



The BOMA San Francisco

ADVOCATE

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

Route to >> _____

August 4, 2006

Volume 12, Number 4

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

San Francisco Electrical Contractors Association

Questions or inquiries about the *BOMA San Francisco Advocate* should be directed to **Ken Cleaveland**,
BOMA San Francisco's Government and Public Affairs Director
Phone: (415)362-2662x11 or Email: <kenc@boma.com>

Special Summer Issue!

San Francisco Business Community Wins One Against City in Prop I Lawsuit

The San Francisco Chamber of Commerce, Committee on Jobs, BOMA, the Union Square Association, Hotel Council, the SF Realtors Association, SF Apartment Association and other business organizations won Round 1 in Superior Court on July 20th when Judge Ronald Quidachay ruled the city must produce economic reports on proposed legislation, as required by passage of Proposition I in November, 2004, and that the rules the Board of Supervisors passed to implement the proposition were invalid. Those rules gave Board of Supervisors' President Aaron Peskin the power to decide which legislation had to be reviewed by the city's economists and which did not. The City announced they would appeal.

BOMA San Francisco Secures 70K Matching BOMA International Grant For BOMA California Energy Advocacy

Kathy Mattes, BOMA San Francisco's President, made a convincing presentation before BOMA International's Industry Defense Fund at the Dallas Conference late June seeking additional funding for our energy advocacy efforts before the California Public Utilities Commission. BOMA San Francisco was joined in their petition for financial assistance to fight punitive rates for commercial electrical users by BOMA Locals in Los Angeles, Oakland, San Diego, Orange County, San Jose, Sacramento, and Inland Empire. The association has retained **Bill Roberts**, an economist with **Economic Sciences Corporation** in Berkeley, to define our positions, analyze our options and prepare our filings with the Commission.

San Francisco Gross Receipts Tax Proposal Tabled (for now)

SF Board of Supervisor President **Aaron Peskin** recently tabled his proposal to re-institute a gross receipts tax on San Francisco's businesses. He had proposed a .10 - .30 percent tax on all gross revenues from business (except non-profits) and a 1.4% levy on commercial lease transactions and rents exceeding \$2 million/year. Peskin had considered placing the measure on the November ballot, but decided not to move forward based primarily on the recently passed healthcare legislation, which was already going to burden businesses in the City with additional costs. BOMA made it clear it opposed the 1.4% punitive rate for its members and that such costs would simply be transferred to the many small businesses housed in the City's office buildings, further increasing the costs for products and services in San Francisco.

San Francisco Board of Supervisors Pass and Mayor Signs Historic Legislation Extending Heathcare Benefits to Uninsured

The Board of Supervisors and Mayor finally came to an agreement on a phased-in healthcare program for the approximately 82,000 working San Franciscans who currently have no insurance. The program will be funded by the city government, the individuals seeking treatment, and San Francisco's employers. The program will begin in July 2007 for employers of 100 or more employees. The start date is July 2008 for smaller employers with 20-99 employees. Employers with less than 20 workers were not covered or required to participate. Total costs are expected to exceed \$200 million annually, initially. It is unknown how much the costs will escalate, or what future contribution levels might be to fund the program. Dr. Mitch Katz, Director of Public Health for San Francisco, predicted it would take almost a year to work out the rules, but he was optimistic that it could be done, and would be more cost-effective in the long run for everyone involved.

New "kinder, gentler" Downtown Parking Restrictions Legislation Passed

BOMA and other business groups scored a victory for moderation when the Mayor's veto of the proposed limits on new downtown parking spaces was upheld by the Board of Supervisors, and pushed the Board to moderate their extreme measure. The version that finally passed several weeks ago will reduce the net allowable parking in new residential developments in the downtown area from one parking space per unit to .75 parking spaces per unit, but will allow a 1-1 for those so-called "family units" that are 1,000 square feet or larger and have at least 2 bedrooms. Above ground parking structures will be allowed up to 3 stories, and the prior prohibition on porte cochere's (cut outs for hotels, etc.) or curb cuts necessary for new garages was eliminated.

San Francisco Board of Supervisors Tables Employer Fee to Enforce Minimum Wage Laws

Supervisor **Sophie Maxwell** (District 10, Bayview/Hunter's Point, Potrero Hill) also withdrew her legislation which would have created a new annual employer fee to be used to pay for enhanced enforcement of the city's minimum wage laws. Originally written as a flat \$39 annually per employer, the fees had morphed into a graduated scale with a small business exemption, but the outcry from the small business community coupled with Mayor Newsom adding funds to the annual budget for the city agency charged with enforcement of wage laws, led the Supervisor to withdraw it. BOMA commends Supervisor Maxwell and Mayor Newsom for working out a compromise that accomplishes the goals without raising taxes or fees on businesses.

New Sign Relocation Ordinance Passed By San Francisco Board of Supervisors

If BOMA members have an advertising sign on their building or property, there are new rules for re-locating that sign, recently passed by the SF Board of Supervisors. BOMA was not consulted on this legislation, and continues to have problems with it. The result of the legislation gives the holder of the permit the sole bidder status with that owner, and precludes the owner from shopping the site with other sign companies to obtain a better deal. The sign company can remove the sign only with the permission of the owner, but fair rates of payment are not expected to property owners under this new setup. BOMA will continue to work to amend the legislation to allow for competitive bidding in the selection of sign vendors on existing sites, realizing that no new sites are allowable under Prop G, (passed in 2002) except those that have been transferred from some other location within the city.

Significant Tree Preservation Ordinance Passed

The San Francisco Board of Supervisors has passed an ordinance that severely restricts property owners' rights to cut down what are being called "significant" trees. A significant tree is defined as one that has a diameter at breast height in excess of 12 inches, a height of 20 feet, or a canopy of 15 feet. Removal without a permit from the Department of Public Works is punishable by a fine of \$200 - \$1,000 and/or imprisonment up to six months in county jail. Removal of significant trees is allowed if they appear to be dead, dangerous or falling, obstruct or damage streets or sidewalks, harbor serious disease or infestation, interfere with vehicular or pedestrian traffic, obstruct official street-cleaning activities, or pose a significant hazard as determined by the DPW Director. Approval to take down a "significant" tree will also require owners to pay a fee into a DPW-managed Adopt a Tree Fund that is used to purchase/plant new trees in the city. The city will also be considering criteria to be used for designating certain trees as Landmark Trees, a more protected category of trees.

BOMA SF PAC Update

BOMA's Political Action Committee Board of Directors supported several people running for the Democratic Party's nomination for state offices this past June, including **Leland Yee** (who is running for CA State Senate) and **Fiona Ma** (running for CA State Assembly), who both won their primaries and now face a much smaller battle to win their seats in heavily Democratic San Francisco and San Mateo counties in November. Still, both need continuing financial support to help erase campaign debts created in their fiercely competitive primary races. BOMA's PAC urges its members who can to assist these two very worthy candidates headed for our state legislature, and send them a contribution today. You can also learn more about each candidate at their websites, which are:

Leland Yee – www.lelandyee.com

Fiona Ma – www.fionama.com

BOMA was also delighted to see three of the four **San Francisco City Propositions** go down in defeat, including the set-aside budget item for violence prevention (which BOMA contends should be done through – not around – the budgetary process), the re-organization of the Transbay Joint Powers Authority, which would have diluted San Francisco Mayor Gavin Newsom's influence and given it to the Board of Supervisors, and the creation of a special use district for Laguna Honda hospital, which would have set a terrible precedent for using Planning and Zoning codes and personnel to make medical decisions about patient care at the facility. The business community and BOMA were disappointed that the additional eviction disclosure requirements in residential sales was passed (narrowly), as we contended that information is already being provided to potential buyers under current law prior to closing.

Looking toward the November elections, BOMA SF PAC reviewed the qualifications and met with **Rob Black**, candidate for District 6 Supervisor and voted to endorse him for that seat. Our PAC Board urges every BOMA member to support him in his effort to defeat the current anti-business/anti-property owner Supervisor Chris Daly. Members are urged to help by going to Rob Black's website: www.robblack2006.com. He would be a voice for all sectors of his district, not just the fringe elements. Rob Black is an attorney and formerly worked for Supervisor Michela Alioto-Pier at City Hall. He and his plaintiff's attorney spouse, Lisa Marie Williams, rent on Treasure Island. Black is a native of New Mexico, graduated summa cum laude from University of New Mexico in Political Science, and obtained his law degree from Hastings College (University of California). **Contributions can be sent to: Rob Black for Supervisor, P.O. Box 410594 San Francisco, CA 94141.** Email him at: info@robblack2006.com

With the above race in mind, BOMA members are reminded that corporate contributions are allowed in state races, but are no longer allowed in city elections (as of July 23, 2006). If members wish to contribute to **Rob Black**, or **Michela Alioto-Pier** (also endorsed by BOMA) or **Bevan Dufty** or any other city official, they must use personal funds, and they cannot contribute more than \$500. (Dufty has set a voluntary limit of \$100 on contributions to his campaign for re-election.)

BOMA California Suffers Defeat on Security Deposit Legislation

AB 1161 – the Legislation that would have allowed a commercial real estate landlord to apply a security deposit against damages the landlord suffers (including future lost rent) when a lease is terminated early, including lost future rent, was defeated in the Senate Rules Committee earlier last month. The legislation was drafted by Assembly Member **Leland Yee**, and would have restored state law allowing for same before a recent court case reversed that right. Special thanks are due **Manny Fishman**, BOMA attorney member with Stoel Rives, who prepared and delivered our association's testimony in support of this legislation before the Rules Committee. The legislation can (and will) be re-introduced next year.

In other legislation action, AB 2083, the bill to extend the AED (Automatic External Defibrillators) immunity protections, passed, but was not enhanced, as desired by BOMA. The new law will grant immunity to those buildings who install AED devices until January 1, 2013 (from 1/1/08). The current requirements which were passed into the state's health and safety codes in 2005 (AB 254) remain in effect. They include several important things for building owners to remember. In order to have the limited immunity for AED use, the building must ensure that all AED devices installed are tested every 30 days, or after every use, are used only by persons trained on the use of the equipment by Red Cross or Heart Association volunteers, and that the building has a written plan that describes the procedures to be followed in the event of an emergency that requires the use of an AED device. Tenants must receive an annual notice of any and all AED devices installed in their properties, including the location of each AED device and the proper use of same. These tenant notices must also be approved by the local chapter of the American Red Cross or American Heart Association prior to distribution.

SF Garbage Rates Increased

Representatives from Golden Gate Disposal and Recycling Company briefed BOMA members June 29th on the increases that were to become effective July 1st. The rates will increase approximately 17% for residential customers with a cumulative increase of nearly 28% authorized by the City over the life of the five year contract. This baseline for cost increases in residential rates will also be applied to commercial customers. The key is recycling. If a building is not recycling, its garbage costs could increase 40%. In order to maintain or even reduce your garbage costs, a building must participate in a recycling program. BOMA members are urged to have waste audits performed by Golden Gate Disposal, and to implement recycling programs that will work best for each property and its tenant base. The City has mandated the waste diversion rate be increased to 75% by 2010, which is part of the impetus behind the new rate schedules. To get further input or individual consultations on the garbage costs and recycling possibilities at your building, contact **Chris Levaggi** (415-575-2437 or clevaggi@goldengatedisposal.com) or **Maurice Quillen** (415-575-2490 or mquillen@goldengatedisposal.com).

Crime Stoppers Reward Program Comes to San Francisco

A new rewards program is being established in San Francisco that will pay cash for information leading to the arrest and conviction of criminals. The program, called San Francisco Crime Stoppers, uses anonymous tipsters to solve crime, and will provide cash rewards of up to \$2,000 to those tipsters whose information proves valuable in solving crimes. No names are taken by dispatchers working the hotline, and informants are given a number to use when claiming their rewards. This program is very successful in New York City, San Diego, and many other cities across the country and around the globe. The conviction rate averages 95% on crimes that get reported via these Crime Stopper programs. The San Francisco Police Department and the Mayor's office are currently working on a Memorandum of Understanding between the city and the First Responder Foundation, which is the non-profit organization which will manage the Crime Stopper program. For more information, contact Anthony "Tony" Fasanella, Founder and CEO of First Responder Foundation at 415-369-0330 or email: apf@firstresponderfoundation.org.

Impressive November Ballot Lineup of Propositions

The Secretary of State has assigned proposition numbers to the measures that have qualified for the November 7 General Election ballot. BOMA California has not taken an official position on any of them as yet, but is expected to support the infrastructure bond measures. The list:

- **Proposition 1A: Transportation Funding Protection.** A constitutional amendment to protect gas tax revenues from being used for purposes other than transportation.
- **Proposition 1B: Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006.** A \$19.9 billion bond measure.
- **Proposition 1C: Housing and Emergency Shelter Trust Fund Act of 2006.** A \$2.9 billion bond measure.
- **Proposition 1D: Kindergarten-University Public Education Facilities Bond Act of 2006.** A \$10.4 billion bond measure.
- **Proposition 1E: Disaster Preparedness and Flood Prevention Bond Act of 2006.** A \$4.1 billion bond measure.
- **Proposition 83: Sex Offenders. Sexually Violent Predators. Punishment, Residence Restrictions and Monitoring.** Increases penalties for violent and habitual sex offenders and child molesters.
- **Proposition 84: Water Quality, Safety and Supply.** Flood Control. Natural Resource Protection. Park Improvements. Bonds. A \$5.4 billion bond measure.
- **Proposition 85: Waiting Period and Parental Notification Before Termination of Minor's Pregnancy.** Amends the state Constitution to prohibit abortion for a minor without parental notification and establishes a waiting period of 48 hours after the physician notifies the minor's parent or legal guardian.
- **Proposition 86: Tax on Cigarettes.** This measure increases the state's excise tax by 300 percent, adding an additional \$2.60 per pack tax to the price of cigarettes sold in California, with the majority of the revenue used to fund health care services.
- **Proposition 87: Alternative Energy. Research, Production, Incentives. Tax on California Oil.** This measure places a new tax only on oil produced in California, thereby increasing California's dependence on foreign and imported oil by significantly adding to the cost of oil production and diverting funds that would be available for domestic oil exploration and development.
- **Proposition 88: Education Funding. Real Property Parcel Tax.** Imposes additional property tax and earmarks new revenues for classrooms.
- **Proposition 89: Political Campaigns. Public Financing. Corporate Tax Increase.** Contribution and Expenditure Limits. This initiative increases corporate income taxes to pay for publicly financed campaigns. The proposition limits corporate contributions or spending to \$10,000 to support or oppose any state ballot measures. In addition, it prohibits corporate contributions to candidates who opt to receive public funding.

Proposition 90: Government Acquisition, Regulation of Private Property. Forbids state and local governments from condemning or damaging private property to promote other private projects.

For more information on these measures or the November 7 ballot, please visit the Secretary of State website at www.ss.ca.gov.

Los Angeles Enacts Business Tax Reforms – Reduces Tax Burden by 15%

While we hold our breath in San Francisco expecting to see new tax measures proposed or new hikes to city fees and permits announced nearly every week, Los Angeles did just the opposite. They reduced their gross receipts business taxes by an across the board average of 15% by adopting a reform package proposed after nearly a year of study involving a panel of economists, attorneys, accountants, and academics. Added to this panel of experts was a Business Tax Advisory Committee composed of civic leaders from both local governments (there are 88 cities within Los Angeles County) and the private business and non-profit communities. They used several criteria in evaluating the components of a new and simplified gross receipts tax: the potential economic benefit, the ease to administer, the stability of the revenue source, the fairness of the process, and the goal of keeping it revenue neutral. (There was no push to raise the amount of money being collected through the city's existing gross receipts tax.) Los Angeles eliminated almost half of its city tax code with these reforms and increased their compliance rate. The new gross receipts tax has a \$300,000 exemption for small business. The 15% tax reductions will occur in 3% increments over the next 5 years, and were based on an estimate of a 10% annual city growth rate. Former Mayor Jim Hahn pursued the tax reforms following the defeat of several secession initiatives by various parts of Los Angeles in 2002. BOMA San Francisco, the Committee on Jobs and the SF Chamber of Commerce have all called upon San Francisco's Board of Supervisors and Mayor Newsom to initiate a similar review and restructuring of the business taxes in San Francisco, with the goal to be two-fold: elimination of the payroll tax, and the creation of a new tax structure that is fair, broadbased, and revenue neutral. We are still waiting for an answer....

The Budget That Ate San Francisco

In light of the story above, is it any surprise that San Francisco's city budget continues to increase beyond any reasonable relationship to the size of San Francisco (both geographically and demographically)? San Francisco's budget for 2006-7 is \$5.7 billion or nearly \$8,000 per city resident. San Francisco's city budget is now larger than 20 U.S. states. No city matches us in cost per capita, and no city seemingly gets less for its money. Have you seen less trash on the city streets? Fewer homeless wandering about aimlessly or panhandling you? Less open drug dealing? Less graffiti on city signs, buses, and buildings? Less crime being committed? Nicer parks and playing fields? Improved schools? The answer is probably a resounding NO WAY! City taxpayers are paying more for city services and getting less and less for it. *What's wrong with this picture?* Inefficient government operating under outdated rules. Our city government has many good, hard working professionals on its staff, but many are hampered by restrictions that protect the status quo and the mediocre employee. Department heads have very little ability to actually shape their departments to be lean, efficient operations because of union work rules, and contracting out prohibitions. Mayor Newsom and his Human Resources Director Phil Ginsburg have produced a terrific list of reforms for the city's civil service system, but getting them approved by the Board of Supervisors will be no easy task. City employee unions have systematically over the years, mainly through Memoranda of Understanding (MOUs) and city charter amendments, built up an elaborate, secure empire that over compensates and over protects their membership. And any accountability for results through audits of city departments' expenditures has been rare. More often, "Downtown" businesses are singled out as the culprits who don't want to pay "their fair share" of city government expenses, hence shortfalls and service reductions, which is one way to deflect attention from our inefficient and overly expensive government. But there were precious few stats to substantiate that position. Recently, a study was published that chronicles how much the city *actually does take in* as tax revenues from the downtown business community. It turns out that half of the city's payroll taxes are collected from downtown businesses, a quarter of the business registration taxes, nearly all of the franchise taxes, and (in FY 2004-5) over \$100 million in commercial property taxes. Add to that the parking tax (78% of it paid from downtown garages and lots), the hotel occupancy tax (14%) and sales tax revenues generated from downtown businesses, and you can appreciate the fact that "downtown San Francisco" is indeed contributing its "fair share" to the city's coffers. To get the full report, please log onto www.sfvotewatch.com.

Mayor Newsom Optimistic Over City's Economic Future

Gavin Newsom addressed the Business Times' annual Structures Breakfast Wednesday morning, July 26th, and was characteristically optimistic about San Francisco's economy. He said "everything that needs to be up is up, and everything that needs to be down, is down." Unemployment is currently at 4.5%, a 17% drop from last year, while visitors spent over \$7 billion in the City last year and there has been a net absorption of office space for the last 12 quarters bringing down the city's commercial vacancy rates to about 12% overall. He stated he would not support any new tax increases as that would just "screw it up", alluding to the city's economy. The mayor was optimistic also about new housing developments in the City, and was particularly pleased the city's new budget included \$210 million for affordable housing construction and rehabilitation without needing to push another bond. He predicted that over 5,000 new housing units would be built over the next 2-3 years, and that 26,000 potential units are in the pipeline. He concluded his remarks with this statement,

“For every one thing that is wrong about San Francisco we have 10 things that are right. We are a model for sustainability throughout the world, and we are a city that prospers despite our differences.”

BOMA Members Announce New Building Plans in San Francisco

Tom Hart, VP/Development with Shorenstein Company, addressed the same SF Business Times breakfast and discussed four new projects his firm is working on in the City. They are: 350 Bush (350,000 square foot office building), 500 Pine (office building and expanded St. Mary’s Park onto the roof of the building), 409/499 Illinois (a life sciences building in Mission Bay), and Piers 27-31 which Shorenstein (along with Farrollon Partners) will develop into an indoor/outdoor office park complete with retail shops, corporate office spaces in four different low-rise buildings, and an aquatic features such as a floating swimming pool. Shorenstein currently owns 50 California, 1 California, 45 Fremont, 235 Montgomery and 315 Montgomery Street buildings in San Francisco.

Carl Shannon, Regional VP with Tishman Speyer, announced their company is also expanding into San Francisco. In addition to their current local portfolio of One Bush, 595 Market, and 550 Terry Francois (Mission Bay), they are going to be opening 300 Spear in 2007 (residential tower), building a second residential tower at 201 Folsom and will be building a new office building at 555 Mission, across from the soon-to-be redeveloped Transbay Terminal.

Chris Meany, of Wilson Meany Sullivan, announced his plans for redeveloping Treasure Island. He said the company plans to create a new neighborhood “in the tradition of North Beach” (compact and walkable) that will be a model of sustainability, will set aside 30% of the nearly 6,000 new housing units as below market-rate housing, include an organic farm, art park, and be 13 minutes away from downtown San Francisco by ferry. This project is slated to be completed over the next 12-14 years.

CA Building Standards Commission Appoints New Executive Director

The California Building Standards Commission today announced that E. David Walls, 53, of Yuba City, has been appointed Executive Director of the Commission. He has served as state housing program manager for the Department of Housing and Community Development since 2002. Walls served as a district representative in the state housing law program from 2001 to 2002. Prior to joining the Department of Housing and Community Development, Walls served as a building inspector for the County of Sutter from 1995 to 2001, and for the City of Galt from 1992 to 1995. Previous to that, he was a general contractor for Ayers Construction. Walls has certifications in building, plumbing, mechanical and electrical inspection, and in code enforcement, and is an instructor of the California Building Standards Code at the University of California, Davis. He replaced Stan Nishimura, the previous Executive Director, who retired.

Employers Now Able to Verify that Social Security Numbers and Names Match

The Social Security Administration (SSA) has created an online program called the Social Security Number Verification System (SSNVS). The only purpose of the SSNVS is to verify that Social Security numbers and names that employers have been provided match and are correct for purposes of completing W-2 forms.

The SSA emphasizes that such verifications can only occur after an employee has been hired and that the use of SSNVS is applied to employees consistently. If the SSA notifies an employer that the name and Social Security number do not match, rather than taking immediate adverse action, employers are encouraged to communicate with the employee immediately of the problem. The SSNVS service is free and employers may sign up for the service at www.socialsecurity.gov/bsowelcome.htm.

What Should You Do?

- Add the SSNVS to your policies to ensure the SSNVS is utilized after hire and to current employees.
- Inform employees through an offer letter that after they accept the offer, your company will use the SSNVS system.
- Implement the SSNVS verification process in a non-discriminatory manner.

Special thanks to our BOMA San Francisco Advocate Sponsor...

The contractors of the **San Francisco Electrical Contractors Association (SFECA)** have provided the highest quality electrical installations since 1909 to the commercial real estate industry. The mission of the SFECA is to meet and exceed the needs of our clients and our community, and to do this with the professional expertise that our customers expect and deserve.

For more information on the SFECA or its contractor members please call **Tom Coleman**, Executive Manager @ **415 703-8333**.