

MINUTES
WAR MEMORIAL BOARD OF TRUSTEES
REGULAR MONTHLY MEETING

Thursday, June 11, 2009

The Board of Trustees of the War Memorial of San Francisco met in regular session at 2:00 p.m. on Thursday, June 11, 2009, in the Trustees' Board Room, War Memorial Opera House, President Bechtle presiding.

ROLL CALL

Present: President Bechtle, Trustee Bashford, Trustee Davis, Trustee Farrow, Trustee Horn, Trustee Jarman, Trustee Moscone, Trustee Myatt, Trustee Pelosi, and Trustee Tsakopoulos-Kounalakis;
Absent: Vice President Shultz.
Staff Present: Elizabeth Murray, Managing Director
Jennifer Norris, Assistant Managing Director/Executive Secretary

APPROVAL OF MINUTES

President Bechtle called for approval of the minutes of the May 14, 2009 regular meeting of the Board. On motion of Trustee Moscone, seconded by Trustee Horn, the minutes were unanimously approved.

PRESIDENT'S REPORT

Vice President Shultz: President Bechtle reported that Vice President Shultz is unable to attend today's meeting, due to an accident last week resulting in a broken hip. She reported that Vice President Shultz is now home from the hospital and recovering from hip replacement surgery. On behalf of the Board, President Bechtle extended best wishes to Vice President Shultz for a speedy recovery.

Opera Summer Season: President Bechtle reported that the San Francisco Opera opened its Summer Season on June 2, 2009 with a wonderful production of "Tosca," which was again performed again on June 5, with live simulcast to AT&T Park. President Bechtle added that earlier this week, the Opera presented its first performance of "Porgy and Bess" to a sold-out audience. On behalf of the Board, President Bechtle extended congratulations to the Opera on a spectacular start of their Summer Season.

MANAGING DIRECTOR'S REPORT

Rental Requests: Ms. Murray reported that rental requests as mailed to Trustees include a request from the Marine's Memorial Association to use Davies Symphony Hall on October 19, 2009 to present "The President's Own" U.S. Marine Band in concert, which will be free to veterans, their families and the public. She stated that Trustees also received a copy of the letter from Michael Gerold, Chair of the American Legion War Memorial Commission, requesting that the rental fee for this free concert be waived. Ms Murray noted that on two previous occasions, the Board has approved rental fee waivers for free concerts by the U.S. Marine Band in 1999 and the U.S. Air Force Band of the Rockies in 2000, and that staff is recommending approval of this rental and rental fee waiver request, which would be consistent with the Trustees' past practice. Ms. Murray stated that remaining rental requests are routine and requested their approval. On motion of Trustee Farrow, seconded by Trustee Horn, the following resolution was unanimously adopted:

RESOLUTION NO. 09-23

RESOLVED, By the Board of Trustees of the War Memorial of San Francisco that the following rental requests are hereby approved:

LOUISE M. DAVIES SYMPHONY HALL

Marine's Memorial Association "The President's Own" U.S. Marine Band in Concert	October 19, 2009	Rental waiver approved
San Francisco Girls Chorus Holiday Concert	December 21, 22, 2009	\$4,100.00 vs. 10% \$6,300.00 maximum
UCSF School of Medicine 2010 Graduation Ceremony & Lobby Reception	May 14, 2010	\$3,900.00

HERBST THEATRE

Litquake Lewis Black & Marc Maron	June 28, 2009	\$750.00
San Francisco Opera Guild Summer Conservatory Performance: The Fairy Queen	July 3, 2009	\$1,150.00
World Channel, Inc. Hong Kong Yip's Children's Choir	August 8, 2009	\$1,250.00
Theatreworks USA Charlotte's Web Nate the Great Freedom Train Max & Ruby	November 18, 2009 March 12, 2010 April 5, 2010 May 12, 2010	\$2,100.00
Urban School of San Francisco 2009 Winter Concert 2010 Spring Concert	December 13, 2009 April 7, 2010	\$1,500.00

Additional Rental Requests: Ms. Murray requested approval of additional rental requests as submitted. On motion of Trustee Pelosi, seconded by Trustee Moscone, the following resolution was unanimously adopted:

RESOLUTION NO. 09-24

RESOLVED, By the Board of Trustees of the War Memorial of San Francisco that the following additional rental requests are hereby approved:

LOUISE M. DAVIES SYMPHONY HALL

SFJAZZ 2009 Jazz Festival	October 21, 29, 2009 November 8, 2009	\$6,600.00 vs. 10% \$13,200 maximum
------------------------------	--	--

HERBST THEATRE

American Legion Post 911 Warriors in Their Words	October 3, 2009	\$750.00
---	-----------------	----------

SFJAZZ	October 21-25, 29-31, 2009	\$7,500.00
2009 Jazz Festival	November 1, 6, 2009	

SECRETARY'S REPORT

Revenue, Appropriations and Housekeeping Expenditures Reports for May 2009: Ms. Norris referred to the Revenue, Appropriations, and Housekeeping Expenditures Reports for May 2009, and requested a resolution to approve housekeeping expenditures as submitted. On motion of Trustee Horn, seconded by Trustee Tsakopoulos-Kounalakis, the following resolution was unanimously adopted:

RESOLUTION NO. 09-25

RESOLVED, By the Board of Trustees of the War Memorial of San Francisco that Purchase Order Nos. WM090365 through WM090382, are hereby approved.

COMMITTEE REPORTS

Building Committee:

Trustee Pelosi, Chair of the Building Committee, reported that the Committee met earlier today to consider and adopt recommendations on two items.

San Francisco Public Utilities Commission - Request to install a Solar Energy System on the roof of Davies Symphony Hall: Trustee Pelosi reported that the Building Committee heard a presentation, from John Doyle, Manager of Energy Generation Projects for the San Francisco Public Utilities Commission Power Enterprise, concerning the PUC's proposal to install and operate, at the PUC's cost, a solar energy system on the roof of Davies Symphony Hall. This is part of the PUC's continuing commitment to serve the City's municipal facilities with clean and renewable energy. Trustee Pelosi stated that this installation would be cost neutral for the War Memorial. He noted that the solar panels will meet approximately 10% of the building's energy demand, but that the War Memorial will continue to pay the same rates annually. The PUC will realize the 10% savings, though it will not be sufficient to recoup the full cost of the installation over the system's estimated useful life of 25 years. Trustee Pelosi stated that the PUC will clean and replace panels as needed; and should the roof need to be replaced during the term of the installation, the PUC would remove the panels and re-install them after roof replacement. He said that the solar panels will not be visible from the street or from nearby buildings, and will have no negative or other impact on building systems or acoustics.

Trustee Pelosi stated that PUC's proposes to bid the project's design/construct contract in July 2009; select the contractor in October 2009; commence design work in January 2010; commence four-month construction period in Summer 2010; with the project on-line during the 4th quarter of 2010. He noted that PUC would coordinate all construction with the rehearsal and performance schedule in Davies Symphony Hall.

Trustee Pelosi reported that the Committee heard from a representative of the San Francisco Symphony, that the Symphony is in favor of the solar energy system installation, and that the Symphony would be happy to work with the PUC on their proposed lobby display alerting patrons of this Green initiative. He added that Beth Murray reported that War Memorial staff had had several meetings with PUC on the proposal, and was prepared to recommend approval of the proposal subject to coordinating a construction schedule that does not interfere with rehearsal and performance activity in the Hall, and subject to the War Memorial and PUC developing and entering into a Memorandum of Understanding concerning the Project's installation, operation and maintenance.

Trustee Pelosi reported that following discussion, the Building Committee voted unanimously to recommend to the full Board approval of the PUC proposal, and on motion of Trustee Horn, seconded by President Bechtel, the following resolution was unanimously adopted:

RESOLUTION NO. 09-26

RESOLVED, By the Board of Trustees of the War Memorial of San Francisco that it hereby adopts the report and recommendation of its Building Committee, and approves the proposal of the San Francisco Public Utilities Commission to install, at the PUC's cost, a solar energy system on the roof of Davies Symphony Hall, subject to the War Memorial and PUC developing and entering into a Memorandum of Understanding concerning the system's installation, operation and maintenance.

Swords to Plowshares – Request to lease office space in the Veterans Building: Trustee Pelosi reported that the Building Committee considered a proposal from Swords to Plowshares to lease approximately 2,250 square feet of office space in the southeast corner of the Veterans Building third floor for their Employment & Training program. He noted that this space was recently vacated by Municipal Railway offices, and is suitable for the office needs of Swords to Plowshares. Trustee Pelosi stated that the Committee reviewed the basic lease information summary prepared by staff, which included an annual base rent of \$18,000 to be paid to War Memorial by Swords to Plowshares, such rent subject to annual adjustment of no more than 10% on July 1 of each year. Swords to Plowshares would propose to occupy the space sometime in July or August 2009, and the lease would provide a standard provision for 90-day notice of termination by either of the parties. The space would be leased in "as-is" condition, and all tenant improvements—which may include some electrical, painting and carpet upgrades—would be subject to advance approval of the War Memorial. Trustee Pelosi stated that the Building Committee voted unanimously to approve the lease of space to Swords to Plowshares.

Following discussion, and on motion of Trustee Horn, seconded by Trustee Moscone, the following resolution was unanimously adopted:

RESOLUTION NO. 09-27

RESOLVED, By the Board of Trustees of the War Memorial of San Francisco that it hereby adopts the report and recommendation of its Building Committee, and approves entering into an agreement with Swords to Plowshares for their lease of office space in the Veterans Building as provided in the basic lease information summary.

REGULAR ITEMS

San Francisco Public Utilities Commission – Presentation on Energy Efficiency Projects at the War Memorial and Performing Arts Center: President Bechtle stated that in keeping with the Mayor's directives to departments to achieve greater energy efficiency and conservation in City buildings, the War Memorial staff has worked very closely with the Public Utilities Commission Power Enterprise on coordinating energy efficiency projects in the War Memorial buildings. These projects, funded through PUC's General Fund Energy Efficiency Program, are currently underway, and include numerous lighting improvements that will significantly reduce War Memorial energy consumption and costs. President Bechtle introduced and welcomed Barbara Hale, Assistant General Manager of the PUC Power Enterprise, and PUC representatives to provide Trustees with an overview of the PUC's energy efficiency upgrades at the War Memorial and Performing Arts Center.

Christine Vance, SFPUC Utility Specialist, provided highlights of the lighting upgrades in progress, with project costs of \$925,000 being contributed by the PUC, and estimated to reduce War Memorial's annual electricity use by 15% and reduce annual electricity costs by \$44,500. She also reviewed proposed mechanical energy efficiency measures for Davies Symphony targeted for implementation in August 2010, which will improve reliability and operating performance as well as generate an estimated additional annual savings of \$27,000.

On behalf of the Board, President Bechtle expressed thanks and appreciation to the San Francisco Public Utilities Commission for their coordination of and contribution to War Memorial energy efficiency improvements. She also thanked and recognized War Memorial staff members, Mark Naddy, Senior Stationary Engineer, and Lyn Shimizu, Electrician, who have been instrumental in the PUC's development and implementation of these improvements.

Patina Catering – Request to increase beverage concession pricing at Davies Symphony Hall: President Bechtle stated that Trustees have received a copy of the letter from Garo Eldemir, General Manager for Patina Catering at the War Memorial complex, proposing to increase pricing for beverage concession items at Davies Symphony Hall to the beverage pricing levels currently charged at the Opera House. President Bechtle referred this matter to the Board's Presentor's Liaison Committee to consider and adopt recommendations to the full Board.

Additional Extension of Agreement between the War Memorial Board of Trustees and American Legion War Memorial Commission: President Bechtle reported that at the March meeting, the Board approved an additional extension of the current agreement between the War Memorial Board of Trustees and the American Legion War Memorial Commission for a period of up to three months. The Trustees asked that during this three-month period, the Commission meet with War Memorial staff to review the roles and responsibilities of the parties and to develop and submit budget information on the Commission's income and expenditures related to administering, assigning and scheduling uses of the Veterans Building space allocated for use by the American Legion Posts.

President Bechtle stated that an additional extension of the agreement is on today's meeting agenda at the request of War Memorial staff, as staff's attempts to meet with the Commission during the last three months have been unsuccessful.

President Bechtle stated that Trustees today have received a copy of the June 4, 2009 letter from Michael Gerold, Chair of the American Legion War Memorial Commission, stating that the Commission is in the process of receiving legal advice regarding the agreement between the Trustees and Commission, and stating that the Commission will not submit a budget for consideration by the Trustees until they have been advised by legal counsel. President Bechtle said that while the Commission has not requested a further extension of the current agreement, War Memorial staff is recommending an additional extension of up to three months so that the parties can meet as previously directed by the Board.

Following discussion, and on motion of Trustee Horn, seconded by Trustee Moscone, the following resolution was adopted:

RESOLUTION NO. 09-28

RESOLVED, By the Board of Trustees of the War Memorial of San Francisco that it hereby approves an additional extension of the agreement between the War Memorial Board of Trustees and the American Legion War Memorial Commission for a period of up to three months, during which time the Commission meet with War Memorial staff to review the roles and responsibilities of the parties to the agreement and develop and submit budget information on the Commission's income and expenditures related to administering, assigning and scheduling uses of the Veterans Building space allocated for use by the Posts.

Proposed transfer and consolidation of War Memorial engineering and custodial maintenance functions and personnel to the Real Estate Division of the City Administrator: President Bechtle stated that Trustees were advised by memorandum from Beth Murray on May 29, 2009, of a plan included in the Mayor's proposed budget for fiscal year 2009-10, under which responsibility for facilities maintenance operations and services for the War Memorial buildings and grounds are to be transferred from the War Memorial department to the Real Estate Division of the City Administrator's Office. President Bechtle acknowledged City representatives, who are present today to provide information to the Trustees and answer any questions on the proposed transfer. She first asked Beth Murray to provide a brief overview of the budget proposal.

Ms. Murray stated the Mayor's proposed budget for FY 2009-10, which was submitted to the Board of Supervisors on June 1, includes a plan whereby responsibility for all War Memorial engineering, building trades and custodial personnel and services will be transferred from the War Memorial department to the Real Estate Division effective July 1, 2009. She said that War Memorial staff learned of this plan on or about May 20th. In

response to the War Memorial's immediate initial concerns and questions about the operational and financial bases of the proposed consolidation, the Real Estate Division provided a memorandum on May 22, which outlined Real Estate's current facilities management operations and which summarized their reduced staffing plans for the War Memorial buildings based on square footage calculations. However, the square footage amounts used by Real Estate in these calculations represented only 58% of the War Memorial buildings' 779,600 square feet currently managed, operated and maintained by the War Memorial department. Ms. Murray stated that to date, the War Memorial has received no other information as to the Real Estate Division's plans for managing and delivering engineering, trades and custodial operations and services for the War Memorial buildings.

Ms. Murray stated that War Memorial staff had several meetings with the Real Estate Division and Mayor's Office before the Mayor's June 1 budget submission, and expressed concerns about the lack of any planning for such a consolidation and the risks of adverse and unintended financial and operational effects from moving forward with an undeveloped and unclear consolidation plan. War Memorial offered to the Mayor's Office, and has reiterated this offer, to provide an alternative revenue-neutral budget plan whereby engineering/custodial employees would remain with the War Memorial in FY 2009-10, and provide necessary time for War Memorial and Real Estate to meet to discuss and evaluate consolidation issues, benefits and options.

President Bechtle acknowledged and introduced Amy Brown, Director of Property and Deputy City Administrator. Ms. Brown informed the Trustees that this facilities management consolidation—which involves transferring staff from the War Memorial and Department of Public Work to the Real Estate Division—produces critical savings to the City in meeting an unprecedented projected budget shortfall of \$438 million. She stated that the proposed staffing reductions and pooling of personnel resources are expected to result in \$1+ million in savings to the City. Ms. Brown said that pooling employees from various departments allows for greater flexibility in scheduling personnel resources based on demand, and while there will not be the same head count solely dedicated to a building, there will be some regular personnel who can be supplemented with support staff from the larger staffing pool when needed. She stated that while their memo did incorrectly state War Memorial square footage, they believe staffing levels at the War Memorial are still higher than at other facilities.

Ms. Brown stated that she had hoped to have ready for the Trustees today a draft Service Memo of Understanding under which the War Memorial would be hiring the Real Estate Division to manage the facilities pursuant to mutually agreed upon terms. She stated that this draft MOU would be forthcoming as soon as possible. Ms. Brown also assured Trustees that the same engineering, trades and custodial personnel who currently work at the War Memorial will continue working at War Memorial at least for the next three months.

In response to an inquiry from Trustee Horn, Ms. Brown stated that the Real Estate Division does not currently manage any performing arts facilities; however, they have experience in coordinating services and support resources for special events at City Hall.

President Bechtle acknowledged and introduced Adine Varah, Deputy City Attorney, and asked Ms. Varah to respond to Trustees' inquiries concerning the obligations and duties of the Trustees under the War Memorial Trust, and the legality and potential implications of transferring a core function of the War Memorial Board of Trustees to another City agency.

Deputy City Attorney Adine Varah stated that under Section 5.101 of the Charter, the War Memorial is a "charitable trust department" and that the War Memorial Board of Trustees, as the governing body of the War Memorial, has "exclusive charge of the trusts and all other assets under their jurisdiction ...including any land or buildings set aside for their use." The Trustees also have a fiduciary duty under the War Memorial Trust Agreement to operate, maintain and keep in good repair and condition the War Memorial facilities. Care and maintenance of the War Memorial Trust property is one of the Trustees' core Trust functions.

Ms. Varah further stated that under the Charter, the War Memorial has broad facilities management and contracting authority. Under Section 5.101 of the Charter, the Trustees' exclusive jurisdiction includes the authority to "maintain, operate, manage, repair or reconstruct existing buildings and to construct new buildings, and to make and enter into contracts relating thereto, subject, insofar as City funds are to be used, to the

budgetary and fiscal provisions of the Charter.” Ms. Varah noted that the “budgetary and fiscal provisions of the Charter,” in turn, are set forth in Article 9 of the Charter (Financial Provisions).

The Mayor and the Board of Supervisors have the authority to approve the War Memorial’s annual budget and to determine how much City funding the War Memorial will receive, as long as they provide a sufficient amount under the Charter’s minimum funding mandate (Charter Section 16.106). The funding mandate under Section 16.106 of the Charter provides that “The Board of Supervisors shall annually appropriate to the War Memorial and Performing Arts Center Board of Trustees, an amount sufficient to defray the cost of maintaining, operating and caring for the War Memorial Performing Arts Center.” But, the Charter does not specify any particular amount, so there is some discretion on the part of the Mayor and Board of Supervisors to determine what that amount will be.

Ms. Varah stated that the Mayor and the Board of Supervisors, within the funding limits under Charter Section 16.106, can determine how much funding the War Memorial gets for certain functions, including maintenance and other functions. But the Mayor and the Board of Supervisors cannot alone dictate how the War Memorial carries out its functions, nor can the Mayor or the Board of Supervisors give another agency control over the assets and functions under the War Memorial’s exclusive jurisdiction, unless the parties agree on the terms. Ms. Varah stated it is conceivable, if there were a plan acceptable to the War Memorial Board of Trustees, the War Memorial could decide to enter into such an agreement as the consolidation and transfer of duties proposed under the Mayor’s budget. Any such agreement or Service Memorandum of Understanding would need to be approved by the War Memorial Board of Trustees.

President Bechtle, on behalf of the Trustees, expressed sincere interest in being part of the City’s budget solution, while still making sure the Trustees’ Charter and Trust responsibilities and commitments to Trust beneficiaries and resident licensees are being fulfilled. Before hearing public comment on this matter, President Bechtle read into the record a letter from Vice President Shultz expressing deep concern that outsourcing facilities maintenance functions would compromise the War Memorial Board’s core responsibility to maintain these important buildings as charitable trust assets for the public (letter attached as appendix to minutes).

President Bechtle called for public comment on this matter. Trustees heard from representatives of the War Memorial’s resident licensees, Brent Assink, Executive Director of the San Francisco Symphony, Glenn McCoy, Executive Director of the San Francisco Ballet, and Drew Landmesser, Director of Production of the San Francisco Opera, all of whom emphasized the importance of their relationship with the War Memorial as very positive, long-term and necessary to their operations. They expressed grave concerns that outsourcing facilities maintenance would endanger smooth operations and risk alienating ticket buyers as well as potentially discouraging future major investment of private money in the buildings. They noted that private funds are currently raised by the resident licensees for projects which would otherwise need to be funded by the War Memorial, thus sparing the City the full costs of maintaining and updating the facilities, and stated that dual leadership in the form of two separate City departments would threaten these projects and the relationships upon which they are based.

Trustees heard from Sydney Goldstein, Executive Director of City Arts and Lectures, who stated concerns that while such a consolidation plan may be well-intentioned, there is clear consensus that such a plan will not only severely compromise the complicated operation of a thriving Performing Arts Center, but will not necessarily save money.

Trustees heard additional public comment from Garo Eldemir, General Manager for Patina Catering at the War Memorial complex, Kevin Kelly, War Memorial Acting Building and Grounds Superintendent, Mark Naddy, War Memorial Senior Stationary Engineer, and Lyn Shimizu, War Memorial Electrician, each of whom conveyed their concerns about the consolidation proposal.

Following public comment and discussion with Trustees, President Bechtle suggested the best course of action would be not to take any action at this time, but to prepare for a meeting with Mayor Newsom scheduled for June 18, at which it is hoped that representatives of the Trustees, as well as staff, could carry the message of cooperation as well as deep concern over this proposed consolidation. War Memorial staff was directed to have a variety of alternative funding and staffing solutions available for the meeting with the Mayor.

MISCELLANEOUS CORRESPONDENCE

Letters from American Legion War Memorial Commission: President Bechtle stated that Trustees have received copies of six letters from Michael Gerold, Chair of the American Legion War Memorial Commission, concerning various items. She stated that copies of these letters have been distributed for the Trustees' information, and absent any Trustee request to calendar any of the letters for Board action, she referred the letters to War Memorial staff for response or other action as necessary.

ADJOURNMENT

There being no further business, President Bechtle adjourned the meeting at 3:35 p.m.

Jennifer E. Norris
Executive Secretary