACT  
STATEMENT/ENVIRONMENTAL IMPACT REPORT (FEIS/FEIR), CEQA FINDINGS,  
AND PROPOSED LEGISLATION ON VAN NESS AVENUE BUS RAPID TRANSIT  
PROJECT**

This is public comment on the Final EIS/EIR ("FEIR"), proposed "CEQA Findings," and proposed legislation on the Van Ness Avenue Bus Rapid Transit Project ("BRT") Project ("the Project"). Please assure that a copy of this comment is distributed to each member of the Board of the San Francisco County Transportation Authority ("SFCTA") in advance of the SFCTA Board Meeting of September 10, 2013 (Agenda Item 3), and place a copy of this Comment in all applicable files on the Project. Please consider this Comment before any deliberations on certifying the Project EIR and approving any findings, statement of overriding considerations, or legislation approving the Project or any part of it.



The FEIR and the proposed Project violate the California Environmental Quality Act ("CEQA") (Cal. Pub. Resources Code ["PRC"] §§21000 *et seq.*, CEQA's regulatory Guidelines (14 Cal. Code Regs. §§15000 *et seq.* ["CEQA Guidelines"]), the National Environmental Policy Act ("NEPA") (42 U.S.C. §§4371 *et seq.*), its implementing regulations and Executive Orders (e.g., 40 CFR 1500 *et seq.*, etc.), and other statutes and regulations that apply to the review, funding, and approval of the Project (e.g., 49 USC §303; 23 USC 106, 109, 138, 325, 326, 327; 23 CFR 771 *et seq.*, etc.) This commenter has also submitted Comment on the DEIS/DEIR ("DEIR"), which is incorporated by reference in this Comment. FEIR at II: Individuals, pp.106-121 (I-40).

**BROWN ACT VIOLATION:** The SFCTA failed to comply with the Brown Act, which requires posting the Agenda of this meeting at least 72 hours in advance of the meeting in "a location that is freely accessible to members of the public and on the local agency's Internet Web site." Cal. Gov. Code §54954.2(a)(1). The agency did not post the meeting Agenda 72 hours in advance of the meeting in a location that is freely accessible to the public. SFCTA's office is not "freely accessible to members of the public" and is not accessible at all on weekends. The agency did not provide by electronic mail a copy of the Agenda at least 72 hours in advance of the meeting, and only sent a notice that the meeting would take place, e-mailed on Friday, September 6, 2013, which did not include the Agenda. In any event, the Agenda had to be posted in a publicly accessible location in addition to any web site posting. Cal.Gov. Code §54954.2(a)(1). This Board therefore must continue the Item and all actions on it until after legally required public notice has been provided.

The proposed "CEQA Findings" and hundreds of pages of other "enclosures" and "addenda" were not legally noticed or publicly available before this hearing. These materials were not noticed, even to those, like this commenter, who have repeatedly requested notice of all proceedings and environmental review of this Project. They were posted as links to a link to the "agenda" that itself was not lawfully noticed—again not directly available without navigating the internet—with no web version of the agenda or links available until after business hours on September 6, 2013, giving the public less than legally adequate notice--in fact less than 48 hours of notice for this meeting scheduled on September 10, 2013 at 11:00 a.m. Although this commenter has asked for public notice and copies of all environmental documents in advance of their approval, none were provided. The documents are hundreds of pages of cross-referenced materials, precluding public access and comment on the proposed actions in violation of NEPA and CEQA. Under these circumstances, there is no requirement of exhausting administrative remedies in the event of litigation, because the materials were not timely available to the public for practical purposes. Any approval by this Board without allowing meaningful opportunity for public input and review is itself evidence of a preordained determination to adopt the Project in a fashion that precludes public input.

Due to the inadequate notice and inadequate public comment period, unavailability of materials referenced in the environmental documents, including supporting studies, unavailability of agency staff, the large volume of paper generated since the close of public comment on the DEIR, the massively revised FEIR, the addition *after* the close of comment on the DEIR of a "Locally Preferred Alternative" ["LPA"] that was *not* included in the DEIR, and thousands of pages of "technical memos," this Comment is necessarily incomplete. However, commenters do not waive further comment on this Project, including issues not addressed in this



Comment. Further, where as here public comment is curtailed by inadequate information and is futile, since a foregone conclusion of approval has already been assumed in every document and in agency actions, the public may not be held to a requirement of exhaustion of administrative remedies in future litigation, because such remedies do not exist for practical purposes.

Since the agencies have provided inadequate time and information, this comment is necessarily incomplete, does not include all issues and violations of NEPA and CEQA in the defective FEIS and the agencies' procedures, and is not organized in order of importance. This commenter, however, does not waive any issue by its absence or due to the inadequate time to fully address it in this Comment.

## **1. Introductory comments**

The Van Ness BRT ("the Project") proposes to make existing San Francisco ("Muni") bus traffic "compete" with vehicle traffic on federal and state highway, US 101, which is also an historic major street in San Francisco. The two existing Muni lines on Van Ness Avenue, Routes 47 and 49, carry 16,000 passengers per day, make 14 stops in each direction on the two-mile Project segment, with an average speed of approximately 5.2 miles per hour. FEIR, p.3-21, 24. The Project's stated "purpose and need" are to increase bus speed by slowing other modes of traffic that include 44,500 vehicles per day on the segment and more than 126,000 vehicles in the Project area corridor, which includes Gough, Franklin, Polk, Larkin, and Hyde Streets. FEIR, p.3-44, §3.3.2.2, p.3-3. According to the FEIR, within the Project area "study" corridor, the two Muni lines carry 14% of travelers, while vehicles carry 86%. FEIR, p.3-3. That figure, however, mistakenly assumes that vehicles carry only the driver, when in fact many vehicles carry more than one passenger, including the 11% of San Francisco commuters who carpool,<sup>1</sup> taxis, shuttle and tour buses, and vehicles carrying passengers.

To achieve its "purpose and need" of slowing traffic other than the two Muni lines, each of the "alternatives" for building the Project reduces traffic capacity on Van Ness Avenue by one-third by eliminating two traffic lanes from the existing six lanes that carry 44,500 vehicles per day. FEIR, p.3-44, §3.3.2.2. The FEIR admits that the vehicles now occupying six lanes on US Highway 101/Van Ness Avenue would be diverted to other streets causing significant traffic impacts, but claims without any supporting evidence that many would abandon vehicle travel and ride the two Muni lines or use bicycles. FEIR, p. 3-10.

The Project proposes slowing vehicle (meaning all non-Muni-bus) traffic to make the two Muni lines more "competitive" with other travel modes on US Highway 101/Van Ness Avenue, such as cars, trucks, taxis, and even shuttle buses ("Google" or Bauer buses), which will not be allowed in the BRT lanes. The Project proposes to achieve its combined goal by eliminating two traffic lanes, all left-turn lanes, most parking, and many right-turn lanes on US101/Van Ness Avenue to slow, obstruct, and force diverting vehicle traffic so that it is as slow as existing bus traffic.

The Project also proposes to speed up Muni Lines 47 and 49 by eliminating *half of the existing bus stops on Van Ness Avenue*, making bus stops 1,150 feet apart (nearly 1/4 mile), instead of the current 700 to 800 feet apart. FEIR, p.3-112. The FEIR observes that not having to

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<sup>1</sup> San Francisco County Transportation Authority ("SFCTA"): *Countywide Transportation Plan* ["CWTP"], p. 41.



stop for passengers would increase the speed of the two bus lines. However, removing bus stops to speed up Muni lines does not require removing traffic lanes and parking to create BRT lanes in the middle of US Highway 101/Van Ness Avenue.

Other Project features include: *eliminating nearly all of the parking on Van Ness Avenue* and hundreds of parking spaces on cross-streets; *eliminating all left-turns*; eliminating many existing right turns; installing bulbouts at 64 intersections to obstruct right turns by vehicles, trucks and buses (FEIR, p.3-108); removing all existing mature trees and other vegetation in the median to install a paved center-median BRT; removing the existing historic streetlamps and installing generic utility posts with two glaring *faux* deco street lamps on each; installing freeway-style overhanging signs; installing large, garish bus stop areas in the median; spending millions to install otherwise unnecessary new sewer lines to accommodate the increased weight of buses traveling in the center of the avenue; painting the pavement occupying the central half of the avenue a garish red color (FEIR, pp.4.4-27,29,31); permitting buses to pass one another in the remaining traffic lanes on US Highway 101/Van Ness Avenue FEIR at p.10-5, §10.2.4.1.; and requiring additional bus traffic in the remaining traffic lanes *Id.* FEIR at p.10-5, §10.2.4.1.

These measures would not in the “near term” accomplish the Project’s “purpose” of buses “competing” with other traffic but would *slow down other modes of traffic* “resulting in a significantly reduced speed gap between modes” on Van Ness Avenue. FEIR at p.3-27-28, §3.2.2.3, Figure 3.2-6. Once past the verbiage, the Project’s actual “purpose and needs” are twofold: 1) to obstruct and slow all traffic except Muni buses on routes 47 and 49; and 2) to marginally increase the speed of Muni buses on routes 47 and 49. Without all those stops for passengers and by delaying all other traffic, the two Muni lines will supposedly increase their speed to 7 miles per hour, while other vehicles would be delayed not just on Van Ness Avenue but on cross streets and on parallel streets, particularly Franklin and Gough Streets. Thus, the Project’s improper purpose is in fact to deliberately create traffic congestion throughout the area to make the two Muni lines “competitive” with other travel modes.

The FEIR admits that the Project would cause significant impacts measured by level of service (“LOS”) in the “near term” and degrade three important intersections from satisfactory to unsatisfactory LOS: Gough/Hayes (existing LOS D 45.9 seconds delay would be degraded to LOS E, 74.6 seconds delay); Franklin/O’Farrell (existing LOS D, 39.3 seconds delay to LOS E, 55.9 seconds delay); and Franklin/Market/Page (existing LOS C, 27.2 seconds delay to LOS F, 103.7 seconds delay); and that LOS at Gough/Green would decline from existing LOS F with 76.5 seconds delay to 108.1 seconds delay with the LPA. FEIR, p.3-60, Table 3.3.9. The projected impacts in 2035 include longer delays on these intersection and delays on several other intersections. FEIR, p.3-67, Table 3.3.14.

The FEIR claims that passengers on Muni routes 47 and 49 would gain up to 1.8 minutes of bus time if they travel the entire 2-mile length of the BRT on Van Ness. The FEIR does not account for added travel time to walk twice as far to get on a bus. There is no commitment to acquire more buses to meet the needs of its claimed 40% increase in passengers. Buses would pass one another presumably occupying one of two traffic lanes remaining in each direction. FEIR at p.10-5, §10.2.4.1.

According to the FEIR, the 44,500 vehicles with an unstated number of passengers who do not take the #47 and #49 buses would experience delays in 2015 on US Highway 101/Van



Ness Avenue and on Gough, Franklin, Polk, Larkin, and Hyde Streets (combined) of 2.3 miles per hour southbound, and 1.2 miles per hour northbound. FEIR, p.3-54, Tables 3.3-5, 3.3-6. By 2035, those travelers would be delayed by 6.1 miles per hour southbound, and by 7.4 miles per hour northbound. Vehicles diverted to Franklin Street with an existing average speed of 10.5 miles would lose 4.3 miles per hour and travel at only 6.2 miles per hour.

The net human loss in traveling time in all vehicles except Muni buses would far exceed the minimal “improvement” for most passengers on Muni Lines 47 to 49, which would be less than two minutes if their origins and destinations happened to be on the Project’s 2-mile length of Van Ness Avenue. Private buses like “Google” and other “employer shuttle service” or commute buses, tour buses, medical shuttle services, and taxis would not be allowed in the BRT lanes and would continue to occupy remaining traffic lanes on Van Ness Avenue. FEIR at 3-33, §3.2.3; Vol.II: Master Response 3; I-1. The Golden Gate bus lines would continue to travel in the remaining traffic lanes or in the BRT lanes, but all but two of its stops would be eliminated on Van Ness Avenue, leaving only two stops, one at Chestnut Street, and one at Geary. FEIR, p.3-32. Thus, while up to 16,000 existing local Muni bus passengers would allegedly gain up to 1.8 minutes on Van Ness Avenue, that gain would be at the expense of significant time lost by the vast majority of travelers.

Further, much of the time gained by the 16,000 Muni passengers would be attributable to measures that could be implemented *without* the Project, such as the proposed elimination of half of the Muni bus stops on Van Ness Avenue (FEIR, p.10-31, §10.4.1.1), replacing existing buses with new buses with lower floors, new bus stops that would show real time bus arrivals (many of which have already been installed, more efficient boarding and ticket purchase, and other features unrelated to removing traffic lanes, turning pockets, and parking. However, the FEIR fails to consider and analyze alternatives that would include these features but would not include eliminating lanes, turning, and parking.

After close of public comment, the lead agency created a “locally preferred alternative” (“LPA”) that was not in the DEIR. FEIR, p.2-3-2-4, §2.1.4. The LPA was then approved by the lead agency, the San Francisco County Transportation Authority (“SFCTA”) and by the implementing agency, the San Francisco Municipal Transportation Agency (“SFMTA”), without receiving any environmental review or public comment.

The LPA, unlike any center-median “alternative” in the DEIR, will eliminate nearly all of the parking on Van Ness Avenue. That fact is hidden in a footnote that contradicts the happy-talk promotion of the LPA in other documents, all of which falsely claim that eliminating parking would be minimal with the center-median BRT proposals. The FEIR, unlike the DEIR, discloses that the LPA *would permanently remove nearly all of the parking on both sides of Van Ness Avenue*, including existing passenger loading zones, blue zones, and yellow loading zones--more than any alternative analyzed in the DEIR. FEIR at pp.4.2-13-17, fn.65, §§4.2.4.2-4, Tables 4.2-8 & 9; 10-31-32, §10.4.1.1. This change in the Project Description requires recirculating an accurate DEIR, not a final environmental document, because the public has been misled by all previous information in the DEIR and other documents.

The LPA would place the BRT in the existing median of Van Ness Avenue, occupying two existing traffic lanes plus the entire median and turning pocket areas, creating a red asphalt expanse that would otherwise equal four traffic lanes, changing the character of Van Ness



Avenue from a grand avenue that is an historic major highway and City thoroughfare to a busway. FEIR, Ch. 10. The LPA and all center BRT alternatives also remove all left turn lanes (“pockets”) on the entire length of Van Ness Avenue, and prohibit right turns at several intersections.

The LPA and other center-BRT designs require that City rebuild the sewer system on Van Ness Avenue to accommodate the weight of the vehicles in the center of the avenue, and reconstruct the existing drainage system that would also be affected by the proposed bulbouts.

The LPA requires removing the historic streetlamps lining Van Ness Avenue and replacing them with higher generic highway-style poles with two glaring lamps at different levels on each pole to accommodate OCS wires for existing electric buses that would have to be realigned to the center of the avenue. The LPA would remove nearly all of the existing mature trees and vegetation from the median, and the LPA and other “build” alternatives would install large highway-style overhanging signs along the avenue.

The LPA and other “build” alternatives also include large bulbouts obstructing right turns at many intersections by vehicles, buses, and trucks. The LPA would remove nearly all of the mature trees in the median and replace the median green with large garish visual clutter, including huge new bus stops with glaring advertisements, light fixtures, and “art” installations. The LPA would, contrary to the City’s General Plan, paint the entire expanse of the huge asphalt centerpiece a garish red in case the public was unable to locate it otherwise.

The FEIR also admits that, since the Project eliminates nearly half of the bus stops on Van Ness Avenue, that the average distance between BRT stops under the LPA “was determined to be 1,150 feet,” more than 1/5 of a mile, affecting accessibility to buses for the disabled, seniors, and others. FEIR atp.10-31, §10.4.1.1. Thus, the marginal increase in Muni speed would also come at the expense of reducing access for many people.

The FEIR admits that the Project’s reduction of one-third of traffic capacity on Van Ness Avenue would result in vehicles traveling on parallel streets causing significant impacts, but claims with *no* supporting evidence that many travelers would abandon vehicle travel entirely, would switch to traveling on the two Muni lines, travel on distant corridors, or ride bicycles to reach their destinations. See, e.g., FEIR II:80. That speculation is completely unsupported by evidence, as pointed out in several public comments. See, e.g., FEIR II:78-79, 98-99, 115. The FEIR admits that it has “revised” the “text in Section 3.1.2.2” to “include more conditional language: ‘*up to 50% of the new transit riders could be former drivers.*’” FEIR II:102, emphasis added. There is no coherent analysis or quantified data on origin to destination travel, even though the Project proposes to significantly affect travel on a major US Highway, regional, and City traffic corridor. The FEIR fails to accurately account for the significant delays to the one-third of travelers who now use the two traffic lanes on Van Ness Avenue/US Highway 101 and treats those delays and the Project’s significant impacts dismissively with no attempt at mitigation.

The FEIR contains the same defects in its analyses of impacts as the DEIR, including the failure to collect accurate data on existing conditions, selectively choosing only a few intersections for analysis, and omitting accurate baseline descriptions of the five parallel streets that are already congested where it proposes to divert traffic. The FEIR omits any accurate LOS analyses of traffic impacts on cross streets, spillover traffic, and segregates the few impacts it



finds from the obvious impacts *those* impacts will in turn cause on other intersections. These failures to accurately analyze the Project's significant impacts are defects that cannot survive judicial scrutiny under CEQA and NEPA.

The FEIR states that in order to fulfill its "purpose and need" to obstruct vehicle traffic, it "assumes" a "finding of significant and unavoidable impact under CEQA." FEIR, p.7-25. However, that assumption directly violates CEQA.

The FEIR claims that the Project would require up to 58 months (5 *years*) of construction during which time up to four lanes of traffic and bus service would be obstructed and delayed. FEIR, p. 9-6. Although the FEIR claims that only a few blocks at a time would undergo construction, those obstructions would cumulatively affect the heavy traffic on US Highway 101/Van Ness Avenue and other streets and the existing transit for the entire duration of construction.

This Project proposes eliminating more than one-third of the capacity of a major Federal highway and north-south corridor through San Francisco. Even if it were supported by the local public, and there is no evidence that it is, an allegedly "locally preferred" alternative should not, as proposed, control the analyses and outcome of this Project. NEPA and CEQA require avoiding and mitigating significant impacts, not as here deliberately creating them by slowing traffic to make vehicle travel more difficult, time-consuming, and polluting.

## **2. Public Comment Has Been Undermined by the Lead Agencies' Failure to Provide Adequate Notice and the Opportunity to Comment on Both the DEIR and the FEIR. The "CEQA Findings" Were Not Publicly Noticed or Available to the Public Before the Board's Hearing.**

NEPA requires that "high quality" information, including "[a]ccurate scientific analysis, expert agency comments, and *public scrutiny*" be available "*before* decisions are made and *before* actions are taken, and that agencies must "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment." 40 CFR 1500.1(b) (emphasis added), 1500.2(d).

The FEIR is dated "July, 2013," but in fact was not released until after a July 11, 2013 e-mailed announcement that did not contain the FEIR. A two-page "Memorandum" was in the envelope, stating at the end: "How may I comment on it? The Authority Board will consider certification of the Final EIS/EIR and project approval in early September 2013 (the final date is to be determined). The San Francisco Municipal Transportation Agency will consider project approval at their September 17, 2013 Board meeting. Following these actions, the FTA will consider issuance of a Record of Decision (ROD). Compliant with the national Environmental Policy Act, any comments submitted before August 12, 2013 will be considered by the FTA before issuance of the ROD." In short, *no* dates were provided for submitting comments to the approving agencies, except that the public had to submit a comment for future (undated) FTA consideration by August 12, 2013. This commenter asked the FTA for a 30-day time extension for public comment, receiving a 15-day extension to August 27, 2013. That time is still inadequate and arbitrary, since *no* date has been specified for issuing the ROD or the approvals that precede it.



The due date for public comment was not in the e-mailed announcement. The documents themselves are impractical for downloading due to their immense size.

Several days after the e-mailed “Update,” a CD arrived in the mail claiming to contain the FEIR, though it did not contain any of the newly added or previous studies such as the “Vehicular Traffic Analysis Technical Memorandum (CHS, 2013)” or any other supporting material, none of which were contained in the “Appendices I and J” attached to the FEIS.

The “CEQA Findings” were not publicly available and could not be viewed except by complicated internet navigation posted on the SFCTA web site under the “Agenda” item for the SFCTA Board meeting of September 10, 2013. The Agenda was not available until after hours, Friday, September 6, 2013, giving the public less than 48 hours to find and assimilate hundreds of pages of findings and other documents that were not previously available. That is not adequate notice under CEQA or other existing statutes providing for open meetings, public notice and the opportunity to be heard.

The “Findings” at “Enclosure A” of the Agenda of the Board Meeting of September 10, 2013, **falsely states** that “paper copies” of the FEIR were “sent to . . . those parties that commented on the Draft EIS/EIR and provided a physical mailing address.” “Enclosure A, September 10, 2013 [“Findings”], p. 8. This commenter commented on the DEIR/DEIS and was never provided a hard copy of the FEIR or any other document. Instead, this commenter, and presumably all others were required to separately order and pay for a hard copy of the FEIR, and for hard copies of the allegedly supporting studies.

A hard copy of the FEIR had to be separately ordered at a cost of \$97.59, precluding getting a readable document for people who could not afford it and could not visit public facilities to view it during business hours, *i.e.*, most working people. See, *e.g.*, 40 CFR 1506.6(f). A cheaper black and white copy was unavailable within the limited public comment period. A CD of the “Technical Memos,” meaning the supporting documents that should have been included in appendices, was only available on request, and the CD provided was defective, requiring more requests, more hassles and wasted review time of the defective documents. Nevertheless, the agencies still did not extend the time for public comment beyond the bare minimum required.

The Findings and other materials were not publicly noticed or available to the public in any form before the September 10, 2013 meeting of this Board. They were only available by searching and finding them on the SFCTA web site where they were posted after hours on Friday, September 6, 2013.

### **3. THE DEIR MUST BE RECIRCULATED: The FEIR Has Hundreds of Pages of Revisions and A New “Locally Preferred Alternative” That Were Not in the DEIR, Requiring Recirculation Under Both NEPA And CEQA.**

*After* the close of public comment on the DEIR on December 23, 2011, the lead agency, the San Francisco County Transportation Authority (“SFCTA”) and a “cooperating” or “responsible” or “implementing” agency, the San Francisco Municipal Transportation Agency (“SFMTA”), significantly changed the Project description, alternatives, and analyses in the DEIR by creating a new “alternative” and approving it as the “locally preferred alternative” (“LPA”).



A section is added at §10.3 in the FEIS, claiming that the lead agency SFCTA and City's MTA "proposed an LPA based on the project's purpose and need."

The FEIR claims that those "substantive" changes are "demarcated by a vertical bar in the margin" (FEIR at p.S-1, §S-2), but they are otherwise unexplained, and they occupy nearly every page of the massive FEIR, substantively changing the Project description, alternatives, baseline (existing conditions description), proposed mitigations, and all the analyses of impacts required by NEPA and CEQA.

For example, the FEIR, unlike the DEIR, discloses that the LPA *would permanently remove nearly all of the parking on both sides of Van Ness Avenue*, including existing passenger loading zones, blue zones, and yellow loading zones -- more than any alternative analyzed in the DEIR. FEIR at pp.4.2-13-17, fn.65, §§4.2.4.2-4, Tables 4.2-8 & 9; 10-31-32, §10.4.1.1. This change in the Project Description requires recirculating an accurate DEIR, not a final environmental document, because the public has been substantially misled by all previous information in the DEIR and other documents. The LPA also removes nearly all trees in the center median strip, and contains more bulbouts, turn prohibitions, and other significantly negative features than the "alternatives" described in the DEIR. The failure to coherently describe the Project requires recirculation, because the public has been misled.

Both laws require recirculation of the DEIR under these circumstances, since the public and decisionmakers have been deprived of a meaningful opportunity to understand and comment on what is actually being proposed as the Project and its significant impacts. NEPA requires that the DEIS "must fulfill and satisfy to the fullest extent possible the requirements established for final statements," and, "If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised *draft* of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives *including the proposed action*." 40 CFR 1502.9(a), emphasis added. Here, the DEIS did not include the proposed action, precluding meaningful analysis and depriving the public of the opportunity to understand what the agency actually intended and to meaningfully participate in the decisionmaking process. "NEPA procedures must insure that environmental information is available to . . . citizens before decisions are made. . . The information must be of high quality." 40 CFR 1500.1(b)

NEPA requires the agency to "assess the reasonable alternatives to *proposed actions* that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 CFR §1500.2(e), emphasis added. Here, the FEIR proposed alternatives without having a finite, stable "proposed action."

NEPA further requires that, based on the FEIR's description of the affected environment (40 CFR §1502.15), and the statement of environmental consequences (40 CFR §1502.16), the FEIR "should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker *and the public*." 40 CFR §1502.14, emphasis added. The Alternatives section of the FEIR must "identify the agency's preferred alternative . . . **in the draft statement...**" 40 CFR §1502.14(e), emphasis added. The DEIR failed to comply, and the agencies must now recirculate the DEIR for a new public comment period and, after considering public comment, issue a new FEIR. *Ibid.*



CEQA also requires recirculation of the DEIR, because it failed to accurately describe the proposed Project, which is the LPA. See, e.g., PRC §21092.2; Guidelines §15088.5 [requiring recirculation when significant new information is added to the EIR including changes in the project, environmental setting, and additional data or other information, that “deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative”]. That provision clearly applies here, because the public was deprived of even knowing what the actual Project was, and because the FEIR admits throughout that substantive changes were made to the DEIR.

The DEIR misled the public to believe that there were four specifically described alternatives that did *not* include the LPA, and that the public had a voice in the analysis and choice of alternatives.

Even if the agency claims that the LPA resembles other “alternatives” (such as #3 and #4) with a center-median BRT, those alternatives were highly controversial. Indeed, the City’s Public Utilities Commission and the Department of Public Works raised serious concerns and repeatedly stated their opposition to the center median BRT. FEIR II: Agency: 28-30, 32-38, 46, 48-50, 54, 56-61, 113-114, 129-132. The Mayor’s Office of ADA/Disability Access also raised significant concerns about the center-median BRT and opposed it. FEIR II: Agency: 68-71. Several individuals also voiced opposition to the center-median “build” alternatives in the FEIR. See, e.g., FEIR II: individuals, 11, letter I-4, 24 (I-10), .32 (I-14), 34 (I-15), 36 (I-16). Many substantive comments were opposed to the entire Project and all “build” alternatives. See, e.g., FEIR II: Individuals, p.15 (I-6), 19 (I-8), 22 (I-9), 26 (I-11), 34(I-15), 36 (I-16), 45(I-20), 59 (I-25), 71-72 (I-31a), 78-79(I-32), 82 (I-33), 90-91 (I-36), 96 (I-37), 98-100 (I-38), 112-121 (I-40).

While the Project’s improper goal of slowing traffic by eliminating traffic lanes to create a large paved island for buses in the middle of the historic Van Ness Avenue corridor was proposed as an alternative in the DEIR, it was not proposed as the “*preferred alternative*” that is now described as *the* Project. The analysis remains a one-sided promotion instead of an objective analysis and is now focused on an “alternative” that was *never presented for public scrutiny* and input or properly described as the Project under review. The public was therefore deprived of meaningful participation in the decisionmaking process. 40 CFR §§1500.1(b), 1502.19, 1506.6; Cal. Pub. Res. Code [“PRC”] §21092.1; 14 Cal.Code Regs. [“CEQA Guidelines”] §15088.5(a), (g).

The DEIR here did not include the actual ***proposed project***, a violation of CEQA that deprived the public of meaningful participation in the review process. The LPA and the large number of substantive changes (vertical lines appear on nearly every page of the FEIR) require a new DEIR and recirculation to meet CEQA’s and NEPA’s requirements of informed public involvement in the review and decisionmaking process.

Additionally, and previously undisclosed, the LPA would permanently eliminate *most parking on Van Ness Avenue, a new significant impact unaddressed and unmitigated in the DEIR*. FEIR at pp.4.2-13-17, fn.65, §§4.2.4.2-4, Tables 4.2-8 & 9; 10-31-32, §10.4.1.1. In fact, the DEIR misinformed the public to believe that center-median “alternatives” would not eliminate parking.



The DEIR's omissions, misleading Project and "alternatives" descriptions and misleading analyses also require recirculating a new DEIR under NEPA, since the DEIR failed to provide accurate or "high quality" information for public scrutiny. 40 CFR §§1500.1(b), 1500.2(d); 1505.1, 1506.3(b)

The FTA and other lead agencies must recirculate a new DEIS/DEIR with all of the above contents, including an accurate description of the proposed Project and existing conditions, and the other requirements noted above that are absent from the DEIR previously circulated. Only *after* allowing a new comment period for the accurate DEIR, may the agency issue a new FEIR that addresses public comment on the DEIR. Further, the public comment period for the recirculated DEIR must be a minimum of 45 days but should be at least 90 days due to the large amount of paper generated by the agencies, the obfuscatory analyses in the documents, the unavailability of studies and staff, the fact that the public comment period on the original DEIR was improperly shortened, and the need to address at least two different bodies of environmental law.

**4. THE REVIEW IS NOT OBJECTIVE. The SFCTA (Project Sponsor And Lead Agency), and the MTA (Implementing Agency), Have Conflicts of Interest Since They Would Receive Substantial Funding From Project Approval; And The FTA Has Provided No Independent Review.**

The FEIR claims that it was prepared by the Federal Transit Administration ("FTA") and the San Francisco County Transportation Authority ("SFCTA"). FEIR inside cover page. However, the "Appendix H List of Preparers" includes SFCTA and MTA Agency staff, even though those agencies would receive and have already received part of at least \$87.6 million from the FTA to design and implement the Project (FEIR, p.1-6), and thus have a huge financial interest in the outcome of the Project, which is prohibited by NEPA. 40 CFR §1506.5(c). The SFCTA plans to allocate to itself another \$20.5 million in Proposition K funding. FEIR, p.9-2. The FEIR indicates that the FTA has already approved the Project and its funding, which violates NEPA's and CEQA's fundamental requirements of analyzing and mitigating the Project's impacts before approving it. FEIR, p.9-6.

The FTA's role is unclear in either in preparing the FEIR or about the deliberations on the Project. The Project is, on the one hand, improperly cast as a "local" or "community" Project to make bus service more competitive with vehicle transportation on a segment of Van Ness Avenue/US Highway 101, with local (San Francisco) agencies controlling its design and implementation. On the other hand, the FTA appears willing to be a conduit for the hundreds of millions required to build the Project without taking responsibility for the magnitude of its impacts on City, regional, state, and interstate traffic on US Highway 101. The muddying of agency roles in preparing an FEIR does not excuse the agencies from their responsibilities under CEQA and NEPA. The FTA must not fund this Project without assuring that its significant impacts on traffic, transit, air quality, and transportation have been identified, analyzed, and completely mitigated. The FEIR admits that it has *not* fulfilled that mandatory duty. See, *e.g.*, FEIR, p.7-25 (CITE)

Further, CEQA requires objective decisionmaking that is precluded when a lead agency acts as the Project sponsor, EIR preparer, *and* unelected decisionmaker. There is *no* oversight of SFCTA by any elected decisionmaking body, and the SFCTA Board is not elected. There is no



way for the public to appeal its decisions at the administrative level. There is no way for the public to object to its conflicting roles as a relentless booster of the Project and as a decisionmaking body.

**5. THE FEIR'S STATED "PURPOSE AND NEED" ARE IMPROPER: The Claimed "Purpose And Need" of Competing with Vehicle Speed by Slowing and Obstructing Vehicle Traffic Are Not Legitimate, Have No Federal Mandate, Are Contrary to the Mandates of CEQA and NEPA, And Unlawfully Constrain the Alternatives Analysis.**

The FEIR states that the Projects "need" is to "provide a competitive transit alternative to auto travel" by decreasing the speed of all vehicles other than Muni bus lines #47 and 49. (FEIR, p.1-8, §1.3.2) However, competing with vehicles, the mode choice of the vast majority of travelers, by removing more than one-third of traffic capacity on a major United States Highway is not a legitimate goal, since it significantly and adversely affects local, regional, state, and interstate travel and the greater human environment in violation of NEPA and CEQA.

In response to a public comment on the Project's significant impacts by slowing traffic, the FEIR admits that the Project *will* have significant impacts that it claims are "unavoidable" on Franklin and Gough Streets, stating, "The proposed project is not intended to increase vehicle traveling rate on Van Ness Avenue," but rather to "balance vehicle circulation with...project objectives." FEIR II: Individuals, p.97.

The Project proposes making buses "competitive" by making car, taxi, and freight traffic on Van Ness Avenue and cross streets much slower, *so* slow that between now and 2035, buses and private bicycles will overtake vehicles while they sit idling in gridlocked traffic, unable to turn or to efficiently reach a destination. FEIR, p.3-72, Table 3.3-15. However, that goal does not serve the public, and it is contrary to the mandates of NEPA and CEQA to protect the entire environment, not just the environment of a relatively small segment of the public. Under NEPA, agencies must "identify and assess the reasonable alternatives *to the proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment,*" and must "[u]se all practicable means . . . to "restore and enhance the quality of the human environment and *avoid or minimize any possible adverse effects of their actions.*" 40 CFR 1500.2(e), (f), emphasis added.

Here, the Project proposes *not* to improve the human environment but to deliberately degrade it for the vast majority of travelers. CEQA requires that an EIR "shall be considered by every public agency prior to its approval or disapproval of a project," and its purpose is to provide agencies and the public with information about a project's possible impacts, and to "list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." PRC §21061. CEQA's mandate is to maintain a "quality environment" for all the people of California, not just some. PRC §21001(a),(d). CEQA prohibits approving any project where an EIR has identified significant impacts without proposing effective mitigation or alternatives to the project, and specifically requires such information in EIRs and separately in findings. See, *e.g.*, PRC §21002.1, 21081, 21081.5; CEQA Guidelines §§15091 – 15093; 15120-15130. The FEIR fails to satisfy those requirements.

The FEIR complains that, "Transit speeds are currently not competitive with automobiles on Van Ness Avenue. Buses now travel at half the speed of cars (only 5 miles per hour) in the



Project area.” FEIR, p.S-3, §S.5.2. The document claims that with the Project buses would increase bus speed to up to 7 miles per hour and substantially decrease vehicle speed on Van Ness Avenue *and* parallel streets from the current 10.5 miles per hour, “resulting in a significantly reduced speed gap between modes” on Van Ness Avenue. FEIR at p.3-27-28, §3.2.2.3, Figure 3.2-6. That alleged gain of 1.8 miles per hour of speed for Muni lines #47 and #49 on the 2-mile Project length, however, comes at the expense of delaying hundreds of thousands of people, while doubling the distance between bus stops. FEIR, p. 3-72, Table 3.3-15.

Although it is not analyzed in the FEIR, much of the Muni gain in speed would be due to removing half the bus stops and other measures unrelated to eliminating traffic lanes and parking. By failing to describe such alternatives, the FEIR falsely implies that the “purpose and need” can only be met by creating the significant impacts and expense of a median-strip BRT. The FEIR further misleads by claiming without evidence that more people would travel by bus, but makes no commitment to acquire new buses to meet even the existing peak hour need, and without accounting for passengers who would give up on bus travel because of the increased (doubling of the) distance between bus stops. See, *e.g.*, *Sierra Club v. Bosworth*, 199 F.Supp.2d 971, 980-981 (9th Cir.2002) [failure to support purpose and need with scientific evidence and to consider contrary opinion violates NEPA].

The Project’s toll on the vast majority travelers is distorted by the FEIR’s relentless promotion of the Project and its underlying negative purpose of significantly affecting traffic and parking in central San Francisco. The FEIR says that the segment of U.S. Highway 101/Van Ness Avenue where the Project would eliminate two traffic lanes, all turning lanes, and hundreds of parking spaces, carries a total of 16,000 passengers on the two Muni bus lines #47 and 49. However, the few marginal gains in speed for people who might travel on Muni lines #47 and #49 are disproportionate to the Project’s significant adverse impacts on the vast majority of travelers and on the entire human environment.

At the same time, the Project and the LPA require significantly degrading the visual and historic character of Van Ness Avenue by removing the mature trees and vegetation adorning the avenue, and the unique, historic, graceful old streetlamps that line that avenue and contribute to its character. The entire median would be replaced by a huge, asphalt expanse in the center of Van Ness Avenue, with bus stops (euphemistically called “stations”), flashing advertising signs, and the historic streetlamps by higher, ugly, generic light poles with two glaring lights that will significantly alter and degrade the visual and historic character of the entire corridor. There is no alternative that would rehabilitate the historic poles, and the agency has rejected the alternative that would save the median strip.

The FEIR claims that its “purpose and need” is supported by the lead agency’s (SFCTA) own 2004 Countywide Transportation Plan (“CWTP”). FEIR, p.1-7, §1.3.1. The FEIR makes no other claim of federal authority for the “purpose and need” of the Project.<sup>2</sup> Again, the insular multiple roles here of a Project sponsor and booster that is the lead agency, the preparer of the environmental document, and the unelected decisionmaking body, leads to a predictable result

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<sup>2</sup> The FEIR claims that the regional Metropolitan Transportation Commission and/or Caltrans have supported the Project are unsupported. There is no evidence of funding by either, and Caltrans wrote a letter opposing the Project.



and egregious lack of objectivity that fails to accurately inform the public, producing instead a massive document in support of a *fait accompli*.

Since the Project's "purpose and needs" is unreasonable and contrary to the law and will necessarily have significant adverse impacts on the environment that are not effectively mitigated, and since they have no basis in federal authority, they do not satisfy NEPA.

The FEIR's "purpose and needs" also improperly constrain the analysis of alternatives under NEPA by mandating the Project in some form. 40 CFR §1502.2(f) ["Agencies shall not commit resources prejudicing selection of alternatives before making a final decision"], and (g) ["Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made."]; §1502.14, 1502.13; §1502.16(d); and see, e.g., *League of Wilderness Defenders-Blue Mountains Biodiversity Project v. U. S. Forest Service* 689 F.3d 1060, 1069-1070. For example, no alternatives are discussed (except "no project") that would avoid or minimize the Project's adverse impacts, such as alternatives that might include removing half the bus stops, improved boarding capabilities, real-time displays at existing bus stops, and all the other parts of the Project that do not cause significant impacts on traffic and parking.

The significant effects on traffic that necessarily result from the FEIR's "purpose and needs" are contrary to the mandates of NEPA and CEQA to protect the environment, not to deliberately degrade it. See, e.g., 40 CFR §1500.1, 1500.2(f) [requiring federal agencies to "Use all practicable means. . . to enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment."]; and see, e.g., PRC §§21001 [California policy requires long-term protection of the environment of every Californian]; 21002 [public agencies should not approve projects if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects; §21002.1(a) [purpose of EIR is to identify the Project's significant effects on the environment, and to "indicate the manner in which those significant effects can be mitigated or avoided; CEQA Guidelines §15126.6 [alternatives must avoid or substantially lessen significant impacts, even if these alternatives would impede to some degree the attainment of the Project objectives.]

Deliberately causing traffic congestion throughout the area to "provide a competitive transit alternative to auto travel in major corridors" to gain speed on two Muni lines does not serve these mandates.

The FEIR's "purpose and needs" also misleads the public by masking the Project's significant impacts in feel-good verbiage, such as its claim that the Project's purpose is to "Contribute to the urban design, identity, and livability of the BRT corridors." FEIR, p.1-7, §1.3.1. In fact, as noted by many commenters, the Project will significantly degrade the environment on Van Ness Avenue by removing all mature median trees and creating a huge asphalt expanse, by removing parking, by removing streetlamps, and by creating traffic congestion in the entire area.

## **6. The FEIR's Claim That Vehicles Will Disappear Or Find Some Other Way to Get Around Is Unsupported Speculation.**



The FEIR, like the DEIR, states that the one-third of travelers who formerly occupied those traffic lanes will find some other way to get around, speculating without any evidence that drivers will convert to bus travel, bicycles, or travel on foot.<sup>3</sup> FEIR, p.3-10. One third of the vehicle traffic on Van Ness would be 12,000 to 15,000 vehicles. No evidence is provided for the speculative mode shift, and there is no analysis of the impacts.

The FEIR has no coherent discussion of origin/destination or the *purpose* of vehicle travel, or of the origin/destination of other “modes,” such as pedestrian travel and travel by bicycle. If those factors are considered, the FEIR’s happy fantasy of vehicle abandonment evaporates. By omitting this critical information and by its false and unsupported speculation, the FEIR is misleading and fails in its informational purpose.

For example, the FEIR claims that “the number of trips made by transit would increase significantly” on Van Ness Avenue but fails to note that vehicle traffic would also increase significantly on parallel streets where there is already a large volume of traffic. FEIR, p.3-12. Similarly, the FEIR disingenuously claims that a higher *proportion* of travelers on US Highway 101/Van Ness Avenue would use transit, but fails to note the forced diversion of other vehicles by eliminating one-third of the highway’s capacity. *Id.* The FEIR observes that each bus on would carry more passengers than a car. FEIR, p.3-13.

However, all of those happy numbers are irrelevant, since, even with its many defects and omissions, the FEIR admits that the Project will have significant adverse impacts on traffic on Gough and Franklin Streets that will worsen over time, while failing completely to analyze the Project’s impacts on cross traffic and transit. The FEIR fails to propose any effective mitigation measures even for those impacts it identifies, plainly violating both CEQA and NEPA.

The FEIR admits that a large volume of vehicles already travel on parallel streets and that the Project would cause significant adverse impacts on those heavily-traveled corridors, but even that admission is couched in misleading promotional verbiage while the FEIR continues to irresponsibly promote the Project.

For example, the FEIR admits that the Project’s decrease of roadway capacity by one-third “would cause motorists to divert from Van Ness Avenue to avoid delays.” FEIR, p.3-52. The FEIR explains that “the reduction in overall vehicle capacity, as well as the reduction in left turns on Van Ness Avenue may make the accessibility of parallel streets relatively more attractive for local drivers in comparison [to the BRT], even at similar speeds.” FEIR, p.3-10.

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<sup>3</sup> The FEIR claims without any supporting evidence that “Pedestrian and bicycle trips comprise approximately 25 percent of trips to, from, or within the neighborhoods surrounding Van Ness Avenue.” (FEIR, p.3-12, §3.1.3) Thus, of the “55,000” travelers on Van Ness Avenue, the FEIR implausibly claims that 13,750 travel by private bicycle or on foot. (*Id.*) Since a “pedestrian” may be walking 20 feet to a bus or a vehicle, and since the document admits that there are few bicycles traveling on Van Ness Avenue, that claim is misleading and irrelevant to the impacts analysis. At p. 3-91, the FEIR contradicts itself by stating that pedestrian trips are 26% of the total “nonmotorized transportation in the Van Ness Avenue corridor,” but admits that “these figures” do *not* account for “walking to reach transit,” and “every transit trip begins and ends as a pedestrian trip.” FEIR, p.3-91, §3.4.2. The FEIR admits that “there is no accurate accounting” of private bicycle trips in the Project area, but includes it in the merged 25% or 26% of “nonmotorized” trips. FEIR, p.3-100, §3.4.2.2.



Incredibly, the FEIR does not attribute that mass diversion of traffic to the *delays* caused by the Project, which are significant adverse impacts under CEQA and NEPA.

Continuing to pretend that parallel streets could accommodate the diversion, the FEIR nevertheless claims that “Less than half of travelers in private vehicles on Van Ness Avenue under existing conditions have an origin or destination in neighborhoods surrounding Van Ness Avenue, meaning many of them could divert to streets throughout San Francisco rather than use Van Ness Avenue or streets immediately parallel.” FEIR, p.3-12.

The FEIR says that with the Project, “an average of 19 to 32 percent of traffic on Van Ness Avenue (depending on the location) would change their travel patterns, including driving on other streets, shifting the trip to other times of day, or shifting to other modes such as transit, walking, and bicycling.” FEIR, p.3-52. With no supporting evidence, the FEIR claims that those 19 to 32 percent of travelers who now use Van Ness Avenue “would change their tripmaking in a number of different ways,” with half either using one of the five parallel streets (Gough, Franklin, Polk, Larkin, or Hyde), and claiming that the other half would use transit, walk or bike, change the time of day of their trip, forego the trip, or to “use a route through another part of the city.” FEIR, p.3-10. With no supporting evidence, the FEIR claims that “more than half of all trips that start *and* end in the Van Ness Avenue neighborhoods . . . are walk or bike trips.” FEIR, p.3-6.

The FEIR admits that Franklin and Gough Streets already carry 59,000 daily automobile person trips. FEIR, p.3-3. The FEIR finally admits that both “near term” and “long term” impacts would lead to significant traffic impacts on Gough and Franklin Streets. See, *e.g.*, FEIR, p.3-60, Table 3.3-9, p.3-72, Table 3.3-15. The FEIR, however, considers those impacts in a vacuum, without considering how the queuing and back-up will affect other intersections and cross traffic. The FEIR proposes to inflict more impacts on drivers as “*mitigation*” for those impacts, *i.e.*, to eliminate more parking, and to eliminate more turn pockets. FEIR, p.3-81.

The FEIR claims without evidence that the BRT would increase transit trips to “an average” of 40 to 44 percent, and that at “select locations, transit trips would comprise more than 50 percent of motorized trips,” (FEIR, p.3-12) and that “the number of trips made by transit would increase significantly.” FEIR, p.3-13. That claim is mistaken, unsupported, and misleading, since vehicles and their passengers would obviously be diverted to other streets causing increased congestion. There is *no* evidence that vehicle passengers would abandon cars to take Muni lines 47 and 49 to their destinations. Like the DEIR, the FEIR fails to accurately state that the Project provides *no* new buses to accommodate the claimed increase in use of transit.<sup>4</sup> The pretense is that Van Ness is a neighborhood street, like Polk Street. But Van Ness is a major US Highway carrying through the City, region and state. However, the FEIR admits that “Less than half of travelers in private vehicles on Van Ness Avenue under existing conditions have an origin or destination in neighborhoods surrounding Van Ness Avenue,

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<sup>4</sup> The FEIR vaguely speculates that, “Future services investments would increase person-throughput without additional traffic operations impacts” (FEIR, p.3-13), and that MTA might buy one new bus. FEIR, p.3-37.



meaning many of them could divert to streets throughout San Francisco rather than use Van Ness Avenue or streets immediately parallel.” FEIR, p.3-12.

The FEIR’s lack of objectivity and the failure to support the speculation that thousands of vehicles will simply disappear or switch to buses or bicycles to reach their destinations and its improper promotion of the Project in spite of its significant adverse impacts violate NEPA and CEQA’s fundamental requirements to provide accurate, high-quality information and objective analysis. 40 CFR §§1500.1(b), 1500.2(d), 1505.1, 1506.3(b).

Further, since it proposes to obstruct and delay traffic on a major U.S. and California Highway, the Project will clearly affect interstate commerce and travel, implicating constitutional provisions that require equitable allocation of revenues for such funding, not special or local interests. United States Constitution, amendment XIV (1). To the extent that revenues for building, maintenance, and operating costs of the Project are proposed to be taken from state fuel taxes, they must first be specifically approved in an election and must be used “in a manner which gives equal consideration to the transportation needs of all areas of the State and all segments of the population.” California Constitution article XIX (1) (3) and (4). The FEIR claims that the funding of Project construction would be partially from FTA “small starts” program, based on a “high” rating, and partially from “Proposition K,” revenues. However, the Project provides no funding of new buses.

#### **7. PROJECT DESCRIPTION: The FEIR’s Project Description Is Not Stable, Finite, and Accurate.**

The DEIR described the Project as “three build alternatives,” with two “options” for “Build Alternative 3,” and a “no Build alternative,” (DEIR at pp.S-4 to S-6) instead of an accurate, finite description, and therefore did not comply with CEQA. *County of Inyo v. City of Los Angeles* (1977) 72 Cal.App.3d 185, 193.

Months after the close of public comment, the SFCTA and SFMTA collaborated on designing and approving a “local preferred alternative” (“LPA”) that was *not included in the DEIR*. FEIR, p.2-3-2-4, §2.1.4. The LPA proposes removing the existing median, two traffic lanes, nearly all parking on Van Ness Avenue, removing nearly all of the mature trees and vegetation in the median of Van Ness Avenue, and other features causing significant impacts that were not described or analyzed the DEIR. And see discussion at Item 3, *ante*.

The DEIR was required to include and describe *the Project*, not only alternatives to it. For example, NEPA requires the agency to “assess the reasonable alternatives to *proposed actions* that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” 40 CFR §1500.2 (e), emphasis added. Here, the FEIR proposed alternatives without having a finite “proposed action.” NEPA further requires that, based on the FEIR’s description of the affected environment (40 CFR §1502.15), and the statement of environmental consequences (40 CFR §1502.16), the FEIR “should present the environmental impacts of the proposal *and* the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker *and the public*.” 40 CFR §1502.14, emphasis added. The Alternatives section of the FEIR must “identify the agency’s preferred alternative . . . in the *draft statement*...” 40 CFR §1502.14(e). The DEIR failed to identify the preferred alternative in the DEIR, and the agencies must now recirculate the DEIR for a new public comment period and, after considering public comment, issue a new FEIR. *Ibid*.



NEPA explicitly requires that the analysis of the Project's impacts should *not* duplicate the discussion of alternatives. 40 CFR §1502.16. By simply discussing alternatives and *not* discussing the Project itself, which is the LPA, both the DEIR and the FEIR fail to comply with NEPA.

Under NEPA, the analysis of alternatives to the Project is clearly distinct from the analysis of the Project's impacts.

CEQA also requires a Project description that is distinct from the analysis of alternatives. CEQA Guidelines §15125, *cf.* §15126.6. Under CEQA, the failure to include an accurate Project description is an abuse of discretion that makes it impossible to assess the Project's direct, indirect, and cumulative impacts. See, *e.g.*, *Communities for a Better Environment v. Richmond*, 184 Cal.App.4th 70, 88-89 [holding abuse of discretion where agency did not disclose accurate project description until after close of public comment, as "too little, and certainly too late, to satisfy CEQA's requirements" for informing the public.].

In any event, as noted, recirculation is required because the necessary information was not given to the public in the DEIR as required, and the public was deprived of meaningful participation in the review and decisionmaking process, violating both CEQA and NEPA. See discussion, Item 3, *ante*. The public had no way of knowing what was actually being proposed on Van Ness Avenue from the misleading DEIR, and had no opportunity to comment on the actual Project and its significant impacts.

**8. BASELINE DEFECTS: The FEIR'S Description of Existing Conditions Is False, Distorted, and Incomplete, Precluding Accurate Analysis of the Project's Impacts: There Is NO Accurate Description of Existing Traffic Conditions on Van Ness Avenue and on the Parallel and Surrounding Streets.**

As discussed previously (FEIR II: Individuals, p.114-121; I-40), but not coherently addressed in agency response, under CEQA an EIR must include an accurate description of the actual existing physical conditions in the Project area. The FEIR here contains no such description.

An analysis of the Project's impacts must begin with an accurate description of the existing conditions in the Project area. 40 CFR 1502.15; CEQA Guidelines §15125. An accurate baseline is necessary for determining the Project's impacts existing conditions.

Under NEPA, baseline data must be accurate, reliable, and based on scientific evidence. *Northern Plains Resource Council v. Surface Transportation Board*, 668 F.3d 1067, 1083 (9th Cir. 2011). Baseline data must be gathered and analyzed before implementation of a project, because "[O]nce a project begins, the pre-project environment' becomes a thing of the past' and evaluation of the project's effect becomes 'simply impossible.'" *Id.* "[W]ithout this data, an agency cannot carefully consider information about significant environmental impacts," resulting in an arbitrary and capricious decision. *Id.* at 1085. Collecting the necessary data cannot be deferred to a future date, because "the data is not available during the EIS process and is not available to the public for comment. Significantly, in such a situation, the EIS process cannot serve its larger informational role, and the public is deprived of their opportunity to play a role in the decision-making process." *Id.*; and, *e.g.*, 40 CFR 1502.24



CEQA also requires that the baseline must be supported by substantial evidence in the administrative record. See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management District*, 48 Cal.4th 310, 328 (2010); *County of Amador v. El Dorado County Water Agency* 76 Cal.App.4th 931, 954 (1999) [inadequate baseline held an abuse of discretion]; *Communities for a Better Environment v. Richmond, supra*, 184 Cal.App.4th at 89 [omission of baseline information fails CEQA's informational purpose].

Here, as described in our Comment on the DEIR, the traffic baseline is incomplete, inaccurate, and unsupported. FEIR, Appendix I, Individuals, p.114-121 (I-40).

The FEIR, like the DEIR, errs in omitting critical baseline information and by focusing only on intersections already “operating at LOS E and F.” FEIR, p.3-41, §3.3.1. The FEIR only conducted actual traffic counts in 2007 at five intersections on Van Ness Avenue, on one intersection of Gough Street, and one intersection on Franklin Street. FEIR, p.3-44. Those counts, however, were not used to analyze traffic impacts. Instead, traffic counts were “developed” by a computer model called “Synchro” (FEIR, p.3-40), based on growth factors from another computer model called “CHAMP,” and other data. FEIR p.3-39-41, §3.3.1. The FEIR “uses a Synchro traffic operations model to assess intersection LOS impacts” caused by the Project’s “build alternatives” on Van Ness Avenue and the “five parallel north-south streets east and west of Van Ness Avenue.” FEIR, p.3-41. The computer model evaluates intersections “based on the approach with the highest delay.” FEIR, p.3-41. Although the study area includes 139 intersections, “Due to the large number of intersections in the traffic study area, the discussion of existing and future intersection approach LOS focuses . . . on intersections . . . operating at LOS E or F.” FEIR, p.3-41.

However, by only analyzing intersections that *already* operate unsatisfactorily, the Project’s impacts are necessarily minimized. Significance is assessed by degradation of the Level of Service (“LOS”) from level “A,” indicating “negligible delays” of less than 10 seconds per vehicle to LOS level “F,” indicating delays of more than 80 seconds at signalized intersections “with queuing that may block upstream intersections” and more than 50 seconds for unsignalized approaches. FEIR, p.3-41. LOS “D” indicates delays of 35 to 55 seconds, and LOS “E” indicates delays of 55 to 80 seconds at signalized intersections. *Id.* Therefore, the impacts are much greater if LOS declines from “A” to “F” (losing more than 70 seconds), or from “A” to “D” (losing 25 to 45 seconds), than if it declines from “E” to “F” (losing one to 15 seconds). The omission of baseline information violates NEPA and CEQA. *County of Amador v. El Dorado County Water Agency, supra*, 76 Cal.App.4th at 954; *Communities for a Better Environment v. Richmond, supra*, 184 Cal.App.4th at 89.

Further, the FEIR fails to analyze the queuing that it admits may block upstream traffic when LOS is degraded to “F,” and considers the few intersections that it does analyze that operate at LOS E or F in isolation. FEIR, p. 3-60. The FEIR’s Synchro output thus projects significant traffic impacts in the “near term,” meaning for the year 2015, at only five intersections, with some experiencing delays of over 100 seconds. FEIR, p.3-60, Table 3.3-9. However, the FEIR fails to analyze how those delays will affect intersections “upstream.” There is no LOS analysis of the impacts on cross traffic.

In the year 2035 projection, those significant effects worsen, and ten intersections operate at LOS E or F, some intersections with delays of more than two minutes per vehicle.



FEIR, p.3-67, Table 3.3-14. And again, the FEIR fails to analyze the inevitable queuing and backup of traffic at other intersections upstream.

Even if the FEIR's defective baseline could be considered adequate on US Highway 101/Van Ness Avenue, the FEIR contains *no accurate baseline description of existing conditions on Gough, Franklin, and other parallel streets where the FEIR says traffic will be diverted, and no analysis of intersecting streets affected by the Project.*

**a. GOUGH STREET: The FEIR Fails to Describe Existing Conditions on Gough Street, which Cannot Accommodate Any Overflow from US Highway 101/Van Ness Avenue.**

Gough Street is a two-way, two-lane street from Lombard Street to Sacramento Street, with unsignalized intersections, many Stop signs, and a steep grade. It is not a major arterial street, and it does not merge into Highway 101 southbound. FEIR, p.3-40. Gough turns into a one-way street south of Sacramento Street. Gough Street does not go through to Highway 101 or any freeway turnoff. FEIR, p.3-40 Figure 3.3-1.

Unstated in the FEIR are the plain facts that Gough Street between Sacramento and Market Streets is backed up for several intersections during peak hours, and can accommodate no more traffic without extreme delays. The FEIR claims that it measured 27,007 cars at Ellis and Gough Streets some time in 2007, but contains *no* actual on-ground measurement of existing traffic at or near the Civic Center and Market Street or at any other intersection from Ellis to Lombard Streets. FEIR, p.3-44. The FEIR admits that *no* trucks will travel on Gough Street. FEIR, p. 3-12 ["it is unlikely that most trucks would divert from Van Ness Avenue to parallel streets due to the increased grade/slope on parallel streets (trucks are currently prohibited on Franklin Street north of California Street and are also prohibited on Gough Street north of Sacramento Street . . . and because they are either traveling regionally on US 101 or making deliveries on Van Ness Avenue."]. However, the FEIR fails to analyze the inevitable delays to those vehicles and other traffic from eliminating a traffic lane on US 101.

In fact, there is *no major arterial street* carrying southbound traffic in the Project area other than US Highway 101/Van Ness Avenue. That critical information is omitted from the FEIR. The FEIR ignores that egregious defect, and only analyzes *one* intersection where existing LOS is already at "F" at Gough/Green. FEIR, p.3-55. The FEIR claims that is the *only* intersection on Gough Street that will be affected by diverting thousands of cars from US Highway 101/Van Ness Avenue in the "near term." FEIR, p.3-55. That conclusion cannot survive judicial scrutiny under CEQA or NEPA, since the omission of accurate baseline conditions makes the impacts analysis impossible. *Northern Plains Resource Council v. Surface Transportation Board*, *supra*, 668 F.3d 1067 at 1085; *Communities for a Better Environment v. South Coast Air Quality Management District*, *supra*, 48 Cal.4th at 328; *County of Amador v. El Dorado County Water Agency* 76 Cal.App.4th 931, 954 (1999) [inadequate baseline held an abuse of discretion]; *Communities for a Better Environment v. Richmond*, *supra*, 184 Cal.App.4th at 89 [omission of baseline information fails CEQA's informational purpose].

However, the FEIR contains *no* accurate description of existing conditions on the five parallel streets where the FEIR claims that the vehicle traffic will go after the Project eliminates one-third of the road capacity on US Highway 101/Van Ness Avenue. FEIR, p.3-42-43.

**b. FRANKLIN STREET**



The FEIR claims that SFCTA measured 30,901 vehicles at Franklin and Post Streets in 2007, but there is no accurate statement of existing conditions on Franklin Street. FEIR, p.3-44. Therefore, no evidence supports the FEIR's conclusion that there will be no traffic impacts on Franklin Street from diverting thousands of vehicles from Van Ness Avenue.

**c. POLK STREET**

The FEIR contains *no* measurement of existing traffic, and no accurate description of existing conditions on Polk Street, an often-congested, two-lane, two-way street between Grove Street and Lombard Streets that is not a major arterial. FEIR, p.3-42. Polk Street is a busy neighborhood commercial street. The FEIR also fails to state that City's MTA and the San Francisco Bicycle Coalition have proposed a plan to remove most or all of the parking on Polk Street, to create "parklets," bulbouts, and a wide, separated bicycle lane, and to otherwise obstruct vehicle traffic and turning on Polk Street. These existing conditions make the EIR's speculation that thousands of vehicles from US Highway 101/Van Ness Avenue will be diverted to Polk Street a ludicrous, unsupported, and unrealistic theory, not substantial evidence.

**d. LARKIN STREET**

The FEIR contains *no* actual traffic counts and no accurate statement of existing traffic conditions on Larkin Street, which is described as a "one-way NB street with three lanes from Market to California streets, and a two-way street north of California Street and between McAllister and Grove Streets." FEIR, p.3-42. The FEIR's claim that this street could accommodate *any* diverted traffic from US Highway 101/Van Ness Avenue is entirely unsupported.

**e. HYDE STREET**

The FEIR contains *no* actual traffic counts and no accurate statement of existing traffic conditions on Hyde Street, which is described as "a one-way street with three SB lanes between California and Market streets, and a two-way street with one lane in each direction between Jefferson and California streets," which "shares the ROW with cable cars between Beach and Washington Streets." FEIR, p.3-43. That description does not accurately describe the baseline traffic conditions on Hyde Street, and there is no way that traffic impacts on Hyde Street can be analyzed from that description.

**f. EAST-WEST STREETS: There Is No Accurate Description of cross traffic, cross transit and parking on cross-streets. Broadway, Pine, Bush, Geary, O'Farrell, Hayes, Fell, Market, and Mission Streets.**

The FEIR contains *no* accurate description of existing conditions on major east-west cross streets, many of which carry heavy traffic and more transit passengers than Muni lines 47 and 49 on Van Ness Avenue. The FEIR admits that it has not analyzed traffic, transit, parking, emergency services, and land use impacts on these and other cross streets, most of which the FEIR does not even bother to list, much less to describe and analyze. The FEIR lists some cross streets (FEIR, p.3-43) but contains no information on traffic volumes, existing congestion, transit, and parking on those and other cross streets that are certain to be affected by the Project's traffic diversions, turning restrictions, and parking removal. The FEIR fails to analyze those impacts.



The FEIR also fails to accurately describe existing cross-transit. The FEIR lists the Muni lines that cross Van Ness with average weekday ridership, which exceeds 400,000 per day on these lines, with several individual Muni lines crossing Van Ness exceeding the 16,000 combined ridership on lines 47 and 49, FEIR, p.3-17,18, Table 3.2-2. However, the FEIR does not show existing stops and speeds on those cross streets and has *no analysis* of how they will be affected by the increased congestion caused by the Project's traffic diversion, turning restrictions, and parking removal.

Similarly, the FEIR mentions Muni route 19, carrying 9,200 passengers on Polk Street, but fails to show its existing speed and stops, thus making any analysis of the Project's impacts impossible.

The Project area is improperly defined as only Van Ness Avenue and five parallel streets, implying that other areas will be unaffected by the Project's impacts. In fact, the transportation environment affected by the Project includes existing traffic, transit, and parking conditions on the cross streets.

**g. There Is No Accurate Count of Trucks, Taxis, Shuttle and Tour Buses in the Project Area and No Analysis of Impacts on Them.**

The FEIR has no accurate count of trucks, taxis, shuttle, and tour buses, on Van Ness Avenue and other streets in the Project area. These types of vehicles are instead merged with "private" automobiles that the FEIR dismissively claims will find some other way to get to their destination with the Project's lane elimination.

The FEIR dismisses the impacts on trucks and traffic with the cavalier observation that "it is unlikely that most trucks would divert from Van Ness Avenue to parallel streets due to the increased grade/slope on parallel streets (trucks are currently prohibited on Franklin Street north of California Street and are also prohibited on Gough Street north of Sacramento Street . . . and because they are either traveling regionally on US 101 to making deliveries on Van Ness Avenue." FEIR, p. 3-12.

Similarly, the FEIR contains no accurate information on taxis that carry passengers throughout the area and region, dismissing the Project's significant impacts on taxis, instead merging them with "mixed-flow traffic." FEIR, Appendix I, Individuals, p. 101. The FEIR dismisses the evidence presented by a 26-year taxi driver by again reciting the dubious rhetoric in the DEIR and FEIR, while noting that it has revised the former claim that drivers would convert to bus travel to "include more conditional language: '*up to 50% of the new transit riders could be former drivers.*'" *Id.* at 102. That speculation, again, is not substantial evidence or an accurate assessment of the Project's impacts on travel in the Project area.

The FEIR contains *no* accurate information on the large number of shuttle buses carrying passengers to and from jobs, medical shuttles, and the large number of tour buses traveling throughout the Project area to tourist attractions and to and from Civic Center attractions. Those large vehicles are again merged with cars in the FEIR, the cars that the document claims will go elsewhere, on transit, or on bicycles.

**h. Computer-generated Simulations and Projections Are Not a Substitute for Accurate Baseline Descriptions, or for the FEIR's Omissions.**



The FEIR admits that actual traffic counts were conducted at only five intersections. The remaining “existing” conditions were created by computer projections and not by evidence of actual physical conditions.

The FEIR refers to a traffic study consisting of thousands of pages of computer-generated print-outs from its “CHAMP,” “Synchro,” and “Vissim” databases. CHS Consulting Group: “*Final Van Ness Corridor Bus Rapid Transit Traffic Analysis Vehicular Traffic Analysis Technical Memorandum*,” July 7, 2013 [“*Final Technical Memo*”]<sup>5</sup>.

However, that massive document does not provide an accurate measure of the traffic on U.S. Highway 101/Van Ness Avenue, or on the parallel and cross streets affected by the Project. The agency has *no* accurate data on the origin and destination of the traffic on these streets, *no* accurate traffic count data for cross streets, and *no* accurate data on turning on Van Ness Avenue and other affected streets. Without that data, the FEIR cannot accurately analyze transportation impacts.

The FEIR notes a large number of changes in its Transportation Analysis, noted by vertical lines in the document. The FEIR states that computer “travel demand projections” are “the basis for the operations models” described in the FEIR and “provide several measures of performance of the build alternatives.” FEIR, p.3-2, §3.1. The FEIR states that its “existing travel patterns” section uses “CHAMP”-generated data to describe existing and future travel patterns: travel demand, regional versus local travel patterns, divertibility of trips, and mode splits” FEIR, p.3-2, §3.1.1.

The *Final Technical Memo* states that “SF-CHAMP” was used as the primary technical modeling tool to predict changes in travel patterns for private vehicles with the implementation of BRT in both the near term (2015) and horizon year (2035),” and “takes into account the ‘attractiveness’ (i.e., relative capacity, driving travel time, left turn opportunities, etc.) of streets relative to each other, as well as the relative ‘attractiveness of other modes (e.g., cost, travel time, frequency, etc.) when determining the changes in traveler behavior with the implementation of the BRT.” *Final Technical Memo*, p.7.

After all that, the *Final Technical Memo* reaches the unsurprising conclusion that “Van Ness Avenue would be less attractive to drivers when compared with the No Build Alternative and BRT service on Van Ness Avenue would be slightly more attractive than the 47/49 service under the No Build Alternative.” *Final Technical Memo*, p.7.

The *Final Technical Memo* also states that it uses a “macro-simulation traffic model” called “Synchro” that used some “field counts conducted in 2008 by SFCTA” and that “Synchro default values were assumed for all other locations.” *Final Technical Memo*, p.7.

However, the FEIR admits that actual traffic counts were conducted by SFCTA only in March 2007 at five locations along Van Ness Avenue and 1 location each along Franklin and Gough streets “to determine the peak hour traffic.” FEIR, p.3-2, §3.1.1, fn.18; and see FEIR,

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<sup>5</sup> The *Final Technical Memo* apparently augments or supersedes the earlier *Technical Memo* referred to in the DEIR. The FEIR refers to the *Final Technical Memo*, but it is not made available as an appendix to the FEIR and must be specially ordered from the SFCTA. FEIR, p.3-1.



Appendix I, Individuals, p.114. The FEIR claims that “traffic turning movement counts were taken at 91 intersections and were a separate effort.” *Ibid.* However, those elusive “field counts” and “traffic turning movement counts” are not included in the FEIR or the *Final Technical Memo*, even though they are required to be included in the FEIR by the San Francisco Planning Department’s *Transportation Impact Analysis Guidelines for Environmental Review*, which requires on-ground traffic counts to establish existing conditions, including “the date that the counts were actually taken,” “[c]opies of all counts used in the analysis,” and “[t]he LOS calculation sheets need to include the data . . . used in the calculation was actually collected.” San Francisco Planning Department: *Transportation Impact Analysis Guidelines for Environmental Review*, Appendix B, 1, 2.<sup>6</sup> Nor does any document define or explain what the “Synchro default values” are or how the “existing” traffic volumes were created by “Synchro.”

The *Final Technical Memo* states that it also used “VISSIM,” which it says is “a multi-modal micro-simulation model” that is “capable of simulating transit, automobile, and pedestrian operations, parking operations,” and was selected to “model VN BRT transit operations due to its ability to model bus operations in exclusive bus lanes” and was “primarily utilized to compare the relative travel time and speed difference between autos and buses, differences in speeds and delays between the BRT alternatives, and bus reliability.” *Final Technical Memo*, p.8.

The *Final Technical Memo* states that, even though it used other computer programs, “only Synchro results were used to assess vehicular traffic impacts based on intersection Levels of Service (LOS) impacts along Van Ness Avenue and the five parallel north-south streets.” *Final Technical Memo*, p.8. Since LOS is the methodology used by the FEIR to measure the Project’s traffic impacts, the lengthy elaborations in the FEIR and the *Technical Memo* on “CHAMP” and “VISSIM” are largely pointless, except perhaps to promote the Project’s dubious “purpose and need” of a busway that “competes” by impeding other traffic. The *Final Technical Memo* also admits that its data “volume to capacity ratio” and “average vehicular travel speed” is useless for identifying the Project’s impacts. *Final Technical Memo*, pp.8-9.

The *Final Technical Memo*, like the previous Technical Memo, states: “The VN BRT Project traffic study area includes a total of 139 intersections. . . Due to the large number of intersections analyzed in the traffic study area, the discussion of existing (and future) intersection LOS focuses only on those operating at LOS E and F.” *Final Technical Memo*, p.8. However, as noted, that analysis necessarily minimizes impacts.

The FEIR’s description of “existing” conditions on selected streets is largely a computer-generated statistical exercise that removes those conditions from the real environment and human experience, while the reality of the Project’s impacts on that real environment remains unaddressed.

Without an accurate description of the existing and historic *purpose and use* of US Highway 101, Van Ness Avenue, the context of the Project’s significant impacts cannot be analyzed. Under NEPA, “Context” means that “*the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected*

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<sup>6</sup> This Commenter requested pursuant to the California Public Records Act *all* traffic counts, and was not provided “turning movement counts” at “91 intersections” or any “field counts conducted in 2008 by SFCTA” that the *Final Technical Memo* claims were the basis for its “existing conditions.”



*interests, and the locality,” and both short- and long-term effects.* 40 CFR 1508.27(a), emphasis added. That required description is not in the FEIR.

Under CEQA, the analysis of impacts is impossible without an accurate baseline, and the failure to accurately describe existing conditions is a failure to meet informational requirements and an abuse of discretion. See, e.g., *County of Amador v. El Dorado County Water Agency*, *supra*, 76 Cal.App.4th at 954; *Communities for a Better Environment v. Richmond*, *supra*, 184 Cal.App.4th at 89 [omission of baseline information fails CEQA’s informational purpose].

The visual character and history of Van Ness Avenue as a grand boulevard is also part of the context that is absent in the FEIR, precluding a coherent analysis of the Project’s destruction and alteration of that context and character. Pieces of that context are divorced from its whole, such as the median strip, the historic poles, and the layout of the avenue to provide the That loss is irretrievable and yet made invisible by the FEIR’s omissions and failure to provide a coherent description of the existing environment.

## **9. IMPACTS: The FEIR Fails to Identify and Analyze the Project’s Impacts**

NEPA and CEQA require that the FEIR identify the impacts of the Project. See, e.g., 42 USC §4332(C)(i); PRC §21002.1; and see, e.g., 40 CFR §§1502.16, 1508.7, 1508.8, 1508.27. The FEIR fails to satisfy those requirements. Its flaws include failing to accurately state the existing environment, and context, meaning “society as a whole (human, national), the affected region, the affected interests, and the locality (40 CFR §1508.27(a)); failing to include a factually and legally adequate analysis of the Project’s cumulative impacts on traffic, parking, and visual and historic resources; omitting impacts analysis from backed-up traffic on parallel streets, cross-traffic and transit, parking, emergency services, and air quality; failing to accurately describe the Project; and failing to support its conclusory statements with evidence and quality analyses. Due to lack of time, this Comment can only give a few examples, in addition to the comments already submitted by the public and agencies. FEIR, Appendix I.

### **a. TRAFFIC: The FEIR Violates CEQA and NEPA by Failing to Identify and Analyze the Project’s Impacts on Traffic.**

This commenter and many others have already submitted comment on the Project’s inevitable impacts on traffic. See FEIR, Appendix I generally, and Individuals, p.114-121. The FEIR still fails address many impacts.

Even though the FEIR analyzes “near-term” and “long-term” impacts, its analysis is selective and improperly relies on causing significant impacts on traffic on parallel streets by traffic diverted by the Project’s removing one-third of the traffic capacity on US Highway 101/Van Ness Avenue. One third of the vehicle traffic on Van Ness would be 12,000 to 15,000 vehicles. The FEIR admits that “approximately 105 to 450 total vehicles in both directions could divert away from Van Ness Avenue and make their trip on a parallel street” during the PM peak, and “any given segment of Polk, Franklin, or Gough streets could experience an additional 50 to 250 vehicles per hour. . .during the PM peak. FEIR, p.3-10 -3-11. And the “approximately” widely ranging figures fall far short of the high quality data required for a legally adequate analysis of the Project’s impacts and fail to inform the public of the intensity of the Project’s severe consequences on traffic. 40 CFR §1508.27(b); §1500.1(b); PRC §21002.1.



The FEIR fails to analyze or even acknowledge the Project's inevitable impacts on cross traffic. As noted, the FEIR's analysis of existing conditions omits conditions on cross streets, making such analysis impossible. Those omissions are an informational failure and an abuse of discretion under CEQA, and also fail to comply with NEPA.

While the FEIR finds impacts in the "near term" at five intersections, it fails to analyze how those delays will affect traffic at intersections upstream and on cross streets. Thus, the defective analysis misleads decisionmakers and the public to believe those impacts are isolated and occur in a vacuum, minimizing their effect. This is not the high quality information required by NEPA, and does not satisfy CEQA, and misleads the public and decisionmakers.

The FEIR contains *no information* on how the Project's turning prohibitions will affect traffic on Van Ness Avenue and on cross streets, even though the FEIR admits that "approximately 105 to 450 total vehicles in both directions could divert away from Van Ness Avenue and make their trip on a parallel street" during the PM peak, and "any given segment of Polk, Franklin, or Gough streets could experience an additional 50 to 250 vehicles per hour . . . during the PM peak. FEIR, p.3-10 -3-11.

There is no accurate description or count of existing traffic turning left from Van Ness Avenue intersections with which to begin the impacts analysis of how the left-turn prohibitions will affect traffic on cross and parallel streets. Nor is there any coherent analysis of the impacts of increased right turns, or of the impacts of prohibiting right turns on many intersections, inevitably leading to significant traffic congestion where turns may be permitted.

The FEIR contains *no* information on how removing parking on Van Ness Avenue, will affect traffic on the avenue and on parallel and cross streets, even though vehicles will clearly have to circle and search for parking after the Project removes nearly all of the parking on Van Ness.

The FEIR contains *no* coherent analysis of bus crowding, even though it predicts more passengers. And see, FEIR, Appendix I, Individuals, p.114-118.

The FEIR contains *no* information on impacts on trucks, taxis, shuttle buses, and tour buses. FEIR, p. 3-11-12. There is no accurate description or counts of trucks on Van Ness Avenue, even though the FEIR admits that "it is unlikely that most trucks would divert from Van Ness Avenue to parallel streets due to the increased grade/slope on parallel streets (trucks are currently prohibited on Franklin Street north of California Street and are also prohibited on Gough Street north of Sacramento Street . . . and because they are either traveling regionally on US 101 or making deliveries on Van Ness Avenue." FEIR, p. 3-12.

Further, the FEIR's analysis of cumulative impacts on traffic does not comply with the requirements of NEPA and CEQA. The analysis must identify impacts that result from "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. 40 CFR §1508.7. Under CEQA, the analysis must include a discussion past, present, and probable future projects that could have similar impacts or that when combined with other impacts could cause an incremental impact to become significant. PRC §21083( b)(2), CEQA Guidelines §15130(b)(1), 15065. The FEIR's "cumulative impacts" section on traffic simply repeats the data from its section on "transportation impacts." That analysis, however, does not take into account past, present, and probably future projects that will add to the



Project's impacts on traffic, transit, and parking. Instead, that analysis only contains a computer-projection of the *direct* impacts of the Project from 2015 to 2035. That is not a legally adequate cumulative impacts analysis under CEQA or NEPA, and is an abuse of discretion under CEQA. See, e.g., CEQA Guidelines §15130; *San Franciscans for Reasonable Growth*, 151 Cal.App.3d 61, 73-76, 80 (1984); *Environmental Protection Information Center v. Johnson*, 170 Cal.App.3d 604, 624-625 (1985).

**b. PARKING: The FEIR's Failure to Accurately Identify and Analyze Parking Impacts Violates NEPA and CEQA.**

The FEIR contains *no accurate information* on parking impacts, since its information is inconsistent throughout as to how much parking will permanently be eliminated. For example, the FEIR claims that due to a more "refined analysis" it has discovered that, contrary to conflicting information elsewhere in the FEIR and in the DEIR, the LPA would remove nearly all of the parking on Van Ness Avenue, at least 105 spaces, not including the spaces permanently removed by construction and bulbouts. FEIR, p.3-122-123; 4.2-13-17

The FEIR repeats the City and County of San Francisco's mistaken notion that parking is not a part of the physical environment, that removing parking is not a significant impact under the law, and that it need not analyze and mitigate parking impacts. FEIR, p.3-118, 3-125, §3.5.3. That notion is factually incorrect and legally spurious. See, e.g., *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District*, 214 Cal.App.4th 1013, 1050, 1053-54 (2013) [holding that parking is part of the environment and that a project's impacts on parking may be significant impacts on the environment and on humans, requiring analysis and mitigation in an EIR].

The FEIR fails to analyze parking impacts under NEPA, even though such analysis is clearly required.

Further, as noted, the DEIR misled the public to believe that parking would not be removed under the alternatives describing center-median projects. Instead, the FEIR now contradicts that conclusion, admitting that the LPA and other alternatives would all remove most of the parking on Van Ness Avenue. However, even more misleading, the FEIR's response to public comment claims that "parking and loading would be largely retained." FEIR II, Individuals, p.101. (I-38-3)

In contrast, the FEIR admits that at least 105 parking spaces would be permanently removed on both sides of Van Ness, and that the LPA would provide "fewer spaces" than any other alternative, and would completely remove parking on many blocks of Van Ness, including between Market and Mission Streets, Vallejo and Broadway Streets, Green and Vallejo streets, and Lombard and Greenwich Streets, and would be completely removed on both sides of Van Ness Avenue between O'Farrell and Geary Streets, Broadway and Vallejo Streets, Vallejo and Green Streets. FEIR, p. 3-125 A more detailed description shows that nearly *all* parking on many more segments would be removed, including, for example, all spaces west side from Market St. to Golden Gate Avenue, all spaces east side between Market and Fell Streets, all but one space on both sides from Fulton to McAllister Streets, 10 of 12 spaces west side from McAllister to Golden Gate Ave., 9 of 11 spaces between Golden Gate Ave. and Turk Streets, 6 of 8 spaces on east side from Turk to Eddy Street, all 5 spaces west side from O'Farrell to Geary, 4 of 5 spaces on east side and 8 of 9 spaces on west side between Sutter and Bush streets, 10 of



11 spaces east side and 4 of 5 spaces west side from Sacramento to Clay, all 5 spaces on east side from Jackson to Pacific, 7 of 11 spaces on east side from Pacific to Broadway, all spaces between Broadway and Vallejo, all spaces from Vallejo to Green, all spaces east side between Green and Union, --and all spaces west side from Greenwich to Lombard. FEIR, p.4.2-13-17, fn.63, Table 4.2-8.

The FEIR notes that the Project would also remove passenger-loading spaces, green short-term spaces, truck-loading spaces FEIR, 4.2-16, Table 4.2-9

The FEIR fails to account for the two to three parking spaces removed for each of the 64 to 70 bulbouts it proposes to construct, removing 200 more parking spaces.

The FEIR has no legally adequate analysis of cumulative impacts on parking. For example, the FEIR fails to note that the City's Market-Octavia Plan will increase population in the Project area by 10,000, while requiring no parking.

The FEIR fails to analyze the impacts of proposed "mitigation" of the Project's traffic impacts on Van Ness Avenue and parallel streets, which call for removing *more* parking.

The FEIR ignores and fails to comply with the requirement of one parking space per residential unit in the San Francisco General Plan's Van Ness Avenue Area Plan and Civic Center Area Plan. Instead the FEIR falsely claims the Project is "consistent" with those parts of the General Plan. FEIR, p.4.1-8,9, 4.1-12

The FEIR finally concludes that there would be *no parking impacts*, even though most of the parking would be removed on Van Ness, and other parking spaces would be permanently removed for bulbouts, and an unstated amount of parking would be removed to "mitigate" the Project's impacts on other streets. FEIR, p.5-18, 5-21.

Even though it concludes that parking is not an impact and/or that there are no parking impacts, the FEIR claims that the following are "mitigation measures under NEPA" and "an improvement measure under CEQA": "coordinate with" businesses affected by removal of "colored parking spaces...to confirm the need for truck and/or passenger loading spaces," and "apply parking management tools . . . including adjustment of residential permits in the residential community north of Broadway Street" or to "manage parking occupancy and turnover through pricing [by SFPark]" FEIR, p.4.2-17, §4.2.5.

There is no coherent analysis of cumulative parking impacts affecting residents and businesses, or of the impacts on cross streets and parallel streets from removing parking, which include spillover traffic, circling, and double-parking. Again, the FEIR fails in its purpose to inform the public and decisionmakers.

### **c. AESTHETIC AND HISTORIC RESOURCES IMPACTS**

#### **1. The FEIR Fails to Accurately Analyze the Direct and Cumulative Impacts of Removing the Historic Lamp Posts on Van Ness Avenue.**

The FEIR admits that the Project's replacement of the historic streetlights lining Van Ness Avenue is "one of the most noteworthy changes to the visual context at each key viewpoint" that it presents, and that "Impacts resulting from changes to the OCS support poles/streetlights network would be experienced by all viewer groups, including sensitive viewer groups (i.e., residents, commuters, and tourists.)" FEIR, p.4.4-34. The poles are nearly 100



years old and bear historic markings and irreplaceable features that define the character of Van Ness Avenue. FEIR, p.4-4-12, 14, Figures 4.4-3, 4. The FEIR fails to state that the unique square bases and poles, their height and spacing, and the size and shape of the lamps, are part of their value to those viewpoints. Instead, the FEIR claims that the generic, higher poles each with unevenly spaced faux decorative lamps measure up to the graceful old streetlight system. Even the few depictions for comparison in the FEIR plainly show that the newer lamps bear no resemblance to the historic ones, are intrusive, and contrary to the FEIR are plainly out of scale by comparison. FEIR, p.4-4-29, 31, 4.4-34. The FEIR incredibly concludes that, contrary to the plain evidence, the Project's removal and replacement with incompatible poles would have "no significant visual or aesthetic effect." FEIR, p.4.4-35.

Further, the FEIR fails to describe an alternative that would restore and rehabilitate, rather than replace, the historic poles. The old lamp posts are part of the context of Van Ness Avenue that merits restoration not destruction regardless of the Project.

## **2. The FEIR Fails to Accurately Analyze the Direct and Cumulative Impacts of Killing and Eliminating the Mature Trees and Green Median on Van Ness.**

The FEIR admits that the "landscaped median and tree canopy are one of the most noteworthy impacts on the visual setting" and "are one of the most important visual features in the corridor." FEIR, p. 4.4-35. The FEIR acknowledges that the Project's killing and removal of those trees would affect all viewers, and that "Many comments regarding concern for tree loss were submitted by agencies and the public during circulation of the [DEIR]." FEIR, p.4.4-35-36. The FEIR admits that the Project's removal of 90 of 102 mature trees and nearly all the "existing healthy and mature median trees in the corridor" would result in a "notable, adverse change in the visual quality of the project corridor until new tree plantings mature." FEIR, p.4.4-44.

That misleading statement implies that a similar median might result from replanting, but that is plainly false, since the LPA would replace the median with a red asphalt expanse with glaring plastic bus stops and advertising where the mature trees now stand. That misleading information and the false claim that the removal of the trees would be "mitigated" by the BRT violate NEPA and CEQA.

## **3. The FEIR Fails to Describe and Analyze the Impacts of the BRT, the Barren Red Asphalt Expanse, and Visual Clutter on the Median Strip and the Context of Van Ness Avenue.**

There is no accurate description of the Project's changes to the visual context on Van Ness Avenue consisting of mature streets separating, defining, and structuring the broad Avenue. That context will be destroyed and replaced with a 2-mile red asphalt strip dominating the entire avenue with glaring bus stops lined with advertisements and visual clutter. The failure to analyze those impacts is a failure to comply with NEPA and CEQA.

No reason is given to paint the huge four-lane expanse of the Proposed bus lanes red in violation of the General Plan, and there is no illustration or coherent description of the resulting bus stops, glaring advertising, intrusive lighting, "art" installations, and pointless whirling wind turbines and other visual clutter proposed for the middle of the avenue, and even claims that would be "mitigation" for removing the trees. See, *e.g.*, FEIR, p. 4.4-31, 4.4-52



**d. TRANSIT: The FEIR Fails to Identify, Analyze and Mitigate the Project's Impacts on Transit.**

There is no coherent analysis of the Project's impacts on transit crowding. There is no analysis of the Project's impacts on the more than 400,000 passengers on buses that cross Van Ness Avenue, ignoring the inevitable impacts of congestion on the cross streets from the Project's diversion and turning impacts.

**e. AIR QUALITY AND NOISE IMPACTS: The FEIR's Air Quality and Noise Impacts Analyses Fail to Accurately Describe and Propose Mitigation of the Project's Impact.**

**f. IMPACTS OF BULBOUTS**

The FEIR fails to analyze the impacts of removing hundreds of parking spaces and obstructing turning by installing 64 bulbouts on Van Ness Avenue. FEIR, p.3-108, and see simulation at FEIR, p.4.4-27. Bulbouts protrude into the street, obstructing right turns, backing up traffic trying to turn right and blocking through traffic, and they remove two to five parking spaces per bulbout. The FEIR claims that pedestrians would gain a negligible average of 1.7 feet of crossing distance, but fails to analyze their significant impacts on parking and traffic.

**g. EMERGENCY AND COMMUNITY SERVICES**

There is no accurate analysis of the Project's impacts on emergency services (fire, ambulance) from the Project's traffic impacts on Van Ness, on cross streets, and on parallel streets.

The analysis of traffic impacts on cultural events and community services is inadequate, with the unsupported conclusion that although traffic delays are forecast during the PM peak period; the project effects on traffic circulation would be less at other times of day and night when shopping, eating out, entertainment, and other commercial activities often occur." 4.2-13.

There is no analysis of traffic to and from cultural events at the Civic Center.

The FEIR acknowledges that the loss of parking could affect residents and businesses, but dismisses those significant impacts, claiming with no supporting evidence that "it can be anticipated that private vehicles users would have more incentive to shift their mode of travel to public transit," and that the Project "would benefit the transit-dependent population at large and would result in a transportation mode shift from automobiles to public transit." FEIR, p. 5-22. That unsupported and irrelevant conclusion does not comply with NEPA or CEQA. See, e.g., 40 CFR 1508.27(a); PRC §21002.1.

**h. The FEIR Fails to Identify and Analyze the Project's Impacts on Accessibility for Disabled and Seniors.**

The FEIR fails to accurately analyze the Project's impacts on accessibility to transit for disabled and seniors from removing half the bus stops on Van Ness. There is no analysis of impacts on parking for seniors and the disabled.

**10. THE FEIR FAILS TO IDENTIFY AND DISCUSS FEASIBLE MITIGATION MEASURES FOR EACH OF THE PROJECT'S IMPACTS**



Under NEPA, mitigation includes: “(a) Avoiding the impact altogether by not taking a certain action or parts of an action. (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. . .” 40 CFR §1508.20. CEQA includes similar provisions. CEQA Guidelines §15370. Mitigation measures must be described in the FEIR. *Ibid.*, and, *e.g.*, CEQA Guidelines §15126.4.

Under CEQA, mitigation measures must be analyzed for each identified and must be effective for each significant impact identified in the EIR. CEQA Guidelines §15126.4. The FEIR fails to comply with this requirement. It provides no feasible mitigation measures for *each* of the “near-term” and “long-term” traffic impacts, and no mitigation measures for the many impacts that it fails to identify. The mitigation measures described are ineffective, generalized, and are themselves negative measures that will cause more significant impacts, such as removing more parking. If a mitigation measure will itself cause impacts, it must also be analyzed in the EIR, which the FEIR fails to do. CEQA Guidelines §15126.4(a)(1)(D). The FEIR improperly “assumes” that it may propose a Project that has “significant and unavoidable” impacts. FEIR, p.7-25. That assumption violates CEQA.

**a. The FEIR Describes NO Effective Mitigation Measures for the Project’s Traffic Impacts.**

The FEIR fails to address each traffic impact it has identified, plainly violating CEQA’s requirements. Even though it omits many required impacts in its defective and selective analyses, the FEIR identifies many impacts on intersections for each “build” alternative. FEIR, pp.3-55, Table 3.3-7; 3-57 – 3-61, Tables 3.3-8;3.3-9 [describing selected “near-term” impacts at Gough/Green, Gough/Hayes, Franklin/O’Farrell, Franklin/Market/Page, Otis/Mission/S. Van Ness, and Duboce/Mission/Otis/US101 Off-Ramp]. The FEIR describes selected “long-term” (meaning some time between 2015 and 2035) significant traffic impacts at Gough/Green, Gough/Clay, Gough/Hayes, Franklin/Pine, Franklin/O’Farrell, Franklin/Eddy, Franklin/McAllister, Van Ness/Pine, Otis/Mission/S. Van Ness, and Duboce/Mission/Otis/US101 Off-Ramp. FEIR pp.3-67-79, Tables 3.3-14, 3.3-15, 3.3-16.

However, instead of proposing feasible and effective mitigation measures for each of those identified impacts as required, the FEIR proposes self-defeating suggestions for each and then concludes that if the SFCTA finds them “infeasible,” the impacts would be “significant and unavoidable,” and therefore exempt from mitigation. FEIR, p.3-82 -3-87. That does not meet CEQA’s requirement to propose effective mitigation, including “Avoiding the impact altogether by not taking a certain action or parts of an action” and “Minimizing impacts by limiting the degree or magnitude of the action and its implementation.” CEQA Guidelines, §15370. Further, deferring a determination of the feasibility of mitigation is a failure to proceed under CEQA’s requirements. CEQA Guidelines §15126.4(a)(1)(B).

Further, the FEIR’s “mitigation” measures would cause worsened impacts, by removing more parking or removing more “turn pockets.” FEIR, p.3-81. Those measures, however, are not “mitigation” within the meaning of CEQA and NEPA. Further, the FEIR fails to analyze the impacts of those proposed “mitigation” measures. Other examples of the FEIR’s failure to describe mitigation of the Project’s impacts include but are not limited to the following.

**PARKING**



The FEIR claims that there would be no parking impacts even though most of the parking would be removed on Van Ness, and other parking spaces would be permanently removed for bulbouts and for “mitigation” of other impacts. FEIR, p.5-18.

The FEIR claims that even though there are no parking impacts, it would try to “mitigate” parking impacts by retaining colored loading zones and blue disabled parking zones, where “feasible.” FEIR, p.5-21. That does not meet CEQA’s requirements for mitigation.

**LAMP POSTS: The FEIR Misstates that Demolishing the Historic Lampposts Can Be Mitigated by Installing Completely Different Generic-style Posts.**

The FEIR is mistaken in claiming that replacing the historic lampposts on Van Ness Avenue with new, taller, ugly, generic posts with two unevenly spaced fixtures on each is “mitigation.” The standards required by the Secretary of the Interior require that the existing historic lampposts be rehabilitated and restored.

**MEDIAN TREES: The FEIR Misstates that Planting Vegetation on the Sidewalks Can Mitigate Killing and Removing the Mature Trees on the Van Ness Median.**

The FEIR is plainly incorrect in claiming that removing nearly all of the mature trees on the Van Ness median can be mitigated by planting other tree varieties on sidewalk (where there are already trees) or in other places, and waiting for them to reach maturity.

**CONSTRUCTION**

As to the impacts of 5-years of construction, the FEIR acknowledges that, “traffic congestion, travel delay, and access restriction . . . within the general vicinity could be expected during the entire construction period.” FEIR, p.5-14. But the FEIR says that “Early and well-publicized announcements and outreach will help to minimize the confusion and traffic congestion at the start of construction.” FEIR, p.5-15. The FEIR says that other “mitigation,” such as removing parking, detours, and forced turning that “could” minimize the five years of disruption, may or may not be “feasible.” FEIR, 5-15. That does not comply with CEQA, since it does not mitigate or propose feasible mitigation for the Project’s impacts from five years of construction.

**11. THE FEIR FAILS TO CONSIDER ALTERNATIVES THAT WOULD AVOID THE PROJECT’S SIGNIFICANT IMPACTS ON TRAFFIC, TRANSIT, PARKING, AIR QUALITY, AND NOISE, AND IS IMPROPERLY NARROWED BY THE CLAIMED “PURPOSE AND NEED.”**

The FEIR’s “alternatives” analysis does not comply with CEQA or NEPA, which requires that the EIR set forth a full range of alternatives that are capable of “avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” CEQA Guidelines §15126.6(b); PRC §21002.1. An alternative is not eliminated unless it cannot meet “most of the basic project objectives. CEQA Guidelines §15126.6(c); and see 40 CFR §1502.14 [requiring the FEIR to “Rigorously explore and objectively evaluate all reasonable alternatives.”]

The analysis must also consider alternative locations for the Project, and if there are none, must explain why. CEQA Guidelines §15126.6(f)(2).



The FEIR here describes no alternatives that meet these requirements, even though many alternatives could accomplish most of the Project's objectives without removing traffic lanes on Van Ness Avenue and causing severe traffic congestion and parking loss throughout the area.

The alternatives are not a random list of variations on the Project as here, but must be alternatives to the proposed Project for the purpose of eliminating its impacts. CEQA Guidelines §15126.6(b).

Further, the FEIR errs in claiming that the "No Build" or "No Project" alternative is the "environmentally superior" alternative. FEIR, p.7-27, §7.6. If the FEIR identifies No Project as the environmentally superior alternative, it must also identify another environmentally superior alternative. CEQA Guidelines §15126.6(e)(2); and see, *e.g.*, *Watsonville Pilots Ass'n v. City of Watsonville*, 183 Cal.App.4th 1059, 1089 (2010). Here, the FEIR identifies "Build Alternative 2" as the "environmentally superior" alternative but admits that it would have similar impacts to all of the other alternatives in the FEIR. FEIR, p.7-28.

The FEIR fails to analyze other possible alternatives that would not eliminate traffic lanes and parking on Van Ness Avenue but would still achieve *most* of the Project's objectives, including that of speeding up Muni Lines 47 and 49.

For example, no alternative(s) are proposed that would eliminate half the Muni lines 47 and 49 bus stops, would improve bus stops with real-time information (most of which has already been done), would get the already-procured low-boarding buses, and other improvements that do not require removing traffic lanes and parking on Van Ness Avenue, would not destroy the historic streetlamps, would not require building a new sewer and drainage system, would not require removing the mature trees that give character and beauty to the entire corridor, would not cost hundreds of millions of dollars, would not cause congestion, air pollution and noise, would not obstruct and degrade aesthetic views in the corridor, and would not remove the beautiful historic streetlamps, which could be restored instead of being demolished. Instead, the FEIR analyzes *only* "alternatives" that would cause all of these significant impacts to achieve a dubious goal or "purpose and need" of increased speed that could be accomplished without the impacts caused by all of the listed alternatives.

The FEIR claims that it initiated a "feasibility study" of a Van Ness Avenue BRT in 2004 that "defined BRT in San Francisco" as "general elements" of "Dedicated lane, Transit signal priority, High-quality stations, Distinctive vehicles, [and] Level or near level/all-door boarding(or proof-of-payment)." FEIR, p.1-6, §1.2.1. All of these "elements" except the "dedicated lane" can be met without the Project. The FEIR admits that other Project features such as pedestrian countdown signals would be implemented anyway, without the Project. FEIR, p. 3-90

In considering a superior alternative that would avoid the Project's impacts, the FEIR was required to "rigorously explore and objectively evaluate *all* reasonable alternatives." 40 CFR §1502.14(a). That analysis has not taken place here.

Instead, the agency has manufactured a more damaging preferred alternative to deliberately cause impacts on vehicle traffic and parking under an improper claim of "purpose and need" for the Project. The LPA, for example has more traffic impacts, more turning restrictions, more parking removal, more air quality degradation, removal of more median trees



(i.e., all of them), more expense, more sewer replacement, more relocation of curbs for bulbouts, more difficulty and strain for pedestrians to reach bus stops, more impacts on aesthetic and visual resources, and more construction time. (FEIR, p.10-16, 17,23,31,33, 36, 37) It is not even an alternative under CEQA, since it improperly creates impacts rather than eliminating and avoiding them.

The FEIR attempts to justify its violation of NEPA and CEQA in failing to consider reasonable alternatives to the Project that would achieve some of its objectives. For example, the FEIR rejects the idea of eliminating bus stops but not eliminating traffic lanes and parking by claiming that “the percentage of households in the Van Ness corridor that do not own cars is 17 percent higher than the citywide average.” FEIR, p.7-31. That claim is irrelevant and unsubstantiated, since the use of US Highway 101/Van Ness Avenue is of regional, statewide, and nationwide importance, and the number of travelers on that federal Highway vastly exceeds the number of “households” that do not own cars on Van Ness Avenue.

The FEIR’s claim that Muni lines #47 and #49 would “experience reliability impacts” without the “Build” alternatives is unproven and without merit. FEIR, p.7-32. In considering a superior alternative that would avoid the Project’s impacts, the FEIR is required to support its conclusions with rigorous analysis and substantial evidence that is entirely lacking.

Further, NEPA forbids an alternatives analysis that is narrowly limited by manufacturing a “purpose and needs” statement, which is exactly what the FEIR does here. And see discussion at Item 5, *ante*. The improper “purpose and need” to deliberately obstruct and slow traffic and cause congestion for vehicle traffic results in a done-deal analysis that only considers “alternatives” that accomplish that improper goal. Instead of analyzing alternatives that eliminate the Project’s significant impacts, the FEIR blanketly rejects such alternatives claiming they “contained a ‘fatal flaw’” in “meeting the project purpose and need.” FEIR, p.7-32.

Further, with the LPA, the agency has improperly already decided on building the Project, which violates both CEQA and NEPA. See, e.g., 40 CFR §1502.2(f), (g); e.g., *Laurel Heights Improvement Assn. v. Regents of the University of California*, 47 Cal.3d 376, 394.

## **12. THE “CEQA FINDINGS” WERE NOT PUBLICLY AVAILABLE AND DO NOT COMPLY WITH CEQA.**

As noted, the public was not given adequate notice of the SFCTA’s CEQA Findings [“Findings”] and the “Mitigation Monitoring & Reporting Program” [“MMRP”], which were unavailable until only one business day before this hearing to adopt them. That is not legal notice under any provision of CEQA, NEPA, the Government Code, and the California or United States Constitutions. This meeting must be postponed until such notice and the opportunity for meaningful public participation in the proceedings is provided.

This Comment cannot possibly comment on the hundreds of pages of “Findings” and other materials that were neither provided on request of this commenter nor timely made available for public review. Therefore, this Comment does not waive any issue on the inadequacy of the FEIR or SFCTA’s Findings and other materials in its packet. The Findings document is incoherent and largely inscrutable, with encoded conclusory statements, consideration of “construction” impacts in lieu of or listed along with “operation” findings, whatever that means.



Even a cursory glance at the Findings shows many legal and factual flaws. The Findings contain factual falsehoods, such as the claim that hard copies of the FEIR were distributed to those with a street address who had commented on the DEIR. (Findings, p.8.) In fact, as noted, such copies were unavailable, and were only provided by request and a time-consuming trip to the not readily accessible SFCTA offices, where this Commenter, for example, was charged nearly \$100 for a hard copy of the FEIR, and was not timely provided on request with any accurate or hard copies of the “studies” referred to in that document.

Due to the lack of notice and time for comment, there is no time to give a comprehensive view of examples of the false and unsupported “factual” statements in the Findings, and only a few can be provided here.

Due to the FEIR’s failure to identify and analyze the Project’s significant impacts, the Findings are necessarily legally inadequate. The Findings thus evade the necessity to set forth mitigation measures, for example, on the Project’s parking impacts, impacts on land use, air quality, noise, and traffic, because the FEIR fails to properly identify those impacts. The Findings repeats the false claim that the LPA will not remove parking. Findings, p.23. The Findings repeat the mistaken legal conclusion that the impacts of removing parking do not require analysis and mitigation. *Id.* at 23-25.

The Findings discloses for the first time (it is nowhere else in the record) that the agencies propose to also remove parking on other streets, including Franklin, Gough, and other parallel streets as “mitigation” for the Project’s turning impacts. Findings, e.g., pp.37-39. The FEIR was required but failed to analyze the impacts caused by that proposed “mitigation.” CEQA Guidelines, §15126.4(a)(1)(D). The Findings admits that its previously undisclosed plan to remove parking on Gough and Franklin Streets will *not* mitigate the Project’s significant traffic impacts on those streets, and therefore is not effective mitigation as required within the meaning of CEQA or NEPA. Findings, pp.40-42. The Findings admits that removing parking would cause impacts on pedestrian conditions, since parking spaces provide a buffer insulating pedestrians from moving traffic, and that removing parking conflicts with its General Plan. *Id.* p.42-43.

As to the significant impacts on traffic identified in the FEIR, the Findings admits that the FEIR’s proposed “Traffic Management ‘Toolbox’ Strategies,” such as “Driver Way Finding and Signage,” “Public Awareness Campaign and TMP during Project Construction,” and “Pedestrian Amenities at Additional Corridor Locations” will not effectively mitigate the Project’s impacts: “These strategies. . . cannot be readily represented in conventional traffic operations models; therefore, their potential effect on minimizing traffic delay impacts has not been quantified and the traffic impacts...would remain significant and unavoidable.” Findings, p.42. Thus, the “Toolbox Strategies” are a pointless paper-generating exercise, not mitigation.

The Findings conclude without any support or citation to evidence that there is no feasible mitigation for any of the Project’s traffic impacts identified in the FEIR. Findings, pp.43-44. There is no feasibility analysis in the Findings or in the record.

The Findings fail to properly, objectively, and accurately analyze feasible alternatives that would eliminate or mitigate the significant impacts identified in the FEIR. Instead, the Findings simply repeat the SFCTA’s reason for developing the LPA, which is not an “alternative” to the Project, but is the Project itself, which was neither described nor analyzed in



the DEIR, precluding public input. The Findings fails to support any of its conclusions with substantial evidence.

Even with the inadequate and truncated impacts “analysis” in the FEIR, the Findings fails to discuss *each* significant impact identified in the EIR as required by CEQA. *E.g.*, PRC §21081(a); 21081.5. The Findings (and the FEIR to which they defer) also fail as required to set forth *effective* mitigation measures for each of the Project’s significant impacts. Such effectiveness must be supported by substantial evidence in the administrative record. There is no such discussion in either the Findings or the FEIR.

Nor may the agency “incorporate by reference” as “findings” the conclusions in the FEIR. Findings, p.16. The Findings must itself be a legally adequate document supported by substantial evidence that complies with CEQA’s requirement that “no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur: (a) The public agency makes one or more of the following findings with respect to each significant effect: (1) Changes or alterations have been required in...the project which mitigate or avoid the significant effects...(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency; (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.” PRC §21081(a). The Findings do not comply with these requirements.

After rotely rejecting all mitigation of the Project’s impacts, the Findings set forth a two and one-half page “Statement of Overriding Considerations” [“SOC”] that fails to comply with CEQA’s requirements. Findings, pp.53-55. The Findings fails to first find mitigation of the Project’s identified significant impacts truly infeasible, since it contains no feasibility study. The SOC then fails to include a factual statement weighing the Project’s impacts on all travelers versus its benefits to all travelers, and to support that analysis with substantial evidence. Instead, the SOC only describes the alleged benefits of the Project to users of Muni lines 47 and 49, and the unsupported, unattributed, and subjective rhetoric that Project would, *e.g.*, “help transform the street into a vibrant pedestrian promenade,” “would provide a greater sense of permanence than existing bus facilities,” or would help “to stimulate further transit-oriented development,” with *no* discussion or weighing of the Project’s significant impacts on traffic, parking, air quality, noise, and aesthetic and historic resources.

The SOC does not comply with CEQA, which requires first that the Findings prove that mitigation is truly infeasible with substantial evidence, and only after that rigorous examination may an agency consider an SOC. The Findings do not meet that requirement here. Only after meeting that requirement may the agency consider an SOC, which must be a factual, not rhetorical, statement supported by substantial evidence in the record that “specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant impacts.” PRC §21081(b); CEQA Guidelines §15093. Those requirements are not met by the SOC.

The Project may not lawfully proceed without legally adequate Findings.



## **CONCLUSION**

The FEIR and Findings do not comply with the law and must not be approved and/or certified. Approving the Project and funding it would therefore be an abuse of discretion and a failure to proceed as required by law.

DATED: September 10, 2013

SIGNED: \_\_\_\_\_  
Mary Miles



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** FW: noise and air pollution, idling engines, and the poor, abused planet  
**Date:** Thursday, September 30, 2021 11:19:00 AM

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-----Original Message-----

From: janis reed <jreedme@sonic.net>  
Sent: Wednesday, September 29, 2021 1:32 PM  
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
Subject: noise and air pollution, idling engines, and the poor, abused planet

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear B.O.S.

This is a problem that has plagued me for years. Maybe the BOS can come up with a solution to educate the public (and businesses) about this. I certainly feel powerless.

Everyday, without fail, I see, hear, and smell cars and trucks with their engines idling. Today a moving van delivered a whole load of furniture next door. The van was parked for over an hour with its diesel engine running. After 1/2 hour I went out and asked them to please turn off their engine. They did, only to turn it on again for another 1/2 hour (they did not need it on for any reason, like say a cement truck mixing its cement needs to do). They finally left, and now parked in front of my house is a small utility van for some electrical contractor, with the driver inside, texting away while his engine runs. Sigh....

I don't have enough fingers and toes to count how many people I come across each time I venture out sitting in their cars, texting and tweeting away with their engines running. I had one woman tell me it was none of my business when I asked her to kindly turn her engine off. I informed her it was indeed my business as it is the air I breathe and the planet I live on.

Is it possible people have become so lacking in critical thinking skills (or... just plain dumb) that they think if a vehicle is "only" idling, somehow no emissions are being spewed out? And I bet half these people claim to care about the environment. What a disconnected city we've become. Clueless. Brain dead. Entitled? or "I just don't give a sh\*t." ???? If I could cast spells, I would make their tanks go to empty.

I emailed the moving company today letting them know that even if they aren't concerned with climate change, they most likely are concerned about costs. Fuel is not cheap. She replied they would educate their drivers. But this is only one company.

The City used to have—and somewhat enforce if someone called in—a no idling rule for commercial vehicles. Five minutes and no longer. Of course, there is no one to enforce this anymore, and from what I see the population of this town now thumbs their noses at any laws and rules that are meant to make society work a little more smoothly and to keep us from tearing our hair out, like I am doing right at this moment.

I welcome your feedback,

Janis Reed



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** FW: Request for fairness and humane treatment  
**Date:** Thursday, September 30, 2021 11:20:00 AM  
**Attachments:** [Final Report of Findings - Class 9131 9139 Post-Referral Process.pdf](#)

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**From:** Bhanu Vikram <bhanu1vikram@gmail.com>  
**Sent:** Tuesday, September 28, 2021 4:46 PM  
**To:** CivilService, Civil (CSC) <civilservice@sfgov.org>  
**Cc:** Eng, Sandra (CSC) <sandra.eng@sfgov.org>; Ackerman, Kimberly (MTA) <Kimberly.Ackerman@sfmta.com>; Miles II, William (MTA) <William.MilesII@sfmta.com>; Wong, Kitty (MTA) <Kitty.Wong@sfmta.com>; Morganti, Luz (CSC) <luz.morganti@sfgov.org>; Aldana, Elizabeth (CSC) <elizabeth.aldana@sfgov.org>; Henriquez, Lizzette (CSC) <lizzette.henriquez@sfgov.org>; Bushman, Jennifer (CSC) <jennifer.bushman@sfgov.org>; Tumlin, Jeffrey (MTA) <Jeffrey.Tumlin@sfmta.com>; SFMTA Board of Directors <MTABoard@sfmta.com>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** Request for fairness and humane treatment

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To,

Jaqueline P. Minor, President  
Kate Favetti, Vice President  
Douglas S. Chan, Commissioner  
F.X. Crowley, Commissioner  
Elizabeth Salveson, Commissioner

Dear Commissioners,

I hope you are well.

I wish to communicate my response to the [Inspection Service Review Findings Regarding Post-Referral Process for Class 9131 and Class 9139](#) and make an important request today.

The report, which is attached to this email, says: "In summary, there is no violation of Charter, Civil Service Commission Rules or DHR policies and procedures."

SFMTA may not have violated the Charter, Civil Service Commission Rules, and DHR policies and procedures, but surely the methods they have used are unfair and inhumane. SFMTA has



communicated to me that they do not take candidates' experience, skills, and talents into consideration for hiring purposes.

Employers around the world seek experienced candidates for all types of work. SFMTA, on the other hand, bases its decisions solely on subjective opinions of interview panels. If they truly want to hire the best people to serve the public well, they must take candidates' experience, skills, and talents into consideration. It is sad that I had to even write the previous sentence.

If the same managers at SFMTA were hiring a chef for their daughter's wedding, they would surely look into experience, skills, and talents, and they would definitely not hire a cook who had no experience. Unless there is something really wrong with an experienced candidate there is no reason not to hire him/her over an inexperienced candidate based solely on subjective conclusions drawn during a 20- or 30-minute interview. It is also sad that I had to even write this paragraph in 2021.

SFMTA's hiring methods allow and nurture discrimination, retaliation, favoritism, and nepotism. I am highly disappointed and saddened that the Charter, Civil Service Commission Rules, and DHR policies and procedures support such unfair and inhumane hiring practices in 2021. It is time that the Charter, Civil Service Commission Rules, and DHR policies and procedures are corrected and improved to produce fair and humane results for everyone so that there is no chance to commit illegal acts of discrimination, retaliation, and favoritism, which are all rampant at SFMTA.

I hereby request the Civil Service Commission to take immediate action and solve this problem for good.

I thank you all in advance.

Kind regards,  
Bhanu

Bhanu Vikram

----- Forwarded message -----

From: **Morganti, Luz (CSC)** <[luz.morganti@sfgov.org](mailto:luz.morganti@sfgov.org)>

Date: Fri, Sep 24, 2021 at 4:33 PM

Subject: Inspection Service Review Findings Regarding Post-Referral Process for Class 9131 and Class 9139

To: Bhanu Vikram <[bhanu1vikram@gmail.com](mailto:bhanu1vikram@gmail.com)>

Cc: Eng, Sandra (CSC) <[sandra.eng@sfgov.org](mailto:sandra.eng@sfgov.org)>, Ackerman, Kimberly (MTA)

<[Kimberly.Ackerman@sfmta.com](mailto:Kimberly.Ackerman@sfmta.com)>, Miles II, William (MTA) <[William.MilesII@sfmta.com](mailto:William.MilesII@sfmta.com)>, Wong,



Kitty (MTA) <[Kitty.Wong@sfmta.com](mailto:Kitty.Wong@sfmta.com)>, Morganti, Luz (CSC) <[luz.morganti@sfgov.org](mailto:luz.morganti@sfgov.org)>, Aldana, Elizabeth (CSC) <[elizabeth.aldana@sfgov.org](mailto:elizabeth.aldana@sfgov.org)>

Dear Bhanu,

Attached is my report of findings.

Sincerely,

***Luz Morganti***

Sr. Human Resources Analyst  
Civil Service Commission  
City and County of San Francisco  
25 Van Ness Avenue, Suite 720  
San Francisco, CA 94102  
Direct: (628)652-1106  
Reception: (628)652-1100  
Fax: (628)652-1109  
[Luz.morganti@sfgov.org](mailto:Luz.morganti@sfgov.org)





**CIVIL SERVICE COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

*Sent Via Email: bhanu1vikram@gmail.com*

September 24, 2021

Bhanu Vikram  
[bhanu1vikram@gmail.com](mailto:bhanu1vikram@gmail.com)

**Subject:** Inspection Service Review No. 0039-21-11: Regarding Post-Referral Process for Class 9131 Station Agent and Class 9139 Transit Supervisor at the San Francisco Municipal Transportation Agency (SFMTA)

Dear Mr. Vikram:

This is written in response to the request for Inspection Service review that you submitted to the Civil Service Commission regarding the post-referral selection process for Class 9131 Station Agent and Class 9139 Transit Supervisor at the San Francisco Municipal Transportation Agency (SFMTA).

You state that the hiring process is highly unfair. Candidates (who are interviewed) are hired based on the scores they get in a 30-minute interview and candidates' work experience, skills and talents are not taken into consideration.

The following are applicable Standards, Civil Service Commission Rules, and my findings as to whether there are violations of the Charter and/or Civil Service Commission Rules, policies and or procedures regarding the selection process.

**Authority**

The Civil Service Commission is authorized by Charter (Article X Section 10.101. General Powers and Duties) to establish rules, policies, and procedures to carry out the merit system provisions of the Charter. Therefore, the Commission provides oversight and review on examinations, minimum qualifications, and other merit system matters.

**Charter Section 10.101** states in relevant part,

“The Commission shall establish an inspection service for the purpose of investigating the conduct or an action of appointees in all positions and of securing records of service for promotion and other purposes. All departments shall cooperate with the Commission in making its investigations and any person hindering the Commission or its agents shall be subject to suspension. [...] The Commission shall have the power to inquire into the operation of the civil service merit system to ensure compliance with merit principles and rules established by the Commission.”



## **Standards**

### **Civil Service Commission Rules and Policies and Procedures**

#### ***Rule 410.15.1 Qualifications of Applicants*** (states in part)

“Every applicant for an examination must possess and maintain the qualifications required by law and by the examination announcement for the examination.”

#### ***CSC Adviser No. 8 Selection from Civil Service Eligible List*** states in part,

“The Department Head is responsible for selecting the best qualified eligible utilizing uniform nondiscriminatory merit-based selection procedures...The department head/designee may determine the appropriate method to screen eligibles who have expressed interest. This screening process must be non-discriminatory and merit system compliant and could include, but is not limited to, resumes, updated applications, writing exercises, work samples, skills checklists, and performance reviews.”

#### ***Civil Service Commission Rules and Policies on the Civil Service Selection Process, September 10, 2014*** (states in part)

### **Hiring Department’s Options Upon Referral of the Eligible List**

#### **Notice of Inquiry Now Optional, Per Recent Civil Service Rule Amendments**

Under the newly revised Civil Service Rules, the Department of Human Resources (“DHR”) (or the Director of Transportation, for service-critical positions of the Municipal Transportation Agency (“MTA”)) now sends a “Notice of Certification” to both the hiring department and the reachable eligibles at the time that the eligible list is certified to the department to fill a PCS position. The Notice of Certification to the eligibles is informational only; it does not require a response from the eligible, and it is clear that an interview is not guaranteed. (Rules 113.11 and 413.11 Notice of Certification)

Hiring departments then have the option of issuing a Notice of Inquiry (NOI) to the eligibles for the purpose of assessing their interest in the specific position in the department, and/or requesting additional information or submissions as part of the screening and selection process. (Rules 113.5 and 413.5 Notice of Inquiry) Unless the deadline for response is otherwise extended by the Human Resources Director (or Director of Transportation, for service-critical positions of the MTA), eligibles are required to respond to the Notice of Inquiry within five business days. (Rules 113.12.2 and 413.12.2)



## **I. Post-Referral Selection Process Requirements**

### **A. Appointing Officer's Discretion**

An appointing officer is afforded a great deal of discretion and authority in both determining the appropriate non-discriminatory and merit-based method to screen eligibles who have expressed interest in a position, as well as in ultimately selecting the candidate that he or she believes is best-suited to perform the duties of the specific position to be filled based on that screening process.

### **B. Post-Referral Screening Criteria and Selection Processes**

Provided that they are appropriately documented and uniformly applied, such nondiscriminatory merit-based screening and selection criteria *may* include, for example, any one or more of the following: performance on the examination; responses to job-related panel interview questions; performance assessments; reviews of examination application materials and/or written supplemental submissions (e.g., to determine the possession of desirable qualifications as posted on the examination announcement); work performance; disciplinary history; reference checks; etc.

For example, a department may choose to appoint the candidate who ranked first on the eligible list, based on the fact that he or she performed so successfully on the examination. This would be particularly appropriate if the hiring department is selecting from a recently established eligible list pursuant to a Position-Based Testing examination administered by that same department. Or, a department may wish to only consider candidates in the first three reachable ranks based on their successful performance on the examination; however, the hiring department must administer and document the non-discriminatory, merit-based criteria used to further screen and select from the reachable eligibles in those ranks.

## **Findings**

### **Post-Referral Selection Process Class 9131 Station Agent**

***Certification #16979 was issued: four (4) positions approved in 2019***

SFMTA Human Resources Division received approval to fill three (3) 9131 Station Agent positions. A referral was issued on May 1, 2019. The certification rule was Rule of Three (3) Scores. Ranks 1 to 5 were reachable (37 candidates) and Ranks 6 to 34 were alternates (1045 candidates). A Notice of Inquiry (Yes/No interest) was sent to all candidates (1082 total). The hiring division later received approval to fill one (1) additional position to fill a total of four (4) positions. Based on candidates' response, ranks 1 to 7 were reachable (70 candidates).

Human Resources sent a redacted response list to the hiring division for review, and the hiring division decided to invite twelve (12) candidates - ranks 1 to 3, to participate in the oral interview process. Candidates were given 30 minutes to answer 5 questions. Panelists scored candidates individually and based on their response to the pre-developed and structured



interview questions and rating guidelines. The top ranked candidates from the oral interview process, based on cumulative scores, were offered the positions. The pre and post interview processes were reviewed and approved by SFMTA Equal Employment Opportunity (EEO) Office.

Since the hiring division only invited candidates within Ranks 1 to 3 to the interview process, you ranked 5 on the eligible list and were not invited to participate in the post referral selection process.

***Certification #18492 was issued: six (6) hires were made in 2020***

SFMTA Human Resources Division received approval to fill four (4) 9131 Station Agent positions. A referral was issued on January 8, 2020. Ranks 1 to 6 were reachable (34 candidates) and Ranks 7 to 34 were alternates (104). A Notice of Inquiry, Referral Questionnaire (RQ) – requesting for resume and cover letter, was sent to all candidates (1078 total). Based on candidates' response, ranks 1 to 8 were reachable (83 candidates). Human Resources (HR) sent the redacted response list to the hiring division for review, and the division decided to invite 23 candidates (Ranks 1 to 5), based on ranks on the eligible list, to participate in the oral interview process. The hiring division later received approval to fill two (2) additional positions for a total of six (6) positions. Candidates were given 30 minutes to answer 10 questions. Panelists scored candidates individually and based on their response to the pre-developed and structured interview questions and rating guidelines. The top ranked candidates from the oral interview process, based on cumulative scores, were offered the positions. The pre and post interview processes were reviewed by the SFMTA Equal Employment Opportunity (EEO) Office.

You are ranked 5 on the eligible list and were invited to participate in the oral interview process. Based on the interview results, the hiring division offered the positions to the top six candidates from the post-referral process.

**Post-Referral Selection Process Class 9139 Transit Supervisor**

Cert #19309, for 9139 Transit Supervisor was issued on September 9, 2020, to fill 55 positions and later 39 positions were added so there was a total of 94 positions. The department sent out a Notice of Inquiry soliciting candidate's interest (Y/N) on September 10, 2020, and later sent out another notification on April 14, 2021, informing candidates that additional positions were added and provided another opportunity for candidates who did not respond to the initial Notice of Inquiry sent on September 10, 2020.

All candidates that responded were invited to the interview process. The division which facilitated and conducted the interview process informed HR and SFMTA EEO after panelists reported that some candidates provided similar or identical responses as the rating guidelines during the interviews. It was identified that some candidates due to unknown/unexplained reasons received a copy of the interview questions and rating guidelines.



To ensure the department conducted a fair interview and selection process, the post referral process was cancelled. Candidates invited to the interviews were notified and that they would be contacted again when the department was ready to resume the interview and selection process.

New interview questions and rating guidelines were developed and submitted to SFMTA EEO for review and approval. The division rescheduled and conducted interviews based on the final responses from candidates after the additional 40 positions were added and solicited. So, a total of 300 candidates out of 321 were invited to the interviews and new interview questions and rating guidelines were used.

### **Conclusion**

As stated in the *Civil Service Commission Rules and Policies on the Civil Service Selection Process*, an appointing officer is afforded a great deal of discretion and authority in both determining the appropriate non-discriminatory and merit-based method to screen eligibles who have expressed interest in a position, as well as in ultimately selecting the candidate that he or she believes is best-suited to perform the duties of the specific position to be filled based on that screening process. The policy states further that "Provided that they are appropriately documented and uniformly applied, such nondiscriminatory merit-based screening and selection criteria *may* include, for example, any one or more of the following: performance on examination; responses to job-related panel interview questions; performance assessments; reviews of examination application materials and/or written supplemental submissions (e.g., to determine the possession of desirable qualifications as posted on the examination announcement); work performance; disciplinary history; reference checks; etc.

SFMTA chose to conduct oral interviews as part of the post-referral selection process for class 9131 and class 9139 which is a common method utilized for selection by City and County departments. Their decisions for final selection are based on the responses to the job-related panel interview questions.

In summary, there is no violation of Charter, Civil Service Commission Rules or DHR policies and procedures. Thank you for bringing your concerns to our attention.

Sincerely,  
CIVIL SERVICE COMMISSION

*Luiz Morganti*

LUZ MORGANTI  
Senior Human Resources Analyst

cc: Sandra Eng, Executive Officer, CSC  
Kimberly Ackerman, HR Director MTA



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** FW: SFFD Corruption Complaint 1 August 4, 2021 and new complaint dated 9.26.201  
**Date:** Thursday, September 30, 2021 11:22:00 AM  
**Attachments:** [Whistle Blower Complaint fbbV35RS- 8.4.2021.pdf](#)  
[SFFD Complaint #2 - 9.26.2021.docx](#)  
[Oliva Scanlon San Francixco Work Time Line.pdf](#)

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**From:** Smitty Smith <citizens.against.sffd.corruption@gmail.com>  
**Sent:** Sunday, September 26, 2021 6:29 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** SFFD Corruption Complaint 1 August 4, 2021 and new complaint dated 9.26.201

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Good Evening Mr. Walton

I am writing to you as a concerned citizen about new concerns associated with our original Whistleblower complaint of the SFFD. I am not sure that you have received our original August 4, 2021 complaint, so I am attaching that along with today's additional comments and complaint.

We believe that there is a core of corruption within the SFFD and we are asking anyone within the city to review and investigate our claims. We are just asking that they be impartially reviewed and the appropriate action be taken upon determination of said review.

Thank you for your time and consideration.

Concerned Citizens



| Olivia Scanlon's City of San Francisco Work Time Line |                                                                                                                                                                                                                                                                                                                |          |            |                      |         |              |                  |                                                                                    |        |       |               |        |                        |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------|----------------------|---------|--------------|------------------|------------------------------------------------------------------------------------|--------|-------|---------------|--------|------------------------|
| Employee Name                                         | Job Title                                                                                                                                                                                                                                                                                                      | Base Pay |            | Overtime   Other Pay |         | Benefits     | Total Pay & Bene |                                                                                    | Year   | Notes | Agency        | Status | Source                 |
| Olivia S Scanlon                                      | Deputy Director II                                                                                                                                                                                                                                                                                             | \$       | 165,357.00 |                      |         |              |                  |                                                                                    | 2020   |       | San Francisco | FT     | City of SF Budget      |
| Olivia S Scanlon                                      | Chief of Staff                                                                                                                                                                                                                                                                                                 |          |            |                      |         |              |                  |                                                                                    | 2020   |       | San Francisco | FT     | City of SF Budget      |
| Olivia S Scanlon                                      | Communications & Outreach                                                                                                                                                                                                                                                                                      |          |            |                      |         |              |                  |                                                                                    | May-19 |       | San Francisco | FT     | City of SF Budget      |
| Olivia S Scanlon                                      | Public Relations Mgr                                                                                                                                                                                                                                                                                           | \$       | 135,772.91 | 0                    | 0       | \$ 29,264.71 | \$               | 165,037.62                                                                         | 2019   | None  | San Francisco | FT     | Transparent California |
| Olivia S Scanlon                                      | Public Relations Mgr                                                                                                                                                                                                                                                                                           | \$       | 117,299.21 | 0                    | 0       | \$ 24,394.60 | \$               | 141,693.81                                                                         | 2018   | None  | San Francisco | FT     | Transparent California |
| Olivia S Scanlon                                      | Public Relations Mgr                                                                                                                                                                                                                                                                                           | \$       | 107,569.06 | 0                    | 0       | \$ 37,957.62 | \$               | 145,526.68                                                                         | 2017   | None  | San Francisco | FT     | Transparent California |
| Olivia S Scanlon                                      | Public Relations Mgr                                                                                                                                                                                                                                                                                           | \$       | 113,204.94 | 0                    | 0       | \$ 42,870.49 | \$               | 156,075.43                                                                         | 2016   | None  | San Francisco |        | Transparent California |
| Olivia S Scanlon                                      | Public Relations Mgr                                                                                                                                                                                                                                                                                           | \$       | 90,938.13  | 0                    | 3733.28 | \$ 29,512.07 | \$               | 124,183.48                                                                         | 2015   | None  | San Francisco | FT     | Transparent California |
| Olivia S Scanlon                                      | Legislative Assistant                                                                                                                                                                                                                                                                                          | \$       | 97,801.02  | 0                    | 4625.08 | \$ 36,246.42 | \$               | 138,672.52                                                                         | 2014   | None  | San Francisco | FT     | Transparent California |
| Olivia S Scanlon                                      | Legislative Assistant                                                                                                                                                                                                                                                                                          | \$       | 97,482.81  | 0                    | 4939.65 | \$ 33,855.50 | \$               | 136,277.96                                                                         | 2013   | None  | San Francisco |        | Transparent California |
| Olivia Scanlon                                        | Legislative Assistant                                                                                                                                                                                                                                                                                          | \$       | 75,965.93  | 0                    | 4017.77 | \$ 31,596.79 | \$               | 111,580.49                                                                         | 2012   | None  | San Francisco |        | Transparent California |
| OLIVIA SCANLON                                        | LEGISLATIVE ASSISTANT                                                                                                                                                                                                                                                                                          | \$       | 62,405.93  | 0                    | 3806.9  | None         | \$               | 66,212.83                                                                          | 2011   | None  | San Francisco |        | Transparent California |
|                                                       | Attorney for Tony Hall, David Waggoner, quoted comments about <b>Olivia Scanlon</b> , "the fact that the woman makiing these allegations in the first place had to take the Fifth today to avoid perjuring herself even further in this matter bears out the absurdity of the charges against him (Tony Hall)" |          |            |                      |         |              |                  | After Ethic's hearing in November 2008, dismissing Tony Hall's charges against him |        |       | San Francisco |        | Public Records         |
| Olivia S Scanlon                                      | Scanlon, the key witness against Tony Hall's 3-year ethics case, had to plead the 5th Amendment to prevent her from perjury base upon her previous sworn statements                                                                                                                                            |          |            |                      |         |              |                  | 10.27.2008                                                                         |        |       | San Francisco |        | Public Records         |
| Olivia S Scanlon                                      | Scanlon wen to work as an aid to Supervisor Elsbernd.                                                                                                                                                                                                                                                          |          |            |                      |         |              |                  | 2004                                                                               |        |       | San Francisco |        | Public Records         |
| Olivia S Scanlon                                      | Scanlon quite work for Tony Hall when Hall refused to put Scanlon in a management position at Treasure Island                                                                                                                                                                                                  |          |            |                      |         |              |                  | 2004                                                                               |        |       | San Francisco |        | Public Records         |
| Olivia S Scanlon                                      | Aid to Tony Hall                                                                                                                                                                                                                                                                                               |          |            |                      |         |              |                  | 2004                                                                               |        |       | San Francisco |        | Public Records         |
| Olivia S Scanlon                                      | Tony Hall Campaign Volunteer                                                                                                                                                                                                                                                                                   |          |            |                      |         |              |                  | 2003                                                                               |        |       |               |        | Public Records         |
| Olivia S Scanlon                                      | Olympic Club Event Planner                                                                                                                                                                                                                                                                                     |          |            |                      |         |              |                  | 2000                                                                               |        |       |               |        | Public Records         |



Date: September 26, 2021

Hard Copies sent via U.S. Postal Service

Re: Whistleblower Complaint – Additional Complaints to be added to the original August 4, 2021, filing against SFFD Chief Jeannine Nicholson, Deputy Director II Olivia Scanlon and others

To: London Breed, Mayor of San Francisco  
Fire Commission  
Ethics Commission, [ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org)  
City Attorney  
Mission Local  
Marina Times  
Fog City Journal  
Bay Area Reporter  
San Francisco Chronicle  
Post News Group

To the Noted Above:

We, a group of concerned citizens, are submitting additional complaints to our previous submission on August 4, 2021. Immediate action by the City and County of San Francisco is needed as soon as possible to avoid spending millions of dollars to defend the actions of irreparable damages caused by Fire Chief Nicholson, Ms. Olivia Scanlon and Deputy Chief O'Connor. With Chief Nicholson trying elevate Deputy Director II Olivia Scanlon to Deputy Director IV as final payment of the Chief's quid-pro-quo. This action, in conjunction with Deputy Director II Scanlon's conflict-of-interest attempt to eliminate the Department of Public Works from SFFD construction projects to privatize the oversight and design is all for Ms. Scanlon's and her General Contractor husband's personal gain. We offer these two new complaints.

**Complaint 7:** Wrongful attempt by Fire Chief Jeannine Nicholson to promote Ms. Olivia Scanlon from Deputy Director II, 0952 to the position of Deputy Director IV, 0954, providing Ms. Scanlon a \$70,000 raise, which also includes advancement of power and authority which she is unqualified and lacks the minimum resume requirements of the City for the position.

Recently, Fire Chief Jeannine Nicholson approached Human Resources to request that Ms. Scanlon be given an unwarranted promotion that she is not qualified for and ironically would put Ms. Scanlon at the same pay scale as her quid-pro-quo partner Deputy Chief Tom O'Connor (Complaints 1 & 5 on the original 8.04.2021 complaint) for their behind-the-scenes maneuvers as tradeoff for the quid-pro-quo, to get Fire Chief Jeannine Nicholson elected to her position as Chief.

From 2000 to 2019, Olivia Scanlon worked as an Event Planner, Volunteer Campaign Worker, Aid to two Supervisors, Legislative Assistant, and Public Relations Manager (See Attachment 1). No college degree(s) and no Fire Department background. Shortly after Chief Nicholson was sworn in on May 6, 2019, she appointed Ms. Scanlon to the position of Communications & Outreach (C&O). The question becomes from May of 2019 to September 2021, what exactly Ms. Scanlon did to increase her qualifications during this period of time to go from C&O to Deputy Director II to Deputy Director IV. An amazing feat, in a little over two years, with no experience whatsoever.

We have been informed that SFFD Human Resources took the correct action and referred the Chief's request to City level, as the Chief continues to push for Ms. Scanlon's advancement. Investigators should review who in the SFFD Human Recourse Department allowed Ms. Scanlon to be given the Chief-of-Staff / Deputy Director II appointment to see how this atrocity happened in the first place and stop any further advancement of Ms. Scanlon.



## Complaint 7 Summary:

We ask that the City of San Francisco Ethics Commission to review Fire Chief Jeannine Nicholson actions with SFFD Human Resources for her part in this request for advancement of Ms. Olivia Scanlon to Deputy Director IV, 0954, in which Ms. Scanlon is even less qualified for this advanced position than her current position, based upon the City Department of Human Resources Classification & Compensation Regulations - Management Minimum Qualifications. If after investigation, the Complaint is proven valid, Fire Chief Jeannine Nicholson & Deputy Director II, Olivia Scanlon should be dismissed from their positions immediately. With Chief Nicholson's position posted immediately for replacement and Ms. Scanlon's position eliminated.

It would also be interesting to compare Ms. Scanlon's qualifications to all other Deputy Director II and IV within the City of San Francisco to see just how far over her head she was promoted over those actually deserving of the position.

**Complaint 8:** Deputy Director II Olivia Scanlon is attempting to privatize development of SFFD new construction from other City of San Francisco department and entities, for **personal gain, conflict of interest and against City of San Francisco statutes** that specifically spells out the roles of noted City Departments.

During Fire Chief Jeannine Nicholson tenure, she has elevated Ms. Olivia Scanlon to Chief-of-Staff, Deputy Director II. With this position, Ms. Scanlon has taken on an oversight role of all new SFFD capital and remodel projects possessing no relevant experience nor educational background in the field of construction, construction finance, or construction project management.

On Wednesday, September 22, 2021, the SFFD Union requested a Cancellation and Rebidding of SFFDPW Request for Qualifications for Design Team for the new \$275M Training Center (Public record – 2020 Bond). An unprecedented request from the SFFD Union, in which the Union does not have any authority over SFFD Construction Projects. This unprecedented action is another stall tactic orchestrated by Ms. Scanlon to circumvent the City of San Francisco statutes to attempt to gain power and personal wealth at the expense of the City. We offer the following comments to support our claims.

### 1. Conflict of Interest

- a. Ms. Scanlon's husband is a Private General Contractor, Owner of Seamus R. Cudden Construction, registered for business in the City and County of San Francisco, operating out of Daly City, CA.
- b. By privatizing development of all SFFD projects, Ms. Scanlon will be able to influence and award contracts to companies like Seamus R. Cudden Construction, associates or circle of friends within the construction industry, which will lead to personal gain for Scanlon and Cudden.
- c. Due to this conflict of interest, which should have been noted or flagged years ago, (Public Records 2008). Ms. Scanlon should have recused herself from any involvement with any City of San Francisco construction projects and/or oversight.

### 2. In a 2008 court hearing, Peter Fatooh testified that Ms. Scanlon had misused gifts meant for volunteers and donors of the Tony Hall campaign for personal use. Mr. Fatooh stopped helping the campaign because she (Scanlon) lied about the use of the gifts (Public Record).



3. Ms. Scanlon has used her contacts to promote her husband's self-owned General Contractor Company. Contractor Michael Buckley testified in court that he (Buckley) had considered hiring Scanlon's husband, Seamus Cudden, as a subcontractor, but refused after Cudden's request to be paid in cash only, which was the only terms under which Cudden would accept employment. (Public Record)
4. Ms. Scanlon had to take the 5<sup>th</sup> Amendment as the star witness in the ethics hearing against Supervisor Tony Hall. Ms. Scanlon did so to prevent perjury from previously sworn testimony and falsifying documents. (Public Record)
5. Ms. Scanlon was the person noted as making the allegations against Tony Hall shortly after Ms. Scanlon left work as an aid to Tony Hall, due to Mr. Hall declining to put Ms. Scanlon in a management position to oversee the Treasure Island construction development. (Public Record)
6. Ms. Scanlon for over a year has begun a systematic campaign to privatize development and oversight of SFFD projects, specifically the Training Center, by talking about overruns and delays by the DPW while directing members of the SFFD not to attend or cancel meetings and then blame DPW for them.
7. The September 22, 2021 Union request for Cancellation and Rebidding of SFFDPW Request for Qualifications #0000005636 of the new SFFD Training Center due to lack of Community Outreach is the perfect example of the chaos caused by Chief Nicholson and Deputy Director II Olivia Scanlon, as Ms. Scanlon **is responsible** for all SFFD Community Outreach. Scanlon's lack of doing her job will further delay the SFFD Training Center and cost the city millions of dollars in delayed escalation costs in materials and labor if the union challenge is successful.

#### **Complaint 8 Summary:**

Chief Nicholson, by wrongfully promoting Oliva Scanlon, Scanlon is now able to advance her and her husband's 2004 Treasure Island plan to influence and profit from the development process, but without the upper management interference. As Scanlon, through Chief Nicholson's illegal promotions of Scanlon, has eliminated most of the managerial restraints that impacted her desires in 2004, that will allow Scanlon and Cudden an opportunity for personal gain at the City's expense.

Scanlon has shown through Public Records that she is willing to lie under oath, falsify/forged documents and wrongfully accuse a fellow city employee of ethics issues when said fellow city employee failed to provide Scanlon the position that she wanted. Scanlon does not work in good faith with the construction departments and again, has proven she will do what it takes to complete her personal agenda. Ms. Scanlon needs to be removed immediately from any contact with construction projects, funding of projects, budgets of projects or any day-to-day involvement due to conflict of interest and personal gain.

#### **Summary:**

In closing, the City needs to review the cause of the Scanlon's quick rise within the SFFD, as we believe that through investigation, you will find a quid-pro-quo between Chief Nicholson's appointment to Chief and Scanlon's current Deputy Director II and the recent attempt at being promoted to Deputy Director IV. Please note, we are not saying that Chief Nicholson is aware of Scanlon's separate agenda, but she is the cause of Scanlon being able to implement it.



In 2008, Scanlon's false accusation, cost the tax payers of San Francisco over \$1,000,000 for all of the hours expended by the Ethics Committee in pursuit to prove Scanlon's claim that she ultimately had to retract by pleading the 5<sup>th</sup> Amendment to her previously sworn testimony that caused her accusations to be dismissed.

One has to ask, how someone so unqualified, so ethically challenged and dishonest, get to be in her position in the City of San Francisco Fire Department. The City of San Francisco really needs to take a closer look at how people are appointed to positions, given promotions, especially within the SFFD. In this case, there were far more qualified candidates who actually understood firefighting and the firefighters needs.

Again, please investigate, help the City of San Francisco stop the wasted spending and self-serving agenda. Please note, the longer any action takes, the more wasted taxpayers' money under this administration occurs.

Thank you for your time and effort.

Concerned Citizens

Attachment #1 – Scanlon Work Timeline



Date: August 4, 2021

Re: Whistleblower Complaint

Hard Copies sent via U.S. Postal Service

To: London Breed, Mayor of San Francisco  
Fire Commission  
Ethics Commission, [ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org)  
City Attorney  
Mission Local  
Marina Times  
Fog City Journal  
San Francisco Chronicle

The SFFD has been under a spotlight recently with numerous law suits filed against it dealing with harassment and discrimination. To name a few:

- "S.F Assistant Fire Chief claims she faced discrimination, harassment after taking on "good old boys' club," March 11, 2021, San Francisco Chronicle alleging discrimination and harassment "after blowing the whistle on instances of cheating, racism and safety violation within the department"
- "Gay SF firefighter sues city for racial, sexual orientation discrimination," January 25, 2021, Bay Area Reporter
- "Black firefighters' discrimination suit takes on new light in wake of SF HR scandal," October 29, 2020
- "SFFD 'Whites Only' Policy on Fire Boat," August 6, 2020, Post News Group
- "Paramedic says fire department discriminated against her when she got pregnant," April 20, 2021
- "Pair sue S.F. Fire, alleging race bias," July 29, 2020, San Francisco Chronicle
- "Editorial: SFFD's 3-alarm firm," March 17, 2021, Bay Area Reporter; "Three members of the LGBTQ community – all people of color – have accused the San Francisco Fire Department of discrimination this year."
- "Lesbian assistant chief files lawsuit against SFFD," Bay Area Reporter, March 28, 2021

Discrimination, harassment, and racism are not the only problems at SFFD – corruption and cronyism are another deeply rooted abominations freely practiced by the current management. Many people were forced to leave the ranks because they would not subscribe to cheating, taking shortcuts, playing favoritism, and doing as they were told. The cancer has been spreading from the top and it is mainly due to the incompetence of the Fire Chief Jeannine Nicholson and her enablers. Under the current Fire Chief, number of injuries grew, one fire fighter died during training exercise and Fire Chief spends most of her time at home, awarding badges to civilians while the department is being silently influenced and managed by Ms. Olivia Scanlon, an unqualified individual with a questionable past. Our complaints are as follows.



**Complaint 1:** The hiring and appointment of **Ms. Olivia Scanlon** as SFFD Chief-of-Staff, Deputy Director II, Job position 0952 by Chief Jeanine Nicholson, 0140. Funded by 10000 GF, Annual Account Control.

The basis of this complaint is about Ms. Scanlon's position as Chief-of-Staff, Deputy Director 2, 0952, how this position was created by Chief Nicholson as a quid pro quo for Ms. Scanlon, how the position was not filled per City of San Francisco guidelines and how Ms. Scanlon is not qualified to be a Deputy Director level 2, 0952, as her previous position with the City was as a Public Relations Manager 2015 – 2019 and Legislative Assistant from 2011 - 2014.

When Chief Nicholson was still a Deputy Chief of Administration, 0150, under Chief Joanne Hayes-White, you will note (attachment 1) that SFFD did not have a position of Chief-of-Staff Deputy Director II, 0952. Please note in reviewing the available historical documents, prior to Chief Nicholson, no Chief of the SFFD had a Chief-of-Staff Deputy Director II, 0952 position available. This position was created shortly after Deputy Chief Nicholson was appointed Chief as payment to a political ally.

When then Deputy Chief of Administration Nicholson, 0150 was applying for the Chief position, Ms. Scanlon, along with then Union President, Mr. Tom O' Connor (will be referenced later as a separate complaint), worked together behind the scenes to apply political and union pressure, along with misdirection to get Deputy Chief of Administration Nicholson, 0150, appointed to Chief, 0140. As a reward to Ms. Scanlon for all of her behind the scenes work, Chief Nicholson created a new SFFD position, Chief-of-Staff (Attachment 3, 2021-2022 Annual Salary Ordinance & 3a 2021 SFFD Organizational Chart).

Chief Nicholson went against City of San Francisco hiring practices, did not properly advertise the new position opening and then basically appointed Ms. Scanlon, herself with a questionable past and ethics issues (attachment 4 – Please read the entire attachment). Based upon the City of San Francisco's Minimum Qualifications, Ms. Scanlon does not have either a 4 year college degree or proper managerial experience equivalent to replace the college degree requirement to qualify for a Deputy Director II, 0952 (attachment 5).

It should be noted Ms. Scanlon, when recently attending Fire Commission Meetings, still signs in as Communications and Outreach, not as a Deputy Director II (attachment 6). A reference example is Mr. Mark Corso, who signs in by his title of Deputy Director of Finance, so one has to wonder why the deceit by Ms. Scanlon in not providing her correct title of Chief-of-Staff, Deputy Director 2, 0952 in public meetings?

### **Complaint 1 Summary:**

We are requesting that the Whistleblower Program look into the questionable hire of Ms. Scanlon by Chief Nicholson. Confirm that the creation of the position was approved by the Mayor's Budget Office and meets all of the requirements for creating a new management position within the SFFD. As this position appears to be a reward for a political ally at the taxpayers' expense. Confirm Ms. Scanlon's qualifications to be a Deputy Director II – 0952 are in fact legitimate at the time the position was awarded, as this individual with a questionable past should not have even been considered for a position that is able to influence and manipulate SFFD finances, hires and protocol. Confirm how the position was advertised and interviews conducted. Who were the other applicants, if any? Confirm that this was not a Quid-Pro-Quo, as it appears



to be. From observation and research, when creating a new high level position within the SFFD, there is little or no records of this going through normal City of San Francisco procedures and protocol.

Ms. Scanlon, by means of quid pro quo, has been awarded the position as Deputy Director II, in which she is not properly qualified for. Ms. Scanlon therefore, along with the position of SFFD Chief of Staff, should be removed immediately.

**Complaint 2: *ADC Dawn DeWitt*** was improperly awarded the position of Assistant Deputy Chief of Support Services, H51, due to the interview process being wrongfully stopped by Chief Nicholson and thus violating the City of San Francisco hiring procedures and protocol to award the position of ADC of Support Services to Ms. DeWitt.

Chief Nicholson interrupted and prevented the interview committee from tallying the final accumulative scoring results of all the participating interviewees and announcing the committee's choice for Assistant Deputy Chief of Support Services. During said interruption Chief Nicholson announced that the choice for the position is obvious and should be awarded to Ms. Dawn DeWitt.

This action and announcement of Ms. DeWitt by Chief Nicholson was taken after Chief Nicholson was informed that her choice, Ms. DeWitt, did not appear to be the top candidate by the committee panelists. That the committee was expected to name another individual as Assistant Deputy Chief of Support Services.

### **Complaint 2 Summary:**

We ask the Whistleblower Program to review the process and analyze interview documentation in which ADC DeWitt was hired and appointed. Review with the interview committee, if they in fact had counted the final interview results. If it was determined that Chief Nicholson did indeed interfere with the process, we request that the position be re-opened up immediately for new interviews and ADC DeWitt be prohibited from re-applying for the position.

### **Complaint 3: Abuse and misuse of authority by Assistant Deputy Chief Dawn DeWitt**

ADC DeWitt wrongfully advanced her ex-husband, Mr. Brent Stuckert, Civil Servant Rank - Captain H30 to the rank of H39 Battalion Chief, paid for by the ESER 2016 Bond. After his advancement, Battalion Chief Stuckert directly reported to ADC DeWitt until February of 2021, in which BC Stuckert's supervisor was shifted from ADC DeWitt to the newly appointed Assistant Deputy Chief of Auxiliary Water Supply Systems, Tom O'Connor. By transferring supervisors, it is an attempt to hide H39 Battalion Chief Stuckert from the scrutiny of prying eyes for at least one more year to allow Battalion Chief Stuckert to be vested at a higher pension and benefits from the SFFD and City of San Francisco.



### **Complaint 3 Summary:**

We ask the Whistleblower Program to investigate the appointment and promotion of H30 Captain Brent Stuckert by ADC Dawn DeWitt. If confirmed, the findings should be turned over to the City of San Francisco Prosecutor's office for charges of corruption. ADC DeWitt should be put on immediate administration leave and removed.

**Complaint 4: Battalion Chief Brent Stuckert, H39** knowingly receiving a wrongful promotion in an effort to increase regular/retirement earnings and benefits from the City of San Francisco

BC Stuckert was wrongfully promoted by his ex-wife, ADC Dawn DeWitt, in which BC Stuckert knowingly and premeditatedly accepted the position of Battalion Chief for the sole purpose of personal gain and profit at the expense of San Francisco tax payers.

### **Complaint 4 Summary:**

We ask the Whistleblower Program to investigate the appointment and promotion of H30 Captain Brent Stuckert by ADC Dawn DeWitt. If confirmed, the findings should be turned over to the City of San Francisco Prosecutor's office for charges of corruption. BC Stuckert should have his retirement returned to level H30 and any retirement fund earned under the H39 promotion need to be removed from Mr. Stuckert's said account. Mr. Stuckert should also pay restitution.

**Complaint 5:** The hiring, advancement and appointment of **ADC Tom O'Connor**, from Union President, to Civil Servant rank, Battalion Chief H40, to Assistant Deputy Chief of Auxiliary Water Supply Systems, H051 F.

When then Deputy Chief of Administration Nicholson, 0150 was applying for the Chief position, then Union President Tom O'Connor, along with then Public Relations Manager, Ms. Olivia Scanlon (previously referenced above in Complaint number 1), worked together behind the scenes to apply political and union pressure, along with misdirection to get Deputy Chief of Administration Nicholson, 0150, appointed to Chief, 0140. As a reward to Tom O'Connor for all of his Union support and behind the scene maneuvering, Chief Nicholson created, after a year delay, a new SFFD position, quid pro quo, Assistant Deputy Chief of Auxiliary Water Supply Systems.

After stepping down as President of the Fireman Union Local 798 at the end of December 2019, Mr. O'Connor was rehired by the SFFD during a City of San Francisco hiring freeze to the Civil Servant Rank of Battalion Chief H40 in early 2020. Battalion Chief O'Connor was unhappy with the H40 position and time required to fulfill the quid pro quo position of H051 F to allow for a better retirement and benefits.

In late 2020, BC O'Connor approached Chief Nicholson and Chief-of-Staff Scanlon to discuss the H51 position per the quid pro quo discussions. Chief Nicholson and Chief of Staff Scanlon wanted BC O'Connor to wait longer as not to raise suspicion from going from Union President, to BC H40, to finally ADC H051 F. O'Connor's argument was that he needs one (1) year at ADC AWSS H051F to be vested at the H051 F Level. Shortly thereafter a new position of ADC AWSS H051 F was created and pushed by Chief Nicholson and Chief-of-Staff Scanlon to the Fire Commission. On January 27, 2021, the Fire Commission approved the Chief Nicholson's request to elevate ADC AWSS O'Connor to the higher rank.



Upon receiving the ADC AWSS promotion, O'Connor enjoys a Deputy Fire Chief H51 position of high pay and benefits with very few responsibilities, as this position is a duplicate with similar overlapping responsibilities that were previously and are still being conducted by Battalion Chief Brent Stuckert H39 (see Complaint 4) who now reports to ADC AWSS O'Connor.

#### **Complaint 5 Summary:**

We ask the Whistleblower Program to investigate and confirm that ADC Tom O'Connor was hired per the proper City of San Francisco hiring practices, if O'Connor was wrongfully hired during a City of San Francisco hiring freeze. To further investigate the creation of a high ranking/paying position that does not require such an expense to the city taxpayers which does not appear in any of the SFFD or City current budgets.

O'Connor's hiring was a pre-arranged quid pro quo reward by Chief Nicholson for Union support to become Fire Chief. When the improper hiring procedures and advancements are confirmed, we ask that ADC O'Connor and his position to be eliminated from the SFFD and City budget, along with his added pension and salary.

#### **Complaint 6:**

The hiring of ADC of Emergency Medical Services, ***Sandra Tong*** by Chief Nicholson.

EMS Chief Tong was brought out of retirement by Chief Nicholson, again ignoring City of San Francisco hiring practices and procedures in filling the position. Position was given to Ms. Tong disregarding past practices of advertising to the pool of available candidates who were next in line and already working for the SFFD.

#### **Complaint 6 Summary:**

We ask the Whistleblower Program to review the procedures on how Ms. Tong was hired. Upon confirmation of irregularities, we request that the position be re-opened up immediately for new interviews and ADC of EMS Sandra Tong be prohibited from re-applying for the position.

Since her appointment in July 2019, Chief Nicholson has lead the SFFD into a sea of costly lawsuits due to her authoritarian style leadership, which has created a new level of acceptance of discrimination, bias and cronyism within the San Francisco Fire Department that our City's leaders should be ashamed of. Using the SFFD as a personal reward system to advance those not by merit or committee, but by breaking city policies and in some cases committing criminal acts to reward those few who have supported and carried out the Chief's wishes. The corruption is spreading further and faster as the Fire Chief takes more time off while having ethically challenged people such as Chief-of-Staff Olivia Scanlon, ADC Dawn DeWitt and ADC Tom O'Conner managing the Department.



Please investigate, help the City of San Francisco stop the wasted spending and self-serving agendas, while removing all the criminal activity within the SFFD.

Thank you for your time and effort.

Concerned Citizens

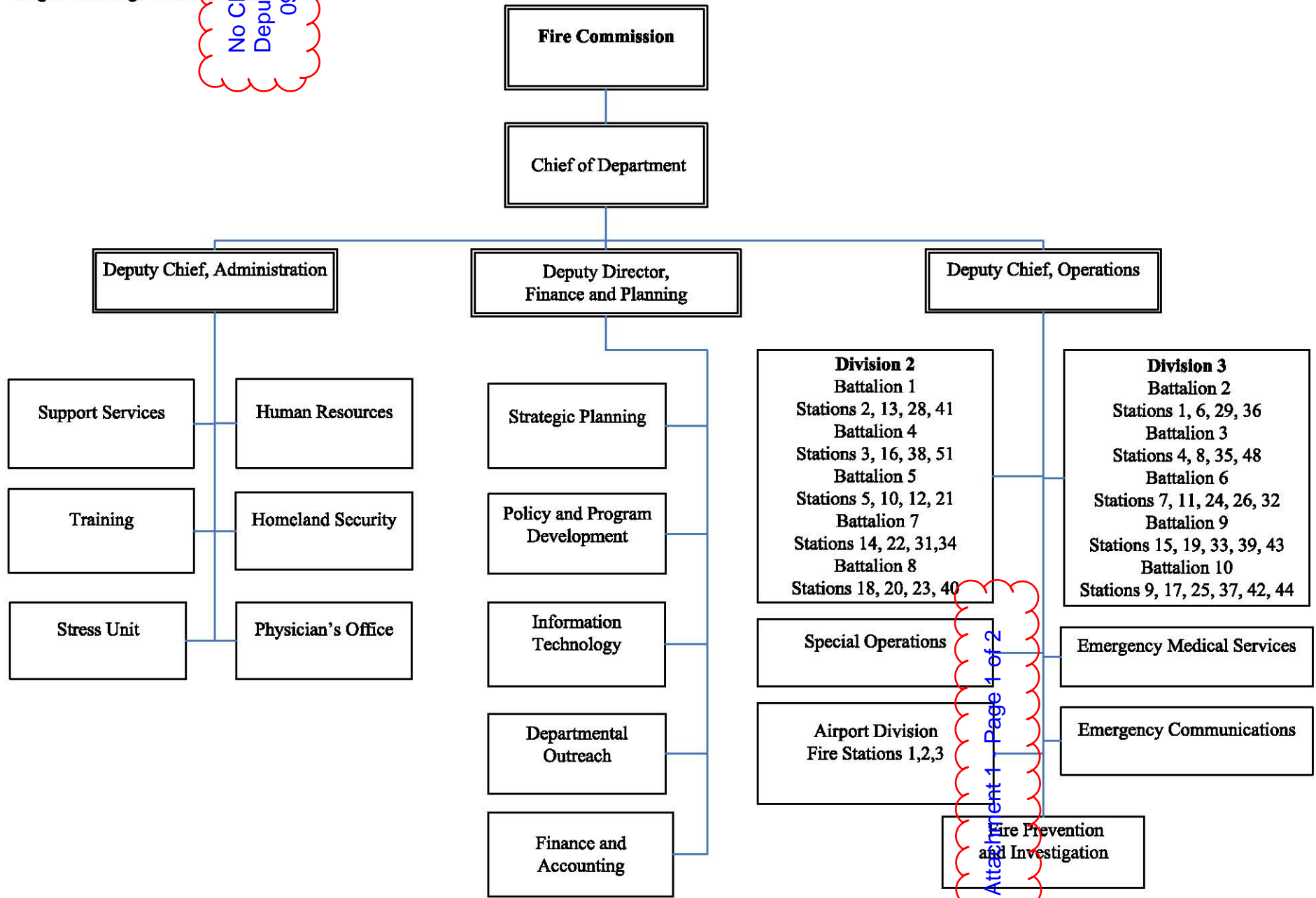
Attachments Included:

1. SFFD High Level Organization Chart 2018 - Pre-Chief Nicholson, showing no Chief-of-Staff position.
2. 2019 - 2020 SFFD Budget showing no budget for the position of 0952 - Deputy Director II, which is the salary designation for the Chief-of-Staff position.
3. SFFD 2021 & 2022 Budget, which now has a position of 0952\_C, Deputy Director II.
- 3a SFFD High Level Organization Chart 2021, showing Olivia Scanlon as a Chief-of-Staff, 0952\_C, Deputy Director II.
4. Written Newspaper Article of ethical, criminal and perjury issues with Olivia Scanlon during the Tony Hall trial.
5. City of San Francisco Minimum Management Requirements.
6. Fire Commission Regular Meeting Minutes, Dated April 14, 2021.



San Francisco Fire Department  
High Level Organization Chart

No Chief-of-Staff  
Deputy Director II  
0952



Attachment 1 Page 4 of 2



# San Francisco Fire Department Organization Chart

No Chief of Staff  
Deputy Director II  
0952

**Fire Commission**  
Ken Cleaveland, President  
Stephen A. Nakajo, Vice-President  
Michael Hardeman  
Frances Covington  
Joe Alioto Veronese

Maureen Conefrey  
Commission Secretary  
1454 Exec Secty III

Joanne Hayes-White  
Chief of Department  
0140 Chief of Department  
0922 Manager I

Jeanine Nicholson  
Deputy Chief, Administration  
0150 Deputy Chief of Department  
1426 Sr Clerk Typist

Mark Corso  
Planning and Finance  
0954 Deputy Director IV

Mark A. Gonzales  
Deputy Chief, Operations  
0150 Deputy Chief of Department  
1452 Executive Secty II

Anthony Rivera  
ADC Support Services  
H 51, Assistant Deputy Chief  
1822 Admin Analyst.  
1823 Sr Admin Analyst  
1934 Storekeeper (3)  
1936 Senior Storekeeper (4)  
1842 Management Asst.  
1942 Materials Coordinator  
7335 Senior Stationary Engineer  
H 30 Captain  
H 20 Lieutenant (1)  
H 2 Firefighter (10)

Jeff Columbini  
ADC Training  
H 51, Assistant Deputy Chief  
1426 Sr Clerk Typist (2)  
H 20 Lieutenant (NERT)  
H 28 Training Lieutenants  
H 33 EMS Captains  
H 39 Training Captain (3)  
H 43 EMS Section Chief  
H 2 Firefighter (Recruitment)

Jesusa Bushong  
Human Resources  
0931 Manager III  
1446 Secretary  
1241 Personnel Analyst  
1244 Senior HR Analyst  
1224 Prin Payroll Personnel Clerk  
1222 Sr Payroll Per Clerk (4)

Stress Unit  
H 2 Firefighter (2)

Michael Cochrane  
ADC Homeland Security  
H 51, Assistant Deputy Chief

Ramon Terrazas  
Department Physician  
2233 Sr Physician  
2232 Senior Physician Specialist  
2328 Nurse Practitioner  
1426 Sr Clerk Typist

Strategic Planning  
1823 Sr Admin Analyst

Departmental Outreach  
9251 Communications Mgr

Planning and Research  
H 40 Battalion Chief (Defunded)  
H 33 EMS Captain  
H 20 Lieutenant (2)  
1804 Statistician  
1844 Sr Mgmt Asst (5)

Elaine Walters  
Chief Financial Officer  
0931 Manager III  
1823 Sr Admin Analyst  
1657 Accountant IV  
1652 Accountant II  
1630 Account Clerk

Jesus Mora  
Information Services  
0933 Manager V  
1044 IS Engineer – Principal  
1043 IS Engineer - Senior  
1042 IS Engineer (2)  
1093 IT Op. Support Admin III (2)

Division 2  
H 50 Assistant Chief  
H 10 Incident Supp Spec  
H 40 Battalion 1  
Stations 2, 13, 28, 41  
H 40 Battalion 4  
Stations 3, 16, 38, 51  
H 40 Battalion 5  
Stations 5, 10, 12, 21  
H 40 Battalion 7  
Stations 14, 22, 31, 34  
H 40 Battalion 8  
Stations 18, 20, 23, 40  
H 33 Rescue Captain  
H 30 Captains  
H 20 Lieutenants  
H 3 FF Paramedics  
H 2 Firefighters

Special Operations  
H 40 Battalion Chief (Defunded)

Khairul Ali  
ADC Airport Division  
H 51, Assistant Deputy Chief  
H 40 Battalion Chief (3)  
H 39 Captain  
H 32 Captain BFP (2)  
H 30 Captain (4)  
H 33 Captain EMS (3)  
H 22 Lieutenant BFP (2)  
H 20 Lieutenant (9)  
H 4 Inspector (2)  
H 3 FF Paramedics  
H 2 Firefighters  
6281 Fire Inspector BFP  
5215 FP Engineer

Division 3  
H 50 Assistant Chief  
H 10 Incident Supp Spec  
H 40 Battalion 2  
Station 1, 6, 29, 36  
H 40 Battalion 3  
Station 4, 8, 35, 48  
H 40 Battalion 6  
Station 7, 11, 24, 26, 32  
H 40 Battalion 9  
Station 15, 19, 33, 39, 43  
H 40 Battalion 10  
Station 9, 17, 25, 37, 42, 44  
Station 48 TI  
H 33 Rescue Captains  
H 30 Captains  
H 20 Lieutenants  
H 110 Marine Engineer  
H 120 Pilot  
H 3 FF Paramedics  
H 2 Firefighters  
H 43 Section Chief (Defunded)

Andy Zanoloff  
H 53 EMS Chief  
H 43 Section Chief  
H 33 EMS Captains  
2112 Med Records Tech  
H 33 Rescue Capt (2 – EMS-6)  
H 33 Rescue Capt (4)  
H 33 Rescue Capt (Sta 49)  
H 31 Paramedics  
H 3 Level I EMTs  
H 3 Level II Paramedics  
H 8 Per Diem EMT/PM

Daniel DeCossio  
ADC, Fire Prevention  
and Investigation  
H 51, Assistant Deputy Chief  
1426 Sr Clerk Typist  
1446 Secretary II  
1042 IS Engineer  
1652 Accountant II  
1820 Jr Admin Analyst (3)  
1840 Jr Mgmt Asst.  
1063 IS Programmer (2)  
1093 IT Op. Support Admin III  
5215 FP Engineer  
6281 Fire Inspector (9)  
H 4 Inspector (33)  
H 22 Lieutenant (10)  
H 32 Captain (3)  
H 42 Asst. Fire Marshal  
H 32 Captain (BFI)  
H 24 Lieutenant  
H 6 Investigator (9)

Patrick D'Arcy  
Emergency Communications  
H 40 Battalion Chief  
H 33 EMS Captain (4)  
H 20 Lieutenant (4)



**Administration (10001965)****SFFD Budget FY19 and FY20****Administration Summary Table**

|       |                                     | <b>Current<br/>FY 2018</b> | <b>Budget<br/>FY 2019</b> | <b>Variance<br/>18 to 19</b> | <b>Budget<br/>FY 2020</b> |
|-------|-------------------------------------|----------------------------|---------------------------|------------------------------|---------------------------|
| 001   | Salaries                            | 3,682,632                  | 4,224,846                 | 542,214                      | 4,920,738                 |
| 002   | Permanent Salaries-uniform          | 1,568,513                  | 1,627,845                 | 59,332                       | 1,666,063                 |
| 004   | Permanent Salaries-nurses           | 217,460                    | 223,693                   | 6,233                        | 231,142                   |
| 009   | Premium Pay                         | 159,072                    | 164,124                   | 5,052                        | 164,124                   |
| 011   | Overtime                            | 108,206                    | 111,584                   | 3,378                        | 111,584                   |
| 013   | Mandatory Fringe Benefits           | 3,842,028                  | 4,154,268                 | 312,240                      | 4,266,799                 |
| 021   | Travel                              | 1,570                      | 1,570                     | 0                            | 1,570                     |
| 022   | Training                            | 13,700                     | 13,700                    | 0                            | 13,700                    |
| 024   | Membership Fees                     | 2,615                      | 2,615                     | 0                            | 2,615                     |
| 027   | Professional & Specialized Services | 361,471                    | 361,471                   | 0                            | 361,471                   |
| 035   | Other Current Expenses              | 224,900                    | 224,900                   | 0                            | 224,900                   |
| 040   | Materials & Supplies                | 189,859                    | 189,859                   | 0                            | 189,859                   |
| 052   | Taxes, Licenses & Permits           | 600                        | 600                       | 0                            | 600                       |
| 081H0 | Gf-hr-equal Employment Opportunity  | 21,000                     | 21,000                    | 0                            | 21,000                    |
| 081H3 | Gf-hr-workers' Comp Claims          | 9,354,940                  | 9,636,292                 | 281,352                      | 9,636,292                 |
| 081H8 | Gf-hr-drug Testing                  | 32,175                     | 32,175                    | 0                            | 32,175                    |
| 081HE | Ef-sfgh-medical Service             | 3,305                      | 3,305                     | 0                            | 3,305                     |
| 081HS | Gf-chs-medical Service              | 237,459                    | 246,717                   | 9,258                        | 246,717                   |
|       |                                     | <b>20,021,505</b>          | <b>21,240,564</b>         | <b>1,219,059</b>             | <b>22,094,654</b>         |

**Administration Salary Detail****Permanent Salaries**

| <b>Id#</b> | <b>Code</b> | <b>Ref</b> | <b>Title</b>                     | <b>FY19<br/>FTEs</b> | <b>FY19<br/>Amount</b> | <b>FY20<br/>FTEs</b> | <b>FY20<br/>Amount</b> |
|------------|-------------|------------|----------------------------------|----------------------|------------------------|----------------------|------------------------|
| 0114       | A           |            | Board/Commission Member, Group V | 0.00                 | 6,143                  | 0.00                 | 6,143                  |
| 0922       | A           |            | Manager I                        | 1.00                 | 132,989                | 1.00                 | 137,418                |
| 0931       | A           |            | Manager III                      | 2.00                 | 307,863                | 2.00                 | 318,115                |
| 0933       | A           |            | Manager V                        | 1.00                 | 178,221                | 1.00                 | 184,156                |

No - 0952 Deputy Director II in Budget



**Administration (10001965)****SFFD Budget FY19 and FY20**

|       |   |                                       |              |                  |              |                  |
|-------|---|---------------------------------------|--------------|------------------|--------------|------------------|
| 0954  | A | Deputy Director IV                    | 1.00         | 217,802          | 1.00         | 225,055          |
| 1042  | A | IS Engineer-Journey                   | 3.00         | 404,994          | 3.00         | 418,480          |
| 1043  | A | IS Engineer - Senior                  | 1.00         | 149,593          | 1.00         | 154,574          |
| 1044  | A | IS Engineer-Principal                 | 1.00         | 166,308          | 1.00         | 166,308          |
| 1070  | A | IS Project Director                   | 1.00         | 166,308          | 1.00         | 166,308          |
| 1093  | A | IT Op. Support Admin III              | 2.00         | 200,958          | 2.00         | 207,650          |
| 1222  | A | Senior Payroll And Personnel Clerk    | 4.00         | 341,284          | 4.00         | 352,649          |
| 1224  | A | Principal Payroll And Personnel Clerk | 1.00         | 94,051           | 1.00         | 97,183           |
| 1241  | A | Personnel Analyst                     | 1.00         | 102,648          | 1.00         | 106,066          |
| 1244  | A | Senior Personnel Analyst              | 1.00         | 119,787          | 1.00         | 123,776          |
| 1426  | A | Senior Clerk Typist                   | 1.00         | 69,333           | 1.00         | 71,642           |
| 1446  | A | Secretary II                          | 1.00         | 76,457           | 1.00         | 79,003           |
| 1454  | A | Executive Secretary III               | 1.00         | 99,514           | 1.00         | 102,828          |
| 1630  | A | Account Clerk                         | 1.00         | 65,236           | 1.00         | 67,408           |
| 1652  | A | Senior Accountant                     | 1.00         | 91,132           | 1.00         | 94,167           |
| 1657  | A | Accountant IV                         | 1.00         | 127,633          | 1.00         | 131,883          |
| 1804  | A | Statistician                          | 1.00         | 90,731           | 1.00         | 93,752           |
| 1823  | A | Senior Administrative Analyst         | 2.00         | 229,236          | 2.00         | 236,870          |
| 1844  | A | Senior Management Assistant           | 5.00         | 518,595          | 5.00         | 535,865          |
| 2112  | A | Medical Records Technician            | 1.00         | 80,501           | 1.00         | 83,182           |
| 2232  | A | Senior Physician Specialist           | 0.15         | 39,836           | 0.15         | 41,163           |
| 2233  | A | Supervising Physician Specialist      | 1.00         | 285,632          | 1.00         | 295,144          |
| 9251  | A | Communications Manager                | 1.00         | 143,434          | 1.00         | 148,210          |
| 9991M | A | One Day Adjustment - Misc             | 0.00         | 0                | 0.00         | 0                |
| 9993M | A | Attrition Savings - Miscellaneous     | (2.03)       | (276,160)        | (2.03)       | 281,168          |
| STEPM | A | Step Adjustments, Miscellaneous       | 0.00         | (5,213)          | 0.00         | (5,428)          |
|       |   |                                       | <b>35.12</b> | <b>4,224,846</b> | <b>35.12</b> | <b>4,920,738</b> |

**Uniform Salaries**

| <b>Id#</b> | <b>Code</b> | <b>Ref</b> | <b>Title</b>                 | <b>FY19<br/>FTEs</b> | <b>FY19<br/>Amount</b> | <b>FY20<br/>FTEs</b> | <b>FY20<br/>Amount</b> |
|------------|-------------|------------|------------------------------|----------------------|------------------------|----------------------|------------------------|
| 0140       | A           |            | Chief Of Department          | 1.00                 | 327,787                | 1.00                 | 338,702                |
| 0150       | A           |            | Deputy Chief Of Department   | 1.00                 | 282,947                | 1.00                 | 292,369                |
| 9991U      | A           |            | One Day Adjustment - Uniform | 0.00                 | 0                      | 0.00                 | 0                      |



**FD Administration (10001965)****San Francisco Fire Department Budget FY21 and FY22**

|        |                                 |                   |                   |                  |                   |
|--------|---------------------------------|-------------------|-------------------|------------------|-------------------|
| 581430 | GF HR Equal Employmnt Opportuni | 21,000            | 21,000            | 0                | 21,000            |
| 581460 | GF HR Workers' Comp Claims      | 11,464,315        | 11,784,170        | 319,855          | 11,784,170        |
| 581490 | GF HR Drug Testing              | 32,175            | 32,175            | 0                | 32,175            |
| 581520 | EF SFGH Medical Service         | 3,305             | 249               | (3,056)          | 249               |
| 581570 | GF Chs Medical Service          | 253,849           | 261,194           | 7,345            | 261,194           |
|        |                                 | <b>24,135,728</b> | <b>25,417,282</b> | <b>1,281,554</b> | <b>25,640,316</b> |

**FD Administration Salary Detail**

| <b>Uniform Salaries</b>   |           |            |                                               | <b>Current</b> | <b>FY21</b>  | <b>FY21</b>      | <b>FY22</b>  | <b>FY22</b>      |
|---------------------------|-----------|------------|-----------------------------------------------|----------------|--------------|------------------|--------------|------------------|
| <b>Id#</b>                | <b>St</b> | <b>Ref</b> | <b>Title</b>                                  | <b>FTEs</b>    | <b>FTEs</b>  | <b>Amount</b>    | <b>FTEs</b>  | <b>Amount</b>    |
| 0140_F                    | A         |            | Chief of Department, (Fire Department)        | 1.00           | 1.00         | 346,828          | 1.00         | 358,551          |
| 0150_F                    | A         |            | Deputy Chief of Department, (Fire Department) | 1.00           | 1.00         | 299,400          | 1.00         | 309,520          |
| H002_F                    | A         |            | Firefighter                                   | 2.00           | 2.00         | 257,624          | 2.00         | 266,332          |
| H020_F                    | A         |            | Lieutenant, Fire Suppression                  | 2.00           | 2.00         | 299,347          | 2.00         | 309,465          |
| H030_F                    | A         |            | Captain, Fire Suppression                     | 1.00           | 1.00         | 170,910          | 1.00         | 176,687          |
| H033_F                    | A         |            | Captain, Emergency Medical Services           | 2.00           | 2.00         | 341,820          | 2.00         | 353,374          |
| H040_F                    | A         |            | Battalion Chief, Fire Suppression             | 1.00           | 1.00         | 205,162          | 1.00         | 212,096          |
|                           |           |            |                                               | <b>10.00</b>   | <b>10.00</b> | <b>1,921,091</b> | <b>10.00</b> | <b>1,986,025</b> |
| <b>Permanent Salaries</b> |           |            |                                               | <b>Current</b> | <b>FY21</b>  | <b>FY21</b>      | <b>FY22</b>  | <b>FY22</b>      |
| <b>Id#</b>                | <b>St</b> | <b>Ref</b> | <b>Title</b>                                  | <b>FTEs</b>    | <b>FTEs</b>  | <b>Amount</b>    | <b>FTEs</b>  | <b>Amount</b>    |
| 0922_C                    | A         |            | Manager I                                     | 1.00           | 1.00         | 142,858          | 1.00         | 147,883          |
| 0931_C                    | A         |            | Manager III                                   | 2.00           | 2.00         | 330,713          | 2.00         | 342,344          |
| 0931_C                    | A         | 2021K      | Manager III                                   | 0.00           | (1.00)       | (165,357)        | (1.00)       | (171,173)        |
| 0933_C                    | A         |            | Manager V                                     | 1.00           | 1.00         | 191,480          | 1.00         | 198,214          |
| 0933_C                    | A         | 2021K      | Manager V                                     | 0.00           | 1.00         | 191,480          | 1.00         | 198,214          |
| 0933_C                    | A         | 2021L      | Manager V                                     | 0.00           | (1.00)       | (191,480)        | (1.00)       | (198,214)        |
| 0941_C                    | A         | 2021L      | Manager VI                                    | 0.00           | 1.00         | 205,521          | 1.00         | 212,750          |
| 0952_C                    | A         |            | Deputy Director II                            | 1.00           | 1.00         | 165,357          | 1.00         | 171,173          |
| 0954_C                    | A         |            | Deputy Director IV                            | 1.00           | 1.00         | 233,953          | 1.00         | 242,182          |
| 1041_C                    | A         |            | IS Engineer-Assistant                         | 0.00           | 0.00         | 0                | 0.00         | 0                |
| 1042_C                    | A         |            | IS Engineer-Journey                           | 3.00           | 3.00         | 435,018          | 3.00         | 450,318          |
| 1043_C                    | A         |            | IS Engineer-Senior                            | 1.00           | 1.00         | 160,712          | 1.00         | 166,365          |
| 1044_C                    | A         |            | IS Engineer-Principal                         | 1.00           | 1.00         | 172,901          | 1.00         | 178,982          |
| 1070_C                    | A         |            | IS Project Director                           | 1.00           | 1.00         | 172,901          | 1.00         | 178,982          |
| 1093_C                    | A         |            | IT Operations Support Administrator III       | 2.00           | 2.00         | 215,912          | 2.00         | 223,506          |
| 1222_C                    | A         |            | Senior Payroll And Personnel Clerk            | 4.00           | 4.00         | 366,636          | 4.00         | 379,530          |
| 1224_C                    | A         |            | Principal Payroll And Personnel Clerk         | 1.00           | 1.00         | 101,029          | 1.00         | 104,582          |
| 1241_C                    | A         |            | Human Resources Analyst                       | 1.00           | 1.00         | 110,800          | 1.00         | 115,253          |



# San Francisco Fire Department Organization Chart

**Fire Commission**  
 Francee Covington, President  
 Katherine Feinstein, Vice-President  
 Stephen A. Nakajo  
 Ken Cleaveland  
 Tony Rodriguez

**Maureen Conefrey**  
 Commission Secretary  
 1454 Exec Secty III

**Jeanine Nicholson**  
 Chief of Department  
 0140 Chief of Department  
 0922 Manager I

**Olivia Scanlon**  
 Chief of Staff  
 0952 Deputy Director II

**Jose Velo**  
 Deputy Chief, Administration  
 0150 Deputy Chief of Department  
 1452 Executive Secretary II

**Mark Corso**  
 Planning and Finance  
 0954 Deputy Director IV

**Victor Wyrach**  
 Deputy Chief, Operations  
 0150 Deputy Chief of Department  
 1452 Executive Secty II

**Dawn DeWitt**  
 ADC Support Services  
 H 51, Assistant Deputy Chief  
 1822 Admin Analyst.  
 1823 Sr Admin Analyst  
 1934 Storekeeper (3)  
 1936 Senior Storekeeper (4)  
 1842 Management Asst.  
 1942 Materials Coordinator  
 7335 Senior Stationary Engineer  
 H 30 Captain  
 H 20 Lieutenant (1)  
 H 2 Firefighter (10)

**Joel Sato**  
 ADC Training  
 H 51, Assistant Deputy Chief  
 1426 Sr Clerk Typist (2)  
 H 20 Lieutenant (NERT)  
 H 28 Training Lieutenants  
 H 33 EMS Captains  
 H 39 Training Captain (3)  
 H 43 EMS Section Chief  
 H 2 Firefighter (Recruitment)

**Jesusa Bushong**  
 Human Resources  
 0931 Manager III  
 1446 Secretary  
 1241 Personnel Analyst  
 1244 Senior HR Analyst  
 1224 Prin Payroll Personnel Clerk  
 1222 Sr Payroll Per Clerk (4)

**Natasha Parks**  
 Health and Safety  
 H 40, Battalion Chief  
 Physician's Office  
 2233 Sr Physician  
 2328 Nurse Practitioner  
 1426 Sr Clerk Typist  
 Peer Support Unit  
 H 2 Firefighter (2)

**Planning and Research**  
 H 33 EMS Captain  
 H 20 Lieutenant (2)  
 1844 Sr Mgmt Asst (5)

**Strategic Planning**  
 1823 Sr Admin Analyst

**Grants Unit**  
 1823 Sr Admin Analyst

**Elaine Walters**  
 Chief Financial Officer  
 0931 Manager III  
 1823 Sr Admin Analyst (2)  
 1657 Accountant IV  
 1652 Accountant II  
 1630 Account Clerk

**Jesus Mora**  
 Information Services  
 0933 Manager V  
 1044 IS Engineer - Principal  
 1043 IS Engineer - Senior  
 1042 IS Engineer (2)  
 1093 IT Op. Support Admin III (2)  
 1804 Statistician  
 1070 IS Project Director

**Division 2**  
 H 50 Assistant Chief  
 H 10 Incident Supp Spec  
 H 40 Battalion 1  
 Stations 2, 13, 28, 41  
 H 40 Battalion 4  
 Stations 3, 16, 38, 51  
 H 40 Battalion 5  
 Stations 5, 10, 12, 21  
 H 40 Battalion 7  
 Stations 14, 22, 31, 34  
 H 40 Battalion 8  
 Stations 18, 20, 23, 40  
 H 33 Rescue Captain  
 H 30 Captains  
 H 20 Lieutenants  
 H 3 FF Paramedics  
 H 2 Firefighters

**Special Operations**  
 H 40 Battalion Chief (Defunded)

**Khairul Ali**  
 ADC Airport Division  
 H 51, Assistant Deputy Chief  
 H 40 Battalion Chief (3)  
 H 39 Captain  
 H 32 Captain BFP (2)  
 H 30 Captain (4)  
 H 33 Captain EMS (3)  
 H 28 Training Lieutenant  
 H 22 Lieutenant BFP (2)  
 H 20 Lieutenant (9)  
 H 16 Tech. Trng. Specialist  
 H 4 Inspector (2)  
 H 3 FF Paramedics  
 H 2 Firefighters  
 6281 Fire Inspector BFP  
 5215 FP Engineer

**Division 3**  
 H 50 Assistant Chief  
 H 10 Incident Supp Spec  
 H 40 Battalion 2  
 Station 1, 6, 29, 36  
 H 40 Battalion 3  
 Station 4, 8, 35, 48  
 H 40 Battalion 6  
 Station 7, 11, 24, 26, 32  
 H 40 Battalion 9  
 Station 15, 19, 33, 39, 43  
 H 40 Battalion 10  
 Station 9, 17, 25, 37, 42, 44  
 Station 48 TI  
 H 33 Rescue Captains  
 H 30 Captains  
 H 20 Lieutenants  
 H 110 Marine Engineer  
 H 120 Pilot  
 H 3 FF Paramedics  
 H 2 Firefighters

**Sandra Tong**  
 H 53 EMS Chief  
 1426 Sr Clerk Typist  
 H 43 Section Chief (2)  
 H 33 EMS Captains  
 1820 Junior Admin Analyst  
 H 33 Rescue Capt (7 - EMS-6)  
 H 33 Rescue Capt  
 H 33 Rescue Capt (Sta 49)  
 H 23 EMS Lieutenant  
 H 1 Paramedics  
 H 3 Level I EMTs  
 H 3 Level II Paramedics  
 H 8 Per Diem EMT/PM

**Daniel DeCossio**  
 ADC, Fire Prevention  
 and Investigation  
 H 51, Assistant Deputy Chief  
 1446 Secretary II  
 1042 IS Engineer  
 1652 Accountant II  
 1820 Jr Admin Analyst (3)  
 1822 Administrative Analyst  
 1840 Jr Mgmt Asst.  
 1063 IS Programmer (2)  
 1093 IT Op. Support Admin III  
 5215 FP Engineer (11)  
 6281 Fire Inspector (6)  
 H 4 Inspector (51)  
 H 22 Lieutenant (11)  
 H 32 Captain (7)  
 H 42 Asst. Fire Marshal (4)  
 H 32 Captain (BFI)  
 H 24 Lieutenant  
 H 6 Investigator (9)

**Patrick D'Arcy**  
 Emergency Communications  
 H 40 Battalion Chief  
 H 33 EMS Captain (4)  
 H 20 Lieutenant (4)

**Michael Cochrane**  
 ADC Homeland Security  
 H 51, Assistant Deputy Chief



Please read all 5 pages

Exclusive to the Westside Observer

### STAR WITNESS AGAINST TONY HALL PLEADS THE 5TH!



Olivia Scanlon, the Ethics Commission's star witness against Tony Hall in their 3 year long effort against the former District 7 Supervisor, plead the 5th Amendment against self-incrimination as the hearing progressed on October 27. She was a former Aide to Hall.

Scanlon, who also serves as an Aide to Supervisor Sean Elsbernd, appeared at the hearing in response to a subpoena from Hall's attorney David Waggoner. He had earlier filed a criminal charge against Scanlon that alleged she tampered with evidence, as reported in the September Observer.

At the hearing into the anonymous complaint filed at the Ethics Commission charging that Hall improperly used campaign funds for personal expenses, Ethics Commissioners heard testimony from defense witnesses. But when it came time for the testimony from the prosecution's star witness, Olivia Scanlon, who had been summoned to answer questions about the discrepancy in the evidence, she plead the 5th Amendment in connection with her previous testimony in the matter.

In September the Commission heard testimony in support of the allegations. It included charges that then Supervisor Hall had misused funds, repaying Scanlon \$12,000 from campaign funds for a personal loan that she had made to Hall, and charges that he had bought food and gas for campaign workers and volunteers without filing the necessary paperwork, and that he purchased personal gifts for his wife and daughters with a campaign credit card in the amount of \$320.

The pivotal evidence, the checks Scanlon submitted to the Ethics Investigators as evidence of the alleged loan, came into question when it was discovered that there were two versions of the same check. One version had the notation "services" in the lower left corner, indicating the reason for the payment, the other check, bearing the same number and contained in the official exhibit at the trial, had no such notation, which led to the questions surrounding the evidence which precipitated the criminal charges brought against Scanlon for tampering with evidence.

Commissioners and the Ethics leadership continue, however, to press on with the hearings into the matter in spite of the shaky evidence.

Hall noted the cost to the people of the City for the hearings, "it is unfortunate, because the taxpayers are also the victims of this over-zealous prosecution. With four City employees working on this case for the last three years—when that time is tallied—the expense may well be over a million dollars. I know there are better uses for our hard-



earned tax dollars. This incredible attack on my character is unprecedented, as far as I know. I remain confident that the Commission will make the right decision, but there has to be better oversight of shenanigans like this. I hope the Ethics Commission will get its priorities clear to assure the public that it is not driven by political agendas.”

At the hearing, Commissioners heard Peter Fatooh testify that Scanlon had misused theater tickets he had secured to be used as gifts to campaign volunteers and donors and, he said, that he stopped helping the campaign because she had used them herself. He said he “stopped taking her calls,” because “she lied about their use.”

Contractor Michael Buckley testified that he had considered hiring Scanlon’s husband, Seamus Cudden, as a subcontractor, but refused to pay him in cash, which was the only terms under which Cudden would accept employment.

Frank Gallagher, media relations consultant, testified that he had worked with Scanlon on the Hall for Supervisor campaign in 2003 and that the checks from the campaign funds were for work Scanlon had done as Volunteer Coordinator and for her work raising funds for the campaign. He had “no doubt” that Ms. Scanlon was paid \$12,000 for services she had performed with the Irish-American community, and especially for her help with contractors. He further testified that the gas and food charges were for bone fide campaign expenses.

Eamon J. Murphy, construction contractor, testified that Scanlon solicited campaign funds from him for the newly-appointed Sean Elsbernd when he visited him in his offices in City Hall.

Peter Bagatelos, Hall’s campaign attorney, testified that he had advised Hall about the use of gas and meals for the campaign, and that there should have been a proper accounting for each expenditure, but that those kind of expenses are not usually subject to charges, and amounted to “de minimis” errors. He said that the single expenditure, the charge for purses for his wife and daughters at a Virginia City leather shop, happened when Hall mistakenly used the wrong credit card. He advised Hall to repay the \$320 to the campaign and to apologize for the error and offered to settle the gaff with Ethics with a small fine. His efforts to settle the minor problems did not meet with any response from Richard Mo, the officer in charge of the complaint, he said. Bagatelos charged that Mo had prejudged Hall’s behavior before the investigation began, because Mo told him early on “Hall lied about expenditures and had intimidated witnesses.”

When Olivia Scanlon was called as a witness, she appeared in the hearing room, but her lawyer, Edward Swanson, of Swanson, McNamara and Haller, a firm specializing in criminal defense, appeared on her behalf and invoked the 5th Amendment against self-incrimination, stating that, since criminal charges had been filed, she reserved her right to remain silent.

The commission is scheduled to make a determination on the facts and the law at the next regularly scheduled meeting of the Ethics Commission on December 8th. Contractor

“The case against Tony Hall has been politically motivated from the beginning and the fact that the woman making these allegations in the first place had to take the Fifth today to avoid perjuring herself even further in this matter bears out the absurdity of the charges against him,” David Waggoner, an attorney for Hall, said after the hearing. November 2008

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## **INSIDE THE TONY HALL INVESTIGATION**

*Who's really behind the Ethics Commission Investigation?*

*By David Waggoner*





Long before Sean Elsbernd was a supervisor, he was a clerk at the political law firm of Nielsen Merksamer. While there, Elsbernd worked with political attorney Jim Sutton. Sutton, now Elsbernd's campaign treasurer, has often been referred to as "the dark prince of San Francisco elections."

For his part, Elsbernd began working in city hall after Tony Hall hired him as an aide in 2000. Upon Elsbernd's recommendation, Hall also later hired Olympic Club events planner, Olivia Scanlon. In a revealing move, Elsbernd left Hall's office in January 2004 to work for Gavin Newsom, who also employed Sutton. Seven months later, in the middle of an election season in which Hall was certain to be re-elected, Newsom appointed Hall to oversee Treasure Island.

Though unprecedented, Newsom then appointed his own aide, Elsbernd, to Hall's former seat on the board. Soon afterwards, the residents of District 7 received a letter supporting Elsbernd and purportedly signed by Hall. The letter — paid for by the Building Owners and Managers Association — was a forgery. Elsbernd of course went on to win election to the board in November 2004. After Hall declined to put Scanlon in a management position at Treasure Island, she began working for Elsbernd.

With its panoramic views of the San Francisco Bay, Treasure Island is literally a gold mine for developers. Top Newsom fundraiser and lobbyist Darius Anderson recognizes such opportunities. In 2005, Anderson's Kenwood Investments sought a contract — worth hundreds of millions of dollars — to develop the Island. But Hall, notoriously independent, opposed the sweetheart deal. The Treasure Island board, all appointees of Newsom, unceremoniously fired Hall after only 14 months on the job. Wielding the axe for Newsom was none other than current District 3 supervisorial candidate and Treasure Island board president, Claudine Cheng.



At about the same time Hall was fired, the Ethics Commission received an anonymous complaint — written in legalese — alleging Hall had used campaign funds to buy food and gas for campaign workers. Commission staff, led by chief enforcement officer Richard Mo, began to investigate. Mo is a law school graduate but has never passed the bar exam. Over the course of three years, Mo and his staff spent thousands of hours reviewing Hall's campaign records, all on the public dime.

Months later, Mo's investigation culminated in a formal accusation that Hall borrowed \$12,000 from Olivia Scanlon (now an aide to Elsbernd) and repaid the "loan" with campaign funds. During the course of Mo's sleuthing, he obtained photocopies of two checks totaling \$12,000 from Scanlon. Scanlon told Mo that the checks were loans to Hall to pay for his daughter's wedding. But the checks — drawn on the business account of Scanlon's husband, contractor Seamus Cudden — were payments to Hall for consulting services. Hall informally advised Cudden on land use matters, code compliance, investment strategies, not to mention many hours of personal advice. Hall declared the income on his 2004 tax return, paid taxes on it, and repeatedly sought an IRS form from Cudden. Cudeen has never complied with that law. While consulting fees are common forms of income for elected officials, as long as they conform with Conflict of Interest restrictions, Hall's consulting for Cudden pales in comparison to Newsom's consulting for billionaire Gordon Getty. But Mo knows where his bread is buttered.

Hall's campaign did pay Scanlon \$12,000 — for her fundraising work on his 2004 re-election campaign. And she was paid by the campaign before Cudden paid Hall, via one check with a notation written on the check that it was payment for "Campaign Services, Jan-Jun." But Scanlon now claims she was a volunteer the whole time. Her volunteer tale is contradicted by testimony from Hall's campaign manager, attorney, consultant, fundraiser and treasurer. Eager to score points against his old boss, Sean Elsbernd showed up at the hearing to testify as a rebuttal witness, despite the fact that Hall had not yet presented any evidence. As there was nothing to rebut, Chairperson Susan Harriman would not allow him to testify.

At a hearing before the Commission on June 9, Scanlon repeated her loan allegation, and swore that the photocopies of the checks she provided to Mo were accurate copies of the originals.

After the June 9 hearing, and three years after initiating his investigation, Mo issued a subpoena for Cudden's bank records. In response, Scanlon and Cudden retained white collar criminal defense firm, Swanson, McNamara and Haller. The firm offered to provide a faxed copy of one of the checks to Mo in exchange for withdrawing the subpoena, to "spare his clients the expense of having to file a motion to quash the subpoena." Without questioning why Scanlon and Cudden hired a criminal defense lawyer to oppose a subpoena for evidence against Hall, Mo agreed to the deal and withdrew the subpoena. In contrast, Hall has not withheld a single document from the Commission.

After Mo withdrew the subpoena, Haller gave Mo a new copy of a check — which Scanlon swore was a loan to Hall — that was different than the first version Scanlon gave to Mo. The new version of the check has the word, "Services," written in the notation section of the lower left hand corner of the check. The "Services" notation is evidence that Hall was indeed paid by Cudden for consulting services. But the first version of the check that Scanlon gave to Mo three years ago did not have the "Services" notation. Neither Mo nor Scanlon has provided any



explanation for why Scanlon provided a check which had apparently been altered to white-out the “Services” notation.

After the defense team discovered that Mo withdrew the subpoena, we subpoenaed the same records. Despite Scanlon’s efforts to keep the records secret, defense finally has the records, and it is clear why Scanlon and Cudden were determined to keep the records concealed. The date on the check that was altered, June 1, 2004, is out of sequence with the rest of the checks before and after it, indicating that the check was backdated by about six weeks. Why would Scanlon backdate the check, and white-out the “Services” notation? Did the prosecution’s star witness commit perjury? Did Scanlon concoct this scheme all on her own, or did she have help?

Throughout the whole ordeal, Commission Executive Director John St. Croix and Chief Enforcement Officer Richard Mo have demonstrated a consistent willingness to ignore the facts, distort the law and show contempt for due process and the presumption of innocence. As the hearing process unfolds, Hall is confident the public will see this case for what it is: a publicly funded, politically motivated, completely unsubstantiated smear campaign. The altered check raises very serious questions about who was really behind the effort to politically destroy Tony Hall. As the Commission spends untold resources to pursue a frivolous case against Hall, sweetheart deals for developers remain obscured by smoke and mirrors at Treasure Island.

The public is also beginning to question the usefulness of an Ethics Commission that can be easily manipulated by political factions. Filing a complaint is becoming common practice to effectively prevent candidates from running for office or to score press hits against an opponent. The mere threat of an Ethics Commission “investigation” through an anonymous complaint triggered by a well-financed politician can be more valuable than a dozen mass mailings. Perhaps this is a contributing factor to the reason the voters turned down the last initiative put forward by the Ethics Commission to give themselves more power and funding.

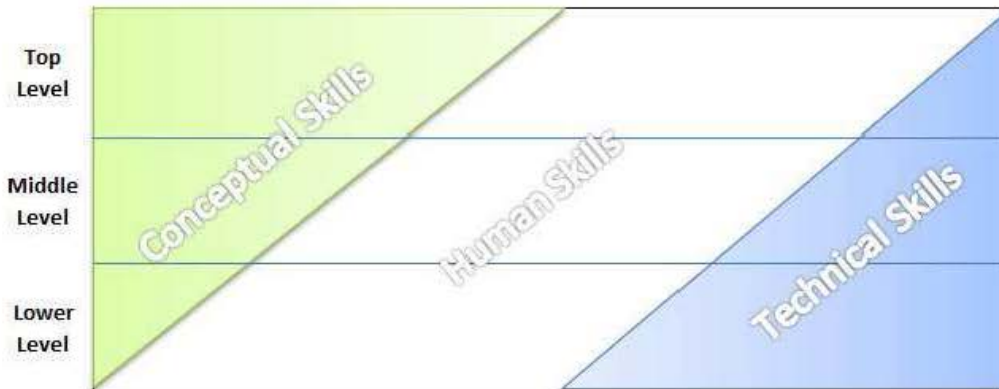
*David P. Waggoner is an attorney in San Francisco specializing in political law. Waggoner successfully defended grassroots public power treasurer, Carolyn Knee, before the Ethics Commission. Waggoner is also a supervising attorney at a nonprofit legal services organization that advocates for income and healthcare for people who are homeless and disabled in Alameda County.*

More information: [Fog City Journal](#)



**Management Minimum Qualifications***Last Updated as of 2/6/18*

**Managerial Skills:** As management positions rely primarily on soft skills, departments should avoid having overly stringent management minimum qualifications particularly in regards to technical skills. Rather, departments should seek to use additional desirable qualifications to indicate what they would prefer that can provide for more flexibility as many times the “perfect” candidate will have many, but not all of the desirable skills.

**Definitions:**

- **Professional:** An individual that interprets laws and regulations and exercises independent judgment in the application of defined principles, practices and regulations.
- **Supervisor:** An individual having authority and exercising independent judgment to effectively recommend to hire/promote, discipline, assign, reward or adjust the grievances of other employees. Please note, pursuant to Civil Service Rules, supervisors do not directly hire or discipline employees; rather, they recommend a course of action to a higher authority.
- **Manager:** An individual in a high level administrative and policy-influencing position who plans, organizes, staffs, leads and controls a major function or effort for the purpose of accomplishing organizational goals.

**Education:**

- **Bachelor Degrees:**
  - **Generally:** May substitute up to 2 years of education for Bachelor of Art degrees with additional years of experience (consistent with citywide practice on MQs for professional classifications). *Ms. Scanlon does not meet this standard*
  - **Exception:** May fully substitute education with additional years of experience in fields in which incumbents in the feeder classifications typically do not have bachelor degrees (e.g., Public Safety, Trades and IT). *Ms. Scanlon does not meet this standard*



- **Advanced Degrees:**

- Should only be required when mandated by law; otherwise, should only potentially be listed as a desirable qualification.
- May substitute for one year of experience.

**Experience:** To the extent specific experience is required, that experience should qualify the recommended years of experience below as opposed to requiring additional years of experience.

| Classification Level                         | Experience                                                                                                                                                                                                                                                                  |
|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 0922 – 0923<br>Managers I - II               | 3 – 5 years of professional experience in the applicable, major functional area with <b>desirable qualification</b> that 2 of those years include supervisory experience (as underlying professional classifications often do not supervise then do not want to make an MQ) |
| 0931 – 0933<br>Managers III - V              | 5 – 8 years of professional experience in a applicable, major functional area of which 3 years <b>must include</b> experience supervising professionals (except for public safety and trades); management experience should only be listed as a desirable qualification     |
| 0941 – 0943<br>Managers VI – VIII            | 4 – 6 years of managerial experience of which all <b>must include</b> supervisory                                                                                                                                                                                           |
| 0951 – 0955 <sup>1</sup><br>Deputy Directors | 2 – 6 years of managerial experience of which all <b>must include</b> supervisory<br>(0951: 2-4yrs, 0952: 2-4yrs, 0953: 4-6yrs, 0954: 4-6yrs; 0955: 4-6yrs)                                                                                                                 |
| 0961 – 0965 <sup>1</sup><br>Department Heads | 6 – 10 years of managerial experience of which all <b>must include</b> supervisory<br>(0961: 4-6yrs, 0962: 4-6yrs, 0963: 6-8yrs, 0964: 6-8yrs; 0965: 8-10yrs)                                                                                                               |

Ms. Scanlon did not meet this standard

- **Major Functional Areas:**

- Administrative
- Engineering
- Finance and Accounting
- Health and Human Services
- Human Resources
- Information Services
- Legal Protection and Detention
- Operations

<sup>1</sup> Department Heads (096x) and Deputy Directors (095X): As these appointments are exclusively exempt under the Charter, DHR defers to departments to set position specific minimum qualifications and the preceding guidance is provided only as a recommendation. Departments are encouraged to state MQs as “desirable” qualifications when publically posting 096x and 095x positions.



**FIRE COMMISSION REGULAR MEETING  
MINUTES**

**Wednesday, April 14, 2021 9:00 a.m. – 12:00 p.m.**

**This meeting was held remotely on WebEx**

The Video can be viewed by clicking this link:

[https://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=180&clip\\_id=38250](https://sanfrancisco.granicus.com/MediaPlayer.php?view_id=180&clip_id=38250)

President Feinstein called the meeting to order at 9:03 a.m.

|                           |                               |          |
|---------------------------|-------------------------------|----------|
| Commission President      | Katherine Feinstein           | Present  |
| Commission Vice President | Tony Rodriguez                | Present  |
| Commissioner              | Stephen Nakajo                | Present  |
| Commissioner              | Francee Covington             | Present  |
| Commissioner              | Ken Cleaveland                | Present  |
| Chief of Department       | Jeanine Nicholson             | Present. |
| Bryan Rubenstein          | Deputy Chief -- Operations    |          |
| Jose Velo                 | Deputy Chief --Administration |          |
| Joel Sato                 | Division of Training          |          |
| Sandy Tong                | EMS                           |          |
| Mark Johnson              | Airport Division              |          |
| Dan DeCossio              | Bureau of Fire Prevention     |          |
| Dawn DeWitt               | Support Services              |          |
| Erica Arteseros           | Homeland Security             |          |
| Natasha Parks             | Health and Wellness           |          |
| Tom O'Connor              | AWSS                          |          |

Staff

Mark Corso

Olivia Scanlon

Deputy Director of Finance

Communications and Outreach

Why is Ms. Scanlon not using her Deputy Director or Chief-of-Staff title in public hearings/ meetings?

**2. PUBLIC COMMENT**

There was no public comment.

**3. APPROVAL OF THE MINUTES [Discussion and possible action]**

Discussion and possible action to approve meeting minutes.

- Minutes from Regular Meeting on March 24, 2021.

Commissioner Covington asked that the entire conversation between her and the Chief of Department regarding the ethnic breakdown for the current recruit class be added to the minutes.

Commissioner Covington Moved to approve the minutes as amended and Commissioner Cleaveland Seconded. The motion was unanimous.

There was no public comment.



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** FW: Step up to save San Franciscans, workers and families from mandate covid19 vaccination - stop murdering Americans!  
**Date:** Thursday, September 30, 2021 11:20:00 AM  
**Attachments:** [09132021 vaccine death 296.640.docx](#)  
[Nuremberg Code.docx](#)  
[2006 to 2019 data-statistics-report.pdf](#)  
[No mandate in Florida EO-21-81.pdf](#)  
[No mandate 08172021 military-vaccine-mandate-complaint.pdf](#)  
[06102021 filed 113 pages 1 60c2c0ef2f009a01af1e18be Doc 10 Original AFLDs Complaint.pdf](#)  
[07192021 CDC 45,000 Covid 19 Vaccine deaths Law Suit case 2-21-cv-00702-CLM.pdf](#)  
[DOJ 2021-07-06-mand-vax.pdf](#)  
[07272021 health department has NO right to shut down private business re covid19.pdf](#)  
[CITIZENS+ARREST+-+info+CA+\(1\).docx](#)  
[US+Civil+Rights+Protection+Card+\(3\).pdf](#)

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**From:** Lee Ellen <ellenzhou888@yahoo.com>

**Sent:** Tuesday, September 28, 2021 3:21 PM

**To:** Breed, Mayor London (MYR) <mayorlondonbreed@sfgov.org>; ChanStaff (BOS) <chanstaff@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; MelgarStaff (BOS) <melgarstaff@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Breed, London (MYR) <london.breed@sfgov.org>; SFPD Central Station, (POL) <sfpdcentralstation@sfgov.org>; SFPD Southern Station, (POL) <SFPDSouthernStation@sfgov.org>; SFPD Bayview Station, (POL) <SFPDBayviewStation@sfgov.org>; SFPD Mission Station, (POL) <SFPDMissionStation@sfgov.org>; SFPD Northern Station, (POL) <sfpdnorthernstation@sfgov.org>; SFPD Park Station, (POL) <SFPDParkStation@sfgov.org>; SFPD Richmond Station, (POL) <sfpdrichmondstation@sfgov.org>; SFPD Ingleside Station, (POL) <SFPDInglesideStation@sfgov.org>; SFPD Taraval Station, (POL) <SFPDTaravalStation@sfgov.org>; SFPD Tenderloin Station, (POL) <SFPDTenderloinStation@sfgov.org>; SFEOCJIC <sfeocjic@sfgov.org>; Press, DEM (DEM) <dempres@sfgov.org>; Press Office, Mayor (MYR) <mayorspresso@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>

**Cc:** Revivalsf Info <info@revivalsf.com>; Commoner Law Group <info@commonerlaw.com>; Center for American Liberty Harmeet Dhillon <info@libertycenter.org>; Aclj Info <info@aclj.org>; Judicialwatch Info <info@judicialwatch.org>; Support <info@saltandlightcouncil.org>; Peggy / THE HEALTHY AMERICAN <peggy@thehealthyamerican.org>; info@aflid.org; Pji Info <info@pji.org>; info@forunitedsolutions.org

**Subject:** Step up to save San Franciscans, workers and families from mandate covid19 vaccination - stop murdering Americans!

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Tuesday, September 28, 2021



## Public Notice to San Francisco City and County Elected Officials

Dear SF Mayor London Breed and all 11 Board of SF Supervisors,

This is for public information. Please submit for next Board of Supervisors' Public hearing. Thank you. 11 attachments. Consider this information as a public notice to you all.

My name is Ellen Lee Zhou and I am a Behavioral Health Clinician for CCSF Public Health. I am also a resident in San Francisco for the last 35 years. Yes, I was the Ellen Lee Zhou who ran for SF mayor to make San Francisco Safe and Clean in 2018 and 2019.

I am writing to you today, SF mayor, all 11 Board of Supervisors and CCSF management staff, to request you look into the public codes, laws and regulations, to stop mandate vaccination because covid19 vaccine was meant to reduce symptoms only, covid19 vaccine never intend to prevent or cure or stop any pandemic, per vaccine application filed with CDC. Covid19 was planned to destroy our economy. As a resident in SF, I've learned SF is a test city! The spread to CA! Then spread to the entire nation! Look at all these failed policies in our city history!

As you know, ongoing covid19 test is medical discrimination & illegal: Federal law 28 CFR §36.202, Title III Reg 28 CFR §36.104, Title III, Sections §36.202(a)(b)(c) and §36.203(a)(b)(c) .Title 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I-III) of the Federal Food, Drug, and Cosmetic Act. Health orders is illegal because the health order person has NO legal authority. Only elected officials make and pass laws to be legalized! See attached Nuremberg codes!

As you may know, America is in the middle of communism take over, lawlessness happens across our nation, it is evil vs good. More and more Americans forced to die or adverse injuries by forcing a gene therapy, aka covid19 vaccine, this gene therapy is killing our own immune system, see my attached files. Vaccine is a medical choice but should not be a force! If people think vaccine is good for them, it is up to people's choice, but never play politics for people's life! Forcing public employees to an experimental drug in change for our job is illegal! Our job is based on our abilities for our jobs but no base on a job! The CCSF is also liable for any injuries or deaths that cause by mandate vaccine! Who pays the damages? It is us the tax payers paying for something we know it is illegal and damages ahead of our public  
????????????????

As Behavioral Health Clinician for SF Public Health, I have the duty to inform our public about politicians abuse and management abuse. Many of the public workers



are threat to take the gene therapy or face termination, more than 300,000 Americans died already from taking the covid19 vaccine. Forcing a gene therapy is illegal and is un-constitutional. See attached court reports and medical reports on illegal mandate. More and more people died from covid19 vaccination. What happened in SF government is illegal! It is not good for any of our public employees. It is treason to murder our very own citizens.

SF does NOT have a report system to record deaths and adverse injuries from covid19 vaccination!!! Covid19 vaccine has graphene oxide in it that means it has 5G capability that enable to track people's whereabouts. It is the one world government's agenda!

As some of you already know from public hearings, I have a track record against government corruption since 2016 to present. Every one has the right to liberty and freedom to live a free life! I will continue to stand up to protect our children, public workers and families. Yes, SF public employees filed a lawsuit against CCSF Employer medical tyranny. If you are being forced, see help, see below public resources for help, see help for detox. Save yourself from spike protein, see medical help! Save our children and families, stop mandate vaccine! Stop abusing your public authority!

Between July 2021 to present, I gave evidence to public officials and SFDPH DHR and management staff about gene therapy, an experimental drug should NOT be mandated. More and more people died after being vaccinated. See below information my previous email attachments to you. But CCSF DHR Director Carol Isen keeps on sending threaten email to public employees to vaccinate or no job which is illegal, it is crime against humanity. It is treason! It is against civil, ADA, Medical and religious laws. We are Americans and we have constitutional rights. Medical is a choice, not a force! I am Public Health worker and I am well trained on informed consent for any treatment. For management staff and communism politicians to lie and cheat on the public on a gene therapy process is a crime. It is a crime against humanity.

Elected public officials, as some of you remember that back in December 2015, we have more than 200 public employees spoke in front of Civil Service Commission about government corruption and management corruption across most departments. I believe the majority of public workers are good people. Majority of us, public workers work so hard to keep our public safe. I believe all took oath to serve the public. Are you really?

From March 2020 to present, our city is under attack by the some lawless politicians who sold their souls to communism, globalists, aka One World Order. The pandemic 2019 was planned to take down our nation. Covid19 gene therapy was meant to destroy our economy and our health. Vaccine shot does not heal or cure anyone, it only reduce symptoms, per vaccine application filed with CDC, emergency use authorization, never FDA approved for regular vaccine, never said it is a mandate. The California lockdown was illegal too, we, the people filed lawsuits filed against Gavin Newsom in 2020 and 2021 and won by the people, specially people believe in God, that was one of the reasons that we can re-open. See my attached files, covid19



is a flu symptom and there is medicine for the sure, no need for vaccine nor shot! See attached, vaccine destroys our immune system! See other red / republican states vs. blue / democrat states! Mandates vs. banned mandates! Good vs evil!

Covid19 survival rate is 99.9%, less than 1% death and most deaths are elderly, people old, expected deaths. The Covid19 death ages beyond life expectancy. Then why CCSF-DHR kept forcing public employees, students, workers and citizens to vaccine??? Who are the people benefit from vaccine? Follow the money NOT the science! It is a crime against humanity for CCSF public officials and management staff to push a bio-weapon, aka gene therapy, aka vaccine on people's body!!! So many people died already from this covid19 shot! Wake up! Wake up America! Wake up San Francisco! We should stand together and take back our city against the global agenda!

CCSF - SFDPH does NOT have a tracking system for vaccine death nor injuries. It is illegal for SFDPH management staff, specially the Health Officer / health codes, no vaccine card, no indoor eating or indoor activities, all these are violations against civil rights and constitutional rights. These public officers abuse their job title should be removed from their public position. We, the public buildings and public employees do NOT discriminate against any clients based on sex, gender, race, creed, age, religious, vaccinated or un-vaccinated! But why health orders create discrimination against American people? It is illegal for what we face in today's lawless un-American San Francisco. I am a public servant and I am trained to follow the **Mission** of the San Francisco Department of Public Health is to protect and promote the health of all San Franciscans.

We, the Americans are under attack by the evil agenda 21 and now evil agenda 2030. There are more and more people died from vaccination. See my attached files here in this email. We, some of the government employees filed lawsuit against medical tyranny. The truth information kept censoring by the evil hi-tech media!

You and I know, we, can NOT force any gene therapy or any medical treatment to any patients. Have you ever thought about who are the people behind the no vaccine no job agenda? Why? We have medicine to heal covid19 patients, but why forcing vaccine even so many people died??? In the last 20 years, there are fewer than 5,000 died from vaccine. But from January 2021 to present, more than 300,000 died already, plus millions adverse injuries from covid19 vaccination, but why DPH Health Officer continue to push a gene therapy that has nothing to do with healing patients? Vaccine19 vaccine only meant to reduce symptoms, not to heal any covid19 patients, per vaccine application filed in CDC!

Elected officials, you and I are public servants and we serve the public with love, hope and faith. We have equal rights and responsibilities to do our job. I stood up against management abuse. What the corrupted management staff and some evil politicians do, cheat and lie to our public, I have no control. But, I follow the good public servant codes to report to you and the public. The blood is not on my hand now. I do my part to share the truth with you the public and elected officials. You can stop killing more Americans. May God bless you and keep you safe.



We are a people government, not a dictator government. We do what is the best for the public. Our public workers have the right to receive or reject an experimental gene therapy. Our public have the right to informed consent for medical treatment. Covid19 is a gene therapy, no benefit to sure or heal any covid19 flu, it may only reduce some of the symptoms, see attached.

I urge you all, work with all departments in SF, no more mandate for gene therapy! No more graphene oxide to track people. No more spike protein to murder more people! No more threats to discriminate anyone! Stop this vaccine mandate! Stop murdering our citizens! Stop carrying out the unconstitutional agenda for the globalists! We are San Franciscans! We are Americans! Liberty for all! Thank you.

Sincerely;

Ellen Lee Zhou, Behavioral Health Clinician for San Francisco Public Health.  
Resident of District 9

SF government employees delegate

Mayoral candidate for June 2018 and November 2021

Attached files:

1. 296,640 vaccinated people died in USA in 2021!
2. Nuremberg code.
3. Vaccine death from 2006 to 2019
4. No mandate in State of Florida
5. No pandemic crisis to shut down
6. No Bill of Rights to force Covid19 vaccine
7. People died from vaccination
8. EUA is not a mandate
9. CA shut downs are illegal
10. Legal notice to elected officials
11. US civil rights protection

**The Mission** of the San Francisco Department of Public Health is to protect and promote the health of all San Franciscans

If you believe in God, please pray for our elected officials to open their eyes to see, hearts to feel and ears to hear the cries from people.

See below resources to support what I said. I am sharing you nothing but the truth. The truth shall revive America. Yes, return to God and God will help us to revive San Francisco. I am a firm believer for being a good and faithful public servant. I love my job and I love San Francisco.

[296,640 Estimated Dead From the mRNA Vaxxxines in the USA. Yet Dr. Death Fauci is Coming For Your Children. Dr. Zelenko: This is a Worldwide Genocide | Agenda 21](#)



[| Before It's News \(beforeitsnews.com\)](http://BeforeIt'sNews.com) : 296,640 Estimated Dead From the mRNA Vaxxxines in the USA. Yet Dr. Death Fauci is Coming For Your Children. Dr. Zelenko: This is a Worldwide Genocide, Monday, September 13

For those who vaccinated, time to seek medical help, detox

[MyFreeDoctor.com's Free Doctor consults all 50 states!](http://MyFreeDoctor.com)

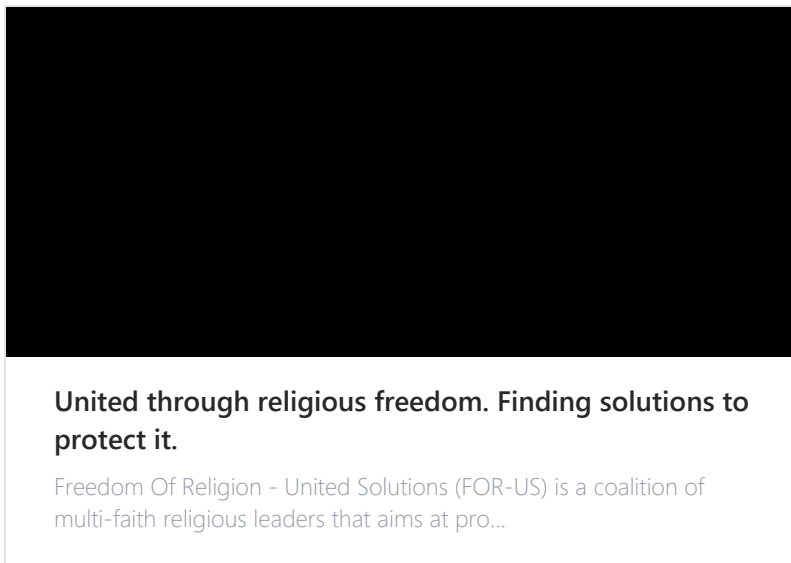
Lawsuits filed across the nation against vaccine mandate:

[Legal - America's Frontline Doctors \(americasfrontlinedoctors.org\)](http://Legal-America'sFrontlineDoctors.org)

[America's Frontline Doctors \(americasfrontlinedoctors.org\)](http://America'sFrontlineDoctors.org)

[Advocates For Faith & Freedom \(faith-freedom.com\)](http://AdvocatesForFaith&Freedom.com)

[Freedom Of Religion - United Solutions \(FOR-US\) \(forunitedsolutions.org\)](http://FreedomOfReligion-UnitedSolutions.org)



[THE HEALTHY AMERICAN™](http://THEHEALTHYAMERICAN.org)

[Non-Profit Legal Defense Organization - Pacific Justice Institute](http://Non-ProfitLegalDefenseOrganization.org)

[A Voice for Choice Advocacy – If there is RISK there MUST be CHOICE!](http://AVoiceforChoiceAdvocacy.org)

The fruit of the Spirit is love, joy, peace, forbearance, kindness, goodness, faithfulness, gentleness and self-control. Against such things there is no law. (Bible---Galatians 5:22,23)

Please note: This email may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intent person/people/parties receiving this email, please delete all contents and notify this sender.



Your response is greatly appreciated. Thank you. Ellen Lee Zhou



## Data & Statistics

The United States has the safest, most effective vaccine supply in history. In the majority of cases, vaccines cause no side effects, however they can occur, as with any medication—but most are mild. Very rarely, people experience more serious side effects, like allergic reactions. In those instances, the National Vaccine Injury Compensation Program (VICP) allows individuals to file a petition for compensation.

### **What does it mean to be awarded compensation?**

Being awarded compensation for a petition does not necessarily mean that the vaccine caused the alleged injury. In fact:

- Approximately 60 percent of all compensation awarded by the VICP comes as result of a negotiated settlement between the parties in which HHS has not concluded, based upon review of the evidence, that the alleged vaccine(s) caused the alleged injury.
- Attorneys are eligible for reasonable attorneys' fees, whether or not the petitioner is awarded compensation by the Court, if certain minimal requirements are met. In those circumstances, attorneys are paid by the VICP directly. By statute, attorneys may not charge any other fee, including a contingency fee, for his or her services in representing a petitioner in the VICP.

### **What reasons might a petition result in a negotiated settlement?**

- Consideration of prior U.S. Court of Federal Claims decisions, both parties decide to minimize risk of loss through settlement
- A desire to minimize the time and expense of litigating a case
- The desire to resolve a petition quickly

### **How many petitions have been awarded compensation?**

According to the CDC, from 2006 to 2019 over 4 billion doses of covered vaccines were distributed in the U.S. For petitions filed in this time period, 8,438 petitions were adjudicated by the Court, and of those 5,983 were compensated. This means for every 1 million doses of vaccine that were distributed, approximately 1 individual was compensated.

Since 1988, over 24,335 petitions have been filed with the VICP. Over that 30-year time period, 20,208 petitions have been adjudicated, with 8,278 of those determined to be compensable, while 11,930 were dismissed. Total compensation paid over the life of the program is approximately \$4.6 billion.

This information reflects the current thinking of the United States Department of Health and Human Services on the topics addressed. This information is not legal advice and does not create or confer any rights for or on any person and does not operate to bind the Department or the public. The ultimate decision about the scope of the statutes authorizing the VICP is within the authority of the United States Court of Federal Claims, which is responsible for resolving petitions for compensation under the VICP.



## VICP Adjudication Categories, by Alleged Vaccine for Petitions Filed Since the Inclusion of Influenza as an Eligible Vaccine for Filings 01/01/2006 through 12/31/2019

| Name of Vaccine Listed First in a Petition (other vaccines may be alleged or basis for compensation) | Number of Doses Distributed in the U.S., 01/01/2006 through 12/31/2019 (Source: CDC) | Compensable Concession | Compensable Court Decision | Compensable Settlement | Compensable Total | Dismissed/Non-Compensable Total | Grand Total |
|------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|------------------------|----------------------------|------------------------|-------------------|---------------------------------|-------------|
| DT                                                                                                   | 794,777                                                                              | 1                      | 0                          | 5                      | 6                 | 4                               | 10          |
| DTaP                                                                                                 | 109,991,074                                                                          | 24                     | 24                         | 115                    | 163               | 128                             | 291         |
| DTaP-Hep B-IPV                                                                                       | 79,798,141                                                                           | 6                      | 7                          | 30                     | 43                | 63                              | 106         |
| DTaP-HIB                                                                                             | 1,135,474                                                                            | 0                      | 1                          | 2                      | 3                 | 2                               | 5           |
| DTaP-IPV                                                                                             | 31,439,498                                                                           | 0                      | 0                          | 5                      | 5                 | 4                               | 9           |
| DTaP-IPV-HIB                                                                                         | 74,403,716                                                                           | 4                      | 4                          | 9                      | 17                | 39                              | 56          |
| DTP                                                                                                  | 0                                                                                    | 1                      | 1                          | 3                      | 5                 | 3                               | 8           |
| DTP-HIB                                                                                              | 0                                                                                    | 1                      | 0                          | 2                      | 3                 | 1                               | 4           |
| Hep A-Hep B                                                                                          | 17,946,038                                                                           | 3                      | 1                          | 18                     | 22                | 8                               | 30          |
| Hep B-HIB                                                                                            | 4,787,457                                                                            | 1                      | 1                          | 2                      | 4                 | 1                               | 5           |
| Hepatitis A (Hep A)                                                                                  | 203,339,060                                                                          | 8                      | 6                          | 47                     | 61                | 36                              | 97          |
| Hepatitis B (Hep B)                                                                                  | 216,772,259                                                                          | 12                     | 12                         | 73                     | 97                | 94                              | 191         |
| HIB                                                                                                  | 137,675,315                                                                          | 2                      | 1                          | 11                     | 14                | 10                              | 24          |
| HPV                                                                                                  | 132,062,306                                                                          | 18                     | 14                         | 115                    | 147               | 231                             | 378         |
| Influenza                                                                                            | 1,842,400,000                                                                        | 1,195                  | 224                        | 2,865                  | 4,284             | 744                             | 5,028       |
| IPV                                                                                                  | 78,237,532                                                                           | 0                      | 1                          | 4                      | 5                 | 5                               | 10          |
| Measles                                                                                              | 135,660                                                                              | 0                      | 0                          | 1                      | 1                 | 0                               | 1           |
| Meningococcal                                                                                        | 119,054,485                                                                          | 8                      | 5                          | 44                     | 57                | 20                              | 77          |
| MMR                                                                                                  | 116,647,585                                                                          | 24                     | 16                         | 93                     | 133               | 134                             | 267         |



National Vaccine Injury Compensation Program  
Monthly Statistics Report

| Name of Vaccine Listed First in a Petition (other vaccines may be alleged or basis for compensation) | Number of Doses Distributed in the U.S., 01/01/2006 through 12/31/2019 (Source: CDC) | Compensable Concession | Compensable Court Decision | Compensable Settlement | Compensable Total | Dismissed/Non-Compensable Total | Grand Total  |
|------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|------------------------|----------------------------|------------------------|-------------------|---------------------------------|--------------|
| MMR-Varicella                                                                                        | 32,226,723                                                                           | 12                     | 0                          | 14                     | 26                | 19                              | 45           |
| Mumps                                                                                                | 110,749                                                                              | 0                      | 0                          | 0                      | 0                 | 0                               | 0            |
| Nonqualified                                                                                         | 0                                                                                    | 0                      | 0                          | 3                      | 3                 | 44                              | 47           |
| OPV                                                                                                  | 0                                                                                    | 1                      | 0                          | 0                      | 1                 | 5                               | 6            |
| Pneumococcal Conjugate                                                                               | 269,907,936                                                                          | 38                     | 3                          | 57                     | 98                | 61                              | 159          |
| Rotavirus                                                                                            | 125,787,826                                                                          | 21                     | 4                          | 23                     | 48                | 19                              | 67           |
| Rubella                                                                                              | 422,548                                                                              | 0                      | 1                          | 1                      | 2                 | 0                               | 2            |
| Td                                                                                                   | 71,408,785                                                                           | 13                     | 6                          | 65                     | 84                | 28                              | 112          |
| Tdap                                                                                                 | 294,534,882                                                                          | 149                    | 22                         | 362                    | 533               | 113                             | 646          |
| Tetanus                                                                                              | 3,836,052                                                                            | 15                     | 2                          | 47                     | 64                | 21                              | 85           |
| Unspecified                                                                                          | 0                                                                                    | 1                      | 1                          | 4                      | 6                 | 593                             | 599          |
| Varicella                                                                                            | 127,901,171                                                                          | 9                      | 7                          | 32                     | 48                | 25                              | 73           |
| <b>Grand Total</b>                                                                                   | <b>4,092,757,049</b>                                                                 | <b>1,567</b>           | <b>364</b>                 | <b>4,052</b>           | <b>5,983</b>      | <b>2,455</b>                    | <b>8,438</b> |

**Notes on the Adjudication Categories Table**

The date range of 01/01/2006 through 12/31/2019 was selected to reflect petitions filed since the inclusion of influenza vaccine in July 2005. Influenza vaccine now is named in the majority of all VICP petitions.

In addition to the first vaccine alleged by a petitioner, which is the vaccine listed in this table, a VICP petition may allege other vaccines, which may form the basis of compensation.

Vaccine doses are self-reported distribution data provided by US-licensed vaccine manufacturers. The data provide an estimate of the annual national distribution and do not represent vaccine administration. In order to maintain confidentiality of an individual manufacturer or brand, the data are presented in an aggregate format by vaccine type. Flu doses are derived from CDC's FluFinder tracking system, which includes data provided to CDC by US-licensed influenza vaccine manufacturers as well as their first line distributors.

"Unspecified" means insufficient information was submitted to make an initial determination. The conceded "unspecified" petition was for multiple unidentified vaccines that caused abscess formation at the vaccination site(s), and the "unspecified" settlements were for multiple vaccines later identified in the Special Masters' decisions



# National Vaccine Injury Compensation Program

## Monthly Statistics Report

### Definitions

**Compensable** – The injured person who filed a petition was paid money by the VICP. Compensation can be achieved through a concession by the U.S. Department of Health and Human Services (HHS), a decision on the merits of the petition by a special master or a judge of the U.S. Court of Federal Claims (Court), or a settlement between the parties.

- **Concession:** HHS concludes that a petition should be compensated based on a thorough review and analysis of the evidence, including medical records and the scientific and medical literature. The HHS review concludes that the petitioner is entitled to compensation, including a determination either that it is more likely than not that the vaccine caused the injury or the evidence supports fulfillment of the criteria of the Vaccine Injury Table. The Court also determines that the petition should be compensated.
- **Court Decision:** A special master or the court, within the United States Court of Federal Claims, issues a legal decision after weighing the evidence presented by both sides. HHS abides by the ultimate Court decision even if it maintains its position that the petitioner was not entitled to compensation (e.g., that the injury was not caused by the vaccine).

For injury petitions, compensable court decisions are based in part on one of the following determinations by the court:

1. The evidence is legally sufficient to show that the vaccine more likely than not caused (or significantly aggravated) the injury; or
  2. The injury is listed on, and meets all of the requirements of, the Vaccine Injury Table, and HHS has not proven that a factor unrelated to the vaccine more likely than not caused or significantly aggravated the injury. An injury listed on the Table and meeting all Table requirements is given the legal presumption of causation. It should be noted that conditions are placed on the Table for both scientific and policy reasons.
- **Settlement:** The petition is resolved via a negotiated settlement between the parties. This settlement is not an admission by the United States or the Secretary of Health and Human Services that the vaccine caused the petitioner's alleged injuries, and, in settled cases, the Court does not determine that the vaccine caused the injury. A settlement therefore cannot be characterized as a decision by HHS or by the Court that the vaccine caused an injury. Petitions may be resolved by settlement for many reasons, including consideration of prior court decisions; a recognition by both parties that there is a risk of loss in proceeding to a decision by the Court making the certainty of settlement more desirable; a desire by both parties to minimize the time and expense associated with litigating a case to conclusion; and a desire by both parties to resolve a case quickly and efficiently.
  - **Non-compensable/Dismissed:** The injured person who filed a petition was ultimately not paid money. Non-compensable Court decisions include the following:
    1. The Court determines that the person who filed the petition did not demonstrate that the injury was caused (or significantly aggravated) by a covered vaccine or meet the requirements of the Table (for injuries listed on the Table).
    2. The petition was dismissed for not meeting other statutory requirements (such as not meeting the filing deadline, not receiving a covered vaccine, and not meeting the statute's severity requirement).
    3. The injured person voluntarily withdrew his or her petition.



## Petitions Filed, Compensated and Dismissed, by Alleged Vaccine, Since the Beginning of VICP, 10/01/1988 through 09/01/2021

| Vaccines                  | Filed Injury  | Filed Death  | Filed Grand Total | Compensated  | Dismissed     |
|---------------------------|---------------|--------------|-------------------|--------------|---------------|
| DTaP-IPV                  | 16            | 0            | 16                | 5            | 4             |
| DT                        | 69            | 9            | 78                | 26           | 52            |
| DTP                       | 3,288         | 696          | 3,984             | 1,273        | 2,709         |
| DTP-HIB                   | 20            | 8            | 28                | 7            | 21            |
| DTaP                      | 478           | 85           | 563               | 244          | 268           |
| DTaP-Hep B-IPV            | 97            | 39           | 136               | 44           | 64            |
| DTaP-HIB                  | 11            | 1            | 12                | 7            | 4             |
| DTaP-IPV-HIB              | 49            | 21           | 70                | 17           | 39            |
| Td                        | 231           | 3            | 234               | 130          | 79            |
| Tdap                      | 1,039         | 8            | 1,047             | 535          | 114           |
| Tetanus                   | 172           | 3            | 175               | 87           | 48            |
| Hepatitis A (Hep A)       | 132           | 7            | 139               | 62           | 39            |
| Hepatitis B (Hep B)       | 737           | 62           | 799               | 288          | 442           |
| Hep A-Hep B               | 42            | 0            | 42                | 22           | 9             |
| Hep B-HIB                 | 8             | 0            | 8                 | 5            | 3             |
| HIB                       | 47            | 3            | 50                | 21           | 20            |
| HPV                       | 543           | 17           | 560               | 146          | 248           |
| Influenza                 | 7,839         | 200          | 8,039             | 4,305        | 780           |
| IPV                       | 269           | 14           | 283               | 9            | 271           |
| OPV                       | 282           | 28           | 310               | 158          | 152           |
| Measles                   | 145           | 19           | 164               | 55           | 107           |
| Meningococcal             | 114           | 3            | 117               | 58           | 21            |
| MMR                       | 1,022         | 62           | 1,084             | 415          | 596           |
| MMR-Varicella             | 57            | 2            | 59                | 26           | 19            |
| MR                        | 15            | 0            | 15                | 6            | 9             |
| Mumps                     | 10            | 0            | 10                | 1            | 9             |
| Pertussis                 | 4             | 3            | 7                 | 2            | 5             |
| Pneumococcal Conjugate    | 295           | 22           | 317               | 102          | 77            |
| Rotavirus                 | 111           | 6            | 117               | 70           | 30            |
| Rubella                   | 190           | 4            | 194               | 71           | 123           |
| Varicella                 | 111           | 10           | 121               | 68           | 37            |
| Nonqualified <sup>1</sup> | 112           | 10           | 122               | 3            | 115           |
| Unspecified <sup>2</sup>  | 5,426         | 9            | 5,435             | 10           | 5,416         |
| <b>Grand Total</b>        | <b>22,981</b> | <b>1,354</b> | <b>24,335</b>     | <b>8,278</b> | <b>11,930</b> |



National Vaccine Injury Compensation Program  
Monthly Statistics Report

<sup>1</sup> Nonqualified petitions are those filed for vaccines not covered under the VICP.

<sup>2</sup> Unspecified petitions are those submitted with insufficient information to make a determination.

## Petitions Filed

| Fiscal Year  | Total         |
|--------------|---------------|
| FY 1988      | 24            |
| FY 1989      | 148           |
| FY 1990      | 1,492         |
| FY 1991      | 2,718         |
| FY 1992      | 189           |
| FY 1993      | 140           |
| FY 1994      | 107           |
| FY 1995      | 180           |
| FY 1996      | 84            |
| FY 1997      | 104           |
| FY 1998      | 120           |
| FY 1999      | 411           |
| FY 2000      | 164           |
| FY 2001      | 215           |
| FY 2002      | 958           |
| FY 2003      | 2,592         |
| FY 2004      | 1,214         |
| FY 2005      | 735           |
| FY 2006      | 325           |
| FY 2007      | 410           |
| FY 2008      | 417           |
| FY 2009      | 397           |
| FY 2010      | 447           |
| FY 2011      | 386           |
| FY 2012      | 402           |
| FY 2013      | 504           |
| FY 2014      | 633           |
| FY 2015      | 803           |
| FY 2016      | 1,120         |
| FY 2017      | 1,243         |
| FY 2018      | 1,238         |
| FY 2019      | 1,282         |
| FY 2020      | 1,192         |
| FY 2021      | 1,941         |
| <b>Total</b> | <b>24,335</b> |



## Adjudications

Generally, petitions are not adjudicated in the same fiscal year as filed.  
On average, it takes 2 to 3 years to adjudicate a petition after it is filed.

| Fiscal Year  | Compensable  | Dismissed     | Total         |
|--------------|--------------|---------------|---------------|
| FY 1989      | 9            | 12            | 21            |
| FY 1990      | 100          | 33            | 133           |
| FY 1991      | 141          | 447           | 588           |
| FY 1992      | 166          | 487           | 653           |
| FY 1993      | 125          | 588           | 713           |
| FY 1994      | 162          | 446           | 608           |
| FY 1995      | 160          | 575           | 735           |
| FY 1996      | 162          | 408           | 570           |
| FY 1997      | 189          | 198           | 387           |
| FY 1998      | 144          | 181           | 325           |
| FY 1999      | 98           | 139           | 237           |
| FY 2000      | 125          | 104           | 229           |
| FY 2001      | 86           | 88            | 174           |
| FY 2002      | 104          | 104           | 208           |
| FY 2003      | 56           | 100           | 156           |
| FY 2004      | 62           | 247           | 309           |
| FY 2005      | 60           | 229           | 289           |
| FY 2006      | 69           | 193           | 262           |
| FY 2007      | 82           | 136           | 218           |
| FY 2008      | 147          | 151           | 298           |
| FY 2009      | 134          | 257           | 391           |
| FY 2010      | 180          | 330           | 510           |
| FY 2011      | 266          | 1,742         | 2,008         |
| FY 2012      | 265          | 2,533         | 2,798         |
| FY 2013      | 369          | 651           | 1,020         |
| FY 2014      | 370          | 194           | 564           |
| FY 2015      | 520          | 145           | 665           |
| FY 2016      | 700          | 187           | 887           |
| FY 2017      | 696          | 204           | 900           |
| FY 2018      | 544          | 199           | 743           |
| FY 2019      | 642          | 184           | 826           |
| FY 2020      | 710          | 217           | 927           |
| FY 2021      | 635          | 221           | 856           |
| <b>Total</b> | <b>8,278</b> | <b>11,930</b> | <b>20,208</b> |



National Vaccine Injury Compensation Program  
Monthly Statistics Report

## Awards Paid

| Fiscal Year | Number of<br>Compensated<br>Awards | Petitioners' Award<br>Amount | Attorneys'<br>Fees/Costs<br>Payments | Number of Payments<br>to Attorneys<br>(Dismissed Cases) | Attorneys'<br>Fees/Costs<br>Payments<br>(Dismissed<br>Cases) | Number of<br>Payments to<br>Interim<br>Attorneys' | Interim<br>Attorneys'<br>Fees/Costs<br>Payments | Total Outlays    |
|-------------|------------------------------------|------------------------------|--------------------------------------|---------------------------------------------------------|--------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|------------------|
| FY 1989     | 6                                  | \$1,317,654.78               | \$54,107.14                          | 0                                                       | \$0.00                                                       | 0                                                 | \$0.00                                          | \$1,371,761.92   |
| FY 1990     | 88                                 | \$53,252,510.46              | \$1,379,005.79                       | 4                                                       | \$57,699.48                                                  | 0                                                 | \$0.00                                          | \$54,689,215.73  |
| FY 1991     | 114                                | \$95,980,493.16              | \$2,364,758.91                       | 30                                                      | \$496,809.21                                                 | 0                                                 | \$0.00                                          | \$98,842,061.28  |
| FY 1992     | 130                                | \$94,538,071.30              | \$3,001,927.97                       | 118                                                     | \$1,212,677.14                                               | 0                                                 | \$0.00                                          | \$98,752,676.41  |
| FY 1993     | 162                                | \$119,693,267.87             | \$3,262,453.06                       | 272                                                     | \$2,447,273.05                                               | 0                                                 | \$0.00                                          | \$125,402,993.98 |
| FY 1994     | 158                                | \$98,151,900.08              | \$3,571,179.67                       | 335                                                     | \$3,166,527.38                                               | 0                                                 | \$0.00                                          | \$104,889,607.13 |
| FY 1995     | 169                                | \$104,085,265.72             | \$3,652,770.57                       | 221                                                     | \$2,276,136.32                                               | 0                                                 | \$0.00                                          | \$110,014,172.61 |
| FY 1996     | 163                                | \$100,425,325.22             | \$3,096,231.96                       | 216                                                     | \$2,364,122.71                                               | 0                                                 | \$0.00                                          | \$105,885,679.89 |
| FY 1997     | 179                                | \$113,620,171.68             | \$3,898,284.77                       | 142                                                     | \$1,879,418.14                                               | 0                                                 | \$0.00                                          | \$119,397,874.59 |
| FY 1998     | 165                                | \$127,546,009.19             | \$4,002,278.55                       | 121                                                     | \$1,936,065.50                                               | 0                                                 | \$0.00                                          | \$133,484,353.24 |
| FY 1999     | 96                                 | \$95,917,680.51              | \$2,799,910.85                       | 117                                                     | \$2,306,957.40                                               | 0                                                 | \$0.00                                          | \$101,024,548.76 |
| FY 2000     | 136                                | \$125,945,195.64             | \$4,112,369.02                       | 80                                                      | \$1,724,451.08                                               | 0                                                 | \$0.00                                          | \$131,782,015.74 |
| FY 2001     | 97                                 | \$105,878,632.57             | \$3,373,865.88                       | 57                                                      | \$2,066,224.67                                               | 0                                                 | \$0.00                                          | \$111,318,723.12 |
| FY 2002     | 80                                 | \$59,799,604.39              | \$2,653,598.89                       | 50                                                      | \$656,244.79                                                 | 0                                                 | \$0.00                                          | \$63,109,448.07  |
| FY 2003     | 65                                 | \$82,816,240.07              | \$3,147,755.12                       | 69                                                      | \$1,545,654.87                                               | 0                                                 | \$0.00                                          | \$87,509,650.06  |
| FY 2004     | 57                                 | \$61,933,764.20              | \$3,079,328.55                       | 69                                                      | \$1,198,615.96                                               | 0                                                 | \$0.00                                          | \$66,211,708.71  |
| FY 2005     | 64                                 | \$55,065,797.01              | \$2,694,664.03                       | 71                                                      | \$1,790,587.29                                               | 0                                                 | \$0.00                                          | \$59,551,048.33  |
| FY 2006     | 68                                 | \$48,746,162.74              | \$2,441,199.02                       | 54                                                      | \$1,353,632.61                                               | 0                                                 | \$0.00                                          | \$52,540,994.37  |
| FY 2007     | 82                                 | \$91,449,433.89              | \$4,034,154.37                       | 61                                                      | \$1,692,020.25                                               | 0                                                 | \$0.00                                          | \$97,175,608.51  |
| FY 2008     | 141                                | \$75,716,552.06              | \$5,191,770.83                       | 74                                                      | \$2,531,394.20                                               | 2                                                 | \$117,265.31                                    | \$83,556,982.40  |
| FY 2009     | 131                                | \$74,142,490.58              | \$5,404,711.98                       | 36                                                      | \$1,557,139.53                                               | 28                                                | \$4,241,362.55                                  | \$85,345,704.64  |
| FY 2010     | 173                                | \$179,387,341.30             | \$5,961,744.40                       | 59                                                      | \$1,933,550.09                                               | 22                                                | \$1,978,803.88                                  | \$189,261,439.67 |
| FY 2011     | 251                                | \$216,319,428.47             | \$9,572,042.87                       | 403                                                     | \$5,589,417.19                                               | 28                                                | \$2,001,770.91                                  | \$233,482,659.44 |
| FY 2012     | 249                                | \$163,491,998.82             | \$9,241,427.33                       | 1,020                                                   | \$8,649,676.56                                               | 37                                                | \$5,420,257.99                                  | \$186,803,360.70 |
| FY 2013     | 375                                | \$254,666,326.70             | \$13,543,099.70                      | 704                                                     | \$7,012,615.42                                               | 50                                                | \$1,454,851.74                                  | \$276,676,893.56 |
| FY 2014     | 365                                | \$202,084,196.12             | \$12,161,422.64                      | 508                                                     | \$6,824,566.68                                               | 38                                                | \$2,493,460.73                                  | \$223,563,646.17 |
| FY 2015     | 508                                | \$204,137,880.22             | \$14,445,776.29                      | 118                                                     | \$3,546,785.14                                               | 50                                                | \$3,089,497.68                                  | \$225,219,939.33 |



National Vaccine Injury Compensation Program  
Monthly Statistics Report

| Fiscal Year  | Number of Compensated Awards | Petitioners' Award Amount | Attorneys' Fees/Costs Payments | Number of Payments to Attorneys (Dismissed Cases) | Attorneys' Fees/Costs Payments (Dismissed Cases) | Number of Payments to Interim Attorneys' | Interim Attorneys' Fees/Costs Payments | Total Outlays             |
|--------------|------------------------------|---------------------------|--------------------------------|---------------------------------------------------|--------------------------------------------------|------------------------------------------|----------------------------------------|---------------------------|
| FY 2016      | 689                          | \$230,140,251.20          | \$16,298,140.59                | 99                                                | \$2,741,830.10                                   | 59                                       | \$3,502,709.91                         | \$252,682,931.80          |
| FY 2017      | 706                          | \$252,245,932.78          | \$22,045,785.00                | 131                                               | \$4,439,538.57                                   | 52                                       | \$3,363,464.24                         | \$282,094,720.59          |
| FY 2018      | 521                          | \$199,588,007.04          | \$16,658,440.14                | 112                                               | \$5,106,382.65                                   | 58                                       | \$5,151,148.78                         | \$226,503,978.61          |
| FY 2019      | 653                          | \$196,217,707.64          | \$18,991,247.55                | 102                                               | \$4,791,157.52                                   | 65                                       | \$5,457,545.23                         | \$225,457,657.94          |
| FY 2020      | 733                          | \$186,860,677.55          | \$20,188,683.76                | 113                                               | \$5,750,317.99                                   | 76                                       | \$5,090,482.24                         | \$217,890,161.54          |
| FY 2021      | 650                          | \$202,580,447.55          | \$22,628,783.73                | 130                                               | \$6,367,015.98                                   | 49                                       | \$4,425,985.25                         | \$236,002,232.51          |
| <b>Total</b> | <b>8,224</b>                 | <b>\$4,273,742,418.51</b> | <b>\$248,952,920.93</b>        | <b>5,696</b>                                      | <b>\$97,012,505.47</b>                           | <b>614</b>                               | <b>\$47,788,606.44</b>                 | <b>\$4,667,496,451.35</b> |

NOTE: Some previous fiscal year data has been updated as a result of the receipt and entry of data from documents issued by the Court and system updates which included petitioners' costs reimbursements in outlay totals,

"Compensated" are petitions that have been paid as a result of a settlement between parties or a decision made by the U.S. Court of Federal Claims (Court). The # of awards is the number of petitioner awards paid, including the attorneys' fees/costs payments, if made during a fiscal year. However, petitioners' awards and attorneys' fees/costs are not necessarily paid in the same fiscal year as when the petitions/petitions are determined compensable. "Dismissed" includes the # of payments to attorneys and the total amount of payments for attorneys' fees/costs per fiscal year. The VICP will pay attorneys' fees/costs related to the petition, whether or not the petition/petition is awarded compensation by the Court, if certain minimal requirements are met. "Total Outlays" are the total amount of funds expended for compensation and attorneys' fees/costs from the Vaccine Injury Compensation Trust Fund by fiscal year.

Since influenza vaccines (vaccines administered to large numbers of adults each year) were added to the VICP in 2005, many adult petitions related to that vaccine have been filed, thus changing the proportion of children to adults receiving compensation.



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA**

AMERICA’S FRONTLINE DOCTORS; and )  
)  
JOEL WOOD, RPH; and )  
)  
BRITTANY GALVIN; and )  
)  
ELLEN MILLER, )  
Individually and as Guardian of )  
3 Minor Siblings; and )  
)  
AUBREY BOONE; and )  
)  
JODY SOBCZAK, )  
Individually and as Father of )  
2 Minor Children; and )  
)  
DEBORAH SOBCZAK, )  
Individually and as Mother of )  
2 Minor Children; and )  
)  
SNOW MILLS; and )  
)  
JENNIFER MCCRAE, RN; and )  
)  
ANGELLIA DESELLE; and )  
)  
KRISTI SIMMONDS; and )  
)  
VIDIELLA, A/K/A SHAWN SKELTON; and )  
)  
SALLY GEYER; and )  
)  
MARIA MEYERS; and )  
)  
KARI HIBBARD; and )  
)  
JULIE ROBERTS, RN; and )  
)  
AMY HUNT; and )  
)  
RICHARD KENNEDY, individually and as )  
Administrator of the Estate of his mother Dovi )

Civil Action No.  
2:21-cv-00702-CLM

**COMPLAINT**

**Jury Trial Demanded**



Sanders Kennedy; and )  
)  
ESTATE OF DOVI SANDERS KENNEDY, by )  
and through its Administrator Richard Kennedy; and )  
)  
LYLE BLOOM, )  
Individually and as Father of )  
2 Minor Children; and, )  
)  
JULIE BLOOM, )  
Individually and as Mother of )  
2 Minor Children; and )  
)  
ANDREA MCFARLANE, RN, )  
Individually and as Mother of )  
4 Minor Children; and )  
)  
JENNIFER GREENSLADE, )  
Individually and as Mother of )  
2 Minor Children; and )  
)  
STEVEN M. ROTH, MD, )  
Individually; and )  
)  
MATT SCHWEDER, )  
Individually and as Father of )  
a Minor Child. )  
)  
Plaintiffs, )  
)  
vs. )  
)  
XAVIER BECERRA, Secretary of the U.S. )  
Department of Health and Human Services, in his )  
official and personal capacities, DR. ANTHONY )  
FAUCI, Director of the National Institute of )  
Allergies and Infectious Diseases, in his official and )  
personal capacities, DR. JANET WOODCOCK, )  
Acting Commissioner of the Food and Drug )  
Administration, in her official and personal )  
capacities, U.S. DEPARTMENT OF HEALTH )  
AND HUMAN SERVICES, the FOOD AND )  
DRUG ADMINISTRATION, the CENTER FOR )  
DISEASE CONTROL AND PREVENTION, )  
NATIONAL INSTITUTE OF HEALTH, )  
NATIONAL INSTITUTE OF ALLERGIES AND )



INFECTIOUS DISEASES, and JOHN AND JANE )  
DOES I-V. )  
 )  
Defendants. )  
\_\_\_\_\_ )

## **COMPLAINT<sup>1</sup>**

### **I. NATURE OF THE CASE**

1. On February 4, 2020, Alex M. Azar, II, the then serving Secretary of the Department of Health and Human Services (“DHHS”), exercising his authority under Section 546 of the Food, Drugs and Cosmetics Act, 21 U.S.C. § 360bbb-3, declared that the SARS-Cov-2 virus created a “public health emergency” that had a “significant potential to affect national security” (the “Emergency Declaration”).

2. Based on the Declaration, the DHHS Secretary’s designee, the Commissioner of the Food and Drug Administration (“FDA”), issued a series of Emergency Use Authorizations (“EUA”) under § 360bbb-3. EUAs allow medical products that have not been fully tested and approved by the FDA to be sold to American consumers, in order to meet the exigencies of an emergency. Initially, the EUA medical products included various polymerase chain reaction (“PCR”) tests marketed as COVID-19 diagnostic tools. Later, EUAs (collectively, the “Vaccine EUAs”) were issued for the so-called “Pfizer-BioNTech COVID-19 Vaccine,”<sup>2</sup> “Moderna COVID-19 Vaccine”<sup>3</sup> and the “Johnson & Johnson (Janssen) COVID-19 Vaccine”<sup>4</sup> (collectively, the “Vaccines”).<sup>5</sup>

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<sup>1</sup> Plaintiffs filed a Motion for Temporary Restraining Order on May 19, 2021 (ECF 1). The Court denied the Motion on May 24, 2021 (ECF 3).

<sup>2</sup> Issued December 11, 2020. *See* <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/pfizer-biontech-covid-19-vaccine>.



3. The Emergency Declaration and the Vaccine EUAs were the keys that unlocked the profit potential of the COVID-19 crisis. They enabled the Vaccine manufacturers to open the door to the vast American market, enter and reap billions of dollars in profit by exploiting the fears of the American people. In the first quarter of 2021 alone, Pfizer has earned \$3.5 billion, and Moderna has earned \$1.7 billion, in revenues generated from the sale of their respective EUA Vaccines. Plaintiffs' investigation has revealed that the Defendants appear to have numerous disclosed and undisclosed conflicts-of-interest that should deeply trouble any reasonable observer concerned about the integrity of the EUA process. For instance, Defendant the National Institutes of Health ("NIH") appears to be a co-creator and co-owner of the intellectual property in the "Moderna COVID-19 Vaccine."

4. The Vaccines are unapproved, inadequately tested, experimental and dangerous biological agents that have the potential to cause substantially greater harm than the SARS-CoV-2 virus and the COVID-19 disease itself. According to data extracted from the Defendants' Vaccine Adverse Events Reporting System ("VAERS"), 99% of all deaths attributed to vaccines in the first quarter of 2021 are attributed to the COVID-19 Vaccines, and only 1% are attributed to all other vaccines. The number of vaccine deaths reported in the same period constitutes a 12,000% to 25,000% increase in vaccine deaths, year-on-year. The Vaccines appear to be linked to a range of profoundly

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<sup>3</sup> Issued December 18, 2020. *See* <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/moderna-covid-19-vaccine>.

<sup>4</sup> Issued February 27, 2021. *See* <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/janssen-covid-19-vaccine>.

<sup>5</sup> For the sake of clarity of reference, Plaintiffs are using the names given to the Pfizer and Moderna EUA medical products by their manufacturers and the Defendants. However, Plaintiffs reject the highly misleading use of the term "vaccine" to describe the Pfizer and Moderna EUA medical products, since they are not vaccines within the settled meaning of the term and instead are more precisely described as a form of genetic manipulation.



serious medical complications, among them myocarditis, miscarriage, irregular vaginal bleeding, clotting disorders, strokes, vascular damage and autoimmune disease. Meanwhile, Pfizer, Moderna and Janssen enjoy statutorily conferred immunity from liability for any harm caused by their experimental products.

5. The Vaccine EUAs are unlawful on multiple different grounds and must be terminated immediately. First, the Emergency Declaration upon which they are all based was unjustified. As Plaintiffs allege in detail and will show at trial with expert medical and scientific evidence, including the Defendants' own data and studies, there is not now, and there never has been, a *bona fide* "public health emergency" due to the SARS-Cov-2 virus or the disease COVID-19. Virtually all of the PCR tests were calibrated to produce false positive results, which has enabled the Defendants and their counterparts in state governments to publish daily reports containing seriously inflated COVID-19 "case" and "death" counts that grossly exaggerate the public health threat. Even assuming the accuracy of these counts, we now know that COVID-19 has a fatality rate far below that originally anticipated - 0.2% globally, and 0.03% for persons under the age of 70. According to the CDC, 95% of "COVID-19" deaths involve at least four additional co-morbidities.

6. The DHHS Secretary has failed to satisfy the "criteria for issuance" of the EUAs set forth in § 360bbb-3(c). The Vaccines are not effective in diagnosing, treating or preventing COVID-19. Absolute Risk Reduction ("ARR") is a critical measure of the impact of a medical intervention, reached by comparing outcomes in a treated group with outcomes in an untreated group in a randomized controlled trial. The NIH has published a study that indicates the ARR for the Pfizer-BioNTech COVID-19 Vaccine is just 0.7%,



and the ARR for the Moderna COVID-19 Vaccine is 1.1%. The benefits of the Vaccines when used to diagnose, prevent or treat COVID-19, do not outweigh the risks of these experimental agents. This is particularly so for children, for whom COVID-19 presents 0% risk of fatality statistically. There are multiple adequate, approved and available alternative products that have been used safely and effectively for decades. For example, the evidence suggests that Ivermectin consistently has an ARR that far exceeds that of the Vaccines.<sup>6</sup>

7. The DHHS Secretary has failed to meet the “conditions of authorization” mandated by § 360bbb-3(e)(1)(A). Healthcare professionals administering the Vaccines and Vaccine subjects alike are being deprived of basic information regarding the nature and limitations of the EUAs, the known risks of the Vaccines and the extent to which they are unknown, available alternative products and their risks and benefits, and the right to refuse the Vaccines. Not only is this information not being presented, it is being actively suppressed. There is no reliable system for capturing and reporting all adverse events associated with the Vaccines. The Defendants have created a new reporting system dedicated to the Vaccines parallel to VAERS, and Plaintiffs have been unable to obtain any information from this system.

8. At the same time, the American public, desperate for a return to normalcy following a year of relentless psychological manipulation through fear-messaging regarding SARS-CoV-2/COVID-19 and associated unprecedented deprivations of their constitutional and human rights, are being told in a carefully orchestrated public messaging campaign that the Vaccines are “safe and effective” and a “passport” back to

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<sup>6</sup> See <https://c19ivermectin.com>.



the freedoms they once enjoyed. Dissenting medical opinion is systematically censored. Private sector employers and all levels of government are offering dramatic incentives to accept the Vaccines, and jarring penalties for refusing them. In these conditions, it is not possible for Vaccine subjects to give voluntary informed consent to the Vaccines, and the “warp speed” rollout of these dangerous, untested biological agents to the American population constitutes non-consensual human experimentation in violation of customary international law.

9. Plaintiffs are healthcare professionals whose rejection of the Vaccines and promotion of alternative products has resulted in the termination of their employment or the suspension of their professional license, or has placed them in an untenable ethical bind that interferes with their ability to practice their chosen profession and threatens their livelihood and employment; parents and children under extreme pressure to accept the Vaccines; and the Estate and loved ones of an elderly woman whose life was cut short after she received a Vaccine, without having given voluntary, informed consent; and a number of individuals seriously injured by a Vaccine, without having given voluntary, informed consent.

10. As a threshold matter, Plaintiffs are asking the Court to scrutinize, under the authority of Home Building and Loan Association v. Blaisdell, 290 U.S. 398 (1934) and Chastleton Corp. v. Sinclair, 264 U.S. 543 (1924), whether the exigencies that justify a declaration of a “public health emergency” under § 360bbb-3(b) exist, and to declare that since they do not exist, the DHHS Secretary’s declaration of a public health emergency and repeated renewals thereof are unlawful, and the Vaccine EUAs which are based on the “public health emergency” are also unlawful.



11. Plaintiffs are seeking additional declaratory relief including *inter alia* determinations that the Defendants have violated § 360bbb-3(c) by failing to meet the criteria for issuing the Vaccine EUAs, that they have violated § 360bbb-3(e) by failing to establish and maintain the conditions for the EUAs, that they have violated customary international law by engaging in non-consensual human medical experimentation, and that they have violated 45 CFR Part 46 by failing to implement protections for human subjects in medical experimentation. They are also asking the Court to enjoin *inter alia* the enforcement of the challenged declaration of a “public health emergency” and further renewals thereof, enforcement of the Vaccine EUAs and further extensions of the Vaccine EUAs to children under the age of 16. Finally, the Vaccine-injured Plaintiffs are seeking civil money damages from the Defendants’ key officials.

## **II. THE PARTIES**

### **Plaintiffs**

12. AMERICA’S FRONTLINE DOCTORS (“AFLDS”) is a non-partisan, not-for-profit organization of hundreds of member physicians that come from across the country, representing a range of medical disciplines and practical experience on the front lines of medicine. AFLDS’ programs focus on a number of critical issues including:

- Providing Americans with science-based facts about COVID-19;
- Protecting physician independence from government overreach;
- Combating the “pandemic” using evidence-based approaches without compromising Constitutional freedoms;
- Fighting medical cancel culture and media censorship;
- Advancing healthcare policies that protect the physician-patient relationship;
- Expanding COVID-19 treatment options for all Americans who need them; and
- Strengthening the voices of front-line doctors in the national healthcare conversation.



13. AFLDS' core beliefs, shared by each of its member health care professionals, include the following:

- That the American people have the right to accurate information using trusted data derived from decades of practical experience, not politicized science and Big Tech-filtered public health information.
- That critical public health decision-making should take place away from Washington and closer to local communities and the physicians that serve them. They are steadfastly committed to protecting the physician-patient relationship.
- That front-line and actively practicing physicians should be incorporated into the nation's healthcare policy conversation.
- That safe and effective, over-the-counter COVID preventative and early treatment options should be made available to all Americans who need them. They reject mandatory government lockdowns and restrictions not supported by scientific evidence. They support focused care for the nation's at-risk population, including seniors and the immune-compromised.

14. AFLDS, through its member physicians, is deeply committed to maintaining the physician-patient relationship in the face of government encroachment.

15. Each of AFLDS' member physicians is also deeply committed to the guiding principle of medicine, "FIRST, DO NO HARM". They take gravely their ethical obligations to their patients. It is axiomatic that a physician's duty is to his or her patient.

16. AFLDS has recommended that the experimental Covid-19 vaccines be prohibited for use in the under-20 age category, and strongly discouraged for use in the healthy population above the age of 20 through the age of 69. These recommendations have two sound and broadly scientific foundations upon which they are based. First, there is the undeniable fact that the Covid-19 vaccines are experimental and either lack clinical testing or have presented serious risks for young people in the 12 to 15 age group. The risks and safety evidence based upon such trials as there are, cannot justify the use of



these vaccines in younger persons. Because AFLDS has taken the science-based position that it is unethical even to advocate for Covid-19 vaccine administration to persons under the age of 50, its and its membership cannot administer it or support any agency that attempted to do so for juvenile persons in the 12 to 15 age category.

17. It should be noted here that AFLDS is NOT against vaccines generally as a class of medical interventions. It has praised the speedy progress of the vaccine development program. It has taken care to ensure clarity in its position regarding support of the proper use of approved vaccines and the proper application of emergency use authorizations. It holds sacrosanct the relationship between doctor and patient where truly informed decisions are to be made, taking into consideration all of the factors relating to the patients' health, risks, co-morbidities and circumstances.

18. Given these considerations it would be grossly unethical and therefore impossible for AFLDS members to stand idly by while their patients and their patients' families are subjected to the imminent risk of experimental COVID-19 vaccine injections being administered to minor children. If the EUAs are allowed to stand unrestrained and extended to young children in the 12-to-15-year age group, AFLDS member physicians will be forced into further untenable positions of unresolvable conflict between their ethical and moral duties to their patients, and the demands of many of the hospitals in which they work. AFLDS is aware of doctors around the Country to whom this has already been done and who have lost their medical licenses and/or their jobs over these issues.

19. Many of AFLDS member physician's employers subscribe to and follow the recommendations of the American Medical Association ("AMA"). In a special



meeting in November of 2020, the AMA's Council on Ethical and Judicial Affairs, updated a previously published Ethics Opinion in the AMA Code of Medical Ethics as opinion 8.7, "Routine Universal Immunization of Physicians."

20. In this updated opinion, the astonishing position was taken that not only do physicians have an ethical and moral obligation to inject themselves with the experimental COVID-19 vaccination, but they also have an ethical duty to encourage their patients to get injected with the experimental COVID-19 vaccination. The ethics opinion repeatedly uses the phrase "safe and effective" as a descriptor for the experimental COVID-19 vaccination. The AMA's ethics opinion goes on to state that institutions may have a responsibility to require immunization of all staff!

21. "Physicians and other health care workers who decline to be immunized with a safe and effective vaccine, without a compelling medical reason, can pose an unnecessary medical risk to vulnerable patients or colleagues," said AMA Board Member Michael Suk, MD, JD, MPH, MBA. "Physicians must strike an ethical balance between their personal commitments as moral individuals and their obligations as medical professionals."

22. The ethical opinion adopted by the AMA House of Delegates says that doctors:

*have an ethical responsibility to encourage patients to accept immunization when the patient can do so safely, and to take appropriate measures in their own practice to prevent the spread of infectious disease in health care settings. Physician practices and health care institutions have a responsibility to proactively develop policies and procedures for responding to epidemic or pandemic disease with input from practicing physicians, institutional leadership, and appropriate specialists. Such policies and procedures should include robust infection-control practices, provision and required use of appropriate protective equipment, and a process for making appropriate immunization readily available to staff.*



*During outbreaks of vaccine-preventable disease for which there is a safe, effective vaccine, institutions' responsibility may extend to requiring immunization of staff.*

23. It is clear from this ethics opinion that AFLDS member physicians would be considered by their employers to be both morally and ethically bound by a duty to encourage 12–15-year-old minors to receive the experimental COVID-19 vaccination injection.

24. The AMA even offers a “COVID-19 vaccine script for patient inquiries”. Despite being styled as a script for inquiries, the script clearly intends for phone messages and office websites to lead with the following message for every caller, not simply those who wish to inquire about vaccines. The proposed script reads: “We are encouraging our patients to receive the COVID-19 vaccine when it is available and offered to them.”

25. To the extent that the AFLDS member physicians either lack control of their office website or telephone system or are simply unaware of the message that has been placed there absent their knowledge and consent, the member physicians will have been forced unwittingly into an utterly untenable position. Such would create an unresolvable conflict for the member physicians, and deep confusion for their patients, who would thereby be receiving irreconcilable and contradictory messages from the same office.

26. To illustrate just how unresolvable these conflicts are, it is necessary to consider the massive power of big pharmaceutical companies over the institutions who employ the physicians and the ease with which a physician’s career can be destroyed through widely unregulated reporting which opens an investigation that can and often does render the physician virtually unemployable. Not only do physicians have to choose



between their ethical obligations to their patient to do no harm and their current job; the reality is that many of them will be choosing between their patients and their medical career.

27. It is critical to point out that for AFLDS member physicians, the practice of medicine is not simply a job. Neither is it merely a career. Rather, it is a sacred trust. It is a true high calling that often requires a decade or more of highly focused sacrificial dedication to achieve. The depth and the horror of the bind that this ethics opinion places the member physicians of AFLDS in, simply cannot be overstated.

28. To grasp the irreparable nature of the harm they face, one must consider the ease with which even an anonymous report can be made that may injure or haunt a physician's career. The National Physicians Database ("NPDB") was created by Congress with the intent of providing a central location to obtain information about practitioners. However, as Darryl S. Weiman, M.D., J.D. pointed out, the "black mark of a listing in the NPDB may not accomplish what the law was meant to do; identify the poor practitioner." Weiman goes on to point out that "It is the threat of a NPDB report which prevents the open discussion, fact-finding, and broad-based analysis and problem solving which was the intent of the meaningful peer-review of the HCQIA."

29. The gross imbalance of equities between an individual physician and the various large institutions and pharmaceutical companies which exert tremendous sway over his or her professional calling has many physicians fearful of pushing back against such ethical binds as have been described above. Many physicians have a family and medical school debts to consider and should never be forced into such a bitter double bind.



30. The types of harm the AFLDS member physicians are inevitably subjected to by this extension of the EUAs to inject 12–15-year-old minors with the experimental COVID-19 vaccine is truly irreparable. Such harm strikes at the moral and ethical underpinnings of their calling as a physician and drives irreparable wedges into the sacred doctor-patient relationship that cannot be healed and certainly cannot be addressed with monetary damages. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

31. JOEL WOOD, RPH, of Berkshire, New York, is a licensed registered pharmacist who was named an essential worker, and who worked throughout the entire Covid-19 pandemic for Kinney Drugs Corporation.

32. Joel personally administered over 500 COVID-19 Vaccines to adults through his employment with Kinney Drugs Corporation, beginning in January 2021. When Joel first began to administer the Vaccines, he was under the impression that these Vaccines were necessary to get us through this awful time in history.

33. As time went on, Joel started to be concerned more with what the Vaccines were doing to people, and he started to change his opinion. As a pharmacist, Joel is trained to assess the risk of treatment against the risk of the disease state. Through his research into the experimental COVID-19 Vaccines, Joel learned that the risks associated with the injection outweigh the risks associated with contracting COVID-19. In Joel's professional opinion regarding people below the age of 65, the risks associated with the Vaccines outweigh the risks associated with getting COVID-19. COVID-19 poses almost no health risk to any healthy individual under the age of 50.



34. There is no long-term data regarding possible benefits of the experimental Vaccines. Even with the experimental Vaccines, you can still transmit and become infected with the virus. Coronaviruses has been around for decades; they are part of what causes the common cold. The vaccination site where Joel worked did not ensure full informed consent. Joel has personal knowledge that his former employer, as well as other COVID-19 vaccination sites around the country, are not ensuring study participants give full informed consent as defined in the Code of Federal Regulations §46.116 General Requirements for Informed Consent. In fact, no one can give proper informed consent for the COVID-19 Vaccines, because the package inserts are blank.

35. Joel heard from many staff members and patients that they did not know that the Vaccine was not FDA approved. He personally observed staff administering this Vaccine while not disclosing to people that it is not an FDA-approved Vaccine. How many people would get the shot if they knew they could still get and spread COVID- 19? While Joel was administering the Vaccines, he observed many people coming in to get the shot only because they believed the shot would be required to get back to “normal life,” -- take the mask off, attend a wedding or attend a sports game.

36. When Joel became aware that the EUA had been extended to include administration of the Vaccine to children ages 12 to 15, he felt compelled to take a stand. On May 5, 2021, Joel placed an anonymous call to the Kinney Drugs ethics line in order to express deep concern over two issues: Vaccine shedding and the experimental injection of youth.

37. On May 9, 2021, Joel followed up by sending a letter via email expressing the concerns raised in his telephone call and advising his employer that he would contact



OSHA if he did not receive a response. In his letter, Joel inquired about what Kinney Drugs would be doing to address the safety concern of Vaccine shedding in the workplace. The Pfizer Trial Investigational Protocol, 1 at page 67, addresses “environmental exposure” or Vaccine shedding. He also inquired about the lack of patient safety and informed consent he had observed, his issues with many staff members and patients not knowing the shots were **not** FDA approved, and staff administering the shot while failing to advise people the shot is not FDA approved.

38. On May 10, 2021, when Joel’s communication with Kinney Drugs was unanswered, he sent an email complaint to OSHA. In his Complaint, he expressed his concern with exposure and his knowledge of vaccine shedding. Joel expressed his concern that there are no long-term studies for the experimental vaccines and his conviction that staff working in retail pharmacies are exposed to vaccine spike protein shedding as described in the Pfizer Trial Investigational Protocol.

39. On May 11, 2021, Joel received a response from OSHA which stated: “At this time OSHA has no standards or jurisdiction when it comes to COVID-19 concerns or complaints.” Joel was additionally provided with phone numbers for the New York Governor, the New York State COVID-19 Hotline, and the New York City COVID-19 Violations Hotline.

40. On May 12, 2021, Joel had a verbal discussion with his boss after being advised by human resources that no accommodation was going to be made to address his concerns and that he would be required to give shots to kids. Joel’s boss gave him until May 14, 2021 to decide whether he would give the shots. On May 14, 2021, Joel verbally advised his boss that he had a legal right under religious moral, and ethical concerns to



not provide a service. He advised his boss that he could not ethically administer the experimental Vaccines to adolescents, nor could he ethically administer the Vaccines without providing informed consent. Joel further advised his boss that it is not possible to provide full informed consent as the Vaccine manufacturer's package inserts are blank, and there is no long-term data. Joel's boss explained that in that case he would be terminated. Joel was then fired from his job.

41. According to the Nuremberg Code, voluntary consent is absolutely essential to medical experimentation. The Vaccines are medical experimentation. It has been Joel's professional opinion based on direct observation that his former employer, along with other Vaccine clinics has failed, and continue to fail to provide proper informed consent for the Vaccine. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

42. BRITTANY GALVIN, of Tampa, Florida, is Vice President of Sales for a professional employer organization, and the primary breadwinner for her family. She is a 35-year-old wife and mother of three children. She has a history of Rheumatoid Arthritis, diagnosed four years ago, in remission for a couple of years. Before the COVID injections, she did not take any regular medications.

43. Before the spring of 2020, she traveled extensively for work. Just prior to the reporting of the COVID outbreak in the United States, when she returned from Las Vegas in late February of 2020, she got extremely sick. The Urgent Care doctor she saw told her there was no way she could have COVID because she had not been to China.



Between March and June 2020, she was tested at least ten times for COVID-19. None of these tests were positive. However, she was sick for almost three months.

44. By June of 2020, Brittany had become extremely ill. She went to the ER and was transferred to Advent Carrollwood Hospital where she was admitted to a Covid unit for 6 days as “positive” for COVID-19. She never saw positive test results. On the first day of her hospital admission, she was treated with Hydroxychloroquine. By the third day she had improved significantly. Nothing helped before the Hydroxychloroquine. Several months later, she had a positive antibody test.

45. Brittany experienced tremendous pressure to get “vaccinated” so she requested a medical exemption from the shot from her rheumatologist. However, she was advised by his assistant that they were recommending that all patients get the injections. She was further advised that her doctor would not provide a recommendation against the shot, but that instead, he would write a letter stating she should get the shot. This incident was extremely alarming to Brittany.

46. After her doctor failed to support her medically, and needing to get back to work, Brittany reluctantly took the first Moderna injection on March 28, 2021. Within 4-5 hours of receiving the shot, she experienced chills all over her body and felt terrible. She felt unsteady and when she walked it felt like her legs were moving through wet cement.

47. She received her second Moderna injection on May 4, 2021, at her local Publix pharmacy. She filled out a form that asked me if she had a prior autoimmune disease. She checked the box on the form indicating that she had, and that she would



need to be seen by a pharmacist. No pharmacist saw her and she reluctantly accepted the injection.

48. A couple of days after the shot metal started sticking to her body. Brittany had learned more about the shots and was alarmed. She asked the pharmacist why he provided shots with a blank package insert and he could not tell her what was in the shots.

49. On May 22, 2021, about 13 days after her second shot, Brittany seized up unable to walk, and fainted on the floor. Her head was tingling and her ears were hot. She had a terrible headache. Coming to, she was able to call 911. By the time paramedics arrived, her body had fully seized up. She was transported to Memorial Hospital of Tampa by ambulance where the staff asked her immediately if she had had the COVID shot, which ones, and when. She overheard a conversation at that emergency room that alerted her that similar side effects were coming into the hospital regularly. She overheard hospital staff talking about seeing a lot of heart conditions, chest pains, and leg numbness from the COVID shots.

50. At Memorial Hospital, the hospital staff took x-rays with a spoon stuck to her body. In fact, the MRI technician tried it, and the spoon stuck to him as well.

51. She was ultimately released with the reason for admission in her chart noted as “anxiety.”

52. A few days later, on May 25, 2021, she was admitted to the emergency room at Advent Carrollwood Hospital in Tampa, Florida for the same symptoms: unsteadiness, numbness, tingling, headaches, nausea, chest pain. The next day she was



released, and her chart noted that she was admitted for “anxiety.” After this hospital stay, she made a report to VAERS.

53. On May 30, 2021, Brittany was again admitted to Advent Carrollwood Hospital. She was there fighting for her life as of June 8, 2021. She has undergone multiple tests, including without limitation blood tests, neurology tests, brain MRIs, and a spinal tap. The hospital was prepared to release her with another diagnosis of “anxiety” when her neurology team arrived in her room with results from her lumbar puncture. Her neurologist advised her that her problems arose from the COVID shot. He also advised her that she was not the first patient he has seen with these problems. He then diagnosed her with Guillain Barre Syndrome, Acute Neuropathic POTS, pericarditis, gastroparesis and aseptic meningitis and, as she was told, made a report to VAERS.

54. As of June 8, 2021, Brittany has a very stiff neck and her head pain is extreme. She cannot use the bathroom unassisted. She is experiencing pressure in her head like her brain is swollen. She has recently been running a fever and throwing up. She is getting worse, not better. Her family and husband need her.

55. Brittany feels very strongly about using her experience to warn and help others so this does not happen to them. She posted her experiences on Instagram at @brit\_galvin. Her videos have been censored on social media.

56. When Brittany took the COVID-19 experimental injections, she did not know they were experimental and not approved by the FDA. She was highly confused by the media asserting that they were “safe and effective.”

57. Brittany believes the COVID-19 vaccines should all be immediately pulled from use. She stands strong in her conviction to make a difference with her life by



stopping these experimental injections. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was known to this Plaintiff prior to sustaining Vaccine injury, and none was supplied by the Defendants or as a result of their efforts.

58. ELLEN MILLEN, a resident of Huntsville, Alabama, is the Guardian of three siblings ages 5, 4 and 4. These children have been entrusted to her by Child Protective Services and she is responsible for making medical decisions for them. Ellen has obtained a medical exemption for vaccines and neither she nor their biological parents wish the children to receive the experimental COVID-19 vaccination. Ellen stands not only for the children currently in her care but for those who may be placed in her care in the future. She stands for her 22-year-old son and four other children who are unable to stand for themselves in opposing the application of the experimental COVID-19 vaccination to children of all ages who are at NO statistical risk of death from COVID-19. Ellen knows that the children in her care will face overwhelming pressure to receive the experimental COVID-19 vaccination injection from friends, parents of friends, sports organizations, summer camps, schools and colleges. The fear and pressure that this fragile at-risk population of children will be subjected to if the requested injunctive relief is not granted is greater than that which is often faced by children from intact nuclear families. The nature of their placement outside of their home and away from their biological family leaves them particularly susceptible to the pressures and the fear mongering that they will receive from peers and authority figures. The harm that they will undergo emotionally, mentally, and/or physiologically is precisely the type of harm considered irreparable by the law in this case. The trauma that is created in this type



of a situation will quite likely be carried for life, and no monetary damage award can possibly erase the effects. Ellen recently watched an interview with the mother of a young man named Everest Romney. Everest was a healthy top-level athlete. Everest took the injection, followed by his father and his pregnant mother, who each took a vaccine in the same day. One took the Pfizer injection and the other took the Moderna injection. Everest and his father were hospitalized within days with blood clots on their brain. Ellen is terrified that something similar or worse will happen to her family. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

59. AUBREY BOONE, of Lubbock, Texas, is 39 years old and studying to be a colon hydro-therapist. She also works as a caregiver for her retired father, who is a disabled Veteran and unable to care for himself due to service-related injuries and significant cognitive decline. Additionally, she is the single mother of two minor children ages twelve and sixteen. She has always been healthy and had no medical problems prior to being injected with the experimental agents in the Covid-19 “vaccine”.

60. Aubrey took the first Moderna shot on March 18, 2021, and the second shot on April 15, 2021. She registered for the vaccine appointment online and showed up at Lubbock Civic Center with her father. When she arrived, staff searched for her name on the roster, where it happened to appear twice. Her identification was never checked, nor was her father’s. They then were escorted to a table and asked only if they were getting the first or second shot.



61. The first shot was given by an EMT. He told Aubrey that it was the first shot, and she should experience no side effects. They were not at any time provided with disclosures, papers or directives. They were only provided a proof of vaccine card.

62. Aubrey cannot attest to the position of the person who administered the second shot, because the woman giving the shot did not wear a uniform. Aubrey and her father were once again only asked if it was the first or second shot. This time, they were asked which brand of shot we had received. The woman giving Aubrey the injection told her she may get a fever and if it persists to go to the emergency room. Once again, Aubrey and her father were never given any paperwork on the actual vaccine and never warned of potential side effects.

63. After the shot Aubrey became extremely ill very quickly. Within 12 hours she had a fever of 103, severe migraine, unbearable body aches, stomach issues, and what seemed to be arthritic pain in every joint on her body. The fever lasted four days, but the severe migraine continued for 17 days. Aubrey became so ill that she could barely function. During the first four days, she had someone assist her by bringing her items that she needed. This person became terribly ill with the same symptoms she was experiencing, within 24 hours of contacting her.

64. Aubrey was never informed that she could get this sick from the vaccine. She could not function for 17 days and this was extremely difficult for her. If she would have known that she was going to become that sick with the vaccine she would have been able to make a somewhat informed decision for herself, and for her family that depends solely on Aubrey's care. Aubrey heard that the experimental injection is going to be given to children aged 12 to 15 and she believes that is wrong. She does not want her



children to get this experimental Covid-19 vaccine injection. Aubrey felt enormous pressure to get vaccinated. She believes the pressure on children is even stronger. Children are not old enough to be pressured about their health decisions and they are not old enough to make a potentially life changing medical decision. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was known to this Plaintiff prior to sustaining Vaccine injury, and none was supplied by the Defendants or as a result of their efforts.

65. JODY SOBCZAK, of Huntsville, Alabama, is the father of two minor children ages 15 and 17. Jody has researched the experimental COVID-19 vaccines and fiercely opposes their use in healthy children of any age. He knows that his own children are placed at immediate and irreparable risk of harm by extending the EUAs for the experimental COVID-19 Vaccines to adolescents. Jody recently watched a video showing an interview of a young woman named Alicia Smith. Ms. Smith is a 34-year-old hair stylist who has uncontrollable essential tremors and facial palsy since she received her COVID-19 shot on April 15, 2021. She took the vaccine because a lot of her clients pressured her into it and she did not want to lose clients. Ms. Smith's story is heartbreaking. The doctors are telling her that it is an anxiety problem. She does not know if she will ever be able to work as a hairstylist again. It is very upsetting to Jody that this young woman trusted the shot was safe, even though she really did not want to get it. She has now been adversely affected in a serious and possibly permanent way. She is a grown woman, and she succumbed to pressure to take the shot. Teens are far more susceptible to peer pressure than adults, and Jody is afraid for his own children, absent the relief requested. People simply do not know any better and they are trusting the drug



companies and the government. Jody is well aware that there are safe and effective alternative treatments readily available, and he adamantly opposes the suppression of those treatments in favor of experimental and potentially life-threatening agents. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

66. DEBORAH SOBCZAK is the wife of JODY SOBCZAK, and the mother of minor children ages 15 and 17. The allegations in the preceding paragraph are incorporated herein by reference. None of the adverse information that this Plaintiff has discovered about the Vaccine was supplied by the Defendants or as a result of their efforts.

67. SNOW MILLS, of Lubbock, Texas, is a 49-year-old grandmother with no serious health issues prior to the experimental COVID-19 vaccine injection. Snow took the first dose of the experimental Moderna injection on March 8, 2021, after registering online with a CVS Pharmacy. When she arrived at CVS on March 8, she checked in on her phone. She then went inside, checked in with someone, and proceeded to a table to receive the injection. She was not provided with any information about side effects or warnings whatsoever. Later that evening she started feeling very achy and sick to her stomach.

68. Approximately two weeks after the shot Snow contracted a fever and a large knot appeared at the injection site for about four days. On April 4, 2021, Snow received the second Moderna shot. She dreaded it because of the terrible reaction she had



with the first vaccine. Several hours after the second injection, Snow began to experience horrible flu-like symptoms that kept her bed-ridden for two days.

69. At no time was Snow ever given any information about risks or side effects of the experimental COVID-19 Vaccine injection before or after they were administered to her. Snow strongly objects to the COVID-19 shots being given to children. There is no way to know the risks to young people, with their entire lives ahead of them. Snow is mentally and emotionally distressed at the thought of any child, who is statistically at no risk of death or serious injury, going through the awful side effects she experienced. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was known to this Plaintiff prior to sustaining Vaccine injury, and none was supplied by the Defendants or as a result of their efforts.

70. JENNIFER MCCRAE, RN, of Wichita, Kansas, is an RN working at a county health department vaccination clinic. For many years she did transfusion therapy for patients and therefore she has extensive experience with the process of informed consent. Jennifer is deeply concerned that COVID-19 vaccination sites around the country, such as the one where she works, are also not providing study participants full informed consent as defined in the 45 CFR §46.116, General Requirements for Informed Consent. Jennifer finds this extremely troubling given that legal guardians are enrolling children as young as 12 years old in the COVID-19 vaccination clinical trial without understanding they are participating in a clinical trial. According to the guidance provided by DHHS:

*Informed consent is a process, not just a form. Information must be presented to enable persons to voluntarily decide whether or not to*



*participate as a research subject. It is a fundamental mechanism to ensure respect for persons through provision of thoughtful consent for a voluntary act. The procedures used in obtaining informed consent should be designed to educate the subject population in terms that they can understand. Therefore, informed consent language and its documentation (especially explanation of the study's purpose, duration, experimental procedures, alternatives, risks, and benefits) must be written in "lay language", (i.e., understandable to the people being asked to participate). The written presentation of information is used to document the basis for consent and for the subjects' future reference. The consent document should be revised when deficiencies are noted or when additional information will improve the consent process.*

71. Jennifer's opinion as a medical professional with extensive experience studying and providing informed consent to those who are being asked to participate in clinical trials, is that her clinic is providing the experimental COVID-19 experimental Vaccine injections in direct violation of 45 CFR §46.116, General Requirements for Informed Consent. When a vaccine recipient walks into the clinic they are asked a few simple screening questions. They are not counseled by any staff member about risk vs benefits of participating in this clinical trial. Many believe the vaccines are fully FDA approved and that this Vaccine is mandatory or will be soon. Many have even asked Jennifer if they need to have their vaccination card on them at all times. Jennifer interprets this at minimum as a lack of understanding, but also as coercion.

72. A Vaccine recipient is given the manufacturer's information sheet at check in but is not asked if they understand what they are reading. If that person does not speak English as a first language and/or cannot read at an adequate reading level to comprehend the information they are not receiving informed consent. Additionally, no one assesses a Vaccine recipient's level of understanding at any part of the process. The manufacturer's information sheet is not informed consent. For example, it does not contain any information about the individual's risk. For a patient aged 12 to 15, it is relevant risk



information that a person under age 18 has statistically zero percent chance of death from COVID-19. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

73. ANGELLIA DESELLE, of Marrero, Louisiana, was a surgery center manager until the devastating health effects of the experimental COVID-19 Vaccine injection changed her life forever and cost her that job. As an essential worker, Angelia worked throughout the entire Covid-19 pandemic. Before January 5, 2021, she was a healthy 45-year-old woman with absolutely no health issues. She did not take any regular medications. However, she took the experimental Pfizer Vaccine on January 5, 2021, because she was exposed to COVID-19 regularly at work and did not want to endanger her aging parents. She drove herself to the vaccination center during her lunch hour on Tuesday, January 5, 2021. Within 2 hours of receiving the shot, Angelia got a severe headache, and the headache has not gone away since.

74. On Wednesday, January 6, 2021, Angelia slept for 15 hours straight when she got home from work.

75. On Thursday morning, January 7, 2021, she woke up and felt very dizzy, and almost passed out. However, she took Ibuprofen and went on to work.

76. By Friday night, January 8, 2021, Angelia was having problems with her legs. At about 11:30 PM, she got out of bed and could not feel or use her left leg. Initially, she just thought it would pass and went back to bed.

77. By Saturday morning, January 9, 2021, she could not use either of her legs and could not walk unassisted. About two hours later, she started having full-body



convulsions. Her husband took her to the emergency room, and she was admitted to Ochsner Medical Center, where a hospitalist came in to see her. He told her, “Ms. Desselle, I heard you were coming. I know what is going on and I know this is the vaccine. We are going to research this until we figure it out.” That doctor never came into Angelia’s room again and that was the last time she ever saw him. She was in Ochsner Medical Center Hospital for five days. She was never treated for convulsions, nor was any testing done for convulsions or seizures. Her spine was studied, and an MRI was done. The hospital documented her problems on discharge as “bilateral leg weakness.”

78. Angelia’s severe health problems have persisted for five months and not only continue unabated, but have grown worse, as detailed below. She has been shuffled from doctor, to doctor, to doctor. She has seen numerous neurologists. Unfortunately, all her testing has taken place at the same hospital where she was administered the experimental vaccine injection. The last five months have been a nightmare for Angelia. She has neurological issues, as well as memory loss and brain fog. As manager of a surgery center, Angelia was very sharp and could think fast and easily make decisions. The mental acuity she possessed before receiving the experimental injection is gone. In addition, Angelia’s job is gone. Gone as well is her ability to drive along with the ability to go out in public for fear of a convulsion starting.

79. Angelia recently testified in support of Louisiana State Bill 498 which makes it illegal to discriminate against unvaccinated people and keeps the vaccine off the required list of immunizations for the upcoming school year. Her testimony helped the bill pass through the House. She then testified in front of the State Senate via written



statement and video. She was unable to attend in person because she has a new problem with her vision, preliminarily diagnosed as a detached retina.

80. When the experimental COVID-19 injection was administered, Angelia had no idea it was experimental and NOT approved by the FDA. Her employer provided her with a “Covid-19 Vaccine Consent Form” which appeared to be merely a standard consent form for the “Inactivated Seasonal Influenza Vaccine” with the word “influenza” replaced with “COVID-19.” The form does not address potential neurological problems or any of the health issues she has experienced since she was injected. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was known to this Plaintiff prior to sustaining Vaccine injury, and none was supplied by the Defendants or as a result of their efforts.

81. KRISTI SIMMONDS, of Bakersville, North Carolina, was a healthy 40-year-old, who worked as a Registered Nurse and Clinical Manager for a home health agency prior to January 20, 2021. The only pre-existing conditions she had prior to receiving the experimental Vaccine were related to Barrett’s Esophagus and acid reflux. Believing that the experimental injection was an approved vaccine, Kristi only accepted the injection to encourage her clinicians by showing them it was safe. She received the COVID-19 Vaccine at her local health department. When she arrived at her appointment, after her name was confirmed to be on the list, she was simply asked if she wanted the Vaccine in the right or left arm. She signed a document that was presented as a “consent” but was not provided a copy. Kristi is familiar with consent documents and recalls that the consent mentioned flu-like symptoms and a potential for anaphylaxis. It contained no



warning of neurological risks. She was never informed the Vaccine was merely approved under an EUA and was not approved by the FDA.

82. Kristi received the experimental Moderna Vaccine on Tuesday, January 19, 2021. Two days later, she went to the emergency room for swelling in her mouth and throat. She was given Benadryl, Tylenol, and a steroid, which she took round the clock, every four hours, for five days.

83. The following Tuesday, January 26, 2021, Kristi returned to work where she experienced severe fatigue and exhaustion together with unusual difficulty concentrating. That evening, after work, Kristi went straight to bed and immediately started having convulsions. Her entire body drew up into a fetal position with her hands and feet distorted and curled in. She was rushed to a local emergency room, where she was discharged with no diagnosis or change in condition. Her sister immediately drove me to another emergency room, where she received the same response. She was advised that the hospitals did not know what was happening and to follow up with neurology.

84. This cycle repeated continuously for over 3 months. The neurologist and her primary care physician were unable to diagnose the cause of her convulsions, or the cause of other conditions which were developing. Her primary care physician verbalized a concern that the Vaccine has caused autoimmune disorders. Between January 26, 2021, and May 21, 2021, Kristi experienced up to 16 convulsions a day.

85. Kristi has battled these terrible convulsions, body tremors, memory loss, fatigue, brain fog, and pain for almost half a year. Although some conditions have partially relented, new debilitating conditions continue to present. Since the injection, in her desperate quest for medical help, Kristi has been to six different Emergency Rooms,



two different neurologists, and has seen her primary care physician numerous times. Kristi used to ride a Harley Davidson motorcycle for enjoyment, but now she cannot even drive a car. She was terminated from her job on April 28, 2021 and lost her medical insurance and benefits. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was known to this Plaintiff prior to sustaining Vaccine injury, and none was supplied by the Defendants or as a result of their efforts.

86. VIDIELLA, A/K/A SHAWN SKELTON, of Oakland City, Indiana, has been a Certified Nursing Assistant (“CAN”) for 25 years. As an essential worker, Shawn worked throughout the entire Covid-19 pandemic. Prior to January 4, 2021, Shawn was a healthy 42-year-old woman with no underlying health conditions. She took no medication except Effexor (75mg- 1x day).

87. On Jan 4, 2021, she was at work at Good Samaritan Nursing Home and Rehabilitation owned by American Senior Communities (ASC). Her employer was holding a “vaccine” clinic that day. Personnel from CVS pharmacy came in to administer the Vaccines. Corporate representatives were on site attempting to coerce staff into getting injected. Shawn was approached five times that day and pressured to accept the experimental injection. Her employer further coerced staff with the offer of a \$50.00 bonus for “getting vaccinated”, and the promise that everyone “vaccinated” would be entered into a raffle to win \$500, if 70% of staff, or more, were injected.

88. The last time Shawn was approached on January 4, 2021, she was told “Shawn, you are the biggest patient care advocate here. I can’t believe you aren’t going to take the shot to protect the residents you care so much about!” At 1:45 PM, Shawn



relented to the pressure and guilt and accepted the experimental Vaccine that changed her life forever. The next day, Shawn experienced flu-like symptoms, which worsened as the day progressed. On January 6, 2021, she was barely able to lift her head from her pillow and called in sick. By mid-morning, her tongue began to spasm out of control at a resting state so severely that her teeth rubbed it raw. That afternoon she called her primary care physician, who recommended Benadryl and Pepcid, and called in a prescription for some oral steroids.

89. On January 7, 2021, Shawn woke up in full-body convulsions. She was rushed by ambulance to the Emergency Room. The ER doctor slammed her hand into the side of the bed, told her she was having a panic attack, and instructed her to settle down. Her husband immediately took her to another hospital in Evansville, Indiana. This second ER doctor stated that she was clearly experiencing a Vaccine injury and advised her not to take the second dose. He discharged her with a diagnosis of coarse tremors from the vaccine and advised her to follow up with a neurologist. That was the first and only time she was advised that she had suffered a Vaccine injury.

90. In her desperate and unsuccessful quest for medical help, Shawn visited five emergency rooms as far away from her home as Vanderbilt in Nashville, Tennessee. Doctors suggested a variety of different problems including psychogenic movement disorder, convulsion disorder, panic attack, PTSD, and even stress.

91. On January 11, 2021, she was finally admitted into Deaconess Gateway Neurology. She was examined by a psychologist before she was permitted to be seen by a neurologist, who ordered an MRI. The MRI was deemed normal, and Shawn was discharged. Her full-body convulsions continued without ceasing for 12 days.



92. Shawn currently experiences tremors and uncontrollable body movements almost daily. She experiences convulsions several times a week and sometimes several times a day. In mid-May 2021, her convulsions progressed until she was gripped by six seizures in a single day. Since receiving the experimental injection, Shawn also suffers from severe headaches, high blood pressure and must now take multiple medications a day. She can no longer drive. Her primary care physician has deemed her unable to work and that her condition could persist for years. She was denied worker's compensation and then fired from her job. Shawn is currently being treated experimentally by doctors who cannot provide her with a diagnosis.

93. She knows she is not the only victim of the experimental Vaccines, suffering deeply, injured beyond comprehension. Hundreds of people reached out to her for help since she went public with her story. She speaks to COVID-19 Vaccine victims every day with symptoms similar to her, and no medical diagnosis. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was known to this Plaintiff prior to sustaining Vaccine injury, and none was supplied by the Defendants or as a result of their efforts.

94. SALLY GEYER, of Muskegon, Michigan, is the grandmother of ten grandchildren ages 18, 16, 12, 12, 11, 9, 9, 6, 6 and 5. She is keenly aware of a Vaccine incident of one of her grandchildren as witnessed by his mother, her daughter. About 7 years ago, when Sally's grandson was about 18 months old, he received the polio/pneumococcal vaccine. That same night he started to bang his head repeatedly on the floor, something he had never done before. As a result of this extremely disturbing incident, Sally and her daughter have educated themselves on many of the adverse



reactions with vaccines and the alarming number of new vaccines that the CDC recommends each year. Sally has strong objections to the experimental COVID-19 Vaccine for children, as well as to it being forced on people of any age. It has not been studied long enough and children are at virtually no risk of dying from COVID-19.

95. As a mother and grandmother, Sally is truly terrified of the futures her grandchildren now face. The testing for the Vaccines was not adequate, and nobody knows what this medical experiment may do to children, who have long lives ahead of them. Sally has faced extreme social pressure to take the experimental injection herself, despite the fact that she is an adult able to make my own decisions. Children are susceptible to peer pressure and authority and are also not old enough to make their own decisions about participating in an experimental, risky clinical trial. Sally is further aware and deeply concerned by the fact effective and safe treatments are available to treat COVID-19, which have been kept from people in order to roll out the experimental COVID-19 Vaccine injections. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

96. MARIA MEYERS, of Traverse City, Michigan, is the mother of two boys, ages 6 and 8 years old. When her first born received his polio/pneumococcal vaccine at 18 months old, he spiked a fever of 102.5 for 2.5 days. After the fever finally broke, he started banging his head on the hardwood floor as hard as he could and did not stop until Maria grabbed him. He did not cry after this head banging incident. Head banging continued a few more times over the next week. Maria never gave him another vaccine. She opposes emergency use authorizations of the experimental COVID-19 injections for



people of any age. Even more strongly, she opposes emergency use authorizations for children and adolescents ages 12-15 and older. She believes her children face substantial risk of harm if emergency use of the experimental COVID-19 Vaccine injections is extended to adolescents. From her own studies, she is aware that the experimental Vaccines have not been studied long enough and that children are at no statistical risk of dying from COVID-19. Nobody knows what could happen to young people, who have long lives ahead of them, if they are experimented on with these untested and experimental agents. Furthermore, Maria believes there could be effective and safe treatments available to treat COVID-19 and strongly opposes suppression of those treatments in favor of using untested, experimental and potentially life-threatening agents. She has serious concerns that these medical experiments will be mandated, which means the loss of medical privacy for her and her boys. Maria believes it should remain her informed choice to decide whether or not to take a Vaccine, after being fully informed about the risks and benefits. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

97. KARI HIBBARD, of North Shores, Michigan, is a Transplant Call Coordinator/Preservationist. She works for a heart and lung transplant program. She receives, reviews, and screens all donor organ offers to help determine whether or not it is a good organ for the intended recipient. Since the experimental Vaccines received EUA, Kari has witnessed that multiple donors have died from a stroke within days or weeks of receiving the Vaccine. Her heart is broken for families losing loved ones to these experimental agents, especially as she knows they are being told it is safe and 95%



effective. Kari believes that they are being lied to because the Vaccines have efficacy with respect to minimizing symptoms, not at stopping transmission of COVID-19.

98. Kari is painfully aware that people are not being provided with information about the terrible risks connected with these medical experiments, nor are they informed that these “vaccine” manufacturers have been granted immunity from liability. The experimental agents have been subjected to no long-term safety studies, yet disturbingly, people are now being told it is safe for 12- to 15-year-olds and pregnant women.

99. Kari has two boys, ages 9 and 11. She is terrified her children will eventually be required to get the Vaccine in order to attend public school. She is deeply disturbed at the implications of forcing dangerous medical experiments on children who face no risk of death from COVID-19, or on adults who have a 99.97% chance at recovering from COVID-19, if they get it. She is disturbed that the Vaccines are fraudulently presented to people as a means of protecting others when they cannot stop transmission. She is aware that thousands who are considered “fully vaccinated” are still getting Covid. She is deeply concerned for her transplant recipients who are being advised to get the Vaccine even though it has never been tested on the immuno-compromised. She is deeply concerned for all the young children and what this could possibly do to their reproductive systems. As a medical professional, she is concerned that in the future we are going to face an increase in childhood auto-immune disorders and cancer.

100. Kari believes that our rights to choose what is best for our bodies are being deliberately stripped away through a campaign of lies and misinformation.



101. Kari's nephew once experienced a vaccine reaction that was so alarming his mother stopped giving vaccines to him and his younger brother. Kari also has a vaccine injured niece who is on the autism spectrum, but high functioning. This vaccine injured niece just allowed herself to be injected with the Vaccine because she was told it is a vaccine that would help protect her father who is going through chemotherapy. Kari believes informed consent and medical health freedom have been ignored. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

102. JULIE ROBERTS, RN, of Niles, Michigan, works for a physician service for homebound people. She works primarily in triaging phone calls. Her organization is involved in scheduling and administering COVID-19 Vaccines. Julie is also the grandmother of three boys ages 4, 7 and 8. As a concerned grandparent, a medical professional and citizen, she deeply opposes EUAs of the experimental COVID-19 Vaccines for any age of the population. It makes her especially ill to see EUAs granted for children and adolescents ages 12 to 15. She believes that her own grandchildren and their young peers are at dire risk.

103. As a medical professional, she knows very well that the experimental COVID-19 Vaccines have been rushed out without enough time to study them. Children have a 100% chance of living through COVID-19. Nobody knows what could happen to young people, who have long lives ahead of them, if they are experimented on with these untested experimental agents.



104. She has heard about a lot of injuries and deaths from the COVID-19 Vaccines and personally experienced a horrifying situation at work recently. She examined an elderly woman who had received the COVID-19 Vaccine sometime at the end of February or the beginning of March, 2021. Julie recalls that the woman was one of the first recipients to have received both of the 2-part Pfizer Vaccine from the organization where she works. Julie assessed her on a Friday because she had not been feeling well. When Julie examined her, she did not present emergent. She was weak but alert and conversing without any problems. Her lung sounds were good. Julie was a bit concerned that she could not get an accurate oxygen reading but the woman was in no respiratory distress during the visit and had a history of being difficult to get readings from. Her husband stated that he had noticed that she had been having some difficulty breathing at times. Julie texted the woman's provider about medications and advised her husband to take her to the ER if needed. When Julie came into work that following Monday, she was told that the woman's husband had her taken to the ER that Sunday but she died, testing positive for COVID and having multiple pulmonary emboli. Julie was shocked that she had pulmonary emboli, and also shocked that the woman tested positive after already receiving the Vaccine. Julie conducted research and discovered that the experimental Vaccine can affect the pulmonary lining. Julie became convinced that the woman passed away as a result of the Vaccine.

105. Julie had to give one of the experimental COVID-19 Vaccines to an elderly woman who was not alert. The woman's daughter had insisted she receive the Vaccine when she moved into a nursing home. Julie did not want to give the injection but was in the area of the nursing home and accepted the assignment. Julie felt terrible doing



it and afterward. Julie would refuse to give the Vaccine to a young person, and never wants to give another one to anybody. Julie's adult son in Maryland was bullied into taking the vaccine by his employer. After he received the Vaccine, he told Julie he would not have done it, but felt it was necessary to get back into the office.

106. The truly eye-opening moment for Julie came when her research led her to discover that in order to obtain an EUA for a Vaccine, there has to be no treatment available. As a medical professional, Julie is aware that there are multiple effective and safe treatments for COVID-19. Julie cannot understand why harmful and experimental injections are being pushed so strongly in favor of the safe, effective and readily available treatments. Julie has never witnessed anything so disturbing in her nursing career. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

107. AMY HUNT, of Grand Rapids, Michigan, is a mother of two minor children ages 11 and 13. As a mother, she opposes EUAs of experimental COVID-19 Vaccines for any age of the population. In our current climate, she is very hesitant to allow her children to be involved in activities where they may be subjected to pressure to take the Vaccine. She worries that their summer camp will try to require the Vaccine. She recently watched a podcast that depicted a teenage boy with injuries he had received from the COVID-19 Vaccine. The boy was shaking uncontrollably. The video made impacted her deeply with incredibly sadness for that boy who had his whole life ahead of him, and fear for her own children. She firmly believes her children are at dire risk if EUA is granted to allow medical experimentation on adolescents through these COVID-19



Vaccines. There is no circumstance under which Amy will allow her children to receive the experimental COVID-19 Vaccine.

108. Amy knows that there has not been proper testing for the experimental COVID-19 Vaccine. She knows that no other vaccination ever created was introduced into humans until after extensive animal testing. Amy also discovered that animal testing was initiated with these experimental Vaccines, but the animals died. Now, she has learned, the VAERS data says there are more adverse reactions to this injection than in the previous 20 years combined for all vaccinations. Amy wonders how many thousands of deaths it will take before the Vaccines are taken off the market. In doing extensive research about the COVID Vaccine, Amy has learned that children have a 100% chance of living through COVID-19. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

109. RICHARD KENNEDY is a resident of Dallas, Louisiana. His mother Dovi Sanders Kennedy lived in an assisted living facility called Savannah Grand in Bossier City, Louisiana. She was 89 years old and in good health, until she was killed by the experimental COVID-19 Vaccine that was forced on her despite a direct refusal of the Vaccine by her Guardian. Richard visited his mom on Christmas Day, December 25, 2020, one month before her birthday, and she looked great. Like always she was in a great mood. She was reading her Bible. The next time Richard visited his mom was on January 25, 2021. It was her birthday and Richard, with his youngest daughter, visited her around 10:00 am. As soon they walked in Richard sensed something was not right. His mom was always smiling and in good spirits and never complained about anything. On



this day, however, she had her comforter curled up on one side of her in a way that Richard had never seen before, and she just did not look right. But it was her birthday so Richard and his daughter did what they could to cheer her up. They took several pictures and stayed with her for a little over an hour.

110. Richard later learned through another resident's daughter that the facility, Savannah Grand, had made it mandatory for all residents to get the experimental Covid-19 Vaccine and that the first dose was given on January 25. Richard's older brother, who is their mother's medical decision maker, informed Richard that Savannah Grand contacted him and asked about giving his mother the experimental Covid-19 Vaccine and he told them not to. They administered the experimental Covid-19 Vaccine anyway.

111. Richard took pictures on his mom's birthday and was disturbed at her sad face, and the way she was holding her right arm and the heavy bruising on her neck in the lymph node area. His Mom was paralyzed on her left side from a stroke 20 years ago. She had some movement, but she always used her right hand to do everything. Looking at the pictures taken on her birthday Richard noticed she was not using her right hand and that it was tightened up almost closed. She was clearly in pain from getting the shot on her right side. She was trying to hold on to a cup cake with her index finger on her left side, the side that she had little movement on.

112. Richard's mother had a bit of Alzheimer's, so he believes she did not know what was going on when they gave her the Vaccine. She certainly could not have given informed consent. But she was in pain and bruised heavily on the right side, which Richard did not discover until after she died when he began to examine his pictures of her. His mom was administered a second dose of the Vaccine on February 22, 2021,



according to another resident's daughter. Richard and his brother, their mom's guardian, were never told that their mother received the Vaccine, on either the first or second dosage. Richard next visited his mother on February 1 or 2, and again on February 7. He spent a few hours with her on the February 7, and it was clear to Richard that she was not the same person anymore.

113. On March 1, Richard's brother called him around 6:00 PM and told him that their mother was almost dead. Stunned, Richard rushed to the home where their mother was in bed near death. Curiously, however, her heart rate was normal. They stayed with their mother until 9:00 PM that night on Monday and were told she would not make it until Tuesday.

114. Richard could not understand how this happened to her so quickly. His mother had no underlying medical problems with internal organs and her heart was beating fine but she was laying there dehydrated and unable not talk. Nevertheless, his mother was never taken to the hospital. She did survive that night and Richard spent most of the day Tuesday, March 2 sitting beside her bed holding her hand. The staff had already written up a death certificate. She died on March 5. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was known to this Plaintiff prior to his mother sustaining Vaccine injury, and none was supplied by the Defendants or as a result of their efforts.

115. ESTATE OF DOVI SANDERS KENNEDY, is represented by its Administrator Richard Kennedy. The allegations of the preceding paragraph are incorporated herein by reference. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was



known to this Plaintiff prior to sustaining Vaccine injury, and none was supplied by the Defendants or as a result of their efforts.

116. LYLE BLOOM, of Huntsville, Alabama, is the father of two children ages 10 and 16, and the father of one young adult aged 21. Lyle has researched the Vaccines and fiercely opposes their use in healthy children of any age. Lyle recently watched the podcast interview where Robert F. Kennedy Jr. interviewed the mother of a young man named Everest Romney. Everest was a healthy top-level athlete from Utah. Everest took the Vaccine, followed by his father and his pregnant mother, who each took a Vaccine the same day. One took the Pfizer Vaccine and the other took the Moderna Vaccine. Everest and his father were hospitalized within days with blood clots on their brain. Lyle is afraid of what will happen to his own children if the Vaccine experiments are not stopped immediately.

117. Lyle knows that his own children are placed at immediate and irreparable risk of harm by the extension of the Vaccine EUAs to adolescents. Lyle is well aware that there are safe and effective alternative treatments readily available, and he adamantly opposes the suppression of those treatments in favor of experimental and potentially life-threatening agents. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

118. JULIE BLOOM, of Huntsville, Alabama, is the wife of Lyle Bloom and the mother of their two children ages 10 and 16, and the mother of their young adult aged 21. The allegations of the preceding paragraph are incorporated by reference. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of



the information about alternatives, was supplied by the Defendants or as a result of their efforts.

119. ANDREA MCFARLANE, RN, of Huntsville, Alabama, currently works as a trauma/ICU nurse at Vanderbilt. She is the mother of 4 children, 10, 12, 14 and 16. As a nurse Andrea has seen tremendous pressure placed on staff to get the experimental COVID-19 Vaccines. Even medical staff that have had COVID-19 are pressured relentlessly to take the experimental Vaccines. It is well known among the staff that taking the experimental Vaccines will leave you sick for days, and they accommodate for the expected sick reactions in their staffing plans. Andrea is also in school and as a student she is pressured and incentivized to get vaccinated. As a mother, Andrea knows only too well the tremendous pressure her boys will be under to get vaccinated. They will be under social and school pressure and Andrea deeply fears for their safety. She has studied the Vaccines. She knows that they are experimental and that they have proven harmful in many cases. She knows that her children are not at risk from COVID-19 and believes it should be illegal and that it is immoral to give an experimental and untested Vaccine to children who are not at risk. She believes that if the relief sought herein is not granted, not only will her children be at grave risk of irreparable harm, but she will be subjected to pressure in her profession to comply with an immoral policy. The AMA, through an updated ethics opinion, has already opined that medical institutions will likely have an obligation to require that their staff get injected with the Vaccines. When this happens, Andrea will be unable to work because she will not follow a policy that she believes is immoral. None of the adverse information that this Plaintiff has discovered



about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

120. JENNIFER GREENSLADE, of Remlap, Alabama, has an autoimmune disorder for which she takes medicine on a daily basis. She has researched the Vaccines and is aware that to take them would be to inject herself with an unknown agent that is largely unstudied, but which carries risk to anyone with an autoimmune disease. She fears deeply for her own health and the health of her children, ages 9 and 12. The type of disease she has can be hereditary and nobody knows how it might interact with her children's health, whereas COVID-19 itself poses no risk of death to her children whatsoever.

121. Jennifer has two cousins who did allow themselves to be injected with the Vaccines. They were both healthy prior to the injection. They became extremely ill after being injected and spent weeks on the brink of death in the ICU. They are now out of the ICU but neither of them can walk and they require care from their children. This type of Vaccine related injury constitutes irreparable harm. Her cousins were in good health and now they are unable to walk even though they survived the initial onslaught of the vaccine related sickness. Jennifer's health is not strong and her children may have inherited her autoimmune disorder. If they are pressured or mandated to take the Vaccine and experience reactions similar to Jennifer's cousins' reactions, she and her children might not survive. For a mother of two small children, it is a stark and terrifying concern to think that they may be killed or paralyzed or that she may be rendered unable to care for them or worse. None of the adverse information that this Plaintiff has discovered



about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

122. STEVEN M. ROTH, MD, of Alabama, has been a practicing emergency medicine physician for 13 years. As part of his practice, Dr. Roth sees patients of all ages. He is aware of the risks and benefits of these investigational agents as well as the current vaccine schedule for other diseases. Based on the most recent numbers from the CDC from May 5, 2021, anyone under the age of 18 has statistically no risk of dying of Covid-19.

123. Dr. Roth has not seen a COVID-19 patient in many months, but he is currently seeing many patients come to the emergency department as post-COVID-19 Vaccine patients. All of said patients came in with COVID-19 like symptoms that occurred within 48 hours of the Vaccine. All said patients required hospital admission. Several of said patients progressed to death, caused by the Vaccine.

124. Dr. Roth's concern is that based upon what he is seeing in the community, and because of the schools asking that students take the experimental COVID-19 Vaccines and putting obstacles around those who do not take it, young people are being pressured to take an experimental Vaccine, and many are succumbing to that pressure. This is deeply disturbing to Dr. Roth, because it is universally known that children statistically do not die from COVID-19 and given that children have a very strong immune system, they are more likely than adults to have an over-reaction to the Vaccine. This means that there is not only no benefit, but also an increased risk for children who receive the Vaccine. Also, with all prior viruses and vaccines, it has been accepted in the medical community that natural immunity is superior to vaccination, and there is no basis



to believe that would be different with SARS-CoV-2. Because of these factors, it is not preferable to give the Vaccine even if it was definitely safe, which these are not.

125. In addition, Dr. Roth is extraordinarily concerned that there have been no animal studies, nor long-term studies, of the COVID-19 Vaccines, especially since prior coronavirus vaccines all caused death in the animals subjected to them.

126. Dr. Roth is aware of many thousands of physicians who agree with him, but who are under great pressure to say nothing. Dr. Roth has chosen to speak out now, at great personal cost to himself, because the alternative is unbearable. Dr. Roth could not live with himself if he stood by and allowed these experimental Vaccines to be inflicted upon children universally, resulting in death and destruction over the years. He considers it immoral and unconscionable that this experimental therapy will be given to children. Not only are children not at risk of death from COVID-19, but they are also not mini-adults. Their organs are still forming, and they are even more vulnerable than adults to developing auto-immune disease in this situation.

127. Dr. Roth would be deeply and directly affected by a change in FDA guidelines regarding Vaccines for young people, and as a result he is imploring this Court to grant the relief requested herein, and to prevent the use of these Vaccines in children. In addition to the direct threat of irreparable harm posed to Dr. Roth's young patients, an additional unwelcome consequence of using coercion to mandate or pressure the participation of healthy young people who are statistically at no risk, is the risk of sharply reducing the public trust in all vaccines. This would also create what can only be described as irreparable harm to the public generally. None of the adverse information



that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

128. MATT SCHWEDER, of Lexington, Kentucky, is the father of one minor daughter, age 15, and an adult son, age 25. Matt's son is in the Advanced Nurse Practitioner Program at Vanderbilt University. Matt's daughter is an active student and plays soccer for her high school. Matt has, until recently, coached girls select soccer for a number of years and he is very aware of the extraordinary power of peer pressure in the life of young adolescents. Matt's daughter is subjected to a barrage of peer pressure regarding vaccinating, which is a constant source of conversation for her friends, who have been taught to fear that which should hold no fear.

129. In addition, her school system bombards her with weekly emails, pressuring and shaming her and her family into allowing themselves to be experimented on with the experimental Vaccines. The pressure is so intense that one of Matt's daughter's friends was forced to take the Vaccine by his own mother, against his will, at the age of 16, and Matt's daughter had to undergo the trauma of knowing that her friend had become part of this dangerous human experiment even though he was adamantly opposed to doing so. Matt has conducted his own research into COVID-19, and he is well aware that children under the age of 18 have a 0% chance statistically of dying from COVID-19. Matt knows that safe and effective treatments for COVID-19 are available and he fiercely opposes the suppression of these treatments in favor of using untested and potentially life-threatening agents against children who are not at risk. As a father, Matt has witnessed the growing concern his son has, that his school or potential employer might decide to make the experimental agents mandatory, which would put his education



to waste. None of the adverse information that this Plaintiff has discovered about the Vaccines, and none of the information about alternatives, was supplied by the Defendants or as a result of their efforts.

Defendants

130. Defendants are federal agencies, sub-agencies and federal officials.

131. Defendant XAVIER BECERRA (“Secretary Becerra”) is the current Secretary of Defendant the U.S. Department of Health and Human Services. He is being sued in his official and personal capacities.

132. Defendant DR. ANTHONY FAUCI (“Dr. Fauci”) is the current Director of Defendant National Institute of Allergies and Infectious Diseases, a federal sub-agency of the Department of Health and Human Services. He is being sued in his official and personal capacities.

133. Defendant DR. JANET WOODCOCK (“Dr. Woodcock”) is the current Acting Commissioner of the Food and Drug Administration, a federal sub-agency of the Department of Health and Human Services. She is being sued in her official and personal capacities.

134. Defendant U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (“DHHS”) is a federal agency.

135. Defendant FOOD AND DRUG ADMINISTRATION (“FDA”) is a federal sub-agency of DHHS.

136. Defendant CENTER FOR DISEASE CONTROL AND PREVENTION (“CDC”) is a federal sub-agency of DHHS.



137. Defendant NATIONAL INSTITUTE OF HEALTH (“NIH”) is a federal sub-agency of DHHS.

138. Defendant NATIONAL INSTITUTE OF ALLERGIES AND INFECTIOUS DISEASES (“NIAID”) is a federal sub-agency of DHHS.

139. JOHN AND JANE DOES I - V, are as yet unknown agencies and individuals who violated the law and harmed Plaintiffs.

140. The Defendants have coordinated, collaborated, planned and conspired, each with the others, and aided and abetted, the unlawful actions described herein.

### **III. JURISDICTION, VENUE, STANDING**

141. This Court exercises subject matter jurisdiction under 28 U.S.C. § 1331, which confers original jurisdiction on federal district courts to hear suits arising under the laws and Constitution of the United States.

142. This Court also exercises subject matter jurisdiction in accordance with 28 U.S.C. § 1361, which grants to district courts original jurisdiction “of any action to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” Defendants owe a duty to Plaintiffs to comply faithfully with § 360bbb-3 and 45 CFR Part 46, the provisions of which are intended to protect them.

143. This Court has the authority to the requested declaratory relief under 28 U.S.C. § 2201, and the requested injunctive relief under 28 U.S.C. § 1343(a).

144. This Court is the appropriate venue for this litigation pursuant to 28 U.S.C. § 1391(e)(1) since the Defendants are officers or employees of the United States acting in an official capacity or under color of legal authority, and agencies of the United States, at least one Plaintiff resides in this District, and real property is not involved.



145. The Administrative Procedures Act (“APA”) provides: “A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of the relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702. Further:

*[t]he reviewing court shall -*

*(2) hold unlawful and set aside agency action, findings, and conclusions found to be -*

*(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;*

*(B) contrary to constitutional right, power, privilege, or immunity;*

*(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right*

5 U.S.C. § 706.

146. Plaintiffs satisfy the “case-or-controversy” requirement of Article III of the Constitution and have standing to sue because they:

*[have] suffered an “injury in fact” that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.*

Sproule v. United States FDA, 2018 U.S. Dist. LEXIS 62507 at \*7 (S.D.Fl. 2018)

(quoting Fla. Wildlife Fed’n, Inc. v. S. Fla. Water Mgmt. Dist., 647 F.3d 1296, 1302

(11th Cir. 2011)).

#### **IV. STATEMENT OF FACTS**

##### **A. The Emergency Use Authorization Framework**

Basis for DHHS Secretary’s Declaration of Emergency



147. § 360bbb–3(b) authorizes the DHHS Secretary to declare a “public health emergency” justifying the emergency use of unapproved medical products, in relevant part as follows (emphasis added):

*(b) Declaration of emergency or threat justifying emergency authorized use*

*(1) In General. The Secretary may make a declaration that the circumstances exist justifying the authorization under this subsection for a product on the basis of—*

*[ ]*

*(C) a determination by the Secretary that there is a public health emergency, or a significant potential for a public health emergency, **that affects, or has a significant potential to affect, national security** or the health and security of United States citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents;*

148. The DHHS Secretary declared a “public health emergency” pursuant to § 360bbb–3(b)(1)(C) on February 4, 2020, after making the relevant finding. Plaintiffs contend and the facts set forth below demonstrate that the finding was made in error, without any real justification, since there is no bona fide underlying public health emergency, and as such the EUAs for the Vaccines are unlawful.

Criteria for Issuance of Emergency Use Authorization

149. Once the DHHS Secretary has declared a public health emergency, § 360bbb–3(c) authorizes him to issue EUAs “only if” certain criteria are met, in relevant part as follows (emphasis added):

*(c) Criteria for issuance of authorization. The Secretary may issue an authorization under this section with respect to the emergency use of a product **only if**, [ ] the Secretary concludes -*

*(1) that an agent referred to in a declaration under subsection (b) can cause **a serious or life threatening disease or condition**,*

*(2) that, based on the totality of scientific evidence available to the Secretary, including **data from adequate and well-controlled clinical trials**, if available, **it is reasonable to believe that—***



(A) *the product may be effective in diagnosing, treating, or preventing—*

(i) *such disease or condition; or*

(ii) *a serious or life-threatening disease or condition caused by a product authorized under this section, approved or cleared under this chapter, or licensed under section 351 of the Public Health Service Act [42 U.S.C. 262], for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and*

(B) *the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under subsection (b)(1)(D), if applicable;*

(3) *that there is **no adequate, approved, and available alternative** to the product for diagnosing, preventing, or treating such disease or condition;*

150. Plaintiffs contend and the facts set forth below demonstrate that the Secretary has not met and cannot meet the criteria for issuing EUAs for the Vaccines.

#### Conditions of Authorization

151. Once an EUA has been issued, § 360bbb–3(e) obligates the Secretary to establish such conditions on an authorization as are necessary to ensure that both healthcare professionals and consumers receive certain minimum required information, in relevant part as follows (emphasis added):

(e) *Conditions of authorization*

(1) *Unapproved Product*

(A) **Required** conditions. *With respect to the emergency use of an unapproved product, the Secretary [ ] shall [ ] establish [ ]:*

(i) *Appropriate conditions **designed to ensure** that health care professionals administering the product are informed -*

(I) *that the Secretary has authorized the **emergency use** of the product;*

(II) *of the **significant known and potential benefits and risks** of the emergency use of*



*the product, and of the extent to which such benefits and risks are known; and*  
*(III) of the **alternatives** to the product that are available, and of their benefits and risks.*  
(ii) *Appropriate conditions designed to ensure that individuals to whom the product is administered are informed -*  
*(I) that the Secretary has authorized the **emergency use** of the product;*  
*(II) of the **significant known and potential benefits and risks** of the emergency use of the product, and of the extent to which such benefits and risks are known; and*  
*(III) of the **option to accept or refuse** administration of the product, of the consequences, if any, of refusing administration of the product, and of the **alternatives** to the product that are available, and of their benefits and risks.*  
(iii) *Appropriate conditions for the **monitoring and reporting of adverse events** associated with the emergency use of the product.*

152. Plaintiffs contend and the facts set forth below demonstrate that the Secretary has failed to satisfy the conditions for authorization, because he has not ensured that healthcare professionals and Vaccine subjects are properly informed.

#### **B. The Vaccine EUAs are Unlawful - There is No Underlying Emergency**

153. In approximately January of 2020, the media began creating and circulating news stories that seemed designed to generate panic, regarding a new and deadly disease that could kill us all. This was odd given that the estimated fatality rate at the time was between 2-4%. By contrast, tuberculosis has a fatality rate of approximately 10%, the original SARS virus had a fatality rate of approximately 9%, and the MERS virus had a fatality rate of approximately 30% - all had similar rates of spread.

154. The actual COVID-19 statistics present a vastly different picture than the one painted by the media - a fatality rate of 0.2% globally, which drops to 0.03% for



persons under age 70, which is comparable to the yearly flu. Further, statistically, the fatality risk is limited to the elderly population. The Defendants' own data published through publicly accessible government portals<sup>7</sup> establishes that there is no public health emergency due to SARS-CoV-2 and COVID-19:

| United States Totals              |                                                                                                                              |
|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| COVID-19<br>Emergency Room Visits | 1.2% are due to COVID-19<br>(In 26 states, COVID-19 accounts for less than 1% of ER visits. The highest percentage is 3.1%). |
| COVID-19<br>Inpatients            | 4% of all inpatients are due to COVID-19                                                                                     |
| COVID-19<br>ICU Patients          | 9% of all ICU are due to COVID-19                                                                                            |
| COVID-19<br>Hospitalizations      | 15 per 100,000 or less in 46 states, and 20 per 100,000 or less in 49 states                                                 |
| COVID-19 "Cases"                  | 9 per 100,000 per day                                                                                                        |

155. The actual COVID-19 fatality numbers are vastly lower than those reported. On March 24, 2020, the DHHS changed the rules applicable to coroners and others responsible for producing death certificates and making "cause of death" determinations - **exclusively for COVID-19**. The rule change states that "COVID-19 should be reported on the death certificate for all decedents where the disease caused *or is assumed to have caused or contributed* to death." Many doctors have attested that permitting such imprecision on a legal document (death certificate) has never happened before in modern medicine. This results in reporting of deaths as caused by COVID-19, even when in fact deaths were imminent and inevitable for other pre-existing reasons and caused by co-morbidities. In other words, people dying **with** COVID-9 are being reported as dying **from** COVID-19. DHHS statistics are now showing that 95% of

<sup>7</sup> See, e.g., <https://healthdata.gov> and <https://healthdata.gov/Health/COVID-19-Community-Profile-Report/gqxm-d9w9>



deaths classed as “COVID-19 deaths” involve an average of four additional co-morbidities.

156. Substantial government subsidies paid for reported COVID-19 deaths undoubtedly fuel this misattribution of the cause of death. Former CDC Director Robert Redfield acknowledged this perverse financial incentive in sworn Congressional testimony on COVID-19: “I think you’re correct in that we’ve seen this in other disease processes too, really in the HIV epidemic, somebody may have a heart attack, but also have HIV – the hospital would prefer the classification for HIV because there’s greater reimbursement.”

157. Dr. Genevieve Briand of John Hopkins University published a study demonstrating that the overall death rate in the United States has remained the same, despite the deaths attributed to COVID-19. Dr. Briand analyzed federal CDC data for 2018 and 2020 and found that nationwide deaths from causes other than COVID-19, decreased by the same amount that COVID-19 deaths increased, raising the presumption that deaths from these other causes have been characterized as COVID-19 deaths. There are no excess deaths due to COVID-19.

158. Similarly, the actual number of COVID-19 “cases” is far lower than the reported number. The signs, symptoms and other diagnostic criteria for COVID-19 are laughably broad. Applying the criteria, countless ailments can be classed as COVID-19, especially the common cold or ordinary seasonal flu. Compounding the problem, the DHHS authorized the use of the polymerase chain reaction (“PCR”) test as a diagnostic tool for COVID-19, with disastrous consequences. The PCR tests are themselves experimental products, authorized by the FDA under separate EUAs. Test manufacturers



use disclaimers like this in their product manuals: “[t]he FDA has not determined that the test is safe or effective for the detection of SARS-Co-V-2.”

159. A PCR test can only test for the presence of a fragment of the RNA of the SARS-CoV-2 virus, and literally, by itself, cannot be used to diagnose the COVID-19 disease. The RNA fragment detected may not be intact and may be dead, in which case it cannot cause the disease COVID-19. This is analogous to finding a car part, but not a whole car that can be driven. Manufacturer inserts furnished with PCR test products include disclaimers stating that the PCR tests should NOT be used to diagnose COVID-19. This is consistent with the warning issued by the Nobel Prize winning inventor of the PCR test that such tests are not appropriate for diagnosing disease.

160. Further, the way in which the PCR tests are administered guaranties an unacceptably high number of false positive results. Cycle Threshold Value (“CT value”) is essentially the number of times that a sample (usually from a nasal swab) is magnified or amplified before a fragment of viral RNA is detected. The CT Value is exponential, and so a 40-cycle threshold means that the sample is magnified around a trillion times. The higher the CT Value, the less likely the detected fragment of viral RNA is intact, alive and infectious.

161. Virtually all scientists, including Dr. Fauci, agree that any PCR test run at a CT value of 35-cycles or greater is useless. Dr. Fauci has stated:

*What is now evolving into a bit of a standard is that if you get a cycle threshold of 35 or more that the chances of it being replication competent are miniscule... We have patients, and it is very frustrating for the patients as well as for the physicians... somebody comes in and they repeat their PCR and it's like 37 cycle threshold... you can almost never culture virus from a 37 threshold cycle. So I think if somebody does come in with 37, 38, even 36, you gotta say, you know, it's dead nucleotides, period.” In other words, it is not a COVID-19 infection.*



A study funded by the French government showed that even at 35-cycles, the false positivity rate is as high as 97%. Despite this, a majority of the PCR tests for COVID-19 deployed under EUAs in the United States are run at cycles seemingly guaranteed to produce false positive results. Under the EUAs issued by the FDA, there is no flexibility to depart from the manufacturer's instructions and change the way in which the test is administered or interpreted. The chart below shows that all major PCR tests in use in the United States are run at cycles of 35 or higher.

| <b>Manufacturer</b>                                                 | <b>Manufacturer's Recommended Cycle Threshold</b> |
|---------------------------------------------------------------------|---------------------------------------------------|
| Xiamen Zeesan SARS-CoV-2 Test Kit (Real-time PCR)                   | 45 cycles                                         |
| Opti Sars CoV-2 RT-PCR Test                                         | 45 cycles                                         |
| Quest SARS-CoV-2rRT-PCR Test                                        | 40 cycles                                         |
| CDC 2019-Novel Coronavirus Real Time (RT-PCR Diagnostic Panel) Test | 40 cycles                                         |
| Wren Labs COVID-19 PCR Test                                         | 38 cycles                                         |
| LabCorp COVID-19 RT-PCR Test                                        | 35 cycles                                         |

162. There is, however, one GLARING exception to this standard. THE CDC HAS STATED THAT ONCE A PERSON HAS BEEN VACCINATED, AND THEN AFTER VACCINATION THAT PERSON TESTS POSITIVE FOR COVID-19 USING A PCR TEST, THE CDC WILL ONLY "COUNT" THE POSITIVE RESULT AT 28 CYCLES OR LESS! Why the difference? More recently, the CDC has announced it will no longer compile and report data showing the total number of vaccinated who subsequently contract COVID-19: "[We are] transitioning to reporting only patients with COVID-19 vaccine breakthrough infection that were hospitalized or died to help



maximize the quality of the data collected.”<sup>8</sup> There appears to be an agenda to protect the myths about the vaccine, rather than to protect the public.

163. The Defendants and their counterparts in state governments used the specter of “asymptomatic spread” - the notion that fundamentally healthy people could cause COVID-19 in others - to justify the purported emergency. But there is *no credible scientific evidence* that demonstrates that the phenomenon of “asymptomatic spread” is real. On the contrary, on June 7, 2020, Dr. Maria Von Kerkhov, head of the WHO’s Emerging Diseases and Zoonosis Unit, told a press conference that from the known research, asymptomatic spread was “very rare.” “From the data we have, it still seems to be rare that an asymptomatic person actually transmits onward to a secondary individual.” She added for emphasis: “it’s very rare.” Researchers from Southern Medical University in Guangzhou, China, published a study in August 2020 concluding that asymptomatic transmission of COVID-19 is *almost non-existent*. “Asymptomatic cases were least likely to infect their close contacts,” the researchers found. A more recent study involving nearly 10 million residents of Wuhan, China found that there were no - zero - positive COVID-19 tests amongst 1,174 *close contacts* of asymptomatic cases, *indicating the complete absence of asymptomatic transmission*.

164. On September 9, 2020, Dr. Fauci was forced to admit in an official press conference:

*[E]ven if there is some asymptomatic transmission, in all the history of respiratory borne viruses of any type, asymptomatic transmission has never been the driver of outbreaks. The driver of outbreaks is always a symptomatic person, even if there is a rare asymptomatic person that might transmit, an epidemic is not driven by asymptomatic carriers.*

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<sup>8</sup> <https://www.cdc.gov/vaccines/covid-19/health-departments/breakthrough-cases.html>



165. Ultimately, there is simply no objective evidence to support the Secretary's finding - the necessary legal predicate for unleashing dangerous experimental medical interventions on the American public - that a true public health emergency exists. On a national level, Plaintiffs are unaware of any inter-country requests for aid, or legitimately overwhelmed community health resources or hospitals. The Cambridge dictionary defines the word "emergency" to mean "something dangerous or serious, such as an accident, that happens suddenly or unexpectedly and needs fast action in order to avoid harmful results." COVID-19 has been with us for well over a year, and we know far more about the disease than we did at the outset. Most importantly, we can identify with precision the discrete age segment of the population that is at potential risk. In particular, children under 18 statistically have a zero percent chance of death from COVID-19. If there is no emergency, then the EUAs should be invalidated entirely.

**C. The Vaccine EUAs are Unlawful - The Vaccines are Not Effective in Diagnosing, Treating or Preventing SARS-CoV-2 or COVID-19**

166. Some countries with the highest rates of Vaccine injection are facing a surge of COVID-19 deaths and infections. Uruguay endured the highest COVID-19 death rate in the world per capita for weeks, even though it had one of the world's most successful vaccination drives. Other highly vaccinated countries like Bahrain, Maldives, Chile and Seychelles, experienced the same surge.

167. CDC data shows that deaths and hospitalizations for COVID-19 infection have tripled among those who have already received the full recommended dosage of the Vaccines in the United States in the past month. Deaths from COVID-19 in those who have received the recommended dosages of the Vaccines increased from 160 as of April 30, 2021 to 535 as of June 1, 2021.



168. CDC data shows that a total of 10,262 SARS-CoV-2 “breakthrough infections” of those who have already received the full recommended dosage of the Vaccines were reported to the CDC from 46 states and territories between January 1, 2021 and April 30, 2021. Meanwhile, a study published by the renowned Cleveland Clinic in Ohio indicates that natural immunity acquired through prior infection with COVID-19 is stronger than any benefit conferred by a Vaccine, rendering vaccination unnecessary for those previously infected.

169. In studying the effectiveness of a medical intervention in randomized controlled trials (often called the gold standard of study design), the most useful way to present results is in terms of Absolute Risk Reduction (“ARR”). ARR compares the impact of treatment by comparing the outcomes of the treated group and the untreated group. In other words, if 20 out of 100 untreated individuals had a negative outcome, and 10 out of 100 treated individuals had a negative outcome, the ARR would be 10% ( $20 - 10 = 10$ ). **According to a study published by the NIH, the ARR for the Pfizer Vaccine is a mere 0.7%, and the ARR for the Moderna Vaccine is only 1.1%.**

170. From the ARR, one can calculate the Number Needed to Vaccinate (“NNV”), which signifies the number of people that must be injected before even one person benefits from the vaccine. The NVV for the Pfizer Vaccine is 119, meaning that 119 people must be injected in order to observe the reduction of a COVID-19 case in one person. The reputed journal the *Lancet* reports data indicating that the NVV may be as high as 217. The NVV to avoid hospitalization exceeds 4,000. The NVV to avoid death exceeds 25,000.



171. There are several factors that reduce any purported benefit of the COVID-19 Vaccines. First, it is important to note that the Vaccines were only shown to reduce symptoms – not block transmission. For over a year now, these Defendants and state-level public health authorities have told the American public that SARS-CoV-2 can be spread by people who have none of the symptoms of COVID-19, therefore Americans must mask themselves, and submit to innumerable lockdowns and restrictions, even though they are not manifestly sick. If that is the case, and these officials were not lying to the public, and asymptomatic spread is real, then what is the benefit of a vaccine that merely reduces symptoms? There isn't any.

172. Secondly, it appears that these Defendants either did lie about asymptomatic spread or were simply wrong about the science. The theory of asymptomatic transmission - used as the justification for the lockdown and masking of the healthy - was based *solely* upon mathematical modeling. This theory had no actual study participants, and no peer review. The authors made the unfounded assumption that asymptomatic persons were “75% as infectious” as symptomatic persons. But in the real world, healthy false positives turned out to be merely healthy, and were never shown to be “asymptomatic” carriers of anything. Studies have shown that PCR test-positive asymptomatic individuals do not induce clinical COVID-19 disease, not even in a family member with whom they share a home and extended proximity. An enormous study of nearly ten million people in Wuhan, China showed that asymptomatic individuals testing positive for COVID-19 **never** infected others. Since asymptomatic individuals do not spread COVID-19, they do not need to be vaccinated.

**D. The Vaccine EUAs are Unlawful - The Known and Potential Risks of the Vaccines Outweigh the Known and Potential Benefits**



The “Pfizer-BioNTech COVID-19 Vaccine” and the “Moderna COVID-19 Vaccine” are Novel Gene Therapy Technology, Not Vaccines

173. The CDC defines a “vaccine” as: “A product that stimulates a person’s immune system to produce immunity to a specific disease, protecting the person from that disease. Vaccines are usually administered through needle injections but can also be administered by mouth or sprayed into the nose.”<sup>9</sup> The CDC defines “immunity” as: “Protection from an infectious disease. If you are immune to a disease, you can be exposed to it without becoming infected.”<sup>10</sup>

174. However, the “Pfizer-BioNTech COVID-19 Vaccine” and the “Moderna COVID-19 Vaccine” do not meet the CDC’s own definitions. They do not stimulate the body to produce immunity from a disease. They are a synthetic fragment of nucleic acid embedded in a fat carrier that is introduced into human cells, not for the purpose of inducing immunity from infection with the SARS-CoV-2 virus, and not to block further transmission of the virus, but in order to lessen the symptoms of COVID-19. No published, peer-reviewed studies prove that the “Pfizer-BioNTech COVID-19 Vaccine” and the “Moderna COVID-19 Vaccine” confer immunity or stop transmission.

175. Further, the “Pfizer-BioNTech COVID-19 Vaccine” and the “Moderna COVID-19 Vaccine” are not “vaccines” within the common, lay understanding of the public. Since vaccines were first discovered in 1796 by Dr. Edward Jenner, who used cowpox to inoculate humans against smallpox, and called the process “vaccination” (from the Latin term *vaca* for cow), the public has had an entrenched understanding that a vaccine is a microorganism, either alive but weakened, or dead, that is introduced into the

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<sup>9</sup> <https://www.cdc.gov/vaccines/vac-gen/imz-basics.htm>. Retrieved 4/9/2021 at 11:00 AM

<sup>10</sup> <https://www.cdc.gov/vaccines/vac-gen/imz-basics.htm>. Retrieved 4/9/2021 at 11:00 AM



human body in order to trigger the production of antibodies that confer immunity from the targeted disease, and also prevent its transmission to others. The public are accustomed to these traditional vaccines and understand them.

176. The public are fundamentally uninformed about the gene therapy technology behind the “Pfizer-BioNTech COVID-19 Vaccine” and the “Moderna COVID-19 Vaccine.” No dead or attenuated virus is used. Rather, instructions, via a piece of genetic code (“mRNA”) are injected into your body that tell your body how to make a certain “spike protein” that is purportedly useful in attacking the SARS-CoV-2 virus.

177. By referring to the “Pfizer-BioNTech COVID-19 Vaccine” and the “Moderna COVID-19 Vaccine” as “vaccines,” and by allowing others to do the same, the Defendants knowingly seduce and mislead the public, short-circuit independent, critical evaluation and decision-making by the consumers of these products, and vitiate their informed consent. Meanwhile, this novel technology is being deployed in the unsuspecting human population for the first time in history.

#### Inadequate Testing

178. The typical vaccine development process takes between 10 and 15 years and consists of the following sequential stages - research and discovery (2 to 10 years), pre-clinical animal studies (1 to 5 years), clinical human trials in four phases (typically 5 years). Phase 1 of the clinical human trials consists of healthy individuals and is focused on safety. Phase 2 consists of additional safety and dose-ranging in healthy volunteers, with the addition of a control group. Phase 3 evaluates efficacy, safety and immune response in a larger volunteer group, and requires two sequential randomized controlled



trials. Phase 4 is a larger scale investigation into longer-term safety. Vaccine developers must follow this process in order to be able to generate the data the FDA needs in order to assess the safety and effectiveness of a vaccine candidate.

179. This 10–15-year testing process has been abandoned for purposes of the Vaccines. The first human-to-human transmission of the SARS-CoV-2 virus was not confirmed until January 20, 2020, and less than a year later both mRNA Vaccines had EUAs and for the first time in history this novel mRNA technology was being injected into millions of human beings. As of June 7, 2021, 138 million Americans, representing 42% of the population, have been fully vaccinated.

180. All of the stages of testing have been compressed in time, abbreviated in substance, and are overlapping, which dramatically increases the risks of the Vaccines. Plaintiffs' investigation indicates that Moderna and Pfizer designed their Vaccines in only two days. It appears that pharmaceutical companies did not independently verify the genome sequence that China released on January 11, 2020. It appears that the Vaccines were studied for only 56 days in macaques, and 28 days in mice, and then animal studies were halted. It appears that the pharmaceutical companies discarded their control groups receiving placebos, squandering the opportunity to learn about the rate of long-term complications, how long protection against the disease lasts and how well the Vaccines inhibit transmission. A number of studies were deemed unnecessary and not performed prior to administration in human subjects, including single dose toxicity, toxicokinetic, genotoxicity, carcinogenicity, prenatal and postnatal development, offspring, local tolerance, teratogenic and postnatal toxicity and fertility. The American public has not



been properly informed of these dramatic departures from the standard testing process, and the risks they generate.

181. AFLDS medico-legal researchers have analyzed the accumulated COVID-19 Vaccine risk data, and report as follows:

Migration of the SARS-CoV-2 “Spike Protein” in the Body

182. The SARS-CoV-2 has a spike protein on its surface. The spike protein is what allows the virus to infect other bodies. It is clear that the spike protein is not a simple, passive structure. The spike protein is a “pathogenic protein” and a toxin that causes damage. The spike protein is itself biologically active, even without the virus. It is “fusogenic” and consequently binds more tightly to our cells, causing harm. If the purified spike protein is injected into the blood of research animals, it causes profound damage to their cardiovascular system, and crosses the blood-brain barrier to cause neurological damage. If the Vaccines were like traditional *bona fide* vaccines, and did not leave the immediate site of vaccination, typically the shoulder muscle, beyond the local draining lymph node, then the damage that the spike protein could cause might be limited.

183. However, the Vaccines were authorized without any studies demonstrating where the spike proteins traveled in the body following vaccination, how long they remain active and what effect they have. A group of international scientists has recently obtained the “biodistribution study” for the mRNA Vaccines from Japanese regulators. The study reveals that unlike traditional vaccines, this spike protein enters the bloodstream and circulates throughout the body over several days post-vaccination. It accumulates in a number of tissues, such as the spleen, bone marrow, liver, adrenal



glands and ovaries. It fuses with receptors on our blood platelets, and also with cells lining our blood vessels. It can cause platelets to clump leading to clotting, bleeding and heart inflammation. It can also cross the blood-brain barrier and cause brain damage. It can be transferred to infants through breast milk. The VAERS system includes reports of infants suckling from vaccinated mothers experiencing bleeding disorders in the gastrointestinal tract.

184. These risks have not been adequately studied in trials, or properly disclosed to healthcare professionals or Vaccine subjects.

#### Increased Risk of Death from Vaccines

185. The government operated VAERS database is intended to function as an “early warning” system for potential health risks caused by vaccines. It is broadcasting a red alert. Of the 262,000 total accumulated reports in VAERS, only 1772 are not related to COVID-19. The database indicates that the total reported vaccine deaths in the first quarter of 2021 represents a 12,000% to 25,000% increase in vaccine deaths, year-on-year. In ten years (2009-2019) there were 1529 vaccine deaths, whereas in the first quarter of 2021 there have been over 4,000. Further, 99% of all reported vaccine deaths in 2021 are caused by the COVID-19 Vaccines, only 1% being caused by the numerous other vaccines reported in the system. It is estimated that VAERS only captures 1% to 10% of all vaccine adverse events.

186. These risks have not been adequately studied in trials, or properly disclosed to healthcare professionals or Vaccine subjects.

#### Reproductive Health



187. The mRNA Vaccines induce our cells to manufacture (virus-free) “spike proteins.” The “spike proteins” are in the same family as the naturally occurring syncytin-1 and syncytin-2 reproductive proteins in sperm, ova and placenta. Antibodies raised against the spike protein might interact with the naturally occurring syncytin proteins, adversely affecting multiple steps in human reproduction. The manufacturers did not provide data on this subject despite knowing about the spike protein’s similarity to syncytin proteins for more than one year. There are now a remarkably high number of pregnancy losses in VAERS, and worldwide reports of irregular vaginal bleeding without clear explanation. Scientists are concerned that the Vaccines pose a substantial risk to a woman’s reproductive system. This increased risk of sterility stems from an increased concentration of the spike proteins in various parts of the reproductive system after vaccination. Not enough is known to determine the risk of sterility, but it is beyond question that the risk is increased.

188. Since Plaintiffs filed their Motion for Temporary Restraining Order in this case, new evidence has emerged that further confirms the risk. A leaked Pfizer document (below) exposes that Pfizer Vaccine nanoparticles accumulate in the ovaries at an extraordinarily high rate, in concentrations orders of magnitude higher than in other tissues. Billions of aggressive spike proteins are accumulating in very delicate ovarian tissues, the one place in the human body where females carry a finite number of fertile eggs.



SARS-CoV-2 mRNA Vaccine (BNT162, PF-07302048)  
2.6.5 薬物動態試験の概要表

**2.6.5.5B. PHARMACOKINETICS: ORGAN**  
**DISTRIBUTION CONTINUED**

Test Article: [REDACTED]

| Sample                          | Total Lipid concentration (µg lipid equivalent/g [or mL])<br>(males and females combined) |       |       |       |       |       |       | %     |
|---------------------------------|-------------------------------------------------------------------------------------------|-------|-------|-------|-------|-------|-------|-------|
|                                 | 0.25 h                                                                                    | 1 h   | 2 h   | 4 h   | 8 h   | 24 h  | 48 h  |       |
| Lymph node (mandibular)         | 0.064                                                                                     | 0.189 | 0.290 | 0.408 | 0.534 | 0.554 | 0.727 | --    |
| Lymph node (mesenteric)         | 0.050                                                                                     | 0.146 | 0.530 | 0.489 | 0.689 | 0.985 | 1.37  | --    |
| Muscle                          | 0.021                                                                                     | 0.061 | 0.084 | 0.103 | 0.096 | 0.095 | 0.192 | --    |
| Ovaries (females)               | 0.104                                                                                     | 1.34  | 1.64  | 2.34  | 3.09  | 5.24  | 12.3  | 0.001 |
| Pancreas                        | 0.081                                                                                     | 0.207 | 0.414 | 0.380 | 0.294 | 0.358 | 0.599 | 0.003 |
| Pituitary gland                 | 0.339                                                                                     | 0.645 | 0.868 | 0.854 | 0.405 | 0.478 | 0.694 | 0.000 |
| Prostate (males)                | 0.061                                                                                     | 0.091 | 0.128 | 0.157 | 0.150 | 0.183 | 0.170 | 0.001 |
| Salivary glands                 | 0.084                                                                                     | 0.193 | 0.255 | 0.220 | 0.135 | 0.170 | 0.264 | 0.003 |
| Skin                            | 0.013                                                                                     | 0.208 | 0.159 | 0.145 | 0.119 | 0.157 | 0.253 | --    |
| Small intestine                 | 0.030                                                                                     | 0.221 | 0.476 | 0.879 | 1.28  | 1.30  | 1.47  | 0.024 |
| Spinal cord                     | 0.043                                                                                     | 0.097 | 0.169 | 0.250 | 0.106 | 0.085 | 0.112 | 0.001 |
| Spleen                          | 0.334                                                                                     | 2.47  | 7.73  | 10.3  | 22.1  | 20.1  | 23.4  | 0.013 |
| Stomach                         | 0.017                                                                                     | 0.065 | 0.115 | 0.144 | 0.268 | 0.152 | 0.215 | 0.006 |
| Testes (males)                  | 0.031                                                                                     | 0.042 | 0.079 | 0.129 | 0.146 | 0.304 | 0.320 | 0.007 |
| Thymus                          | 0.088                                                                                     | 0.243 | 0.340 | 0.335 | 0.196 | 0.207 | 0.331 | 0.004 |
| Thyroid                         | 0.155                                                                                     | 0.536 | 0.842 | 0.851 | 0.544 | 0.578 | 1.00  | 0.000 |
| Uterus (females)                | 0.043                                                                                     | 0.203 | 0.305 | 0.140 | 0.287 | 0.289 | 0.456 | 0.002 |
| Whole blood                     | 1.97                                                                                      | 4.37  | 5.40  | 3.05  | 1.31  | 0.909 | 0.420 | --    |
| Plasma                          | 3.97                                                                                      | 8.13  | 8.90  | 6.50  | 2.36  | 1.78  | 0.805 | --    |
| Blood:Plasma ratio <sup>a</sup> | 0.815                                                                                     | 0.515 | 0.550 | 0.510 | 0.555 | 0.530 | 0.540 | --    |

PFIZER CONFIDENTIAL

Page 7

189. Each baby girl is born with the total number of eggs she will ever have in her entire life. Those eggs are stored in the ovaries, and one egg is released each month of a normal menstrual cycle. When there are no more eggs, a woman stops menstruating. The reproductive system is arguably the most delicate hormonal and organ balance of all our systems. The slightest deviation in any direction and infertility results. Even in 2021, doctors and scientists do not know all the variables that cause infertility.

190. There is evidence to support that the vaccine could cause permanent autoimmune rejection of the placenta. Placental inflammation resulting in stillbirths mid-pregnancy (second trimester) is seen with COVID-19 and with other similar coronaviruses. There is a case report of a woman with a normally developing pregnancy



who lost the otherwise healthy baby at five months during acute COVID-19. The mother's side of the placenta was very inflamed. This "infection of the maternal side of the placenta inducing acute or chronic placental insufficiency resulting in miscarriage or fetal growth restriction was observed in 40% of pregnant women with similar coronaviruses." The mRNA Vaccines may instigate a similar reaction as the SARS-CoV-2 virus. There is a component in the vaccine that could cause the same autoimmune rejection of the placenta, but indefinitely. Getting COVID-19 has been associated with a high risk of mid mid-pregnancy miscarriage because the placenta fails. The mRNA Vaccines may have precisely the same effect, however, not for just the few weeks of being sick, but forever. Repeated pregnancies would keep failing - mid-pregnancy.

191. On December 1, 2020, a former Pfizer Vice President and allergy and respiratory researcher, Dr. Michael Yeadon, filed an application with the European Medicines Agency, responsible for approving drugs in the European Union, seeking the immediate suspension of all SARS-CoV-2 Vaccines, citing *inter alia* the risk to pregnancies. As of April 26, 2021, the VAERS database contains over 3,000 reports of failed pregnancies associated with the Vaccines.

192. These risks have not been adequately studied in trials, or properly disclosed to healthcare professionals or Vaccine subjects.

#### Vascular Disease

193. Salk Institute for Biological Studies researchers in collaboration with the University of San Diego, published in the journal *Circulation Research* that the spike proteins themselves damage vascular cells, causing strokes and many other vascular problems. All the vaccines are causing clotting disorders (coagulopathy) in all ages. The



spike proteins are known to cause clotting that the body cannot fix, such as brain thrombosis and thrombocytopenia.

194. These risks have not been adequately studied in trials, or properly disclosed to healthcare professionals or Vaccine subjects.

#### Autoimmune Disease

195. The spike proteins are perceived to be foreign by the human immune system, initiating an immune response to fight them. While that is the intended therapeutic principle, it is also the case that any cell expressing spike proteins becomes a target for destruction by our own immune system. This is an autoimmune disorder and can affect virtually any organ in the body. It is likely that some proportion of spike protein will become permanently fused to long-lived human proteins and this will prime the body for prolonged autoimmune diseases. Autoimmune diseases can take years to show symptoms and many scientists are alarmed at giving young people such a trigger for possible autoimmune disease.

196. These risks have not been adequately studied in trials, or properly disclosed to healthcare professionals or Vaccine subjects.

#### Neurological Damage

197. The brain is completely unique in structure and function, and therefore it requires an environment that is insulated against the rest of the body's functioning. The blood-brain-barrier exists so the brain can function without disruption from the rest of the body. This is a complex, multi-layered system, using several mechanisms that keeps nearly all bodily functions away from the brain. Three such systems include: very tight junctions between the cells lining the blood vessels, very specific proteins that go



between, and unique enzymes that alter substances that do go through the cells. Working together, the blood-brain-barrier prevents almost everything from getting in. Breaching it is generally incompatible with life.

198. Most unfortunately, the COVID-19 Vaccines - unlike any other vaccine ever deployed - are able to breach this barrier through various routes, including through the nerve structure in the nasal passages and through the blood vessel walls. The resulting damage begins in the arterial wall, extends to the supporting tissue outside the arteries in the brain, and from there to the actual brain nerve cells inside. The Vaccines are programmed to produce the S1 subunit of the spike protein in every cell in every Vaccine recipient, but it is this subunit that causes the brain damage and neurologic symptoms. Elderly persons are at increased risk for this brain damage.

199. COVID-19 patients typically have neurological symptoms including headache and loss of smell and taste, as well as brain fog, impaired consciousness, and stroke. Researchers have published a paper in the *Journal of Neurological Sciences* correlating the severity of the pulmonary distress in COVID-19 with viral spread to the brain stem, suggesting direct brain damage, not just a secondary cytokine effect. It has been shown recently by Dr. William Banks, professor of Internal Medicine at University of Washington School of Medicine, that the S1 subunit of the spike protein - the part of the SARS-CoV-2 virus that produces the COVID-19 disease and is in the Vaccines - can cross the blood brain barrier. This is even more concerning, given the high number of ACE2 receptors in the brain (the ACE2 receptor is that portion of the cell that allows the spike protein to connect to human tissue). Mice injected with the S1 subunit of the spike protein developed direct damage to the perivascular tissue. In humans, viral spike protein



was detected in the brain tissues of COVID-19 patients, but not in the brain tissues of the controls. Spike protein produces endothelial damage.

200. There are an excessive number of brain hemorrhages associated with COVID-19, and the mechanism suggests that it is the spike protein that is responsible. The federal government's VAERS database shows a dramatic increase in adverse event reporting of neurological damage following injection with the Vaccine.

| Year | <b>Dementia</b><br>(Reports following injection<br>with Vaccine) | <b>Brain Bleeding</b><br>(Reports following injection<br>with Vaccine) |
|------|------------------------------------------------------------------|------------------------------------------------------------------------|
| 2000 | 4                                                                | 7                                                                      |
| 2010 | 0                                                                | 17                                                                     |
| 2015 | 0                                                                | 17                                                                     |
| 2018 | 21                                                               | 31                                                                     |
| 2019 | 11                                                               | 17                                                                     |
| 2020 | 12 → (43)                                                        | 4 → (11)                                                               |
| 2021 | 17 → (251)                                                       | 0 → (258)                                                              |

201. While the full impact of these Vaccines crossing the blood-brain barrier is unknown, they clearly put vaccinated individuals at a substantially increased risk of hemorrhage, neurological damage, and brain damage as demonstrated by the increased instances of such reporting in the VAERS system.

202. These risks have not been adequately studied in trials, or properly disclosed to healthcare professionals or Vaccine subjects.

#### Effect on the Young

203. The Vaccines are more deadly or harmful to the young than the virus, and that is excluding the unknown future effects on fertility, clotting, and autoimmune disease. Those under the age of 18 face statistically zero chance of death from SARS-CoV-2 according to data published by the CDC, but there are reports of heart



inflammation - both myocarditis (inflammation of the heart muscle) and pericarditis (inflammation of the lining outside the heart) - in young men, and at least one documented fatal heart attack of a healthy 15-year-old boy in Colorado two days after receiving the Pfizer Vaccine. The CDC has admitted that “[s]ince April 2021, increased cases of myocarditis and pericarditis have been reported in the United States after the mRNA COVID-19 vaccination (Pfizer-BioNTech and Moderna), particularly in adolescents and young adults.”

204. The Vaccines induce the cells of the recipient to manufacture trillions of spike proteins for an undetermined amount of time with the pathology described above, whereas naturally occurring COVID-19 comes and goes. The spike protein is the same. The increased risk comes from reprogramming the cells to permanently create the spike protein at potentially high levels. Because immune responses in the young and healthy are more vigorous than those in the old, paradoxically, the vaccines may thereby induce, in the very people least in need of assistance, a very strong immune response, including those which can damage their own cells and tissues, including by stimulating blood coagulation.

205. These risks have not been adequately studied in trials, or properly disclosed to healthcare professionals or Vaccine subjects.

#### Chronic Disease

206. Healthy children whose birthright is decades of healthy life will instead face premature death or decades of chronic disease. We cannot say what percentage will be affected with antibody dependent enhancement, neurological disorders, autoimmune disease and reproductive problems, but it is a virtual certainty that this will occur.



207. These risks have not been adequately studied in trials, or properly disclosed to healthcare professionals or Vaccine subjects.

Antibody Dependent Enhancement

208. Antibody Dependent Enhancement (“ADE”) occurs when SARS-CoV-2 antibodies, created by a Vaccine, instead of protecting the vaccinated person, cause a more severe or lethal case of the COVID-19 disease when the person is later exposed to SARS-CoV-2 in the wild. The Vaccine *amplifies* the infection rather than *preventing* damage. It may only be seen after months or years of use in populations around the world.

209. This paradoxical reaction has been seen in other vaccines and animal trials. One well-documented example is with the Dengue fever vaccine, which resulted in avoidable deaths. Dengue fever has caused 100-400 million infections, 500,000 hospitalizations, and a 2.5% fatality rate annually worldwide. It is a leading cause of death in children in Asian and Latin American countries. Despite over 50 years of active research, a Dengue vaccine still has not gained widespread approval in large part due to the phenomenon of ADE. Vaccine manufacturer Sanofi Pharmaceutical spent 20 years and nearly \$2 billion to develop the Dengue vaccine and published their results in the *New England Journal of Medicine*, which was quickly endorsed by the World Health Organization. Vigilant scientists clearly warned about the danger from ADE, which the Philippines ignored when it administered the vaccine to hundreds of thousands of children in 2016. Later, when these children were exposed in the wild, many became severely ill and 600 children died. The former head of the Dengue department of the Research Institute for Tropical Medicine (RITM) was indicted in 2019 by the Philippines



Department of Justice for “reckless imprudence resulting [in] homicide,” because he “facilitated, with undue haste,” Dengvaxia’s approval and its rollout among Philippine schoolchildren.

210. ADE has been observed in the coronavirus setting. The original SARS-CoV-1 caused an epidemic in 2003. This virus is a coronavirus that is reported to be 78% similar to the current SARS-CoV-2 virus which causes the disease COVID-19. Scientists attempted to create a vaccine. Of approximately 35 vaccine candidates, the best four were trialed in ferrets. The vaccines appeared to work in the ferrets. However, when those vaccinated ferrets were challenged by SARS-CoV-1 in the wild, they became extremely ill and died due to what we would term a sudden severe cytokine storm. The reputed journals *Science*, *Nature* and *Journal of Infectious Diseases* have all documented ADE risks in relation to the development of experimental COVID-19 vaccines. The application filed by Dr. Yeadon with the European Medicines Agency on December 1, 2020 also cites to the risk from ADE. ADE is discovered during long-term animal studies, to which the Vaccines have not been subjected.

211. These risks have not been adequately studied in trials, or properly disclosed to healthcare professionals or Vaccine subjects.

#### Vaccine-Driven Disease Enhancement in the Previously Infected

212. Scientists have noted an immediately higher death rate worldwide upon receiving a Vaccine. This is generally attributed to persons having recently been infected with COVID-19. The FDA states that many persons receiving a Vaccine have COVID-19. A person who previously had SARS-CoV-2, and then receives a Vaccine, mounts an antibody response to the Vaccine that is between 10 and 20 times stronger than the



response of a previously uninfected person. The antibody response is far too strong and overwhelms the Vaccine subject. With a typical vaccine, the body trains itself how to respond to a disease because of exposure to a dead or weakened version of the pathogen. The Vaccines by contrast actually reprogram the body and, in doing so, can escalate the individual's response to levels that place them at risk. Medical studies show severe Vaccine side effects in persons previously infected with COVID-19. Groups of scientists are demanding improved pre-assessment due to vaccine-driven disease enhancement in the previously infected.

213. These risks have not been adequately studied in trials, or properly disclosed to healthcare professionals or Vaccine subjects.

#### More Virulent Strains

214. Scientists are concerned that universal inoculation may create more virulent strains. This has been observed with Marek's Disease in chickens. A large number of chickens not at risk of death were vaccinated, and now all chickens must be vaccinated or they will die from a virus that was nonlethal prior to widespread vaccination. The current policy to pursue universal vaccination regardless of risk may exert the same evolutionary pressure toward more highly virulent strains.

215. These risks have not been adequately studied in trials, or properly disclosed to healthcare professionals or Vaccine subjects.

#### Blood Supply

216. Presently, the vaccinated are permitted to donate their spike protein laden blood into the blood supply, which projects all of the risks discussed *supra* onto the general population of unvaccinated blood donees.



217. Scientists and healthcare professionals all over the world are sounding the alarm and frantically appealing to the FDA to halt the vaccines. They have made innumerable public statements. 57 top scientists and doctors from Central and South America are calling for an immediate end to all vaccine COVID-19 programs. Other physician-scientist groups have made similar calls, among them: Canadian Physicians, Israeli People's Committee, Frontline COVID-19 Critical Care Alliance, World Doctors Alliance, Doctors 4 Covid Ethics, and Plaintiff America's Frontline Doctors. These are healthcare professionals in the field who are seeing the catastrophic and deadly results of the rushed vaccines, and reputed professors of science and medicine, including the physician with the greatest number of COVID-19 scientific citations worldwide. They accuse the government of deviating from long-standing policy to protect the public. In the past, government has halted vaccine trials based on a tiny fraction – far less than 1% - of the number of unexplained deaths already recorded. The scientists all agree that the spike protein (produced by the vaccines) *causes disease even without the virus*, which has motivated them to lend their imprimatur to, and risk their reputation and standing on, these public objections.

218. Notwithstanding all of these risks and uncertainties, the federal government is orchestrating a nationwide media campaign, funded with \$1 billion, to promote the Vaccines. The President has lent his voice to the campaign: “The bottom line is this: I promise you they are safe. They are safe. And even more importantly, they are extremely effective. If you are vaccinated, you are protected.”

**E. The Vaccine EUAs are Unlawful - There are Adequate, Approved and Available Alternatives**



219. Despite the misinformation being disseminated in the press – and, at times, by the Defendants – there are numerous alternative safe and effective treatments for COVID-19.

220. These alternatives are supported by over 300 studies, including randomized controlled studies. Tens of thousands of physicians have publicly attested, and many have testified under oath, as to the safety and efficacy of the alternatives. Globally and in the United States, treatments such as Ivermectin, Budesonide, Dexamethasone, convalescent plasma and monoclonal antibodies, Vitamin D, Zinc, Azithromycin, Hydroxychloroquine, Colchicine and Remdesivir are being used to great effect, and they are safer than the COVID-19 Vaccines.<sup>11</sup>

221. Doctors from the Smith Center for Infectious Diseases and Urban Health and the Saint Barnabas Medical Center have published an *Observational Study on 255 Mechanically Ventilated COVID Patients at the Beginning of the USA Pandemic*, which states: “Causal modeling establishes that weight-adjusted HCQ [Hydroxychloroquine] and AZM [Azithromycin] therapy improves survival by over 100%.”

222. Observational studies in Delhi and Mexico City show dramatic reductions in COVID-19 case and death counts following the mass distribution of Ivermectin. These results align with those of a study in Argentina, in which 800 healthcare professionals received Ivermectin, while another 400 did not. Of the 800, not a single person contracted COVID-19, while more than half of the control group did contract it. Dr. Pierre Kory, a lung specialist who has treated more COVID-19 patients than most doctors, representing a group of some of the most highly published physicians in the world, with over 2,000

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<sup>11</sup> Numerous studies can be reviewed here: <https://c19early.com> (last visited June 7, 2021).



peer reviewed publications among them, testified before the U.S. Senate in December 2020. He testified that based on 9 months of review of scientific data from 30 studies, Ivermectin obliterates transmission of the SARS-CoV-2 virus and is a powerful prophylactic (if you take it, you will not contract COVID-19). Four large randomized controlled trials totaling over 1500 patients demonstrate that Ivermectin is safe and effective as a prophylactic. In early outpatient treatment, three randomized controlled trials and multiple observational studies show that Ivermectin reduces the need for hospitalization and death in statistically significant numbers. In inpatient treatment, four randomized controlled trials show that Ivermectin prevents death in a statistically significant, large magnitude. Ivermectin won the Nobel Prize in Medicine in 2015 for its impacts on global health.

223. Inexplicably, the Defendants never formed or assigned a task force to research and review existing alternatives for preventing and treating COVID-19. Instead, the Defendants and others set about censoring both concerns about the Vaccines, and information about safe and effective alternatives.

**F. The Vaccine EUAs are Unlawful - Information is Being Suppressed, and Healthcare Professionals and Vaccine Subjects are Not Properly Informed**

224. The Associated Press, Agence France Press, British Broadcasting Corporation, CBC/Radio-Canada, European Broadcasting Union (EBU), Facebook, Financial Times, First Draft, Google/YouTube, The Hindu Times, Microsoft, Reuters, Reuters Institute for the Study of Journalism, Twitter, The Washington Post and The New York Times all participate in the “Trusted News Initiative” which has agreed to not allow any news critical of the Vaccines.



225. Individual physicians are being censored on social media platforms (e.g., Twitter, Facebook, Instagram, TikTok), the modern day “public square.” Plaintiff AFLDS has recorded innumerable instances of social media deleting scientific content posted by AFLDS members that runs counter to the prevailing Vaccine narrative, and then banning them from the platform altogether as users. Facebook has blocked the streaming of entire events at which AFLDS Founder Dr. Simone Gold has been an invited guest, prior to her uttering a word. Other doctors have been banned for posting or tweeting screenshots of government database VAERS. YouTube censored the testimony of undersigned counsel Thomas Renz, Esq. before the Ohio legislature.

226. The censorship also extends to medical journals. In an unprecedented move, the four founding topic editors for the *Frontiers in Pharmacology* journal all resigned together due to their collective inability to publish peer reviewed scientific data on various drugs for prophylaxis and treatment of COVID-19.

227. Dr. Philippe Douste-Blazy, a cardiology physician, former France Health Minister, 2017 candidate for Director of the WHO and former Under-Secretary-General of the United Nations, described the censorship in chilling detail:

*The Lancet* boss said “Now we are not going to be able to, basically, if this continues, publish any more clinical research data, because the pharmaceutical companies are so financially powerful today and are able to use such methodologies, as to have us accept papers which are apparently, methodologically perfect but in reality, which manage to conclude what they want to conclude.” ... one of the greatest subjects never anyone could have believed ... I have been doing research for 20 years in my life. I never thought the boss of *The Lancet* could say that. And the boss of the *New England Journal of Medicine* too. He even said it was “criminal” - the word was used by him. That is, if you will, when there is an outbreak like the COVID-19, in reality, there are people ... us, we see “mortality” when you are a doctor or yourself, you see “suffering.” And there are people who see “dollars” - that’s it.



228. In many instances, highly publicized attacks on early treatment alternatives seem to be done in bad faith. For example, one study on Hydroxychloroquine overdosed study participants by administering a multiple of the standard prescribed dose, and then reported the resulting deaths as though they were not a result of the overdose. The 27 physician-scientist authors of the study were civilly indicted and criminally investigated, and still the Journal of the American Medical Association has not retracted the article.

**G. The Vaccine EUAs are Unlawful - Inadequate System for Monitoring and Reporting Vaccine Adverse Events**

229. VAERS was established in 1986 in order to facilitate public access to information regarding adverse events potentially caused by vaccines. Uniquely for COVID-19, the CDC has developed a parallel system called “V-Safe.” V-Safe is an app on a smart phone which people can use to report adverse events. Plaintiffs’ investigation indicates that vaccine subjects who are provided with written information are given the V-Safe contact information. Plaintiffs cannot access V-Safe data, since it is controlled exclusively by the CDC. Plaintiffs are concerned that the information in V-Safe exceeds that in VAERS, in terms of volume and kind, defying Congressional intent in creating VAERS.

**H. Non-Consensual Human Experimentation and Informed Consent**

Customary International Law Ban on Non-Consensual Human Experimentation

230. Customary international law applies directly to the United States and its agencies and instrumentalities. It is well established that customary international law includes a norm that prohibits non-consensual human medical experimentation. Abdullahi v. Pfizer, 562 F.3d 163, 174-188 (2nd Cir. 2009).



231. In August 1947, an International Military Tribunal (“IMT”) sitting in Nuremberg, Germany convicted 15 Nazi doctors for crimes against humanity for conducting medical experiments without the consent of their subjects. “Among the nonconsensual experiments that the tribunal cited as a basis for their convictions were **the testing of drugs for immunization against malaria, epidemic jaundice, typhus, smallpox and cholera.**” *Id.* at 178 (quoting United States v. Brandt, 2 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, 181-182 (1949) (emphasis added)). The Nuremberg Code was created as part of the IMT’s judgment, and it helps to define the contours of the customary international law norm. Its first Principle is that “[t]he **voluntary consent of the human subject is absolutely essential.**” *Id.* at 179 (emphasis added). The Code elaborates on the Principle as follows:

*This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision.*

232. The Nuremberg Code contains other principles relevant here, for example that “[t]he experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random or unnecessary” (Principle 2), and “[t]he experiment should be [ ] designed and based on the results of animal experimentation” (Principle 3), and “[t]he degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem” (Principle 6).



233. The Nuremberg Code has been adopted and amplified by numerous international declarations and agreements, including the World Medical Association's Declaration of Helsinki, the guidelines authored by the Council for International Organizations of Medical Services, Art. 7 of the International Covenant on Civil and Political Rights, the International Covenant on Human Rights, the Universal Declaration on Bioethics and Human Rights, and others.

234. "The history of the norm in United States law demonstrates it has been firmly embedded for more than 45 years and [ ] its validity has never been seriously questioned by any court." *Id.* at 182.

Federal Regulations and the Requirement of Voluntary, Informed Consent

235. Federal Regulations relating to the protection and informed consent of human subjects further implement aspects of this norm and are binding legal obligations. In 1979, the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research issued the Belmont Report, which addressed the issue of informed consent in human experimentation. The Report identified respect for self-determination by "autonomous persons" as the first of three "basic ethical principles" which "demands that subjects enter into the research voluntarily and with adequate information." Ultimately, the principles of the Belmont Report, which itself was guided by the Nuremberg Code and the Declaration of Helsinki, were adopted by the DHHS and FDA in their regulations requiring the informed consent of human subjects in medical research.

236. 45 CFR § 46.401 *et seq.*, applies to "all research involving children as subjects, conducted or supported by [DHHS]." § 46.405 states:



*HHS will conduct or fund research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that holds out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is likely to contribute to the subject's well-being, only if the IRB finds that:*

*(a) The risk is justified by the anticipated benefit to the subjects;*

*(b) The relation of the anticipated benefit to the risk is at least as favorable to the subjects as that presented by available alternative approaches; and*

*(c) Adequate provisions are made for soliciting the assent of the children and permission of their parents or guardians, as set forth in § 46.408.*

U.S. Public Health Authorities' Involvement in Unlawful Human Experimentation

237. It is entirely reasonable to posit that the U.S. public health establishment would in fact design, fund, supervise and implement a non-consensual human medical experiment involving the Vaccines, in conjunction with private sector actors, given its historical track record. On October 1, 2010, President Obama apologized to the Guatemalan government and people for a program of non-consensual human experimentation that had been funded and approved by the U.S. Public Health Service ("PHS") and implemented on the ground by a PHS doctor employed for this purpose by private institutions but reporting to supervisors including PHS doctors. The evidence was suppressed and remained buried until discovered by a private researcher in 2010. A presidential commission investigated and found that in fact thousands of Guatemalans, including orphans, insane asylum patients, prisoners and military conscripts, had been intentionally exposed to syphilis, gonorrhea and other pathogens in furtherance of experiments on the use of penicillin as a prophylaxis.



238. On May 16, 1997, President Clinton apologized to the African American community for the so-called “Tuskegee Study of Untreated Syphilis in the Negro Male”, a non-consensual human medical experiment funded, organized and implemented by the PHS, again with important private sector participation. This was the longest non-therapeutic, non-consensual experiment on human beings in the history of public health, run by the PHS, spanning 40 years from 1932 until its exposure by a whistleblower in 1972. The purpose of the study was to observe the effects of untreated syphilis in black men and their family members. There are numerous other examples, too many for inclusion here.

Targeting Children Who Are Intrinsically Unable to Consent

239. Within days of the FDA extending the Pfizer EUA to children ages 12 to 15, local governments commenced hastily passing laws eliminating the requirement for parental consent, and even parental knowledge, of medical treatments administered to children as young as 12. This is intended to pave the way for children to receive the Vaccines at school, without parental knowledge or consent.

240. However, children in the 12 to 18 age group are not developmentally capable of giving voluntary, informed consent to the Vaccines. Their brains are rapidly changing and developing, and their actions are guided more by the emotional and reactive amygdala and less by the thoughtful, logical frontal cortex. Hormonal and body changes add to their emotional instability and erratic judgment. Children also have a well-known and scientifically studied vulnerability to pressure from peers and adults. This age group is particularly susceptible to pressure to do what others see as the right thing to do - in this case, to be injected with the Vaccine “for the sake of other people and society.”



241. That the American population, and children in particular, are being used as experimental test subjects (guinea pigs) in medical experimentation using the Vaccines is undeniable. The Texas State Senate heard sworn testimony on May 6, 2021 from Dr. Angelina Farella, a pediatrician who has given tens of thousands of vaccinations in her office. She testified:

Dr. Farella: “I have given tens of thousands of vaccinations in my career. I am very pro-vax actually except when it comes to this covid vaccine ... We are currently allowing children 16, 17 years old to get this vaccine, and they were never studied in this trial... Never before in history have we given medications that were not FDA approved to people who were not initially studied in the trial. There were no trial patients under the age of 18... They’re extrapolating the data from adults down to children and adolescents. This is not acceptable. Children are not little adults. ... Children have 99.997% survivability from the Covid. Let me repeat that for you all to understand: 99.997%.”

Senator Hall: “Has there been another vaccine that had the high incidents of serious hospitalizations and deaths that this vaccine is now showing?”

Dr. Farella: “Not to this extent. Not even close.”

Sen. Hall: “Any other vaccine would have been pulled from the market?”

Dr. Farella: “Absolutely.”

Sen. Hall: “Have you seen any other vaccine that was put out for the public that skipped the animal tests?”

Dr. Farella: “Never before. Especially for children.”

Sen. Hall: “...Folks I think that’s important to understand here, that what we’re talking about is the American people ... **this is the test program.**”

#### Self-Disseminating Vaccines



242. The phenomenon of “self-disseminating vaccines” adds a new dimension to the problem of the lack of informed consent. These vaccines spread automatically from the vaccinated to the unvaccinated, without the knowledge or consent of the unvaccinated. They are not a science fiction concept, rather they have been a research subject for years if not decades.

243. Page 67 of the Pfizer EUA application describes the possibility of **the passive “vaccination” of the unvaccinated through proximity to the vaccinated**, including inhalation or skin contact. Pursuant to the referenced document, each person getting the Pfizer Vaccine had to consent to the possibility of exposing pregnant women through inhalation or skin contact (note that pharmaceutical companies can only disclose actual, not purely speculative, risks). According to the document, an “exposure during pregnancy” event that must be reported to Pfizer within 24 hours occurs if:

*A male participant who is receiving or has discontinued study intervention exposes a female partner prior to or around the time of conception.  
A female is found to be pregnant while being exposed or having been exposed to study intervention due to environmental exposure. Below are examples of environmental exposure during pregnancy:*

*A female family member or healthcare provider reports that she is pregnant after having been exposed to the study intervention by inhalation or skin contact.*

Further, an “exposure during breastfeeding” event occurs if “[a] female participant is found to be breastfeeding while receiving or after discontinuing study intervention.”

244. There are worldwide reports of irregular and often very heavy vaginal bleeding in the unvaccinated who are near those who have been injected with the Vaccines, even in post-menopausal women. These public reports are scrubbed from the Internet rapidly, however Plaintiff AFLDS has also received innumerable emails from



around the world with the same reports. It is well documented that the vaccinated have excessive bleeding and clotting disorders including vaginal bleeding, miscarriages, gastrointestinal bleeding and immune thrombocytopenia.

#### Psychological Manipulation

245. The idea of using fear to manipulate the public is not new, and is a strategy frequently deployed in public health. In June, 2020, three American public health professionals, concerned about the psychological effects of the continued use of fear-based appeals to the public in order to motivate compliance with extreme COVID-19 countermeasures, authored a piece for the journal *Health Education and Behavior* calling for an end to the fearmongering. In doing so, they acknowledged that fear has become an accepted public health strategy, and that it is being deployed aggressively in the United States in response to COVID-19:

“... behavior change can result by increasing people’s perceived severity and perceived susceptibility of a health issue through heightened risk appraisal coupled by raising their self-efficacy and response-efficacy about a behavioral solution. In this model, fear is used as the trigger to increase perceived susceptibility and severity.”

246. In 1956, Dr. Alfred Biderman, a research social psychologist employed by the U.S. Air Force, published his study on techniques employed by communist captors to induce individual compliance from Air Force prisoners of war during the Korean War. The study was at the time and to some extent remains the core source for capture resistance training for the armed forces. The chart below compares the techniques used by North Korean communists with the fear-based messaging and COVID-19 countermeasures to which the American population has been subjected over the last year.



| <b>"COMMUNIST COERCIVE METHODS FOR ELICITING INDIVIDUAL COMPLIANCE".*</b><br><b>The Biderman Report of 1956 and COVID-19</b>                                                                                                                                                         |                                                                                                                                                                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Chart of Coercion</b>                                                                                                                                                                                                                                                             | <b>COVID-19</b>                                                                                                                                                                                                                                                                                               |
| <b>Isolation</b> <ul style="list-style-type: none"> <li>• Deprives individual of social support of his ability to resist</li> <li>• Makes individual dependent upon the captor</li> <li>• Individual develops an intense concern with self.</li> </ul>                               | <b>Isolation</b> <ul style="list-style-type: none"> <li>• Social distancing</li> <li>• Isolation from loved ones, massive job loss</li> <li>• Solitary confinement semi-isolation</li> <li>• Quarantines, containment camps</li> </ul>                                                                        |
| <b>Monopolization of Perception</b> <ul style="list-style-type: none"> <li>• Fixes all attention upon immediate predicament;</li> <li>• Frustrates all actions not consistent with compliance</li> <li>• Eliminates stimuli competing with those controlled by the captor</li> </ul> | <b>Monopolization of perception</b> <ul style="list-style-type: none"> <li>• Restrict movement</li> <li>• Create monotony, boredom</li> <li>• Prevent gathering, meetings, concerts, sports</li> <li>• Dominate all media the 24/7, censor information</li> </ul>                                             |
| <b>Induced Debility and Exhaustion</b> <ul style="list-style-type: none"> <li>• Weakens mental and physical ability to resist</li> <li>• People ...become worn out by tension and fear</li> </ul>                                                                                    | <b>Induced debility</b> <ul style="list-style-type: none"> <li>• Forced to stay at home, all media is negative</li> <li>• not permitted to exercise or socialize</li> </ul>                                                                                                                                   |
| <b>Threats</b> <ul style="list-style-type: none"> <li>• Cultivates anxiety and despair</li> <li>• Gives demands and consequences for non compliance</li> </ul>                                                                                                                       | <b>Threats and Intimidation</b> <ul style="list-style-type: none"> <li>• Threaten to close business, levy fines</li> <li>• Predict extension of quarantine, force vaccines</li> <li>• Create containment camps</li> </ul>                                                                                     |
| <b>Occasional Indulgences</b> <ul style="list-style-type: none"> <li>• Provides motivation for compliance</li> <li>• Hinders adjustment to deprivation.</li> <li>• Creates hope for change, reduces resistance</li> <li>• This keeps people unsure of what is happening.</li> </ul>  | <b>Occasional Indulgences</b> <ul style="list-style-type: none"> <li>• Allow reopening of some stores, services</li> <li>• Let restaurants open but only at a certain capacity</li> <li>• Increase more people allowed to gather</li> <li>• Follow concessions with tougher rules</li> </ul>                  |
| <b>Demonstrate Omnipotence</b> <ul style="list-style-type: none"> <li>• Demonstrates futility of resistance</li> <li>• Shows who is in charge</li> <li>• Provides positive motivation for compliance</li> </ul>                                                                      | <b>Demonstrate Omnipotence</b> <ul style="list-style-type: none"> <li>• Shut down entire economies across the world</li> <li>• Create money out of nowhere, force dependency</li> <li>• Develop total surveillance with nanochips and 5G</li> </ul>                                                           |
| <b>Degradation</b> <ul style="list-style-type: none"> <li>• Makes resistance seem worse than compliance</li> <li>• Creates feelings of helplessness.</li> <li>• Creates fear of freedom, dependence upon captors</li> </ul>                                                          | <b>Humiliation or Degradation techniques</b> <ul style="list-style-type: none"> <li>• Shame people who refuse masks, don't distance</li> <li>• Make people stand on circles and between lines</li> <li>• Make people stand outside and wait in queues</li> <li>• Sanitation stations in every shop</li> </ul> |
| <b>Enforcing trivial demands</b> <ul style="list-style-type: none"> <li>• Develops habit of compliance</li> <li>• Demands made are illogical and contradictory</li> <li>• Rules on compliance may change</li> <li>• Reinforces who is in control</li> </ul>                          | <b>Enforcing trivial demands</b> <ul style="list-style-type: none"> <li>• Family members must stand apart</li> <li>• Masks in home and even when having sex</li> <li>• Random limits on people allowed to be together</li> <li>• Sanitizers to be used over and over in a day</li> </ul>                      |

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The Chart of Coercion above is drawn from the Biderman Report on communist brainwashing techniques used by the Chinese and North Koreans on captured American servicemen to make them psychological as well as physical prisoners. Dr. Alfred D. Biderman M.A. and presented his Report at the New York Academy of Medicine Nov 13, 1956. Compare right column with your experience this year.

After a year of sustained psychological manipulation, the population is now weakened, frightened, desperate for a return of their freedoms, prosperity and normal lives, and especially vulnerable to pressure to take the Vaccine. The lockdowns and shutdowns, the myriad rules and regulations, the confusing and self-contradictory controls, the enforced docility, and the consequent demoralization, anxiety and helplessness are typical of authoritarian and totalitarian conditions. This degree of systemic and purposeful coercion means that Americans cannot give truly free and voluntary informed consent to the Vaccines.

247. At the same time, the population is being subjected to an aggressive, coordinated media campaign promoting the Vaccines funded by the federal government



with \$1 billion. The media campaign is reinforced by a system of coercive rewards and penalties designed to induce vaccination. The federal government is offering a range of its own incentives, including free childcare. The Ohio Governor rewarded those Ohio residents accepting the Vaccines by allowing them to enter into the “Vaxamillion” lottery with a total \$5 million prize and the chance to win a fully funded college education, while barring entry for residents who decline the Vaccines. In New York, metro stations offer free passes to those receiving the Vaccine in the station. West Virginia is running a lottery exclusively for the vaccinated with free custom guns, trucks and lifetime hunting and fishing licenses, a free college education, and cash payments of \$1.5 million and \$600,000 as the prizes. Previously, the state offered a \$100 savings bond for each injection with a Vaccine. New Mexican residents accepting the Vaccines will be entered into weekly drawings to take home a \$250,000 prize, and those fully vaccinated by early August could win the grand prize of \$5 million. In Oregon, the vaccinated can win \$1 million, or one of 36 separate \$10,000 prizes through the state’s “Take Your Shot” campaign. Other state and local governments are partnering with fast food chains to offer free pizza, ice cream, hamburgers and other foods to the vaccinated. Many people are desperate following the last year of economic destruction and deprivation of basic freedoms, and they are especially vulnerable to this coercion.

248. The penalties take many forms, among them:

- Using guilt and shame to make unvaccinated children and adults feel badly about themselves for refusing the Vaccines
- Threatening the unvaccinated with false fears and anxieties about COVID-19, especially children who are at no risk statistically
- Removing the rights of those who are unvaccinated:
  - Being prohibited from working
  - Being prohibited from attending school or college



- Being limited in the ability to travel in buses, trains and planes
- Being prohibited from traveling outside the United States
- Being excluded from public and private events, such as performing arts venues.

249. The combined effect of (i) the suppression and censorship of information regarding the risks of the Vaccines, (ii) the failure to inform the public regarding the novel and experimental nature of the mRNA Vaccines, (iii) the suppression and censorship of information regarding alternative treatments, (iv) the failure to inform and properly educate the public that the Vaccines are not in fact “approved” by the FDA, (v) the failure to inform and properly educate the public that the DHHS Secretary has *not* determined that the Vaccines are “safe and effective” and on the contrary has merely determined that “**it is reasonable to believe**” that the Vaccines “**may be effective**” and that the benefits outweigh the risks, (vi) the sustained psychological manipulation of the public through official fear-based messaging regarding COVID-19, draconian countermeasures and a system of rewards and penalties, is to remove any possibility that Vaccine recipients are giving voluntary informed consent to the Vaccines. They are participants in a large scale, ongoing non-consensual human experiment.

## **I. Conflicts-of-Interest**

250. While Plaintiffs make no allegations regarding the legality or illegality of the potential conflicts-of-interest identified herein, they are numerous, now well publicized, and may create an incentive to suppress alternative treatments while promoting and profiting from the experimental COVID-19 Vaccines.

251. NIAID scientists developed the Moderna COVID-19 Vaccine in collaboration with biotechnology company Moderna, Inc. NIAID Director Dr. Fauci referred to the Moderna COVID-19 Vaccine when he said: “Finding a safe and effective



vaccine to prevent infection with SARS-CoV-2 is an urgent public health priority. This Phase 1 study, launched in record speed, is an important first step toward achieving that goal.” NIAID scientists submitted an Employee Invention Report to the NIH Office of Technology Transfer in order to receive a share in the profits from the sale of the Moderna COVID-19 Vaccine. Each inventor stands to receive a personal payment of up to \$150,000 annually from sales of the Moderna COVID-19 Vaccine. NIAID stands to earn millions of dollars in revenue from the sale of the Moderna COVID-19 Vaccine.

252. The NIH Director stated the following in May 2020: “We do have some particular stake in the intellectual property behind Moderna’s coronavirus vaccine.” In fact, NIH and Moderna signed a contract in December 2019 that states “mRNA coronavirus vaccine candidates are developed and jointly owned by the two parties.” Moderna, Inc. is currently valued at \$25 billion despite having no federally approved drugs on the market.

253. The DHHS awarded \$483 million in grants to Moderna, Inc. to accelerate the development of the Moderna COVID-19 Vaccine. Dr. Fauci could have focused on treatments, including treatments he previously advised were beneficial in countering SARS-CoV-1. Instead, Dr. Fauci directed the NIAID, NIH, Congress and the White House to develop the Vaccines, where he has financial and professional ties.

254. Further, on May 11, 2021, Senator Rand Paul asked Dr. Anthony Fauci under oath about the origins of SARS CoV-2 and the NIH and NIAID funding for Gain-of-Function research, and Dr. Fauci stated to the Senator and to all of Congress and to the American people stating that the NIH and NIAID did not fund Gain-of-Function (making viruses more lethal) research when in fact, he provided at least \$60 million funding. The



Defendants obfuscate and profit financially, personally and professionally while the American people suffer.

255. Plaintiffs' investigation has revealed additional conflicts-of-interest among members of the Vaccines and Related Biological Products Advisory Committee ("VRBPAC"), which is an FDA sub-agency that reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products. VRBPAC makes recommendations to the FDA regarding whether or not to grant EUAs. The FDA is not bound to follow the VRBPAC's recommendations, but should VRBPAC advise against approval, especially over safety concerns, it would make it harder for the FDA to move forward.

256. The University of Florida Conflicts of Interest Program and the Project on Government Oversight report that numerous members of the VRBPAC have conflicts-of-interest:

- Dr. Hana el-Sahly, the VRBPAC Chair, was working with Moderna, as one of the three lead investigators for the company's 30,000 person trial of its Vaccine in July 2020. Plaintiffs cannot locate information related to payments made to Dr. el-Sahly by the company.
- The Acting Chair Dr. Arnold Monto received \$54,114 from 2013 to 2019 from vaccine contenders Pfizer, GlaxoSmithKline and Shionogi. He also received \$10,657 from Novartis, which has a contract to manufacture Vaccines. Dr. Monto received a total of \$194,254 from pharmaceutical companies, the largest contributor being Seqirus, a company developing COVID-19 vaccine in Australia.
- In 2019, Dr. Archana Chatterjee received \$23,904 from Pfizer, \$11,738 from Merck and \$11,480 from Sanofi, each of which was racing to develop a COVID-19 vaccine. Since 2013, she has received more than \$200,000 in consulting fees, travel, lodging and other payments from those companies and others working on COVID-19 vaccines. She is also a professor of epidemiology at the University of Michigan, which is partnering with AstraZeneca on a clinical trial of a potential COVID-19 vaccine.



- Dr. Myron Levine is Associate Dean of Global Health, Vaccinology and Infectious Diseases at the University of Maryland School of Medicine, which is participating in a clinical trial of the Moderna COVID-19 Vaccine. Since 2013, Dr. Levine has received general payments of \$41,635 and research funding of \$2.3 million. His 2019 funding was approximately six times the mean of similar physicians. His largest source of funding is from Sanofi Pasteur, which is developing a COVID-19 vaccine.
- Dr. Cody Meissner is the head of all clinical trials for all of Tufts Children's Hospital. Since 2013, Tufts University has been paid \$13.2 million in general payments, and \$34.2 million in research payments, by companies like Pfizer and Janssen.
- Dr. Paul Offit is Director of Vaccine Education Center and an attending physician in the Division of Infectious Diseases at Children's Hospital of Philadelphia. Since 2013, the Hospital has received \$4.6 million in general payments, and \$32 million in research payments, from companies like Pfizer and Novartis.
- Dr. Steven Pergam is Associate Professor, Vaccine and Infectious Disease Division, and Clinical Research Division, Fred Hutchinson Cancer Research Center. Since 2013, Dr. Pergam has received \$4,167 in general payments, and \$140,311 in research funding from companies like Merck, which has been developing a COVID-19 vaccine. He is participating in clinical trials of the Sanofi-Aventis COVID-19 vaccine and has participated in research with Merck.
- Dr. Andrea Shane is professor of pediatrics at Emory University School of Medicine. Since 2013, Emory University Hospital has received \$44.1 million in general payments, and \$170.7 million in research funding, with Pfizer being a primary donor. Since 2013, the Wesley Woods Center of Emory University has received \$41,205 in general payments, and \$3.4 million in research payments, with Janssen being a primary donor.
- Dr. Paul Spearman is Director of the Division of Infectious Diseases at Cincinnati Children's Hospital and a Professor in the Department of Pediatrics at the University of Cincinnati School of Medicine. Dr. Spearman received \$39,459 in research funding from GlaxoSmithKline and AstraZeneca, both of which have developed COVID-19 vaccines. Plaintiffs cannot locate payment data for the years 2016-2019. The University of Cincinnati Medical Center has received \$2.2 million in general payments and \$4.3 million in research



funding since 2013, with Pfizer topping the list of donors. Cincinnati Children's Hospital is a COVID-19 vaccine clinical trial site.

- Dr. Geeta K. Swamy is a Senior Associate Dean in the Department of Obstetrics and Gynecology, and Associate Vice President for Research, Duke University School of Medicine. Duke is a clinical trial site for the Pfizer-BioNTech COVID-19 Vaccine and the AstraZeneca vaccine. Since 2013, Dr. Swamy has received general payments of \$63,000 largely from Pfizer, Sanofi and GlaxoSmithKline, all COVID-19 vaccine manufacturers, and \$206,000 in research funding from GlaxoSmithKline, approximately three times the mean funding of similar physicians. Since 2013, Duke University Hospital has received \$7.6 million in general payments (\$866,000 from Pfizer) and \$40.6 million in research funding (\$2.7 million from Pfizer) from pharmaceutical companies.

## **V. COUNTS**

### **COUNT I**

#### **DECLARATORY JUDGMENT**

#### **§ 360bbb-3(b) - Cessation of Public Health Emergency; APA (All Defendants)**

257. Plaintiffs adopt all of the preceding paragraphs and incorporate them by reference, as if fully set forth herein.

258. The DHHS Secretary declared a “public health emergency” pursuant to 21 U.S.C. § 360bbb-3(b)(1)(C) on February 4, 2020, after finding that “there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad, and that involves the virus that causes COVID-19.”<sup>12</sup>

259. It is clearly not the intention of the statute that the DHHS Secretary should be able to renew his declaration of a “public health emergency” in perpetuity when the basis for the emergency no longer exists. Further, the DHHS Secretary cannot continue

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<sup>12</sup> See <https://www.fda.gov/media/147737/download> (last visited June 7, 2021).



renewing his emergency declaration as a pretense for dodging the licensing requirements for vaccines and other drugs all to the benefit of well-funded political partners.

260. Further, in Home Building and Loan Association v. Blaisdell, 290 U.S. 398 (1934), the U.S. Supreme Court stated: “Whether an emergency exists upon which the continued operation of the law depends is always open to judicial inquiry.” 290 U.S. at 442, citing Chastleton Corp. v. Sinclair, 264 U.S. 543 (1924).

261. In Sinclair, the Supreme Court stated: “A law depending upon the existence of emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change.” 264 U.S. at 547.

262. Both Blaisdell and Sinclair are clear authority that an emergency and the rules promulgated thereunder must end when the facts of the situation no longer support the continuation of the emergency.

263. They also forbid this Court to merely assume the existence of a “public health emergency” based on the pronouncements of the Defendants. They are clear authority that it is the duty of the court of first instance to grapple with this question and conduct an inquiry. “[A] Court is not at liberty to shut its eyes to an obvious mistake when the validity of the law depends upon the truth of what of what is declared.” *Id.* The Sinclair court instructed lower courts to inquire into the factual predicate underlying a declaration of emergency, where there appears to have been a change of circumstances: “the facts should be gathered and weighed by the court of first instance and the evidence preserved for consideration by this Court if necessary.” 264 U.S. at 549.

264. Whereas one can make allowances for an initial, precautionary declaration of a “public health emergency” in the absence of reliable information and experience of



SARS-CoV-2 and COVID-19 (though we do not concede this), over time that justification has worn thin and it is no longer valid. We are no longer in the nascent stage. There is a wealth of data. The Defendants’ own data demonstrates an undeniable change in circumstances, and that the exigencies underlying the “public health emergency” no longer exist, if they ever did. Plaintiffs have accumulated and will present expert medical and scientific evidence further supporting this contention. If the exigencies no longer exist, then the “public health emergency” must end. Plaintiffs therefore seek a Declaratory Judgment terminating the “public health emergency” declared by DHHS Secretary Azar and extended by DHHS Secretary Becerra, and the EUAs which are legally predicated upon that “public health emergency.”

265. Plaintiffs therefore seek a Declaratory Judgment that: the actions of the Defendants are unlawful and arbitrary, capricious, not in accordance with § 360bbb-3, contrary to constitutional rights, powers, privileges and immunities, and in excess of statutory jurisdiction, authority or limitations; that the exigencies underlying the “public health emergency” no longer exist, if they ever did; that the “public health emergency” has ended; and that in the absence of a “public health emergency” the Defendants lack any reason to continue to authorize the emergency use by the American public of the dangerous, experimental Vaccines, thereby nullifying all Vaccine EUAs as unlawful.

## **COUNT II**

### **DECLARATORY JUDGMENT**

#### **§ 360bbb–3(c) - Failure to Meet Criteria for Issuance of Vaccine EUAs; APA (All Defendants)**

266. Plaintiffs adopt all of the preceding paragraphs and incorporate them by reference, as if fully set forth herein.



267. Under § 360bbb–3(c), the DHHS Secretary and his delegee, the Commissioner of the FDA, are authorized to issue and sustain the Vaccine EUAs “only if” they can satisfy certain criteria. As Plaintiffs have alleged and for the reasons set forth herein, the Defendants have failed to do so:

- a. SARS-CoV-2 and COVID-19 are not “a serious or life-threatening disease or condition” for 99% of the population;
- b. the scientific evidence and data available to the DHHS Secretary are not derived from “adequate and well-controlled” clinical trials, since the Vaccine trials are compressed, overlapping, incomplete and in many cases run by the Vaccine manufacturers themselves;
- c. it is *not* “reasonable to believe” that the Vaccines “may be effective” in treating or preventing SARS-CoV-2 and COVID-19;
- d. it is *not* “reasonable to believe” that “the known and potential benefits of the [Vaccines]” in preventing or treating SARS-CoV-2 and COVID-19 “outweigh the known and potential risks of the product”; and
- e. there are “adequate, approved, and available alternative[s] to the [Vaccines]” for preventing or treating SARS-CoV-2 and COVID-19, including *inter alia* Ivermectin and Hydroxychloroquine which are prescribed by doctors worldwide with great effect and are approved by physicians as meeting the standard of care among similarly situated medical professionals.

268. Plaintiffs therefore seek a Declaratory Judgment that: the actions of the Defendants are unlawful and arbitrary, capricious, not in accordance with § 360bbb-3, contrary to constitutional rights, powers, privileges and immunities, and in excess of statutory jurisdiction, authority or limitations; and that the Vaccine EUAs are unlawful, since the DHHS Secretary and his delegee the FDA Commissioner cannot meet the criteria for their issuance, thereby nullifying all Vaccine EUAs.

### **COUNT III**

#### **DECLARATORY JUDGMENT**

#### **§ 360bbb–3(e) - Failure to Establish Conditions for Vaccine EUAs; APA**



**(All Defendants)**

269. Plaintiffs adopt all of the preceding paragraphs and incorporate them by reference, as if fully set forth herein.

270. § 360bbb–3(e) provides that the DHHS Secretary, as a condition to ongoing validity of the Vaccine EUAs, “shall [ ] establish” certain “[r]equired conditions” “designed to ensure” that both healthcare professionals and Vaccine recipients are duly informed of certain critical information. As Plaintiffs have alleged and for the reasons set forth herein, the Defendants have failed to do so:

- a. neither healthcare professionals nor Vaccine recipients are being informed by the Defendants, and conditions do not exist ensuring that others will inform them, that the DHHS Secretary “has authorized the emergency use of the [Vaccines]” since they are not being informed of the true meaning of the EUAs, specifically, that the Secretary has *not* determined that the Vaccines are “safe and effective” (notwithstanding the President’s widely publicized statements to the contrary, which are amplified daily by countless other governmental and private sector statements that the Vaccines are “safe and effective”), and that instead the DHHS Secretary has only determined that he has “reason to believe” that the Vaccines “may be effective” in treating or preventing SARS-CoV-2 and COVID-19, based on trials of the Vaccines that are not being conducted like any previous trials and are compressed, overlapping, incomplete and in many instances conducted by the Vaccine manufacturers themselves;
- b. neither healthcare professionals nor Vaccine recipients are being informed by the Defendants, and conditions do not exist ensuring that others will inform them, of “the significant known and potential [ ] risks” of the Vaccines, since there is a coordinated campaign funded with \$1 billion to extol the virtues of the Vaccines, and a simultaneous effort to censor information about the inefficacy of the Vaccines in preventing or treating SARS-CoV-2 and COVID-19, Vaccine risks, and injuries and deaths caused by the Vaccine;
- c. Vaccine recipients are not being informed by the Defendants, who have a financial stake in the intellectual property underlying at least one Vaccine, and who have other financial conflicts of interest, and conditions do not exist ensuring that others will inform them, that there are alternatives to the Vaccines and of their benefits;



- d. Vaccine recipients are not being informed by the Defendants, and conditions do not exist ensuring that others will inform them, of their “option to accept or refuse” the Vaccines, since they have been saturated with unjustified fear-messaging regarding SARS-CoV-2 and COVID-19, psychologically manipulated, and coerced by a system of rewards and penalties that render the “option to [ ] refuse” meaningless; and
- e. Appropriate conditions do not exist for “the monitoring and reporting of adverse events” since only a fraction (as low as 1%) of adverse events are reported to VAERS by physicians fearing liability, and the Defendants have established a parallel reporting system for COVID-19 that is not accessible by Plaintiffs or the rest of the public.

271. Plaintiffs therefore seek a Declaratory Judgment that: the actions of the Defendants are unlawful and arbitrary, capricious, not in accordance with § 360bbb-3, contrary to constitutional rights, powers, privileges and immunities, and in excess of statutory jurisdiction, authority or limitations; and that the Vaccine EUAs are unlawful, since the DHHS Secretary has not established and maintained the required conditions, thereby nullifying all Vaccine EUAs.

#### **COUNT IV**

##### **DECLARATORY JUDGMENT**

##### **Customary International Law - Non-Consensual Human Experimentation (All Defendants)**

272. Plaintiffs adopt all of the preceding paragraphs and incorporate them by reference, as if fully set forth herein.

273. All of the Vaccines are experimental, in that they have not completed the usual 10–15-year course of clinical trials that are still ongoing and are not approved by the FDA. The trials that are underway do not test all applications and risks of the Vaccines, including long-term risks. Further, the mRNA Vaccines are a novel gene therapy technology that has never before been used in the American population. Vaccine



recipients are provided with a V-Safe application for their smart phones, unique to COVID-19 Vaccines, which assists the Defendants to collect data on the ongoing Vaccine experiment in the general population, even as the general population is excluded from this information.

274. Vaccine recipients are not being informed of the risks of the Vaccines, and therefore cannot give informed consent.

275. Vaccine recipients have been subjected, for over a year, to sustained psychological manipulation regarding SARS-CoV-2 and COVID-19 through fear-based public messaging designed to induce their compliance with draconian countermeasures of questionable constitutionality. The COVID-19 countermeasures have inflicted incalculable psychological, emotional and economic loss. In these dire circumstances, the public are now instructed to take the Vaccine in order to regain their freedoms and some semblance of normalcy in their daily lives. At the same time, they are presented with substantial incentives and rewards for accepting the Vaccines, and penalties such as job loss, suspension or termination from school, and denial of access to performance venues, planes, trains and buses, should they exercise their “option” to refuse the Vaccines. This is systemic, state-organized coercion of the kind ordinarily reserved to communist and other dictatorial regimes, and it vitiates voluntary consent.

276. Defendants’ acts described herein constitute medical experimentation on non-consenting human subjects in violation of the law of nations. The customary international law prohibition against non-consensual human experimentation is expressed and defined international treaties and declarations, international judicial decisions, and in the domestic legislation of numerous countries throughout the world, including the



United States. It is widely accepted that experimentation on unknowing human subjects is morally and legally unacceptable.

277. The deployment of the Vaccines in the foregoing circumstances violates the customary international law norm prohibiting non-consensual human experimentation.

278. Plaintiffs therefore seek a Declaratory Judgment that the Vaccine EUAs are unlawful, since they violate the customary international law norm prohibiting non-consensual human experimentation, thereby nullifying all Vaccine EUAs.

### **COUNT V**

#### **DECLARATORY JUDGMENT**

#### **45 CFR Part 46 - Protection of Human Subjects; APA (All Defendants)**

279. Plaintiffs adopt all of the preceding paragraphs and incorporate them by reference, as if fully set forth herein.

280. For all of the foregoing reasons, the deployment of the Vaccines into the general population constitutes an ongoing human experiment, or “clinical trial” for purposes of 45 CFR Part 46, and triggers the mandatory protections of human experiment subjects mandated by this extensive regulation. The Defendants have failed to implement those protections.

281. For instance, 45 CFR § 46.405 states that DHHS will conduct or fund research involving children that presents “more than minimal risk” to the children “only if” an Institutional Review Board (“IRB”) reviews the proposed experiment and makes certain mandatory findings. One of those findings is that “[t]he risk is justified by the anticipated benefit to the subjects.” The very real and substantial risks of the Vaccines



can *never* be justified when they are administered *en masse* to children under the age of 18, since they have statistically no risk from SARS-CoV-2 and COVID-19.

282. Plaintiffs therefore seek a Declaratory Judgment that: the actions of the Defendants are unlawful and arbitrary, capricious, not in accordance with § 360bbb-3, contrary to constitutional rights, powers, privileges and immunities, and in excess of statutory jurisdiction, authority or limitations; and that the Vaccine EUAs are unlawful, since they violate 45 CFR Part 46, thereby nullifying all Vaccine EUAs.

## **COUNT VI**

### **MANDAMUS**

#### **28 U.S.C. § 1361**

#### **(Individual Federal Defendants)**

283. The individual federal defendants have a clear duty to act to ensure the faithful implementation of § 360bbb-3 and 45 CFR Part 46, the provisions of which are mandatory and intended to protect Plaintiffs.

284. There is “‘practically no other remedy.’” Collin v. Berryhill, 2017 U.S. Dist. LEXIS 78222 at \*9, quoting Helstoski v. Meanor, 442 U.S. 500, 505 (1979). Courts have held that the perceived medical urgencies created by COVID-19 itself, and also those created by the decisions, orders and actions of authorities responding to COVID-19, can make it impractical and inappropriate to force a plaintiff seeking mandamus to wait for alternative processes to run their course:

*Moreover, given the broader context of the COVID-19 pandemic, we agree with the Fifth Circuit that ‘[i]n mill-run cases, it might be a sufficient remedy to simply wait for the expiration of the TRO, and then appeal an adverse preliminary injunction. In other cases, a surety bond may ensure that a party wrongfully enjoined can be compensated for any injury caused. Those methods would be woefully inadequate here.’*



In re Rutledge, 956 F.3d 1018, (8<sup>th</sup> Cir. 2020), quoting In re Abbott, 2020 U.S. App. LEXIS 10893 at \*14.<sup>13</sup>

285. Plaintiffs therefore seek mandamus, compelling the individual federal defendants to perform the duties owed to them pursuant to § 360bbb-3 and 45 CFR Part 46.

## **COUNT VII**

### **CIVIL MONEY DAMAGES**

#### **Bivens - Fifth Amendment, Personal Autonomy and Bodily Integrity (Individual Federal Defendants in their Personal Capacity)**

286. Plaintiffs adopt all of the preceding paragraphs and incorporate them by reference, as if fully set forth herein.

287. The Supreme Court has reminded us:

*No man in this country is so high that he is above the law. . . . All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. . . . [And the] Courts of justice are established, not only to decide upon the controverted rights of the citizens against each other, but also upon rights in controversy between them and the government.*

United States v. Lee, 106 U.S. 196, 220 (1882).

288. Plaintiffs Joel Wood, Brittany Galvin, Aubrey Boone, Snow Mills, Angelia Deselle, Kristi Simmonds, Vidiella A/K/A Shawn Skelton and the Estate of Dovi Sanders Kennedy assert constitutional claims under the Fifth Amendment against the individual federal defendants pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). “Bivens established that a citizen

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<sup>13</sup> The Supreme Court subsequently vacated the judgment in In re Abbott, and remanded to the Fifth Circuit with instructions to dismiss the case as moot, following the Texas Governor’s relaxation of his order restricting abortion as a non-essential surgical procedure, however the decision did not turn on an analysis of mandamus. *See, Planned Parenthood Ctr. for Choice v. Abbott*, 2021 U.S. LEXIS 647.



suffering a compensable injury to a constitutionally protected interest [can] invoke the general federal question jurisdiction of the district courts to obtain an award of monetary damages against the responsible federal official.” Butz v. Economou, 438 U.S. 478, 504 (1978).

### Personal Autonomy and Bodily Integrity

289. In Planned Parenthood v. Casey, 505 U.S. 833, 857 (1992), the U.S. Supreme Court stated:

*Roe, however, may be seen not only as an exemplar of Griswold liberty, but as a rule (whether or not mistaken) of personal autonomy and bodily integrity, with doctrinal affinity to cases recognizing limits on governmental power to mandate medical treatment or to bar its rejection. If so, our cases since Roe accord with Roe’s view that a State’s interest in the protection of life falls short of justifying any plenary override of individual liberty claims. Cruzan v. Director, Mo. Dept. of Health, 497 U.S. 261, 278, 111 L. Ed. 2d 224, 110 S. Ct. 2841 (1990); cf., e. g., Riggins v. Nevada, 504 U.S. 127, 135, 118 L. Ed. 2d 479, 112 S. Ct. 1810 (1992); Washington v. Harper, 494 U.S. 210, 108 L. Ed. 2d 178, 110 S. Ct. 1028 (1990); see also, e. g., Rochin v. California, 342 U.S. 165, 96 L. Ed. 183, 72 S. Ct. 205 (1952); Jacobson v. Massachusetts, 197 U.S. 11, 24-30, 49 L. Ed. 643, 25 S. Ct. 358 (1905).*

To reiterate: “a State’s interest in the protection of life falls short of justifying any plenary override of individual liberty claims.”

290. The Defendants’ purported interest in the protection of lives through mass injection of the Vaccines falls short of justifying “any plenary override” of Plaintiffs’ “individual liberty claims.”

291. The Supreme Court has stated that the protected liberty claims inherent in personal autonomy and bodily integrity include both the right *to be free from* unwanted medical intervention, and the right *to obtain* medical intervention:

*As the joint opinion acknowledges, ante, 505 U.S. at 857, this Court has recognized the vital liberty interest of persons in refusing unwanted medical*



*treatment. Cruzan v. Director, Mo. Dept. of Health, 497 U.S. 261, 111 L. Ed. 2d 224, 110 S. Ct. 2841 (1990). Just as the Due Process Clause protects the deeply personal decision of the individual to refuse medical treatment, it also must protect the deeply personal decision to obtain medical treatment, including a woman's decision to terminate a pregnancy.*

Id. at 927.

292. The Vaccine-injured Plaintiffs were told and believed that they were allowing a “safe and effective” and FDA-approved vaccine, when in fact they were participating in a medical experiment involving an untested, unapproved, new intervention based on genetic manipulation. “This notion of bodily integrity has been embodied in the requirement that informed consent is generally required for medical treatment. [ ] The logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment.” Cruzan, 497 U.S. at 269.

293. Defendants are liable for the alleged conduct in that Defendants, acting under color of law and authority as United States officials, personally and through their own actions, with deliberate indifference, set the conditions for, committed, directed, ordered, confirmed, ratified, acquiesced, had command responsibility for, aided and abetted, conspired to, and/or otherwise directly or indirectly caused or facilitated, medical experimentation on Plaintiffs Brittany Galvin, Aubrey Boone, Snow Mills, Angelia Deselle, Kristi Simmonds, Vidiella A/K/A Shawn Skelton and the Estate of Dovi Sanders Kennedy without their informed consent, depriving them of their clearly established, constitutionally protected liberty interest in personal autonomy and bodily integrity, including their right to refuse medical treatment, of which a reasonable person would



have known, thereby injuring them physically, emotionally and psychologically, and in the case of Plaintiff Kennedy causing her death.

Right to Work, Liberty Interest to Engage in Business Activity

294. The 14<sup>th</sup> Amendment guarantees a citizen's right to work for a living and support herself by pursuing a chosen occupation. Board of Regents v. Roth, 408 U.S. 564, 572 (1972); Truax v. Raich, 239 U.S. 33, 41 (1915) ("It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [14<sup>th</sup>] Amendment to secure.").

295. Without the right to work in a profession of our own choosing, rather than being directed into a profession by state bureaucrats or being directed not to work and placed on state subsidies, we are slaves.

296. Defendants are liable for the alleged conduct in that Defendants, acting under color of law and authority as United States officials, personally and through their own actions, with deliberate indifference, set the conditions for, committed, directed, ordered, confirmed, ratified, acquiesced, had command responsibility for, aided and abetted, conspired to, and/or otherwise directly or indirectly caused or facilitated, the violations of law set forth herein, which have deprived Plaintiff Wood of his clearly established, constitutionally protected liberty interest in working in the profession of his own choosing, of which a reasonable person would have known, thereby injuring him economically, emotionally and psychologically.

**VI. PRAYER FOR RELIEF**

WHEREFORE, and for the foregoing reasons, Plaintiffs request that this Court:



- (A) Declare that the exigencies underlying the DHHS Secretary’s declaration of a “public health emergency” under § 360bbb-3(b) never existed, or if they ever did exist, have since ceased to exist, and in the absence of those exigencies, the declaration of the “public health emergency”, the extensions thereof and the Vaccine EUAs are unlawful, null, void and terminated;
- (B) Declare that the DHHS Secretary and his delegee the Acting Commissioner of the FDA have failed to meet the criteria for issuing the Vaccine EUAs under § 360bbb-3(c), and therefore the Vaccine EUAs are unlawful, null, void and terminated;
- (C) Declare that the DHHS Secretary has failed to meet the conditions of authorization under § 360bbb-3(e), and therefore the Vaccine EUAs are unlawful, null, void and terminated;
- (D) Declare that the Defendants are engaged in non-consensual human experimentation in violation of the law of nations;
- (E) Declare that the Defendants have failed to meet the requirements of 45 CFR Part 46 for the protection of human subjects in medical experimentation;
- (F) Enjoin the enforcement of the challenged declaration of a “public health emergency” and further renewals thereof, the enforcement of the Vaccine EUAs, and further extensions of the Vaccine EUAs to children under the age of 16;
- (G) Award to the Plaintiffs named in Count VII, under Bivens, compensatory damages, including both economic and non-economic damages, against the individual federal Defendants; and
- (H) Award Plaintiffs such other and additional relief as the Court deems fit.

## **VII. JURY DEMAND**

Plaintiffs request a jury trial on all issues so triable, including without limitation the quantum of damages.

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Dated: June 10, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date, June 10, 2021, I electronically transmitted this pleading to the Clerk of the Court using the CM/ECF system for filing, which will send notification of such filing to the following counsel for the Defendants:

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## TABLE OF CONTENTS

|      |                                                                                                                                |    |
|------|--------------------------------------------------------------------------------------------------------------------------------|----|
| I.   | <b>INTRODUCTION.....</b>                                                                                                       | 3  |
| II.  | <b>SUMMARY OF FACTS.....</b>                                                                                                   | 3  |
| A.   | <b>The Unlawful Vaccine Emergency Use Authorizations.....</b>                                                                  | 3  |
|      | (1) 21 U.S.C. § 360bbb–3(b)(1)(C): <b>There is No Emergency.....</b>                                                           | 3  |
|      | (2) § 360bbb–3(c)(1): <b>There is in Fact no Serious or Life-Threatening Disease or Condition.....</b>                         | 7  |
|      | (3) § 360bbb–3(c)(2)(A): <b>The Vaccines Do Not Diagnose, Treat or Prevent SARS-CoV-2 or COVID-19.....</b>                     | 7  |
|      | (4) § 360bbb–3(c)(2)(B): <b>The Known and Potential Risks of the Vaccines Outweigh their Known and Potential Benefits.....</b> | 9  |
|      | (5) § 360bbb–3(c)(3): <b>There Are Adequate, Approved and Available Alternatives to the Vaccines.....</b>                      | 20 |
|      | (6) § 360bbb–3(e)(1)(A)(i) and (ii): <b>Healthcare Professionals and Vaccine Candidates are Not Adequately Informed.....</b>   | 23 |
|      | (7) § 360bbb–3(e)(1)(A)(iii): <b>Monitoring and Reporting of Adverse Events.....</b>                                           | 32 |
| B.   | <b>The Under-18 Age Category.....</b>                                                                                          | 35 |
| C.   | <b>Those Previously Infected with SARS-C0V-2.....</b>                                                                          | 38 |
| D.   | <b>Whistleblower Testimony: 45,000 Deaths Caused by the Vaccines.....</b>                                                      | 41 |
| III. | <b>LAW AND ANALYSIS.....</b>                                                                                                   | 42 |
| A.   | <b>Likelihood of Success on the Merits.....</b>                                                                                | 43 |
|      | 1) <b>Plaintiffs Have Standing.....</b>                                                                                        | 43 |
|      | 2) <b>Defendants’ Actions are Reviewable.....</b>                                                                              | 44 |
|      | i. <b>Plaintiffs’ Injuries are Within the Zone of Interests.....</b>                                                           | 44 |
|      | ii. <b>No Statutory Preclusion.....</b>                                                                                        | 46 |
|      | iii. <b>The Emergency Declaration and the EUAs are “Final” Agency Action.....</b>                                              | 54 |
|      | iv. <b>Not “Committed to Agency Discretion”.....</b>                                                                           | 56 |
| B.   | <b>Irreparable Injury.....</b>                                                                                                 | 58 |
| C.   | <b>Balance of Equities (Hardships) and the Public Interest.....</b>                                                            | 64 |
| IV.  | <b>CONCLUSION.....</b>                                                                                                         | 65 |
|      | <b>CERTIFICATE OF SERVICE.....</b>                                                                                             | 67 |



## I. INTRODUCTION

Plaintiffs move under Rule 65, Fed.R.Civ.P., for a preliminary injunction against Defendants enjoining them from continuing to authorize the emergency use of the so-called “Pfizer-BioNTech COVID-19 Vaccine,”<sup>1</sup> “Moderna COVID-19 Vaccine”<sup>2</sup> and the “Johnson & Johnson (Janssen) COVID-19 Vaccine”<sup>3</sup> (collectively, the “Vaccines”)<sup>4</sup> pursuant to their respective EUAs, and from granting full Food and Drug Administration (“FDA”) approval of the Vaccines:

- (i) for the under-18 age category;
- (ii) for those, regardless of age, who have been infected with SARS-CoV-2 prior to vaccination; and
- (iii) until such time as the Defendants have complied with their obligation to create and maintain the requisite “conditions of authorization” under Section 546 of the Food, Drugs and Cosmetics Act, 21 U.S.C. § 360bbb–3(e), thereby enabling Vaccine candidates to give truly voluntary, informed consent.

## II. SUMMARY OF FACTS

Plaintiffs reference and incorporate herein the facts contained in their Complaint filed on June 10, 2021 (ECF 10).

### **A. The Unlawful Vaccine Emergency Use Authorizations**

#### **(1) 21 U.S.C. § 360bbb–3(b)(1)(C): There is No Emergency**

On February 4, 2020, the Department of Health and Human Services (“DHHS”) Secretary declared, pursuant to § 360bbb–3(b)(1)(C), that SARS-CoV-2 created a “public health

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<sup>1</sup> Emergency Use Authorization (“EUA”) issued December 11, 2020. *See* <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/pfizer-biontech-covid-19-vaccine>.

<sup>2</sup> EUA issued December 18, 2020. *See* <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/moderna-covid-19-vaccine>.

<sup>3</sup> EUA issued February 27, 2021. *See* <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/janssen-covid-19-vaccine>.

<sup>4</sup> For the sake of clarity of reference, Plaintiffs are using the names given to the Pfizer and Moderna EUA medical products by their manufacturers and the Defendants. However, Plaintiffs reject the highly misleading use of the term “vaccine” to describe the Pfizer and Moderna EUA medical products, since they are not vaccines within the settled meaning of the term and instead are more precisely described as a form of genetic manipulation.



emergency.” This initial emergency declaration has been renewed repeatedly and remains in force today. The emergency declaration is the necessary legal predicate for the issuance of the Vaccine EUAs, which have allowed the mass use of the Vaccines by the American public, even before the completion of the standard regimen of clinical trials and FDA approval.

The emergency declaration and its multiple renewals are illegal, since in fact there is no underlying emergency. Assuming the accuracy of Defendants’ COVID-19 death data, SARS-CoV-2 has an overall survivability rate of 99.8% globally, which increases to 99.97% for persons under the age of 70, on a par with the seasonal flu. However, Defendants’ data is deliberately inflated. On March 24, 2020, DHHS changed the rules applicable to coroners and others responsible for producing death certificates and making “cause of death” determinations — **exclusively for COVID-19**. The rule change states: “COVID-19 should be reported on the death certificate for all decedents where the disease caused *or is assumed to have caused or contributed* to death.” In fact, DHHS statistics show that 95% of deaths classed as “COVID-19 deaths” involve an average of four additional co-morbidities. The CDC knew “...the rules for coding and selection of the underlying cause of death are expected to result in COVID-19 being the underlying cause more often than not.”

Similarly, the actual number of COVID-19 “cases” is far lower than the reported number. DHHS authorized the emergency use of the polymerase chain reaction (“PCR”) test as a diagnostic tool for COVID-19, with disastrous consequences. The PCR tests are themselves experimental products, authorized by the FDA under separate EUAs. PCR test manufacturers use disclaimers like this in their product manuals: “[t]he FDA has not determined that the test is safe or effective for the detection of SARS-Co-V-2.” Manufacturer inserts furnished with PCR test products include disclaimers stating that the PCR tests should NOT be used to diagnose



COVID-19. This is consistent with the warning issued by the Nobel Prize winning inventor of the PCR test that such tests are not appropriate for diagnosing disease.

The way in which the PCR tests are administered guarantees an unacceptably high number of false positive results. Cycle Threshold Value (“CT value”) is essentially the number of times that a sample (usually from a nasal swab) is magnified or amplified before a fragment of viral RNA is detected. The CT Value is exponential, and so a 40-cycle threshold means that the sample is magnified around a trillion times. The higher the CT Value, the less likely the detected fragment of viral RNA is intact, alive and infectious.<sup>5</sup>

Virtually all scientists, including Dr. Fauci, agree that any PCR test run at a CT value of 35-cycles or greater is useless. Dr. Fauci has stated (emphasis below added):

*What is now evolving into a bit of a standard is that if you get a cycle threshold of 35 or more that the chances of it being replication competent are miniscule... We have patients, and it is very frustrating for the patients as well as for the physicians...somebody comes in and they repeat their PCR and it's like 37 cycle threshold...you can almost never culture virus from a 37 threshold cycle. So I think if somebody does come in with 37, 38, even 36, you gotta say, you know, it's dead nucleotides, period. In other words, it is not a COVID-19 infection.<sup>6</sup>*

A study funded by the French government showed that even at 35-cycles, the false positivity rate is as high as 97%. Despite this, a majority of the PCR tests for COVID-19 deployed under EUAs in the United States are run at 35-45 cycles in accordance with manufacturer instructions. Under the EUAs issued by the FDA, there is no flexibility to depart from the manufacturer's instructions and change the way in which the test is administered or interpreted. The chart below shows that all major PCR tests in use in the United States are run at cycles of up to 35 or higher.

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<sup>5</sup> <https://www.oralhealthgroup.com/features/the-problems-with-the-covid-19-test-a-necessary-understanding/> (last visited July 15, 2021).

<sup>6</sup> <https://1027kearney.com/kpgz-news/2020/11/9/covid-tests-may-inflate-numbers-by-picking-up-dead-virus> (last visited July 15, 2021).



| Manufacturer                                                        | Manufacturer's Recommended Cycle Threshold |
|---------------------------------------------------------------------|--------------------------------------------|
| Xiamen Zeesan SARS-CoV-2 Test Kit (Real-time PCR)                   | 45 cycles                                  |
| Opti Sars CoV-2 RT-PCR Test                                         | 45 cycles                                  |
| Quest SARS-CoV-2rRT-PCR Test                                        | 40 cycles                                  |
| CDC 2019-Novel Coronavirus Real Time (RT-PCR Diagnostic Panel) Test | 40 cycles                                  |
| Wren Labs COVID-19 PCR Test                                         | 38 cycles                                  |
| LabCorp COVID-19 RT-PCR Test                                        | 35 cycles                                  |

Further, the Defendants and their counterparts in state governments used the specter of “asymptomatic spread” — the notion that fundamentally healthy people could cause COVID-19 in others — to justify the purported emergency. But there is *no credible scientific evidence* that demonstrates that the phenomenon of “asymptomatic spread” is real. On the contrary, on June 7, 2020, Dr. Maria Von Kerkhov, head of the WHO’s Emerging Diseases and Zoonosis Unit, told a press conference that from the known research, asymptomatic spread was “very rare.” “From the data we have, it still seems to be rare that an asymptomatic person actually transmits onward to a secondary individual.” She added for emphasis: “it’s very rare.” Researchers from Southern Medical University in Guangzhou, China, published a study in August 2020 concluding that asymptomatic transmission of COVID-19 is *almost non-existent*. “Asymptomatic cases were least likely to infect their close contacts,” the researchers found. A more recent study involving nearly 10 million residents of Wuhan, China found that there were no — zero — positive COVID-19 tests amongst 1,174 *close contacts* of asymptomatic cases, *indicating the complete absence of asymptomatic transmission*.

On September 9, 2020, Dr. Fauci was forced to admit in an official press conference:

*[E]ven if there is some asymptomatic transmission, in all the history of respiratory borne viruses of any type, asymptomatic transmission has never been the driver of outbreaks. The driver of outbreaks is always a symptomatic person,*



*even if there is a rare asymptomatic person that might transmit, an epidemic is not driven by asymptomatic carriers.*<sup>7</sup>

**(2) § 360bbb–3(c)(1): There is in Fact no Serious or Life-Threatening Disease or Condition**

Once an emergency has been declared and while it remains in force, the DHHS Secretary can issue and maintain EUAs “**only if**” (emphasis added) certain criteria are met. One of these criteria is that there is in fact (not simply perceived, projected or declared) “a serious or life threatening disease or condition.” For the reasons set forth above in the prior section, SARS-CoV-2 and COVID-19 do not constitute a “serious or life threatening disease or condition” within the meaning of the statute. It also bears noting that the legal purpose of an emergency declaration is to bypass checks and balances typically required under law due to a crisis and that the use of such a declaration for such an arbitrary purpose could undermine the balance of power between the various branches of government.

**(3) § 360bbb–3(c)(2)(A): The Vaccines Do Not Diagnose, Treat or Prevent SARS-CoV-2 or COVID-19**

The DHHS Secretary can issue and maintain the Vaccine EUAs “**only if**” they are “effective” in diagnosing, treating or preventing a disease or condition.

Centers for Disease Control and Prevention (“CDC”) data shows that the Vaccines are not effective in treating or preventing SARS-CoV-2 or COVID-19. Deaths from COVID-19 in those who have received the recommended dosages of the Vaccines increased from 160 as of April 30, 2021 to 535 as of June 1, 2021. Further, a total of 10,262 SARS-CoV-2 “breakthrough infections” of those who have already received the full recommended dosage of the Vaccines

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<sup>7</sup> <https://www.statnews.com/2021/01/23/asymptomatic-infection-blunder-covid-19-spin-out-of-control/> (last visited July 15, 2021).



were reported to the CDC from 46 states and territories between January 1, 2021 and April 30, 2021.

In studying the effectiveness of a medical intervention in randomized controlled trials (often called the gold standard of study design), the most useful way to present results is in terms of Absolute Risk Reduction (“ARR”). ARR compares the impact of treatment by comparing the outcomes of the treated group and the untreated group. In other words, if 20 out of 100 untreated individuals had a negative outcome, and 10 out of 100 treated individuals had a negative outcome, the ARR would be 10% ( $20 - 10 = 10$ ). **According to a study published by the NIH, the ARR for the Pfizer Vaccine is a mere 0.7%, and the ARR for the Moderna Vaccine is only 1.1%.**

From the ARR, one can calculate the Number Needed to Vaccinate (“NNV”), which signifies the number of people that must be injected before even one person benefits from the vaccine. The NNV for the Pfizer Vaccine is 119, meaning that 119 people must be injected in order to observe the reduction of a COVID-19 case in one person. The reputed journal the *Lancet* reports data indicating that the NNV may be as high as 217.

There are several factors that reduce any purported benefit of the COVID-19 Vaccines. First, it is important to note that the Vaccines were only shown to reduce symptoms – not block transmission. For over a year now, these Defendants and state-level public health authorities have told the American public that SARS-CoV-2 can be spread by people who have none of the symptoms of COVID-19, therefore Americans must mask themselves, and submit to innumerable lockdowns and restrictions, even though they are not manifestly sick. If that is the case, and these officials were not lying to the public, and asymptomatic spread is real, then what is the benefit of a vaccine that merely reduces symptoms? There isn’t any.



Secondly, it appears that these Defendants either did lie about asymptomatic spread, or were simply wrong about the science. The theory of asymptomatic transmission — used as the justification for the lockdown and masking of the healthy — was based *solely* upon mathematical modeling. This theory had no actual study participants, and no peer review. The authors made the unfounded assumption that asymptomatic persons were “75% as infectious” as symptomatic persons. But in the real world, healthy false positives turned out to be merely healthy, and were never shown to be “asymptomatic” carriers of anything. Studies have shown that PCR test-positive asymptomatic individuals do not induce clinical COVID-19 disease, not even in a family member with whom they share a home and extended proximity. An enormous study of nearly ten million people in Wuhan, China showed that asymptomatic individuals testing positive for COVID-19 **never** infected others. Since asymptomatic individuals do not spread COVID-19, they do not need to be vaccinated.

**(4) § 360bbb–3(c)(2)(B): The Known and Potential Risks of the Vaccine Outweigh their Known and Potential Benefits**

The DHHS Secretary can issue and maintain the Vaccine EUAs “**only if**” (emphasis added) the known and potential risks of each Vaccine are outweighed by its known and potential benefits.

The typical vaccine development process takes between 10 and 15 years, and consists of the following sequential stages: research and discovery (2 to 10 years), pre-clinical animal studies (1 to 5 years), clinical human trials in four phases (typically 5 years). Phase 1 of the clinical human trials consists of healthy individuals and is focused on safety. Phase 2 consists of additional safety and dose-ranging in healthy volunteers, with the addition of a control group. Phase 3 evaluates efficacy, safety and immune response in a larger volunteer group, and requires two sequential randomized controlled trials. Phase 4 is a larger scale investigation into longer-



term safety. Vaccine developers must follow this process in order to be able to generate the data the FDA needs in order to assess the safety and effectiveness of a vaccine candidate.

This 10-15 year testing process has been abandoned for purposes of the Vaccines. The first human-to-human transmission of the SARS-CoV-2 virus was not confirmed until January 20, 2020, and less than a year later both mRNA Vaccines had EUAs and for the first time in history this novel mRNA technology was being injected into millions of human beings. As of June 7, 2021, 138 million Americans, representing 42% of the population, have been fully vaccinated.

All of the stages of testing have been compressed in time, abbreviated in substance, and are overlapping, which dramatically increases the risks of the Vaccines. Plaintiffs' investigation indicates that Moderna and Pfizer designed their Vaccines in only two days. It appears that pharmaceutical companies did not independently verify the genome sequence that China released on January 11, 2020. It appears that the Vaccines were studied for only 56 days in macaques, and 28 days in mice, and then animal studies were halted. It appears that the pharmaceutical companies discarded their control groups receiving placebos, squandering the opportunity to learn about the rate of long-term complications, how long protection against the disease lasts and how well the Vaccines inhibit transmission. A number of studies were deemed unnecessary and not performed prior to administration in human subjects, including single dose toxicity, toxicokinetic, genotoxicity, carcinogenicity, prenatal and postnatal development, offspring, local tolerance, teratogenic and postnatal toxicity and fertility. The American public has not been properly informed of these dramatic departures from the standard testing process, and the risks they generate.

Plaintiff America's Frontline Doctors' ("AFLDS") medico-legal researchers have analyzed the accumulated COVID-19 Vaccine risk data, and report as follows:



### Migration of the SARS-CoV-2 “Spike Protein” in the Body

The SARS-CoV-2 has a spike protein on its surface. The spike protein is what allows the virus to infect other bodies. It is clear that the spike protein is not a simple, passive structure. The spike protein is a “pathogenic protein” and a toxin that causes damage. The spike protein is itself biologically active, even without the virus. It is “fusogenic” and consequently binds more tightly to our cells, causing harm. If the purified spike protein is injected into the blood of research animals, it causes profound damage to their cardiovascular system, and crosses the blood-brain barrier to cause neurological damage. If the Vaccines were like traditional *bona fide* vaccines, and did not leave the immediate site of vaccination, typically the shoulder muscle, beyond the local draining lymph node, then the damage that the spike protein could cause might be limited.

However, the Vaccines were authorized without any studies demonstrating where the spike proteins traveled in the body following vaccination, how long they remain active and what effect they have. A group of international scientists has recently obtained the “biodistribution study” for the mRNA Vaccines from Japanese regulators. The study reveals that unlike traditional vaccines, this spike protein enters the bloodstream and circulates throughout the body over several days post-vaccination. It accumulates in a number of tissues, such as the spleen, bone marrow, liver, adrenal glands and ovaries. It fuses with receptors on our blood platelets, and also with cells lining our blood vessels. It can cause platelets to clump leading to clotting, bleeding and heart inflammation. It can also cross the blood-brain barrier and cause brain damage. It can be transferred to infants through breast milk. The VAERS system includes reports of infants suckling from vaccinated mothers experiencing bleeding disorders in the gastrointestinal tract.



### Increased Risk of Death from Vaccines

The government operated VAERS database is intended to function as an “early warning” system for potential health risks caused by vaccines. It is broadcasting a red alert. Of the 262,000 total accumulated reports in VAERS, only 1772 are not related to COVID-19. The database indicates that the total reported vaccine deaths in the first quarter of 2021 represents a 12,000% to 25,000% increase in vaccine deaths, year-on-year. In ten years (2009-2019) there were 1529 vaccine deaths, whereas in the first quarter of 2021 there have been over 4,000. Further, 99% of all reported vaccine deaths in 2021 are caused by the COVID-19 Vaccines, only 1% being caused by the numerous other vaccines reported in the system. It is estimated that VAERS only captures 1% to at best 10% of all vaccine adverse events.

### Reproductive Health

The mRNA Vaccines induce our cells to manufacture (virus-free) “spike proteins.” The “spike proteins” are in the same family as the naturally occurring syncytin-1 and syncytin-2 reproductive proteins in sperm, ova and placenta. Antibodies raised against the spike protein might interact with the naturally occurring syncytin proteins, adversely affecting multiple steps in human reproduction. The manufacturers did not provide data on this subject despite knowing about the spike protein’s similarity to syncytin proteins for more than one year. There are now a very high number of pregnancy losses in VAERS. A study recently published in the New England Journal of Medicine, “Preliminary Findings of mRNA COVID-19 Vaccine Safety in Pregnant Persons,” exposes that pregnant women receiving Vaccines during their first or second trimesters suffer an 82% spontaneous abortion rate, killing 4 out of 5 unborn babies. There are worldwide reports of irregular vaginal bleeding without clear explanation. Scientists are concerned that the Vaccines pose a substantial risk to a woman’s reproductive system. This increased risk of sterility stems from an increased concentration of the spike proteins in various



parts of the reproductive system after vaccination. Not enough is known to determine the risk of sterility, but it is beyond question that the risk is increased.

A leaked Pfizer document (excerpted below) exposes that Pfizer Vaccine nanoparticles accumulate in the ovaries at an extraordinarily high rate, in concentrations orders of magnitude higher than in other tissues. Billions of aggressive spike proteins are accumulating in very delicate ovarian tissues, the one place in the human body where females carry a finite number of fertile eggs.

SARS-CoV-2 mRNA Vaccine (BNT162, PF-07302048)  
2.6.5 薬物動態試験の概要表

**2.6.5.5B. PHARMACOKINETICS: ORGAN**  
**DISTRIBUTION CONTINUED**

Test Article: [

| Sample                          | Total Lipid concentration (µg lipid equivalent/g [or mL])<br>(males and females combined) |       |       |       |       |       |       | %      |
|---------------------------------|-------------------------------------------------------------------------------------------|-------|-------|-------|-------|-------|-------|--------|
|                                 | 0.25 h                                                                                    | 1 h   | 2 h   | 4 h   | 8 h   | 24 h  | 48 h  | 0.25 h |
| Lymph node (mandibular)         | 0.064                                                                                     | 0.189 | 0.290 | 0.408 | 0.534 | 0.554 | 0.727 | --     |
| Lymph node (mesenteric)         | 0.050                                                                                     | 0.146 | 0.530 | 0.489 | 0.689 | 0.985 | 1.37  | --     |
| Muscle                          | 0.021                                                                                     | 0.061 | 0.084 | 0.103 | 0.096 | 0.095 | 0.192 | --     |
| Ovaries (females)               | 0.104                                                                                     | 1.34  | 1.64  | 2.34  | 3.09  | 5.24  | 12.3  | 0.001  |
| Pancreas                        | 0.081                                                                                     | 0.207 | 0.414 | 0.380 | 0.294 | 0.358 | 0.599 | 0.003  |
| Pituitary gland                 | 0.339                                                                                     | 0.645 | 0.868 | 0.854 | 0.405 | 0.478 | 0.694 | 0.000  |
| Prostate (males)                | 0.061                                                                                     | 0.091 | 0.128 | 0.157 | 0.150 | 0.183 | 0.170 | 0.001  |
| Salivary glands                 | 0.084                                                                                     | 0.193 | 0.255 | 0.220 | 0.135 | 0.170 | 0.264 | 0.003  |
| Skin                            | 0.013                                                                                     | 0.208 | 0.159 | 0.145 | 0.119 | 0.157 | 0.253 | --     |
| Small intestine                 | 0.030                                                                                     | 0.221 | 0.476 | 0.879 | 1.28  | 1.30  | 1.47  | 0.024  |
| Spinal cord                     | 0.043                                                                                     | 0.097 | 0.169 | 0.250 | 0.106 | 0.085 | 0.112 | 0.001  |
| Spleen                          | 0.334                                                                                     | 2.47  | 7.73  | 10.3  | 22.1  | 20.1  | 23.4  | 0.013  |
| Stomach                         | 0.017                                                                                     | 0.065 | 0.115 | 0.144 | 0.268 | 0.152 | 0.215 | 0.006  |
| Testes (males)                  | 0.031                                                                                     | 0.042 | 0.079 | 0.129 | 0.146 | 0.304 | 0.320 | 0.007  |
| Thymus                          | 0.088                                                                                     | 0.243 | 0.340 | 0.335 | 0.196 | 0.207 | 0.331 | 0.004  |
| Thyroid                         | 0.155                                                                                     | 0.536 | 0.842 | 0.851 | 0.544 | 0.578 | 1.00  | 0.000  |
| Uterus (females)                | 0.043                                                                                     | 0.203 | 0.305 | 0.140 | 0.287 | 0.289 | 0.456 | 0.002  |
| Whole blood                     | 1.97                                                                                      | 4.37  | 5.40  | 3.05  | 1.31  | 0.909 | 0.420 | --     |
| Plasma                          | 3.97                                                                                      | 8.13  | 8.90  | 6.50  | 2.36  | 1.78  | 0.805 | --     |
| Blood:Plasma ratio <sup>a</sup> | 0.815                                                                                     | 0.515 | 0.550 | 0.510 | 0.555 | 0.530 | 0.540 | --     |

PFIZER CONFIDENTIAL

Page 7

Each baby girl is born with the total number of eggs she will ever have in her entire life. Those eggs are stored in the ovaries, and one egg is released each month of a normal menstrual cycle. When there are no more eggs, a woman stops menstruating. The reproductive system is



arguably the most delicate hormonal and organ balance of all our systems. The slightest deviation in any direction results in infertility. Even in 2021, doctors and scientists do not know all the variables that cause infertility.

There is evidence to support that the Vaccines could cause permanent autoimmune rejection of the placenta. Placental inflammation resulting in stillbirths mid-pregnancy (second trimester) is seen with COVID-19 and with other similar coronaviruses. There is a case report of a woman with a normally developing pregnancy who lost the otherwise healthy baby at five months during acute COVID-19. The mother's side of the placenta was very inflamed. This "infection of the maternal side of the placenta inducing acute or chronic placental insufficiency resulting in miscarriage or fetal growth restriction was observed in 40% of pregnant women with similar coronaviruses." The mRNA Vaccines may instigate a similar reaction as the SARS-CoV-2 virus. There is a component in the vaccine that could cause the same autoimmune rejection of the placenta, but indefinitely. Getting COVID-19 has been associated with a high risk of mid-pregnancy miscarriage because the placenta fails. The mRNA Vaccines may have precisely the same effect, however, not for just the few weeks of being sick, but forever. Repeated pregnancies would keep failing in mid-pregnancy.

On December 1, 2020, a former Pfizer Vice President and allergy and respiratory researcher, Dr. Michael Yeadon, filed an application with the European Medicines Agency, responsible for approving drugs in the European Union, seeking the immediate suspension of all SARS-CoV-2 Vaccines, citing *inter alia* the risk to pregnancies. As of April 26, 2021, the VAERS database contains over 3,000 reports of failed pregnancies associated with the Vaccines.

#### Vascular Disease

Salk Institute for Biological Studies researchers in collaboration with the University of San Diego, published in the journal *Circulation Research* that the spike proteins themselves



damage vascular cells, causing strokes and many other vascular problems. All of the Vaccines are causing clotting disorders (coagulopathy) in all ages. The spike proteins are known to cause clotting that the body cannot fix, such as brain thrombosis and thrombocytopenia.

None of these risks has been adequately studied in trials, or properly disclosed to healthcare professionals or Vaccine subjects.

#### Autoimmune Disease

The spike proteins are perceived to be foreign by the human immune system, initiating an immune response to fight them. While that is the intended therapeutic principle, it is also the case that any cell expressing spike proteins becomes a target for destruction by our own immune system. This is an autoimmune disorder and can affect virtually any organ in the body. It is likely that some proportion of spike protein will become permanently fused to long-lived human proteins and this will prime the body for prolonged autoimmune diseases. Autoimmune diseases can take years to show symptoms and many scientists are alarmed at giving young people such a trigger for possible autoimmune disease.

#### Neurological Damage

The brain is completely unique in structure and function, and therefore it requires an environment that is insulated against the rest of the body's functioning. The blood-brain-barrier exists so the brain can function without disruption from the rest of the body. This is a complex, multi-layered system, using several mechanisms that keep nearly all bodily functions away from the brain. Three such systems include: very tight junctions between the cells lining the blood vessels, very specific proteins that go between, and unique enzymes that alter substances that do go through the cells. Working together, the blood-brain-barrier prevents almost everything from getting in. Breaching it is generally incompatible with life.



Most unfortunately, the COVID-19 Vaccines — unlike any other vaccine ever deployed — are able to breach this barrier through various routes, including through the nerve structure in the nasal passages and through the blood vessel walls. The resulting damage begins in the arterial wall, extends to the supporting tissue outside the arteries in the brain, and from there to the actual brain nerve cells inside. The Vaccines are programmed to produce the S1 subunit of the spike protein in every cell in every Vaccine recipient, but it is this subunit that causes the brain damage and neurologic symptoms. Elderly persons are at increased risk for this brain damage.

COVID-19 patients typically have neurological symptoms including headache and loss of smell and taste, as well as brain fog, impaired consciousness, and stroke. Researchers have published a paper in the *Journal of Neurological Sciences* correlating the severity of the pulmonary distress in COVID-19 with viral spread to the brain stem, suggesting direct brain damage, not just a secondary cytokine effect. It has been shown recently by Dr. William Banks, professor of Internal Medicine at University of Washington School of Medicine, that the S1 subunit of the spike protein — the part of the SARS-CoV-2 virus that produces the COVID-19 disease and is in the Vaccines — can cross the blood brain barrier. This is even more concerning, given the high number of ACE2 receptors in the brain (the ACE2 receptor is that portion of the cell that allows the spike protein to connect to human tissue). Mice injected with the S1 subunit of the spike protein developed direct damage to the perivascular tissue. In humans, viral spike protein was detected in the brain tissues of COVID-19 patients, but not in the brain tissues of the controls. Spike protein produces endothelial damage.

There are an excessive number of brain hemorrhages associated with COVID-19, and the mechanism suggests that it is the spike protein that is responsible. The federal government's VAERS database shows a dramatic increase in adverse event reporting of neurological damage following injection with the Vaccine.



| Year | <b>Dementia</b><br>(reports following injection<br>with Vaccine) | <b>Brain Bleeding</b><br>(reports following injection<br>with Vaccine) |
|------|------------------------------------------------------------------|------------------------------------------------------------------------|
| 2000 | 4                                                                | 7                                                                      |
| 2010 | 0                                                                | 17                                                                     |
| 2015 | 0                                                                | 17                                                                     |
| 2018 | 21                                                               | 31                                                                     |
| 2019 | 11                                                               | 17                                                                     |
| 2020 | 12 → (43)                                                        | 4 → (11)                                                               |
| 2021 | 17 → (251)                                                       | 0 → (258)                                                              |

While the full impact of these Vaccines crossing the blood-brain barrier is unknown, they clearly put vaccinated individuals at a substantially increased risk of hemorrhage, neurological damage, and brain damage as demonstrated by the increased instances of such reporting in the VAERS system.

#### Effect on the Young

The Vaccines are more deadly or harmful to the young than the virus, and that is excluding the unknown future effects on fertility, clotting, and autoimmune disease. Those under the age of 18 face statistically zero chance of death from SARS-CoV-2 according to data published by the CDC, but there are reports of heart inflammation — both myocarditis (inflammation of the heart muscle) and pericarditis (inflammation of the lining outside the heart) — in young men, and at least one documented fatal heart attack of a healthy 15-year old boy in Colorado two days after receiving the Pfizer Vaccine.<sup>8</sup> The CDC has admitted that “[s]ince April 2021, increased cases of myocarditis and pericarditis have been reported in the United States after the mRNA COVID-19 vaccination (Pfizer-BioNTech and Moderna), particularly in adolescents and young adults.”

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<sup>8</sup> <https://archive.is/mEBcV> (last visited July 15, 2021).



The Vaccines induce the cells of the recipient to manufacture trillions of spike proteins with the pathology described above. Because immune responses in the young and healthy are more vigorous than those in the old, paradoxically, the vaccines may thereby induce, in the very people least in need of assistance, a very strong immune response, including those which can damage their own cells and tissues, including by stimulating blood coagulation.

*See also infra* Section II.B.

#### Chronic Disease

Healthy children whose birthright is decades of healthy life will instead face premature death or decades of chronic disease. We cannot say what percentage will be affected with antibody dependent enhancement, neurological disorders, autoimmune disease and reproductive problems, but it is a virtual certainty that this will occur.

#### Antibody Dependent Enhancement

Antibody Dependent Enhancement (“ADE”) occurs when SARS-CoV-2 antibodies, created by a Vaccine, instead of protecting the vaccinated person, cause a more severe or lethal case of the COVID-19 disease when the person is later exposed to SARS-CoV-2 in the wild.<sup>9</sup> The vaccine *amplifies* the infection rather than *preventing* damage. It may only be seen after months or years of use in populations around the world.

This paradoxical reaction has been seen in other vaccines and animal trials. One well-documented example is with the Dengue fever vaccine, which resulted in avoidable deaths. Dengue fever has caused 100-400 million infections, 500,000 hospitalizations, and a 2.5% fatality rate annually worldwide. It is a leading cause of death in children in Asian and Latin American countries. Despite over 50 years of active research, a Dengue vaccine still has not

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<sup>9</sup> <https://www.nature.com/articles/s41564-020-00789-5> (last visited July 15, 2021).



gained widespread approval in large part due to the phenomenon of ADE. Vaccine manufacturer Sanofi Pharmaceutical spent 20 years and nearly \$2 billion to develop the Dengue vaccine and published their results in the *New England Journal of Medicine*, which was quickly endorsed by the World Health Organization. Vigilant scientists clearly warned about the danger from ADE, which the Philippines ignored when it administered the vaccine to hundreds of thousands of children in 2016. Later, when these children were exposed in the wild, many became severely ill and 600 children died. The former head of the Dengue department of the Research Institute for Tropical Medicine (RITM) was indicted in 2019 by the Philippines Department of Justice for “reckless imprudence resulting [in] homicide,” because he “facilitated, with undue haste,” Dengvaxia’s approval and its rollout among Philippine schoolchildren.<sup>10</sup>

ADE has been observed in the coronavirus setting. The original SARS-CoV-1 caused an epidemic in 2003. This virus is a coronavirus that is reported to be 78% similar to the current SARS-CoV-2 virus that causes the disease COVID-19. Scientists attempted to create a vaccine. Of approximately 35 vaccine candidates, the best four were trialed in ferrets. The vaccines appeared to work in the ferrets. However, when those vaccinated ferrets were challenged by SARS-CoV-1 in the wild, they became very ill and died due to what we would term a sudden severe cytokine storm. The reputed journals *Science*, *Nature* and *Journal of Infectious Diseases* have all documented ADE risks in relation to the development of experimental COVID-19 vaccines. The application filed by Dr. Yeadon with the European Medicines Agency on December 1, 2020 also mentioned the risk from ADE. ADE is discovered during long-term animal studies, to which the Vaccines have not been subjected.

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<sup>10</sup> <https://trialsitenews.com/philippine-dengue-vaccine-criminal-indictments-includes-president-of-sanofi-pasteur-their-fda> (last visited July 15, 2021).



Vaccine-Driven Disease Enhancement in the Previously Infected

*See infra* section II. C.

More Virulent Strains

Scientists are concerned that universal inoculation may create more virulent strains. This has been observed with Marek's Disease in chickens.<sup>11</sup> A large number of chickens not at risk of death were vaccinated, and now all chickens must be vaccinated or they will die from a virus that was nonlethal prior to widespread vaccination. The current policy to pursue universal vaccination regardless of risk may exert the same evolutionary pressure toward more highly virulent strains.

Blood Supply

Presently, the vaccinated are permitted to donate their spike protein laden blood into the blood supply, which projects all of the risks discussed *supra* onto the general population of unvaccinated blood donees.

Scientists and healthcare professionals all over the world are sounding the alarm and frantically appealing to the FDA to halt the Vaccines. They have made innumerable public statements. Fifty-seven top scientists and doctors from Central and South America are calling for an immediate end to all Vaccine COVID-19 programs. Other physician-scientist groups have made similar calls, among them: Canadian Physicians, Israeli People's Committee, Frontline COVID-19 Critical Care Alliance, World Doctors Alliance, Doctors 4 Covid Ethics, and Plaintiff America's Frontline Doctors. These are healthcare professionals in the field who are seeing the catastrophic and deadly results of the rushed Vaccines, and reputed professors of science and medicine, including the physician with the greatest number of COVID-19 scientific citations

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<sup>11</sup> [https://en.wikipedia.org/wiki/Marek%27s\\_disease](https://en.wikipedia.org/wiki/Marek%27s_disease) (last visited July 15, 2021).



worldwide. They accuse the government of deviating from long-standing policy to protect the public. In the past, government has halted vaccine trials based on a tiny fraction — far less than 1% — of the number of unexplained deaths already recorded. The scientists all agree that the spike protein (produced by the Vaccines) *causes disease even without the virus*, which has motivated them to lend their imprimatur to, and risk their reputation and standing on, these public objections.

**(5) § 360bbb–3(c)(3): There Are Adequate, Approved and Available Alternatives to the Vaccines**

The DHHS Secretary can issue and maintain the Vaccine EUAs “**only if**” (emphasis added) there is no adequate, approved and available alternative to the Vaccines.

There are numerous alternative safe and effective treatments for COVID-19. These alternatives are supported by over 300 studies, including randomized controlled studies. Tens of thousands of physicians have publicly attested, and many have testified under oath, as to the safety and efficacy of the alternatives. Globally and in the United States, treatments such as Ivermectin, Budesonide, Dexamethasone, convalescent plasma and monoclonal antibodies, Vitamin D, Zinc, Azithromycin, Hydroxychloroquine, Colchicine and Remdesivir are being used to great effect, and they are far safer than the COVID-19 Vaccines.<sup>12</sup>

Doctors from the Smith Center for Infectious Diseases and Urban Health and the Saint Barnabas Medical Center have published an *Observational Study on 255 Mechanically Ventilated COVID Patients at the Beginning of the USA Pandemic*, which states: “Causal modeling establishes that weight-adjusted HCQ [Hydroxychloroquine] and AZM [Azithromycin] therapy improves survival by over 100%.”<sup>13</sup>

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<sup>12</sup> Numerous studies can be reviewed here: <https://c19early.com> (last visited June 7, 2021).

<sup>13</sup> <https://www.medrxiv.org/content/10.1101/2021.05.28.21258012v1> (last visited July 15, 2021).



Observational studies in Delhi and Mexico City show dramatic reductions in COVID-19 case and death counts following the mass distribution of Ivermectin. These results align with those of a study in Argentina, in which 800 healthcare professionals received Ivermectin, while another 400 did not. Of the 800, not a single person contracted COVID-19, while more than half of the control group did contract it. Dr. Pierre Kory, a lung specialist who has treated more COVID-19 patients than most doctors, representing a group of some of the most highly published physicians in the world, with over 2,000 peer reviewed publications among them, testified before the U.S. Senate in December 2020.<sup>14</sup> He testified that based on 9 months of review of scientific data from 30 studies, Ivermectin obliterates transmission of the SARS-CoV-2 virus and is a powerful prophylactic (if you take it, you will not contract COVID-19). Four large randomized controlled trials totaling over 1500 patients demonstrate that Ivermectin is safe and effective as a prophylaxis. In early outpatient treatment, three randomized controlled trials and multiple observational studies show that Ivermectin reduces the need for hospitalization and death in statistically significant numbers. In inpatient treatment, four randomized controlled trials show that Ivermectin prevents death in a statistically significant, large magnitude. Ivermectin won the Nobel Prize in Medicine in 2015 for its impacts on global health.<sup>15</sup>

Inexplicably, the Defendants never formed or assigned a task force to research and review existing alternatives for preventing and treating COVID-19. Instead, the Defendants and others set about censoring both concerns about the Vaccines, and information about safe and effective alternatives.

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<sup>14</sup> <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwji38elkuPxAhW eAp0JHZhzAeMQFnoECAIQAA&url=https%3A%2F%2Fwww.hsgac.senate.gov%2Fdownload%2Fkory12-08-2020&usg=AOvVaw3z2a7PpDLWgyfSrp3miF1y> (last visited July 15, 2021).

<sup>15</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4692067/> (last visited July 15, 2021).



(6) § 360bbb–3(e)(1)(A)(i) and (ii): Healthcare Professionals and Vaccine Candidates are Not Adequately Informed

Once an EUA has been issued, § 360bbb–3(e) mandates that the DHHS Secretary “shall [ ] establish” conditions “designed to ensure” that both healthcare professionals and Vaccine candidates receive certain minimum required information that is necessary in order to make voluntary, informed consent possible. The required disclosures that the DHHS Secretary are designed to ensure include inter alia (i) that the Vaccines are only authorized for emergency use and not FDA approved, (ii) the significant known and potential risks of the Vaccines, (iii) available alternatives to the Vaccines, (iv) the option to accept or refuse the Vaccines.

The Vaccines are Not Approved by the FDA, but Merely Authorized for Emergency Use

Defendants have failed to educate the American public that the FDA has not actually “approved” the Vaccines, and that the DHHS Secretary has *not* in fact determined that the Vaccines are “safe and effective,” and on the contrary has merely determined, in accordance with the proverbial “weasel language” of the EUA statute, that “**it is reasonable to believe**” that the Vaccines “**may be**” effective and that the benefits outweigh the risks. Instead of being so educated, the public is barraged with unqualified “safe and effective” messaging from all levels of federal and state government, the private sector and the media. They hear from no higher authority than the President himself that: “The bottom line is this: I promise you they are safe. They are safe. And even more importantly, they’re extremely effective. If you’re vaccinated, you are protected.”

The public are also unaware of the serious financial conflicts-of-interest that burden Dr. Fauci, the National Institute of Allergies and Infectious Diseases, and the Vaccines and Related Biological Products Advisory Committee which advises and consults Defendants with respect to the Vaccine EUAs, as outlined in the Complaint (ECF 10, ¶¶ 250-256). Without the information



regarding conflicts-of interest, the public cannot assess for themselves the reliability and objectivity of the analysis underpinning the EUAs.

The Significant Known and Potential Risks of the Vaccines

Perhaps the first step in understanding the potential risks of the Vaccines is to understand exactly what they are, and what they are not. The CDC defines a “vaccine” as: “A product that stimulates a person’s immune system to produce immunity to a specific disease, protecting the person from that disease. Vaccines are usually administered through needle injections, but can also be administered by mouth or sprayed into the nose.”<sup>16</sup> The CDC defines “immunity” as: “Protection from an infectious disease. If you are immune to a disease, you can be exposed to it without becoming infected.”<sup>17</sup>

However, the “Pfizer-BioNTech COVID-19 Vaccine” and the “Moderna COVID-19 Vaccine” do not meet the CDC’s own definitions. They do not stimulate the body to produce immunity from a disease. They are a synthetic fragment of nucleic acid embedded in a fat carrier that is introduced into human cells, not for the purpose of inducing immunity from infection with the SARS-CoV-2 virus, and not to block further transmission of the virus, but in order to lessen the symptoms of COVID-19. No published, peer-reviewed studies prove that the “Pfizer-BioNTech COVID-19 Vaccine” and the “Moderna COVID-19 Vaccine” confer immunity or stop transmission.

Further, the “Pfizer-BioNTech COVID-19 Vaccine” and the “Moderna COVID-19 Vaccine” are not “vaccines” within the common, lay understanding of the public. Since vaccines were first discovered in 1796 by Dr. Edward Jenner, who used cowpox to inoculate humans against smallpox, and called the process “vaccination” (from the Latin term *vaca* for cow), the

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<sup>16</sup> See <https://www.cdc.gov/vaccines/vac-gen/imz-basics.htm> (last visited July 9, 2021).

<sup>17</sup> Id.



public has had an entrenched understanding that a vaccine is a microorganism, either alive but weakened, or dead, that is introduced into the human body in order to trigger the production of antibodies that confer immunity from the targeted disease, and also prevent its transmission to others. The public are accustomed to these traditional vaccines and understand them.

The public are fundamentally uninformed about the gene therapy technology behind the “Pfizer-BioNTech COVID-19 Vaccine” and the “Moderna COVID-19 Vaccine.” Referring to the “mRNA technology” in its Vaccine, Moderna admits the “novel and unprecedented nature of this new class of medicines” in its Securities and Exchange Commission filings.<sup>18</sup> Further, it admits that the FDA classes its Vaccine as a form of “gene therapy.” No dead or attenuated virus is used in the “Pfizer-BioNTech COVID-19 Vaccine” and the “Moderna COVID-19 Vaccine.” Rather, instructions, via a piece of lab-created genetic code (the mRNA) are injected into your body that tell your body how to make a certain “spike protein” that is purportedly useful in attacking the SARS-CoV-2 virus.

By referring to the “Pfizer-BioNTech COVID-19 Vaccine” and the “Moderna COVID-19 Vaccine” as “vaccines,” and by allowing others to do the same, the Defendants knowingly seduce and mislead the public, short-circuit independent, critical evaluation and decision-making by the consumers of these products, and vitiate their informed consent to this novel technology which is being deployed in the unsuspecting human population for the first time in history.

Meanwhile, the federal government is orchestrating a nationwide media campaign funded with \$1 billion — not to ensure that the Defendants meet their statutory disclosure obligations, but solely to promote the purported benefits of the Vaccines. Simultaneously, the Associated Press, Agence France Press, British Broadcasting Corporation, CBC/Radio-Canada, European

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<sup>18</sup> See [www.sec.gov/Archives/edgar/data/1682852/000168285220000017/mrna-20200630.htm](http://www.sec.gov/Archives/edgar/data/1682852/000168285220000017/mrna-20200630.htm) (last visited July 6, 2021).



Broadcasting Union (EBU), Facebook, Financial Times, First Draft, Google/YouTube, The Hindu Times, Microsoft, Reuters, Reuters Institute for the Study of Journalism, Twitter, The Washington Post and The New York Times all participate in the “Trusted News Initiative” which has agreed to not allow any news critical of the Vaccines.

Individual physicians are being censored on social media platforms (e.g., Twitter, Facebook, Instagram, TikTok), the modern day “public square.” Plaintiff AFLDS has recorded innumerable instances of social media deleting scientific content posted by AFLDS members that runs counter to the prevailing Vaccine narrative, and then banning them from the platform altogether as users. Facebook has blocked the streaming of entire events at which AFLDS Founder Dr. Simone Gold has been an invited guest, prior to her uttering a word. Other doctors have been banned for posting or tweeting screenshots of government database VAERS.

The censorship also extends to medical journals. In an unprecedented move, the four founding topic editors for the *Frontiers in Pharmacology* journal all resigned together due to their collective inability to publish peer reviewed scientific data on various drugs for prophylaxis and treatment of COVID-19.

Dr. Philippe Douste-Blazy, a cardiology physician, former France Health Minister, 2017 candidate for Director of the WHO and former Under-Secretary-General of the United Nations, described the censorship in chilling detail:

*The Lancet boss said “Now we are not going to be able to, basically, if this continues, publish any more clinical research data, because the pharmaceutical companies are so financially powerful today and are able to use such methodologies, as to have us accept papers which are apparently, methodologically perfect but in reality, which manage to conclude what they want to conclude.” ... one of the greatest subjects never anyone could have believed ... I have been doing research for 20 years in my life. I never thought the boss of The Lancet could say that. And the boss of the New England Journal of Medicine too. He even said it was “criminal” — the word was used by him. That is, if you will, when there is an outbreak like the COVID-19, in reality, there are people ... us,*



*we see “mortality” when you are a doctor or yourself, you see “suffering.” And there are people who see “dollars” — that’s it.*

In many instances, highly publicized attacks on early treatment alternatives seem to be done in bad faith. For example, one study on Hydroxychloroquine overdosed study participants by administering a multiple of the standard prescribed dose, and then reported the resulting deaths as though they were not a result of the overdose, but from the medication itself administered in the proper dosages. The twenty-seven physician-scientist authors of the study were civilly indicted and criminally investigated, and still the Journal of the American Medical Association has not retracted the article.<sup>19</sup>

#### The Available Alternatives to the Vaccines

Information regarding available alternatives to the Vaccines has been suppressed and censored equally with information regarding the risks of the Vaccines, as aforesaid.

#### The Option to Accept or Refuse the Vaccines

The idea of using fear to manipulate the public is not new, and is a strategy frequently deployed in public health. In June 2020, three American public health professionals, concerned about the psychological effects of the continued use of fear-based appeals to the public in order to motivate compliance with extreme COVID-19 countermeasures, authored a piece for the journal *Health Education and Behavior* calling for an end to the fear-mongering. In doing so, they acknowledged that fear has become an accepted public health strategy, and that it is being deployed aggressively in the United States in response to COVID-19:

*“... behavior change can result by increasing people’s perceived severity and perceived susceptibility of a health issue through heightened risk appraisal coupled by raising their self-efficacy and response-efficacy*

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<sup>19</sup> <https://www.medrxiv.org/content/medrxiv/early/2020/04/16/2020.04.07.20056424.full.pdf> (last visited July 15, 2021).



*about a behavioral solution. In this model, fear is used as the trigger to increase perceived susceptibility and severity.”*

In 1956, Dr. Alfred Biderman, a research social psychologist employed by the U.S. Air Force, published his study on techniques employed by communist captors to induce individual compliance from Air Force prisoners of war during the Korean War. The study was at the time and to some extent remains the core source for capture resistance training for the armed forces. The chart below compares the techniques used by North Korean communists with the fear-based messaging and COVID-19 countermeasures to which the American population has been subjected over the last year.

| <b>“COMMUNIST COERCIVE METHODS FOR ELICITING INDIVIDUAL COMPLIANCE”.*<br/>The Biderman Report of 1956 and COVID-19</b>                                                                                                                                                               |                                                                                                                                                                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Chart of Coercion</b>                                                                                                                                                                                                                                                             | <b>COVID-19</b>                                                                                                                                                                                                                                                                                               |
| <b>Isolation</b> <ul style="list-style-type: none"> <li>• Deprives individual of social support of his ability to resist</li> <li>• Makes individual dependent upon the captor</li> <li>• Individual develops an intense concern with self.</li> </ul>                               | <b>Isolation</b> <ul style="list-style-type: none"> <li>• Social distancing</li> <li>• Isolation from loved ones, massive job loss</li> <li>• Solitary confinement semi-isolation</li> <li>• Quarantines, containment camps</li> </ul>                                                                        |
| <b>Monopolization of Perception</b> <ul style="list-style-type: none"> <li>• Fixes all attention upon immediate predicament;</li> <li>• Frustrates all actions not consistent with compliance</li> <li>• Eliminates stimuli competing with those controlled by the captor</li> </ul> | <b>Monopolization of perception</b> <ul style="list-style-type: none"> <li>• Restrict movement</li> <li>• Create monotony, boredom</li> <li>• Prevent gathering, meetings, concerts, sports</li> <li>• Dominate all media the 24/7, censor information</li> </ul>                                             |
| <b>Induced Debility and Exhaustion</b> <ul style="list-style-type: none"> <li>• Weakens mental and physical ability to resist</li> <li>• People ...become worn out by tension and fear</li> </ul>                                                                                    | <b>Induced debility</b> <ul style="list-style-type: none"> <li>• Forced to stay at home, all media is negative</li> <li>• not permitted to exercise or socialize</li> </ul>                                                                                                                                   |
| <b>Threats</b> <ul style="list-style-type: none"> <li>• Cultivates anxiety and despair</li> <li>• Gives demands and consequences for non compliance</li> </ul>                                                                                                                       | <b>Threats and Intimidation</b> <ul style="list-style-type: none"> <li>• Threaten to close business, levy fines</li> <li>• Predict extension of quarantine, force vaccines</li> <li>• Create containment camps</li> </ul>                                                                                     |
| <b>Occasional Indulgences</b> <ul style="list-style-type: none"> <li>• Provides motivation for compliance</li> <li>• Hinders adjustment to deprivation.</li> <li>• Creates hope for change, reduces resistance</li> <li>• This keeps people unsure of what is happening.</li> </ul>  | <b>Occasional Indulgences</b> <ul style="list-style-type: none"> <li>• Allow reopening of some stores, services</li> <li>• Let restaurants open but only at a certain capacity</li> <li>• Increase more people allowed to gather</li> <li>• Follow concessions with tougher rules</li> </ul>                  |
| <b>Demonstrate Omnipotence</b> <ul style="list-style-type: none"> <li>• Demonstrates futility of resistance</li> <li>• Shows who is in charge</li> <li>• Provides positive motivation for compliance</li> </ul>                                                                      | <b>Demonstrate Ominpotence</b> <ul style="list-style-type: none"> <li>• Shut down entire economies across the world</li> <li>• Create money out of nowhere, force dependency</li> <li>• Develop total surveillance with nanochips and 5G</li> </ul>                                                           |
| <b>Degradation</b> <ul style="list-style-type: none"> <li>• Makes resistance seem worse than compliance</li> <li>• Creates feelings of helplessness.</li> <li>• Creates fear of freedom, dependence upon captors</li> </ul>                                                          | <b>Humiliation or Degradation techniques</b> <ul style="list-style-type: none"> <li>• Shame people who refuse masks, don't distance</li> <li>• Make people stand on circles and between lines</li> <li>• Make people stand outside and wait in queues</li> <li>• Sanitation stations in every shop</li> </ul> |
| <b>Enforcing trivial demands</b> <ul style="list-style-type: none"> <li>• Develops habit of compliance</li> <li>• Demands made are illogical and contradictory</li> <li>• Rules on compliance may change</li> <li>• Reinforces who is in control</li> </ul>                          | <b>Enforcing trivial demands</b> <ul style="list-style-type: none"> <li>• Family members must stand apart</li> <li>• Masks in home and even when having sex</li> <li>• Random limits on people allowed to be together</li> <li>• Sanitizers to be used over and over in a day</li> </ul>                      |

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The Chart of Coercion above is drawn from the Biderman Report on communist brainwashing techniques used by the Chinese and North Koreans on captured American servicemen to make them psychological as well as physical prisoners. Dr. Alfred D. Biderman M.A. and presented his Report at the New York Academy of Medicine Nov 13, 1956. Compare right column with your experience this year.



After a year of sustained psychological manipulation, the population is now weakened, frightened, desperate for a return of their freedoms, prosperity and normal lives, and especially vulnerable to pressure to take the Vaccine. The lockdowns and shutdowns, the myriad rules and regulations, the confusing and self-contradictory controls, the enforced docility, and the consequent demoralization, anxiety and helplessness are typical of authoritarian and totalitarian conditions. This degree of systemic and purposeful coercion means that Americans cannot give truly free and voluntary informed consent to the Vaccines.

At the same time, the population is being subjected to an aggressive, coordinated media campaign promoting the Vaccines funded by the federal government with \$1 billion. The media campaign is reinforced by a system of coercive rewards and penalties designed to induce vaccination. The federal government is offering a range of its own incentives, including free childcare. The Ohio Governor rewarded those Ohio residents accepting the Vaccines by allowing them to enter into the “Vaxamillion” lottery with a total \$5 million prize and the chance to win a fully funded college education, while barring entry for residents who decline the Vaccines. In New York, metro stations offer free passes to those receiving the Vaccine in the station. West Virginia is running a lottery exclusively for the vaccinated with free custom guns, trucks and lifetime hunting and fishing licenses, a free college education, and cash payments of \$1.5 million and \$600,000 as the prizes. Previously, the state offered a \$100 savings bond for each injection with a Vaccine. New Mexican residents accepting the Vaccines will be entered into weekly drawings to take home a \$250,000 prize, and those fully vaccinated by early August could win the grand prize of \$5 million. In Oregon, the vaccinated can win \$1 million, or one of 36 separate \$10,000 prizes through the state’s “Take Your Shot” campaign. Other state and local governments are partnering with fast food chains to offer free pizza, ice cream, hamburgers and other foods to the vaccinated. Many people are desperate following the last year of economic



destruction and deprivation of basic freedoms, and they are especially vulnerable to this coercion.

The penalties take many forms, among them:

- Using guilt and shame to make unvaccinated children and adults feel badly about themselves for refusing the Vaccines.
- Threatening the unvaccinated with false fears and anxieties about COVID-19, especially children who are at no risk statistically.
- Removing the rights of those who are unvaccinated, including:
  - Being prohibited from working
  - Being prohibited from attending school or college
  - Being limited in the ability to travel in buses, trains and planes
  - Being prohibited from traveling outside the United States
  - Being excluded from public and private events, such as performing arts venues.

Most recently, the President has announced an aggressive campaign to visit the homes of the unvaccinated, not for the purpose of ensuring that they have all of the information they might need in order to make fully informed, voluntary decisions about the Vaccines (the information required by § 360bbb–3(e)(1)(A)(i) and (ii)), but instead for the purpose of pressuring them to be injected with the Vaccine so that the Administration can reach its goal of having 70% of the American population vaccinated. He said: “Now we need to go to community by community, neighborhood by neighborhood, and oftentimes, door to door — literally knocking on doors — to get help to the remaining people protected from the virus.”<sup>20</sup> The White House press secretary referred to the door-knockers who would enter our communities to pressure us to accept the Vaccines using the language of war, as “strike forces.” Then, after Dr. Fauci stated his opinion in mainstream media news outlets that “at the local level . . . there should be more mandates,

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<sup>20</sup> See “Biden admin launching door-to-door push to vaccinate Americans, sparks major backlash,” <https://www.foxnews.com/media/biden-admin-door-to-door-coronavirus-vaccines> (last visited July 15, 2021).



there really should be”, the press secretary announced that the Biden Administration would support state and local Vaccine mandates.<sup>21</sup>

A study recently published in the International Journal of Clinical Practice, “Informed Consent Disclosure to Vaccine Trial Subjects of Risk of COVID-19 Vaccines Worsening Clinical Disease,”<sup>22</sup> concludes:

*COVID-19 vaccines designed to elicit neutralising antibodies may sensitise vaccine recipients to more severe disease than if they were not vaccinated. Vaccines for SARS, MERS and RSV have never been approved, and the data generated in the development and testing of these vaccines suggest a serious mechanistic concern: that vaccines designed empirically using the traditional approach (consisting of the unmodified or minimally modified coronavirus viral spike to elicit neutralising antibodies), be they composed of protein, viral vector, DNA or RNA and irrespective of delivery method, may worsen COVID-19 disease via antibody-dependent enhancement (ADE). **This risk is sufficiently obscured in clinical trial protocols and consent forms for ongoing COVID-19 vaccine trials that adequate patient comprehension of this risk is unlikely to occur, obviating truly informed consent by subjects in these trials.***

(emphasis added).

Plaintiffs’ expert Dr. Lee Merritt is a fully licensed, board certified surgeon, and has been actively engaged in medical practice for over 35 years. As Chief of Staff, Chief of Surgery and Chief of Credentialing at a regional medical center, she participated in hospital administration and education with respect to *inter alia* informed consent. She states: “I have read the Complaint and Motion for Preliminary Injunction in the above captioned matter, specifically the allegations related to informed consent. I agree with the informed consent allegations contained in the Complaint and Motion for Preliminary Injunction” (see Declaration of Dr. Lee Merritt at Exhibit A). Dr. Merritt has provided an example of some of the language that she would recommend using for the purpose of obtaining voluntary, informed consent to the Vaccines.

<sup>21</sup> See “Biden will back local vaccine mandates,” <https://thehill.com/changing-america/well-being/prevention-cures/562622-biden-will-back-local-vaccine-mandates> (last visited July 15, 2021).

<sup>22</sup> See <https://onlinelibrary.wiley.com/doi/epdf/10.1111/ijcp.13795> (last visited July 17, 2021).



The combined effect of (i) the suppression and censorship of information regarding the risks of the Vaccines, (ii) the failure to inform the public regarding the novel and experimental nature of the mRNA Vaccines, (iii) the suppression and censorship of information regarding alternative treatments, (iv) the failure to inform and properly educate the public that the Vaccines are not in fact “approved” by the FDA, (v) the failure to inform and properly educate the public that the DHHS Secretary has *not* determined that the Vaccines are “safe and effective” and on the contrary has merely determined that “it is reasonable to believe” that the Vaccines “may be effective” and that the benefits outweigh the risks, (vi) the sustained psychological manipulation of the public through official fear-based messaging regarding COVID-19, draconian countermeasures and a system of rewards and penalties, is to remove any possibility that Vaccine recipients are giving voluntary informed consent to the Vaccines. They have no real option to accept or refuse the Vaccines. They are unwitting, unwilling participants in a large scale, ongoing non-consensual human experiment.<sup>23</sup>

**(7) § 360bbb–3(e)(1)(A)(iii): Monitoring and Reporting of Adverse Events**

VAERS was established in 1986 in order to facilitate public access to information regarding adverse events potentially caused by vaccines. This system is inadequate to the present circumstances, for the following reasons:

- neither healthcare professionals nor Vaccine recipients are being informed by the Defendants, and conditions do not exist ensuring that others will inform them, that the DHHS Secretary “has authorized the emergency use of the [Vaccines]” since they are not being informed of the true meaning of the EUAs, specifically, that the Secretary has *not* determined that the Vaccines are “safe and effective” (notwithstanding the President’s widely publicized statements to the contrary, which are amplified daily by countless other governmental and private sector statements that the Vaccines are “safe and effective”), and that instead the DHHS Secretary has only determined that he

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<sup>23</sup> [https://en.wikipedia.org/wiki/Unethical\\_human\\_experimentation\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Unethical_human_experimentation_in_the_United_States) (last visited July 15, 2021).



has “reason to believe” that the Vaccines “may be effective” in treating or preventing SARS-CoV-2 and COVID-19, based on trials of the Vaccines that are not being conducted like any previous trials and are compressed, overlapping, incomplete and in many instances conducted by the Vaccine manufacturers themselves;

- neither healthcare professionals nor Vaccine recipients are being informed by the Defendants, and conditions do not exist ensuring that others will inform them, of “the significant known and potential [ ] risks” of the Vaccines, since there is a coordinated campaign funded with \$1 billion to extol the virtues of the Vaccines, and a simultaneous effort to censor information about the inefficacy of the Vaccines in preventing or treating SARS-CoV-2 and COVID-19, Vaccine risks, and injuries and deaths caused by the Vaccine;
- Vaccine recipients are not being informed by the Defendants, who have a financial stake in the intellectual property underlying at least one Vaccine, and who have other financial conflicts of interest, and conditions do not exist ensuring that others will inform them, that there are alternatives to the Vaccines and of their benefits;
- Vaccine recipients are not being informed by the Defendants, and conditions do not exist ensuring that others will inform them, of their “option to accept or refuse” the Vaccines, since they have been saturated with unjustified fear-messaging regarding SARS-CoV-2 and COVID-19, psychologically manipulated, and coerced by a system of rewards and penalties that render the “option to [ ] refuse” meaningless; and
- Appropriate conditions do not exist for “the monitoring and reporting of adverse events” since only a fraction (as low as 1%) of adverse events are reported to VAERS by physicians fearing liability, and the Defendants have established a parallel reporting system for COVID-19 that is not accessible by Plaintiffs or the rest of the public.

A 2011 report by Harvard Pilgrim Healthcare for DHHS stated that fewer than 1% of all vaccine adverse events are reported to Defendants: “[F]ewer than 1% of vaccine adverse events are reported. Low reporting rates preclude or slow the identification of “problem” drugs and vaccines that endanger public health. New surveillance methods for drug and vaccine adverse effects are needed.”<sup>24</sup>

To illustrate, while the CDC claims that “Anaphylaxis after COVID-19 vaccination is rare and occurred in approximately 2 to 5 people per million vaccinated in the United States

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<sup>24</sup> Harvard Pilgrim Health Care, Inc., Electronic System for Public Health Vaccine Adverse Event Reporting System, *AHRQ* 2011.



based on events reported to VAERS,”<sup>25</sup> a recent study by Mass General Brigham found “severe reactions consistent with anaphylaxis occurred at a rate of 2.47 per 10,000 vaccinations.”<sup>26</sup> This is 50 to 120 times more cases than reported by VAERS and the CDC, meaning that only between 0.8% and 2% of all anaphylaxis cases are being reported by the Defendants. The underreporting is inexplicable, since it is mandatory for healthcare professionals to report this reaction to the Vaccines,<sup>27</sup> and the reactions typically occur within 30 minutes of vaccination.<sup>28</sup>

Uniquely for COVID-19, the CDC has developed a parallel system called “V-Safe.” V-Safe is an app on a smart phone which people can use to report adverse events. Plaintiffs’ investigation indicates that vaccine subjects who are provided with written information are given the V-Safe contact information. Plaintiffs cannot access V-Safe data, since it is controlled exclusively by the CDC. Plaintiffs are concerned that the information in V-Safe exceeds that in VAERS, in terms of volume and kind, defying Congressional intent in creating VAERS.

In summation, VAERS is inaccurate, and the federal government is failing to provide data from other sources such as V-Safe, Medicare/Medicaid, the military, etc. Informed consent cannot be given without an understanding of risk and Plaintiffs cannot help but wonder why the Defendants would fail to disclose this critical information related to risk to the public, particularly in light of the fact that they have had the time and resources to study and extend the authorizations on the Vaccines, build an enormous Vaccine marketing machine, and roll out Vaccine clinics all over the nation.

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<sup>25</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/adverse-events.html>.

<sup>26</sup> See <https://jamanetwork.com/journals/jama/fullarticle/2777417>.

<sup>27</sup> See <https://www.fda.gov/media/144413/download>.

<sup>28</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/adverse-events.html>.



## **B. The Under-18 Age Category**

In the United States, those younger than 18 years of age accounted for just 1.7% of all COVID-19 cases.<sup>29</sup> Essentially no severe cases of COVID-19 were observed in those aged 10 through 18 years. This group accounted for just 1% of reported cases, almost all of which were very mild.<sup>30</sup> A study recently published in the British Medical Journal concludes: “In contrast to other respiratory viruses, children have less severe symptoms when infected with the novel severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).”<sup>31</sup> Hospitalization due to COVID-19 is incredibly rare among youth, and overstated. The American Academy of Pediatrics<sup>32</sup> reported:

*...these studies underscore the importance of clearly distinguishing between children hospitalized with SARS-Co-V-2 found on universal testing versus those hospitalized for COVID-19 disease. Both demonstrate that reported hospitalization rates greatly overestimate the true burden of COVID-19 disease in children.*

Professor Hervé Seligmann, an infectious disease expert and biomedical researcher with over 100 peer-reviewed international publications, of the University of Aix-Marseille, has scrutinized the official COVID-19 statistics and figures of Israel, which has vaccinated 63% of its population, and fully vaccinated 57% of its population. Professor Seligmann sees no benefit in vaccinating those under 18, and significant risk of harm:

*There are several theories about why the risk of death is so low in the young including that the density of the ACE2 receptors that the virus uses to gain entry into cells is lower in the tissue of immature animals and this is expected to be true also in humans. However, the vaccines induce the cells of the recipient to*

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<sup>29</sup> Coronavirus Disease 2019 in Children - United States, February 12-April 2, 2020. *MMWR. Morbidity and Mortality Weekly Report* 69:422-426.

<sup>30</sup> Tsaouri, S. et al. (2021), Risk Factors for Severity in Children with Coronavirus Disease 2019: A Comprehensive Literature Review. *Pediatric Clinics of North America* 68:321-338.

<sup>31</sup> Zimmermann P, Curtis N Why is COVID-19 less severe in children? A review of the proposed mechanisms underlying the age-related difference in severity of SARS-CoV-2 infections *Archives of Disease in Childhood* 2021;106:429-439.

<sup>32</sup> Ioannidis, J.P.A. (2020) Infection fatality rate of COVID-19 inferred from seroprevalence data. *Bull. World Health Organ.* -:BLT.20.265892.



*manufacture trillions of spike proteins with the pathology described above. Because immune responses in the young and healthy are more vigorous than those in the old, paradoxically, the vaccines may thereby induce, in the very people least in need of assistance, strong immune responses, including those which can damage their own cells and tissues as well as by stimulating blood coagulation. Experts predict that vaccination will greatly increase the very low COVID-19 risks experienced by the younger population ... vaccination-associated mortality risks are expected at least 20 times greater below age 20 compared to the very low COVID19-associated risks for this age group.*<sup>33</sup>

CDC data indicates that children under 18 have a 99.998% COVID-19 recovery rate with no treatment. This contrasts with over 45,000 deaths (*see below*) and hundreds of thousands of adverse events reported following injection with the Vaccines. The risk of harm to children may be as high as 50 to 1. Thus, children under 18 are at no statistically significant risk of harm from SARS-CoV-2 and COVID-19. Administering Vaccines to this age group knowingly and intentionally exposes them to unnecessary and unacceptable risks.

Plaintiffs' expert Dr. Angelina Farella is a fully licensed, board certified pediatrician, actively practicing for over 25 years, and has vaccinated in excess of 10,000 patients (*see Declaration of Angelina Farella, MD at Exhibit B*). Dr. Farella states, in her professional medical opinion: "There are 104 children age 0-17 who have died from Covid-19 and 287 from Covid + Influenza out of roughly 72 million children in America. This equals ZERO risk. There is NO public interest in subjecting children to experimental vaccination programs, to protect them from a disease that does not threaten them." Dr. Farella also opines, with respect to the lack of testing designed to ensure the safety of this subpopulation:

*Vaccines take years to safely test. It's not only the number of people tested but the length of time that is important when creating new vaccines. Emergency Use Authorization was granted prematurely for adolescents, before ANY trials were completed. Moderna is scheduled to complete trials on October 31, 2022, and Pfizer is scheduled to complete trials on April 27, 2023. There were no trial*

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<sup>33</sup> Seligmann, H., (2021), Expert Evaluation on Adverse Effects of the Pfizer COVID-19 Vaccination. *See* [https://www.researchgate.net/publication/351441506\\_Expert\\_evaluation\\_on\\_adverse\\_effects\\_of\\_the\\_Pfizer-COVID-19\\_vaccination](https://www.researchgate.net/publication/351441506_Expert_evaluation_on_adverse_effects_of_the_Pfizer-COVID-19_vaccination) (last visited July 8, 2021).



*patients under the age of 18. The FDA and these pharma companies are currently allowing children 12 years old to receive this shot, when they were never studied in the trials. **Never before in history have we given medications that were not FDA approved to people who were not initially studied in the trial.***

Section 360bbb–3(c)(2) requires the Secretary to base decisions on “data from adequate and well-controlled clinical trials”. Clearly, the Secretary has exceeded his statutory authority with respect to the under-18 subpopulation.

Meanwhile, local governments are hastily passing laws eliminating the requirement for parental consent, and even parental knowledge, of medical treatments administered to children as young as 12. This is intended to pave the way for children to be vaccinated at school, without parental knowledge or consent.

Children in the 12-18 age group are not developmentally capable of giving voluntary, informed consent to the Vaccines. Their brains are rapidly changing and developing, and their actions are guided more by the emotional and reactive amygdala and less by the thoughtful, logical frontal cortex. Hormonal and body changes add to their emotional instability and erratic judgment. Children also have a well-known and scientifically studied vulnerability to pressure from peers and adults. This age group is particularly susceptible to pressure to do what others see as the right thing to do — in this case, to be injected with the Vaccine “for the sake of other people and society.”

Injecting this under-18 subpopulation with the Vaccines threatens them with immediate, potentially life-threatening harm. The documented risks of injecting this subpopulation with the Vaccines far outweigh the purported benefits.



### **C. Those Previously Infected with SARS-CoV-2**

Medical studies show that those with preexisting immunity have long lasting and robust natural immunity to SARS-CoV-2.<sup>34</sup> A recent Cleveland Clinic study<sup>35</sup> demonstrates that natural immunity acquired through prior infection with COVID-19 is stronger than any benefit conferred by a Vaccine, rendering vaccination unnecessary for those previously infected. A comparative study by Goldberg *et al* “questioned the need to vaccinate previously-infected individuals” and noted that previously infected individuals had 96.4% immune protection from COVID-19, versus 94.4% in those injected with the Vaccine.<sup>36</sup>

The Israeli Ministry of Health has released data showing that Israelis who had been previously infected with SARS-CoV-2 (and were not also vaccinated) were far less likely to become re-infected with the virus than those in the population who had been injected with the Vaccines.<sup>37</sup> Of the more than 7,700 new cases detected during the recent wave that commenced in May 2021, only 72, or less than 1%, were people who had previously been infected with SARS-CoV-2 and were never vaccinated. By contrast, over 3,000 cases, or 40%, were people who became infected for the first time, in spite of being vaccinated. The 72 instances of re-infection represent a mere 0.0086% of the 835,792 Israelis who are known to have recovered from the virus.

The immutable laws of immunology continue to function during COVID-19 (meaning those who are previously recovered from such an infection have acquired the ability to recognize disease and can effectively neutralize the infection before it takes hold), as evidenced by the fact

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<sup>34</sup> See <https://www.nature.com/articles/d41586-021-01442-9>, and [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00782-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00782-0/fulltext) (last visited July 14, 2021).

<sup>35</sup> Shrestha, N., Burke, P., Nowacki, A., Terpeluk, P., Gordon, S. (2021), Necessity of COVID-19 Vaccination in Previously Infected Individuals. See <https://www.medrxiv.org/content/10.1101/2021.06.01.21258176v2> (last visited July 8, 2021).

<sup>36</sup> See <https://www.medrxiv.org/content/10.1101/2021.04.20.21255670v1.full.pdf> (last visited July 13, 2021).

<sup>37</sup> See <https://www.israelnationalnews.com/News/News.aspx/309762> (last visited July 15, 2021).



that persons who have had SARS-CoV-1, a virus which is 22% dissimilar to the current strain, are still immune from SARS-CoV-2 18 years later.<sup>38</sup> Laypersons are misled to believe that when antibodies gradually diminish as expected, immunity is gone when in fact, immunity remains<sup>39</sup> quiescent deeper in the body, in the bone marrow<sup>40</sup>, plasma, ready to be activated should the threat reemerge. This is normal immunology.

Not only is a Vaccine unnecessary in this subpopulation, it is more likely to cause harm. Scientists have observed vaccine-driven disease enhancement in the previously infected. The FDA admits that many people receiving a Vaccine either are or were previously infected with SARS-CoV-2, or have or previously had COVID-19.<sup>41</sup> Upon injection with the Vaccines, this population has reported serious medical harm, including death.<sup>42</sup> There is an immediately higher death rate worldwide upon receiving a Vaccine, generally attributed to persons having recently been infected with COVID-19. A person who previously had SARS-CoV-2, and then receives a Vaccine, mounts an antibody response to the Vaccine that is between 10 and 20 times stronger than the response of a previously uninfected person. The antibody response is far too strong and overwhelms the Vaccine subject. Medical studies show severe Vaccine side effects in persons previously infected with COVID-19.<sup>43</sup> A study published in the New England Journal of Medicine noted antibody titers 10-45 times higher in those with preexisting COVID-19 immunity after the first Vaccine injection, **with 89% of those seropositive reporting adverse side-effects.**<sup>44</sup> This substantial risk is suppressed in mainstream national news. Groups of scientists are demanding improved pre-assessment due to “Vaccine-driven disease enhancement”

<sup>38</sup> See <https://www.nature.com/articles/s41586-020-2550-z> (last visited July 14, 2021).

<sup>39</sup> <https://www.medpagetoday.com/infectiousdisease/covid19/92836> (last visited July 14, 2021).

<sup>40</sup> <https://www.nature.com/articles/s41586-021-03647-4> (last visited July 14, 2021).

<sup>41</sup> See <https://www.fda.gov/media/144245/download> (last visited July 13, 2021).

<sup>42</sup> See <https://www.bridgemi.com/michigan-health-watch/three-michigan-people-who-died-after-vaccine-actually-had-earlier-covid>; <https://www.bmj.com/content/bmj/373/bmj.n1372.full.pdf> (last visited July 13, 2021).

<sup>43</sup> See <https://www.medrxiv.org/content/10.1101/2021.01.29.21250653v1.full.pdf> (last visited July 13, 2021).

<sup>44</sup> See <https://www.nejm.org/doi/10.1056/NEJMc2101667> (last visited July 13, 2021).



in the previously infected, a subpopulation which has been excluded from clinical trials. The failure to protect a subpopulation at higher risk, such as this one, is unprecedented. Injecting this subpopulation with the Vaccines, without prescreening, threatens them with immediate, potentially life-threatening harm.

Plaintiffs' expert Dr. Richard Urso is a fully licensed, board certified, practicing medical doctor (see Declaration of Dr. Richard Urso at Exhibit C). Dr. Urso has treated over 300,000 patients in his career, including over 450 COVID-19 recovered patients. In his professional medical opinion:

*COVID recovered patients are at extremely high risk to a vaccine. They retain an antigenic fingerprint of natural infection in their tissues. They have all the requisite components of immune memory. Vaccination may activate a hyperimmune response leading to a significant tissue injury and possibly death.*

*I have read the Complaint and Motion for Preliminary Injunction in the above captioned matter, specifically the allegations related to the dangers to members of the population who have already had Covid-19. I agree with the allegations contained in the Complaint and Motion for Preliminary Injunction.*

Pre-screening can be accomplished in the traditional way by (1) obtaining relevant personal and family medical history including prior COVID-19 symptoms and test results, (2) obtaining antibody and T-Detect testing from indeterminate persons, (3) obtaining rapid PCR screening testing on all persons (using at least the standard cycle thresholds set forth *infra*). If the prescreening results are positive, the Vaccine candidate must be excluded. The documented risks of indiscriminately injecting this subpopulation with the experimental Vaccines far outweigh the purported benefits.

For additional support of the foregoing sections, and this Motion for Injunctive Relief generally, please see the duly sworn Declaration of Dr. Peter A. McCullough, attached hereto and incorporated herein with reference to Exhibit L.



**D. Whistleblower Testimony: 45,000 Deaths Caused by the Vaccines**

Plaintiffs' expert Jane Doe<sup>45</sup> is a computer programmer with subject matter expertise in the healthcare data analytics field, and access to Medicare and Medicaid data maintained by the Centers for Medicare and Medicaid Services (CMS) (*see* Declaration of Jane Doe at Exhibit D). Over the last 20 years, she has developed over 100 distinct healthcare fraud detection algorithms for use in the public and private sectors. In her expert opinion, VAERS under-reports deaths caused by the Vaccines by a conservative factor of at least 5. As of July 9, 2021, VAERS reported 9,048 deaths associated with the Vaccines. Jane Doe queried data from CMS medical claims, and has determined that the number of deaths occurring with 3 days of injection with the Vaccines exceeds those reported by VAERS by a factor of at least 5, indicating that **the true number of deaths caused by the Vaccines is at least 45,000**. She notes that in the 1976 Swine Flu vaccine campaign (in which 25% of the U.S. population at that time, 55 million Americans, were vaccinated), the Swine Flu vaccine was deemed dangerous and unsafe, and removed from the market, even though the vaccine resulted in only 53 deaths.

The gross and willful under-reporting of Vaccine-caused deaths, which is substantiated by Jane Doe's Declaration, and also by other independent data points considered as part of Plaintiffs' due diligence, is profoundly important on a number of levels. This evidence increases the likelihood of Plaintiffs' success on the merits by: (1) making it impossible (a) that the DHHS Secretary can reasonably conclude, as required by § 360bbb-3(c)(2)(B), that "the known and potential benefits of [the Vaccines] outweigh the known and potential risks of [the Vaccines]",

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<sup>45</sup> Plaintiffs' expert Jane Doe is a whistleblower who fears for her personal safety and that of her family, and reprisal, including termination and exclusion from her chosen profession for the duration of her working life, for disclosing the evidence contained in her Declaration at Ex. D. Plaintiffs will present the Court with a motion for an appropriately tailored protective order seeking to preserve the confidentiality of Jane Doe's identity. In the meantime, Defendants are not prejudiced, since they can respond to the substance of Jane Doe's Declaration and challenge her expert qualification without knowing her true identity. Plaintiffs' counsel have in their possession a copy of this same Declaration of Jane Doe, signed by the witness in her actual name.



(b) that the DHHS Secretary has succeeded in creating conditions, as required by § 360bbb–3(e)(1)(A)(i)(II) and (ii)(II), that ensure that healthcare professionals and Vaccine candidates are informed of the “significant known and potential [ ] risks” of the Vaccines, and (c) that the DHHS Secretary has succeeded in creating conditions, as required by § 360bbb–3(e)(1)(A)(iii), for the monitoring and reporting of adverse events; and (2) sealing Plaintiffs’ argument that the FDA’s “citizen petition” process (discussed *infra* in section III(1)) is “inadequate and not efficacious” and that its pursuit by Plaintiffs would have been a “futile gesture” by showing Defendants’ bad faith. The evidence makes it irrefutable that Plaintiffs and others in the public will suffer irreparable injury (discussed *infra* in section III(2)) if this Motion is denied. Finally, the evidence tilts the balance of hardships and public interest (discussed *infra* in Section III(3)) decisively in favor of Plaintiffs.

### III. LAW AND ANALYSIS

In the 11th Circuit, a district court may grant preliminary injunctive relief when:

*“a party establishes each of four separate requirements: (1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.”*

Jones v. Governor of Fla., 950 F.3d 795, 806 (11th Cir. 2020). However, the court has “considerable discretion...in determining whether the facts of a situation require it to issue an injunction.” eBay, Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006) (internal quotations and citations omitted).



### A. Likelihood of Success on the Merits

As a threshold matter, parties seeking a preliminary injunction “are not required to prove their claim, but only to show that they [are] likely to succeed on the merits.” Glossip v. Gross, 135 S. Ct. 2726, 2792 (2015); Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 22 (2008).

While the burden of persuasion remains with the Plaintiffs, the “burdens at the preliminary injunction stage track the burdens at trial.” Gonzales v. O Centro Espírita Beneficente União do Vegetal, 546 U.S. 418, 428–30 (2006). For the purposes of a preliminary injunction, this burden of proof can be shifted to the party opposing the injunctive relief after a *prima facie* showing, and the movant should be deemed likely to prevail if the non-movant fails to make an adequate showing. Id.

#### (1) *Plaintiffs Have Standing*

Plaintiffs have standing to assert these claims. They have demonstrated that they have “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that it is likely to be redressed by a favorable decision.” Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992).

Plaintiffs have alleged specific physical injuries caused by the Vaccines, death caused by the Vaccines, actual and threatened loss of employment, and violations of their constitutionally protected rights to personal autonomy, bodily integrity, and to work in a profession of their choosing, each of which constitutes “an invasion of a legally protected interest” that is “concrete,” “particularized,” and “actual or imminent, not conjectural or hypothetical” as required under Spokeo, Inc. v. Robins, 136 S.Ct. 1540, 1548 (2016). Their pleadings are supported by Declarations made under oath.

The participation of third parties in the chain of causation does not defeat Plaintiffs’ claims or their standing, since their injuries are “fairly traceable” to the Defendants. *See* Simon



v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 45 n.25 (1976) (noting cases providing that privately inflicted injury is traceable to government action if the injurious conduct “would have been illegal without that action”); National Wildlife Federation v. Hodel, 839 F.2d 694, 705 (D.C. Cir. 1988) (“The Supreme Court’s decisions on this point show that mere indirectness of causation is no barrier to standing, and thus, an injury worked on one party by another through a third party intermediary may suffice.”); Telephone and Data Systems, Inc. v. FCC, 19 F.3d 42, 47 (D.C. Cir. 1994) (“injurious private conduct is fairly traceable to the administrative action contested in the suit if that action authorized the conduct or established its legality” . . . “the relief sought would constitute a ‘necessary first step on a path that could ultimately lead to relief fully redressing the injury’” . . . “the relief requested ‘will produce tangible, meaningful results in the real world.’”); Motor & Equip. Mfrs. Ass’n v. Nichols, 142 F.3d 449, 457-58 (D.C. Cir. 1998) (petitioner had standing to challenge government action based on the independent conduct of third parties where evidence demonstrated that the challenged action “resulted in an almost unanimous decision” by those third parties to take action that harmed the petitioner); America’s Community Bankers v. FDIC, 200 F.3d 822, 827-28 (D.C. Cir. 2000) (“an agency does not have to be the direct actor in the injurious conduct, but that indirect causation through authorization is sufficient to fulfill the causation requirement for Article III standing.”); Consumer Federation of America v. F.C.C., 348 F.3d 1009, 1012 (D.C. Cir. 2003) (“When an agency order permits a third-party to engage in conduct that allegedly injures a person, the person has satisfied the causation aspect of the standing analysis.”).

A favorable decision of this Court will likely redress Plaintiffs’ injuries. The Vaccine-injured Plaintiffs continue to suffer the adverse effects of the Defendants’ wrongdoing, and their physical injuries are still unfolding. Their personal injuries can be redressed in the usual way, by



an award of civil money damages for pain and suffering, emotional distress, economic loss and medical monitoring.

***(2) Defendants' Actions are Reviewable***

Plaintiffs have alleged that there is no real emergency as required by § 360bbb–3(b), that Defendants have willfully failed to satisfy the statutory criteria for issuing the Vaccine EUAs required by § 360bbb–3(c), and that Defendants have failed to create and maintain the conditions of authorization for the Vaccine EUAs required by § 360bbb–3(e) (Counts I, II, III and VI).

The Administrative Procedures Act (“APA”) imposes four requirements that must be met before a federal court can review agency action: (1) the alleged injury must “arguably” be within the “zone of interests” protected or regulated by the statute in question, (2) no statute precludes judicial review, (3) the agency action is “final” and (4) the agency action is not “committed to agency discretion” by law.

***i. Plaintiffs' Injuries are Within the Zone of Interests***

The “zone of interests” test is “*not* ‘especially demanding’” Lexmark Int’l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 130 (2014) (quoting Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 567 U.S. 209, 225 (2012)). The Supreme Court has “conspicuously included the word ‘arguably’ in the test to indicate that the benefit of any doubt goes to the plaintiff. “ Id. The test “‘forecloses suit only when a plaintiff’s interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that’ Congress authorized that plaintiff sue.” Collins v. Mnuchin, 938 F.3d 553, 574 (5th Cir. 2019) (quoting Lexmark, 572 U.S. at 130.). The Vaccine injuries and death, and the violations of the constitutionally protected right to bodily integrity and personal autonomy that Plaintiffs assert in the Complaint, are within the zone of interests protected by these statutory provisions, the purpose of which is to tightly limit the circumstances in which



potentially harmful medical products can be placed in the stream of commerce and used by the American public prior to their full approval by the FDA.

*ii. No Statutory Preclusion*

Plaintiffs can locate no valid statute purporting to preclude judicial review of this agency action, either categorically, or prior to the exhaustion of administrative remedies.

Defendants may cite to 42 U.S.C. § 247d-6d(b)(7), a provision of the Public Readiness and Emergency Preparedness Act (“PREP Act”), which states: “No court of the United States, or of any State, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this subsection.” However, a “strong presumption in favor of judicial review of administrative action” governs the construction of potentially jurisdiction-stripping provisions like § 247d-6d(b)(7). INS v. St. Cyr, 533 U.S. 289, 298 (2001). “Even when the ultimate result is to limit judicial review, the Court cautions that as a matter of the interpretive enterprise itself, the narrower construction of a jurisdiction-stripping provision is favored over the broader one.” ANA Int’l Inc. v. Way, 393 F.3d 886, 891 (2004) (citing to Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471, 480-482 (1999)); see also Patel v. United States AG, 917 F.3d 1319, Fn. 4 (11th Cir. 2019) (“We are also mindful that there is a strong presumption in favor of interpreting statutes to allow judicial review of administrative actions; consequently, jurisdiction stripping is construed narrowly.”), (citing to Kucana v. Holder, 558 U.S. 233, 251-252 (2010)).

Thus the prohibition on judicial review in § 247d-6d(b)(7) must be construed narrowly so as to apply exclusively and specifically to declarations conferring the PREP Act “immunity” described in § 247d-6d(a), which are the only declarations made by the Secretary under “this subsection.” Section 247d-6d(b)(1) refers to the Secretary’s having first and beforehand made a declaration that a public health emergency exists (a declaration that is made under an entirely



different statute, 21 U.S.C. § 360bbb–3(b)), and states that if such a public health emergency declaration has been made, then the Secretary may confer PREP Act immunity by publishing a notice of same in the Federal Register.

Any broader interpretation of § 247d-6d(b)(7) — and in particular, any broader interpretation that purports to categorically eliminate judicial review of actions taken under § 360bbb–3 — is an unconstitutional delegation of legislative power by Congress to the executive branch. It is unconstitutional for three reasons. First, it is unconstitutional because it is devoid of any “‘intelligible principle’ on which to judge the conformity of agency action to the congressional grant of power.” Florida v. Becerra, 2021 U.S. Dist. LEXIS 114297 (M.D. Fl. 2021) (quoting J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 (1928)). Further, it purports to categorically exclude, rather than merely limiting, all judicial review. Finally, it is unconstitutional because it purports to eliminate judicial review in that most constitutionally perilous of situations, a state of emergency unilaterally declared and sustained by an executive branch official.

In Home Building and Loan Association v. Blaisdell, 290 U.S. 398 (1934), the U.S. Supreme Court stated: “Whether an emergency exists upon which the continued operation of the law depends is always open to judicial inquiry.” 290 U.S. at 442, citing Chastleton Corp. v. Sinclair, 264 U.S. 543 (1924). In Sinclair, the Supreme Court stated: “A law depending upon the existence of emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change.” 264 U.S. at 547. Both Blaisdell and Sinclair are clear authority that an emergency and the rules promulgated thereunder must end when the facts of the situation no longer support the continuation of the emergency. They also forbid this Court to merely assume the existence of a “public health crisis” based on the pronouncements of the Executive Defendants. They are clear authority that it is the duty of the court of first instance to



grapple with this question and conduct an inquiry. “[A] Court is not at liberty to shut its eyes to an obvious mistake when the validity of the law depends upon the truth of what is declared.” Id. The Sinclair court instructed lower court’s to inquire into the factual predicate underlying a declaration of emergency, where there appears to have been a change of circumstances: “the facts should be gathered and weighed by the court of first instance and the evidence preserved for consideration by this Court if necessary.” 264 U.S. at 549.

In Sterling v. Constantin, 287 U.S. 378 (1932), the Supreme Court reviewed the actions of the Texas Governor in declaring martial law and interfering with oil well production in a manner that impaired private drilling rights. In holding that the question whether an emergency existed justifying such interference with the plaintiffs’ property rights was subject to judicial inquiry and determination, the Court stated:

*If this extreme position could be deemed to be well taken, it is manifest that the fiat of a state governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the federal Constitution upon the exercise of state power would be but impotent phrases, the futility of which the state may at any time disclose by the simple process of transferring powers of legislation to the Governor to be exercised by him, beyond control, upon his assertion of necessity. Under our system of government, such a conclusion is obviously untenable. There is no such avenue of escape from the paramount authority of the federal Constitution. When there is a substantial showing that the exertion of state power has overridden private rights secured by that Constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression.*

287 U.S. at 397-98.

Similarly, the actions of the Secretary must be subject to judicial review. Under 21 U.S.C. § 355(q)(1)(A), the DHHS Secretary

*shall not delay approval of a pending application [ ] because of any request to take any form of action relating to the application, either before or during consideration of the request, unless — (i) the request is in writing and is a petition submitted to the Secretary pursuant to section 10.30 or 10.35 of title 21, Code of Federal Regulations . . .*



21 C.F.R. § 10.30 in turn provides for so called “citizen petitions” which are a form of administrative redress. However, a close reading of the statutory language and due consideration of the underlying policies compel the conclusion that Congress did not intend to preclude judicial review of this particular agency action.

Section 355(q) could easily state that interested parties “shall not pursue” (or the equivalent) lawsuits prior to the completion of the citizen petition process. It does not. Instead, the only mandatory language in § 355(q) is directed at the Secretary, not at citizens, and it states that the Secretary “shall not delay”. This language is intended to target the predominant, anti-competitive mischief marring the FDA approval process at the time the statute was enacted. Entrenched market participants abused the citizen petition process by soliciting citizenry to file petitions for the improper purpose of delaying applications for new drug approval submitted by new market entrants.<sup>46</sup> Senator Edward Kennedy explained: “The citizen petition provision is designed to address attempts to derail generic drug approvals. Those attempts, when successful, hurt consumers and the public health.”<sup>47</sup> The statutory language should be read narrowly in accordance with that purpose, to apply only to the “approval of a pending application” which should not be delayed.

Plaintiffs here are seeking first and foremost the **revocation** or **termination** of the declared emergency and existing Vaccine EUAs, and not for anti-competitive purposes, but in order to respond to unlawful agency action driven by financial conflicts of interest, political pressure and fear, the substantial risk of widespread personal injury and death, and constitutional infractions.

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<sup>46</sup> See *Citizen Petitions: An Empirical Study*, 34 Cardozo L. Rev. 249, 252 (2012) (“The study finds that brand drug companies file 68% of petitions, far more than generic firms or other parties such as universities, doctors or hospitals. Of the petitions by brand firms, more than 75% target generic entrants.”).

<sup>47</sup> 153 Cong. Rec. 25,047 (2007).



Further, neither 21 U.S.C. § 355 nor 21 C.F.R. § 10.30 expressly references § 360bbb–3, the statute pursuant to which the emergency has been declared and the Vaccines released to the public. Conversely, § 360bbb–3 does not expressly refer to 21 U.S.C. § 355 nor 21 C.F.R. § 10.30. If Congress had intended for the citizen petition process — designed to address the specific mischief of anti-competitive behavior — to apply to the very particular and very different circumstances of an emergency use authorization of highly experimental and potentially dangerous medical interventions with the potential to rapidly injure or kill large swathes of the American populace, surely it would have said so. Plaintiffs are the current and future Vaccine-injured in a time of purported emergency, complaining of gross agency malfeasance and conflicts of interest, not profit-seeking market participants.

Neither should the judicial doctrine of “exhaustion of administrative remedies” bar judicial review. “[J]udicially created exhaustion requirements are ‘subject to numerous exceptions.’” Georgia v. United States, 398 F.Supp. 1330, 1343 (S.D. Ga. 2019) (quoting Kentucky v. United States ex rel. Hagel, 759 F.3d 588, 599 (6th Cir. 2014)). In their discretion, the district courts

*“...have recognized at least three prudential exceptions to exhaustion requirements. [ ] Exhaustion may be excused if a litigant can show: (1) that requiring exhaustion will result in irreparable harm; (2) that the administrative remedy is wholly inadequate; or (3) that the administrative body is biased, making recourse to the agency futile.”*

Id. (quoting Kansas Dept. for Children and Families v. SourceAmerica, 874 F.3d 1226, 1250 (10th Cir. 2017) (“We permit district courts to excuse a failure to exhaust where ‘(1) the plaintiff asserts a colorable constitutional claim that is collateral to the substantive issues of the administrative proceedings, (2) exhaustion would result in irreparable harm, and (3) exhaustion would be futile.’”)).



Courts have recognized exceptions to the requirement of administrative exhaustion in the specific context of the FDCA and 21 C.F.R. § 10.30. *See, e.g., Biotics Research Corp. v. Heckler*, 710 F.2d 1375, 1378 (9th Cir. 1983) (“Biotics and Seroyal admit failing to take advantage of this available administrative remedy, but argue that the administrative remedy is ‘inadequate and not efficacious’ and that its pursuit would have been a ‘futile gesture.’ **Although we recognize an exception to the exhaustion requirement in these circumstances,** there is nothing in the record to indicate that a citizens petition to the Commissioner would have been ineffective or futile.” (emphasis added)) (citing to *AMP Inc. v. Gardiner*, 275 F.Supp. 410 (S.D.N.Y. 1967), *aff’d*, 389 F.2d 825 (2d Cir. 1968), *cert. denied*, 393 U.S. 825 (1968); *Premo Pharmaceutical Laboratories, Inc. v. United States*, 629 F.2d 795, 801 (2d Cir. 1980), *Natick Paperboard Corp. v. Weinberger*, 498 F.2d 125, 128-29 (1st Cir. 1974).

The record in this case contains abundant evidence that the citizen petition process is both “inadequate and not efficacious”. First and most importantly, the FDA need not respond to a citizen petition for 5 months, and in fact as a practical matter the “deadline” is more honored in the breach than the observance. When the FDA does respond, its response may be indeterminate. The chart below constructed from VAERS data shows that the American public cannot afford to wait for 5 months, while physical injuries and deaths due to the Vaccine skyrocket. Jane Doe’s expert testimony that the true number of deaths caused by the Vaccine is in excess of 45,000 (*see* Declaration at Ex. D) renders the Defendants’ likely argument that Plaintiffs must muddle through the citizen petition process before bringing this litigation not just legally absurd, but inhumane.



| VAERS DATA             |                        |            |
|------------------------|------------------------|------------|
| APRIL 23, 2021         | JULY 2, 2021           | % INCREASE |
| 118,902 ADVERSE EVENTS | 438,441 ADVERSE EVENTS | 72.88%     |
| 3,544 DEATHS           | 9,048 DEATHS           | 60.83%     |
| 12,619 INJURIES        | 41,015 INJURIES        | 69.23%     |

Plaintiff AFLDS' experience with the citizen petition process to date substantiates the argument. The Complaint alleges that Defendants are suppressing information regarding the availability of safe and effective alternative prophylaxis and treatments for COVID-19, including for example hydroxychloroquine (ECF 10, ¶¶ 219-228). Plaintiff AFLDS filed a citizen petition regarding hydroxychloroquine on October 12, 2020, requesting that the FDA exempt hydroxychloroquine-based drugs from prescription-dispensing requirements and make them available to the public over-the counter (*see* Citizen Petition at Exhibit E). The FDA acknowledged receipt of the petition on October 13, 2020. (*see* FDA Acknowledgment Letter at Exhibit F). Then on April 8, 2021, the FDA wrote to AFLDS to say that it "has been unable to reach a decision on your petition because it raises complex issues requiring extensive review and analysis by Agency officials." (*see* FDA Delay Letter at Exhibit G). As recently as June 21, 2021 the FDA has confirmed by email that it has no substantive response to the Citizen's Petition, responding to AFLDS' request for an update by referring back to the FDA's April 8 delay letter! The issues raised in the Complaint and in this Motion would almost certainly be claimed to be equally or more complex, and there is no reason whatsoever to believe that the FDA will respond substantively to them within the statutory deadline, or in any amount of time shorter than the 10 months that have passed since the hydroxychloroquine petition was filed. All of this becomes



even more relevant in light of the fact that while a response to a citizen’s petition is put off for many months, the vaccines were approved with no delay.

Not only is the citizen petition process fatally slow, the FDA is ultimately powerless to award civil money damages for the physical injury and death that have invaded Plaintiffs’ constitutional right to personal autonomy and bodily integrity. These are irreparable injuries. Winck v. England, 327 F.3d 1296, 1304 (11th Cir. 2003) (“[exhaustion] is not required where no genuine opportunity for adequate relief exists, **irreparable injury** will result if the complaining party is compelled to pursue administrative remedies, or an administrative appeal would be futile”) (emphasis added)).

The pursuit of a citizen petition is also a “futile gesture” since the FDA will not grant the relief requested by Plaintiffs. An empirical study has shown that the mean and median citizen petition grant rates fluctuated between 0% and 16% in the eight years from 2003 through 2010, and the mean and median denial rates were both 92%.<sup>48</sup> The real and substantial financial conflicts of interest compromising the Defendants and their key officials involved in the § 360bbb–3 process (*see* Complaint, ECF 10, ¶¶ 250-256), combined with the immense pressure<sup>49</sup> placed on the FDA by industry and politicians to fast track the approval process, and Jane Doe’s revelation that the Defendants have intentionally concealed from the public that the true number of deaths caused by the Vaccines is at least 45,000 not the approximately 9,000 reported by VAERS (*see* Declaration at Ex. D), destroy any pretense that the FDA could adjudicate such a citizen petition with fairness and impartiality.

The policy justification traditionally cited by those courts that have required compliance with the citizen petition process do not apply here. *See, e.g.,* Garlic v. United States Food &

<sup>48</sup> *Citizen Petitions: An Empirical Study*, 34 Cardozo L. Rev. at 275.

<sup>49</sup> Gardner, L., “Calls Mount on FDA to Formally Endorse COVID Vaccines as Delta Surges” (July 8, 2021). *See* <https://news.yahoo.com/calls-mount-fda-formally-endorse-182622109.html> (last visited July 12, 2021).



Drug Administration, 783 F.Supp. 4, 5 (D. D.C. 1992) (“Allowing ‘interested parties’ to bypass the administrative remedies would undermine the entire regulatory process. Drug manufacturers could circumvent the FDA’s procedures by soliciting private citizens to sue for judicial approval new medications.”). Plaintiffs are not attempting to circumvent the substantive provisions of § 360bbb–3 in order to force the approval and release of a new experimental drug, rather they are trying to force the FDA, its officials riddled with serious conflicts of interests, to comply with these provisions in order prevent widespread personal injury and death and egregious violations of the constitutionally protected rights to personal autonomy and bodily integrity.

Count VI of the Complaint seeks mandamus, since there is “‘practically no other remedy.’” Collin v. Berryhill, 2017 U.S. Dist. LEXIS 78222 at \*9 (quoting Helstoski v. Meanor, 442 U.S. 500, 505 (1979)). Courts have held that the perceived medical urgencies created by COVID-19 itself, and also those created by the decisions, orders and actions of authorities responding to COVID-19, can make it impractical and inappropriate to force a plaintiff seeking *mandamus* to wait for alternative processes to run their course:

*Moreover, given the broader context of the COVID-19 pandemic, we agree with the Fifth Circuit that “[i]n mill-run cases, it might be a sufficient remedy to simply wait for the expiration of the TRO, and then appeal an adverse preliminary injunction. In other cases, a surety bond may ensure that a party wrongfully enjoined can be compensated for any injury caused. Those methods would be woefully inadequate here.”*

In re Rutledge, 956 F.3d 1018, 1026 (8th Cir. 2020), quoting In re Abbott, 2020 U.S. App. LEXIS 10893 at \*14.<sup>50</sup>

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<sup>50</sup> The Supreme Court subsequently vacated the judgment in In re Abbott, and remanded to the Fifth Circuit with instructions to dismiss the case as moot, following the Texas Governor’s relaxation of his order restricting abortion as a non-essential surgical procedure, however the decision did not turn on an analysis of mandamus. See, Planned Parenthood Ctr. for Choice v. Abbott, 2021 U.S. LEXIS 647.



***iii. The Emergency Declaration and the EUAs are “Final” Agency Action***

In order to be deemed “final”, an agency action (1) “must mark the consummation of the agency’s decision-making process — it must not be of a merely tentative or interlocutory nature” and (2) “must be one by which rights or obligations have been determined, or from which legal consequences will flow.” United States Corps of Eng’rs v. Hawkes Co., 136 S.Ct. 1807, 1813 (2016) (quoting Bennett v. Spear, 520 U.S. 154, 177-178 (1997)).

After fact-finding and consultation, the DHHS Secretary declared, under § 360bbb–3(b), that there is an emergency. Once issued, his declaration remained valid for a period of time and was serially renewed. The declaration is not merely “advisory in nature.” Id. It represents the “consummation of the decision-making process” with respect to whether or not an emergency exists. The declaration also gives rise to ““direct and appreciable legal consequences.”” Id. at 1814. The declaration paved the way for Pfizer, Moderna and Janssen to apply for EUAs for their experimental Vaccines, for the DHHS Secretary and his designee the FDA Commissioner to adjudicate and approve their EUA applications, and for the Vaccines to be released into interstate commerce and injected into millions of Americans.

The FDA Commissioner engaged in fact-finding and made vital determinations that the statutory criteria for issuing the Vaccine EUAs required by § 360bbb–3(c) were met, and that the conditions of authorization for the Vaccine EUAs required by § 360bbb–3(e) were also met. On that basis, the Vaccine EUAs were issued. The issuance of the Vaccine EUAs represents the “consummation of the decision-making process” with respect to whether or not EUAs will be granted, and also gave rise to ““direct and appreciable legal consequences”” since millions of people have been injected with these experimental Vaccines while their manufacturers have made billions of dollars in revenues under an immunity shield.



***iv. Not “Committed to Agency Discretion”***

The emergency declaration is not committed to agency discretion by law. Section 360bbb–3(b)(1) states that the DHHS Secretary “may” make a declaration, but then proceeds to enumerate in detail the limited bases upon which the declaration may be made, at least three of which prohibit unilateral declarations by the Secretary by requiring consultation with or the prior decisions of other cabinet-level executive branch officials. Section 360bbb–3(b)(3) prohibits the Secretary from unilaterally terminating the declaration. This is not a broad grant of discretion, but even if it were, “[t]he fact that a statute grants broad discretion to an agency does not render the agency’s decisions completely unreviewable unless the statutory scheme, taken together with other relevant materials, provides absolutely no guidance to how that discretion is to be exercised.” Louisiana v. Biden, 2021 U.S. Dist. LEXIS 112316 \* 40-41 (W. D. La. 2021).

Section 360bbb–3(b)(1)(c) is the sole ground for an emergency that does not seem to require consultation with or the prior decisions of other cabinet-level executive branch officials, and it provides guidance to the Secretary by requiring him to make a 4-pronged finding that (parsing the statute): (i) there is a “public health emergency” (ii) that “affects, or has a significant potential to affect” (iii) (a) “national security” or (b) “the health and security United States citizens living abroad”, and (iv) that “involves” (a) “a biological, chemical, radiological, or nuclear agent or agents” or (b) “a disease or condition that may be attributable to such agent or agents.”

Similarly, the EUAs are not committed to agency discretion by law. Under § 360bbb–3(c), the Secretary “may issue an authorization” but “only if” after consultation with three other executive branch officials, he is able to make at least four different findings. Under § 360bbb–3(e), the Secretary “shall” ensure that certain “required conditions” of authorization, set forth in detail in the statute, are met. Since the Secretary does not have unfettered discretion to issue



EUAs, he must follow detailed guidance as to how any discretion granted to him by the statute is exercised. Id.

In addition to their Counts seeking judicial review of agency action and mandamus, Plaintiffs have also alleged physical injury, death and loss of employment proximately caused, aided and abetted by Defendants' actions, justifying an award of civil money damages under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) (Count VII). By issuing and maintaining the EUAs in these circumstances, the Defendants are enabling the shipment of the Vaccines in interstate commerce, and their use by third parties who actually administer them to the public. Defendants, as joint tortfeasors, are purposefully aiding and abetting the infliction of physical injury and death on Plaintiffs and countless other Americans, all in violation of their constitutionally protected right to personal autonomy and bodily integrity.

Guertin v. Michigan, 912 F.3d 907 (6th Cir. 2019) is a case arising out of the infamous Flint Water Crisis. 912 F.3d at 907-915. The City of Flint Michigan instituted cost-saving measures, and used outdated equipment to treat water before delivering it to residents. Id. Residents consumed the water, now contaminated with lead and *e coli* bacteria. Id. Their hair fell out and they developed rashes. Id. Some died from an associated spike in Legionnaire's disease. Id. Children tested positive for dangerously high blood levels. Id.

The 6th Circuit Court of Appeals upheld the district court's denial of defendants' motion to dismiss 42 U.S.C. § 1983 substantive due process claims based on qualified immunity, because plaintiffs had plead a plausible Fourteenth Amendment violation of their right to bodily integrity, where the City's knowing decision to use outdated equipment and mislead the public about the safety of its water shocked the conscience. Id. The Court admonished:



*[K]nowing the Flint River water was unsafe for public use, distributing it without taking steps to counter its problems, and assuring the public in the meantime that it was safe “is conduct that would alert a reasonable person to the likelihood of liability.” [ ] [T]aking affirmative steps to systematically contaminate a community through its public water supply with deliberate indifference is a government invasion of the highest magnitude. Any reasonable official should have known that doing so constitutes conscience-shocking conduct prohibited by the substantive due process clause. These “actions violate the heartland of the constitutional guarantee” to the right of bodily integrity...*

Id. at 933 (emphasis added).

The language of this decision ought to send a chill through each of the individually named Defendants, for their conduct — albeit distributing dangerous experimental Vaccines, rather than contaminated water — is effectively a mirror image. This is indisputably so with respect to the under-18 age category, and those previously infected with SARS-CoV-2. Since SARS-CoV-2 / COVID-19 present no statistically significant threat to these subpopulations, the Vaccines can have no therapeutic benefits for them. At the same time, the experimental Vaccines, which have known, dangerous side effects and in some cases are even fatal, expose them to unnecessary and dangerous risks.

### **B. Irreparable Injury**

The test does not require that harm actually occur, or that it be certain to occur. *See Whitaker v. Kinoshia Unified School District*, 858 F.3d 1034, 1044 (7th Cir. 2017). Rather, “[w]e have indicated that the injury suffered by a plaintiff is ‘irreparable only if it cannot be undone through monetary remedies.’” *Siegel v. LePore*, 234 F.3d 1163, 1191 at Fn. 4 (11th Cir. 2000), quoting *Cunningham v. Adams*, 808 F.2d 815, 821 (11th Cir. 1987).

The actual or threatened violation of core constitutional rights is presumed irreparable. Id., citing *inter alia Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328 (5th Cir. 1981) (irreparable injury presumed based on threats to access to abortion services implicating the 14th Amendment right to privacy); *Robinson v. Attorney General*, 957 F.3d 1171, 1177 (11th Cir.



2020) (denying motion for stay of preliminary injunction enjoining public health order issued in response to COVID-19 pandemic because it invaded constitutionally protected 14th Amendment rights); Jolly v. Coughlin, 76 F.3d 468, 473 (2d Cir. 1996) (“In any event, it is the alleged violation of a constitutional right that triggers a finding of irreparable harm.”); Mitchell v. Cuomo, 748 F.2d 804, 806 (2d Cir. 1984) (“‘When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.’”).

In Planned Parenthood v. Casey, 505 U.S. 833, 857 (1992), the U.S. Supreme Court stated:

*Roe, however, may be seen not only as an exemplar of Griswold liberty, but as a rule (whether or not mistaken) of personal autonomy and bodily integrity, with doctrinal affinity to cases recognizing limits on governmental power to mandate medical treatment or to bar its rejection. If so, our cases since Roe accord with Roe’s view that a State’s interest in the protection of life falls short of justifying any plenary override of individual liberty claims. Cruzan v. Director, Mo. Dept. of Health, 497 U.S. 261, 278, 111 L. Ed. 2d 224, 110 S. Ct. 2841 (1990); cf., e. g., Riggins v. Nevada, 504 U.S. 127, 135, 118 L. Ed. 2d 479, 112 S. Ct. 1810 (1992); Washington v. Harper, 494 U.S. 210, 108 L. Ed. 2d 178, 110 S. Ct. 1028 (1990); see also, e. g., Rochin v. California, 342 U.S. 165, 96 L. Ed. 183, 72 S. Ct. 205 (1952); Jacobson v. Massachusetts, 197 U.S. 11, 24-30, 49 L. Ed. 643, 25 S. Ct. 358 (1905).*

To reiterate: “a State’s interest in the protection of life falls short of justifying any plenary override of individual liberty claims.” See also Washington v. Glucksberg, 521 U.S. 702, 720 (1997) (“the ‘liberty’ protected by the Due Process Clause [of the Fourteenth Amendment] includes the right[] . . . to bodily integrity”); Shillingford v. Holmes, 634 F.2d 263, 265 (5th Cir.1981) (“the right to be free of state-occasioned damage to a person’s bodily integrity is protected by the fourteenth amendment guarantee of due process.”); Doe v. Moore, 410 F.3d 1337, 1343 (11th Cir. 2005) (“The Supreme Court has recognized that fundamental rights include those guaranteed by the Bill of Rights as well as certain ‘liberty’ and privacy interests implicit in the due process clause and the penumbra of constitutional rights. These special



‘liberty’ interests include ‘the rights to marry, to have children, to direct the education and upbringing of one’s children, to marital privacy, to use contraception, to bodily integrity, and to abortion.’”).

Further, the Supreme Court has stated that the protected liberty claims inherent in personal autonomy and bodily integrity include both the right *to be free from* unwanted medical intervention, and the right *to obtain* medical intervention:

*As the joint opinion acknowledges, ante, 505 U.S. at 857, this Court has recognized the vital liberty interest of persons in refusing unwanted medical treatment. Cruzan v. Director, Mo. Dept. of Health, 497 U.S. 261, 111 L. Ed. 2d 224, 110 S. Ct. 2841 (1990). Just as the Due Process Clause protects the deeply personal decision of the individual to refuse medical treatment, it also must protect the deeply personal decision to obtain medical treatment, including a woman’s decision to terminate a pregnancy.*

Casey, 505 U.S. at 927.

In the Supreme Court’s seminal “right to die” case, Cruzan v. Director, Missouri Dept. of Health, 497 U.S. 261 (1990), it addressed whether an individual in a persistent vegetative state could require a hospital to withdraw life-sustaining medical care based on her right to bodily integrity. 479 U.S. at 265-69. Chief Justice Rehnquist noted that “[b]efore the turn of this century, [the Supreme Court] observed that ‘no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.’” *Id.* at 269 (quoting Union Pacific R. Co. v. Botsford, 141 U.S. 250, 251 (1891)). He continued: “This notion of bodily integrity has been embodied in the requirement that informed consent is generally required for medical treatment,” *Id.* at 269, “generally encompass[es] the right of a competent individual to refuse medical treatment,” *Id.* at 277, and is a right that “may be inferred from [the Court’s] prior decisions.” *Id.* at 278-79 (citing Jacobson v. Massachusetts, 197 U.S. 11 (1905); Breithaupt v. Abram, 352 U.S. 432 (1957);



Washington v. Harper, 494 U.S. 210 (1990); Vitek v. Jones, 445 U.S. 480 (1980); Parham v. J.R., 442 U.S. 584 (1979).).

In Deerfield, the case relied upon by the 11th Circuit in Siegel, a medical group attempted to establish a medical facility to provide abortion services. 661 F.2d at 330-332. The city denied their application for an occupational license on various grounds. Id. The medical group sued the city alleging that the city's actions violated the "right to privacy" in the due process clause of the 14th Amendment by depriving women of access to abortion services, even though any potential constitutional violation was minimized by the presence of other abortion facilities operating in the area. Id. The medical group moved for a preliminary injunction, and the district court denied the motion. Id.

The 5th Circuit reversed, adopting an aggressive, prophylactic approach to the protection of the constitutional right to privacy. "[T]he right of privacy must be carefully guarded for once an infringement has occurred it cannot be undone by monetary relief." Id. at 338, citing to Kennan v. Nichol, 326 F. Supp. 613, 616 (W.D.Wis.1971), *aff'd mem.*, 404 U.S. 1055, 92 S. Ct. 735, 30 L. Ed. 2d 743 (1972) ("to withhold a temporary restraining order is to permit the (constitutional right of privacy) to be lost irreparably with respect to the physician and those women for whom he would otherwise perform the operation in the meantime."). It continued: "We have already determined that the constitutional right of privacy is 'either **threatened** or in fact being impaired', and **this conclusion mandates a finding of irreparable injury**" (emphasis added). Id. at 338, citing to Elrod v. Burns, 427 U.S. 347, 373 (1976).

The Defendants are both violating, and threatening the violation of, the core constitutional right to personal autonomy and bodily integrity held by Plaintiffs and all Americans. Plaintiffs Brittany Galvin (*see* Declaration of Brittany Galvin at Exhibit J), Aubrey Boone, Snow Mills, Angelia Deselle (*see* Declaration of Angelia Deselle at Exhibit H), Kristi



Simmonds, Vidiella A/K/A Shawn Skelton (*see* Declaration of Shawn Skelton at Exhibit I) and the Estate of Dovi Sanders Kennedy have alleged that their rights to personal autonomy and bodily integrity were violated when they were subjected to Vaccines without first having given voluntary, informed consent. Plaintiffs have also attached the Declaration of Diana Hallmark, a resident of Blount County, Alabama, containing the same allegations (*see* Declaration of Diana Hallmark at Exhibit K).<sup>51</sup> These victims testify under penalty of perjury to their physical injuries caused by the Vaccines, and to facts and circumstances that establish that they did not give, and could not possibly have given, their voluntary, informed consent. By way of example, Plaintiff Deselle states (Ex. H):

*No one ever provided me with any information regarding possible adverse reactions, nor did they provide me with any information regarding alternative treatments. I did not understand this was gene therapy rather than a traditional vaccine. Again, I also did not understand that the Vaccines were not “approved” by the FDA. No one told me, and I did not understand that the Vaccines were not determined to be “safe and effective” by anyone — only that it was “reasonable to believe” that they were.*

In addition to constitutional infringements, physical injury and death may constitute irreparable harm justifying preliminary injunctive relief. *See Chastain v. Northwest Ga. Hous. Auth.*, 2011 U.S. Dist. LEXIS 135712 (N.D. Ga. 2011) (possibility of worsening health following eviction from public housing); *Garcia v. Google, Inc.*, 766 F.3d 929, (9th Cir. 2014), *aff’d* on rehearing en banc, 786 F.3d 733 (9th Cir. 2015) (“[I]t is not irrelevant that the harm Garcia complains of is death or serious bodily harm, which the dissent fails to mention. Death is an ‘irremediable and unfathomable’ harm, and bodily injury is not far behind. To the extent the irreparable harm inquiry is at all a close question, we think it best to err on the side of life.”); *Seniors Civil Liberties Ass’n v. Kemp*, 761 F.Supp. 1528, 1537 (M.D. Fla. 1991) (possibility of

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<sup>51</sup> Plaintiffs anticipate amending the Complaint for the purpose of *inter alia* adding Diana Hallmark to it as a named Plaintiff.



physical injury or death arising from police chokeholds). Plaintiffs Brittany Galvin (Ex. J), Aubrey Boone, Snow Mills, Angelia Deselle (Ex. H), Kristi Simmonds, Vidiella A/K/A Shawn Skelton (Ex. I) and the Estate of Dovi Sanders Kennedy have alleged that the Vaccines have caused them grave physical injury and, in the case of Dovi Sanders, also death. Diana Hallmark has made the same allegations (Ex. K).

The court may consider the harm to the public in assessing whether irreparable injury would result from the denial of an injunction. In Hornbeck Offshore Servs., LLC v. Salazar, 696 F.Supp. 2d 627 (E.D. La. 2010) the court granted a motion for preliminary injunction enjoining a federal agency decision to suspend drilling operations in the Gulf of Mexico, finding irreparable harm based on the harm to the public generally:

*The defendants trivialize [Plaintiffs' losses] by characterizing them as merely a small percentage of the drilling rigs affected [ ] [C]ourts have held that in making the determination of irreparable harm, "both harm to the parties and to the public may be considered. The effect on employment, jobs, loss of domestic energy supplies caused by the moratorium as the plaintiffs (and other suppliers, and the rigs themselves) lose business, and the movement of the rigs to other sites around the world will clearly ripple throughout the economy in this region.*

696 F.Supp. 2d at 638-639 (internal citations omitted).

In In re Northwest Airlines Corp., 349 B.R. 338, 384 (S.D.N.Y. 2006), aff'd, 483 F.3d 160 (2d Cir. 2007), the court granted a motion for preliminary injunction enjoining a flight attendants' union from carrying out threats to engage in a labor strike, finding irreparable harm based on the harm to the public generally:

*"[I]n making the determination of irreparable harm, both harm to the parties and to the public may be considered." \* \* \* Here, the record also demonstrates that the public will be harmed: as the Bankruptcy Court found, Northwest carries 130,000 passengers per day, has 1,200 departures per day, is the one carrier for 23 cities in the country, and provides half all airline services to another 20 cities.*



349 B.R. at 384 (quoting Long Island R. Co. v. Int’l Ass’n of Machinists, 874 F.2d 901, 910 (2d Cir. 1989)).

Like Plaintiffs Brittany Galvin (Ex. J), Aubrey Boone, Snow Mills, Angelia Deselle (Ex. H), Kristi Simmonds, Vidiella A/K/A Shawn Skelton (Ex. I), and the Estate of Dovi Sanders Kennedy, and like Diane Hallmark (Ex. K), millions of Americans have already suffered an outrageous violation of their constitutionally protected right to personal autonomy and bodily integrity, and millions more are vulnerable. According to the VAERS data, there have been 438,441 reported adverse events following injection with the Vaccines, including 9,048 deaths and 41,015 serious injuries, between December 14, 2020 and July 2, 2021. The evidence suggests the VAERS system reports only between 0.8% and 2% of all Vaccine adverse events. Plaintiffs' expert and whistleblower Jane Doe has testified that the true number of deaths caused by the Vaccines is at least 45,000 not the approximately 9,000 reported by VAERS (*see* Declaration at Ex. D). By contrast, the Swine Flu vaccine was removed from the market even though it caused only 53 deaths.

### **C. Balance of Equities (Hardships) and Public Interest**

In each case involving a request for pretrial injunctive relief, the court “must consider the effect on each party of the granting or withholding of the requested relief.” Winter, 555 U.S. at 24. The plaintiff “must establish . . . that the balance of hardships tips in his favor.” Id. at 20.

“‘[W]here the government is the party opposing the preliminary injunction, its interest and harm merge with the public interest.’ Thus the Court proceeds with analyzing whether the threatened injury to Plaintiffs outweighs the harm that the preliminary injunction would cause Defendants and the public.” Brown v. Azar, 497 F. Supp. 3d 1270, 1298 (N.D. Ga. 2020), quoting Swain v. Junior, 958 F.3d 1081, 1091 (11th Cir. 2020).



“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” G & V Lounge, Inc. v. Mich. Liquor Control Comm’n, 23 F.3d 1071, 1079 (6th Cir. 1994). “The vindication of constitutional rights and the enforcement of a federal statute serve the public interest almost by definition.” League of Women Voters of Fla. v. Browning, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012). On the other hand, “[t]here is generally no public interest in the perpetuation of unlawful agency action.” League of Women Voters v. Newby, 838 F.3d 1, 12 (D.C. Cir. 2016).

Defendants themselves suffer no conceivable harm from the grant of the requested injunctions. A disease that has an overall survivability rate exceeding 99% — comparable to the seasonal flu and countless other ailments — does not create a public health emergency within the meaning of § 360bbb–3. SARS-CoV-2 and COVID-19 do not give rise to any countervailing public interest that justifies overriding the constitutionally protected right to personal autonomy and bodily integrity. This is so with respect to the entire American public, but even more acutely with respect to the under-18 age category and those previously infected with SARS-CoV-2.

#### IV. CONCLUSION

Accordingly, and for all of the foregoing reasons, Plaintiffs move under Rule 65, Fed.R.Civ.P., for a preliminary injunction against Defendants enjoining them from continuing to authorize the emergency use of the so-called “Pfizer-BioNTech COVID-19 Vaccine,” “Moderna COVID-19 Vaccine” and the “Johnson & Johnson (Janssen) COVID-19 Vaccine” pursuant to their respective EUAs, and from granting full FDA approval of the Vaccines:

- (i) for the under-18 age category;
- (ii) for those, regardless of age, who have been infected with SARS-CoV-2 prior to vaccination; and
- (iii) until such time as the Defendants have complied with their obligation to create and maintain the requisite “conditions of authorization” under Section 546 of the Food, Drugs and Cosmetics Act, 21 U.S.C. § 360bbb–



3(e), thereby enabling Vaccine candidates to give truly voluntary, informed consent.

Dated: July 19, 2021.

RESPECTFULLY SUBMITTED BY:

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, July 19, 2021, I electronically transmitted this pleading to the Clerk of the Court using the CM/ECF system for filing, which will send notification of such filing to the following counsel for the Defendants:

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# SHUTDOWNS ARE ILLEGAL

## THERE IS NO LAWFUL AUTHORITY FOR ANY GOVERNOR, MAYOR OR HEALTH OFFICER TO ORDER YOU TO CLOSE YOUR BUSINESS DUE TO COVID

**1. There is no evidence of any emergency.** Therefore any emergency orders are null, void and unlawful and may be successfully challenged in court, and already have been. (Sutter County 11/13/20; Los Angeles County 12/8/20; Kern County 12/10/20 San Diego County 12/16/20.) Courts ruled the restrictions are unjustified.

**2. No governor or health officer has the authority to shut down your business** without due process of law. That means no Sheriff or health officer can close your business or revoke your license without a hearing. No emergency or pandemic suspends the law. There needs to be evidence that your business is unsafe.

**3. You cannot lose your liquor license unless you serve alcohol to minors** or are convicted of a crime. You cannot lose your license for not wearing or requiring masks or distancing.

**4. There is no law or regulation** requiring you or prohibiting you from serving your patrons indoors or outdoors. **You do not have to limit the number of patrons you serve.**

**5. There is no lawful order** that requires you or your employees to wear masks, distance, or limit the number of patrons you serve. No emergency orders supersede your rights.

**6. You have the legal right to operate your business the way you want to.** No government agent has the authority to interfere in the legal operations of your business, as long as you are not in violation of any actual regulations on the books.

**7. Your business is your property,** and the government ordering you to close or limit your operations, reduce operating hours or limit number of patrons is **THEFT and DEPRIVATION OF RIGHTS, which is a felony. Title 18 §242**

**8. You are not licensed to dispense medical advice,** and you may not require anyone to wear a mask or use hand sanitizer. Further, requiring physical distancing, denying a patron's entry or restricting their movement, could result in a charge against you of unlawful restraint or false imprisonment.

**Learn to defend your rights at [www.TheHealthyAmerican.org](http://www.TheHealthyAmerican.org)**



# LAWS THAT PROTECT YOUR RIGHTS

**THE CONSTITUTION DOESN'T GIVE YOU RIGHTS -- IT PROTECTS THE GOVERNMENT FROM TAKING YOUR GOD-GIVEN INALIENABLE RIGHTS**

**THE BILL OF RIGHTS contains the Amendments to the Constitution**

**The following Amendments are important to you as a business owner:**

**Amendment I** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. [People have the right to gather, including in your place of business.]

**Amendment IV** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [No government agent can enter your business without your permission, and/or without a warrant.]

**Amendment V** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. [Your business and/or your professional license cannot be taken from you unless a court orders it to be so, after a trial.]

**Amendment XIV** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. [The shutdown orders are unconstitutional, null, void and invalid.]

**Learn to defend your rights at [www.TheHealthyAmerican.org](http://www.TheHealthyAmerican.org)**



296,640 Estimated Dead From the mRNA Vaxxxines in the USA. Yet Dr. Death

Fauci is Coming For Your Children. Dr. Zelenko: This is a Worldwide Genocide

Monday, September 13, 2021

Resource: [296,640 Estimated Dead From the mRNA Vaxxxines in the USA. Yet Dr. Death Fauci is Coming For Your Children. Dr. Zelenko: This is a Worldwide Genocide | Agenda 21 | Before It's News \(beforeitsnews.com\)](https://beforeitsnews.com/2021/09/13/296640-estimated-dead-from-the-mrna-vaxxxines-in-the-usa-yet-dr-death-fauci-is-coming-for-your-children-dr-zelenko-this-is-a-worldwide-genocide-agenda-21-before-its-news/)

Dr. Zelenko:

"FOR EVERY CHILD THAT DIES OF COVID, 100 DIES FROM THE VACCINE"

<https://rumble.com/vmdow5-we-are-witnessing-worldwide-planned-genocide-hitler-on-steroids-w-dr.-zelen.html>

Sarah Westall / Dr. Zelenko

We are Witnessing Worldwide Planned Genocide, "Hitler on Steroids" w/ Dr.

Zelenko September 11, 2021

World Famous Dr. Zelenko drops some major Bombshells

Patent for the mRNA vaccines that PROVES THEY ARE CAPABLE OF REMOTE BODY MONITORING AND TRACKING

Dr. Zelenko:

"The Vaccine is a Tool of Eugenics, And accomplishes multiple Goals at once.

There are 3 Levels of Death

[\(About Vladimir Zelenko MD \(zstacklife.com\)\)](https://zstacklife.com/about-vladimir-zelenko-md/)



# We are Witnessing Worldwide Planned Genocide, "Hitler on Steroids" w/ Dr. Zelenko



**Sarah Westall**

September 11, 2021

1,235 Views

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# **LEGAL NOTICE**

To the Person in Charge of this Establishment

As the person responsible for the operation and management of this place of public accommodation, YOU are criminally and civilly liable for the activities that you allow or prohibit on these premises – regardless of whether you own this establishment or not.

YOU ARE HEREBY NOTIFIED THAT:

- (1) It is UNLAWFUL for you or another employee to require someone to wear a mask.** Even if you are a licensed medical doctor who has examined the patron and you have determined that person to be physically fit enough to restrict their breathing while on your premises, the person still has the right to choose whether to wear a mask or not. Recommending that someone wear a mask, which is designated by the FDA as a “medical device” is the unlicensed practice of medicine, which is a violation of **California Business and Professions Code 2052.**
- (2) It is UNLAWFUL for you or another employee to take someone’s temperature.** Gathering vital statistics is a **violation of the 4<sup>th</sup> Amendment**, which protects a person’s right to privacy. Violation of this protection will result in your actions being report to the U.S. Department of Justice, which is required by law to investigate Civil Rights Violations.
- (3) It is UNLAWFUL for you to require proof of vaccination as a condition of entry to this establishment.** State and federal non-discrimination laws protect FREE AND EQUAL ACCESS regardless of my medical condition, which I do not need to disclose to you.
- (4) It is UNLAWFUL for you or another employee to attempt to enforce local ordinances.** You are not a law enforcement officer and impersonating a law enforcement officer is a crime in this state under **California Penal Code 538(d) PC**: Impersonating a peace officer carries the penalty of one year in jail and a \$2,000 fine. You will be reported to authorities for this violation.
- (5) It is UNLAWFUL for you or another employee to prohibit someone to enter this establishment, which is a place of public accommodation. U.S. Federal Civil Rights Law, Title II requires free and equal access to all services and facilities WITHOUT DISCRIMINATION.** Having someone else shop for them is not equal. Further, the non-discrimination laws in this State, under **California Civil Code 51** further prohibit you from preventing entry to the full enjoyment of this business establishment. Violation of these laws will result in you being served a NOTICE



OF DISCRIMINATION, which can serve as the basis of a formal complaint against you personally with the California Department of Justice and the U.S. Department of Justice, which is required by law to investigate civil rights violations.

- (6) **It is UNLAWFUL for you or another employee to block someone's entry to your establishment.** This is a place of public accommodation and as such, no person may be prevented entry when this establishment is open to the public. FALSE IMPRISONMENT is the "unlawful violation of the personal liberty of another." Attempting to prevent someone's entry to this establishment or to restrict, detain or confine their movement constitutes **FALSE IMPRISONMENT**, under **California Penal Code 236 PC**, which can be a felony and punishable up to three years in jail.
- (7) **Any claim of "store policy" or "no mask, no service" is NULL, VOID and UNLAWFUL** as no business may enforce policy that violates established law. This LEGAL NOTICE sets forth the previous five laws (and there may be more) which SUPERCEDE any claim to a "store policy". Any attempt to prohibit the "free and equal access to all services and facilities" of this business establishment will:
- a. Be reported to law enforcement as criminal charges of false imprisonment
  - b. Be reported to the U.S. Department of Justice as a violation of civil rights
  - c. Be reported to the LEGAL COUNSEL of this establishment
  - d. Be reported to the DISTRICT ATTORNEY of this jurisdiction for possible criminal charges.
- (8) **Neither you nor an employee may prevent the lawful entry of a patron – regardless of whether they are wearing a mask or not.** Attempting to prevent the entry of a patron to your business establishment, which is a place of public accommodation is a violation of an IMPLIED, IRREVOCABLE LICENSE that this business has granted to the public.
- (9) **Any attempt by you or an employee to summon law enforcement with a claim of "trespassing" will be reported as ASSAULT by you or your employee.** You or your employee can be charged with and convicted of assault in this state if no one is physically hurt by your behavior. There is **NO VALID CLAIM of TRESPASS** because:
- a. your business establishment is open to the public
  - b. this business has extended an irrevocable license to the public for entry
  - c. the patron has entered legally and has not interfered with the business
  - d. there has been no evidence of violation
- (10) **If you are wearing a mask while engaged in any of the above violations, this may aggravate your crime.** You or your employee can be charged with and



convicted of assault in this state under code even if no one is physically hurt by your behavior.

**YOU ARE HEREBY NOTIFIED of a potential CITIZEN'S ARREST** for violations of the above laws, under California Penal Code 837 PC, which authorizes a private person to make a citizen's arrest in California.

**YOU ARE HEREBY NOTIFIED of a POTENTIAL  
CITIZEN'S ARREST AUTHORIZED BY  
CA PENAL CODE 837PC**

WHEREAS, under the authority of California Penal Code 837 PC, when someone commits a misdemeanor in a citizen's presence, or commits a felony and a citizen has a reasonable cause to believe the perpetrator committed it;

WHEREAS, California courts have recommended that private persons follow certain procedures when making these arrests:

1. The citizen should inform a person that he **intends to arrest him**;
2. The citizen should set for the **cause of the arrest**;
3. If possible, the citizen should indicate **the authority to make the arrest**;
4. If applicable, the citizen should inform the perpetrator that he has **called the police or sheriff**;
5. The citizen should try to **make an arrest as soon as possible**, as a delay may result in the citizen's loss of authority to make an arrest
6. The citizen making the arrest **can use reasonable force** but should consider the safety of all involved
7. The citizen should **consider the safety** of all involved
8. **The citizen should call 911**



9. The citizen should ask for the arrestee's cooperation

10. If needed, the citizen can keep the perpetrator out of harm's way in a secluded location. Initial here: \_\_\_\_\_

Referenced from <https://www.shouselaw.com/ca/defense/penal-code/837/>

THEREFORE, you and your employees have hereby been PUT ON NOTICE of potential civil and criminal violations of unlawfully preventing the lawful entry of any member of the public.

**YOU ARE AT RISK FOR A CITIZEN'S ARREST, AS  
AUTHORIZED UNDER CA PENAL CODE 837, WITH LAW  
ENFORCEMENT BEING SUMMONED FOR YOUR  
VIOLATIONS OF THE ABOVE LAWS. INITIAL\_\_\_\_\_.**

### HOW TO MAKE A CITIZEN'S ARREST IN CALIFORNIA:

1. First, **CALL 911** to report a crime in progress.
2. Inform the perpetrator of the intended arrest, using the following language:
3. "You are hereby informed of my attention to place you under citizen's arrest."
4. "You have willfully and knowingly violated these laws: (read off the list of violations as applicable)"
5. "My authority to arrest you is granted by California Penal Code 837"
6. "I have called law enforcement to the scene"
7. "I am requesting your cooperation until law enforcement arrives".



8. "If you refuse to cooperate or attempt to flee the scene, I have the right to use reasonable force to detain you."
9. "The law allows for you to be kept out of harm's way in a secluded location until law enforcement arrives."

Referenced from <https://www.shouselaw.com/ca/defense/penal-code/837/>

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(Slip Opinion)

## **Whether Section 564 of the Food, Drug, and Cosmetic Act Prohibits Entities from Requiring the Use of a Vaccine Subject to an Emergency Use Authorization**

Section 564(e)(1)(A)(ii)(III) of the Food, Drug, and Cosmetic Act concerns only the provision of information to potential vaccine recipients and does not prohibit public or private entities from imposing vaccination requirements for a vaccine that is subject to an emergency use authorization.

July 6, 2021

### **MEMORANDUM OPINION FOR THE DEPUTY COUNSEL TO THE PRESIDENT**

Section 564 of the Food, Drug, and Cosmetic Act (“FDCA”), 21 U.S.C. § 360bbb-3,<sup>1</sup> authorizes the Food and Drug Administration (“FDA”) to issue an “emergency use authorization” (“EUA”) for a medical product, such as a vaccine, under certain emergency circumstances. This authorization permits the product to be introduced into interstate commerce and administered to individuals even when FDA has not approved the product for more general distribution pursuant to its standard review process. Section 564 directs FDA—“to the extent practicable” given the emergency circumstances and “as the [agency] finds necessary or appropriate to protect the public health”—to impose “[a]ppropriate” conditions on each EUA. FDCA § 564(e)(1)(A). Some of these conditions are designed to ensure that recipients of the product “are informed” of certain things, including “the option to accept or refuse administration of the product.” *Id.* § 564(e)(1)(A)(ii)(III).

Since December 2020, FDA has granted EUAs for three vaccines to prevent coronavirus disease 2019 (“COVID-19”). In each of these authorizations, FDA imposed the “option to accept or refuse” condition by requiring the distribution to potential vaccine recipients of a Fact Sheet that states: “It is your choice to receive or not receive [the vaccine]. Should you decide not to receive it, it will not change your standard medical care.” *E.g.*, FDA, Fact Sheet for Recipients and Caregivers at 5 (revised June 25, 2021), <https://www.fda.gov/media/144414/download>

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<sup>1</sup> Because it is commonly referred to by its FDCA section number, and for the sake of simplicity, we will refer to this provision as section 564, rather than by its United States Code citation.



(“Pfizer Fact Sheet”). In recent months, many public and private entities have announced that they will require individuals to be vaccinated against COVID-19—for instance, in order to attend school or events in person, or to return to work or be hired into a new job. We will refer to such policies as “vaccination requirements,” though we note that these policies typically are conditions on employment, education, receipt of services, and the like rather than more direct legal requirements.<sup>2</sup>

In light of these developments, you have asked whether the “option to accept or refuse” condition in section 564 prohibits entities from imposing such vaccination requirements while the only available vaccines for COVID-19 remain subject to EUAs. We conclude, consistent with FDA’s interpretation, that it does not. This language in section 564 specifies only that certain information be provided to potential vaccine recipients and does not prohibit entities from imposing vaccination requirements.<sup>3</sup>

## I.

### A.

Federal law generally prohibits anyone from introducing or delivering for introduction into interstate commerce any “new drug” or “biological product” unless and until FDA has approved the drug or product as safe and effective for its intended uses. *See, e.g.*, FDCA §§ 301(a), 505(a), 21 U.S.C. §§ 331(a), 355(a); 42 U.S.C. § 262(a). A vaccine is both a drug and a biological product. *See* FDCA § 201(g), 21 U.S.C. § 321(g); 42 U.S.C. § 262(i)(1). Consistent with section 564, we will generally refer to it here as a “product.” *See* FDCA § 564(a)(4)(C) (defining “product” to mean “a drug, device, or biological product”).

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<sup>2</sup> For an example of the latter, see our discussion in Part II.B of a hypothetical military order to service members.

<sup>3</sup> We do not address whether other federal, state, or local laws or regulations, such as the Americans with Disabilities Act (“ADA”), might restrict the ability of public or private entities to adopt particular vaccination policies. *See, e.g.*, Equal Employment Opportunity Commission, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws* (updated June 28, 2021), <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (discussing the ADA).



In 2003, Congress addressed a problem raised in emergency situations where “the American people may be placed at risk of exposure to biological, chemical, radiological, or nuclear agents, and the diseases caused by such agents,” but where, “[u]nfortunately, there may not be approved or available countermeasures to treat diseases or conditions caused by such agents,” even though “a drug, biologic, or device is highly promising in treating [such] a disease or condition.” H.R. Rep. No. 108-147, pt. 1, at 2 (2003). President George W. Bush had flagged this problem in his 2003 State of the Union Address, in which he proposed Project BioShield, a legislative initiative “to quickly make available effective vaccines and treatments against agents like anthrax, botulinum toxin, Ebola, and plague.” *Address Before a Joint Session of the Congress on the State of the Union* (Jan. 28, 2003), 1 Pub. Papers of Pres. George W. Bush 82, 86 (2003). Among the principal components of the proposed Project BioShield legislation were provisions to enable FDA to authorize medical products for use during emergencies even before they are proven to be safe and effective under ordinary FDA review. *See, e.g.*, H.R. 2122, 108th Cong. § 4 (2003). At that time, the only alternative to ordinary FDA approval was 21 U.S.C. § 355(i), which authorizes FDA to exempt drugs from the ordinary approval requirements where the drug is “intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs.” Such a cabined investigational new drug (“IND”) exemption does not, however, allow the widespread dissemination of a drug for general public use in response to an emergency. *See* H.R. Rep. No. 108-147, pt. 1, at 2.

Congress enacted a version of the Project BioShield legislation’s EUA provision in the National Defense Authorization Act for Fiscal Year 2004 as section 564 of the FDCA. *See* Pub. L. No. 108-136, § 1603(a), 117 Stat. 1392, 1684 (2003) (codified at 21 U.S.C. § 360bbb-3).<sup>4</sup> Section 564 authorizes the Secretary of Health and Human Services (“HHS”)—who has delegated to FDA the authorities under the statute at issue here—to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use in an actual or potential emergency even though the product has not yet been generally approved as safe and

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<sup>4</sup> The statute has been amended since, including when Congress enacted the Project BioShield Act the following year. *See* Pub. L. No. 108-276, § 4(a), 118 Stat. 835, 853 (2004).



effective for its intended use. FDCA § 564(a)(1)–(2); *see also* FDA, *Emergency Use Authorization of Medical Products and Related Authorities: Guidance for Industry and Other Stakeholders* at 3 n.6 (Jan. 2017) (“EUA Guidance”) (noting delegation of most of the Secretary’s authorities under section 564 to FDA).<sup>5</sup>

The most pertinent part of section 564 for purposes of your question has remained materially the same since Congress first enacted the statute in 2003. Subsection (e)(1)(A),<sup>6</sup> titled “Required conditions,” provides:

With respect to the emergency use of an unapproved product, the Secretary, to the extent practicable given the applicable [emergency] circumstances . . . , shall, for a person who carries out any activity for which the authorization is issued, establish such conditions on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health, including [certain specified conditions].

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<sup>5</sup> The current version of section 564(a)(1) provides in full:

Notwithstanding any provision of this chapter and section 351 of the Public Health Service Act, and subject to the provisions of this section, the Secretary may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in this section as an “emergency use”).

The “declaration under subsection (b)” refers to a declaration by the Secretary “that the circumstances exist justifying” an EUA, which must be made “on the basis” of one or more types of emergencies or threats. FDCA § 564(b)(1). FDA can grant an EUA where, “based on the totality of scientific evidence available to the Secretary, including data from adequate and well-controlled clinical trials, if available,” FDA finds that “it is reasonable to believe,” among other things, that “the product may be effective in diagnosing, treating, or preventing” a “serious or life-threatening disease or condition” caused by a “biological, chemical, radiological, or nuclear agent or agents” (a standard less onerous than for final approval of the product); that “the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product”; and that “there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition.” FDCA § 564(c).

<sup>6</sup> Subsection (e)(1) applies to a product that FDA has not approved as safe and effective for any intended use, whereas subsection (e)(2) applies to an unapproved use of an otherwise approved product. The COVID-19 vaccines fall under the former category, but the statute applies the condition at issue here to the latter category as well. *See* FDCA § 564(e)(2)(A).



The statute then lists a number of such conditions, including “[a]ppropriate conditions designed to ensure that individuals to whom the product is administered are informed” of certain information. FDCA § 564(e)(1)(A)(ii). This information includes the fact that FDA “has authorized the emergency use of the product,” “the significant known and potential benefits and risks of such use,” and “the extent to which such benefits and risks are unknown.” *Id.* § 564(e)(1)(A)(ii)(I)–(II). Most relevant here, section 564(e)(1)(A)(ii)(III) directs FDA to impose conditions on an EUA “designed to ensure that individuals to whom the product is administered are informed . . . of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.”

In the same section of the 2004 National Defense Authorization Act, Congress also enacted another provision, codified as 10 U.S.C. § 1107a, which is specific to the U.S. military and which expressly refers to the “option to accept or refuse” condition described in section 564(e)(1)(A)(ii)(III). Pub. L. No. 108-136, sec. 1603(b)(1), § 1107a, 117 Stat. at 1690. Subsection (a) of this law provides that when an EUA product is administered to members of the armed forces, “the condition described in section 564(e)(1)(A)(ii)(III) . . . and required under paragraph (1)(A) or (2)(A) of such section 564(e), designed to ensure that individuals are informed of an option to accept or refuse administration of a product, may be waived only by the President” and “only if the President determines, in writing, that complying with such requirement is not in the interests of national security.” 10 U.S.C. § 1107a(a)(1).

## **B.**

In the years after Congress enacted section 564, FDA issued dozens of EUAs in response to various public-health emergencies. *See, e.g.*, Authorization of Emergency Use of the Antiviral Product Peramivir Accompanied by Emergency Use Information; Availability, 74 Fed. Reg. 56,644 (Nov. 2, 2009) (antiviral drug to treat swine flu). The agency’s use of EUAs increased dramatically with the onset of the COVID-19 pandemic in 2020. As of January 2021, the agency had issued more than 600 EUAs for products to combat COVID-19, including drugs, tests, personal protective equipment, and ventilators. *See* FDA, *FDA COVID-19 Pandemic*



*Recovery and Preparedness Plan (PREPP) Initiative: Summary Report* at 6 (Jan. 2021); *cf. id.* at 24 (noting that FDA issued 65 EUAs prior to COVID-19). More importantly for present purposes, the agency has granted EUAs for three COVID-19 vaccines manufactured by Pfizer, Moderna, and Janssen, respectively. *See* Authorizations of Emergency Use of Certain Biological Products During the COVID-19 Pandemic; Availability, 86 Fed. Reg. 28,608 (May 27, 2021) (Janssen); Authorizations of Emergency Use of Two Biological Products During the COVID-19 Pandemic; Availability, 86 Fed. Reg. 5200 (Jan. 19, 2021) (Pfizer and Moderna).

As we have explained, section 564 of the FDCA contemplates that each EUA will be subject to various conditions. For the three COVID-19 vaccines, FDA implemented the “option to accept or refuse” condition described in section 564(e)(1)(A)(ii)(III) in the following manner: In each letter granting the EUA, FDA established as a “condition[] of authorization” that FDA’s “Fact Sheet for Recipients and Caregivers” be made available to potential vaccine recipients. *See, e.g.,* Letter for Pfizer Inc. from RADM Denise M. Hinton, Chief Scientist, FDA at 6, 9 (updated June 25, 2021), <https://www.fda.gov/media/150386/download> (“Pfizer EUA Letter”). The Fact Sheet in question states (to take the Pfizer vaccine as an example): “It is your choice to receive or not receive the Pfizer-BioNTech COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.” Pfizer Fact Sheet at 5. We understand that this approach is consistent with FDA’s general practice for EUAs. *See* EUA Guidance at 24–25 (discussing the use of fact sheets to inform recipients of EUA products “[t]hat they have the option to accept or refuse the EUA product and of any consequences of refusing administration of the product”).

As access to the COVID-19 vaccines has become widespread, numerous educational institutions, employers, and other entities across the United States have announced that they will require individuals to be vaccinated against COVID-19 as a condition of employment, enrollment, participation, or some other benefit, service, relationship, or access.<sup>7</sup> For

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<sup>7</sup> *See, e.g.,* Rukmini Callimachi, *For Colleges, Vaccine Mandates Often Depend on Which Party Is in Power*, N.Y. Times (May 22, 2021), <https://www.nytimes.com/2021/05/22/us/college-vaccine-universities.html>; Tracy Rucinski, *Delta will require COVID-19*



instance, certain schools will require vaccination in order for students to attend class in person, and certain employers will require vaccination as a condition of employment.

Some have questioned whether such entities can lawfully impose such requirements in light of the fact that section 564 instructs that potential vaccine recipients are to be informed that they have the “option to accept or refuse” receipt of the vaccine.<sup>8</sup> In the past few months, several lawsuits have also been filed challenging various entities’ vaccination requirements on the same theory.<sup>9</sup> The only judicial decision to have addressed this issue so far summarily rejected the challenge. *See Bridges v. Houston Methodist Hosp.*, No. 4:21-cv-01774, 2021 WL 2399994, at \*1–2 (S.D. Tex. June 12, 2021), *appeal docketed*, No. 21-20311 (5th Cir. June 14, 2021).

## II.

### A.

We conclude that section 564(e)(1)(A)(ii)(III) concerns only the provision of information to potential vaccine recipients and does not prohibit public or private entities from imposing vaccination requirements for vaccines that are subject to EUAs. By its terms, the provision directs only that potential vaccine recipients be “informed” of certain information, including “the option to accept or refuse administration of the product.”

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*vaccine for new employees*, Reuters (May 14, 2021, 9:16 AM), <https://www.reuters.com/world/us/delta-will-require-covid-19-vaccine-new-employees-2021-05-14/>.

<sup>8</sup> *See, e.g.*, Letter for Thomas C. Galligan Jr., Interim President, Louisiana State University, from Jeff Landry, Attorney General of Louisiana (May 28, 2021); *see also* Advisory Committee on Immunization Practices, Summary Report at 56 (Aug. 26, 2020), <https://www.cdc.gov/vaccines/acip/meetings/downloads/min-archive/min-2020-08-508.pdf> (reporting a CDC official as saying that EUA vaccines are not allowed to be mandatory).

<sup>9</sup> *See, e.g.*, Defendant’s Notice of Removal, *Bridges v. Methodist Hosp.*, No. 4:21-cv-01774 (S.D. Tex. June 1, 2021), 2021 WL 2221293 (referencing complaint); Complaint, *Neve v. Birkhead*, No. 1:21-cv-00308 (M.D.N.C. Apr. 16, 2021), 2021 WL 1902937; Complaint, *Cal. Educators for Med. Freedom v. L.A. Unified Sch. Dist.*, No. 21-cv-2388 (C.D. Cal. Mar. 17, 2021), 2021 WL 1034618; Complaint, *Legaretta v. Macias*, No. 2:21-cv-00179 (D.N.M. Feb. 28, 2021), 2021 WL 909707; *see also* Complaint, *Health Freedom Defense Fund v. City of Hailey*, No. 1:21-cv-00212-DCN (D. Idaho May 14, 2021), 2021 WL 1944543 (making a similar argument about a face-mask requirement).



FDCA § 564(e)(1)(A)(ii)(III). In the sense used here, the word “inform” simply means to “give (someone) facts or information; tell.” *New Oxford American Dictionary* 891 (3d ed. 2010); *see also, e.g., Webster’s Third New International Dictionary* 1160 (2002) (similar). Consistent with this understanding, the conditions of authorization that FDA imposed for the COVID-19 vaccines require that potential vaccine recipients receive FDA’s Fact Sheet, *see, e.g.,* Pfizer EUA Letter at 6, 9, which states that recipients have a “choice to receive or not receive” the vaccine, *see, e.g.,* Pfizer Fact Sheet at 5. Neither the statutory conditions of authorization nor the Fact Sheet itself purports to restrict public or private entities from insisting upon vaccination in any context. *Cf. Bridges*, 2021 WL 2399994, at \*2 (explaining that section 564 “confers certain powers and responsibilities to the Secretary of [HHS] in an emergency” but that it “neither expands nor restricts the responsibilities of private employers”).<sup>10</sup>

The language of another provision of section 564 reflects the limited scope of operation of section 564(e)(1)(A)(ii)(III). Section 564(l) provides that “this section [i.e., section 564] only has legal effect on a person who carries out an activity for which an authorization under this section is issued.” This provision expressly forecloses any limitation on the activities of the vast majority of entities who would insist upon vaccination requirements, because most do not carry out any activity for which an EUA is issued.

To be sure, the EUA conditions effectively require parties administering the products to do so in particular ways—including that they only administer the products to individuals after providing them the informational Fact Sheets that FDA prescribes—and some of those entities,

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<sup>10</sup> Earlier-introduced versions of section 564(e)(1)(A)(ii)(III) in 2003 referred to “any option to accept or refuse administration of the product” (as opposed to “the” option), a formulation that might have even more clearly conveyed the informational nature of the condition. *See, e.g.,* S. 15, 108th Cong. § 204 (Mar. 11, 2003) (emphasis added). We have not found any explanation for why Congress revised the provision to refer to “the option,” so we ascribe little significance to the change—either for or against our reading of the statute. *See Mead Corp. v. Tilley*, 490 U.S. 714, 723 (1989); *Trainmobile Co. v. Whirls*, 331 U.S. 40, 61 (1947) (“The interpretation of statutes cannot safely be made to rest upon mute intermediate legislative maneuvers.”). In 10 U.S.C. § 1107a(a), moreover, Congress used the alternative formulation “an option to accept or refuse” in referring to the condition in section 564(e)(1)(A)(ii)(III) as it relates to the armed forces. (Emphasis added.) This discrepancy counsels further against assigning interpretive weight to the change from “any” to “the” in the legislative development of section 564.



such as universities, might also impose vaccination requirements (e.g., on their students and employees). There is no indication, however, that Congress intended to regulate such entities except with respect to the circumstances of their administration of the product itself. *See, e.g.*, FDCA § 564(e)(1)(B)(ii) (authorizing FDA to establish “[a]ppropriate conditions on who may administer the product with respect to the emergency use of the product, and on the categories of individuals to whom, *and the circumstances under which, the product may be administered with respect to such use*” (emphasis added)). And it would have been odd for Congress to have done so, for in that case the entities choosing to administer EUA products would be limited in their relations with third parties (e.g., students, employees) in ways that analogous entities that did not administer the products were not.

This reading of the “option to accept or refuse” condition to be informational follows not only from the plain text of the provision, but also from the surrounding requirements in section 564(e)(1)(A)(ii). *See, e.g.*, *Lagos v. United States*, 138 S. Ct. 1684, 1688–89 (2018) (relying on the canon of “*noscitur a sociis*, the well-worn Latin phrase that tells us that statutory words are often known by the company they keep”). In addition to requiring that potential recipients be informed of “the option to accept or refuse administration of the product,” the statute also requires that they be informed of “the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.” FDCA § 564(e)(1)(A)(ii)(III). Similarly, the two other provisions in subsection (e)(1)(A)(ii) require that individuals be informed of the fact that FDA “has authorized the emergency use of the product” and of “the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown.” *Id.* § 564(e)(1)(A)(ii)(I)–(II). These provisions all appear to require only that certain factual information be conveyed to those who might use the product.

Indeed, if Congress had intended to restrict entities from imposing EUA vaccination requirements, it chose a strangely oblique way to do so, embedding the restriction in a provision that on its face requires only that individuals be provided with certain information (and grouping that requirement with other conditions that are likewise informational in nature). Congress could have created such a restriction by simply stating that persons (or certain categories of persons) may not require others to



use an EUA product. *See Kloeckner v. Solis*, 568 U.S. 41, 52 (2012) (rejecting a statutory interpretation positing that Congress took a “roundabout way” and an “obscure path” to reach “a simple result”); *cf. Whitman v. Am. Trucking Ass’n*s, 531 U.S. 457, 468 (2001) (Congress does not “hide elephants in mouseholes”).

Our reading of section 564(e)(1)(A)(ii)(III) does not fully explain why Congress created a scheme in which potential users of the product would be informed that they have “the option to accept or refuse” the product. The legislative history of the 2003 statute does not appear to offer any clear explanation. Perhaps Congress viewed section 564(e)(1)(A)(ii)(III) as a variation on the “informed consent” requirement that applies to human subjects in “investigational drug” settings,<sup>11</sup> the only other context in which FDA may (in a limited fashion) authorize the introduction of unapproved drugs into interstate commerce. Or perhaps Congress included this condition to ensure that potential users of an EUA product would not misunderstand what the likely impact of declining to use that product would be.

The information conveyed pursuant to the “option” clause continues to be a true statement about a material fact of importance to potential vac-

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<sup>11</sup> Section 355(i)(4) of title 21 provides that an IND exemption to the premarket approval requirement may only apply if the manufacturer or sponsor of an expert investigation requires the experts in question to certify

that they will inform any human beings to whom such drugs, or any controls used in connection therewith, are being administered, or their representatives, that such drugs are being used for investigational purposes and will obtain the consent of such human beings or their representatives, except where it is not feasible, it is contrary to the best interests of such human beings, or the proposed clinical testing poses no more than minimal risk to such human beings and includes appropriate safeguards.

Congress did not include this same “informed consent” requirement as part of the EUA provision in 2003, perhaps out of concern that it would not be practicable in emergency situations. *See Project BioShield: Contracting for the Health and Security of the American Public: Hearing Before the H. Comm. on Gov’t Reform*, 108th Cong. 33 (Apr. 4, 2003) (statement of Mark B. McClellan, Commissioner, FDA, and Anthony S. Fauci, Director, National Institute of Allergy and Infectious Diseases) (“Because urgent situations may require mass inoculations and/or drug treatments, such informed consent requirements may prove impossible to implement within the necessary time frame when trying to achieve the public health goal of protecting Americans from the imminent danger.”); *see also infra* note 15 (explaining that the informed consent requirements contained in 21 U.S.C. § 355(i)(4) do not apply to EUA products).



cine recipients—virtually all such persons continue to have the “option” of refusing the vaccine in the sense that there is no direct legal requirement that they receive it. *See Bridges*, 2021 WL 2399994, at \*2 (noting that an employer’s vaccination policy was not “coercive” because an employee “can freely choose to accept or refuse a COVID-19 vaccine; however, if she refuses, she will simply need to work somewhere else”); Wen W. Shen, Cong. Research Serv., R46745, *State and Federal Authority to Mandate COVID-19 Vaccination* at 4 (Apr. 2, 2021) (“[E]xisting vaccination mandates—as they are typically structured—generally do not interfere with . . . an individual’s right to refuse in that context. Rather, they impose secondary consequences—often in the form of exclusion from certain desirable activities, such as schools or employment—in the event of refusal.” (footnote omitted)); *Black’s Law Dictionary* 1121 (7th ed. 1999) (defining “option” as relevant here as “[t]he right or power to choose; something that may be chosen”); *The American Heritage Dictionary of the English Language* 1235 (4th ed. 2000) (similar); *cf.* FDCA § 564(e)(1)(A)(ii)(III) (directing that potential vaccine recipients be informed not only of “the option to accept or refuse administration of the product” but also of “the *consequences*, if any, of refusing administration of the product” (emphasis added)).

Importantly, however, and consistent with FDA’s views, we also read section 564 as giving FDA some discretion to modify or omit “the option to accept or refuse” notification, or to supplement it with additional information, if and when circumstances change. As noted above, the statute directs FDA to establish the section 564(e)(1)(A) conditions “to the extent practicable given the applicable [emergency] circumstances” and “as the [agency] finds necessary or appropriate to protect the public health.” FDCA § 564(e)(1)(A). Both of these phrases—“to the extent practicable” and “as the [agency] finds necessary or appropriate”—are generally understood to confer discretion on an agency. *See, e.g., Gallegos-Hernandez v. United States*, 688 F.3d 190, 195 (5th Cir. 2012) (*per curiam*) (“to the extent practicable”); *Madison-Hughes v. Shalala*, 80 F.3d 1121, 1128 (6th Cir. 1996) (collecting cases on “necessary” and “appropriate”). Moreover, the portion of section 564 that deals specifically with informational conditions provides that FDA should establish “[a]ppropriate” conditions designed to ensure that potential vaccine recipients are informed of the “option to accept or refuse” an EUA product. FDCA § 564(e)(1)(A)(ii). These qualifiers indicate that FDA’s responsibility to



impose the “option to accept or refuse” condition is not absolute and that the agency has some discretion to modify or omit the condition when the agency finds the notification would not be “practicable” given the emergency circumstances, or to determine that changes to the notification are “necessary or appropriate to protect the public health.” *See* EUA Guidance at 24 n.46 (noting circumstances in which the “option to accept or refuse” notification might not be practicable).<sup>12</sup> In addition, section 564 gives FDA the authority to supplement the information that is conveyed to potential vaccine recipients, including information about “the consequences, if any, of refusing administration of the product.” FDCA § 564(e)(1)(A)(ii)(III); *see also id.* § 564(e)(1)(B) (noting that FDA has the authority to impose additional conditions as the agency “finds necessary or appropriate to protect the public health”); EUA Guidance at 22 n.40, 26–27 (noting this point). Together, then, these provisions of section 564 give FDA the authority to adapt to changing circumstances and to ensure that the information conveyed to potential users of EUA products is accurate.<sup>13</sup>

Although many entities’ vaccination requirements preserve an individual’s ultimate “option” to refuse an EUA vaccine, they nevertheless impose sometimes-severe adverse consequences for exercising that option (such as not being able to enroll at a university). Under such circumstances, FDA could theoretically choose to supplement the conditions of authorization to notify potential vaccine recipients of the possibility of such consequences (or to make it even clearer that the consequences described

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<sup>12</sup> Indeed, FDA has recently exercised its discretion not to require certain of the statutorily specified conditions with respect to the current COVID-19 pandemic. We understand that FDA has amended or plans to amend the EUAs for the COVID-19 vaccines so as not to require compliance with several of the conditions—including the “option to accept or refuse” notification—when the vaccines are exported to other countries. *See, e.g.*, Pfizer EUA Letter at 10.

<sup>13</sup> Congress’s use of the phrase “Required conditions” in the title of subsection (e)(1)(A) and its specification of certain conditions in the statute suggest that Congress may have presumed that FDA would generally find that the specified conditions are “necessary or appropriate” and thus impose them. As we discuss above, however, the operative text of section 564 indicates that FDA has some discretion to modify, omit, or supplement the conditions in some circumstances. *See* *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1879 (2021) (“[A] title or heading should never be allowed to override the plain words of a text.” (quoting A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 222 (2012))) (alteration in original)).



in the Fact Sheets are limited to consequences related to medical care). As we have noted, however, section 564 does not limit the ability of entities to impose vaccination requirements, and FDA would not be required to change the Fact Sheets in order to allow them to impose such requirements.<sup>14</sup>

\* \* \* \* \*

As noted above, FDA agrees with our interpretation of section 564. On a few occasions, however, FDA has made statements that could be understood as saying that the condition described in section 564(e)(1)(A)(ii)(III) prohibits entities (particularly the U.S. military) from requiring the use of EUA products. In 2005, for instance, FDA issued an EUA that permitted the use of a vaccine for the prevention of inhalation anthrax by individuals between 18 and 65 years of age who were deemed by the Department of Defense (“DOD”) to be at heightened risk of exposure due to an attack with anthrax. As a condition of that authorization, the agency required DOD to inform potential vaccine recipients “of the option to accept or refuse administration of [the vaccine].” *Authorization of Emergency Use of Anthrax Vaccine Adsorbed for Prevention of Inhalation Anthrax by Individuals at Heightened Risk of Exposure Due to Attack With Anthrax*; Availability, 70 Fed. Reg. 5452, 5455 (Feb. 2, 2005). That EUA continued:

With respect to [the] condition . . . relating to the option to accept or refuse administration of [the vaccine], the [immunization program] will be revised to give personnel the option to refuse vaccination. Individuals who refuse anthrax vaccination will not be punished. Refusal may not be grounds for any disciplinary action under the Uniform Code of Military Justice. Refusal may not be grounds for any adverse personnel action. Nor would either military or civilian personnel be considered non-deployable or processed for separation

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<sup>14</sup> FDA further informs us that, wholly apart from FDA’s own authority to change the Fact Sheet, nothing in the FDCA would prohibit an administrator of the vaccine who also has a relationship with the individuals to whom the vaccine is offered (e.g., students in a university that offers the vaccine) from supplementing the FDA Fact Sheet at the point of administration with factually accurate information about the possible nonmedical consequences of the person choosing not to use the product (e.g., that she might not be permitted to enroll).



based on refusal of anthrax vaccination. There may be no penalty or loss of entitlement for refusing anthrax vaccination.

*Id.*; *see also id.* (allowing DOD to inform recipients that “military and civilian leaders strongly recommend anthrax vaccination, but . . . individuals [subject to the vaccination program] may not be forced to be vaccinated” and that “the issue of mandatory vaccination will be reconsidered by [DOD] after FDA completes its administrative process.”). FDA included the same information in its later extension of that EUA. *See* Authorization of Emergency Use of Anthrax Vaccine Adsorbed for Prevention of Inhalation Anthrax by Individuals at Heightened Risk of Exposure Due to Attack With Anthrax; Extension; Availability, 70 Fed. Reg. 44,657, 44,659–60 (Aug. 3, 2005).

In addition, although it is less than clear, certain FDA guidance could be read as saying that section 564 confers an affirmative “option” or “opportunity” to refuse EUA products. *See* EUA Guidance at 24 n.46 (implying that the condition in section 564(e)(1)(A)(ii)(III)—which is subject to waiver for the armed forces under 10 U.S.C. § 1107a—protects “the option for members of the armed forces to accept or refuse administration of an EUA product”); *Guidance Emergency Use Authorization of Medical Products*, 2007 WL 2319112, at \*15 (July 1, 2007) (stating that “[r]ecipients must have an opportunity to accept or refuse the EUA product”).

These statements do not affect our conclusion. Neither the 2005 anthrax vaccine EUA nor the later FDA guidance articulated a legal interpretation of section 564(e)(1)(A)(ii)(III)’s text. And FDA appears to have insisted upon the voluntariness requirement for DOD in the anthrax vaccine EUA because of then-recent litigation in which a court enjoined DOD from implementing a mandatory vaccination program based upon a different statutory provision that is inapplicable to EUAs. *See Doe v. Rumsfeld*, 341 F. Supp. 2d 1 (D.D.C. 2004) (relying on 10 U.S.C. § 1107); *Doe v. Rumsfeld*, 297 F. Supp. 2d 119 (D.D.C. 2003) (same); *see also* 70 Fed. Reg. at 44,660 (requiring DOD to tell vaccine recipients the following: “On October 27, 2004, the U.S. District Court for the District of Columbia issued an Order declaring unlawful and prohibiting mandatory anthrax vaccinations to protect against inhalation anthrax, pending further FDA action. The *Court’s injunction* means you have the right to refuse to take the vaccine without fear of retaliation.” (emphasis added)); 70 Fed. Reg.



at 5454 (discussing litigation); *see also infra* note 15 (explaining that 10 U.S.C. § 1107(f) is inapplicable to EUAs).

## **B.**

Section 564(e)(1)(A)(ii)(III) also raises a question about how to understand its cognate provision regarding the use of EUA products by the armed forces. As we noted above, in the same 2003 legislation that first created section 564, Congress also added the following provision to title 10 of the United States Code:

In the case of the administration of [an EUA] product . . . to members of the armed forces, the condition described in section 564(e)(1)(A)(ii)(III) . . . and required under paragraph (1)(A) or (2)(A) of such section 564(e), designed to ensure that individuals are informed of an option to accept or refuse administration of a product, may be waived only by the President only if the President determines, in writing, that complying with such requirement is not in the interests of national security.

10 U.S.C. § 1107a(a)(1).<sup>15</sup> On its own terms, this provision appears to be consistent with—and even to support—our reading of section 564, as it likewise describes the “option to accept or refuse” condition in purely informational terms. The language refers to the President’s authority to

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<sup>15</sup> Section 1107(f) of title 10—an earlier-enacted provision—contains a similar, but importantly different, waiver authority. Specifically, that provision authorizes the President, “[i]n the case of the administration of an [IND] or a drug unapproved for its applied use to a member of the armed forces in connection with the member’s participation in a particular military operation,” to waive “the prior consent requirement imposed under [21 U.S.C. § 355(i)(4)].” 10 U.S.C. § 1107(f)(1). That “prior consent requirement,” which is imposed for purposes of the human clinical trials for which FDA authorizes “investigational” use of unapproved drugs, *see* 21 U.S.C. § 355(i)(4), does not apply to EUA products, which typically are more widely available, *see* FDCA § 564(k); EUA Guidance at 24 (“informed consent as generally required under FDA regulations is not required for administration or use of an EUA product” (footnote omitted)). Thus, the waiver provision in section 1107(f) is inapplicable to EUA products. *See* 10 U.S.C. § 1107(f)(2) (explaining that this waiver authority applies only in cases in which “prior consent for administration of a particular drug is required” because the Secretary of HHS determines that the drug “is subject to the [IND] requirements of [21 U.S.C. § 355(i)]”); *see also id.* § 1107(f)(4) (defining the relevant consent requirements as those in 21 U.S.C. § 355(i)).



waive a requirement to provide certain information, not to waive any right or affirmative “option” to refuse administration of the product itself.

On the other hand, the conference report on the legislation that created both section 564 of the FDCA and section 1107a of title 10 described the latter provision in the following way:

[This provision] would authorize the President to waive *the right of service members to refuse administration of a product* if the President determines, in writing, that affording service members the right to refuse the product is not feasible, is contrary to the best interests of the members affected, or is not in the interests of national security.

H.R. Rep. No. 108-354, at 782 (2003) (Conf. Rep.) (emphasis added). This language indicates that the conferees may have believed that section 1107a concerns some “right” of members of the armed forces to refuse the use of EUA products. And that belief may help to explain why section 1107a allows only the President to exercise the waiver authority.

Consistent with this legislative history and the vesting of the waiver authority in the President, DOD informs us that it has understood section 1107a to mean that DOD may not require service members to take an EUA product that is subject to the condition regarding the option to refuse, unless the President exercises the waiver authority contained in section 1107a. *See* DOD Instruction 6200.02, § E3.4 (Feb. 27, 2008) (“In the event that an EUA granted by the Commissioner of Food and Drugs includes a condition that potential recipients *are provided an option* to refuse administration of the product, the President may . . . waive *the option* to refuse for administration of the medical product to members of the armed forces.” (emphasis added)). Moreover, we understand that DOD’s position reflects the concern that service members, unlike civilian employees, could face serious criminal penalties if they refused a superior officer’s order to take an EUA product. *See* 10 U.S.C. § 890; *see also United States v. Kisala*, 64 M.J. 50 (C.A.A.F. 2006) (upholding a soldier’s punishment for refusing to take a vaccine). In this way, service members do not have the same “option” to refuse to comply with a vaccination requirement as other members of the public.

As noted above, it does appear that certain members of Congress thought that section 1107a concerned a prohibition against requiring service members to take an EUA product—perhaps on the view that the



waiver authority in section 1107a paralleled the one in 10 U.S.C. § 1107(f), which does effectively prohibit the administration of an IND product in a clinical trial without first obtaining the individual's affirmative, informed *consent*. See *supra* note 15 (distinguishing these waiver authorities).<sup>16</sup> As explained, however, that intent or expectation is not realized in the text of section 564(e)(1)(A)(ii)(III), which section 1107a expressly cross-references. Cf. *Steinle v. City & Cty. of San Francisco*, 919 F.3d 1154, 1164 n.11 (9th Cir. 2019) (“[T]he plain and unambiguous statutory text simply does not accomplish what the Conference Report says it was designed to accomplish.”); *Goldring v. Dist. of Columbia*, 416 F.3d 70, 75 (D.C. Cir. 2005) (“A sentence in a conference report cannot rewrite unambiguous statutory text[.]”).<sup>17</sup> We therefore conclude that section 1107a does not change our interpretation of section 564 of the FDCA.

As for DOD's concern about service members who would lack a meaningful option to refuse EUA products because of the prospect of sanction, including possibly prosecution, we note that any difference between our view and the assumption reflected in the conference report should have limited practical significance. Given that FDA has imposed the “option to accept or refuse” condition for the COVID-19 vaccines by requiring

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<sup>16</sup> It is possible the conferees assumed that the new EUA legislation would, in effect, carry over from the earlier IND provision of the FDCA, see *supra* Part I.A and note 11, the condition that a covered product may not be administered to an individual without that person's express, informed consent—a condition that applies to the military when it undertakes the sort of clinical trial with an IND that 21 U.S.C. § 355(i) governs, see *supra* note 11. Congress did not include such a consent requirement in section 564, however, perhaps because EUA products are not limited, as INDs are, to use in human clinical trials, but are instead authorized for more widespread use in the case of a declared emergency. See *supra* Part I.A and notes 11 & 15.

<sup>17</sup> Moreover, the legislative history as a whole is not uniform on this point. The earlier House report, for instance, described the condition in purely informational terms. See H.R. Rep. No. 108-147, pt. 3, at 33 (2003) (“New section 564(k) [an earlier but similarly worded version of what became 10 U.S.C. § 1107a] pertains to members of the Armed Forces and, among other things, it specifies that the President may waive requirements designed to ensure that such members are *informed* of the option to accept or refuse administration of an emergency use product, upon certain findings[.]” (emphasis added)); see also *Milner v. Dep't of the Navy*, 562 U.S. 562, 574 (2011) (noting that “[l]egislative history, for those who take it into account, is meant to clear up ambiguity, not create it,” and thus, “[w]hen presented, on the one hand, with clear statutory language and, on the other, with dueling committee reports, we must choose the language”).



distribution of its Fact Sheet containing the “[i]t is your choice to receive or not receive” language, DOD is required to provide service members with the specified notification unless the President waives the condition pursuant to 10 U.S.C. § 1107a. And because DOD has informed us that it understandably does not want to convey inaccurate or confusing information to service members—that is, telling them that they have the “option” to refuse the COVID-19 vaccine if they effectively lack such an option because of a military order—DOD should seek a presidential waiver before it imposes a vaccination requirement.

### III.

For the reasons set forth above, we conclude that section 564 of the FDCA does not prohibit public or private entities from imposing vaccination requirements, even when the only vaccines available are those authorized under EUAs.

DAWN JOHNSEN  
*Acting Assistant Attorney General*  
*Office of Legal Counsel*



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No. 21-CV-2228**

DAN ROBERT, SSGT, U.S. ARMY,  
HOLLIE MULVIHILL, SSGT, USMC, and  
OTHER SIMILARLY SITUATED  
INDIVIDUALS,

Plaintiffs,

v.

LLOYD AUSTIN, in his official capacity as  
Secretary of Defense, U.S. Department of  
Defense,

XAVIER BECERRA, in his official capacity  
as Secretary of the U.S. Department of Health  
and Human Services,

JANET WOODCOCK, in her official  
capacity as Acting Commissioner of the U.S.  
Food & Drug Administration

Defendants.

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**COMPLAINT**

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Plaintiffs Staff Sergeant Daniel Robert, U.S. Army, and Staff Sergeant Holli Mulvihill, USMC, individually and on behalf of all other similarly situated active duty, National Guard, and Reserve servicemembers, as documented survivors of COVID-19, file this action against the Department of Defense (“DoD”), seeking a declaratory judgment that the DoD cannot force them to take a COVID-19 vaccination under existing military regulations, federal regulations, federal law, and the U.S. Constitution. The Secretary of Defense, Lloyd Austin (the “SECDEF”) has



publicly notified Plaintiffs, via Memo, that he will seek authorization from the President of the United States of America (the “President”), to mandate the COVID-19 vaccine on or about September 15, 2021. Upon information and belief, the DoD is already vaccinating military members in flagrant violation of its legal obligations and the rights of servicemembers under federal law and the Constitution. Army Regulation 40-562 (“AR 40-562”) provides documented survivors of an infection, a presumptive medical exemption from vaccination because of the natural immunity acquired as a result of having survived the infection. “General examples of medical exemptions include the following... Evidence of immunity based on serologic tests, documented infection, or similar circumstances.” AR 40-562, ¶2-6a.(1)(b). Plaintiffs also seek a declaratory judgment on the separate basis that the Emergency Use Authorization (“EUA”) DoD COVID-19 Vaccine mandate, which they have been notified is imminent, cannot be issued in violation of 10 U.S.C. §1107 and its implementing regulations, including DoD Directive 6200.2, the FDA regulation of biologics at 21 C.F.R. § 50 *et seq.*, as well as the law regarding informed consent 50 U.S.C. 1520 (“The Nuremburg Code”).

Neither the President, nor the SECDEF, nor the Secretary of the Department of Health and Human Services, nor the Secretary of the Food and Drug Administration have complied with the requirements of those controlling pieces of federal law. Therefore, any forced vaccination of Plaintiffs would be/are being administered in blatant violation of federal law, the attendant regulations, and the U.S Constitution, denying Plaintiffs due process of law and violating their bodies. Plaintiffs seek this relief pursuant to the Administrative Procedures Act, 5 U.S.C. §702, *et seq.*, the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and the All Writs Act, 28 U.S.C. §1651. Plaintiff also seek temporary and permanent injunctive relief preventing their forced



vaccination attendant to their claims for declaratory judgment.

### **PARTIES**

1. Staff Sergeant Daniel Robert, U.S. Army, is a Drill Sargent and infantryman currently on active duty stationed at Fort Bragg, North Carolina.

2. Staff Sergeant Holli Mulvihill, USMC, is an air traffic controller currently on active duty stationed at MCAS New River, North Carolina.

3. Defendant, U.S. Department of Defense (“DoD”), is an agency of the United States Government. It is led by SECDEF who has publicly stated that the Department will seek authorization of the President to begin mandating the vaccination of the force on or about September 15, 2021.

4. Defendant, Department of Health and Human Services (“HHS”), is an agency of the United States Government. It is led by Secretary Xavier Becerra.

5. Defendant, Food and Drug Administration (“FDA”), is an agency of the United States Government. It is led by acting Secretary Janet Woodcock.

### **CLASS ACTION ALLEGATIONS**

6. This action is brought by the Plaintiffs on their own behalf and on behalf of the class of all other military members similarly situated, under the provisions of FED. R. CIV. P. 23(a) and (b).

7. The class so represented by the Plaintiffs consists of (at least) active duty and reserve component members of the United States Armed Forces and National Guard members who have already caught and recovered from COVID-19, documented and reported it to superiors and have been or will be ordered to take any COVID-19 vaccine for this public health mandate.



8. The exact number of members of the class described above is not precisely known, but there are currently in excess of 1.8 million members of the active-duty component of the Armed Forces. The class is so numerous that joinder of individual members is impracticable, if not impossible.

9. The relief sought is common to the entire class and there are common questions of law and fact that relate to and affect the rights of each class member. These common questions include the exact legal status under 21 U.S.C. §355 of any of the vaccines against COVID-19 that the military is using on members now and will use in the future; whether the vaccines are being used under a Presidential waiver pursuant to a specific request from the SECDEF, under 10 U.S.C. §1107; or pursuant to the Emergency Use Authorization under 10 U.S.C. §1107a; whether the proper findings and requests have been made regarding the nature and duration of the military exigency that requires a waiver of informed consent under DoD Instruction (“DoDI”) 6200.02.

10. Plaintiffs’ claims are typical of the claims all members of the class could make depending upon the exact nature of the vaccines and each Defendant’s actions with regard to their legal obligations. There is no conflict between Plaintiffs and other members of the class with respect to this action or with respect to the claims for relief made herein. Indeed, Plaintiffs’ claims would also apply to any military member who meets the requirements for medical exemption under AR 40-562, ¶2-6a(1)(a) or (1)(b).

11. The Plaintiffs are representative parties for the class and are able to fairly and adequately protect the interests of the class. The attorneys for the Plaintiffs are experienced and capable in litigating the claims at issue and have engaged in substantial litigation on similar issues to these in previous litigation. Attorneys Todd Callender, Colton Boyles, David Willson, and Dale



Saran will actively conduct and be responsible for the conduct of the action on behalf of the plaintiff class.

12. This action is properly maintained as a class action because the prosecution of separate actions by individual members of the class would create a risk of individual adjudications to class members that would, as a practical matter, be dispositive of the interests of others not party to the litigation or would substantially impair or impede their ability to protect their interests.

13. This action is properly maintained as a class action because the mixed questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior to other available methods of fair and efficient adjudication of the controversy.

### **JURISDICTION AND VENUE**

14. There is a legitimate controversy because the Plaintiffs in this case are already or about to be ordered to take an “Investigational New Drugs”, as defined in 21 CFR 56.104(c) (“IND”), or drug unapproved for its applied use, or EUA (experimental) vaccine for a virus from which they already have the maximum possible systemic immunity by virtue of their immune systems having already defeated it; and for which they, therefore, have no need. This case implicates the most fundamental of all human rights, the right of a person to bodily integrity and to make their own choices about what will be put into their body. Upon information and belief, the DoD has already begun vaccinating members in violation of its legal obligations.

15. Jurisdiction is proper in this Court under the Administrative Procedures Act, 5 U.S.C. §702, the Declaratory Judgment Act, 28 U.S.C. §2201, and under 28 U.S.C. §§1331, 1346, and 1361.



16. Venue is proper in this Court pursuant to 28 U.S.C. §1402 where members of the Plaintiff class are present in the district and directly impacted by the proposed order as members, leadership, and the physically located military reservations of the Defendant DoD in this Court's jurisdiction.

### **FACTUAL BACKGROUND**

17. Army Regulation 40-562, "Immunization and Chemoprophylaxis for the Prevention of Infectious Diseases"<sup>1</sup> presumptively exempts from any vaccination requirement a service member that the military knows has had a documented previous infection.

18. Plaintiffs, individually and as a class, have all previously suffered and recovered from COVID-19 infections with the development of natural immunity as demonstrated to or documented by the military.

19. AR 40-562 was signed on Oct. 7, 2013, went into effect on Nov. 7, 2013, and remains in effect today. It applies to all branches of the military. The Regulation also applies whether the proposed COVID-19 vaccines it seeks to administer to Plaintiffs and the class are IND, as an IND under EUA, 21 USC Sec. 360bbb-3, or as a fully approved FDA vaccine.

20. Plaintiffs and the proposed Plaintiff class of documented COVID-19 survivors file this lawsuit now upon information and belief that service members across the services have already been given a COVID-19 vaccine by the military without any of the proper political officials having complied with their legally mandated obligations under federal law, specifically 10 U.S.C. §1107

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<sup>1</sup> This document is an all-service publication and has an equivalent name for each of the applicable services. We have chosen to use the Army designation throughout for ease, but these arguments apply equally under AFI 48-110, BUMEDINST 6230.15B, COMDETINST M6230.4G. *See*, AR 40-562, ¶2-6a.(1)(b).



and its implementing instructions.

21. Long established precepts of virology demonstrate that the immunity provided by recovery from actual infection is at least as pronounced and effective, if not many times more so, than any immunity conferred by a vaccine. This is no less true of COVID-19. See Exhibit 1 with attached CV, Expert Medical opinion of Dr. Peter A. McCullough, M.D., M.P.H. “Following the science” as it relates to COVID-19 validates and reaffirms the wisdom of maintaining long-established virology protocol, most recently codified in AR 40-562 in 2013.

22. Service members that have natural immunity, developed from surviving the virus, should be granted a medical exception from compulsory vaccination because the DoD Instruction policy reflects the well-established understanding that prior infection provides the immune system’s best possible response to the virus. “COVID-19 did not occur in anyone over the five months of the study among 2,579 individuals previously infected with COVID-19, including 1,359 who did not take the vaccine.” See, e.g., Exhibit 2, Necessity of COVID-19 vaccination in previously infected individuals, Shrestha, Burke, *et al.*, Cleveland Clinic.<sup>2</sup>

23. Plaintiffs and the Plaintiff class should be exempted from compulsory vaccination regardless of the legal status of the vaccines with the FDA because the requirements to vitiate a military service member’s right to informed consent have not been met and cannot be met by the Defendants.

24. Federal law only allows the forced vaccination of service members with an IND *after* the SECDEF has complied with all of the legal requirements of 10 U.S.C. §1107 or §1107a,

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<sup>2</sup> Plaintiffs have included a small sample of studies demonstrating the superiority of naturally acquired immunity over novel mRNA vaccines with no established safety history and unknown side-effects. See, e.g., Exhibits 3-8.



depending upon the status of the vaccine.

25. DoD Instruction 6202.02 (“DoDI”) states (in part) that:

The Heads of DoD Components:

...Shall, when requesting approval to use a medical product under an EUA or IND application, develop, in coordination with the Secretary of the Army, medical protocols, compliant with this Instruction, for use of the product and, if the request is approved, execute such protocols in strict compliance with their requirements...

Shall, when using medical products under a force health protection program pursuant to an EUA, comply with Enclosure 3, Federal Food Drug and Cosmetic Act section 564 (Reference (d)), section 1107a of Reference (e) and applicable FDA requirements.

Shall, when using medical products under a force health protection program pursuant to an IND application, comply with Enclosure 4, section 1107 10 U.S.C., and applicable provisions of References (e) through (g). Requirements applicable to the use of medical products under an IND application do not apply to the use of medical products under an EUA within the scope of the EUA.

26. One of the (many) obligations that the SECDEF has with respect to use of either an IND/drug unapproved for its applied use (under §1107) or an EUA (under §1107a) is to provide detailed, written notice to the servicemember that includes information regarding (1) the drug’s status as an IND, unapproved for its applied use, or EUA; (2) “[t]he reasons why the investigational new drug or drug unapproved for its applied use is being administered[;]” and (3) “the possible side effects of the investigational new drug or drug unapproved for its applied use, including any known side effects possible as a result of the interaction of such drug with other drugs or treatments being administered to the members receiving such drug.”

27. Federal law requires that the SECDEF requests to the President for a written authorization to waive a servicemember’s right to informed consent include the certification that such vaccination is required as to a particular member’s participation in a *specified military operation* that contains the following additional criteria:

(i) The extent and strength of evidence of the safety and effectiveness of the Investigational



New Drug in relation to the medical risk that could be encountered during the military operation, supports the drug's administration under an IND; and

(ii) The specified military operation presents a substantial risk that military personnel may be subject to a chemical, biological, nuclear, or other exposure *likely to produce death or serious or life-threatening injury or illness*; and

(iii) *That there is no available satisfactory alternative therapeutic or preventive treatment in relation to the intended use of the investigational new drug*; and

(iv) that conditioning the use of the investigational new drug upon voluntary participation of each member could significantly risk the safety and health of any individual member who would decline its use, the safety of other military personnel, and the accomplishment of the military mission[,] which remains undefined at this time (emphasis added).

28. The relevant Defendants have not complied with these requirements and upon information and belief have been engaged in an ongoing pattern of intentional vaccination of servicemembers in knowing violation of these obligations and servicemembers' rights.

29. The applicable section of the Federal Food, Drug, and Cosmetic Act (Title 21, Chapter 9) regarding EUA of biologics for the military is found at 21 U.S.C. §360bbb-3. It contains a lengthy list of requirements for either the Secretary of the Department of Homeland Security, the Secretary of Defense, the Secretary of the FDA, including detailed findings regarding the exact military contingency that the Secretary of Defense has used to go to the President in order to override servicemembers' right of informed consent before the administration of any EUA drug or device.

30. The Defendants have not complied and cannot comply with their respective



requirements to support the DoD's actions in vitiating the informed consent rights of servicemembers regarding these unapproved biologics because:

(a) these drugs are not being used in response to any specific military threat in a theater of operations, but rather are a naked attempt to leverage the Plaintiffs' military status against them in order to move forward with an unnecessary public health mandate;

(b) there is near zero risk to healthy, fit, young men and women of the U.S. Armed Services, and

(c) there are numerous safe, long-standing, proven alternative treatments (such as ivermectin, "anti-infective oral and nasal sprays and washes, oral medications, and outpatient monoclonal antibodies, which are 'approved' drugs by the Food and Drug Administration and highly effective in preventing and treating COVID-19")<sup>3</sup> and the existence of such treatments is a legal bar to the use of an EUA or IND without informed consent.

**FIRST CAUSE OF ACTION**  
**(VIOLATION OF ADMINISTRATIVE PROCEDURE ACT)**

31. Plaintiffs reallege the facts in Paragraphs 1 through 30 as if fully set forth in this Count.

32. The United States Government, acting through the DoD, violated its own regulations, DoDI 6200.02 and AR 40-562, by ignoring the Plaintiffs right to informed consent and vaccinating members of the armed forces without complying with applicable federal law and implementing regulations.

33. Defendants' failure to follow federal law and regulations creates a legal wrong

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<sup>3</sup> See **Exhibit 1**, Expert Medical Opinion of Dr. Peter McCullough.



against Plaintiffs.

34. As a result of Defendants' unlawful actions, Plaintiffs have suffered damages, including being required to take an unnecessary drug of unknown long-term safety profile; being subject to or threatened with disciplinary action under the Uniform Code of Military Justice ("UCMJ"), to include adverse administrative action; enduring differential treatment, including being segregated from eating with one's fellow service members in the military dining facilities and subject to ridicule; being denied leave and/or freedom of movement, among others, as a result of Defendants' illegal scheme and actions.

**SECOND CAUSE OF ACTION**  
**(VIOLATION OF 10 U.S.C. §1107)**

35. Plaintiffs reallege the facts in Paragraphs 1 through 30 as if fully set forth in this Count.

36. This case involves an actual controversy surrounding the legality of any orders or actions the DoD has taken with regard to vaccinating service members against COVID-19 in the absence of the Secretaries and DoD's moral and statutory obligations.

37. The United States Government, acting through the DoD, violated a federal statute, namely 10 U.S.C. §1107, as well as DoDI 6200.02, when it illegally required or stated it would require or mandate members of the class of Plaintiffs who have already had the virus to submit to COVID-19 vaccinations in an IND or "unapproved for their applied use" status.

38. As a result of Defendants' unlawful actions, Plaintiffs have suffered damages, including being required to take an unnecessary drug of unknown long-term safety profile; being subject to or threatened with disciplinary action under UCMJ, to include adverse administrative action; enduring differential treatment, including being segregated from eating with one's fellow



service members in the military dining facilities and subject to ridicule; being denied leave and/or freedom of movement, among others, as a result of the Defendants' illegal scheme and actions.

**THIRD CAUSE OF ACTION**  
**(VIOLATION OF 10 U.S.C. §1107a)**

39. Plaintiffs reallege the facts in Paragraphs 1 through 30 as if fully set forth in this Count.

40. This case involves an actual controversy surrounding the legality of any orders or actions the DoD has taken with regard to vaccinating service members against COVID-19 in the absence of the Secretaries and DoD's moral and statutory obligations.

41. The United States Government, acting through the DoD, HHS, and FDA, violated a federal statute, namely 10 U.S.C. §1107a, as well as 21 U.S.C. §355, DoDI 6200.02, when it illegally required or threatened to mandate members of the class of Plaintiffs who have already had the virus, to submit to COVID-19 vaccinations in an EUA status. Even though not currently lawfully mandated by SECDEF and other Defendants, many Plaintiffs, e.g., service members, have been ordered, or coerced by virtue of military structure and rank, to submit to taking the vaccine.

42. As a result of Defendants' unlawful actions, the Plaintiffs have suffered damages, including being required to take an unnecessary drug of unknown long-term safety profile; being subject to or threatened with disciplinary action under the UCMJ, to include adverse administrative action; enduring differential treatment, including being segregated from eating with one's fellow service members in the military dining facilities and subject to ridicule; being denied leave and/or freedom of movement, among others, as a result of the Defendants' illegal scheme and actions.

**FOURTH CAUSE OF ACTION**  
**(VIOLATION OF 50 U.S.C. §1520)**



43. Plaintiffs reallege the facts in Paragraphs 1 through 30 as if fully set forth in this Count.

44. This case involves an actual controversy surrounding the legality of any orders or actions the DoD has taken with regard to vaccinating service members against COVID-19 in the absence of the Secretaries and DoD's moral and statutory obligations.

45. The United States Government, acting through the DoD, HHS, and FDA, violated a federal statute, namely 50 U.S.C. §1520, when it illegally required members of the class of Plaintiffs who have already had the virus to submit to COVID-19 vaccinations in any FDA status. The right of informed consent is one of the sacrosanct principles that came out of the Nazi Doctor Tribunals conducted at Nuremburg. The overriding legal principle was that no State, not even the United States, may force its citizens to undergo unwanted medical procedures merely by declaring an emergency.<sup>4</sup>

46. As a result of Defendants' unlawful actions, the Plaintiffs have suffered damages, including being required to take an unnecessary drug of unknown long-term safety profile; being subject to or threatened with disciplinary action under the UCMJ, to include adverse administrative action; enduring differential treatment, including being segregated from eating with one's fellow service members in the military dining facilities and subject to ridicule; being denied leave and/or freedom of movement, among others, as a result of the Defendants' illegal scheme and actions.

**WHEREFORE**, Plaintiffs respectfully ask this Court to:

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<sup>4</sup> If this were the correct legal principle, then the Nazi doctors were wrongly tried and convicted as Germany was in a declared state of emergency at the time of the Nazi medical experiments.



- A. Find that the use of investigational new drugs or drugs unapproved for their applied use is illegal until and unless the Secretary of Defense complies with his statutory requirements in requesting a waiver of informed consent and until the President makes the requisite finding under 10 U.S.C. §1107; and
- B. Find that all members of the Plaintiffs' class are still entitled to a medical exemption from vaccination even after the Defendants have complied with their legal obligations under the implementing DoDI 6200.02;

Alternatively, if applicable,

- C. Find that the use of vaccines under an EUA is illegal until and unless all of the Defendants comply with their statutory obligations in requesting a waiver of informed consent under 10 U.S.C. §1107a and the implementing regulations and laws;
- D. Find that all members of the Plaintiffs' class are still entitled to a medical exemption from vaccination even after the Defendants have complied with their legal obligations under DoDI 6200.02;

Plaintiffs also ask this Honorable Court to:

- E. Find and declare that any order issued by DoD requiring the Plaintiffs to receive inoculation with COVID-19 vaccines are patently unlawful;
- F. Enjoin the DoD from vaccinating any service members until this action has completed and the status of any vaccine has been determined and the requirements for taking away Plaintiffs' rights of informed consent have been met; and
- G. Award Plaintiffs their costs and attorneys' fees and any other relief this Court may



find appropriate.

Date: August 17, 2021

Respectfully submitted,

s/ Todd Callender

***Todd Callender, Esq.***

Colorado Bar #25981

600 17th St., Suite 2800 South

Denver, CO 80202

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Olathe, KS 66061

Telephone: 508-415-8411



# STATE OF FLORIDA

## OFFICE OF THE GOVERNOR EXECUTIVE ORDER NUMBER 21-81

(Prohibiting COVID-19 Vaccine Passports)

**WHEREAS**, on March 9, 2020, I issued Executive Order 20-52, subsequently extended, declaring a state of emergency for the entire State of Florida as a result of COVID-19; and

**WHEREAS**, on December 23, 2020, I issued Executive Order 20-315, as subsequently extended by Executive Orders 21-46, 21-47, 21-62, 21-67, and 21-79, directing Florida's initial phase of vaccine distribution and prioritizing seniors first; and

**WHEREAS**, the State of Florida is leading the effort to distribute the vaccine to elderly and vulnerable populations of the State and has successfully provided vaccines to nearly 3.5 million seniors; and

**WHEREAS**, many Floridians have not yet had the opportunity to obtain a COVID-19 vaccination, some have infection-acquired immunity, and others may be unable to obtain a COVID-19 vaccination due to health, religious, or other reasons; and

**WHEREAS**, Florida seeks to ensure that every Floridian who desires a COVID-19 vaccine can obtain one, but such vaccines will not be mandated; and

**WHEREAS**, no COVID-19 vaccine is required by law; and

**WHEREAS**, individual COVID-19 vaccination records are private health information which should not be shared by mandate; and

**WHEREAS**, so-called COVID-19 vaccine passports reduce individual freedom and will harm patient privacy; and



**WHEREAS**, requiring so-called COVID-19 vaccine passports for taking part in everyday life—such as attending a sporting event, patronizing a restaurant, or going to a movie theater—would create two classes of citizens based on vaccination; and

**WHEREAS**, it is necessary to protect the fundamental rights and privacies of Floridians and the free flow of commerce within the state.

**NOW, THEREFORE, I, RON DESANTIS**, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution and by the Florida Emergency Management Act, as amended, and all other applicable laws, promulgate the following Executive Order:

Section 1. No Florida government entity, or its subdivisions, agents, or assigns, shall be permitted to issue vaccine passports, vaccine passes, or other standardized documentation for the purpose of certifying an individual's COVID-19 vaccination status to a third party, or otherwise publish or share any individual's COVID-19 vaccination record or similar health information.

Section 2. Businesses in Florida are prohibited from requiring patrons or customers to provide any documentation certifying COVID-19 vaccination or post-transmission recovery to gain access to, entry upon, or service from the business.

Section 3. All executive agencies under my direction shall work to ensure businesses comply with this order. Any provision of Florida Statutes is hereby suspended solely to the extent it restricts a Florida agency from requiring compliance with this order as a condition for a license, permit, or other state authorization necessary for conducting business in Florida.

Section 4. All businesses must comply with this order to be eligible for grants or contracts funded through state revenue.

Section 5. The requirements in this order do not otherwise restrict businesses from instituting COVID-19 screening protocols in accordance with state and federal law to protect



public health, and nothing herein shall be construed to interfere with individuals' rights to access their own personal health information under federal law.

Section 6. This order is effective immediately and shall remain in effect for the duration of Executive Order 20-52, as extended.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 2nd day of April, 2021.

  
RON DESANTIS, GOVERNOR

ATTEST:

  
SECRETARY OF STATE

2021 APR -2 PM 12:25  
DEPARTMENT OF STATE  
TALLAHASSEE, FL

FILED



# The Nuremberg Code

1. The voluntary consent of the human subject is absolutely essential.  
This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved, as to enable him to make an understanding and enlightened decision. This latter element requires that, before the acceptance of an affirmative decision by the experimental subject, there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person, which may possibly come from his participation in the experiment.  
The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.
2. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.
3. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study, that the anticipated results will justify the performance of the experiment.
4. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.
5. No experiment should be conducted, where there is an a priori reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects.
6. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.
7. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.
8. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.



9. During the course of the experiment, the human subject should be at liberty to bring the experiment to an end, if he has reached the physical or mental state, where continuation of the experiment seemed to him to be impossible.
10. During the course of the experiment, the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgement required of him, that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

["Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10", Vol. 2, pp. 181-182. Washington, D.C.: U.S. Government Printing Office, 1949.]





# U.S. CIVIL RIGHTS PROTECTION



**MY LEGAL RIGHT TO ENTER, SHOP AND BE SERVED AT THIS ESTABLISHMENT -- without covering my face or showing proof of vaccination -- IS PROTECTED BY STATE AND FEDERAL LAW**

1. **This private business has a LEGAL CLASSIFICATION as a "public accommodation"** according to Title III Reg 28 CFR §36.104. Your private business serves the public and therefore must abide by all state and federal laws. No business policy supersedes the law. No governor's order, health order, emergency or pandemic supersedes Constitutionally-protected rights. This business is open to the public, and I am the public. **Your denial of my service violates several federal laws.**
2. **Federal law 28 CFR §36.202 prohibits "denial of participation" from this business** establishment. §36.202(c) states that unless I have been individually assessed as a *"direct threat"* you may not exclude me from the SAME and EQUAL services as others.
3. Denying my service or requiring me to be served outside or be limited to home delivery is a VIOLATION of Title II, III and VII of the U.S. Civil Rights Act of 1964.
4. **Title III, Sections §36.202(a)(b)(c) and §36.203(a)(b)(c)** states that I shall not be denied the same PARTICIPATION and EQUAL ACCESS as everyone else. **The law prohibits you from serving me separately or differently.**
5. **As such, this business is PROHIBITED from unlawful discrimination** by denying the entry of any member of the public who is not disturbing the peace. To do so is a crime of unlawful restraint and interfering with commerce and you will be held personally liable for this crime.
6. These premises are open to the public and thus any charge of "trespass" is a false accusation as **I am complying with all lawful conditions allowing me to remain on these premises and be served by this business without discrimination. I do not need to disclose my condition to you.**

**Learn about your rights and how to defend them at [www.TheHealthyAmerican.org](http://www.TheHealthyAmerican.org)**



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** 3 Letters Regarding 24th and Mission Bart Station  
**Date:** Thursday, September 30, 2021 12:03:00 PM  
**Attachments:** [24th and Mission Bart Station.pdf](#)

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Hello,

Please see attached for 3 letters regarding the 24<sup>th</sup> and Mission Bart Station.

Regards,

**Board of Supervisors - Clerk's Office**

1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102  
(415) 554-5184 | (415) 554-5163  
[board.of.supervisors@sfgov.org](mailto:board.of.supervisors@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)

Complete a Board of Supervisors Customer Service Satisfaction Form by clicking  
<http://www.sfbos.org/index.aspx?page=104>

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

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**From:** [Francesca Pastine](#)  
**To:** [Ronen, Hillary](#); [Chan, Connie \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Preston, Dean \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [DPH - Anthony](#); [Breed, Mayor London \(MYR\)](#); [letters@marinatimes.com](#); [Lerma, Santiago \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); [Cityattorney](#); [SFPD Mission Station, \(POL\)](#); [MelgarStaff \(BOS\)](#); [demian.bulwa@sfchronicle.com](#); [Mission Local](#); [Melgar, Myrna \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Walton, Shamann \(BOS\)](#); [taylor.brown@sfchronicle.com](#); [Li-D9, Jennifer \(BOS\)](#); [DHS \(HOM\)](#); [Albert Pastine](#); [Kositsky, Jeff \(DEM\)](#); [Monge, Paul \(BOS\)](#); [MandelmanStaff, \(BOS\)](#)  
**Subject:** RECENT TRIP TO BART  
**Date:** Friday, September 24, 2021 11:30:55 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Hillary Ronen, et. al.,

Now that I am getting back to using public transportation I am shocked to see the complete deterioration of the 24th Street BART station. The conditions are absolutely abhorrent. This used to be a decent transportation hub with a few legitimate concessions, some-times musicians, and our neighborhood preachers. Otherwise, it was just the normal flow of commuters. Now it's a hell -scape.

It is another indication that Hillary Ronen's work to ruin this neighborhood is fait-complet. It's over. It's done. The neighborhood is irreversibly destroyed. It is now a completely blighted territory of broken windows, trash, squatters taking over huge swaths of public sidewalks, human feces, graffiti, shoplifters, blood-filled hypodermic-needles, addicts, drunks, and lunatics. Simply going to BART yesterday I had to cross the street twice to avoid mentally ill people raving and acting out in a hostile fashion. Note, BART is just a few blocks from my house. Once there, I had to skirt around people lounging on the sidewalks drinking and doing drugs, public bus stations completely taken over by squatters, and row after row of people selling shoplifted merchandise.

For years, I have been warning about the consequences that would result through Hillary Ronen's exploitation of our vulnerable, immigrant, low-income, and poc neighborhood. Well now we see it. The living conditions in the Mission are intolerable. Years of policies that enabled squatting on our sidewalks while blocking stable housing; years of enabling drug use and car encampments; years of concentrating Safe Sleeping Areas and Navigations centers in my community while lettering other wealthier communities skirt any responsibility to host these same people, have finally panned out. This is Hillary Ronen's Mission and it is ugly.

Sincerely,  
Francesca Pastine

PS: note to my bcc people, please forward this to as many people you can. thx

















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<https://www.francescapastine.com/>  
<http://francescapastine.blogspot.com>  
[Eleanor Harwood Gallery](#)  
[Pentimenti Gallery](#)  
[IN THE MAKE](#)

Life is short  
Art is long  
Opportunity fleeting  
Experience treacherous  
Judgment difficult

Hippocrates 400 b.c.



From: [Albert Pastine](#)  
To: [Rosen, Hillary](#), [Dean, Corinne](#), [Santel, Catherine](#), [Finkle, Aaron](#), [Whe, Gordon](#), [Evanson, Ryan](#), [Harvey, Matt](#), [Sabo, Andy](#), [KPH - Anthony](#), [Boyd, Meyer](#), [London, Mimi](#), [info@francescapastine.com](#), [Larson, Santiago](#), [Board of Supervisors](#), [City Attorney](#), [SFPI Mission Station](#), [Miguel Staff](#)  
Subject: RE: RECENT TRIP TO BART  
Date: Friday, September 24, 2015 2:24:29 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

> Dear Hillary Rosen, et. al.,  
>  
> Now that I am getting back to using public  
> transportation I am shocked to see the complete  
> deterioration of the 24th Street BART station.  
> The conditions are absolutely abhorrent. This  
> used to be a decent transportation hub with a  
> few legitimate concessions, some-times  
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> Otherwise, it was just the normal flow of  
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> these same people, have finally panned out.  
> This is Hillary Rosen's Mission and it is ugly.  
>  
> Sincerely,  
> Francesca Pastine  
>  
> PS: note to my bcc people, please forward this  
> to as many people you can. thx  
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> > https://avanan.url-protection.com/v1?url?  
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> Life is short  
> Art is long  
> Opportunity fleeting  
> Experience teaches  
> Judgment difficult  
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> Hippocrates 400 b.c.  
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[illegible]



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** FW: MORE BAD GOVERNANCE  
**Date:** Thursday, September 30, 2021 12:04:00 PM

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-----Original Message-----

From: Albert Pastine <architect.pastine@ca.astound.net>  
Sent: Monday, September 27, 2021 3:37 PM  
To: Ronen, Hillary <hillary.ronen@sfgov.org>; Chan, Connie (BOS) <connie.chan@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; DPH - Anthony <Anthony@dscs.org>; Breed, Mayor London (MYR) <mayorlondonbreed@sfgov.org>; letters@marinatimes.com; Lerma, Santiago (BOS) <santiago.lerma@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Cityattorney <Cityattorney@sfcityatty.org>; SFPD Mission Station, (POL) <SFPDMissionStation@sfgov.org>; MelgarStaff (BOS) <melgarstaff@sfgov.org>; demian.bulwa@sfchronicle.com; Mission Local <info@missionlocal.com>; Melgar, Myrna (BOS) <myrna.melgar@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; taylor.brown@sfchronicle.com; Li-D9, Jennifer (BOS) <jennifer.li-d9@sfgov.org>; DSHS (HOM) <dhsh@sfgov.org>  
Subject: Re: MORE BAD GOVERNANCE

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

On 9/22/21 5:26 PM, Francesca Pastine wrote:

> Dear Hillary Ronen, et. al.,

>

> I see people sweep handfuls of merchandise off the shelves at

> Walgreens and walk out the door.

> I then see that same merchandise being sold at the corner of Mission

> and 24th. Good governance would not allow just anyone to lay down a

> blanket and sell merchandise on our public sidewalks. There would be

> a permit process to make sure the sellers are legitimate and not

> selling stolen goods. Permits would also regulate how many people

> could sell things at a single corner to make sure sidewalks are not

> clogged and impassable.

> IMG\_1375.jpg

>

> Unfortunately, good governance is not a requirement to be a

> supervisor. The corner of 24th and Mission is another casualty of

> Hillary Ronen's bad policies.

>

> Every day, my neighborhood deteriorates because we have a supervisor

> that works for special interests groups and not her constituents.

> Theft is encouraged, blight is encouraged, squatting is encouraged,

> while housing that would support stable families that have an interest

> in bettering the community is discouraged.

>

> I have been writing for years about the worsening condition in my

> neighborhood to no avail. I believe the critical mass of years of bad

> governance and bad policies have finally completely overwhelmed this



> community. As a resident in the Mission since 1994, I have witnessed,  
> in the last six years, a complete deterioration of civil life in the  
> Mission.  
> There are broken windows everywhere, trash, huge and persistent  
> encampments, crime, and feces everywhere. Now the 24th Street BART  
> station is clogged with criminals fencing stolen goods.  
>  
> When I think things cannot get any worse, they get worse.  
> Unfortunately, I fear that if Hillary Ronen continues to govern we  
> will see this continuing down-hill spiral in the Mission.  
>  
> Sincerely,  
> Francesca Pastine  
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>  
>  
> Life is short



- > Art is long
- > Opportunity fleeting
- > Experience treacherous
- > Judgment difficult
- >
- > Hippocrates 400 b.c.
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**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** 4 Letters with Various Constituent Concerns  
**Date:** Thursday, September 30, 2021 11:59:00 AM  
**Attachments:** [John Smith - Various Concerns.pdf](#)

---

Hello,

Please see attached for 4 letters regarding various constituent concerns.

Regards,

**Board of Supervisors - Clerk's Office**

1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102  
(415) 554-5184 | (415) 554-5163  
[board.of.supervisors@sfgov.org](mailto:board.of.supervisors@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)

Complete a Board of Supervisors Customer Service Satisfaction Form by clicking  
<http://www.sfbos.org/index.aspx?page=104>

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

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**From:** [john.smith](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Subject:** COMMENT ON YOUR "PERFORMANCE"  
**Date:** Thursday, September 23, 2021 5:48:42 PM

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YOU PLEDGE TO STOP RETAIL THEFTS? OK AFTER, AFTER. AFTER ALL THE SMALLER BUINESSSES HAVE BEEN CLOSED DOWN. AND THE ONLY ONES LEFT ARE CORPORATE BIG BOX STORES. TOO LITTLE TOO LATE. AFTER, AFTER, AFTER WHAT'S THE POINT NOW? SEE YOU "PEOPLE" OR GOVERNMENT WORKERS FACK UP EVERYTHING THEN ,THEN ,THEN YOU SEE YOUR TAX REVENUE US GONE DOWN AND YOU, YOU MISS THE FREE MONEY!!!! WE TOLD YOU. DIDN'T WE?

THOSE ILLEGALS JUST GOBBLE IT UP!!! AND PAY NOTHING IF NOT LITTLE. YET. YOU STILL GIVE THE JOBS TO THE ILLEGALS AND NEVER THE CITIZENS OR HEAVENS THOSE "WHITE MEN"!!!!!! EGAD!!!!!! IF THE WHITE MEN ARE SO HORRIBLE AND RACIST AND VERY BAD WHY DOES ALL THE ILLEGALS AND EVERYONE LITERALLY KILL THEMSELVES TO CUT THE LINE TO GET INTO THE WHITE MAN'S NATION(S) PLURAL???? ANSWER IT'S BS AND EVERYONE KNOWS IT EVEN THE DISGUSTING ILLEGALS. YOUR EXTREMELY UNINTELLIGENT MOB HAS STOLEN THE REIGNS OF OUR NATION AND ITS NOW A THIRD WORLD HELLHOLE OH, NOT YOUR NEIGHBORHOOD IT'S STILL GREAT, YEAH AND IT'S A SHRINKING BUBBLE. YOU HAVE MY EMAILS THEY ARE CACHED AND SAVED SO YOU CAN SIC THE WHOMEVER ON ME, READ THEM. ASK YOURSELF IS HE PSYCHIC? CLAIRVOYANT? HAVE ESP? OR IS HE JUST A "NORMIE" WITH COMMON SENSE? I SAY THE LAST. ALL MY PREDICTIONS HAVE COME TRUE. OR MY COMMENTS ARE "ON THE MONEY" SO TO SPEAK.. YOU ALL SIT AROUND IN OUR BUILDING AND CONTINUE TO DO THE SAME DUMB REACTIONS. AND PASS THE SAME TYPE OF DUMB EDICTS, COMPLETELY IRRELEVANT AND STUPID, SO, HOW'S THAT GOING? YOU THE DEMS/PROGRESSIVES/COMMUNISTS/SOCIALISTS/LIBERALS/ETC. HAVE BEEN IN POWER SINCE REAGAN LEFT. A ONE PARTY RULE!!! LIKE STALIN OR ARAFAT OR KHOMEINI OR CASTRO OR MAO OR POL POT OR HO CHI MINH OR KIM JONG UN AND ON AND ON.... ONE PARTY RULE. ISN'T THAT WHAT THE FOUNDERS RAN FROM????!!!!!! HENCE THEY CAME UP WITH THE "AMERICAN CONSTITUTION"!!!!!! OH MY!!!!!!

YOU HAVE COMPLETELY DESTROYED THE STATE!!! RAN OFF MOST OF THE TAXPAYERS ARE LEFT WITH THE CORPORATIONS WHO HAVE AMAZING ACCOUNTANTS, NO "TEAMS " OF AMAZING ACCOUNTANTS !!!! WHOSE JOB IS TO GUARD THEIR MONEY. THAT MEANS YOUR TAX REVENUE IS SHRINKING AND WHEN YOU CHANGE THE TAX LAWS TO SWIPE THEIR MONEY THEY TOO WILL VAMOOSE!! DO YOU GET IT? WILL YOU EVER GET IT? WHEN AFTER ITS TOO LATE?? WHICH TAKES US BACK TO YOU "PLEDGING" TO STOP THE RETAIL THEFTS!!! SURE LIKE WE BELIEVE YOUR EMPTY WORDS CRAP!!!! PEOPLE OR REAL CITIZENS WHO YOU LIED TO AND BETRAYED HAVE GONE ALREADY AND THOSE FEW LEFT HERE STILL, LIKE "KATRINA-ESQUE" VICTIMS ARE VERY, VERY, VERY UNHAPPY WITH YOU!!!!!!



WE VERY MUCH BELIEVE YOU WILL EVENTUALLY GET IT. YOU AND YOUR  
SYCOPHANTS.  
TAKE CARE  
ALL THE BEST  
BE WELL



**From:** [john.smith](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Subject:** ITS IN THE EYE OF THE BEHOLDER  
**Date:** Friday, September 24, 2021 7:53:03 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

OK SO YOU CAN HAVE YOUR "JOB " FOR 4 YEARS AND FOR 8 IF ELECTED TO A SECOND TERM, MAKING OVER 140 K A YEAR WITH BENEFITS.

AND WHAT DO YOU DO???

ITS NOT TO STOP CRIME. OK YOU SAY THATS THE COPS JOB AND YOUR JOB IS TO MAKE SURE THEY DO THEIR JOB.

DO YOU DETER CRIME?

HOW?????? YOU ASK?? YOU ( I ASK YOU DO YOU SLAP THEIR WRIST OR MAKE PELDGES? (SEE MAYORS BS PLEDGE)

YOU HIRE A D.A. AND POLICE FORCE THAT CAN AND DO FORCE CRIMINALS TO LEAVE GOOD PEACEFUL OR EVEN BAD PEACEFUL PEOPLE ALONE LIKE ASIANS AND WHITES AND OTHER PEOPLE.

AND ACTUALLY NOT HIDE THE FACT THE PEOPLE DOING THESE CRIMES ARE BLACK!!!!!!!!!! OR DO YOU REALLY STOP IT?

YOU TRY TO HELP THE HOMELESS?

THAT THERE IS A MAJOR PROBLEM WE, THE TAX PAYERS NOT YOU, YOU GET PAID BY THE TAX PAYERS SO THIS EXEMPTS YOU, IS TO STOP THE MISERY OF CITIZENS THAT ARE HOMELESS. YOU SAY WE HAVE HOMELESS SHELTERS WELL, I SAY YOU NEED TO STAY IN ONE NOT WITH FANFARE OR ANY HERALDING OF WHO YOU ARE.

AND SEE THE HORRIBLE SCANDLES THE SHELTERS ARE. THE GIVING OF NOT EVEN ENOUGH SLOP THEY SERVE OR THE FEW HOURS YOU CAN STAY THERE. AND WHO THEY "HELP", IS IT RACIST WHAT THEY DO??? ITS A VICIOUS CYCLE OF CRIME THERE.

SO, I ASK WHAT DO YOU DO????

IT SEEMS TO ME YOU ALL ARE ABOUT JUST GETTING PAID BY US AND BUDDYING UP TO COPORATIONS, BIG BUSINESSES, ILLEGALS,SPECIAL INTERESTS, AND THOSE THAT DONT HELP THE REAL WORKERS OF SF THIS CITY IS THE REAL "SODOM AND GOMORRAH". AND BEFROE YOU SAY HES A WEIRDO A BIBLICAL DUDE, MAYBE BUT, JESUS WAS A REAL PERSON, HISTORIANS HAVE PROVEN THERE WAS A MAN NAMED JESUS AND SCHOLARS ALL AGREE. THERE WAS A JESUS.HE WAS A CARPENTER, HE WAS A RESIDENT OF JUDEA AND GALILEE, JOHN THE BAPTIST BAPTIZED HIM. HE WAS A PREACHER HIS FOLLOWERS WERE CALLED DICIPLES. HE HAD PROBLEMS WITH THE JEWISH COUNCIL WHO RULED UNDER THE ROMAN EMPIRE. HE HAD PROBLEMS AT THE "TEMPLE" THAT WAS RUN BY THE JEWISH COUNCIL, JESUS WAS A JEW.

AND YES HE WAS CRUFIED BY THE JEWISH COUNCIL NOT BY THE ROMAN COUNCIL PONTIUS PILATE MADE THAT CLEAR.

SO. WHATS THE POINT OF ME TELLING YOU THIS? YOUR THE BOARD .OF DIRECTORS HERE. AND YOU ARE A COUNCIL OF ONE PARTY. ONE RULE, ONE UNITED FORCE, ISNT THAT ORWELLIAN???? ISNT THAT HUXLEY-ESQUE?



KAFKA-ESQUE? EVEN ANTI-AYN RAND. OH MY YOU ALL CLAIM THAT LITERATURE IS ALL ANTI-SAINT FRANCIS OR ANTI-SAN FRANCISCO!!!! COULD THAT BE WHY RESIDENTS HAVE LEFT? YOU BALK. WE HAVE PLENTY OF RESIDENTS YOU CALIM !!!!

YEAH. ILLEGALS, THOSE TRAPPED ECONOMICALLY HERE THOSE THAT PROFIT OR THOSE WITH JOBS THEY CANT ABANDON. AND THOSE THAT ARE DUMB OF THE OBVIOUS.

SO, YOU ASK WHY ARE YOU TELLING US THIS BS? AND WHY WOULD WE CARE? MY RETORT IS THIS THE SAME REACTION BY THE MEN THAT CRUCIFIED JESUS? MY REPLY IS ALL THIS SYMBOLIC OR REAL?

AND DO YOU REALLY CARE IF YOU HAVE CHEATED THE VERY PEOPLE YOU SWORE TO SERVE??? AND GET PAID BY?

DO MY WORDS STING OR ARE BALKED AT? DO YOU ALL USE THEM TO MAKE JOKES OR PASS AROUND AND CLAIM HERES MORE FROM THAT WIERDO. WE ARE PERFECT AND WE ARE MANY!!! NO, YOU ARE FEW AND YOU ARE IMPERFECT. AND WE WILL LAUGH LAST. AND THOSE THAT DONT KNOW HISTORY ARE DOOMED TO REPEAT IT. IN MEANTIME PLEASE STOP THE VIOLENT CRIME. AND EARN WHAT WE PAY YOU. NUMBER ONE IN MASLOWS LAWS ARE

AIR-FOOD-WATER-SEX-SLEEP-CLOTHES -SHELTER, NOT EVEN DEALING WITH THE SAFETY, SOCIAL, ESTEEM, COGNITIVE AND ETC. NEEDS.

THE POINT WHEN YOU HAVE A CITY FULL HUMANS NOT GIVEN THE BASIC NEEDS TO BE HUMANS YOU ARE NOT DOING YOUR JOB(S)

WHEN A CITY IS FULL OF HUMANS WITH NOTHING AND GO WITHOUT THEIR BASIC NEEDS YOU EVEN CLAIM TO BE DOING YOUR JOBS?

AND YES I COULD FIX THEM. AND ALL. HOW? YOU DONT PAY ME TO CONSULT NOR WOULD YOU LISTEN, OH YOU ARE NOT TELLING US IS A SELFISH PLOY!!! OR IS NOT DOING YOUR JOB A SELFISH PLOY?

WHETHER IT IS IN MY HOMETOWN OF SANTA MONICA/BRENTWOOD OR WHERE I WAS BORN IN JACKSON COUNTY, MO. WE CRINGE AT THE SICK WORLD YOU POLITICIANS HAVE CREATED. AND HOW MANY MORE LANGUAGES MUST I SPEAK??? GOOD GOD!! AT THIS TIME I WOULD RELISH AN INGSOC DICTIONARY!!!

INVITING IN THE THIRD WORLD AS IF IT HELPS INSTEAD OF FIXING THE PROBLEM AT THE CORE. OR HELPING YOUR OWN TAXPAYERS

CLASS DISMISSED TODAY. AND YES I'M MORE INTELLIGENT THAN ALL YOU COMBINED, THATS EGOTICITCAL AND FULL OF HUBRIS. YEAH, SO?

AND FURTHER MORE OUR CURRENCY IS FIAT, NOT LIKE MY OLD CAR IN REFERENCE TO MONEY. ITS VALUE IS WHAT WE PLACE ON IT, OR UNTIL WE SAY THATS ONLY PAPER. SEE THE WEIMAR REPUBLIC FOR THE EXAMPLE, SO WHAT DO YOU ALL DO? IN OTHER WORDS ITS ALL IN THE EYE OF THE BEHOLDER

TAKE CARE

ALL THE BEST

BE WELL



**From:** [john.smith](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Subject:** SPELLING EDIT, ISNT THIS BETTER????  
**Date:** Saturday, September 25, 2021 6:38:02 PM

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OK SO YOU CAN HAVE YOUR "JOB " FOR 4 YEARS AND FOR 8 IF ELECTED TO A SECOND TERM, MAKING OVER 140 THOUSAND A YEAR WITH BENEFITS. AND WHAT DO YOU DO???

IT'S NOT TO STOP CRIME. OK YOU SAY THAT'S THE COPS JOB AND YOUR JOB IS TO MAKE SURE THAT THEY DO THEIR JOB.

AND THAT IS TO DETER CRIME?

HOW?????? YOU ASK?? WELL SO I ASK YOU, DO YOU SLAP THEIR WRISTS OR MAKE PLEDGES? (SEE MAYORS BS PLEDGE)

YOU HIRE A D.A. AND POLICE FORCE THAT CAN AND DO FORCE CRIMINALS TO LEAVE GOOD PEACEFUL OR EVEN BAD PEACEFUL PEOPLE ALONE?? THAT, LIKE ASIANS AND WHITES AND OTHER PEOPLE.AND ACTUALLY NOT HIDE THE FACT THE PEOPLE DOING THESE CRIMES ARE BLACK!!!!!!!!!! OR DO YOU REALLY STOP IT?

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AND YES HE WAS CRUCIFIED BY THE JEWISH COUNCIL NOT BY THE ROMAN COUNCIL PONTIUS PILATE MADE THAT CLEAR."HE WASHED HIS HANDS" MEAN ANYTHING???

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TAKE CARE

ALL THE BEST

BE WELL



**From:** [john.smith](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Subject:** COMMENTS!!!  
**Date:** Wednesday, September 29, 2021 5:50:20 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I WAS ARRESTED BY THE CITY OF SAN FRANCISCO SHERIFF'S DEPARTMENT AND SFPD.

MY RIGHTS WERE NEVER EVEN AFTER I ASKED, MANY TIMES

I WILL NOT SPEAK WITHOUT AN ATTORNEY.

I GOT NO PUBLIC DEFENDER!!!!

THEY STOLE MY PROPERTY AND MY DNA!!!!

I WAS RELEASED NEVER EVEN HAD A CASE FILED AGAINST ME YET.....

THEY KEPT ME NOT FEED ME, WHAT?!!!! YEP, THE GUARDS LEAVE BEFORE THE "TRUSTEES" PASS OUT THE FOOD ME AND OTHERS GOT NO FOOD.

WE GOT NO WATER OR MILK YOU HAD TO BUY A CUP!!!

THAT WAS SFJAIL!!!!

**I WAS RELEASED NO CHARGES EVER FILED!!!!!! YOUR PUBLIC DEFENDER**

**MANOHAR RAJU DIDN'T EVEN DO HIS FUNDAMENTAL JOB!!! TO**

**CONSTITUTIONALLY PROVIDE ME WITH A PUBLIC DEFENDER. NOW YOUR THE BOARD OF SUPERVISORS WHAT DO YOU DO??**

THE HEAD PUBLIC DEFENDER NEVER RETURNED MY EMAILS CALLS OR MAIL. HOW DO I SUE???!!!! THE CITY'S HEAD PUBLIC DEFENDER AND OFFICE?

I HAD MY CIVIL RIGHTS VIOLATED!!!!!! AND YOU THE BOARD OF DIRECTORS NEED YOU TO KNOW THIS!!!! I DID NOTHING!!!!!! I DID NOTHING!!!! WHAT DID I DO????????? NOTHING.

THE "DOLLAR TREE" RAISED THEIR PRICES!!!! YA, THE DOLLAR TREE. EVER HEAR OF THE MCDONALDS INDEX?

WHAT IS THAT???? TO PUT IT IN TERMS YOU CAN UNDERSTAND ITS A FINANCIAL BAROMETER. TO READ THE WAY WE CAN READ/SEE THE ECONOMY OR WHAT IS IN STORE FOR US?

TAKE CARE

ALL THE BEST

BE WELL



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** FW: San Francisco can avoid a water crisis. Why isn't SFPUC on board?  
**Date:** Thursday, September 30, 2021 1:12:00 PM

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-----Original Message-----

From: info@baykeeper.org <info@baykeeper.org> On Behalf Of Kenneth via San Francisco Baykeeper  
Sent: Thursday, September 30, 2021 12:05 PM  
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
Subject: San Francisco can avoid a water crisis. Why isn't SFPUC on board?

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Mayor Breed,

I urge you to withdraw the City's litigation against the State Water Resources Control Board and direct SFPUC to start investing aggressively in water recycling today.

I am writing to you in the early days of yet another punishing drought. While San Franciscans are doing their part to save water at the household level, SFPUC is mismanaging San Francisco's main water source, the Tuolumne River, and it isn't doing nearly enough to prepare for drought this year—or in the decades to come.

Other cities have learned the lessons of California's unpredictable climate and are quickly adopting water recycling to reduce their burden on rivers, while increasing the reliability of their supply. Orange County gets more than 75 percent of its water through its water reuse program. Las Vegas recycles nearly all of its water used indoors. And Los Angeles is on the path to reusing 100 percent of its wastewater by 2035.

But, as SFPUC's draft Urban Water Management Plan recently revealed, San Francisco currently has no plans to make recycled water widely available in the next 25 years. Instead, the city is pursuing multiple expensive and misguided lawsuits so that it can continue to rely, almost exclusively, on the Tuolumne River—one of the state's most overapped rivers—for the next several decades. San Francisco and large agribusiness water districts divert four out of every five gallons of water that flow in the Tuolumne River during a typical year.

This overuse has caused the river's once mighty Chinook Salmon populations to crash. Meanwhile, low river flows from the Tuolumne contribute to deteriorating water quality—including toxic algae blooms—downstream, in the Delta and San Francisco Bay.

It's unacceptable for the city with the nation's greenest reputation to shirk its responsibilities to preserve California's precious and unpredictable water supply. We support increasing river flows to uphold San Francisco Bay's fisheries, water quality, and recreation. San Franciscans want the city to do its part to protect the Bay and its rivers—water recycling is a common-sense way to limit the city's water use, increase the reliability of its supply, and protect the Bay from harmful wastewater treatment plant effluent.

Thank you,  
Kenneth Frank  
San Rafael, California



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Laxamana, Junko \(BOS\)](#)  
**Subject:** FW: Communication  
**Date:** Thursday, September 30, 2021 12:08:00 PM  
**Attachments:** [call-in public comment.pdf](#)

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**From:** Wynship Hillier <wynship@hotmail.com>  
**Sent:** Thursday, September 30, 2021 12:04 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** Communication

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Madam, Mx., or Sir:

Please forward the attached to all Supervisors and include in the communications packet for the next meeting of the Board.

Very truly yours,  
Wynship Hillier



**Wynship W. Hillier, M.S.**  
Post Office Box 427214  
San Francisco, California 94142-7214  
(415) 505-3856  
[wynship@hotmail.com](mailto:wynship@hotmail.com)

September 29, 2021

Shamann Walton, Chair  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
City Hall  
San Francisco, California 94102-4689

*Sent via email to board.of.supervisors@sfgov.org*

**Re: ILLICIT SILENCING OF CALLERS DURING PUBLIC COMMENT**

Honorable Chair Walton:

I called in and waited over three hours to speak during yesterday's meeting of the Board of Supervisors. When I got the message that my line had been unmuted, I began to speak, but the clerk interrupted me, telling me to proceed. I asked if she could hear me. There was no response. I tried to speak, but the clerk closed the line, saying that it must have been unattended.

My phone was not muted on my end. I immediately checked the sound recorder application on my phone, and, sure enough, my microphone was not working.

This has happened many times in the past, and I have mentioned it in prior correspondence to the Board. This has also happened much more often at meetings of the Behavioral Health Commission. Typically, I will dial into a meeting and attempt to speak during the opportunity to address the Board or the Commission, and will find that my microphone is not working. Within a very short time after the meeting, my microphone begins functioning again. Sometimes, I will check my microphone before a meeting begins and find that it is working. It appears to "go out" shortly before the opportunity to address the public body and "come back on again" shortly after this opportunity has passed. This has never happened during a telephone conversation that has not connected me to a public meeting.

It is clear to me that this feature of my phone is being disabled remotely in order to curtail my freedom of speech. What surprises me is that many of the other callers who are apparently "not attending their lines" have not reached the same conclusion, or have not spoken up about it. At least, the clerk did not mention any at the last two meetings. In addition, a number of prank callers, apparently aware of this phenomenon, are calling in and giving homophobic, paranoid, or



otherwise off-color comments, often in a southern accent, real or stereotyped, or a male caller stereotypically affecting a high female voice, and then muting themselves halfway through. This not only gives the overt impression that censorship is occurring, but it also suggests, to both the callers who really are being censored and the other listeners, that the views of the callers who are really being censored are unworthy of consideration anyway.

Perhaps many members of the public are still unaware that the prevailing interpretation of the federal Posse Comitatus Act allows U.S. military technology to be used against civilian U.S. persons for the purpose of law enforcement. This would presumably include the ability to remotely disable microphones on smartphones and later re-enable them. As a weapon system, this technology would be protected by official secrecy, but most techies can appreciate that changing the software or settings on a smartphone remotely while it is in use is, at least in principle, as easy as pie. If it is believed to be impractical in fact, it would only support the conclusion that the technology to do so is military in nature. Although callers such as myself are not violating and do not intend to violate any laws regarding freedom of speech, this right has been curtailed in the past, i.e., the “crazy 1960’s,” as Supervisor Peskin called them at the meeting in question, in order to control political dissent. This is illegal, but enforcement is extraordinarily difficult, such that only widespread public awareness and organized political pressure are likely to bring it to an end. This may only begin with people speaking out when it happens to them.

While weapons technology might not be necessary to systematically temporarily disable a cellular telephone’s microphone in order to prevent comments by a particular member of the public at meetings of government bodies, a plausible government objective would be. Federal intelligence law was modified at the end of the administration of George W. Bush to redefine “counterintelligence” to insert “identify, deceive, exploit, disrupt, or” before what would be “protect against espionage, other intelligence activities, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or their agents, or international terrorist organizations or activities.” Sec. 3.5(a) of Exec. Order No. 12,333 (Dec. 4, 1981), 3 C.F.R. §§ 200 and 214 (1981 Compilation) (1982), *reprinted as amended in 50 U.S.C. § 3001 note (“United States Intelligence Activities”)* (hereafter “E.O. 12,333”). This is a government objective under which microphone-disabling may be legally occurring. However, it would be impossible to verify. “Foreign powers, organizations, or persons, or their agents, or international terrorist organizations or activities” links these terms to “intelligence,” such that the very existence of federal records relating to temporary disabling of smartphone microphones would be both classified under the prohibition against disclosure of intelligence sources and methods, Sec. 1.4(c) of Exec. Order No. 13,526 (Dec. 29, 2009), 3 C.F.R. §§ 298, 300 (2009 Compilation) (2010), *reprinted as amended in 50 U.S.C. § 3161 note (“Classified National Security Information”)* and subject to the “black hole” in the Freedom of Information Act, 5 U.S.C. § 552(c)(3), preventing the press from learning anything about it except through an unauthorized “leak” unless those subjected to it spoke out.



That addressing public bodies at public meetings via telephone would be “intelligence activities” conducted on behalf of “international terrorist organizations or activities,” necessary to justify the application of the above law, remains to be explained. “International terrorism,” when practiced by groups, allows for comprehensive surveillance of their members, 50 U.S.C. § 1801, *et seq.* (“Foreign Intelligence Surveillance Act” (“FISA”)), and otherwise requires the activities of the groups to fit extremely narrow criteria, 18 U.S.C. § 2331(1). The statistics released by the Foreign Intelligence Surveillance Court (“FISC”), as well as the very fact of court review, do not suggest that these criteria are being overapplied, drawing into question just how such heinous acts as assassination and kidnapping of public figures, bombing of public buildings, etc., would involve commenting on SEQA hearings by teleconference at meetings of the San Francisco Board of Supervisors. The possibilities are a) that the other “unattended line” callers really were not attending their lines and I am the only one experiencing temporary microphone-disabling, and/or b) that the Department of Justice is neglecting to seek approval of the FISC before subjecting many U.S. people to intelligence surveillance, possibly because these targets, as in my case, fail to engage in acts coming anywhere near meeting the definition of “international terrorism” such that the DOJ’s applications for surveillance warrants could withstand judicial review, to say nothing of justifying “counterintelligence” per E.O. 12,333. Indeed, E.O. 12,333 was promulgated and FISA passed to prevent just these sorts of abuses by Presidential authority (since broadened to state, local, tribal, and “private entity” authority, see below) claiming to act in the interest of national security.

Another clue to this mystery may be found in the applicable law: Secs. 1.1(f) and 1.4(g) of E.O. 12,333, added simultaneously with the change to Sec. 3.5(a), mandate cooperation with state, local, and tribal governments and private entities regarding the gathering and dissemination of intelligence. Possibly, this has been stretched to include the conduct of counterintelligence as contemporaneously redefined? Why else would authorities or “private entities” who thwarted attempted verbal comments unrelated to the War on Terror then allow submission of correspondence on the public record alleging violations of federal law, ostensibly by the intelligence community? What state, local, tribal, or private entity ends might be served here? These topics are currently under investigation by myself. I certainly feel as though I were being “baited” by the disabling of my microphone, but I am choosing to “take the bait” in this particular instance in order to perhaps see something of what is on the other end.

As emphasized in legislative reports, the FISA, together with the Omnibus Crime Control and Safe Streets Act of 1968, embody the limits of the Fourth Amendment to the federal Constitution in the area of domestic electronic surveillance. The President, at least lawfully, has very little unilateral power in this area, even in wartime. A violation of FISA is *per se* a violation of the Fourth Amendment of the Constitution. If you cooperate with anyone in such a violation, you are guilty of a Constitutional tort. 42 U.S.C. § 1985. If you are even aware of such cooperation among others, you are guilty of a Constitutional tort for failure to warn me and possibly other targets of the imminent or continuing violation of our Constitutional rights. 42 U.S.C. § 1986. Constitutional tortfeasors are presumably included among the enemies of the Constitution



Shamann Walton, Chair

September 29, 2021

Page 4

mentioned in most oaths of office, oaths to uphold the Constitution that must be taken by every government employee and officeholder, every member of the armed forces, and every admittee to the practice of law before the bar of any state. This includes you, most of you multiple times over. On the other hand, if you really think that I am involved in activities that fit the definition of “international terrorism,” and that I am a member of a group of such people, I would really like to hear you make out your cases to those effects, because I think they cannot possibly be made good.

I hope to disclose the results of my research in due time. Until then, please consider that the COVID-19 pandemic is being used, opportunistically or otherwise, to curtail the public participation of at least this correspondent, and possibly that of others who may be less articulate, knowledgeable, or outspoken.

Very truly yours,

/s/

Wynship Hillier



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Mchugh, Eileen \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Somera, Alisa \(BOS\)](#)  
**Subject:** FW: Presidential Memo: Appointments to the Disaster Council  
**Date:** Thursday, September 30, 2021 12:41:00 PM  
**Attachments:** [Presidential Memo - Appointments to the Disaster Council.pdf](#)

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**From:** Gee, Natalie (BOS) <natalie.gee@sfgov.org>  
**Sent:** Sunday, September 26, 2021 7:09 PM  
**To:** Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>  
**Cc:** Mchugh, Eileen (BOS) <eileen.e.mchugh@sfgov.org>; Somera, Alisa (BOS) <alisa.somera@sfgov.org>; PEARSON, ANNE (CAT) <Anne.Pearson@sfcityatty.org>; Kittler, Sophia (MYR) <sophia.kittler@sfgov.org>; Carroll, Maryellen (DEM) <maryellen.carroll@sfgov.org>; Zamora, Francis (DEM) <francis.zamora@sfgov.org>; Lim, Victor (DEM) <victor.lim@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Chan, Connie (BOS) <connie.chan@sfgov.org>  
**Subject:** Presidential Memo: Appointments to the Disaster Council

Good morning Madam Clerk,

Attached is President Walton's memo appointing Supervisor Chan and himself to the vacant seats of the Disaster Council. Please help us distribute this to the appropriate parties.

Thank you,  
Natalie

**Natalie Gee** 朱凱勤, Chief of Staff  
**Supervisor Shamann Walton, District 10**  
**President, Board of Supervisors**  
1 Dr. Carlton B. Goodlett Pl, San Francisco | Room 282  
**Direct:** 415.554.7672 | **Office:** 415.554.7670



President, Board of Supervisors  
District 10



City and County of San Francisco

SHAMANN WALTON

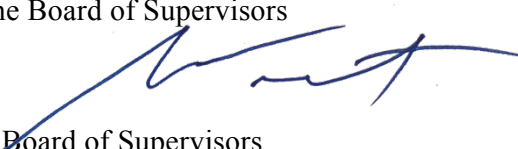
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## MEMORANDUM

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DATE: September 26, 2021

TO: Angela Calvillo, Clerk of the Board of Supervisors

FROM: President Shamann Walton 

CC: Honorable Members of the Board of Supervisors  
Board Legislative Aides  
City Attorney  
Mayor's Office  
Director Mary Ellen Carroll, Department of Emergency Management

SUBJECT: Appointment to the Disaster Council

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Pursuant to Administrative Code Chapter VII, Section 3, President Shamann Walton is appointing Supervisor Connie Chan and himself to serve on the Disaster Council for an indefinite term.

This appointment is effective immediately.

For Clerk's Office use only:

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Seat #: \_\_\_\_\_ Term expiration date: \_\_\_\_\_ Seat Vacated: \_\_\_\_\_



**From:** [Mchugh, Eileen \(BOS\)](#)  
**To:** [BOS-Supervisors](#); [BOS-Legislative Aides](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [BOS-IT](#); [BOS-Operations](#)  
**Subject:** FW: 37th Mayoral Supplement  
**Date:** Thursday, September 30, 2021 2:18:07 PM  
**Attachments:** [Supplement37\\_09282021.pdf](#)

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Hello,

Please see the attached Thirty-Seventh Supplement to the Mayoral Proclamation Declaring the Existence of a Local Emergency.

Thank you,

Eileen McHugh  
Executive Assistant  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244  
San Francisco, CA 94102-4689  
Phone: (415) 554-7703 | Fax: (415) 554-5163  
[eileen.e.mchugh@sfgov.org](mailto:eileen.e.mchugh@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)





**THIRTY-SEVENTH SUPPLEMENT TO MAYORAL PROCLAMATION  
DECLARING THE EXISTENCE OF A LOCAL EMERGENCY DATED  
FEBRUARY 25, 2020**

**WHEREAS**, California Government Code Sections 8550 et seq., San Francisco Charter Section 3.100(14) and Chapter 7 of the San Francisco Administrative Code empower the Mayor to proclaim the existence of a local emergency, subject to concurrence by the Board of Supervisors as provided in the Charter, in the case of an emergency threatening the lives, property or welfare of the City and County or its citizens; and

**WHEREAS**, On February 25, 2020, the Mayor issued a Proclamation (the “Proclamation”) declaring a local emergency to exist in connection with the imminent spread within the City of a novel (new) coronavirus (“COVID-19”); and

**WHEREAS**, On March 3, 2020, the Board of Supervisors concurred in the Proclamation and in the actions taken by the Mayor to meet the emergency; and

**WHEREAS**, On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist within the State due to the threat posed by COVID-19; and

**WHEREAS**, On March 6, 2020, the Health Officer declared a local health emergency under Section 101080 of the California Health and Safety Code, and the Board of Supervisors concurred in that declaration on March 10, 2020; and

**WHEREAS**, To protect the health and safety of City employees and the public, and to comply with legal mandates, the City required all employees to report their vaccination status by July 29, 2021. For employees who reported their status as unvaccinated, City policy required them to update that status as they received vaccination for COVID-19. Employees who failed to comply with this reporting requirement are subject to progressive discipline, up to and including termination of employment; and

**WHEREAS**, To protect the health and safety of City employees and the public, City policy requires all City employees to be fully vaccinated against COVID-19 no later than November 1, 2021, subject to limited exemptions for medical disability and sincerely held religious beliefs, and depending on their work duties some City employees must be fully vaccinated prior to November 1 under State and City health orders. City policy also provides that employees who are not vaccinated consistent with these requirements and who do not have an approved exemption on medical or religious grounds that the





department is able to reasonably accommodate will be subject to non-disciplinary separation from City employment for failure to meet a condition of City employment; and

**WHEREAS**, Presently, a significant number of City employees across a number of departments have not been vaccinated, and except for employees with an approved exemption to the vaccination requirement that the department is able to reasonably accommodate, such employees will be separated from City employment if they refuse to comply with the City's vaccination policy; and

**WHEREAS**, To ensure the continuity of City services due to the suspension, termination, or non-disciplinary release of employees who fail to comply with the vaccination policy reporting and vaccination requirements, it is in the public interest to temporarily waive provisions of City law to expedite the process of filling positions left vacant due to vaccination policy-related suspensions or terminations; and

**WHEREAS**, Some employees may resign from City employment or take extended leave rather than comply with the City's vaccination policy, and others may resign or take extended leave rather than return to in-person work after the City returns employees to the workplace, currently scheduled for November 1, 2021. These resignations or extended leaves may increase staffing vacancies already created by release of employees who fail to comply with the vaccination policies; and

**WHEREAS**, In the Seventh Supplemental Proclamation, the Mayor authorized a program for additional paid sick leave for City employees to ensure they have sufficient paid time off balances to remain out of the workplace if they or their family members are sick, quarantined, or otherwise impacted by COVID-19, so those employees could return to work as soon as possible and function at full capacity in the service of the City. This program was modified by the Thirtieth, Thirty-Fourth, and Thirty-Sixth Supplemental Proclamations, and the leave program extended to September 30, 2021. Due to the impacts of the Delta variant as well as the possible use of such leave for vaccination-related purposes, it is in the public interest to extend the program further; and

**WHEREAS**, In the Seventh and Thirty-First Supplemental Proclamations, the Mayor waived provisions of local law to allow City employees to accrue up to 80 hours of vacation over the applicable vacation cap because many City employees were unable to use vacation balances due to the demands of their duties related to the emergency. The Thirty-First Supplemental Proclamation authorized the accrual of such additional





vacation hours until June 30, 2021, and required City employees to use the additional vacation by December 31, 2021. Given that emergency conditions have continued and City operations are still in the process of returning to pre-pandemic normal, some City employees have been unable to reduce their vacation balances, thus it is in the public interest to authorize employees to maintain vacation balances above the cap until June 30, 2022, to provide employees additional time to reduce vacation balances;

**NOW, THEREFORE,**

I, London N. Breed, Mayor of the City and County of San Francisco, proclaim that there continues to exist an emergency within the City and County threatening the lives, property or welfare of the City and County and its citizens;

**In addition to the measures outlined in the Proclamation and in the Supplements to the Proclamation issued on various dates, it is further ordered that:**

(1) The Human Resources Director is delegated authority to temporarily waive, for a period not to exceed the duration of the local emergency, provisions of the Civil Service Commission Rules and provisions of the Charter regarding hiring for any specified department or classification, including, without limitation, permanent civil service hiring, if the Human Resources Director determines in writing submitted to the Civil Service Commission that such waiver is necessary or appropriate to ensure the continuity of City services due to the reassignment, suspension or termination of City employees as a result of the City's policy concerning vaccination or federal, state, or local vaccination requirements. This waiver authority extends to continuity of service needs due to employee resignations, retirements, or leaves in response to any of these policies or requirements or return to in-person work requirements. The Director of Transportation is delegated authority with regard to San Francisco Municipal Transportation Agency service critical positions to temporarily waive, for a period not to exceed the duration of the local emergency, provisions of the Civil Service Commission Rules and provisions of the Charter regarding hiring for service critical positions, including permanent civil service hiring, if the Director of Transportation determines in writing submitted to the Civil Service Commission that such waiver is necessary or appropriate to ensure the continuity of City services due to the reassignment, suspension or termination of City employees as a result of the City's policy concerning vaccination or federal, state, or local vaccination requirements. This waiver authority extends to continuity of service needs due to employee resignations, retirements, or leaves in response to any of these policies or requirements or return to in-person work requirements. This Order shall





remain in effect during the local emergency, unless terminated earlier by the Mayor or the Board of Supervisors.

(2) The program providing an additional 80 hours of new paid sick leave to employees employed as of April 1, 2020, enacted in Section 2 of the Mayor's Seventh Supplemental Proclamation, and supplemented in the Mayor's Thirtieth, Thirty-Fourth, and Thirty-Sixth Supplemental Proclamations is modified to extend the expiration date for leave available under the program to October 31, 2021. The Human Resources Director is delegated authority to further extend the expiration date for leave under the program to no later than December 31, 2021, upon a written determination that extending the availability of this leave will mitigate the impacts of COVID-19 on City employees and their families, support continued delivery of City programs and services, or support the health and safety of City employees or the public. The Human Resources Director shall transmit any such determination to extend the program to the Mayor and the Clerk of the Board of Supervisors. The other terms of the program in Section 2 of the Mayor's Seventh Supplemental Proclamation as modified by the Mayor's Thirtieth, Thirty-Fourth, and Thirty-Sixth Supplemental Proclamations shall remain in effect. This Order shall remain in effect until December 31, 2021, unless terminated earlier by the Mayor or the Board of Supervisors.

(3) Employees who accrued additional vacation hours above the maximum accrual limit under Section 3 of the Thirty-First Supplement to the Proclamation of Local Emergency must use vacation time and reduce their balance below the maximum accrual limit by June 30, 2022. Any provisions of the Charter, the Municipal Code, and City rules or regulations that would limit or prevent employees from carrying vacation balances above the maximum accrual limit are waived, including but not limited to Charter Section A8.440 and Administrative Code Section 16.12. The Human Resources Director and Controller, or their designees, are authorized to implement this program and issue any necessary rules and guidance. This Order shall remain in effect until June 30, 2022, unless terminated earlier by the Mayor or the Board of Supervisors.

DATED: September 28, 2021

A handwritten signature in blue ink, reading "London N. Breed".

London N. Breed  
Mayor of San Francisco



**From:** [Mchugh, Eileen \(BOS\)](#)  
**To:** [BOS-Supervisors](#); [BOS-Legislative Aides](#)  
**Cc:** [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [Khoo, Arthur \(BOS\)](#)  
**Subject:** TIME SENSITIVE: Pursuant to Charter, Section 8B.125 - CleanPowerSF Rates  
**Date:** Thursday, September 30, 2021 5:04:16 PM  
**Attachments:** [2021 PUC Rates and Charges 9.30.21.pdf](#)  
[1. BOS Transmittal Letter CleanPowerSF Rates.pdf](#)  
[2. SFPUC Resolution 21-0152.PDF](#)  
[3. Agenda Item for SFPUC Resolution 21-0152.pdf](#)  
[3a. Agenda Item Attachment 1 - Statutory Exemption Concurrence.pdf](#)

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Hello,

The SFPUC has submitted the attached resolution adopting rates and charges, pursuant to Charter, Section 8B.125. Please see the memo from the Clerk of the Board for more information and instructions.

Thank you,

Eileen McHugh  
Executive Assistant  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244  
San Francisco, CA 94102-4689  
Phone: (415) 554-7703 | Fax: (415) 554-5163  
[eileen.e.mchugh@sfgov.org](mailto:eileen.e.mchugh@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)

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**From:** Scarpulla, John <JScarpulla@sfgwater.org>  
**Sent:** Thursday, September 30, 2021 10:17 AM  
**To:** Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Cc:** Mchugh, Eileen (BOS) <eileen.e.mchugh@sfgov.org>; Perl, Charles (PUC) <CPerl@sfgwater.org>; Cordero, Kristina (PUC) <KCordero@sfgwater.org>; Hyams, Michael (PUC) <MHyams@sfgwater.org>; Hale, Barbara (PUC) <BHale@sfgwater.org>  
**Subject:** CleanPowerSF Rates

Dear Madam Clerk,

In accordance with section 8B.125 of the Charter of the City and County of San Francisco, the SFPUC "shall set rates, fees and other charges in connection with providing the utility services under its jurisdiction, subject to rejection — within 30 days of submission — by resolution of the Board of Supervisors. If the Board of Supervisors fails to act within 30 days the rates shall become effective without further action."

On behalf of the San Francisco Public Utilities Commission (SFPUC), I am submitting the SFPUC's September 28, 2021, Resolution No. 21-0152, adopting rates and charges for the San Francisco



CleanPower SF Community Choice Aggregation Program. The anticipated effective date of the adopted rates and charges is November 1, 2021.

Please find attached copies of the following documents relating to this rates action by the SFPUC Commission:

1. Cover Letter from SFPUC Acting General Manager Michael Carlin
2. SFPUC Resolution 21-0152
3. SFPUC Agenda Item for SFPUC Resolution 21-0152 with the following attachment:
  - 3a) CEQA Statutory Exemption Request and Planning Department Concurrence

Best,  
John

---

John Scarpulla  
San Francisco Public Utilities Commission  
[jscarpulla@sfwater.org](mailto:jscarpulla@sfwater.org)



**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. 544-5227**

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**MEMORANDUM**

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Date: September 30, 2021  
To: Members, Board of Supervisors  
From: *ACC* Angela Calvillo, Clerk of the Board  
Subject: San Francisco Public Utilities Commission (SFPUC) adopting rates and charges for the San Francisco CleanPower SF Community Choice Aggregation Program

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On September 30, 2021, the Office of the Clerk of the Board received the attached resolution adopting rates and charges for the San Francisco CleanPower SF Community Choice Aggregation Program.

Under San Francisco Charter Section 8B.125, the SFPUC “shall set rates, fees and charges in connection with providing the utility services under its jurisdiction, subject to rejection – within 30 days (October 30, 2021) of submission – by resolution of the Board of Supervisors. If the Board fails to act within 30 days, the rates shall become effective without further action.”

**If you would like to hold a hearing on this matter, please let me know in writing by 12:00 p.m. on Friday, October 8, 2021.**

c: Alisa Somera - Legislative Deputy  
Anne Pearson - Deputy City Attorney  
Sophia Kittler - Mayor’s Legislative Liaison  
John Scarpulla - SFPUC Director of Strategic Initiatives



September 29, 2021

Ms. Angela Calvillo  
Clerk of the Board of Supervisors  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

RE: Notice of San Francisco Public Utilities Commission (SFPUC) Adoption of  
CleanPowerSF Community Choice Aggregation Program Rate Adjustment Methodology

Dear Ms. Calvillo:

In accordance with section 8B.125 of the Charter of the City and County of San Francisco, the SFPUC “shall set rates, fees and other charges in connection with providing the utility services under its jurisdiction, subject to rejection – within 30 days of submission – by resolution of the Board of Supervisors. If the Board of Supervisors fails to act within 30 days, the rates shall become effective without further action.”

The SFPUC is submitting the San Francisco Public Utilities Commission’s September 28, 2021, Resolution No. 21-0152 adopting CleanPowerSF Community Choice Aggregation Program Rate Adjustment. The anticipated effective date of adopted CleanPowerSF Community Choice Aggregation Program Rate Adjustment Methodology is November 1, 2021.

Please find attached copies of the following documents relating to this rates action by the Commission:

1. Resolution No. 21-0152 – SFPUC Agenda Item Adopting CleanPowerSF Community Choice Aggregation Program Rate Adjustment Methodology

Should you have any questions, please contact Eric Sandler, SFPUC Chief Financial Officer, at 415-934-5707.

Sincerely,



Michael P. Carlin  
Acting General Manager

Attachments: a/s

**London N. Breed**  
Mayor

**Sophie Maxwell**  
President

**Anson Moran**  
Vice President

**Tim Paulson**  
Commissioner

**Ed Harrington**  
Commissioner

**Newsha Ajami**  
Commissioner

**Michael Carlin**  
Acting  
General Manager



# **PUBLIC UTILITIES COMMISSION**

City and County of San Francisco

RESOLUTION NO.: 21-0152

WHEREAS, In 2004, the San Francisco Board of Supervisors established a Community Choice Aggregation (CCA) program (Ordinance No. 86-04) and the San Francisco Public Utilities Commission (SFPUC) has implemented the program called CleanPowerSF consistent with Ordinances Nos. 146-07, 147-07, and 232-09; and

WHEREAS, The complementary objectives of the CleanPowerSF program are to (1) provide electricity and related services at affordable and competitive rates while promoting long-term rate stability, (2) reduce, and eventually eliminate, the greenhouse gas emissions associated with the use of electricity in San Francisco, (3) support, to the greatest extent possible and affordable, the development of new clean energy infrastructure and new employment opportunities for San Franciscans, and (4) provide long-term rate and financial stability to CleanPowerSF and its customers; and

WHEREAS, The SFPUC finds that CleanPowerSF rates shall be set to meet program operating costs, repay debt, and meet SFPUC wide financial policies; and

WHEREAS, The proposed CleanPowerSF rate adjustment methodology conforms to the CleanPowerSF Rate Setting Policy and the Commission's Ratepayer Assurance Policy; and

WHEREAS, Pacific Gas and Electric Company's (PG&E) electric generation rates are authorized by the California Public Utilities Commission (CPUC); and

WHEREAS, The CPUC permits PG&E to levy the Power Charge Indifference Adjustment (PCIA) on the bills of customers who switch to CleanPowerSF, in order to recover the estimated above market costs of power supply commitments made by PG&E prior to a customer's switch to CleanPowerSF generation service; and

WHEREAS, The Franchise Fee Surcharge (FFS) is a surcharge imposed by PG&E on its customers to recover franchise fees charged by cities and counties; and

WHEREAS, Pursuant to Charter Section 16.112, a Notice of hearing on the proposal to adopt a new CleanPowerSF ratemaking framework was published in the official newspaper on September 10, 12, 15, 16, and 17, 2021, and posted on the SFPUC website on September 7, 2021, and at the San Francisco Public Library, as required, noticing a public hearing on September 28, 2021; and

WHEREAS, The proposed new CleanPowerSF rate adjustment methodology authorizes the General Manager to formulaically adjust CleanPowerSF rates so that they are no more than 15% higher than comparable PG&E generation rates that exist at the time, accounting for the PCIA and FFS, which amounts to approximately 6% higher cost on a total electricity bill basis; and

WHEREAS, Charter section 8B.125 requires the Commission to set rates and charges, subject to rejection by the Board of Supervisors, within 30 days of submission; and



WHEREAS, This Commission hereby finds that adoption of this resolution will establish an increase to CleanPower SF rates and charges for one or more of the following purposes: 1) meeting operating expenses, including employee wage rates and fringe benefits, 2) purchasing or leasing supplies, equipment, or materials, 3) meeting financial reserve needs and requirements, and 4) obtaining funds for capital projects necessary to maintain service within existing service areas; and

WHEREAS, This Commission hereby finds that adoption of this resolution does not include rate increases for funding expansion of the CleanPowerSF system; accordingly, adoption of this resolution is statutorily exempt from environmental review requirements in accordance with California Public Resource Code Section 21080(b)(8) and California Environmental Quality Act Guideline 15273(a); and

WHEREAS, On September 15, 2021 the Planning Department determined that the proposed action is statutorily exempt from the California Environmental Quality Act (CEQA) Guidelines under Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273 (Rates, Tolls, Fares, and Charges), under Planning Department Case Number 2021-009464ENV; and

WHEREAS, This action constitutes the Approval Action for the Project for the purposes of CEQA, pursuant to Section 31.04(h) of the San Francisco Administrative Code; now, therefore, be it

RESOLVED, This Commission hereby delegates authority to the General Manager to adjust CleanPowerSF rates based on the following rate adjustment methodology: Clean Power SF rates shall be set as the lesser of (1) +15% higher than comparable PG&E generation rates, after accounting for the PCIA and FFS, or (2) rates that recover CleanPowerSF's program costs; and be it

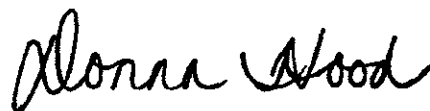
FURTHER RESOLVED, That such rate adjustment methodology shall be effective as of November 1, 2021 and shall remain in effect until further action by this Commission; and be it

FURTHER RESOLVED, The adjustment of CleanPowerSF rates according to this formula applies to the rate classes listed in Exhibit 1, attached to this resolution, which also includes rates to be implemented on November 1, 2021 for each class; and be it

FURTHER RESOLVED, The rates effective November 1, 2021 include the PCIA credits for each vintage and customer class shown in Exhibit 2, attached to this resolution; and be it

FURTHER RESOLVED, This Commission directs the General Manager to submit this rate adjustment methodology to the Board of Supervisors, as required by Charter Section 8B.125.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of September 28, 2021.*



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Secretary, Public Utilities Commission





# AGENDA ITEM

## Public Utilities Commission

*City and County of San Francisco*

DEPARTMENT Financial Services AGENDA NO. 14  
 MEETING DATE September 28, 2021

**Public Hearing: CleanPowerSF Community Choice Aggregation Program Rate Adjustment Methodology: Regular Calendar**

**Project Managers:** Erin Franks and Michael Hyams

|                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Summary of Proposed Commission Action:</b> | <p><b>Public Hearing:</b> Discussion and possible action to approve, for customers of the San Francisco Public Utilities Commission’s CleanPowerSF (Community Choice Aggregation) Program, a revised rate-setting methodology effective November 1, 2021 through June 30, 2022 that sets rates to the lesser of (a) 15% higher than comparable PG&amp;E rates, or (b) rates that recover CleanPowerSF’s program costs. This action constitutes the Approval Action for the project for the purposes of CEQA, pursuant to Section 31.04(h) of the San Francisco Administrative Code.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Background:</b>                            | <p><b><u>CleanPowerSF Rate-Setting Landscape</u></b></p> <p>Retail utility rates are set by the Commission pursuant to the San Francisco Charter Section 8B.125. All budgets, rates, fees, and charges presented by staff to the Commission must conform to both the procedural and substantive requirements of the Charter and the SFPUC Ratepayer Assurance Policy, which is guided by the key principles of: revenue sufficiency, customer equity, environmental sustainability, affordability, predictability, and simplicity.</p> <p>While CleanPowerSF operates under much of the same legal and policy framework as the SFPUC’s other utility services, the program faces unique commercial and financial dynamics that need to be accounted for in rate-making.</p> <p>Existing CleanPowerSF customers can choose to switch to PG&amp;E as their electric generation service provider at any time. In addition, all San Francisco electric generation customers receive an annual Joint Rate Mailer from PG&amp;E and CleanPowerSF providing a comparison of costs between PG&amp;E and CleanPowerSF service offerings. As a result, if CleanPowerSF customer costs are significantly higher than PG&amp;E bundled customer costs, customers may opt out of the program, resulting in revenue losses. Because PG&amp;E changes its rates regularly – sometimes three-four rate changes in a single year – the competitive environment can change quickly.</p> <p>Furthermore, PG&amp;E collects two fees from CleanPowerSF customers: (1) the Power Charge Indifference Adjustment (PCIA), and (2) Franchise Fee Surcharge (FFS). The PCIA, which is set by the California Public Utilities Commission, is intended to recover PG&amp;E’s unavoidable and above-market costs for electricity generation resources acquired prior to a customer’s switch to a third-party electric service provider.</p> |



A “competitive” rate for CleanPowerSF must not only consider the comparable PG&E generation rate, but also account for these additional PG&E fees. To maintain the same effective generation costs for CleanPowerSF customers compared to PG&E bundled generation customers, increases in the PCIA drive reductions in CleanPowerSF’s generation rates.

Because of these competitive pressures and constraints, CleanPowerSF needs to take into account PG&E’s rates in its own rate-setting and the ability to react quickly to changes in the market, raising or lowering its rates to cover costs or compete with PG&E.

To address these issues, beginning in December 2018, by Resolution No. 18-0056, the Commission delegated authority to the General Manager to adjust CleanPowerSF rates using a “rate adjustment methodology” that sets a limited range in which CleanPowerSF rates can be adjusted by the General Manager in response to PG&E rate changes. The authority was last updated in May 2021 by Commission Resolution 21-0085. Among other requirements, the current rate adjustment methodology requires the CleanPowerSF rates be set no more than 5% above the comparable PG&E generation rates (accounting for the PCIA). Staff recommended this level after careful evaluation of the need to balance CleanPowerSF financial health while maintaining the program’s competitiveness and its impact on customers. The General Manager adjusted CleanPowerSF rates once under the delegated authority granted by Resolution 21-0085 on July 1, 2021.

The strategy of adjusting CleanPowerSF generation rates to demonstrate competitiveness with PG&E bundled customer costs has introduced volatility into CleanPowerSF rates, revenues, and financial planning. The PCIA has more than doubled since the program launched in 2016, and PG&E generation rates have increased by 18% during that same timeframe. To compensate, CleanPowerSF’s current residential rates (implemented in July 2021) are 0.4% lower than when the program began in 2016. While customer bills have gone up, CleanPowerSF has had to operate with thinner and thinner margins as a result of PG&E’s significant increases to its PCIA charge.

#### **Changes to Financial Drivers Since May 2021 Rates Action**

Recent events have placed additional stresses on CleanPowerSF’s expenditures and reserve levels. To respond, Staff is proposing a revision to CleanPowerSF’s electricity generation rate adjustment methodology to cover unexpected changes in operating expenses and support its strong credit rating.

First, CleanPowerSF’s power supply costs for this fiscal year are projected to exceed budget by about 20%, incorporating both already-undertaken and planned purchases to close CleanPowerSF’s open power portfolio positions, following prudent utility practice for electric portfolio management. The power supply market has seen more volatility this year than in the past, partially driven by concerns that climate-change-related higher temperatures could cause statewide shortfalls in power supply availability. This has been exacerbated by drought conditions reducing hydroelectric generation and demand uncertainty caused by the unknown pace of economic recovery from the COVID-19 pandemic. As a result, power prices in California have risen over 20% from levels projected in CleanPowerSF’s budget.

Second, the recent bankruptcy of a different community choice aggregator, Western Community Energy (WCE), has drawn attention to the financial reserves and liquidity



of community choice aggregators in California. While CleanPowerSF is in a significantly better financial position than WCE, the assumption made in the rate action taken on May 26, 2021 that the program would draw-down on reserves during the fiscal year faces both increased scrutiny from credit institutions and other external parties. CleanPowerSF can maintain its strong credit rating by continuing to maintain a sufficient level of financial reserves and strengthening its liquidity position, but doing so requires action now to increase rates. In addition to this interim action, the ongoing Power Rates Study is evaluating the program's reserves policy and may recommend changes to both the minimum and target levels, as well as a dedicated timeline to meet targets over the next few years. The proposal is in its early stage of evaluation process and will be brought to the Commission for approval at a later date.

PG&E filed its Energy Resource Recovery Account (ERRA) application with the CPUC in June 2021 and updated its rate forecast for 2022 in August. Based on those filings, PG&E is forecasting to increase its generation rates in January 2022 by 6% while decreasing the PCIA by about 43%. Under the current rate adjustment methodology, CleanPowerSF rates would be re-set to the adopted 5% margin over PG&E's rates, resulting in fiscal year-end reserves of about \$60 million. However, PG&E has a history of delays and changes to its rate actions, and downside scenarios reflecting this volatility show year-end reserve levels as low as \$25 million.

While the strategy of tying rates to PG&E's changes has several benefits – maintaining competitive edge and allowing CleanPowerSF to capture upside when PG&E's rates increase – the problems with this approach have become readily apparent. Frequent rate changes, uncertainty regarding future revenues, and pressure to set rates that do not fully cover costs undermine the Ratepayer Assurance Policy principles of revenue sufficiency and predictability. Moreover, with CleanPowerSF's mandate to meet an aggressive 2025 target for 100% renewable supply for all customers, the program needs the financial support to achieve the Ratepayer Assurance goal of environmental sustainability.

At this time, CleanPowerSF is engaged in the Power Rate Study as required by the San Francisco Charter Section 8B.125. The results of this study will be used to propose rates effective on and after July 1, 2022 (FY 2022-23), and are expected to propose CleanPowerSF rates at our program's own cost of service starting in FY 2022-23, independent from the volatility of following PG&E rates. Other CCAs such as Sonoma Clean Power and Marin Clean Energy have already moved away from strict parity to PG&E, with current residential rates at 11% and 18% above comparable PG&E rates, respectively.

But until the results of the rate study are complete, the program needs an updated rate adjustment methodology to ensure it ends the fiscal year with healthy reserve levels, responding to environmental and market factors, including the volatile power supply market. The new methodology would be applicable through June 30, 2022, as described further in the CleanPowerSF Rates and Rate Adjustment Methodology section below.

### **CleanPowerSF Rates & Rate Adjustment Methodology**

#### ***Components of CleanPowerSF Rates***

The existing CleanPowerSF rate adjustment methodology compares CleanPowerSF generation rates, plus the non-bypassable PCIA and FFS, to the generation component of the PG&E equivalent rate schedule. The difference is expressed as a percentage above or below the equivalent PG&E generation rates. This comparison



emphasizes the effective generation bill experienced by customers taking service from CleanPowerSF vs. PG&E, but it's important to note that approximately 40% of a CleanPowerSF customer's generation bill goes to pay PG&E's PCIA and FFS fees.

For the default Green generation product, which provides at least 50% California Renewable Portfolio Standard (RPS)-certified renewable energy, the rate adjustment methodology simply sets rates at the designated percentage above or below PG&E. For example, if the methodology is targeting rates 5% above PG&E, the sum of CleanPowerSF generation rates + PCIA + FFS would be 5% more than the PG&E generation rate. Customers may also "opt up" to the SuperGreen product to receive 100% RPS-certified renewable energy. SuperGreen customer rates are calculated as a surcharge on the equivalent Green rate schedule.

CleanPowerSF also employs a "PCIA Credit" for applicable customers to account for the fact that the PCIA for a specific customer is set based on the year in which they became a CleanPowerSF customer; therefore, each customer has a PCIA "vintage." The specific \$/kWh PCIA rates can vary substantially by "vintage." To support the Ratepayer Assurance Policy principle of customer equity, the PCIA Credit is added to applicable customers' rates so all CleanPowerSF customers pay comparable generation costs, with equivalent differences from PG&E, regardless of when they were enrolled into the program. The proposed PCIA credits effective November 1, 2021 for each customer class and vintage are shown in Exhibit 2.

#### ***Existing Rate Adjustment Methodology Adopted in May 2021***

Resolution No. 21-0085 authorized rates adjustments whenever the PCIA or PG&E generation rates change to the lesser of (a) 5% higher than comparable PG&E rates, or (b) rates that recover CleanPowerSF's program costs.

Under the existing rate adjustment methodology, CleanPowerSF generation rates increased by 4% on July 1, 2021. However, both this and proposed increases should be placed in the long-term context. Due to changes to maintain close parity to PG&E, CleanPowerSF generation rates have cumulatively decreased by approximately 0.4% since the program launched in 2016. In particular, the program decreased its rates significantly in May 2020 and January 2021.

The table below shows CleanPowerSF rate changes from the last few rate actions.

**Table 1**  
**CleanPowerSF Last Three Rate Changes**

| <b>Rate Change Date</b> | <b>Change From Prior Rates*</b> | <b>PG&amp;E Rate Differential</b> |
|-------------------------|---------------------------------|-----------------------------------|
| 05/15/2020              | -2%                             | -1%                               |
| 01/15/2021              | -16%                            | +1%                               |
| 07/01/2021              | +4%                             | +5%                               |

\*CleanPowerSF generation residential rate (E-1), not inclusive of PCIA and FFS

#### ***Proposed Revisions to the Rate Adjustment Methodology***

With increasing supply costs, the need to exercise prudence in maintaining a healthy reserves balance, and to hedge against the volatility of PG&E rates and PCIA, staff is proposing a rate adjustment methodology in which CleanPowerSF rates would be set to the lesser of: (1) 15% higher than comparable PG&E generation rates, after accounting for the PCIA and FFS, or (2) rates that recover CleanPowerSF's program costs. By placing a 15% cap on the PG&E rate differential, the methodology ensures that CleanPowerSF can remain competitive but not in strict parity to PG&E, while the second option ensures that the adopted rates cannot exceed cost of service. This



|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                              | <p>modification to the CleanPowerSF rate adjustment methodology means that, on average, CleanPowerSF customer electricity bills will be about 6% more than PG&amp;E customer electricity bills. Any adjustments made to CleanPowerSF rates under this formula will be reported to the Commission.</p> <p>If adopted, this new methodology is expected to result in a CleanPowerSF generation rate change on November 1, 2021 to 15% above the equivalent PG&amp;E generation rates, after accounting for the PCIA. Exhibit 1 attached to this staff report shows the rates that are anticipated to be implemented on November 1, 2021 based on current PG&amp;E rate filings; however, small adjustments to the PG&amp;E rates in place on that date may change the final rates. We expect further adjustments to PG&amp;E's rates, and subsequent CleanPowerSF rates increases under this authority, in January 2022. However, these changes are subject to ongoing California Public Utilities Commission rate case decisions and may be different than anticipated or may not occur.</p> <p>The proposed methodology does <u>not</u> require CleanPowerSF to decrease rates if either PG&amp;E's generation rates decrease or the PCIA increases. This "one way" mechanism avoids the situation experienced in FY 2020-21, which caused CleanPowerSF rates to decrease by 18% cumulatively from July 2019 to January 2021. It is expected that the November 1, 2021 rate change will represent minimum rates for the remainder of the fiscal year, such that further rate changes by PG&amp;E will not require CleanPowerSF to absorb even greater losses.</p> <p>This proposed framework for CleanPowerSF rates adjustment will become effective November 1, 2021 and will remain effective until and unless revised by this Commission. It is expected that after July 1, 2022 this methodology will be replaced by the Commission with rates informed by the new rate study.</p> <p>If the SFPUC wishes to adjust rates in a manner that differs from the new formula, or that does not meet all of the requirements of the new formula, a new rate action by the Commission would be required.</p> <p><b>Public Hearing &amp; Approval Process</b></p> <p>As required by Charter Section 8B.125, SFPUC staff presented the proposed CleanPowerSF ratemaking framework to the Rate Fairness Board (RFB) on September 24, 2021.</p> <p>Pursuant to Charter Section 16.112, a Notice of Public Hearing on the establishment of a framework of rates adjustment was published in the official newspaper on September 10, 12, 15, 16 and 17, , and posted on the SFPUC website on September 7, 2021, noticing a public hearing on September 28, 2021, with possible Commission action on this date. If approved by the Commission, this framework for rate adjustment will be subject to rejection by the Board of Supervisors (BOS), as provided in Charter section 8B.125, within 30 days following notification to the BOS.</p> |
| <b>Environmental Review:</b> | <p>On September 15, 2021 the Planning Department determined that the proposed action is statutorily exempt from the California Environmental Quality Act (CEQA) Guidelines under Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273 (Rates, Tolls, Fares, and Charges), under Planning Department Case Number 2021-009464ENV. The statutory exemption request and determination message are located here:<br/> <a href="https://sfpuc.sharefile.com/d-s467a30048c33468bb2e1156ddb0dc707">https://sfpuc.sharefile.com/d-s467a30048c33468bb2e1156ddb0dc707</a></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |



|                            |                                                                                                                                                                                                         |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                            | This action constitutes the Approval Action for the project for the purposes of CEQA, pursuant to Section 31.04(h) of the San Francisco Administrative Code.                                            |
|                            |                                                                                                                                                                                                         |
| <b>Result of Inaction:</b> | If the proposal is not approved, existing CleanPowerSF rates will remain in place and will result in significant use of reserves during the next fiscal year.                                           |
|                            |                                                                                                                                                                                                         |
| <b>Recommendation:</b>     | SFPUC staff recommends that the Commission adopt the attached resolution.                                                                                                                               |
|                            |                                                                                                                                                                                                         |
| <b>Attachments:</b>        | <ol style="list-style-type: none"> <li>1. Exhibit 1: Estimated Schedule of CleanPowerSF Rates and Charges for November 1, 2021</li> <li>2. Exhibit 2: PCIA Credit Effective November 1, 2021</li> </ol> |



# **PUBLIC UTILITIES COMMISSION**

City and County of San Francisco

RESOLUTION NO.: \_\_\_\_\_

WHEREAS, In 2004, the San Francisco Board of Supervisors established a Community Choice Aggregation (CCA) program (Ordinance No. 86-04) and the San Francisco Public Utilities Commission (SFPUC) has implemented the program called CleanPowerSF consistent with Ordinances Nos. 146-07, 147-07, and 232-09; and

WHEREAS, The complementary objectives of the CleanPowerSF program are to (1) provide electricity and related services at affordable and competitive rates while promoting long-term rate stability, (2) reduce, and eventually eliminate, the greenhouse gas emissions associated with the use of electricity in San Francisco, (3) support, to the greatest extent possible and affordable, the development of new clean energy infrastructure and new employment opportunities for San Franciscans, and (4) provide long-term rate and financial stability to CleanPowerSF and its customers; and

WHEREAS, The SFPUC finds that CleanPowerSF rates shall be set to meet program operating costs, repay debt, and meet SFPUC wide financial policies; and

WHEREAS, The proposed CleanPowerSF rate adjustment methodology conforms to the CleanPowerSF Rate Setting Policy and the Commission's Ratepayer Assurance Policy; and

WHEREAS, Pacific Gas and Electric Company's (PG&E) electric generation rates are authorized by the California Public Utilities Commission (CPUC); and

WHEREAS, The CPUC permits PG&E to levy the Power Charge Indifference Adjustment (PCIA) on the bills of customers who switch to CleanPowerSF, in order to recover the estimated above market costs of power supply commitments made by PG&E prior to a customer's switch to CleanPowerSF generation service; and

WHEREAS, The Franchise Fee Surcharge (FFS) is a surcharge imposed by PG&E on its customers to recover franchise fees charged by cities and counties; and

WHEREAS, Pursuant to Charter Section 16.112, a Notice of hearing on the proposal to adopt a new CleanPowerSF ratemaking framework was published in the official newspaper on September 10, 12, 15, 16, and 17, 2021, and posted on the SFPUC website on September 7, 2021, and at the San Francisco Public Library, as required, noticing a public hearing on September 28, 2021; and

WHEREAS, The proposed new CleanPowerSF rate adjustment methodology authorizes the General Manager to formulaically adjust CleanPowerSF rates so that they are no more than 15% higher than comparable PG&E generation rates that exist at the time, accounting for the PCIA and FFS, which amounts to approximately 6% higher cost on a total electricity bill basis; and

WHEREAS, Charter section 8B.125 requires the Commission to set rates and charges, subject to rejection by the Board of Supervisors, within 30 days of submission; and



WHEREAS, This Commission hereby finds that adoption of this resolution will establish an increase to CleanPower SF rates and charges for one or more of the following purposes: 1) meeting operating expenses, including employee wage rates and fringe benefits, 2) purchasing or leasing supplies, equipment, or materials, 3) meeting financial reserve needs and requirements, and 4) obtaining funds for capital projects necessary to maintain service within existing service areas; and

WHEREAS, This Commission hereby finds that adoption of this resolution does not include rate increases for funding expansion of the CleanPowerSF system; accordingly, adoption of this resolution is statutorily exempt from environmental review requirements in accordance with California Public Resource Code Section 21080(b)(8) and California Environmental Quality Act Guideline 15273(a); and

WHEREAS, On September 15, 2021 the Planning Department determined that the proposed action is statutorily exempt from the California Environmental Quality Act (CEQA) Guidelines under Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273 (Rates, Tolls, Fares, and Charges), under Planning Department Case Number 2021-009464ENV; and

WHEREAS, This action constitutes the Approval Action for the Project for the purposes of CEQA, pursuant to Section 31.04(h) of the San Francisco Administrative Code; now, therefore, be it

RESOLVED, This Commission hereby delegates authority to the General Manager to adjust CleanPowerSF rates based on the following rate adjustment methodology: Clean Power SF rates shall be set as the lesser of (1) +15% higher than comparable PG&E generation rates, after accounting for the PCIA and FFS, or (2) rates that recover CleanPowerSF's program costs; and be it

FURTHER RESOLVED, That such rate adjustment methodology shall be effective as of November 1, 2021 and shall remain in effect until further action by this Commission; and be it

FURTHER RESOLVED, The adjustment of CleanPowerSF rates according to this formula applies to the rate classes listed in Exhibit 1, attached to this resolution, which also includes rates to be implemented on November 1, 2021 for each class; and be it

FURTHER RESOLVED, The rates effective November 1, 2021 include the PCIA credits for each vintage and customer class shown in Exhibit 2, attached to this resolution; and be it

FURTHER RESOLVED, This Commission directs the General Manager to submit this rate adjustment methodology to the Board of Supervisors, as required by Charter Section 8B.125.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of September 28, 2021.*

---

*Secretary, Public Utilities Commission*



# Schedule of CleanPowerSF Electric Rates and Charges

## Effective November 1, 2021

| Tariff Title                                                      | Applies To Customers on Following PG&E Rate Schedules     | Season     | Hours Applied      | Green Product Rate (\$) | SuperGreen Rate (\$) | Billing Determinant |
|-------------------------------------------------------------------|-----------------------------------------------------------|------------|--------------------|-------------------------|----------------------|---------------------|
| Non-Time of Use Residential (E-1)                                 | E-1, E-1-L, EM, EM-L, ES, ES-L, ESR, ES-R-L, ET, and ET-L | Year round | All hours          | 0.07807                 | 0.08807              | kWh                 |
| Residential Time of Use (1) (E-6)                                 | E-6                                                       | Summer     | Peak               | 0.22987                 | 0.23987              | kWh                 |
|                                                                   |                                                           |            | Part Peak          | 0.10104                 | 0.11104              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.04845                 | 0.05845              | kWh                 |
|                                                                   |                                                           | Winter     | Part Peak          | 0.07764                 | 0.08764              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.06317                 | 0.07317              | kWh                 |
| Residential Time of Use B (E-TOU-B)                               | E-TOU-B                                                   | Summer     | Peak               | 0.19336                 | 0.20336              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.07999                 | 0.08999              | kWh                 |
|                                                                   |                                                           | Winter     | Peak               | 0.07584                 | 0.08584              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.05516                 | 0.06516              | kWh                 |
| Residential Time of Use C (E-TOU-C)                               | E-TOU-C                                                   | Summer     | Peak               | 0.13284                 | 0.14284              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.07405                 | 0.08405              | kWh                 |
|                                                                   |                                                           | Winter     | Peak               | 0.07920                 | 0.08920              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.06267                 | 0.07267              | kWh                 |
| Residential Time of Use C (E-TOU-D)                               | E-TOU-C                                                   | Summer     | Peak               | 0.14627                 | 0.15627              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.05281                 | 0.06281              | kWh                 |
|                                                                   |                                                           | Winter     | Peak               | 0.10084                 | 0.11084              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.08425                 | 0.09425              | kWh                 |
| Electric Vehicle Time-of-Use Service (EV)                         | EV-A, EV-B                                                | Summer     | Peak               | 0.24867                 | 0.25867              | kWh                 |
|                                                                   |                                                           |            | Part Peak          | 0.09522                 | 0.10522              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.02420                 | 0.03420              | kWh                 |
|                                                                   |                                                           | Winter     | Peak               | 0.06315                 | 0.07315              | kWh                 |
|                                                                   |                                                           |            | Part Peak          | 0.02162                 | 0.03162              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.02676                 | 0.03676              | kWh                 |
| Electric Vehicle Time-of-Use Service 2 (EV-2)                     | EV-2                                                      | Summer     | Peak               | 0.15212                 | 0.16212              | kWh                 |
|                                                                   |                                                           |            | Part Peak          | 0.10294                 | 0.11294              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.05769                 | 0.06769              | kWh                 |
|                                                                   |                                                           | Winter     | Peak               | 0.08955                 | 0.09955              | kWh                 |
|                                                                   |                                                           |            | Part Peak          | 0.07582                 | 0.08582              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.05000                 | 0.06000              | kWh                 |
| Residential Multi Meter Standby (S-EM)                            | SEM                                                       | Year round | Reservation Charge | 0.51                    | 0.51                 | kW                  |
|                                                                   |                                                           |            | All hours          | 0.07577                 | 0.08577              | kWh                 |
| Small General Service (A-1-A)                                     | A-1                                                       | Summer     | All hours          | 0.09522                 | 0.10272              | kWh                 |
|                                                                   |                                                           | Winter     | All hours          | 0.05106                 | 0.05856              | kWh                 |
| Small General Service (A-1-B)                                     | A-1X                                                      | Summer     | Peak               | 0.09812                 | 0.10562              | kWh                 |
|                                                                   |                                                           |            | Part Peak          | 0.09812                 | 0.10562              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.07094                 | 0.07844              | kWh                 |
|                                                                   |                                                           | Winter     | Part Peak          | 0.06430                 | 0.07180              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.06366                 | 0.07116              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.06366                 | 0.07116              | kWh                 |
| Small General Time-of-Use Service (A-6)                           | A-6                                                       | Summer     | Peak               | 0.21628                 | 0.22378              | kWh                 |
|                                                                   |                                                           |            | Part Peak          | 0.10769                 | 0.11519              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.07411                 | 0.08161              | kWh                 |
|                                                                   |                                                           | Winter     | Part Peak          | 0.06379                 | 0.07129              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.06301                 | 0.07051              | kWh                 |
|                                                                   |                                                           |            | Off Peak           | 0.06301                 | 0.07051              | kWh                 |
| Direct-Current General Service (A-15)                             | A-15                                                      | Summer     | All hours          | 0.09522                 | 0.10272              | kWh                 |
|                                                                   |                                                           | Winter     | All hours          | 0.05106                 | 0.05856              | kWh                 |
| Medium General Demand Non-Time of Use - Secondary Voltage (A-10A) | A-10                                                      | Summer     | All hours          | 0.09122                 | 0.09622              | kWh                 |
|                                                                   |                                                           | Winter     | All hours          | 0.06728                 | 0.07228              | kWh                 |
|                                                                   |                                                           | Summer     | Demand             | 0.00                    | 0.00                 | kW                  |



# Schedule of CleanPowerSF Electric Rates and Charges

## Effective November 1, 2021

| Tariff Title                                                                               | Applies To Customers<br>on Following PG&E<br>Rate Schedules | Season    | Hours Applied        | Green<br>Product Rate<br>(\$) | SuperGreen<br>Rate (\$) | Billing<br>Determinant |     |
|--------------------------------------------------------------------------------------------|-------------------------------------------------------------|-----------|----------------------|-------------------------------|-------------------------|------------------------|-----|
| Med. General Demand<br>Non-Time of Use - Primary<br>Voltage (A-10A-P)                      | A-10                                                        | Summer    | All hours            | 0.07814                       | 0.08314                 | kWh                    |     |
|                                                                                            |                                                             | Winter    | All hours            | 0.05744                       | 0.06244                 | kWh                    |     |
| Summer                                                                                     |                                                             | Demand    | 0.00                 | 0.00                          | kW                      |                        |     |
| Summer                                                                                     |                                                             | All hours | 0.06208              | 0.06708                       | kWh                     |                        |     |
| Med. General Demand<br>Non-Time of Use -<br>Transmission (A-10A-T)                         |                                                             | Winter    | All hours            | 0.04325                       | 0.04825                 | kWh                    |     |
|                                                                                            |                                                             | Summer    | Demand               | 0.00                          | 0.00                    | kW                     |     |
| Medium General Demand<br>Time of Use - Secondary<br>Voltage<br>(A-10-B)                    | A-10-B                                                      | Summer    | Peak                 | 0.10579                       | 0.11079                 | kWh                    |     |
|                                                                                            |                                                             |           | Part Peak            | 0.10579                       | 0.11079                 | kWh                    |     |
|                                                                                            |                                                             |           | Off Peak             | 0.07632                       | 0.08132                 | kWh                    |     |
|                                                                                            |                                                             | Winter    | Part Peak            | 0.06771                       | 0.07271                 | kWh                    |     |
|                                                                                            |                                                             |           | Off Peak             | 0.06693                       | 0.07193                 | kWh                    |     |
|                                                                                            |                                                             | Summer    | Demand               | 0.00                          | 0.00                    | kW                     |     |
| Medium General Demand<br>Time of Use - Primary Voltage<br>(A-10-B-P)                       |                                                             | Summer    | Peak                 | 0.09387                       | 0.09887                 | kWh                    |     |
|                                                                                            |                                                             |           | Part Peak            | 0.09387                       | 0.09887                 | kWh                    |     |
|                                                                                            |                                                             |           | Off Peak             | 0.06602                       | 0.07102                 | kWh                    |     |
|                                                                                            |                                                             |           | Winter               | Part Peak                     | 0.05786                 | 0.06286                | kWh |
|                                                                                            |                                                             |           |                      | Off Peak                      | 0.05712                 | 0.06212                | kWh |
|                                                                                            |                                                             |           | Summer               | Demand                        | 0.00                    | 0.00                   | kW  |
| Medium General Demand<br>Time of Use - Transmission<br>(A-10-B-T)                          |                                                             | Summer    | Peak                 | 0.07876                       | 0.08376                 | kWh                    |     |
|                                                                                            |                                                             |           | Part Peak            | 0.07876                       | 0.08376                 | kWh                    |     |
|                                                                                            |                                                             |           | Off Peak             | 0.05164                       | 0.05664                 | kWh                    |     |
|                                                                                            |                                                             |           | Winter               | Part Peak                     | 0.04368                 | 0.04868                | kWh |
|                                                                                            |                                                             |           |                      | Off Peak                      | 0.04295                 | 0.04795                | kWh |
|                                                                                            |                                                             |           | Summer               | Demand                        | 0.00                    | 0.00                   | kW  |
| Medium General Demand<br>Time of Use - Secondary<br>(E-19-S)                               | E-19                                                        | Summer    | Peak                 | 0.05501                       | 0.06001                 | kWh                    |     |
|                                                                                            |                                                             |           | Part Peak            | 0.05501                       | 0.06001                 | kWh                    |     |
|                                                                                            |                                                             |           | Off Peak             | 0.04843                       | 0.05343                 | kWh                    |     |
|                                                                                            |                                                             |           | Max Peak Demand      | 10.22                         | 10.22                   | kW                     |     |
|                                                                                            |                                                             |           | Max Part Peak Demand | 10.22                         | 10.22                   | kW                     |     |
|                                                                                            |                                                             | Winter    | Part Peak            | 0.04559                       | 0.05059                 | kWh                    |     |
| Off Peak                                                                                   |                                                             |           | 0.04480              | 0.04980                       | kWh                     |                        |     |
| Medium General Demand<br>Time of Use - Primary<br>(E-19-P)                                 |                                                             | Summer    | Peak                 | 0.04517                       | 0.05017                 | kWh                    |     |
|                                                                                            |                                                             |           | Part Peak            | 0.04517                       | 0.05017                 | kWh                    |     |
|                                                                                            |                                                             |           | Off Peak             | 0.03888                       | 0.04388                 | kWh                    |     |
|                                                                                            |                                                             |           | Max Peak Demand      | 8.89                          | 8.89                    | kW                     |     |
|                                                                                            |                                                             |           | Max Part Peak Demand | 8.89                          | 8.89                    | kW                     |     |
|                                                                                            |                                                             |           | Winter               | Part Peak                     | 0.03616                 | 0.04116                | kWh |
| Off Peak                                                                                   |                                                             | 0.03542   |                      | 0.04042                       | kWh                     |                        |     |
| Medium General Demand<br>Time of Use - Transmission<br>(E-19-T)                            |                                                             | Summer    | Peak                 | 0.03716                       | 0.04216                 | kWh                    |     |
|                                                                                            |                                                             |           | Part Peak            | 0.03716                       | 0.04216                 | kWh                    |     |
|                                                                                            |                                                             |           | Off Peak             | 0.03093                       | 0.03593                 | kWh                    |     |
|                                                                                            |                                                             |           | Max Peak Demand      | 9.79                          | 9.79                    | kW                     |     |
|                                                                                            |                                                             |           | Max Part Peak Demand | 9.79                          | 9.79                    | kW                     |     |
|                                                                                            |                                                             |           | Winter               | Part Peak                     | 0.02826                 | 0.03326                | kWh |
| Off Peak                                                                                   |                                                             | 0.02753   |                      | 0.03253                       | kWh                     |                        |     |
| Medium General Demand<br>Time of Use - Secondary<br>With Qualifying Solar PV<br>(E-19-S-R) |                                                             | Summer    | Peak                 | 0.13195                       | 0.13695                 | kWh                    |     |
|                                                                                            |                                                             |           | Part Peak            | 0.09373                       | 0.09873                 | kWh                    |     |
|                                                                                            |                                                             |           | Off Peak             | 0.06572                       | 0.07072                 | kWh                    |     |
|                                                                                            |                                                             |           | Winter               | Part Peak                     | 0.06287                 | 0.06787                | kWh |
| Off Peak                                                                                   |                                                             | 0.06209   |                      | 0.06709                       | kWh                     |                        |     |



# Schedule of CleanPowerSF Electric Rates and Charges

## Effective November 1, 2021

| Tariff Title                                                                                                                                                         | Applies To Customers on Following PG&E Rate Schedules | Season     | Hours Applied        | Green Product Rate (\$) | SuperGreen Rate (\$) | Billing Determinant |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|------------|----------------------|-------------------------|----------------------|---------------------|
| Medium General Demand<br>Time of Use - Primary<br>With Qualifying Solar PV<br>(E-19-P-R)                                                                             | E-19                                                  | Summer     | Peak                 | 0.11500                 | 0.12000              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Part Peak            | 0.08103                 | 0.08603              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.05621                 | 0.06121              | kWh                 |
|                                                                                                                                                                      |                                                       | Winter     | Part Peak            | 0.05349                 | 0.05849              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.05276                 | 0.05776              | kWh                 |
| Medium General Demand<br>Time of Use - Transmission<br>With Qualifying Solar PV<br>(E-19-T-R)                                                                        |                                                       | Summer     | Peak                 | 0.11078                 | 0.11578              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Part Peak            | 0.08086                 | 0.08586              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.05915                 | 0.06415              | kWh                 |
|                                                                                                                                                                      |                                                       | Winter     | Part Peak            | 0.05648                 | 0.06148              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.05575                 | 0.06075              | kWh                 |
| Service to Max Demands<br>>1,000 kW<br>Time of Use - Secondary<br>Voltage<br>(E-20-S)                                                                                | E-20                                                  | Summer     | Peak                 | 0.05182                 | 0.05932              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Part Peak            | 0.05182                 | 0.05932              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.04531                 | 0.05281              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Max Peak Demand      | 9.81                    | 9.81                 | kW                  |
|                                                                                                                                                                      |                                                       |            | Max Part Peak Demand | 9.81                    | 9.81                 | kW                  |
|                                                                                                                                                                      |                                                       | Winter     | Part Peak            | 0.04246                 | 0.04996              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.04168                 | 0.04918              | kWh                 |
| Service to Max Demands<br>>1,000 kW<br>Time of Use - Primary Voltage<br>(E-20-P)                                                                                     |                                                       | Summer     | Peak                 | 0.05064                 | 0.05814              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Part Peak            | 0.05064                 | 0.05814              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.04430                 | 0.05180              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Max Peak Demand      | 10.51                   | 10.51                | kW                  |
|                                                                                                                                                                      |                                                       |            | Max Part Peak Demand | 10.51                   | 10.51                | kW                  |
|                                                                                                                                                                      |                                                       | Winter     | Part Peak            | 0.04158                 | 0.04908              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.04084                 | 0.04834              | kWh                 |
| Service to Max Demands<br>>1,000 kW<br>Time of Use - Transmission<br>(E-20T)                                                                                         |                                                       | Summer     | Peak                 | 0.04215                 | 0.04965              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Part Peak            | 0.04215                 | 0.04965              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.03592                 | 0.04342              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Max Peak Demand      | 12.51                   | 12.51                | kW                  |
|                                                                                                                                                                      |                                                       |            | Max Part Peak Demand | 12.51                   | 12.51                | kW                  |
|                                                                                                                                                                      |                                                       | Winter     | Part Peak            | 0.03325                 | 0.04075              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.03252                 | 0.04002              | kWh                 |
| Medium General Demand<br>With Qualifying Solar PV<br>Time of Use - Secondary<br>E-20-S-R                                                                             |                                                       | Summer     | Peak                 | 0.12163                 | 0.12913              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Part Peak            | 0.08869                 | 0.09619              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.06261                 | 0.07011              | kWh                 |
|                                                                                                                                                                      |                                                       | Winter     | Part Peak            | 0.05976                 | 0.06726              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.05898                 | 0.06648              | kWh                 |
| Medium General Demand<br>With Qualifying Solar PV<br>Time of Use - Primary<br>E-20-P-R                                                                               |                                                       | Summer     | Peak                 | 0.12520                 | 0.13270              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Part Peak            | 0.08676                 | 0.09426              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.06042                 | 0.06792              | kWh                 |
|                                                                                                                                                                      |                                                       | Winter     | Part Peak            | 0.05771                 | 0.06521              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.05697                 | 0.06447              | kWh                 |
| Medium General Demand<br>With Qualifying Solar PV<br>Time of Use - Transmission<br>E-20-T-R                                                                          |                                                       | Summer     | Peak                 | 0.12013                 | 0.12763              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Part Peak            | 0.08176                 | 0.08926              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.05576                 | 0.06326              | kWh                 |
|                                                                                                                                                                      |                                                       | Winter     | Part Peak            | 0.05309                 | 0.06059              | kWh                 |
|                                                                                                                                                                      |                                                       |            | Off Peak             | 0.05237                 | 0.05987              | kWh                 |
| Customer-Owned Street and<br>Highway Lighting<br>Customer-Owned Street and<br>Highway Lighting Electrolier<br>Meter Rate<br>Outdoor Area Lighting Services<br>(LS-1) | LS-2, LS-3, OL-1                                      | Year round | All hours            | 0.06213                 | 0.06963              | kWh                 |



# Schedule of CleanPowerSF Electric Rates and Charges

## Effective November 1, 2021

| Tariff Title                                 | Applies To Customers on Following PG&E Rate Schedules | Season     | Hours Applied                                 | Green Product Rate (\$) | SuperGreen Rate (\$) | Billing Determinant |
|----------------------------------------------|-------------------------------------------------------|------------|-----------------------------------------------|-------------------------|----------------------|---------------------|
| Traffic Control Service (TC-1)               | TC-1                                                  | Year round | All hours                                     | 0.06555                 | 0.07305              | kWh                 |
| Agricultural Power (AG-1)                    | AG-1A                                                 | Summer     | All hours                                     | 0.05733                 | 0.06483              | kWh                 |
|                                              |                                                       |            | Connected Load                                | 2.12                    | 2.12                 | kW                  |
|                                              |                                                       | Winter     | All hours                                     | 0.04301                 | 0.05051              | kWh                 |
| Agricultural Power (AG-1)                    | AG-1B                                                 | Summer     | All hours                                     | 0.06752                 | 0.07502              | kWh                 |
|                                              |                                                       |            | Max Demand                                    | 3.51                    | 3.51                 | kW                  |
|                                              |                                                       |            | Primary Voltage Disc.                         | 0.00                    | 0.00                 | kW                  |
|                                              |                                                       | Winter     | All hours                                     | 0.03722                 | 0.04472              | kWh                 |
| Agricultural Power, Time-of-Use (AG-4A)      | AG-4A, AG-4D                                          | Summer     | Peak                                          | 0.09945                 | 0.10695              | kWh                 |
|                                              |                                                       |            | Off Peak                                      | 0.04979                 | 0.05729              | kWh                 |
|                                              |                                                       |            | Connected Load                                | 1.67                    | 1.67                 | kW                  |
|                                              |                                                       | Winter     | Part Peak                                     | 0.04115                 | 0.04865              | kWh                 |
|                                              |                                                       |            | Off Peak                                      | 0.04037                 | 0.04787              | kWh                 |
| Agricultural Power, Time-of-Use (AG-4B)      | AG-4B, AG-4E                                          | Summer     | Peak                                          | 0.08207                 | 0.08957              | kWh                 |
|                                              |                                                       |            | Off Peak                                      | 0.05398                 | 0.06148              | kWh                 |
|                                              |                                                       |            | Max Demand                                    | 3.01                    | 3.01                 | kW                  |
|                                              |                                                       |            | Max Peak Demand                               | 1.61                    | 1.61                 | kW                  |
|                                              |                                                       |            | Primary Voltage Disc. (per Max Demand)        | 0.68                    | 0.68                 | kW                  |
|                                              |                                                       |            | Part Peak                                     | 0.04960                 | 0.05710              | kWh                 |
|                                              |                                                       | Winter     | Off Peak                                      | 0.04884                 | 0.05634              | kWh                 |
|                                              |                                                       |            | Peak                                          | 0.07242                 | 0.07992              | kWh                 |
| Agricultural Power, Time-of-Use (AG-4C)      | AG-4C, AG-4F                                          | Summer     | Part Peak                                     | 0.03918                 | 0.04668              | kWh                 |
|                                              |                                                       |            | Off Peak                                      | 0.02709                 | 0.03459              | kWh                 |
|                                              |                                                       |            | Max Peak Demand                               | 5.06                    | 5.06                 | kW                  |
|                                              |                                                       |            | Max Part Peak Demand                          | 3.03                    | 3.03                 | kW                  |
|                                              |                                                       |            | Primary Voltage Disc. (per Max Peak Demand)   | 0.56                    | 0.56                 | kW                  |
|                                              |                                                       |            | Trans. Volt. Disc. (per Max Peak Demand)      | 1.03                    | 1.03                 | kW                  |
|                                              |                                                       |            | Trans. Volt. Disc. (per Max Part-Peak Demand) | -                       | -                    | kW                  |
|                                              |                                                       | Winter     | Part Peak                                     | 0.03379                 | 0.04129              | kWh                 |
|                                              |                                                       |            | Off Peak                                      | 0.03301                 | 0.04051              | kWh                 |
| Large Time-of-Use Agricultural Power (AG-5A) | AG-5A, AG-5D                                          | Summer     | Peak                                          | 0.09558                 | 0.10308              | kWh                 |
|                                              |                                                       |            | Off Peak                                      | 0.05422                 | 0.06172              | kWh                 |
|                                              |                                                       |            | Connected Load                                | 4.60                    | 4.60                 | kW                  |
|                                              |                                                       | Winter     | Part Peak                                     | 0.04798                 | 0.05548              | kWh                 |
|                                              |                                                       |            | Off Peak                                      | 0.04720                 | 0.05470              | kWh                 |
| Large Time-of-Use Agricultural Power (AG-5B) | AG-5B, AG-5E                                          | Summer     | Peak                                          | 0.08913                 | 0.09663              | kWh                 |
|                                              |                                                       |            | Off Peak                                      | 0.03610                 | 0.04360              | kWh                 |
|                                              |                                                       |            | Max Demand                                    | 5.73                    | 5.73                 | kW                  |
|                                              |                                                       |            | Max Peak Demand                               | 3.60                    | 3.60                 | kW                  |
|                                              |                                                       |            | Primary Voltage Disc. (per Max Demand)        | 1.64                    | 1.64                 | kW                  |
|                                              |                                                       |            | Trans. Volt. Disc. (per Max Demand)           | 2.85                    | 2.85                 | kW                  |
|                                              |                                                       | Winter     | Part Peak                                     | 0.04115                 | 0.04865              | kWh                 |
|                                              |                                                       |            | Off Peak                                      | 0.04040                 | 0.04790              | kWh                 |



# Schedule of CleanPowerSF Electric Rates and Charges

## Effective November 1, 2021

| Tariff Title                                                          | Applies To Customers<br>on Following PG&E<br>Rate Schedules                                                                                                             | Season                                                                                                                                                                  | Hours Applied                                  | Green<br>Product Rate<br>(\$) | SuperGreen<br>Rate (\$) | Billing<br>Determinant |         |     |
|-----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|-------------------------------|-------------------------|------------------------|---------|-----|
| Large Time-of-Use Agricultural<br>Power<br>(AG-5C)                    | AG-5C, AG-5F                                                                                                                                                            | Summer                                                                                                                                                                  | Peak                                           | 0.06113                       | 0.06863                 | kWh                    |         |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Part Peak                                      | 0.03330                       | 0.04080                 | kWh                    |         |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Off Peak                                       | 0.02294                       | 0.03044                 | kWh                    |         |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Max Peak Demand                                | 9.72                          | 9.72                    | kW                     |         |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Max Part Peak Demand                           | 6.47                          | 6.47                    | kW                     |         |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Primary Voltage Disc.<br>(per Max Peak Demand) | 1.22                          | 1.22                    | kW                     |         |     |
|                                                                       |                                                                                                                                                                         | Trans. Volt. Disc.<br>(per Max Peak Demand)                                                                                                                             | 2.27                                           | 2.27                          | kW                      |                        |         |     |
|                                                                       |                                                                                                                                                                         | Winter                                                                                                                                                                  | Part Peak                                      | 0.03298                       | 0.04048                 | kWh                    |         |     |
| Off Peak                                                              | 0.03220                                                                                                                                                                 |                                                                                                                                                                         | 0.03970                                        | kWh                           |                         |                        |         |     |
| Standby Service -<br>Secondary and Primary<br>Voltage                 | Applies to Full Standby<br>customers under Rate<br>Schedule S. All partial<br>standby customers are<br>billed at their<br>Otherwise Applicable<br>Schedule ("OAS") rate | Year round                                                                                                                                                              | Reservation Charge                             | 0.51                          | 0.51                    | kW                     |         |     |
|                                                                       |                                                                                                                                                                         | Summer                                                                                                                                                                  | Peak                                           | 0.09601                       | 0.10351                 | kWh                    |         |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Part Peak                                      | 0.07531                       | 0.08281                 | kWh                    |         |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Off Peak                                       | 0.04824                       | 0.05574                 | kWh                    |         |     |
|                                                                       |                                                                                                                                                                         | Winter                                                                                                                                                                  | Part Peak                                      | 0.07861                       | 0.08611                 | kWh                    |         |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Off Peak                                       | 0.05764                       | 0.06514                 | kWh                    |         |     |
| Standby Service -<br>Transmission Voltage                             |                                                                                                                                                                         | Applies to Full Standby<br>customers under Rate<br>Schedule S. All partial<br>standby customers are<br>billed at their<br>Otherwise Applicable<br>Schedule ("OAS") rate | Year round                                     | Reservation Charge            | 0.41                    | 0.41                   | kW      |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Summer                                         | Peak                          | 0.07253                 | 0.08003                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                | Part Peak                     | 0.05576                 | 0.06326                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                | Off Peak                      | 0.03356                 | 0.04106                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Winter                                         | Part Peak                     | 0.05840                 | 0.06590                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                | Off Peak                      | 0.04135                 | 0.04885                | kWh     |     |
| Small General Service<br>(B-1)                                        | B-1                                                                                                                                                                     |                                                                                                                                                                         | Summer                                         | Peak                          | 0.14336                 | 0.15086                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                | Part Peak                     | 0.08921                 | 0.09671                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                | Off Peak                      | 0.06632                 | 0.07382                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Winter                                         | Peak                          | 0.08259                 | 0.09009                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                | Part Peak                     | 0.06486                 | 0.07236                | kWh     |     |
| Super Off Peak                                                        |                                                                                                                                                                         |                                                                                                                                                                         |                                                | 0.04680                       | 0.05430                 | kWh                    |         |     |
| Small General Time-of-Use<br>Service<br>(B-6)                         |                                                                                                                                                                         | B-6                                                                                                                                                                     | Summer                                         | Peak                          | 0.14666                 | 0.15416                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                | Off Peak                      | 0.06839                 | 0.07589                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Winter                                         | Peak                          | 0.07679                 | 0.08429                | kWh     |     |
|                                                                       | Off Peak                                                                                                                                                                |                                                                                                                                                                         |                                                | 0.05803                       | 0.06553                 | kWh                    |         |     |
| Super Off Peak                                                        | 0.03998                                                                                                                                                                 |                                                                                                                                                                         |                                                | 0.04748                       | kWh                     |                        |         |     |
| Medium General Demand<br>Time of Use - Secondary<br>Voltage<br>(B-10) | B-10                                                                                                                                                                    |                                                                                                                                                                         | Summer                                         | Peak                          | 0.16848                 | 0.17348                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                | Part Peak                     | 0.10062                 | 0.10562                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                | Off Peak                      | 0.06480                 | 0.06980                | kWh     |     |
|                                                                       |                                                                                                                                                                         | Winter                                                                                                                                                                  | Peak                                           | 0.10463                       | 0.10963                 | kWh                    |         |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Part Peak                                      | 0.06560                       | 0.07060                 | kWh                    |         |     |
| Super Off Peak                                                        |                                                                                                                                                                         |                                                                                                                                                                         | 0.02563                                        | 0.03063                       | kWh                     |                        |         |     |
| Medium General Demand<br>Time of Use - Primary Voltage<br>(B-10-P)    |                                                                                                                                                                         | B-10                                                                                                                                                                    | Summer                                         | Peak                          | 0.15197                 | 0.15697                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                | Part Peak                     | 0.08784                 | 0.09284                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                | Off Peak                      | 0.05392                 | 0.05892                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         | Winter                                         | Peak                          | 0.09188                 | 0.09688                | kWh     |     |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                | Part Peak                     | 0.05487                 | 0.05987                | kWh     |     |
| Super Off Peak                                                        |                                                                                                                                                                         |                                                                                                                                                                         |                                                | 0.01490                       | 0.01990                 | kWh                    |         |     |
| Medium General Demand<br>Time of Use - Transmission<br>(B-10-T)       |                                                                                                                                                                         |                                                                                                                                                                         | B-10                                           | Summer                        | Peak                    | 0.13316                | 0.13816 | kWh |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                |                               | Part Peak               | 0.07075                | 0.07575 | kWh |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                |                               | Off Peak                | 0.03767                | 0.04267 | kWh |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                | Winter                        | Peak                    | 0.07481                | 0.07981 | kWh |
|                                                                       |                                                                                                                                                                         |                                                                                                                                                                         |                                                |                               | Off Peak                | 0.03868                | 0.04368 | kWh |
| Super Off Peak                                                        |                                                                                                                                                                         |                                                                                                                                                                         |                                                |                               | (0.00129)               | 0.00371                | kWh     |     |



# Schedule of CleanPowerSF Electric Rates and Charges

## Effective November 1, 2021

| Tariff Title                                                                                    | Applies To Customers<br>on Following PG&E<br>Rate Schedules                                  | Season         | Hours Applied                                                   | Green<br>Product Rate<br>(\$) | SuperGreen<br>Rate (\$) | Billing<br>Determinant |
|-------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|----------------|-----------------------------------------------------------------|-------------------------------|-------------------------|------------------------|
| Medium General Demand<br>Time of Use - Secondary<br>(B-19-S)                                    | B-19                                                                                         | Summer         | Peak                                                            | 0.10276                       | 0.10776                 | kWh                    |
|                                                                                                 |                                                                                              |                | Part Peak                                                       | 0.07097                       | 0.07597                 | kWh                    |
|                                                                                                 |                                                                                              |                | Off Peak                                                        | 0.04850                       | 0.05350                 | kWh                    |
|                                                                                                 |                                                                                              |                | Max Peak Demand                                                 | 15.93                         | 15.93                   | kW                     |
|                                                                                                 |                                                                                              |                | Max Part Peak Demand                                            | 2.32                          | 2.32                    | kW                     |
|                                                                                                 |                                                                                              | Winter         | Peak                                                            | 0.08258                       | 0.08758                 | kWh                    |
|                                                                                                 |                                                                                              |                | Off Peak                                                        | 0.04841                       | 0.05341                 | kWh                    |
|                                                                                                 |                                                                                              |                | Super Off Peak                                                  | 0.00256                       | 0.00756                 | kWh                    |
| Max Peak Demand                                                                                 |                                                                                              |                | 1.89                                                            | 1.89                          | kW                      |                        |
| Medium General Demand<br>Time of Use - Primary<br>(B-19-P)                                      |                                                                                              | Summer         | Peak                                                            | 0.08389                       | 0.08889                 | kWh                    |
|                                                                                                 |                                                                                              |                | Part Peak                                                       | 0.06012                       | 0.06512                 | kWh                    |
|                                                                                                 |                                                                                              |                | Off Peak                                                        | 0.03945                       | 0.04445                 | kWh                    |
|                                                                                                 |                                                                                              |                | Max Peak Demand                                                 | 13.41                         | 13.41                   | kW                     |
|                                                                                                 |                                                                                              |                | Max Part Peak Demand                                            | 1.96                          | 1.96                    | kW                     |
|                                                                                                 |                                                                                              | Winter         | Peak                                                            | 0.07101                       | 0.07601                 | kWh                    |
|                                                                                                 |                                                                                              |                | Off Peak                                                        | 0.03959                       | 0.04459                 | kWh                    |
|                                                                                                 |                                                                                              |                | Super Off Peak                                                  | (0.00511)                     | (0.00011)               | kWh                    |
|                                                                                                 |                                                                                              |                | Max Peak Demand                                                 | 1.38000                       | 1.38000                 | kW                     |
|                                                                                                 |                                                                                              |                | Medium General Demand<br>Time of Use - Transmission<br>(B-19-T) | Summer                        | Peak                    | 0.07423                |
| Part Peak                                                                                       |                                                                                              | 0.06418        |                                                                 |                               | 0.06918                 | kWh                    |
| Off Peak                                                                                        | 0.04277                                                                                      | 0.04777        |                                                                 |                               | kWh                     |                        |
| Max Peak Demand                                                                                 | 10.63                                                                                        | 10.63          |                                                                 |                               | kW                      |                        |
| Max Part Peak Demand                                                                            | 2.66                                                                                         | 2.66           |                                                                 |                               | kW                      |                        |
| Winter                                                                                          | Peak                                                                                         | 0.07557        |                                                                 | 0.08057                       | kWh                     |                        |
|                                                                                                 | Off Peak                                                                                     | 0.04304        |                                                                 | 0.04804                       | kWh                     |                        |
|                                                                                                 | Super Off Peak                                                                               | (0.00478)      |                                                                 | 0.00022                       | kWh                     |                        |
|                                                                                                 | Max Peak Demand                                                                              | 1.02000        |                                                                 | 1.02000                       | kW                      |                        |
|                                                                                                 | Medium General Demand<br>Time of Use - Secondary<br>With Qualifying Solar PV<br>(B-19-S-R,S) | Summer         |                                                                 | Peak                          | 0.24449                 | 0.24949                |
| Part Peak                                                                                       |                                                                                              |                | 0.09536                                                         | 0.10036                       | kWh                     |                        |
| Off Peak                                                                                        |                                                                                              |                | 0.04700                                                         | 0.05200                       | kWh                     |                        |
| Winter                                                                                          |                                                                                              | Peak           | 0.09947                                                         | 0.10447                       | kWh                     |                        |
|                                                                                                 |                                                                                              | Off Peak       | 0.05293                                                         | 0.05793                       | kWh                     |                        |
|                                                                                                 |                                                                                              | Super Off Peak | 0.01353                                                         | 0.01853                       | kWh                     |                        |
| Medium General Demand<br>Time of Use - Primary<br>With Qualifying Solar PV<br>(B-19-P-R,S)      | Summer                                                                                       | Peak           | 0.21736                                                         | 0.22236                       | kWh                     |                        |
|                                                                                                 |                                                                                              | Part Peak      | 0.08147                                                         | 0.08647                       | kWh                     |                        |
|                                                                                                 |                                                                                              | Off Peak       | 0.04254                                                         | 0.04754                       | kWh                     |                        |
|                                                                                                 | Winter                                                                                       | Peak           | 0.08407                                                         | 0.08907                       | kWh                     |                        |
|                                                                                                 |                                                                                              | Off Peak       | 0.04266                                                         | 0.04766                       | kWh                     |                        |
|                                                                                                 |                                                                                              | Super Off Peak | 0.00326                                                         | 0.00826                       | kWh                     |                        |
| Medium General Demand<br>Time of Use - Transmission<br>With Qualifying Solar PV<br>(B-19-T-R,S) | Summer                                                                                       | Peak           | 0.18366                                                         | 0.18866                       | kWh                     |                        |
|                                                                                                 |                                                                                              | Part Peak      | 0.09401                                                         | 0.09901                       | kWh                     |                        |
|                                                                                                 |                                                                                              | Off Peak       | 0.04764                                                         | 0.05264                       | kWh                     |                        |
|                                                                                                 | Winter                                                                                       | Peak           | 0.08492                                                         | 0.08992                       | kWh                     |                        |
|                                                                                                 |                                                                                              | Off Peak       | 0.04787                                                         | 0.05287                       | kWh                     |                        |
|                                                                                                 |                                                                                              | Super Off Peak | 0.00847                                                         | 0.01347                       | kWh                     |                        |



# Schedule of CleanPowerSF Electric Rates and Charges

## Effective November 1, 2021

| Tariff Title                                                                                    | Applies To Customers<br>on Following PG&E<br>Rate Schedules | Season         | Hours Applied                                                                | Green<br>Product Rate<br>(\$) | SuperGreen<br>Rate (\$) | Billing<br>Determinant |
|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------|----------------|------------------------------------------------------------------------------|-------------------------------|-------------------------|------------------------|
| Service to Max Demands<br>>1,000 kW<br>Time of Use - Secondary<br>Voltage<br>(B-20-S)           | B-20                                                        | Summer         | Peak                                                                         | 0.09692                       | 0.10442                 | kWh                    |
|                                                                                                 |                                                             |                | Part Peak                                                                    | 0.06837                       | 0.07587                 | kWh                    |
|                                                                                                 |                                                             |                | Off Peak                                                                     | 0.04584                       | 0.05334                 | kWh                    |
|                                                                                                 |                                                             |                | Max Peak Demand                                                              | 15.50000                      | 15.50000                | kW                     |
|                                                                                                 |                                                             |                | Max Part Peak Demand                                                         | 2.24000                       | 2.24000                 | kW                     |
|                                                                                                 |                                                             | Winter         | Peak                                                                         | 0.07991                       | 0.08741                 | kWh                    |
|                                                                                                 |                                                             |                | Off Peak                                                                     | 0.04566                       | 0.05316                 | kWh                    |
|                                                                                                 |                                                             |                | Super Off Peak                                                               | -0.00023                      | 0.00727                 | kWh                    |
| Max Peak Demand                                                                                 |                                                             |                | 1.98000                                                                      | 1.98000                       | kW                      |                        |
| Service to Max Demands<br>>1,000 kW<br>Time of Use - Primary Voltage<br>(B-20-P)                |                                                             | Summer         | Peak                                                                         | 0.09489                       | 0.10239                 | kWh                    |
|                                                                                                 |                                                             |                | Part Peak                                                                    | 0.06465                       | 0.07215                 | kWh                    |
|                                                                                                 |                                                             |                | Off Peak                                                                     | 0.04354                       | 0.05104                 | kWh                    |
|                                                                                                 |                                                             |                | Max Peak Demand                                                              | 17.03000                      | 17.03000                | kW                     |
|                                                                                                 |                                                             |                | Max Part Peak Demand                                                         | 2.34000                       | 2.34000                 | kW                     |
|                                                                                                 |                                                             | Winter         | Peak                                                                         | 0.07564                       | 0.08314                 | kWh                    |
|                                                                                                 |                                                             |                | Off Peak                                                                     | 0.04360                       | 0.05110                 | kWh                    |
|                                                                                                 |                                                             |                | Super Off Peak                                                               | -0.00185                      | 0.00565                 | kWh                    |
|                                                                                                 |                                                             |                | Max Peak Demand                                                              | 1.96000                       | 1.96000                 | kW                     |
|                                                                                                 |                                                             |                | Service to Max Demands<br>>1,000 kW<br>Time of Use - Transmission<br>(B-20T) | Summer                        | Peak                    | 0.07650                |
| Part Peak                                                                                       |                                                             | 0.05804        |                                                                              |                               | 0.06554                 | kWh                    |
| Off Peak                                                                                        |                                                             | 0.03744        |                                                                              |                               | 0.04494                 | kWh                    |
| Max Peak Demand                                                                                 |                                                             | 19.06000       |                                                                              |                               | 19.06000                | kW                     |
| Max Part Peak Demand                                                                            |                                                             | 4.54000        |                                                                              |                               | 4.54000                 | kW                     |
| Winter                                                                                          |                                                             | Peak           |                                                                              | 0.07561                       | 0.08311                 | kWh                    |
|                                                                                                 | Off Peak                                                    | 0.03372        |                                                                              | 0.04122                       | kWh                     |                        |
|                                                                                                 | Super Off Peak                                              | -0.00812       |                                                                              | -0.00062                      | kWh                     |                        |
|                                                                                                 | Max Peak Demand                                             | 2.54000        |                                                                              | 2.54000                       | kW                      |                        |
| Medium General Demand<br>With Qualifying Solar PV<br>Time of Use - Secondary<br>(B-20-S-R,S)    | Summer                                                      | Peak           | 0.23731                                                                      | 0.24481                       | kWh                     |                        |
|                                                                                                 |                                                             | Part Peak      | 0.09129                                                                      | 0.09879                       | kWh                     |                        |
|                                                                                                 |                                                             | Off Peak       | 0.05009                                                                      | 0.05759                       | kWh                     |                        |
|                                                                                                 | Winter                                                      | Peak           | 0.09804                                                                      | 0.10554                       | kWh                     |                        |
|                                                                                                 |                                                             | Off Peak       | 0.04994                                                                      | 0.05744                       | kWh                     |                        |
|                                                                                                 |                                                             | Super Off Peak | 0.01061                                                                      | 0.01811                       | kWh                     |                        |
| Medium General Demand<br>With Qualifying Solar PV<br>Time of Use - Primary<br>(B-20-P-R,S)      | Summer                                                      | Peak           | 0.22802                                                                      | 0.23552                       | kWh                     |                        |
|                                                                                                 |                                                             | Part Peak      | 0.08623                                                                      | 0.09373                       | kWh                     |                        |
|                                                                                                 |                                                             | Off Peak       | 0.04806                                                                      | 0.05556                       | kWh                     |                        |
|                                                                                                 | Winter                                                      | Peak           | 0.09218                                                                      | 0.09968                       | kWh                     |                        |
|                                                                                                 |                                                             | Off Peak       | 0.04810                                                                      | 0.05560                       | kWh                     |                        |
|                                                                                                 |                                                             | Super Off Peak | 0.00878                                                                      | 0.01628                       | kWh                     |                        |
| Medium General Demand<br>With Qualifying Solar PV<br>Time of Use - Transmission<br>(B-20-T-R,S) | Summer                                                      | Peak           | 0.22772                                                                      | 0.23522                       | kWh                     |                        |
|                                                                                                 |                                                             | Part Peak      | 0.09723                                                                      | 0.10473                       | kWh                     |                        |
|                                                                                                 |                                                             | Off Peak       | 0.04196                                                                      | 0.04946                       | kWh                     |                        |
|                                                                                                 | Winter                                                      | Peak           | 0.09706                                                                      | 0.10456                       | kWh                     |                        |
|                                                                                                 |                                                             | Off Peak       | 0.03875                                                                      | 0.04625                       | kWh                     |                        |
|                                                                                                 |                                                             | Super Off Peak | 0.00267                                                                      | 0.01017                       | kWh                     |                        |



# Schedule of CleanPowerSF Electric Rates and Charges

## Effective November 1, 2021

| Tariff Title                                                     | Applies To Customers on Following PG&E Rate Schedules                                                                                                  | Season     | Hours Applied      | Green Product Rate (\$) | SuperGreen Rate (\$) | Billing Determinant |     |
|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--------------------|-------------------------|----------------------|---------------------|-----|
| Standby Service - Secondary and Primary Voltage (B-ST-S, B-ST-P) | Applies to Full Standby customers under Rate Schedule SB. All partial standby customers are billed at their Otherwise Applicable Schedule ("OAS") rate | Year round | Reservation Charge | 0.33                    | 0.33                 | kW                  |     |
|                                                                  |                                                                                                                                                        | Summer     | Peak               | 0.08962                 | 0.09712              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Part Peak          | 0.07662                 | 0.08412              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Off Peak           | 0.06216                 | 0.06966              | kWh                 |     |
|                                                                  |                                                                                                                                                        | Winter     | Peak               | 0.08442                 | 0.09192              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Off Peak           | 0.06339                 | 0.07089              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Super Off Peak     | 0.01668                 | 0.02418              | kWh                 |     |
| Standby Service - Transmission Voltage (B-ST-T)                  |                                                                                                                                                        | Year round | Reservation Charge | 0.19                    | 0.19                 | kW                  |     |
|                                                                  |                                                                                                                                                        | Summer     | Peak               | 0.07569                 | 0.08319              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Part Peak          | 0.06308                 | 0.07058              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Off Peak           | 0.04904                 | 0.05654              | kWh                 |     |
|                                                                  |                                                                                                                                                        | Winter     | Peak               | 0.07074                 | 0.07824              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Off Peak           | 0.05035                 | 0.05785              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Super Off Peak     | 0.00378                 | 0.01128              | kWh                 |     |
| Agricultural Power, Time-of-Use (AG-A1-A)                        | AG                                                                                                                                                     | Summer     | Peak               | 0.20341                 | 0.21091              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Off Peak           | 0.07176                 | 0.07926              | kWh                 |     |
| Winter                                                           |                                                                                                                                                        | Peak       | 0.06811            | 0.07561                 | kWh                  |                     |     |
|                                                                  |                                                                                                                                                        | Off Peak   | 0.03902            | 0.04652                 | kWh                  |                     |     |
| Agricultural Power, Time-of-Use (AG-A2-A)                        |                                                                                                                                                        | Summer     | Peak               | 0.20341                 | 0.21091              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Off Peak           | 0.07176                 | 0.07926              | kWh                 |     |
| Winter                                                           |                                                                                                                                                        | Peak       | 0.06811            | 0.07561                 | kWh                  |                     |     |
|                                                                  |                                                                                                                                                        | Off Peak   | 0.03902            | 0.04652                 | kWh                  |                     |     |
| Agricultural Power, Time-of-Use (AG-B-A)                         |                                                                                                                                                        | Summer     | Peak               | 0.22040                 | 0.22790              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Off Peak           | 0.08502                 | 0.09252              | kWh                 |     |
|                                                                  |                                                                                                                                                        | Winter     | Peak               | 0.07915                 | 0.08665              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Off Peak           | 0.05033                 | 0.05783              | kWh                 |     |
| Agricultural Power, Time-of-Use (AG-C-A)                         | AG                                                                                                                                                     | Summer     | Peak               | 0.08089                 | 0.08839              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Off Peak           | 0.04847                 | 0.05597              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Max Peak Demand    | 13.20                   | 13.20                | kW                  |     |
|                                                                  |                                                                                                                                                        | Winter     | Peak               | 0.06479                 | 0.07229              | kWh                 |     |
| Off Peak                                                         |                                                                                                                                                        |            | 0.03672            | 0.04422                 | kWh                  |                     |     |
| Agricultural Power, Flexible Time-of-Use (AG-F-A)                |                                                                                                                                                        | AG-F       | Summer             | Peak                    | 0.16548              | 0.17298             | kWh |
|                                                                  | Off Peak                                                                                                                                               |            |                    | 0.08063                 | 0.08813              | kWh                 |     |
|                                                                  | Winter                                                                                                                                                 |            | Peak               | 0.06941                 | 0.07691              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Off Peak           | 0.04032                 | 0.04782              | kWh                 |     |
|                                                                  | Agricultural Power, Flexible Time-of-Use (AG-F-B)                                                                                                      |            | Summer             | Peak                    | 0.18422              | 0.19172             | kWh |
|                                                                  |                                                                                                                                                        |            |                    | Off Peak                | 0.09478              | 0.10228             | kWh |
|                                                                  |                                                                                                                                                        |            | Winter             | Peak                    | 0.08151              | 0.08901             | kWh |
|                                                                  |                                                                                                                                                        |            |                    | Off Peak                | 0.05242              | 0.05992             | kWh |
| Agricultural Power, Flexible Time-of-Use (AG-F-C)                | Summer                                                                                                                                                 |            | Peak               | 0.09695                 | 0.10445              | kWh                 |     |
|                                                                  |                                                                                                                                                        |            | Off Peak           | 0.06394                 | 0.07144              | kWh                 |     |
|                                                                  | Max Peak Demand                                                                                                                                        |            | 13.20              | 13.20                   | kW                   |                     |     |
|                                                                  |                                                                                                                                                        |            | Winter             | Peak                    | 0.08109              | 0.08859             | kWh |
| Off Peak                                                         | 0.05200                                                                                                                                                |            |                    | 0.05950                 | kWh                  |                     |     |



## Schedule of CleanPowerSF Electric Rates and Charges Effective November 1, 2021

| Tariff Title                                                | Applies To Customers on Following PG&E Rate Schedules | Season     | Hours Applied  | Green Product Rate (\$) | SuperGreen Rate (\$) | Billing Determinant |
|-------------------------------------------------------------|-------------------------------------------------------|------------|----------------|-------------------------|----------------------|---------------------|
| Small Business Electric Vehicle (B-EV1)                     | B-EV1                                                 | Year round | Peak           | 0.24493                 | 0.25243              | kWh                 |
|                                                             |                                                       |            | Off Peak       | 0.04411                 | 0.05161              | kWh                 |
|                                                             |                                                       |            | Super Off Peak | 0.01618                 | 0.02368              | kWh                 |
| Large Business Electric Vehicle Secondary Voltage (B-EV2-S) | B-EV2                                                 | Year round | Peak           | 0.25941                 | 0.26441              | kWh                 |
|                                                             |                                                       |            | Off Peak       | 0.03572                 | 0.04072              | kWh                 |
|                                                             |                                                       |            | Super Off Peak | 0.00778                 | 0.01278              | kWh                 |
| Large Business Electric Vehicle Primary Voltage (B-EV2-P)   |                                                       | Year round | Peak           | 0.24800                 | 0.25300              | kWh                 |
|                                                             |                                                       |            | Off Peak       | 0.03242                 | 0.03742              | kWh                 |
|                                                             |                                                       |            | Super Off Peak | 0.00580                 | 0.01080              | kWh                 |
| B-1 Storage                                                 | B-1 STORE                                             | Summer     | Peak           | 0.14861                 | 0.15611              | kWh                 |
|                                                             |                                                       |            | Part Peak      | 0.10191                 | 0.10941              | kWh                 |
|                                                             |                                                       |            | Off Peak       | 0.06258                 | 0.07008              | kWh                 |
|                                                             |                                                       | Winter     | Peak           | 0.09297                 | 0.10047              | kWh                 |
|                                                             |                                                       |            | Part Peak      | 0.07940                 | 0.08690              | kWh                 |
|                                                             |                                                       |            | Off Peak       | 0.05520                 | 0.06270              | kWh                 |
|                                                             |                                                       |            | Super Off Peak | 0.03714                 | 0.04464              | kWh                 |
| NEM-CleanPowerSF Net Surplus Compensation Rates             | NEM-CleanPowerSF                                      | N/A        | All hours      | N/A                     | 0.08930              | kWh                 |



# PCIA Adjustment Credit

## Effective November 1, 2021

| Customer Class    | Vintage | Applied (Y/N) | PCIA Credit (\$) | Billing Determinant |
|-------------------|---------|---------------|------------------|---------------------|
| Residential       | 2015    | N             | n/a              | kWh                 |
|                   | 2016    | Y             | -0.00053         | kWh                 |
|                   | 2017    | Y             | -0.00053         | kWh                 |
|                   | 2018    | N             | n/a              | kWh                 |
|                   | 2019    | N             | n/a              | kWh                 |
| Small Commercial  | 2015    | N             | n/a              | kWh                 |
|                   | 2016    | Y             | -0.00051         | kWh                 |
|                   | 2017    | Y             | -0.00051         | kWh                 |
|                   | 2018    | N             | n/a              | kWh                 |
|                   | 2019    | N             | n/a              | kWh                 |
| Medium Commercial | 2015    | N             | n/a              | kWh                 |
|                   | 2016    | Y             | -0.00055         | kWh                 |
|                   | 2017    | Y             | -0.00055         | kWh                 |
|                   | 2018    | N             | n/a              | kWh                 |
|                   | 2019    | N             | n/a              | kWh                 |
| Large Commercial  | 2015    | N             | n/a              | kWh                 |
|                   | 2016    | Y             | -0.00050         | kWh                 |
|                   | 2017    | Y             | -0.00050         | kWh                 |
|                   | 2018    | N             | n/a              | kWh                 |
|                   | 2019    | N             | n/a              | kWh                 |
| Streetlights      | 2015    | N             | n/a              | kWh                 |
|                   | 2016    | Y             | -0.00041         | kWh                 |
|                   | 2017    | Y             | -0.00041         | kWh                 |
|                   | 2018    | N             | n/a              | kWh                 |
|                   | 2019    | N             | n/a              | kWh                 |
| Standby           | 2015    | N             | n/a              | kWh                 |
|                   | 2016    | Y             | -0.00038         | kWh                 |
|                   | 2017    | Y             | -0.00038         | kWh                 |
|                   | 2018    | N             | n/a              | kWh                 |
|                   | 2019    | N             | n/a              | kWh                 |
| Agriculture       | 2015    | N             | n/a              | kWh                 |
|                   | 2016    | Y             | -0.00048         | kWh                 |
|                   | 2017    | Y             | -0.00048         | kWh                 |
|                   | 2018    | N             | n/a              | kWh                 |
|                   | 2019    | N             | n/a              | kWh                 |



# PCIA Adjustment Credit

## Effective November 1, 2021

| Customer Class | Vintage | Applied (Y/N) | PCIA Credit (\$) | Billing Determinant |
|----------------|---------|---------------|------------------|---------------------|
| E-20T          | 2015    | N             | n/a              | kWh                 |
|                | 2016    | Y             | -0.00043         | kWh                 |
|                | 2017    | Y             | -0.00043         | kWh                 |
|                | 2018    | N             | n/a              | kWh                 |
|                | 2019    | N             | n/a              | kWh                 |
| E-20P          | 2015    | N             | n/a              | kWh                 |
|                | 2016    | Y             | -0.00046         | kWh                 |
|                | 2017    | Y             | -0.00046         | kWh                 |
|                | 2018    | N             | n/a              | kWh                 |
|                | 2019    | N             | n/a              | kWh                 |
| E-20S          | 2015    | N             | n/a              | kWh                 |
|                | 2016    | Y             | -0.00048         | kWh                 |
|                | 2017    | Y             | -0.00048         | kWh                 |
|                | 2018    | N             | n/a              | kWh                 |
|                | 2019    | N             | n/a              | kWh                 |
| BEV1           | 2015    | N             | n/a              | kWh                 |
|                | 2016    | Y             | -0.00043         | kWh                 |
|                | 2017    | Y             | -0.00043         | kWh                 |
|                | 2018    | N             | n/a              | kWh                 |
|                | 2019    | N             | n/a              | kWh                 |
| BEV2           | 2015    | N             | n/a              | kWh                 |
|                | 2016    | Y             | -0.00050         | kWh                 |
|                | 2017    | Y             | -0.00050         | kWh                 |
|                | 2018    | N             | n/a              | kWh                 |
|                | 2019    | N             | n/a              | kWh                 |



**RE: SFPUC SE Request: CleanPowerSF Rate Adjustment**

Kern, Chris (CPC) <chris.kern@sfgov.org>

Wed 9/15/2021 1:39 PM

To: Alexander, Angela (PUC) <AAlexander@sfgwater.org>

Cc: Johnston, Timothy (CPC) <timothy.johnston@sfgov.org>; Catherine Medlock <catherine.medlock@panoramaenv.com>; Frye, Karen (PUC) <KFrye@sfgwater.org>

The Planning Department has determined that the proposed Clean PowerSF Rate Adjustment is statutorily exempt from environmental review pursuant to CEQA section 21080(b)(8) and CEQA Guidelines section 15273 related to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges.

This determination is further documented in Planning Department Case #2021-009464ENV.

**Chris Kern, Principal Planner**  
**Environmental Planning**

San Francisco Planning

49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103

Direct: 628.652.7562 | [sfplanning.org](https://sfplanning.org)

[San Francisco Property Information Map](#)

Due to COVID-19, San Francisco Planning is not providing any in-person services, but we are operating remotely. Our staff are [available by e-mail](#), and the Planning and Historic Preservation Commissions are convening remotely. The public is [encouraged to participate](#). Find more information on our services [here](#).

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**From:** Alexander, Angela <AAlexander@sfgwater.org>

**Sent:** Monday, September 13, 2021 3:53 PM

**To:** CPC.EPIntake <CPC.EPIntake@sfgov.org>

**Cc:** Johnston, Timothy (CPC) <timothy.johnston@sfgov.org>; Kern, Chris (CPC) <chris.kern@sfgov.org>; Catherine Medlock <catherine.medlock@panoramaenv.com>

**Subject:** SFPUC SE Request: CleanPowerSF Rate Adjustment

Good afternoon!

Attached please find a statutory exemption request for the CleanPowerSF Rate Adjustment. Please feel free to reach out with any questions.

Thanks in advance!

Angie

Angie Alexander, Environmental Project Manager

[aalexander@sfgwater.org](mailto:aalexander@sfgwater.org)

(415) 579-3407 (cell)





September 13, 2021

Chris Kern, Principal Planner  
Environmental Planning Division  
San Francisco Planning Department  
49 South Van Ness Avenue, Suite 1400  
San Francisco, CA 94103

RE: CEQA Statutory Exemption Request  
CleanPowerSF Rate Adjustment Methodology -  
September 2021

Dear Chris,

The San Francisco Public Utilities Commission (SFPUC) proposes to approve rate adjustment methodology, implementation of time-of-use bill protection, and reinstatement of termination fee for the SFPUC Power Enterprise CleanPowerSF Community Choice Aggregation (CCA) Program. The Bureau of Environmental Management recommends the proposed adoption of the rate adjustment formula by the Commission is statutorily exempt from the California Environmental Quality Act (CEQA) under Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273 (Rates, Tolls, Fares, and Charges) related to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges.

## BACKGROUND

The current CleanPowerSF rates were established using the Commission approved rate-setting methodology adopted in December 2018 by Commission Resolution 18-0209. The authority was updated by Commission Resolution 20-0048, adopted in February 2020, and subsequently updated again by Commission Resolution 21-0085, adopted in May 2021. The General Manager, under delegation of authority granted by the Commission under Resolution 21-0085, adjusted CleanPower rates in May 2021. This adjustment was determined to be statutorily exempt from environmental review pursuant to CEQA section 21080(b)(8) and CEQA Guidelines Section 15273 (Rates, Tolls,

**London N. Breed**  
Mayor

**Sophie Maxwell**  
President

**Anson Moran**  
Vice President

**Tim Paulson**  
Commissioner

**Ed Harrington**  
Commissioner

**Newsha Ajami**  
Commissioner

**Michael Carlin**  
Acting  
General Manager





Fares, and Charges) by the San Francisco Planning Department on May 6, 2021 (Planning Department Case No. 2021-004576ENV).

The SFPUC currently proposes to again revise the existing rate adjustment methodology authorization of CleanPowerSF rates to the lesser of: 1) 10% higher than comparable PG&E generation rates, after accounting for the Power Charge Indifference Adjustment and Franchise Fee Surcharge, or 2) rates that recover CleanPowerSF's program costs. The new rate-setting methodology would be effective November 1, 2021 through June 30, 2022.

Adoption of the action is scheduled for hearing before the Commission on September 28, 2021.

**CEQA COMPLIANCE RECOMMENDATION**

Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273 (Rates, Tolls, Fares, and Charges) Subsection (a)(1) provides a statutory exemption from CEQA for the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies for the purposes of meeting operating expenses. Thank you for your concurrence with this request.

Sincerely,



Karen Frye, AICP, Acting Bureau Manager  
Bureau of Environmental Management

cc: Erin Franks, SFPUC Rates Administrator  
Michael Hyams, SFPUC Power Manager  
Timothy Johnston, MP, Environmental Planner, Environmental Planning  
Division, San Francisco Planning Department  
Angie Alexander, SFPUC Environmental Project Manager