



The BOMA San Francisco

# ADVOCATE

An Update on Legislative, Regulatory, and Political Issues Affecting Commercial Real Estate

Route to >> \_\_\_\_\_

November 28, 2001 Volume 7, Number 6

---

*This Issue of the BOMA-San Francisco Advocate Is Brought To You By*

## OneSource

---

*Inquiries about the Advocate? Call Governmental Affairs Director **Ken Cleaveland** (415)362-2662x11(kenc@boma.com)*

### **BOMA-SF-PAC Contributes to Victory over Ill-conceived Nov. 6<sup>th</sup> Public Power Ballot Measures**

The BOMA-SF-PAC is proud to be a part of the victory over two measures that, had they passed, would have municipalized electric power, and possibly other utilities such as gas, cable service, and garbage collection, for all San Franciscans. These two measures (**Proposition F** and **Measure I**) would have greatly increased the size of city government, without demonstrating any appreciable benefit to the taxpayers, and would have placed the city on a collision course with Pacific Gas & Electric Company by forcibly taking over the utility's physical assets in SF. Worse, these two measures were being promoted by anti-PG & E activists who have long been advocates for such a takeover, and who were pushing this takeover on the electorate without the benefit of any proper economic and financial studies to back up this draconian action. These propositions would have cost residents and businesses millions, yet would not (could not) guarantee more energy would be available, or that our power would be more dependable, or any cheaper. The proponents appeared to play a game of smoke and mirrors mixed with a lot of rhetoric, as is all too often the case in SF politics. BOMA helped by placing ads in several city newspapers to oppose the measures, and worked with other organizations to coordinate a reasonable response to this local utility takeover attempt. In addition to BOMA, the Chamber of Commerce, the Committee on Jobs, and the San Francisco Planning and Research Association opposed both measures. SF Supervisors **Gavin Newsom** and **Tony Hall** also opposed both. The measures failed, but not by much. The subject is not dead and will be back on the November 2002 ballot. BOMA and its allies can only hope the next measure(s) placed before the voters will be better researched, more defensible, and will include a plan that fairly deals with all parties impacted, including the local utility.

### **BOMA-SF-PAC Endorses Jim Lazarus for City Attorney in December 11<sup>th</sup> Run-off**

The BOMA-SF-PAC, at its November 26<sup>th</sup> meeting, unanimously endorsed **Jim Lazarus** for City Attorney. Although the PAC contributed to three of the four candidates in the general election, it was clear that Mr. Lazarus was the top choice of the vast majority of the San Francisco business community, and of the voters on November 6<sup>th</sup>, and that he should be elected. Mr. Lazarus has experience in several city administrations, is a consensus builder, understands the real estate industry, and is a first-rate attorney. He also has the best management experience of all the candidates, which will prove invaluable in such a large "law firm" as the City Attorney's office represents. Members may assist the Lazarus campaign by contacting his headquarters at 415-751-0472 or sending a contribution to Lazarus for City Attorney, 3569 Geary Boulevard, San Francisco, CA 94118.

### **BOMA Board of Directors Opposes Appeal Rights for Tenants**

No issue is more difficult for commercial property owners in San Francisco than acquiring the proper permits to develop/expand/or remodel their buildings. The rules are complicated, the planning code is Byzantine, and the many tenant activist groups seem ever-poised to take more rights away from the owners. Into this situation came Supervisor **Aaron Peskin**, the District 3 (downtown) top official, who, several months ago, introduced a measure, which was subsequently adopted by the full Board of Supervisors, to increase the power of tenants to appeal conditional use permits by allowing a minimum of five BOS members to appeal any permit on behalf of a tenant (or tenant group)

directly to the Board of Appeals. This change was opposed by BOMA, and continues to concern our members. Recently, the BOMA Board of Directors adopted a statement opposing **any** appeal rights for tenants. Current procedures for public hearings at Planning allow for anyone to support or oppose any project. Tenants do not have the same financial investment or liability for the success or failure of a project that owners have, and should therefore not be granted rights equal to that of owners. A meeting to discuss modifications to this measure is scheduled with Supervisor Peskin.

### **Board of Supervisors Plan Array of Charter Reforms to Diminish Mayoral Power on March 5<sup>th</sup> Ballot**

The San Francisco Board of Supervisors, faced with an estimated \$60+ million budget deficit, seems to be more concerned these days with crafting City Charter amendments to dilute the Mayor's appointment powers, than it is on cutting the size of the city government's future expenditures. District elections have narrowed the focus of the supervisors' responsibilities, but not their appetite for more authority, especially in area of local planning and development. Here is a rundown of just a few of the measures they are considering placing on the March 5<sup>th</sup> ballot:

- Supervisors Gonzalez, McGoldrick, and Daly want to take away three of the seven seats on the Planning Commission from the Mayor, and give them to the Board of Supervisors
- Supervisors Gonzalez, Daly, McGoldrick, Sandoval, Ammiano and others want to take away two of the five seats on the Board of Appeals from the Mayor and hand them to the Board of Supervisors
- Supervisor McGoldrick wants to change the appointment setup on the Building Inspection Commission from the current Mayor/3 Board of Supervisors /4 ratio to the reverse, and wants to allow for their removal at will
- Supervisor Gonzalez wants to allow non-citizens to serve on city Boards and Commissions (but they must be residents!)
- Supervisor Daly wants to create a new position of "Public Advocate" (a public lobbyist?) and wants to establish a new city department, entitled the Dept. of Neighborhood Empowerment, which would set up and manage neighborhood councils.
- Supervisors Gonzalez and Hall want to make the job of SF Supervisor officially a fulltime position, and have Supervisors' salaries set every two years by a survey conducted under the aegis of the Ethics Commission.

No doubt there will be many other measures debated for inclusion on the city's March ballot, but most of them will probably do very little to actually improve the quality of life of the average San Franciscan. There is one proposal that has surfaced, sponsored by Supervisors Leno and Hall, that may actually save taxpayer's money and people's time. That is the proposal to create an "instant run-off" in general elections, which would then eliminate the need for the City to incur an estimated \$1.5 million in expenses to hold separate run-off elections. This system is widely used in the many eastern U.S. cities. Voters would chose their "second" and "third" choices all at once, and by so doing, will allow their favored candidates to be advanced in the balloting by the tallying of each set of a votes. (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, etc.) It's a system worth at least trying here, and may improve our election department's performance as well

### **BOMA California Looks Ahead to 2002 Legislative Session In Sacramento**

BOMA California's legislative advocate (and Executive Director) **Les Spahnn**, recently sent this advisory note regarding what issues may surface in the upcoming session that could affect commercial property owners and managers. Here is his report:

1. **Insurance** against terrorist actions will likely be a debated issue, as it will impact everyone's liability premiums and coverage. Many insurance companies are now considering *excluding* any covered perils relating to terrorism, since the Sept. 11th tragedy, unless there are government guarantees for potential losses. While the debate is largely centered in Washington D.C., insurers doing business in Calif. are still licensed by the state Department of Insurance. Thus, there are influences California can have on this situation.
2. **Building Security:** With the legislature being more of a reactive political body, it is reasonable that some legislation will be introduced on the matter of security in public places. Proposals, both sensible and ridiculous alike, may very well emerge, and the association will be active in defining the effects of such restrictions in terms of building operations and costs.
3. **Energy:** Given the current high rate structure and the prohibitions against obtaining power from alternative sources at the retail level, this issue will be with us for another year.
4. **Split Roll Property Taxation:** While BOMA and virtually the rest of the business community stopped last year's proposal, this coming year's severe state budget shortfall will pit state and local governments against one another, again. Local government always loses this battle. As a sop, and in an effort to soften the financial blows which local governments may suffer, it is not inconceivable that the legislature may try to give them the power to split the roll and tax business property differently than residential property.
5. **Liability Protection For Installing and Using Automated External Defibrillators (AEDs)** will be up. BOMA International recently launched an effort to have more buildings install AEDs as a means of helping save lives.

Moreover, as these devices are increasingly used, and do save lives, the pressure to mandate their installation in public places may grow. However, users of such devices and owners who install them still face certain liabilities should harm result from their use. Protecting owners will be one of the key matters we monitor.

6. **Sub-metering:** Many of the proposals made during last year's energy debate concerning conservation would have minimal effect in multi-tenant commercial buildings because of the way owners distribute and bill for electricity. Moreover, the ability of owners to change that method is limited by law and regulation. Thus, BOMA Cal will continue to keep the option of permitting owners to sub-meter tenants as a viable idea before the state legislature during next year's energy debate.

#### **Do You Have Your Christmas Tree and Holiday Decorations Fire Department Advisory? BOMA does!**

Do you have the latest memorandum from the San Francisco Fire Department regarding the use of Christmas Trees and other types of holiday decorations in office building lobbies, etc.? If not, call Francine Anderson at the BOMA office for your copy, issued November 14, 2000. (415-362-2662, ext 10) Such items as making sure trees and wreaths are treated with a fire retardant that's been applied by a firm registered with the State Fire Marshal are included. The state uniform fire code requirements are also attached which detail required support devices, watering requirements and daily testing. For immediate questions, contact the SF Fire Prevention Bureau at **415-558-3300**.

#### **BOMA Defends Department of Building Inspection Before Supervisor Hearing**

BOMA took the opportunity to praise the Department of Building Inspection's performance before a recent hearing of the Board of Supervisors' Audit, Labor and Government Efficiency Committee. The Board had been presented a report (audit) which questioned the practices of so-called "permit expeditors" and stated the department needed to improve its training and evaluation of staff productivity. Although the customers (like BOMA members) of the DBI were overwhelmingly satisfied with the service they were receiving from the Department, according to a recent survey by KPMG, the DBI staff often thought favoritism played too large a role in the approval of permits. BOMA's Ken Cleveland spoke at the hearing and praised the DBI for its efforts (and that of its director **Frank Chiu**) to reach out to our industry, and association, and to help us promulgate useful information to our members that enables owners and managers to more quickly and efficiently apply for needed permits. More importantly, BOMA lauded the DBI practice of regularly scheduling Public Advisory Committee meetings to seek input from any concerned citizen, disabled advocate, or owner/design/construction professional, regarding ways to create better systems and procedures that could streamline the process. Cooperation is key to building confidence in the effectiveness of local government agencies, and BOMA's experience has been that the DBI has many such opportunities for the community to learn about its procedures. Cleveland suggested other city departments should emulate DBI's outreach efforts.

#### **DPT/DPW and DBI to Re-write Contractor Parking Permit Rules**

At the same October 23<sup>rd</sup> hearing where the DBI audit was presented (see above) the Supervisors discussed revising the current regulations allowing contractors to occupy street parking spaces for construction purposes. "Numerous neighborhood complaints" are forcing supervisors to clamp down on such permits, and to insist the city departments responsible enforce the posting restrictions and prosecute abuses. New changes are being drafted through Supervisor Gavin Newsom's office, with the DPW as the lead agency. Up to now, it has been largely an "honor system", but that will change with a new fee structure, enforcement of the \$1,000 fine for improper or fraudulent use of contractor parking permits, and new placement of all responsibility on the general contractor for future permits for all employees on the job (subcontractors, etc.) Supervisor Newsom's office number is **415-554-5942** for further information. BOMA's position is that whatever new regulations are produced, that they be reasonable to all parties, and that we realize increasing costs to contractors will only fall back on the owner, the tenants and create higher costs for goods and services in SF.

#### **CA Public Utilities Commissioner Geoffrey Brown Speaks Out on Energy Issues**

The most recent appointee to the California Public Utilities Commission, former San Francisco Public Defender Geoffrey Brown, gave an excellent update on the energy issues facing the state energy consumers (and his commission) at a luncheon of the Power Association of Northern California (PANC) November 20<sup>th</sup>. PANC is an organization of power producers and distributors and BOMA is a member of the group. Commissioner Brown would not say if he thought the market had been manipulated by the power marketers, but did say they "took advantage of the circumstances." He also said he did not think direct access was going to be available for consumers anytime soon, and that when it did come back, it would be "slowly and experimentally". Mr. Brown also did not wish to predict what would happen 3/31/02 when the competitive transition charges are supposed to sunset. He did say he did not believe costs would go down. He predicted California will eventually join a regional transmission organization, as pushed by FERC, but predicted some of the state's high-cost energy contracts will have to be "re-negotiated" to find a "direct benefit" to both parties first. He also said that the future percentages of rebate monies should be changed to increase the allocation to the commercial sector. (Currently, the largest rebate amounts are reserved for residential energy upgrades.)