

File No. 111248

Committee Item No. 1

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date January 23, 2012

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
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#### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>SF Police Department Letter, dtd 12/29/2011</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Supervisor Wiener Letter, dtd 1/17/2012</u>     |
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Completed by: Alisa Miller Date January 20, 2012

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document can be found in the file.

1 [Regulations for Jane Warner and Harvey Milk Plazas]

2  
3 **Ordinance: 1) approving regulations for Jane Warner Plaza at the intersection of Castro**  
4 **and 17<sup>th</sup> Streets and Harvey Milk Plaza adjacent to the intersection of Castro and**  
5 **Market Streets; and 2) authorizing official acts in connection with the regulations.**

6 NOTE: Additions are *single-underline italics Times New Roman*;  
7 deletions are *strike-through italics Times New Roman*.  
8 Board amendment additions are double-underlined;  
9 Board amendment deletions are ~~strikethrough normal~~.

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

10 Section 1. Findings.

11 (a) Jane Warner Plaza, formerly known as the 17<sup>th</sup> Street Plaza or Castro Commons,  
12 and located at the intersection of 17<sup>th</sup> and Castro Streets, is one of the City's first "Pavement  
13 to Parks" projects utilizing excess right-of-way for public park purposes.

14 (b) Harvey Milk Plaza, is located adjacent to the Castro Muni station at Castro and  
15 Market Streets. Said plaza is under the control of the Bay Area Rapid Transit District (BART)  
16 and the street level area is subject to the regulations of the Department of Public Works under  
17 a use agreement with BART.

18 (c) Both plazas play a vital role in the Castro community and act as gathering places  
19 for the public and visitors to the neighborhood.

20 (d) With the extensive use of both plazas, the Board has determined that special  
21 regulations should apply to the use of these plazas.

22 Section 2. Regulations for the use of Jane Warner and Harvey Milk Plazas.

23 A. HOURS.

24 Being adjacent to major pedestrian thoroughfares, the Jane Warner and Harvey Milk  
25 Plazas are open and available for pedestrians 24 hours a day. However, both Plazas should

1 be available for sitting on moveable chairs or moveable benches only between the hours of  
2 9:00 a.m. – 9:00 p.m. There may be times at the discretion of the Director of the Department  
3 of Public Works that the Plazas may be closed for general sitting and congregating (inclement  
4 weather, community events/festivals, other City/neighborhood functions).

5 **B. SLEEPING PROHIBITED.**

6 No person shall remain in the Jane Warner Plaza or the Harvey Milk Plaza for the  
7 purpose of sleeping during any hours of the day.

8 **C. CAMPING PROHIBITED.**

9 (1) No person shall construct or maintain or inhabit any structure, tent, or similar  
10 shelter in either the Harvey Milk Plaza or the Jane Warner Plaza that may be used for housing  
11 accommodations or camping, nor shall any person construct or maintain any device that can  
12 be used for cooking.

13 (2) No person shall modify the landscape in any way in order to create a shelter, or  
14 accumulate household furniture or appliances or construction debris.

15 **D. PEDDLING AND VENDING MERCHANDISE.**

16 No person shall bring, or cause to be brought, for the purposes of sale or barter, or  
17 have for sale, or sell or exchange, or offer for sale or exchange any goods, wares, or  
18 merchandise in the Jane Warner Plaza or the Harvey Milk Plaza, except for uses that the City  
19 and County of San Francisco permits. Notwithstanding the above provision, the sale or  
20 distribution of newspapers, periodicals, or other printed material is allowed subject to any  
21 applicable requirements of the Public Works Code.

22 **E. PERFORMANCE OF LABOR.**

23 No person, other than duly authorized City personnel, shall perform any labor, on or  
24 upon the Jane Warner Plaza or Harvey Milk Plaza, including, but not limited to, taking up or  
25 replacing soil, turf, ground, pavement, structures, trees, shrubs, plants, grass, flowers, or

1 similar activities without prior written permission from the Director of the Department of Public  
2 Works.

3 F. **NO SMOKING.**

4 Pursuant to the Municipal Code, smoking is prohibited on any unenclosed area of  
5 property in the City and County of San Francisco that is under the jurisdiction of the any City  
6 department if the property is a park, square, plaza, garden, sport or playing field, pier, or other  
7 property used for recreational purposes, or a farmers' market. Given the use of the subject  
8 areas as pedestrian plazas, this prohibition on smoking shall apply to Jane Warner and  
9 Harvey Milk Plazas.

10 G. **WHEELED EQUIPMENT PROHIBITED.**

11 No person, other than City employees or its agents or its contractors shall use wheeled  
12 conveyances in the Jane Warner Plaza or the Harvey Milk Plaza unless the Director of the  
13 Department of Public Works issues a permit or provides written authorization to an individual  
14 or entity to allow such use. Notwithstanding the above provision, bicycles as defined in the  
15 California Vehicle Code Section 231 or successor legislation, wheelchairs, 2-wheeled  
16 shopping carts, and strollers (for the purposes of carrying children) may be brought into the  
17 Jane Warner and Harvey Milk Plazas. In addition, bicycles are authorized to use the  
18 designated bicycle lane in Jane Warner Plaza.

19 H. **VIOLATION OF REGULATIONS; PENALTIES.**

20 (a) If any person has occupied public right-of-way in violation of these regulations,  
21 the Director shall immediately order the violator to vacate the occupied area or abate the  
22 violation. Should the violation not be corrected as ordered, the permittee or person shall be  
23 subject to the actions and penalties set forth below for each violation.

24 (b) **Criminal Penalty.**

1 (1) Any person who shall violate any of the provisions of these regulations  
2 shall be guilty of an infraction. Every violation determined to be an infraction is punishable by  
3 (a) a fine not exceeding \$100 for the first violation within one year; (b) a fine not exceeding  
4 \$200 for a second violation within one year from the date of the first violation; (c) a fine not  
5 exceeding \$500 for the third and each additional violation within one year from the date of the  
6 first violation.

7 (2) When a government official authorized to enforce this Section has  
8 reasonable cause to believe that any person has committed an infraction in the official's  
9 presence that is a violation of this Section, the official may issue a citation to that person  
10 pursuant to California Penal Code, Part II, Title 3, Chapters 5, 5C, and 5D.

11 (c) **Administrative Penalty.** In the alternative to the criminal penalty authorized by  
12 Subsection (b) of this Section, Department of Public Works officials designated in Section 38  
13 of the Police Code may issue administrative citations for violations of these regulations. The  
14 administrative penalty shall not exceed \$300 per day for each violation. Such penalty shall be  
15 assessed, enforced, and collected in accordance with Section 39-1 of the Police Code.

16 Section 3. (a) The Board of Supervisors urges the Director of DPW to adopt a DPW  
17 Order that includes the regulations set forth in this Ordinance and any additional regulations  
18 that the Department deems appropriate and necessary for the proper management and use of  
19 the aforementioned plazas, such as the posting of signage setting forth the regulations. Such  
20 DPW Order shall be adopted after a public hearing and thereafter made available to any  
21 member of the public that requests such Order.

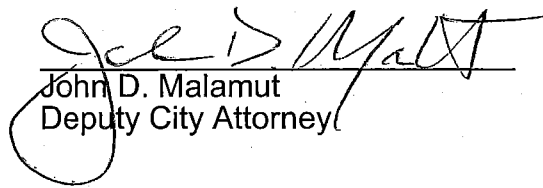
22 (b) Should there be any conflict between the regulations set forth in this Ordinance and  
23 the BART use agreement for Harvey Milk Plaza, the agreement shall prevail. Notwithstanding  
24 the above, the Board of Supervisors urges the Director of DPW, in consultation with the City  
25

1 Attorney's Office, to coordinate with BART in order to apply the regulations in this Ordinance  
2 to the maximum extent feasible.

3 Section 4. Effective Date. This ordinance shall become effective 30 days from the  
4 date of passage.

5 APPROVED AS TO FORM:  
6 DENNIS J. HERRERA, City Attorney

7  
8 By:

  
9 John D. Malamut  
Deputy City Attorney

**LEGISLATIVE DIGEST**

[Regulations for Jane Warner and Harvey Milk Plazas]

**Ordinance: 1) approving regulations for Jane Warner Plaza at the intersection of Castro and 17<sup>th</sup> Streets and Harvey Milk Plaza adjacent to the intersection of Castro and Market Streets; and 2) authorizing official acts in connection with the regulations.**

Existing Law

The Department of Public Works (DPW) regulates specified activities on the dedicated public right-of-way in accordance with the Public Works Code and other Municipal Codes. The public right-of-way consists of streets, sidewalks, and other public places such as plazas as further defined in Public Works Code Sections 2.4.4(t) and 244. Jane Warner Plaza, formerly known as the 17<sup>th</sup> Street Plaza or Castro Commons, is located at the intersection of 17<sup>th</sup> and Castro Streets and is subject to DPW regulation under the Public Works Code. Harvey Milk Plaza, is located adjacent to the Castro Muni station at Castro and Market Streets, and portions of this plaza are subject to DPW regulation under the Public Works Code.

Amendments to Current Law

This Ordinance would establish specific DPW regulations for the use of Jane Warner Plaza and those portions of Harvey Milk Plaza under DPW jurisdiction. The regulations apply to hours for specified activities, sleeping, camping, peddling and vending merchandise, performance of labor, smoking, and use of wheeled equipment. The Ordinance also establishes violations and penalties for activities that conflict with the regulations.



**EDWIN M. LEE**  
MAYOR

**POLICE DEPARTMENT  
CITY AND COUNTY OF SAN FRANCISCO**

THOMAS J. CAHILL HALL OF JUSTICE  
850 BRYANT STREET  
SAN FRANCISCO, CALIFORNIA 94103-4603



**GREGORY P. SUHR**  
CHIEF OF POLICE

December 29, 2011

Ms. Alisa Miller, Clerk  
Land Use & Economic Development Committee  
Board of Supervisors  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco CA 94102-4694

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2012 JAN -4 AM 9:49  
BY *[Signature]*

Dear Ms. Miller:

RE: Request for Input:  
File No. 111248-2 – Substitute Legislation Introduced

After staff review of the substitute proposed legislation pertaining to Jane Warner and Harvey Milk Plazas, the San Francisco Police Department recommends inclusion of language about no loitering or sitting on the pavement in the plazas between 9:00 a.m. and 9:00 p.m. The Civil Sidewalk Ordinance, which added Section 168 to the Police Code, is not enforceable in the “Pavement to Parks” projects.

If I can be of further assistance, please contact my office.

Sincerely,

*[Signature]*  
**GREGORY P. SUHR**  
Chief of Police

/cf



Member, Board of Supervisors  
District 8



City and County of San Francisco

**SCOTT WIENER**

威善高

**January 17, 2012**

Gregory P. Suhr  
Chief of Police  
Hall of Justice  
850 Bryant Street  
San Francisco, CA 94103

**Ordinance - Regulations for Jane Warner and Harvey Milk Plazas (File # 111248-2)**

Dear Chief Suhr:

I am in receipt of your letter dated December 29, 2011, in which you recommend that this legislation be amended to include a prohibition on sitting or loitering on the pavement of the Jane Warner Plaza from 9 a.m. to 9 p.m. Your rationale for the recommendation is that Pavement to Parks projects - including Jane Warner Plaza (but not Harvey Milk Plaza) - are not covered by the sit-lie ordinance. While I greatly appreciate your taking the time to make the recommendation, I respectfully decline to make this amendment to the legislation.

As you note in your letter, the sit-lie ordinance, as proposed by Mayor Newsom and adopted by the voters, contains a specific exclusion for the Pavement to Parks program. The rationale for that exclusion is that these plazas are different from sidewalks and instead are public gathering spaces similar in various respects to parks. We want to encourage people to gather and spend time in the plazas, which may include various forms of sitting on chairs, benches, ledges, and even the ground. Given the exclusion of Pavement to Parks from the sit-lie ordinance adopted by the voters, I am hesitant to contradict that exclusion here.

My legislation is designed to ensure that these plazas are usable by everyone. In that spirit, the legislation imports some basic rules already in place in our parks and/or our sidewalks, such as prohibiting smoking, camping, and large shopping carts and requiring permits for selling merchandise. At the same time, the legislation takes a very balanced approach by avoiding any restrictions on the community's right to assemble in the plazas to protest, celebrate, perform, hold vigils, and the like, and by categorically exempting the sale or distribution of printed material from any restrictions.

Member, Board of Supervisors  
District 8



City and County of San Francisco

**SCOTT WIENER**

威善高

I believe that the current version of the legislation strikes the right balance in terms of use of the plaza, ensuring that no one monopolizes the plaza to the exclusion of other community members, and respecting civil rights. As a result, while I very much appreciate your recommendation, I cannot support it at this time.

Thank you, and I look forward to working together to make our civic public spaces the best they can be.

Sincerely,

A handwritten signature in black ink that reads "Scott Wiener".

Scott Wiener  
Supervisor, District 8

8Wiener

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# NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

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President  
Executive Director

Supervisors Scott Weiner, Marsha Cohen, and Eric Mar  
Land Use & Economic Development Committee, San Francisco Board of Supervisors  
San Francisco City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

January 19, 2012

Re: Proposed Regulations for Jane Warner and Harvey Milk Plazas (No. 111248)

Dear Supervisors Weiner, Cohen, & Mar:

We are writing on behalf of the National Law Center on Homelessness & Poverty (Law Center) to express our concerns about the harmful impact Proposed Ordinance No. 111248, Regulations for Jane Warner and Harvey Milk Plazas, will have on the civil and human rights of homeless San Francisco residents. The city of San Francisco should be pursuing constructive approaches to ending homelessness – such as expanding the supply of affordable and supportive housing – rather than criminalizing some of its most vulnerable citizens. Members of the Board should vote against the ordinance.

The proposed ordinance will disproportionately impact homeless individuals. For instance, Section B of the ordinance prohibits sleeping during any hour of the day and Section C prohibits camping (including constructing or maintaining minimal shelter from the elements or cooking devices). In conjunction with other anti-sleeping regulations currently in place throughout the city,<sup>1</sup> the ordinance will further criminalize homeless individuals' ability to engage in basic, life-sustaining activities in public. In communities where affordable housing or shelter space is inadequate, ordinances that prohibit the public performance of activities necessary for life, such as sleeping, violate the civil and human rights of homeless persons. See *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006), *vacated per settlement agreement* 505 F.3d 1006 (9th Cir. 2007); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1583 (S.D. Fla. 1992); International Covenant on Civil and Political Rights, art. 6, Apr. 2, 1992, 138 Cong. Rec. S4781-01.

The specific prohibitions the Committee has chosen to include in the proposed ordinance strongly suggest the ordinance is intended to target homeless individuals and discourage their presence in Jane Warner and Harvey Milk Plazas, both spaces open to the general public. For instance, the wheeled conveyance prohibition (Section G) clearly targets homeless individuals, by excepting the use of two-wheeled shopping carts more likely to be used by non-homeless individuals. Additionally, the vague and confusing terminology used in several of the sections, such as those prohibiting peddling and vending merchandise or printed material and

<sup>1</sup> For example: SAN FRANCISCO, CA., SAN FRANCISCO POLICE CODE art. 1, § 22-24 (1979); SAN FRANCISCO, CA., SAN FRANCISCO PARK CODE art. 3, § 3.12-3.13 (2008); CAL. PEN. CODE §647(e) (2012).

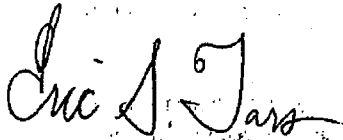
the performance of labor, increases the potential for arbitrary and discriminatory enforcement. The potential for such enforcement raises concerns regarding a lack of due process and a failure to comply with international human rights standards. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 171 (1972); International Convention on the Elimination of All Forms of Racial Discrimination, art. 2, Oct. 21, 1994, 140 Cong. Rec. S7634-02.

Laws that punish homeless people for activities they must do in order to survive perpetuate a vicious cycle that keeps people locked into homelessness. A homeless person with a criminal record for sleeping outside has more difficulty obtaining housing and employment than a peer who has never been arrested or convicted. Homeless individuals will likely lack the ability to pay the criminal and administrative penalties authorized by the ordinance, which can be as much as \$500 per violation. Criminalization also fails to address the root causes of homelessness and wastes limited resources by using money to house individuals in jail rather than providing supportive housing. In a nine-city survey of shelter, supportive housing, and jail costs, jail costs were on average two to three times the cost of supportive housing.<sup>2</sup>

We know that the City of San Francisco participates in the 100,000 Homes Campaign, which works to help communities house the most vulnerable homeless people living outdoors. We recommend expanding this effort. It would be a far more effective use of taxpayer dollars to help homeless persons living in the Jane Warner and Harvey Milk Plazas find permanent housing than to arrest them. In addition, this approach would be dramatically more humane, and would help fulfill the human right to housing for all San Francisco residents.

The Law Center would be happy to serve as a resource to help San Francisco find constructive approaches to homelessness that do not involve criminalization. Please feel free to contact us if you have any questions or would like further information. Thank you for your consideration of this letter.

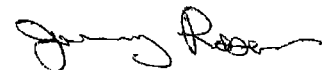
Sincerely,



Eric S. Tars  
Director of Human Rights  
& Children's Rights Programs  
etars@nlchp.org



Heather Maria Johnson  
Civil Rights Attorney  
hjohnson@nlchp.org



Jeremy Rosen  
Policy Director  
jrosen@nlchp.org

<sup>2</sup> Lewin Group, *Costs of Serving Homeless Individuals in Nine Cities: Chart Book* (2004) available at [http://documents.csh.org/documents/ke/csh\\_lewin2004.PDF](http://documents.csh.org/documents/ke/csh_lewin2004.PDF).