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New Problems With $310 Million Housing Bond

Housing Delays = Justice Denied

by Patrick Monette-Shaw

Shrinking Housing: The City's supply of affordable housing has been shrinking for over a decade. When it's not how many fewer affordable units there are, it's units that are much, much smaller. Are we just sweeping this dirty little secret under the rug?

Since we're in the midst of the worst housing crisis in San Francisco's history, you'd think The City wouldn't waste a single day building urgently-needed affordable housing. Given the performance of the Mayor's Office of Housing and Community Development (MOHCD), you'd be wrong. MOHCD has been acting as if it can waste as many days as it pleases, people needing affordable housing be damned.

> **"Since we're in the midst of the worst housing crisis in San Francisco's history, you'd think The City wouldn't waste a single day building urgently-needed affordable housing. You'd be wrong."**

Supervisor Mark Farrell's August 9 *San Francisco Examiner* Op-Ed wrongly alleged the November ballot measure to create a Commission having oversight of MOHCD would slow down affordable housing construction.

My September 23 *Examiner* Op-Ed (responding to Farrell) noted a Housing Commission might actually ***speed up*** affordable housing production. After all, MOHCD has sole discretion over spending allocation decisions involving upwards of $3 ***billion*** dollars from various funding sources. MOHCD has already contributed to slowing down projects.

Readers may recall my June 2016 *Westside Observer* article, "*Last November's Affordable Housing Bond Measure Snookered Voters*," in which I covered how voters were misled about the November 2015 ballot creating the "*$310 million Affordable Housing Bond*." In that article, I covered the January 2016 meeting of the Citizen's General Obligation Bond Oversight Committee (CGOBOC) and various problems CGOBOC is facing dragging accurate information out of MOHCD.

Fast forward to now. CGOBOC's subsequent meetings in July and October illustrate problems with the Bond have worsened.

MOHCD Shifts Planned Spending of $310 Million Affordable Housing Bond

Mayor Ed Lee created a Housing Work Group advisory committee in 2014 to begin planning for the November 2015 election that featured the Affordable Housing Bond measure on the ballot. Over the 18-month period between January 2015 and July 28, 2016, the planned uses of the housing bond kept shifting, at dizzying speed, and for all we know, actual spending of the Bond may shift even more, particularly if cost overruns due to project "change orders" occur.

> **"Over the 18-month period between January 2015 and July 28, 2016, the planned uses of the housing bond kept shifting, at dizzying speed; for all we know, actual spending of the Bond may shift even more."**

Shifting Categories of Bond Spending

As a summary of previous MOHCD planned spending charts illustrate, plans for Bond spending has shifted dramatically. For instance:

- **"Top-Loss Catalyst Fund":** As I reported in "*Mayor's Housing Scam, Redux*" in April 2015, in 2014 a "Findings and Recommendations" document prepared by the Mayor's Housing Work Group recommended forming a public–private partnership "accelerator fund" to enable nonprofit developers to "act quickly and complete [sic; 'compete'] on the open market to purchase land for construction of affordable housing and buildings to be improved as permanently affordable units."

  Table 1 in the summary of spending charts, had included on January 27, 2015 a $20 million carve-out in the bond for a "Catalyst Fund Top Loss" program thought to have been the "accelerator fund." It's not clear at what point the "Catalyst Fund" was removed from planned bond spending, and it's also not known whether the Catalyst Fund was moved from the bond to another funding stream within MOHCD's $3 billion expected revenue over the next 20 years.

> **"The Mayor's 2014 Housing Work Group developing the bond recommended forming a public–private partnership 'accelerator fund' to enable nonprofit developers to 'act quickly and complete [sic; 'compete'] on the open market.' It would have been an off-balance-sheet fund."**

The Housing Work Group report stated the accelerator fund would leverage limited public dollars for housing by pursuing development of the Housing Affordability Fund as an "off-balance-sheet" fund.

> "Since January 2015, Bond spending plans had included a $20 million carve-out for a 'Catalyst Fund Top Loss' program thought to be the 'accelerator fund'."

Off-balance sheet (OBS) financing means an entity doesn't include liabilities on its balance sheet. It's an accounting concept impacting a company's debt and liability. OBS financing is very attractive to all companies, but especially to those that are already highly levered. Clearly, MOHCD pursues leveraging at every opportunity that it can.

Readers will recall that Enron Corporation's collapse and eventual bankruptcy in 2001 were directly tied to Enron's use of OBS scams hiding billions of dollars in debt.

> "A corollary is that top-loss instruments are the most expensive sources of funding. It's unknown whether MOHCD sought to pursue — or is still pursuing — a public-private partnership *Top-Loss Catalyst Fund* to drive profits to MOHCD's housing developer partners."

The term "top loss" refers to the liability structure in the mix of debt and equity in investment activities. Categories in a liability structure represent layers in the creditor hierarchy, with the top layer being the first to absorb a loss. Once a layer is depleted, further losses are applied to the next layer, and so on. That means liability categories closest to the top of the structure are the riskiest for investors and attract correspondingly higher rates of return.

A corollary is that top-loss funding instruments are the most expensive sources of funding. It's unknown whether MOHCD sought to pursue — or is still pursuing — a public-private partnership *Top-Loss Catalyst Fund* to drive profits to MOHCD's housing developer partners on behalf of Mayor Ed Lee.

> "It's not clear at what point the 'Catalyst Fund' was removed from planned bond spending, or whether it was re-named within Bond spending categories, and it's also not known whether the Catalyst Fund was moved from the bond to another funding stream within MOHCD's $3 billion expected revenue streams."

Nor is it known whether MOHCD has potentially simply re-named the $20 million *Top-Loss Catalyst Fund* subcategory proposed in January 2015 to a brand new subcategory titled "*Middle-Income MOHCD Production*" announced to CGOBOC for the first time on July 28 — that had not been presented to CGOBOC on January 28, 2016.

Not too surprisingly, the new "*Middle-Income MOHCD Production*" category is being funded with an identical $20 million in planned Bond spending in FY 18–19 as shown in Table 6 in the summary document linked above, and another $7 million this new category will receive in FY 17–18 set to begin in July 2017 — for a total of $27 million. [**Note:** MOHCD informed CGOBOC on September 12 the spending has been pushed back a full fiscal year since MOHCD first presented Table 6 to CGOBOC on July 28; the dates here reflect the September 12 change.] Sadly, MOHCD has not yet produced any documents indicating what the "*Middle-Income MOHCD Production*" category will be spent on.

> "On July 28, both the 'Middle-Income Rental Program' and 'Expiring Regulations Preservation' subcategories were suddenly eliminated from the 'Middle-Income Housing' main category of bond spending. Three new subcategories suddenly appeared, including 'Middle-Income Teacher Housing,' 'Middle-Income Buy-in Program,' and 'Middle-Income MOHCD Production,' none of which were described."

- **"Middle-Income Housing Main Category":** Tables 3, 4, and 5 in the summary linked above show both a "Middle-Income Rental Program" and a "Expiring Regulations Preservation" program existed as two subcategories within the "Middle-Income Housing" main category of planned bond uses as of June 23, 2015, July 14, 2015, and January 28, 2016, respectively. Table 3 shows that as of June 23, 2015, a total of $17 million was planned for the "Middle-Income Rental Program" subcategory, and a total of $25 million was planned for the "Expiring Regulations Preservation" subcategory.

But without any warning to CGOBOC, on July 28, MOHCD presented Table 6 in the attached summary to CGOBOC. Both the "Middle-Income Rental Program" and "Expiring Regulations Preservation" subcategories were suddenly eliminated from the "Middle-Income Housing" main category of planned bond uses, and three new subcategories appeared that had not been previously listed in any previous document describing planned bond uses. The three new categories are "Middle-Income Teacher Housing," "Middle-Income Buy-in Program," and "Middle-Income MOHCD Production" none of which programs have been described by MOHCD.

The "Expiring Regulations Preservation" subcategory, which was slated to receive $25 million in Bond spending, is discussed in more detail, below.

> **"Between June 23, 2015 and July 28, 2016, MOHCD had been planning to begin spending proceeds of the bond during FY 2015–2016. On September 12, MOHCD suddenly notified CGOBOC that it was shifting the spending to begin in FY 2016–2017. To most observers, that represents a one-year delay."**

Although we don't yet know what the new "Middle-Income MOHCD Production" subcategory will be used for, MOHCD did respond on July 25 to yet another records request about the new "Middle-Income Buy-In Program," saying:

> "*In response to your request for public records, please be advised that the Middle-Income Buy-In Program represents MOHCD's* ***intention*** *to include middle income units (i.e., housing affordable to households between 80% AMI and up to 150% AMI, depending on unit size and neighborhood) in a variety of mixed-income developments. These funds will be disbursed as long-term loans, at below-market interest rates. Anticipated project types receiving the funds will include developments combining low-income and middle-income units;* ***market-rate*** *and middle-income units; and* ***market-rate****, middle-income, and low-income units. The goal is to combine the bond proceeds with the best available* ***leveraged*** *financing in order to maximize the production of middle-income units. Actual projects and per-unit loan amounts are still to be determined*."

There's that word "leveraged" again! And again, there's no information describing what the "Middle-Income Buy-In Program" will actually fund or how the "buy-in" will be structured, but Table 6 shows that it will also receive $24 million of the $80 million portion of the "Middle-Income Housing" main category. More worrisome is whether the $20 million *Top-Loss Catalyst Fund* has alternatively been renamed to the "Middle-Income Buy-In Program."

And shockingly, MOHCD freely admits portions of the $310 million bond will actually subsidize market-rate housing!

Delayed Bond Spending

As I've reported, Supervisor Mark Farrell has ignored MOHCD's own delays concerning new affordable housing construction. One look no further than MOHCD's September 12 response to questions raised by CGOBOC members.

Table 7 in the summary of evolving MOHCD planned spending charts for the $310 million Affordable Housing Bond illustrates that between June 23, 2015 and July 28, 2016, MOHCD had been planning to begin spending proceeds of the bond approved by voters during FY 2015–2016. But Table 7 suddenly shifted the spending to begin in FY 2016–2017. To most observers, that represents a one-year delay introduced by MOHCD itself.

> **"Of the bond's $74.5 million to be spent in FY 2016–2017, only $3.9 million (5.2%) is earmarked for the 'Middle-Income Housing' main category. All other middle-income housing categories are being delayed until FY 2017–2018, which will then be awarded $33 million in bond funds."**

That may be because MOHCD delayed until October 2016 issuing the first "*tranche*" (slice) of the bond.

Table 7 indicates that the $310 million bond will include spending $74.5 million (24.8% of the bond) in FY 2016–2017 (Year 1), $103 million (34.3% of the bond) in FY 2017–2018, and the lion's share of $122.5 million (40.8%) in FY 2018–2019. Of the $74.5 million bond spending in FY 2016–2017, fully 54.5% ($40.6 million) is earmarked for public housing.

Of the bond's $74.5 million to be spent in FY 2016–2017, only $3.9 million (5.2%) is earmarked for the 'Middle-Income Housing' main category, but only for the "Downpayment Assistance Loan Program" (DLAP) and "Teacher Next Door" subcategories that had previously been funded by the much larger Housing Trust Fund, suggesting the two subcategories are being funded by *supplanting* HTF funds with Affordable Housing Bond funds.

All other middle-income housing subcategories are being delayed until Year 2 of bond spending in FY 2017–2018, which will then be awarded $33 million in bond funds.

By way of contrast, the remainder of the $74.5 million to be spent in FY 2016–2017 targets $40.6 million (54.5%) to the Public Housing main category, and the remaining $30 million (40.3%) to the Low-Income Housing main category.

Supervisor Farrell had to have known when he wrote his *San Francisco Examiner* Op-Ed in August 2016 of MOHCD's delay in bond spending for middle-income housing projects.

"By way of contrast, the remainder of the $74.5 million to be spent in FY 2016–2017 targets $40.6 million (54.5%) to the Public Housing main category, and the remaining $30 million (40.3%) to the Low-Income Housing main category."

The delay in middle-income affordable housing production appears to be due to myopic Mayor Ed Lee and MOHCD's myopic director, Olson Lee, who are increasingly sounding like brothers separated at birth.

In January 2014, Mayor Lee intoned: "***I don't think we paid any attention to the middle class***. *I think everybody assumed the middle class was [sic: were] moving out*." [Emphasis added.]

Fast forward to October 21, 2016 when Olson Lee stupidly claimed with a straight face during a hearing of the Board of Supervisors Government Audit and Oversight Committee that "We [eventually] found out ***the need for affordable housing is on-going***." [Emphasis added.]

Big duh, Mayor Lee. An even bigger duh, Olson! The two men could try putting lipstick on a pig, but the lipstick wouldn't disguise the true color of their outrageously clueless remarks.

"The two men — Mayor Ed Lee and MOHCD director Olson Lee — could try putting lipstick on a pig, but the lipstick wouldn't disguise the true color of their outrageously clueless remarks."

Expiring Regulations Preservation

"Expiring regulations preservation" refers to attempts to preserve affordable housing apartments that were built partially with funding from San Francisco's Redevelopment Agency that issued loans for new housing construction in underdeveloped areas, typically with 25- to 30-year legal contracts, called "covenants," designating portions of a building's apartments as affordable housing until the covenant expired. After that, rent could rise to any amount.

Between January 2015 and January 2016, MOHCD had planned all along to use a portion of the category for Middle-Income Housing in the Affordable Housing Bond to "acquire, rehabilitate, and preserve existing rental housing in order to prevent displacement of long-term residents and to prevent the loss of affordable housing rental stock" as part of its "expiring regulations preservation" efforts.

In response to a records request, MOHCD claimed on September 1, 2015 that it had "no responsive documents" listing planned properties, the number of units to be preserved, and in which locations. It also claimed in the same response that it had no documents explaining whether the "expiring regulations preservation" subcategory had received additional funding when the "Middle Income Housing" main category was increased from $57 million to $80 million. MOHCD never indicated what the additional $23 million would be used for, or allocated to, in that main category.

But in a second e-mail response also on September 1, MOHCD said there were five buildings that it knew of that had Below Market Rate (BMR) rental units with rent restrictions that could expire in the near future, based on the financing used at the time of the buildings were constructed. The five buildings — containing 624 rent-restricted units between them — were:

- 737 Post in D-3 that has 50 BMR units and restrictions that could expire March 2016;
- Fillmore Center at 1475 Fillmore Street in D-5that has 223 BMR units with restrictions that could expire in December 2017;
- South Beach Marina Apartments at 2 Townsend Street in D-6 that had 101 BMR units having rent restrictions that expired in January 2015;
- Bayside Village at 3 Bayside Village Place in D-6 that has 174 BMR units, with restrictions that could expire in December 2016;
- Rincon Center at 121 Spear Street in D-6 that has 76 BMR units with rent restrictions that could expire in January, 2021.

As noted above, on July 28, 2016 MOHCD presented an updated chart listing planned bond uses spending. Notably, a document MOHCD presented to the Board of Supervisors on June 23, 2015 and MOHCD's presentation to CGOBOC on January 28, 2016 both included the "Expiring Regulations Preservation" subcategory within "Middle-Income Housing" main category. But after 18 months of planning to fund the expiring regulations, MOHCD suddenly eliminated the "Expiring Regulations Preservation" category from planned bond spending on July 28, 2016 — without any explanation.

"After 18 months of planning to fund the expiring regulations, MOHCD suddenly eliminated the 'Expiring Regulations Preservation' category from planned bond spending on July 28, 2016. It's not yet known whether the 'Expiring Regulations Preservation' program was transferred from planned Bond spending to other MOHCD funding sources."

It's not yet known whether the "Expiring Regulations Preservation" program was transferred from planned Bond spending to other MOHCD funding sources, possibly including the separate Housing Trust Fund, or whether MOHCD dropped its plans to try to preserve this affordable housing. The South Beach Marina Apartments were eventually saved. But it's also not yet known whether the other four properties listed above — or other properties facing expiration of rent restrictions — have actually been saved and preserved.

MOHCD Stonewalls CGOBOC and Grand Jury

Back on March 5, 2002, San Francisco voters adopted Proposition F, the "Citizen Oversight of Bond Expenditures Initiative," creating the CGOBOC, a committee of nine members charged with oversight of all General Obligation Bonds to inform the public about expenditures of bond proceeds through periodic review of bond spending progress, and publishing regular reports. CGOBOC has had its own lackluster performance of its duties.

So it's not too surprising that MOHCD has been stonewalling CGOBOC regarding the $310 million Affordable Housing Bond voters passed in November 2015 for fully a year. MOHCD has also stonewalled the Civil Grand Jury.

Delays Developing "Metrics" for CGOBOC

My June 2016 *Westside Observer* article also addressed CGOBOC's January 28, 2016 meeting regarding the extensive discussion and CGOBOC member questions developing the reporting "metrics" of data points CGOBOC expects MOHCD to utilize in measuring progress on the bond.

"At CGOBOC's July 28 and October 3 meetings, MOHCD continued stonewalling CGOBOC about which metrics will be used to assess performance of the Affordable Housing Bond. CGOBOC is scheduled to receive its next update from MOHCD in January 2017 — meaning there will have been a full one-year delay developing the metrics that will be employed."

The metrics involve various factors to quantifiably measure bond spending, including the number of units to be built or preserved in each category of affordable housing development, income levels by Area Median Income (AMI) for eligibility for the housing, amount of funds allocated to each category of housing development, household size, special needs populations, and other factors.

At CGOBOC's July 28 and October 3 meetings, MOHCD continued stonewalling CGOBOC about which metrics will be used to assess performance of the Affordable Housing Bond. CGOBOC is scheduled to receive its next update from MOHCD in January 2017 — meaning that there will have been a full one-year delay at developing and agreeing on the metrics that will be employed. As of this writing the metrics have not been finalized. Why should it take a year or longer to develop the metrics part way through CGOBOC's oversight of bond spending?

"The issue of 'change orders' is a big, big deal, and CGOBOC has had a lousy track record of examining change orders on all sorts of bond-funded projects."

Why "Change Orders" Are Such a Big Deal — or Deal Breaker's

The issue of "change orders" is a big, big deal, and CGOBOC has had a lousy track record of examining change orders on all sorts of bond-funded projects, including the Laguna Honda Hospital (LHH) replacement facility, the replacement hospital for

San Francisco General Hospital, countless projects involving our parks handled by the Recreation and Park Department (RPD), and various Branch Library Improvement Projects (BLIP) for the Public Library system.

"Change orders" are requests for changes introduced after construction plans and specifications are completed for a given project. Change orders include those: 1) Necessary to correct design errors; 2) Necessary to correct design omissions; 3) Resulting from unforeseen site conditions discovered during construction; 4) Involving owner-initiated requests to add, change, or delete scope to the project after design completion; 5) Necessary to comply with construction codes revised after completion of design; or 6) Issued to incorporate cost savings.

"In May 2010 I wrote an article discussing the $71.6 million in change orders on the Laguna Honda Hospital replacement facility, which contributed to the City eliminating 420 of the hospital's beds by reducing the scope of the rebuild. Because those 420 beds weren't constructed, many elderly and disabled San Franciscans are now simply dumped out of county due to the severe lack of SNF beds in the City."

When I worked for a short period as a City employee at RPD's Capital Improvement Division in late 2009, I became aware that San Francisco's Public Works Department (which handles most City construction projects) has a robust computer system to document graphically the change orders for any given park upgrade project.

Having become aware of DPW's change order computer system, in May 2010 I wrote an article discussing the $71.6 million in change orders on the LHH replacement facility, which contributed to the $183.4 million cost overruns on the LHH rebuild that in turn caused the City to eliminate 420 of the beds at LHH by reducing the scope of the project. Because those 420 beds weren't constructed, many elderly and disabled San Franciscans are now simply dumped out of county, given the severe — and worsening — lack of skilled nursing care beds available in our City.

"During CGOBOC's many hearings on the LHH replacement project, CGOBOC never conducted a meaningful analysis of LHH's change orders."

During CGOBOC's many hearings on the LHH replacement project, CGOBOC never conducted a meaningful analysis of LHH's change orders or discussed publicly LHH's cost overruns by the various change order categories. Nor did CGOBOC discuss whether LHH's "design-build" contracting approach had actually increased change orders to correct design errors and omissions potentially introduced by subcontractors. Financial reports to CGOBOC presented great detail about how much of a given bond measure's budget had been encumbered, but almost nothing about change orders. CGOBOC simply evaded conducting change order reviews as part of their fiduciary duties of bond oversight.

Although CGOBOC's then-Chairperson, Abraham Simmons, and several members of CGOBOC appear to have taken seriously my suggestion CGOBOC review the various change order categories on ***each*** bond-financed project, CGOBCOC appears not to have discussed change orders in depth on any bond-funded projects since at least 2010.

"'One contractor who has done business with the city says change orders often amount to a sort of bait-and-switch'."

— Max Cherny, *San Francisco Weekly*

You may wonder why the issue of change orders is of concern.

First, consider the *San Francisco Weekly's* September 15 article, "*5 Corrupt Ways to Influence San Francisco Politics*." The fifth way involves — wait for it — none other than ***change orders***! Even CGOBOC members ***must*** understand this.

The *Weekly's* Max Cherny wrote, in part:

> "*One form of graft that is hard to track is the use of charge orders in large city projects to bleed cash from city coffers.*
>
> *The mechanics are straightforward: A contractor bids on a contract with the city — say, to renovate public housing. The company then submits a 'change order' saying it needs a little more money to finish a part of the job. But corruption in change orders is hard to sniff out: The technical aspects of a job can be arcane, making the details and costs subjective.*
>
> *One contractor who has done business with the city says change orders often amount to a sort of bait-and-switch.*"

The bait-and-switch, of course, being come in with a low bid to snag the contract, and then start submitting change orders to increase profits reaped from a given project.

The second concern with change orders is that in order to bring a project in on-time and on-budget, project managers then start cutting "scope" of a project, by chopping what will be delivered for the same amount of money. Take the elimination of the 420 beds at LHH, for example.

So why are change orders of great concern for the $310 million Affordable Housing Bond?

A third concern with change orders is that neither the City nor DPW are involved in actually constructing the housing developed by this housing bond. Instead, developers who are awarded loans for the housing will perform the construction, and it's unclear whether the for-profit or non-profit developers will track change orders as closely as the City might do. Worse, it's unclear whether CGOBOC will closely examine change orders on the Affordable Housing Bond.

"Why are change orders of great concern for the $310 million Affordable Housing Bond? Any change orders involving public housing programs that increases the allocation to the Public Housing category will have to come out of the hides of Mission District, Low-Income, and Middle-Income housing categories that may have to have their various 'scopes' reduced."

During CGOBOC's July 28 meeting, CGOBOC's chair, Brian Larkin, and the City Controller's audit manager Tonia Lediju exchanged questions and answers regarding change orders. Larkin stated that so-called design-build projects "*Are not going to get errors and omissions change orders, any more. They're going to give up a certain amount of control over their projects*." It's unclear what Mr. Larkin was referring to, since the City Controller claimed in response to a follow-up request that change orders for design-build projects "***may*** still occur." The qualifier "may" is disturbing.

The four main categories of this bond's spending includes $80 million for public housing, $50 million for site acquisition and affordable housing set aside for the Mission District, $100 million for low-income housing (to be somehow split between new construction and preservation of existing rental housing, although MOHCD hasn't indicated how much of the $100 million will go towards new construction), and $80 million for "Middle-Income Housing" and the four- to five-subcategories within the middle-income housing main category.

Since, as discussed above, $40.6 million of the Public Housing main category will be spent in FY 2016–2017 in Year 1, and another $36.8 million will be spent in Year 2, any change orders involving public housing programs that increases the allocation to the Public Housing main category will come out of the hides of Mission District, Low-Income, and Middle-Income housing categories that may have to have their various "scopes" reduced in order to accommodate change order increases to the public housing category.

And because MOHCD has "sole discretion" on its spending decisions, MOHCD may well come back mid-bond altering yet again how it wants to spend the housing bond, and CGOBOC may find itself facing yet more changes to planned spending that has already occurred between January and September 2016.
No small wonder that CGOBOC member Brenda Kwee McNulty fretted during CGOBOC's January 28, 2016 meeting about whether the correct bond allocation decisions had been made at the outset.

Delays in Implementing Grand Jury Concerns About "Metrics"

In June 2014, the 2013–2014 Civil Grand Jury issued a blistering report about MOHCD titled "*The Mayor's Office of Housing: Under Pressure and Challenged to Preserve Diversity*."

The Civil Grand Jury's sixth "finding" noted MOHCD lacks discipline in posting and reporting Affordable Housing metrics and program results reporting on its website. The Grand Jury recommended MOHCD publish those metrics with greater frequency to help the public assess progress of MOHCD's new development and housing efforts. In its response to the Grand Jury on September 5, 2014, MOHCD claimed the recommendation would be implemented within a year on its website on a *quarterly basis*.

"The Civil Grand Jury's sixth 'finding' noted MOHCD lacks discipline in posting and reporting Affordable Housing metrics and program results reporting on its website."

Unable to locate the quarterly data on MOHCD website, I submitted a records request to locate the data. In response to the records request, on October 13, 2016 — fully two years after the Grand Jury's report and MOHCD's response to the Grand Jury — MOHCD provided a link to the data. It turns out MOHCD isn't posting progress reports on its own website at www.sfmohcd.org, but on the City's so-called "SF Open Data" website. The data sets are a complete mess, aren't at all user-friendly, and aren't available for export to Microsoft Excel to perform a secondary analysis of the data.

"It's completely sad that MOHCD has stonewalled — unnecessarily delaying for fully two years reporting metrics that had been of concern to the Grand Jury."

MOHCD indicated in its October 13 e-mail response:

> "*We understand that it can be difficult to find [the quarterly data on our website] and interpret, and that it isn't clearly labeled as "Quarterly Updates." We are currently improving, simplifying, and streamlining our website and our data reporting. We anticipate that by the next quarterly reporting period, due December 31, 2016, we will have a new "Quarterly Metrics" webpage*."

It's completely sad that MOHCD has stonewalled — unnecessarily delaying for fully two years reporting metrics that had been of concern to the Grand Jury.

Civil Grand Jury Concerns About Diversion of Funds to Housing Authority

The 2013–2014 Civil Grand Jury's report also expressed concerns about diversion of Housing Trust Fund (HTF) revenues to the Housing Authority's successor agency for repairs to public housing properties, and whether the diverted funds would be repaid to the HTF. The Jury — among many other substantial concerns — was clearly very concerned that the diverted funds be repaid to ensure MOHCD spends the HTF on ***new*** affordable housing promised to voters. The Jury wrote:

"The Jury supports the notion that any diversion or loan of funds to the Housing Authority plan should not result in a permanent loss in HTF funds available to MOHCD to achieve new affordable housing goals."

— 2013–2014 Civil Grand Jury

> "*The Jury supports the notion that any diversion or loan of funds to the Housing Authority* ***plan should not result in a permanent loss in HTF funds available to MOHCD to achieve new affordable housing goals*** *for traditional low and moderate income populations as originally voted on in 2012*." [Emphasis added]

Recommendation 4 in the Grand Jury's report noted that when Housing Trust Funds (HTF) are allocated to Housing Authority properties and projects, MOHCD and the Mayor should document a funding analysis for the allocations in the year of encumbrance, with annual updates to report on repayment of those funds back into the HTF.

MOHCD's September 5, 2014 consolidated response to the Grand Jury indicated MOHCD would provide a report regarding use of the HTF and other resources allocated to public housing at the end of the year of encumbrance, and MOHCD would include in such reports all relevant information regarding repayments.

"MOHCD's September 12 response also claimed that any HTF revenues diverted to Housing Authority public housing would be documented in its annual reports, along with any repayments made."

At CGOBOC's October 3, 2016 meeting, MOHCD responded to a series of questions CGOBOC members raised during previous meetings on January 28 and July 28. CGOBOC member Larry Bush specifically questioned whether bond funds used for public housing repairs — which the City should have been maintaining all along, but had not done — would be repaid to the HTF. MOHCD's September 12 response also claimed that any HTF revenues diverted to Housing Authority public housing would be documented in its annual reports, along with any repayments made, as MOHCD promised the Grand Jury it would so report.

In a separate October 11 e-mail response to an October 10 records request I had placed regarding repayments from the Housing Authority to the HTF, MOHCD pointed once again to its FY 2014–2015 annual report, which lists on page 47 three projects totaling approximately $3.4 million funded solely by the HTF on so-called "Rental Assistance

Demonstration" (RAD) programs, which is a U.S. HUD program. But it is not clear whether those RAD projects funded by the HTF were temporary loans for Housing Authority emergency repairs that would be repaid.

MOHCD's annual report didn't mention any funds repaid to the HTF. But MOHCD's e-mail response indicated "*There were no Housing Trust Fund repayments in FY14–15*."

HTF Loans to the Housing Authority

Although MOHCD's Annual Report for FY 2014–2015 doesn't list any Housing Authority loans repaid to the HTF, it isn't at all clear how much money has been diverted from the HTF to San Francisco's Housing Authority.

A record response from the City Controller's Office shows that in 2014, MOHCD diverted $2.964 million from the HTF directly to the Housing Authority as "Loans Issued by the City." For Fiscal Years 2015, 2016, and 2017, the Controller's Office doesn't appear to have included all the necessary information, since those records contain a dizzying amount of encumbrances from one fiscal year carried forward to a subsequent fiscal year, and also contain unexplained "Transfers and Other Budget" amounts. Additional research is necessary to untangle how much the Housing Authority was awarded in loans from the HTF.

"In 2014 MOHCD diverted $2.964 million from the HTF directly to the Housing Authority as 'Loans Issued by the City.' Additional research is necessary to untangle how much the Housing Authority has been awarded in loans from the HTF."

Additional HTF Loans to RAD Program

The U.S. Housing and Urban Development department created a Rental Assistance Demonstration (RAD) program in order to give public housing authorities a tool to preserve and improve public housing properties, and address deferred maintenance backlogs. RAD loans are long-term contracts to facilitate financing of improvements to public housing. It's not known how much of the RAD loans can be used for "operating expenses" rather than actual construction or renovation.

As everyone knows, the city of San Francisco has done a terrible job of keeping up with deferred maintenance of its public housing stock.

In November 2015 the City closed financing for the last of 15 properties in Phase I of San Francisco's RAD program to rehabilitate 1,422 apartments in public housing properties. A second phase of SF RAD involving 2,044 apartments in an additional 14 properties will begin renovations in late 2016. The City is committing up to $90 million in city funds to fill remaining gaps from other funding sources, with $39 million for "pre-development and gap loans" during Phase I.

The same response from the City Controller's Office for the HTF's budgets for the four fiscal years between FY 2013–2014 through FY 2016–2017 shows that in the three fiscal years between FY 2014–2015 and FY 2016–2017, MOHCD appears to have awarded $14.3 million in "Loans Issued by the City" for 17 separate RAD properties from the HTF, all multifamily housing projects. All are thought to have been funded by hundreds of millions from separate multifamily housing *revenue* bonds, although it isn't known whether those HTF loans were for RAD Phase I or Phase II. The RAD loans from the HTF are for actual construction and rehabilitation of the buildings, not rental subsidies.

"In the three fiscal years between FY 2014–2015 and FY 2016–2017, MOHCD appears to have awarded $14.3 million in 'Loans Issued by the City' for 17 separate RAD properties from the HTF, all multi-family housing projects thought to have been funded by hundreds of millions from separate multifamily housing *revenue* bonds. The RAD loans from the HTF are for actual construction and rehabilitation of the buildings, not rental subsidies."

Again, the City Controller's Office doesn't appear to have included all the necessary information, because of the $14.3 million in RAD loans, none of the 17 properties had an initial budgeted amount, and instead the funding came from "Transfers and Other Budget" amounts. Those "transfers-in" to the HTF for RAD loans were subsequently reduced by what appears to be "transfers out" for 11 of the 17 properties, at a combined total of $903,948, potentially reducing the RAD loans to $13.7 million.

A follow-up records response from the City Controller shows the "Transfers and Other Budget" [in and out] RAD expenditures came from within the HTF's overall "Housing Trust Fund Housing Development Pool" (Project Code "PMOHOFHOFREV"). It's unclear whether that housing development pool of money was of concern to the Civil Grand Jury, and will ever be repaid.

And — just like the HTF loans made directly to the Housing Authority for non-RAD loans — the RAD loans from the HTF also contain a dizzying amount of encumbrances from one fiscal year carried forward to a subsequent fiscal year, making the total RAD loans difficult to easily ascertain.

The preliminary HTF budget for FY 2017–2018 shows that MOHCD intends to spend an additional $20 million in "Loans Issued by the City" for multifamily projects beginning in July 2017, but budget details won't be available until then. More than likely, the additional $20 million will also involve additional RAD projects, and likely will be issued for construction and rehabilitation, not rental subsidy vouchers.

That portends that at least $34.3 million is being routed from the HTF to RAD projects just through FY 2017–2018 — plus the $3 million to the Housing Authority — without knowing whether any of those millions will be repaid to the HTF and without knowing how many more RAD loans will be made from the HTF following FY 2017–2018.

A separate document (Table 7 in the summary of MOHCD's evolving bond spending above) shows MOHCD plans to spend at least $51.5 million on RAD public housing projects in the two-year period between FY 2016–2017 and FY 2017–2018 from MOHCD's funding sources ***other than*** the $310 million Affordable Housing Bond. Will all of the $51.5 million for RAD public housing come from the Housing Trust Fund, instead of spending those millions on new affordable housing construction? Another question: Does this involve $34.3 million — or $51.5 million — being spent on RAD from the HTF?

Finally, it's not known whether MOHCD has any expectation the RAD loans will ever be repaid, or whether the loans were issued as "***residual receipts loans***" (see discussion below). Given the Civil Grand Jury's concerns that MOHCD is not fully forthcoming with information, my own problems dragging accurate information out of MOHCD, and MOHCD stonewalling Supervisors Aaron Peskin, Jane Kim, London Breed, and Malia Cohen, it's very unclear whether we will ever get accurate information out of MOHCD — yet another good reason to pass Prop. M on November's ballot to create a Commission having oversight over MOHCD.

"**HTF's preliminary budget for FY 2017–2018 shows MOHCD intends to spend an additional $20 million in 'Loans Issued by the City' for multifamily projects beginning in July 2017. More than likely, the additional $20 million will also involve additional RAD projects.**"

"**That portends that at least $34.3 million is being routed from the HTF to RAD projects just through FY 2017–2018 — plus the $3 million to the Housing Authority — without knowing whether any of those millions will be repaid to the Housing Trust Fund.**"

"**A separate document shows MOHCD plans to spend at least $51.5 million on RAD public housing projects in the two-year period between FY 2016–2017 and FY 2017–2018. Will all of the $51.5 million for RAD public housing come from the Housing Trust Fund, instead of spending those millions on new affordable housing construction?**"

What About Expectations for Housing Authority Repayments to MOHCD?

San Franciscans might just as well forget about any eventual repayments from the Housing Authority from either the $1.5 ***billion*** Housing Trust Fund, or the $310 million Affordable Housing Bond. MOHCD has provided conflicting responses.

MOHCD's September 12 response to CGOBOC member questions about whether bond funds would be repaid for projects the City was obligated to fund, but had not, noted:

"**Finally, it's not known whether MOHCD has any expectation the RAD loans will ever be repaid, or whether the loans were issued as 'residual receipts loans'.**"

> "*Regarding repayment, as is typical for public lending on affordable housing projects, the bond funds* ***will be issued as 'residual receipts' loans****, which require borrowers to repay the loans in annual installments* ***to the extent there is surplus cash flow after payment of operating expenses****, reserves, and amortizing debt payments. Interest rates are set between 0% and 3%, depending on the financial needs of the projects. Because the public housing developments in receipt of bond financing will*

> *include Section 8 operating subsidies,* ***we do expect annual residual receipts repayments to be made*** *to MOHCD. Any bond funds repaid in this manner will be re-issued as new affordable housing loans under terms consistent with the original bond legislation*." [Emphasis added]

But MOHCD's September 12 response to CGOBOC, above, clearly contradicts what MOHCD told CGOBOC on January 28, 2016, MOHCD's Kate Hartley claimed just the opposite — that MOHCD had no expectation of loan repayment. CGOBOC Member Robert Carlson specifically asked Hartley on January 28 "*So, we're going to loan the bond funds to a developer, and then they'll pay them back?*" Her response — again involving "***residual receipts***" — was:

> "*Um ... well ... technically, Yes. But because ... in order to serve very-low income people, you have to structure those kind of loans as something called '****residual receipts****.' And that means if there is ...* ***after you pay your operating expenses, if there are leftover funds****, then a portion would go back to repay us.* ***But we typically don't have an expectation of repayment*** *[to us] over time, because ... in order to demand repayment and make it a 'hard loan' with mandatory debt service, that would require incomes at a certain level that we can't typically support*." [Emphasis added]

"San Franciscans might just as well forget about any eventual repayments from the Housing Authority. MOHCD has provided conflicting responses to CGOBOC member questions.

MOHCD's September 12 response indicated 'residual receipt' loans would be repaid, *if* there is surplus cash flow after payment of operating expenses.

MOHCD claimed just the opposite on January 28 saying that after paying operating expenses, *if* there are leftover funds then a portion would go back to repayment, but *MOHCD typically doesn't have an expectation of repayment*'."

It's also not known whether MOHCD has any sort of checks and balances in place to verify the veracity of whether loan recipients are accurately reporting their true operating expenses as "residual receipts," or are padding their operating expense numbers to escape having to make loan repayments.

Recent Lost Affordable Housing in San Francisco

As Supervisor Jane Kim said during a hearing of the Board of Supervisors Government Audit and Oversight Committee on October 21, 2016 "Preservation of existing affordable housing stock is just as important as fighting for new housing."

In August 2015, *Buzzfeed News* carried an article titled "*An Old Folks Home in San Francisco Has Some New Residents: Young Techies,*" reporting on senior housing being snapped up by younger tech workers.

Many concerned observers worry about the loss of existing housing units in expiring-use-restricted, privately owned HUD-subsidized developments (some non-profit, some for-profit).

"Supervisor Jane Kim says 'Preservation of existing affordable housing stock is just as important as fighting for new housing.' But many concerned observers worry about the loss of existing housing units in expiring-use-restricted, privately owned HUD-subsidized developments."

St. Vincent De Paul, the non-profit owner of the subsidized senior housing Vincentian Villa in the Mission District, sold it to a for profit developer in 2014. Buzzfeed reported:

> "*The Vincentian Villa had been owned by the St. Vincent de Paul Society charity for 40 years, until it was sold to a Los Angeles–based developer for $13.5 million last year. The purchaser, GHC Housing Partners, agreed to extend a federal contract to keep about 60% of the building's units priced far below market rates. But it is now gradually renting out the rest as they become vacant — apartments so small they are called 'micro studios' — to tech workers paying around $2,000 a month for roughly 300 square feet of space*."

Apparently GHC — the new owner, which is one of the largest owners of affordable housing in the United States — only re-applied for subsidies for 72 of Vincentian Villa's 124 units, converting 52 to market-rate units, some of which are reportedly now being rented on Airbnb. Also by report, Randy Shaw, the Executive Director of the non-profit Tenderloin

Housing Clinic, has indicated this scenario will likely reoccur in other developments because MOHCD doesn't have the money to save all of the "expiring regulations" units.

By further report, MOHCD reportedly signed off on the Vincentian Villa deal granting some sort of waiver to the developer because MOHCD was worried that, otherwise, ***all*** of the units could have been lost to market-rate units.

Among other observers, Eddie Stiel is a 25-year resident of the Mission District, who along with his wife have faced no-fault evictions as renters ***twice:*** *Once when he was owner move-in evicted in 2004, and again when he and his wife faced Ellis Act eviction the following year*! Mr. Stiel hopes MOHCD will discuss Vincentian Villa publicly. Stiel says:

> "**'*Without public input and discussion, San Francisco will continue losing existing subsidized units. Lacking public knowledge and scrutiny limits options to preserve these subsidized units*'.** "
>
> **— Eddie Stiel, *Mission District Resident***

"*It's clear this issue deserves public attention, because without public input and discussion San Francisco will continue losing existing subsidized units during our current eviction, displacement, and affordability crisis. Lacking public knowledge and scrutiny limits options to preserve these subsidized units*."

You can almost bet that these new problems with the $310 million affordable housing bond will ***not*** be the last, and there will be yet more problems to come.

I considered titling this article "*Mayor's Housing Scam, Redux – Part II*" since it seems that the ever-shifting planned uses of the $310 million Affordable Housing Bond involve yet another chapter in the scam. MOHCD's housing construction delays really do equal justice denied. Just ask any San Franciscan forced out of The City due to the worst housing crisis in San Francisco's history.

Monette-Shaw is a columnist for San Francisco's Westside Observer *newspaper. He received a James Madison Freedom of Information Award in the "Advocacy" category from the Society of Professional Journalists–Northern California Chapter in 2012. He can be contacted at monette-shaw@westsideobserver.com.*

Further Reading

For readers interested in additional information about concerns regarding the "metrics" CGOBOC should insist that MOHCD be required to report, please see the report I submitted to each CGOBOC member on July 26, 2016 in advance of its July 28 meeting.