



**PUBLIC WORKS COMMISSION**  
CITY AND COUNTY OF SAN FRANCISCO

**London N. Breed, Mayor**

***Correspondence Log***

***November 8 through November 7, 2022***

<b>Date Received</b>	<b>From</b>	<b>Subject</b>
November 8, 2022	Mihal Emberton	Appeal of permitting decision

**From:** [mihal emberton](#)  
**To:** [DPW-Public Works Commission](#)  
**Subject:** Social Justice Reform for DPW  
**Date:** Tuesday, November 8, 2022 1:38:46 PM  
**Attachments:** [Supplement to the Pleading.pdf](#)  
[Opening Statement SF Superior Court III.pdf](#)

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

Dear Public Works Commission,

RE: US Department of Justice Report 146960-VLZ | Case filed with SF Civil Grand Jury 5-9-22 with Foreperson, Karen Kennard 2022-2023

My family has been suffering pervasive civil and human rights violations from our General Plan Agencies (building, planning, and public works) since 2017 and we sincerely hope that you might be able to assist in guiding social justice reform for our Department of Public Works.

In August 2022 we filed our case, 22-cv-05440-TSH (attached), against the City and County of San Francisco for allowing 73 civil and human rights violations from our General Plan Agencies. Because these violations of State and Federal law result from systemic dysfunction, they not only allow corrupt officials such as former SF Public Works Director, Mohammed Nuru, and Permit Expediter, Walter Wong, to profit from the dysfunction, but they also allow these violations to be inflicted upon citizens widely and indiscriminately.

While these systemic violations of State and Federal law satisfy Racketeer Influenced and Corrupt Organizations (RICO) prosecution guidelines, we hope that you will consider policy reforms (attached appendix D) that would advocate for and protect society's interest in enforcing civil and human rights protections for all citizens.

Thank you so much for your time and attention in helping prevent these injustices from persisting...

With humble gratitude,

Mihal Emberton  
530-219-0665 cell  
201 Ashton Ave, SF 94112

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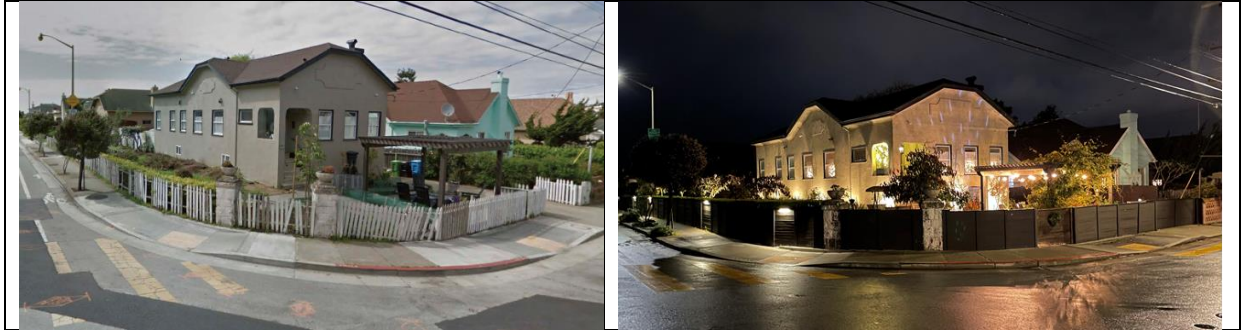
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**Supplemental Pleading**

**Supplemental Complaint | Supplemental Attachment BC-2**



The following supplemental complaint and supplemental causes of action relate to the contested public right-of-way.

Timeline	Action or City Agency Mandate	City Agency Violations
11-17-21	<p>Ada Tan, Planner:                      “The Department of Public Works, Bureau of Street-Use and Mapping (DPW-BSM) is also required to review/approve the permit before it can be issued. I checked in with their agency and they confirmed that the Public right of way (PROW) is 15 feet measured form the curb (along both Ashton Ave and Holloway Ave).”</p> 	<ul style="list-style-type: none"> <li>- Fraud (CA Civil Code Division 3. Part 2. Title 1. Chapter 3. 1565-1572)</li> <li>- Negligence (CA Civil Code §1714(a))</li> <li>- Lack of equal protection (14th Amendment)</li> <li>- Lack of due process (14th Amendment)</li> <li>- Discrimination (Title II Civil Rights Act of 1964; US Money and Finance Code Title 31, §6711; CA Civil Code, Unruh Civil Rights Act; SF Campaign and Governmental Conduct Code, Article III, Chapter 4, Sec 3.400 – Appendix C in first paper)</li> <li>- Extortion (CA Penal Code Part 1. Title 13. Chapter 7. 518. (a))</li> <li>- Abuse of power (Federal Law, Section 242 of Title 18; CA Civil Code, Tom Bane Civil Rights Act)</li> </ul>

		<ul style="list-style-type: none"> <li>- Violates 11 city codes (Appendix A in first paper)</li> <li>- Violates 20 Policies of City General Plan (Required Elements for Designing Healthy, Equitable, Resilient, and Economically Vibrant Places – Appendix B in first paper)</li> <li>- Inconsistency within the City General Plan (CA Office of Planning and Research Required Elements for Designing Healthy, Equitable, Resilient, and Economically Vibrant Places<sup>1</sup>)</li> </ul>
<p>12-10-21</p>	<p>Nicholas Persky, DPW: <i>See first paper complaint, attachment BC-2</i></p>	<ul style="list-style-type: none"> <li>- Fraud (CA Civil Code Division 3. Part 2. Title 1. Chapter 3. 1565-1572)</li> <li>- Negligence (CA Civil Code §1714(a))</li> </ul>
<p>1-13-22</p>	<p>Kevin Li, DPW: <i>See first paper complaint, attachment BC-2</i></p>	<ul style="list-style-type: none"> <li>- Fraud (CA Civil Code Division 3. Part 2. Title 1. Chapter 3. 1565-1572)</li> <li>- Negligence (CA Civil Code §1714(a))</li> </ul>
<p>2-3-22</p>	<p>Kevin Li, DPW: <i>See first paper complaint, attachment BC-2</i></p>	<ul style="list-style-type: none"> <li>- Fraud (CA Civil Code Division 3. Part 2. Title 1. Chapter 3. 1565-1572)</li> <li>- Negligence (CA Civil Code §1714(a))</li> </ul>
<p>4-5-2022</p>	<p>Javier Rivera, Associate Engineer, Permits Division, DPW: “Good afternoon, I am Kevin’s supervisor and he has brought your application to my attention several times.</p>	<ul style="list-style-type: none"> <li>- Fraud (CA Civil Code Division 3. Part 2. Title 1. Chapter 3. 1565-1572)</li> </ul>

<sup>1</sup> GENERAL PLAN GUIDELINES. CHAPTER 4: Required Elements: Designing Healthy, Equitable, Resilient, and Economically Vibrant Places. Governor’s Office of Planning and Research. Accessed 12/15/21. [http://opr.ca.gov/docs/OPR\\_C4\\_final.pdf](http://opr.ca.gov/docs/OPR_C4_final.pdf)

	<p>The current conditions privatizing the public right-of-way are not approvable. In order for this permit to move forward plans reflecting the alterations listed in Kevin’s email of January 13, 2022 must be submitted. Please provide Kevin with updated plans showing the following:</p> <ol style="list-style-type: none"> <li>1. The fence height to be reduced to 3 feet</li> <li>2. 3 feet clearance around the streetlight pole and box on Holloway Ave., as required by SFPUC...</li> <li>3. 3 feet path of travel required between the trees and fence on Holloway Ave (provide photos with tape measure clearly showing the path of travel width)</li> <li>4. The removal of the 10 ft X 10 ft cedar pergola and the fire table</li> <li>5. Show all features in the right-of-way such as street light and box, trees, locations of pavers, location of landscaping, and the altered location of the fence.</li> </ol> <p>Public Works will not recommend the closure of the building complaint until these items are properly shown on the plans and permitted.</p> <p>Regards,          Javier”</p>	<ul style="list-style-type: none"> <li>- Negligence (CA Civil Code §1714(a))</li> <li>- Lack of equal protection (14th Amendment)</li> <li>- Lack of due process (14th Amendment)</li> <li>- Discrimination (Title II Civil Rights Act of 1964; US Money and Finance Code Title 31, §6711; CA Civil Code, Unruh Civil Rights Act; SF Campaign and Governmental Conduct Code, Article III, Chapter 4, Sec 3.400 – Appendix C in first paper)</li> <li>- Extortion (CA Penal Code Part 1. Title 13. Chapter 7. 518. (a))</li> <li>- Abuse of power (Federal Law, Section 242 of Title 18; CA Civil Code, Tom Bane Civil Rights Act)</li> <li>- Violates 11 city codes (Appendix A in first paper)</li> <li>- Violates 20 Policies of City General Plan (Required Elements for Designing Healthy, Equitable, Resilient, and Economically Vibrant Places – Appendix B in first paper)</li> <li>- Inconsistency within the City General Plan (CA Office of Planning and Research Required Elements for Designing Healthy, Equitable, Resilient, and Economically Vibrant Places<sup>2</sup>)</li> </ul>
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<p>5-4-2022</p>	<p>Nicolas Huff, Bureau Manager, Bureau of Street-Use &amp; Mapping, DPW:                  “Dr. Emberton,                  We are in receipt of your letter attached to the email dated May 1, 2022.                  A dedicated public right-of-way is for the use of all members of the public. Fencing off the public right-of-way for personal or private gain is not permissible. The public-right-of-way is not bound to the same laws, codes, and regulations as real estate. Furthermore, there are long established standard design and specifications for items in the right-of-way. These designs include, but are not limited to, clearances for safety, maintenance, and ADA accessibility.                  Requiring the removal of private items from the right-of-way is not taking your property. You are free to keep these items, so long as proper DBI permits are obtained and they are placed within your private property. We understand that many owners want to beautify their neighborhoods and permits are available for these items. However, these items must have proper clearances and provide public benefit.                  Public Works will not recommend the closure of the building complaint until the alterations listed in Kevin’s email of January 13, 2022 are addressed....”</p>	<ul style="list-style-type: none"> <li>- Fraud (CA Civil Code Division 3. Part 2. Title 1. Chapter 3. 1565-1572)</li> <li>- Negligence (CA Civil Code §1714(a))</li> <li>- Lack of equal protection (14th Amendment)</li> <li>- Lack of due process (14th Amendment)</li> <li>- Discrimination (Title II Civil Rights Act of 1964; US Money and Finance Code Title 31, §6711; CA Civil Code, Unruh Civil Rights Act; SF Campaign and Governmental Conduct Code, Article III, Chapter 4, Sec 3.400 – Appendix C in first paper)</li> <li>- Extortion (CA Penal Code Part 1. Title 13. Chapter 7. 518. (a))</li> <li>- Abuse of power (Federal Law, Section 242 of Title 18; CA Civil Code, Tom Bane Civil Rights Act)</li> <li>- Violates 11 city codes (Appendix A in first paper)</li> <li>- Violates 20 Policies of City General Plan (Required Elements for Designing Healthy, Equitable, Resilient, and Economically Vibrant Places – Appendix B in first paper)</li> <li>- Inconsistency within the City General Plan (CA Office of Planning and Research Required Elements for Designing Healthy, Equitable, Resilient, and</li> </ul>
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		Economically Vibrant Places <sup>3</sup> )
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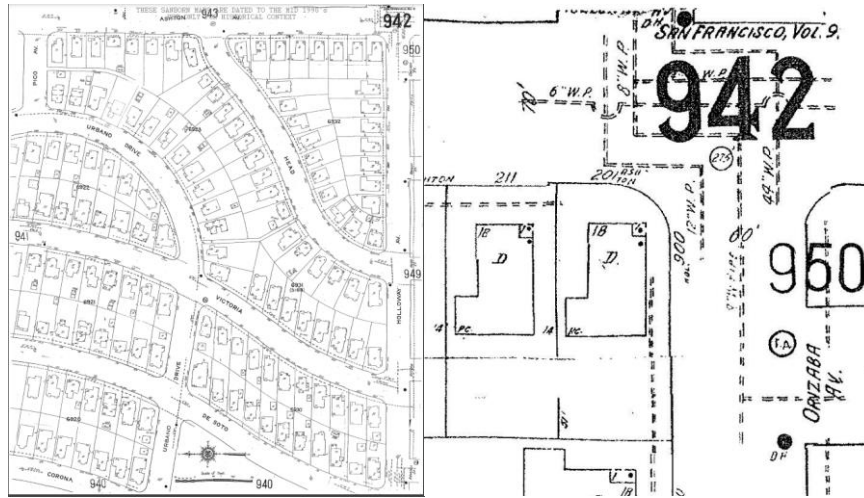
**Supplemental Causes of Action**

Fraudulent Misrepresentation		
CA Civil Code Division 3. Part 2. Title 1. Chapter 3. 1565-1572	<p><i>Nature of a contract: The consent of the parties to a contract must be free, mutual, and communicated by each to the other. Consent is not real or free when obtained through duress, menace, fraud, or undue influence. Actual fraud consists of the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.</i></p>	
4-5-22	The assertion by DPW that there was an “altered location of the fence,” is untrue as the fence location was not altered.	
11-17-21	The assertion by the Planning Department and the Department of Public Works that “Public right of way (PROW) is 15 feet measured form the curb (along both Ashton Ave and Holloway Ave)” is untrue because <ol style="list-style-type: none"> <li>1) The Assessors’ Block Map for our property shows the east-west depth of the property to be 115 feet. This measurement is from the western fence of the property to the edge of the eastern sidewalk. The 115 feet from the back fence to the sidewalk is also consistent with our measurement of the property which we completed for our permit application. This measurement does not show that 9 feet of the property bounded by the sidewalk belongs to the city as a public right-of-way.</li> </ol>	
12-10-21		
1-13-22		
2-3-22		
4-5-22		
5-4-22		
	<ol style="list-style-type: none"> <li>2) The deed to our property does not list any public right-of-way on our lot. This makes sense because generally a public right-of-way is defined as giving the public the right to travel unhindered over a piece of land, even if that land is privately owned. The sidewalk around our property is a public right-of-way and no additional use of private land is needed to allow the public to travel, unhindered, from one public place to another.</li> </ol>	

<sup>3</sup> GENERAL PLAN GUIDELINES. CHAPTER 4: Required Elements: Designing Healthy, Equitable, Resilient, and Economically Vibrant Places. Governor’s Office of Planning and Research. Accessed 12/15/21. [http://opr.ca.gov/docs/OPR\\_C4\\_final.pdf](http://opr.ca.gov/docs/OPR_C4_final.pdf)



3) The deed to our property does, however, list a public-utility “easement,” reserved by Urban Realty Improvement Company for the “purpose of public utility,” recorded September 18, 1922, page 308, of Official Records. According to the Historic Sandborn Map of our property, this public-utility easement was to allow utility access to the 2-in Water Pipe that was running through the easement in 1922.



In working with SFPUC in recent years, we have been told that this 2-in water pipe is no longer in use. This has been confirmed by 811 (service through PG&E) who showed us the active utilities of a water pipe and a gas line entering the property perpendicular to Ashton Avenue and parallel to the driveway. There is no longer a public utility running parallel to Ashton Avenue (nor Holloway Ave) within the historic easement. Furthermore, the public-utility use of the easement has essentially been abandoned by the public-utility agency as there is no longer a public-utility along the historic easement.

Negligence	
California Civil Code §1714(a)	<i>Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.</i>
11-17-21	The assertion by the Planning Department and Department of Public Works that the 9 feet of our property leading up to the sidewalk, is a public right-of-way, when in fact it is a public-utility easement, is evidence of negligence.
12-10-21	
1-13-22	To any reasonable person, an agent or agency which has a responsibility to manage and regulate public right-of-ways is expected to maintain a
2-3-22	

	4-5-22	level of knowledge about public right-of-ways and public-utility easements beyond that of the lay public.
	5-4-22	<p>A public-utility easement allows public-utility agencies, not the public, to use the easement when needed to access the public utility within/below the easement to maintain that public utility.</p> <p>In terms of adverse possession law, there is not and there has not been any public use of the easement as a public right-of-way, which negates any adverse possession claims regarding the property as a public right-of-way that DPW has proposed. Furthermore, should DPW try to claim adverse possession of the public-utility easement to become a public right-of-way, CA Civil Code 325 would protect and reinforce the plaintiff's use, curation, and ownership of the easement:</p> <p><i>(a) For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:</i></p> <p><i>(1) Where it has been protected by a substantial enclosure.</i></p> <p><i>(2) Where it has been usually cultivated or improved.</i></p> <p><i>(b) In no case shall adverse possession be considered established under the provision of any section of this code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, have timely paid all state, county, or municipal taxes that have been levied and assessed upon the land for the period of five years during which the land has been occupied and claimed. Payment of those taxes by the party or persons, their predecessors and grantors shall be established by certified records of the county tax collector.</i></p> <p>It is reasonable at this point to discuss liability of public entities and public employees. Because these unlawful acts (listed here in addition to those in the first paper of the pleading) were perpetrated repeatedly by different agency employees and systemically across agencies, and were universally reinforced by management, these acts occurred at the operational level as a part of normal agency operations, making them unqualified for immunity as described by the unanimous court opinion in <i>Barner v. Leeds (2000) 24 Cal.4th 676, 685.</i></p> <p>Additionally, according to Gov. Code 815.2</p> <p><i>(a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.</i></p>

Constitutional Causes of Action		
Lack of Equal Protection (14 <sup>th</sup> Amendment)	<i>See description in first paper</i>	
	11-17-21	To any reasonable person, the expansion of “corrective action,” such that the corrective action required at the beginning of the permitting or enforcement process is less than the corrective action required later in the permitting or enforcement process is evidence that the rules of law do not remain consistent over time, a violation of equal protection of the law.  Additionally, criminalizing citizens participating in the permitting/enforcement process for maintaining garden structures, such as 4-foot safety fences, trellises, and outdoor furniture, that are systematically allowed for citizens not participating in the permitting/enforcement process is evidence of lack of equal protection of the law (Appendix C of the first paper).  And finally, a government that holds its citizens accountable to follow local, state, and federal codes, policies, and laws but then defends its city agencies for violating 11 city codes (Appendix A of the first paper) and for violating 20 city policies (Appendix B of the first paper), in addition to violating local, state, federal, and international laws, is evidence of lack of equal protection of the law.
	4-5-22	
	5-4-22	
Lack of Due Process (14 <sup>th</sup> Amendment)	<i>No State shall deprive any person of property without due process of law.</i>	
	11-17-21	To any reasonable person, the lack (1) of an opportunity to be heard and (2) of an impartial tribunal for each agency mandate are evidence of lack of due process. This evidence was further proven by Mr. Huff’s written statement of 6-13-2022 (see complaint   attachment BC-2 of first paper) declaring “The application of the codes has been long established and isn’t open to mediation.”
	4-5-22	
	5-4-22	

Discrimination		
Title II Civil Rights Act of 1964; US Money and Finance Code Title 31, §6711; CA Civil Code, Unruh Civil Rights Act; SF Campaign and Governmental Conduct Code, Article III, Chapter 4, Sec 3.400	<i>See description in first paper</i>	
	11-17-21	To any reasonable person, criminalizing citizens participating in the permitting/enforcement process for maintaining garden structures, such as 4-foot safety fences, trellises/arbors, and outdoor furniture that are systematically allowed for citizens not participating in the permitting/enforcement process (Appendix C of first paper) is evidence of discrimination.
	4-5-22	
	5-4-22	

Extortion		
CA Penal Code, Part 1, Title 13, Chapter 7. 518 (a)	<i>Extortion is the obtaining of property or other consideration from another, with his or her consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.</i>	
	11-17-21	To any reasonable person, using a position of power to cause fear to force a citizen 1) to repeatedly pay fees to city agencies that systematically violate their civil and human rights as well as state and federal law, and 2) to demolish and remove property that is systematically allowed for their neighbors (Appendix C of the first paper), are evidence of extortion.
	4-5-22	
	5-4-22	

Abuse of Power		
Federal Law, Section 242 of Title 18; CA Civil Code, Tom Bane Civil Rights Act	<i>See description in first paper</i>	
	11-17-21	To any reasonable person, these repeated, systemic violations of civil and human rights, violations of state and federal law, and violations of local codes and policies are evidence of unlawful abuses of power.
	4-5-22	
	5-4-22	