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MEMORANDUM

TO: Dennis J. Herrera
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FROM: Jon Givner *JG*
Deputy City Attorney, Head of Ethics Team

Thomas Boyd *MB*
Chief of Investigations

DATE: August 17, 2009

RE: Review of Supervisor Christopher Daly's Residency

In light of questions raised about Supervisor Daly's residence based on recent news reports, and in response to Supervisor Daly's request, this Office has independently reviewed whether he currently is a resident of San Francisco's District Six, the district he represents on the City's elected Board of Supervisors. In doing so, this Office reviewed records and spoke with more than a dozen witnesses, including Supervisor Daly, his wife, his roommates, and his neighbors. Applying established legal principles to the facts we have obtained, we conclude that Supervisor Daly currently remains a resident of District Six, as required by the San Francisco Charter. As described further below, the facts here present a much different case from the question of Supervisor Edmund Jew's qualifications for office, where it was clear based on this Office's investigation in 2007 that Mr. Jew failed even to establish residency in his district.

I. SUMMARY

The basic facts do not appear to be in doubt. Since January 2001, Christopher Daly has served as the elected Supervisor from District Six. From November 2001 until May 2009, Supervisor Daly and his wife, Sarah Low Daly ("Ms. Low Daly"), lived in a condominium they owned together on Stevenson Street in District Six. In February 2009 the couple purchased a house in Fairfield, California, and in April 2009 the couple purchased a second house in Fairfield. In late May, Ms. Low Daly and the couple's two children moved from the Stevenson Street residence into one of the houses in Fairfield. According to Supervisor Daly, Ms. Low Daly and other witnesses, and consistent with the records we reviewed, Supervisor Daly has continued to spend the majority of his nights at Stevenson Street, staying in Fairfield primarily on the weekends. Supervisor Daly has stated publicly and to this Office that he intends to continue living at the Stevenson Street residence.

Charter section 13.110 requires that each member of the Board of Supervisors must have resided in the district that member represents for at least 30 days immediately preceding the date he files a declaration of candidacy for the office, and must continue to reside in the district throughout his incumbency. The Charter and local elections code incorporate the state Elections Code, under which the place where an official "resides" – or that person's "residence" – is

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defined to mean *domicile*. To establish a "domicile" for elections law purposes, an official must physically inhabit a place with the intent to remain there. A person can have only one domicile at a time, so to change one's domicile requires both action and intent – that is, the act of physically moving to the new residence plus the intent to make it one's fixed home.

While elected officials may have only one domicile, they can have multiple residences. A long line of cases and Attorney General opinions provides that officials may split time between two homes without losing their original domicile, as long as their actions corroborate their declared intent to remain there. Additionally, officials and their spouses can have different domiciles if they and their spouses reside in different places with the intent that they remain in their respective homes. So here, the facts that Supervisor Daly and his wife purchased a home outside San Francisco, that he spends time at the Fairfield home, and that his wife and children reside in Fairfield do not necessarily mean that Supervisor Daly has established a new domicile in Fairfield. Instead, under established principles of California law, we look to Supervisor Daly's statements and actions, along with records documenting those actions, to determine whether he physically inhabits the Stevenson Street residence and whether he intends to retain it as his fixed home.

Supervisor Daly has consistently stated that he spends most of his time in San Francisco and that he intends to remain at the Stevenson Street residence. His actions – as evidenced by witness observations as well as public and private documents – corroborate that intent. We have reviewed a number of documents, including Department of Motor Vehicle registration records, voter registration records, tax returns, utility and related bills, homeowner's exemption records, and other public documents, all of which are consistent with Supervisor Daly's assertions and link him to the Stevenson Street residence. In contrast, we are aware of no documents that demonstrate Supervisor Daly has changed his domicile to Fairfield. Additionally, a number of witnesses, including Ms. Low Daly, Supervisor Daly's Stevenson Street roommates and third party neighbors in San Francisco and in Fairfield, corroborate his statements. Based on our inspection of his bedroom and other rooms in the unit, it appears that Supervisor Daly resides at least part-time at Stevenson Street.

Applying the established legal standard, we conclude that Supervisor Daly currently remains a resident of District Six. Under the Charter, he must remain a resident of that district and intend that it continue to be his fixed home for as long as he remains in office as the District Six Supervisor. We do not reach any conclusions here about whether Supervisor Daly's domicile will change at any point in the future.

Finally, although questions have been raised about how Supervisor Daly's residency compares to that of former Supervisor Ed Jew, our investigation revealed that the two situations are starkly different. While Supervisor Daly has had a home in District Six for years and now declares that he is not abandoning it, Supervisor Jew never established residency at the house in District Four he claimed was his home. And while all the documentary evidence we reviewed and the witnesses we interviewed here support Supervisor Daly's assertion that he continues to reside on Stevenson Street, Supervisor Jew's similar declarations of residency found no credible support on paper, in visual observations of his house or in the observations of his neighbors. In short, the question with Supervisor Jew was whether he ever established domicile in his district – and he did not – but the question here is whether Supervisor Daly has changed his domicile to a home outside his district. The facts of these two situations are very different and lead to opposing domicile determinations, as further discussed in section IV(C) at the end of this memorandum.

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II. BACKGROUND

Supervisor Daly currently serves as the elected member of the San Francisco Board of Supervisors representing District Six. He was elected to that position in November 2000 and assumed office in January 2001. He later won reelection in 2002 and 2006. His current term expires on January 8, 2011, and under the City's Charter, he may not seek reelection for at least four years.

In nomination papers filed with the City's Department of Elections in 2006, Supervisor Daly swore that he met the legal requirements for candidacy, representing that he was a resident of the City district that he sought to represent and that he had been a resident for at least 30 days. In that filing, Supervisor Daly attested that he resided at an address on Stevenson Street in District Six.

Supervisor Daly and Ms. Low Daly purchased the three-bedroom condominium unit on Stevenson Street in Fall 2001, and moved into the unit in early November of that year. They resided there together until earlier this year. The couple married in 2003 and they now have two children, ages about 1½ and 4½.

On February 10, 2009, Supervisor Daly and Ms. Low Daly purchased a house in Fairfield, California. They purchased that house with cash and did not take out a home loan. Ms. Low Daly's parents live in Fairfield, and many members of her extended family also reside in the area. On April 1, Supervisor Daly and Ms. Low Daly purchased a second house in Fairfield in a foreclosure sale. Like the purchase of the first house, they paid all cash and did not take out a loan. The second house is located on a cul-de-sac and is two doors away from Ms. Low Daly's parents' home. Ms. Low Daly lived on the same cul-de-sac with her parents as a child. According to Supervisor Daly and Ms. Low Daly, they initially intended for Ms. Low Daly and the children to move to the first house, but when a second house so close to Ms. Low Daly's parents became available, they decided to purchase the second property and rent out the first. During the first half of 2009, before the cul-de-sac property was ready for occupancy, Ms. Low Daly and the children began to spend more time in Fairfield with Ms. Low Daly's parents.

When Ms. Low Daly informed her brother that she planned to move to Fairfield, he and his girlfriend agreed to move into the Stevenson Street condominium with Supervisor Daly. They moved in on approximately May 1, and they lived in the unit with the entire Daly family for most of the month. Around Memorial Day weekend, Ms. Low Daly and the children moved to the cul-de-sac property in Fairfield.

After Ms. Low Daly moved, the remaining roommates – Supervisor Daly, his brother-in-law, and his brother-in-law's girlfriend – agreed to find another person to share the unit and help defray housing costs. Supervisor Daly's brother-in-law posted an advertisement on Craigslist, and later interviewed and agreed to lease terms with the final roommate. The final roommate moved into the unit in late June 2009 under a one-year lease agreement. Although the original lease listed Supervisor Daly's brother-in-law as the "landlord," Supervisor Daly and the final roommate later signed a new lease listing Supervisor Daly as the landlord.

With Ms. Low Daly and the children living in Fairfield, four roommates now share the Stevenson Street residence. Ms. Low Daly's brother and his girlfriend share one of the upstairs bedrooms, Supervisor Daly occupies a separate bedroom downstairs, and the final roommate

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occupies the other upstairs bedroom. One of Supervisor Daly's roommates also has a dog that stays in the unit.

Since Ms. Low Daly's move to Fairfield, Supervisor Daly spends most weeknights in the Stevenson Street residence and usually spends weekend nights with his family in Fairfield, according to our interviews with Supervisor Daly, Ms. Low Daly, and the three Stevenson Street roommates. Supervisor Daly informed us that he spends on average four nights a week at Stevenson Street and three nights a week in Fairfield. Ms. Low Daly told us that Supervisor Daly spends the "majority" of his nights at Stevenson Street.

On July 22, Supervisor Daly issued a written statement announcing that he and Ms. Low Daly had purchased a house in Fairfield and that Ms. Low Daly and the children had "recently" moved there. The statement continued:

I continue to eat, sleep, and bathe in my home on Stevenson Street. I bicycle to City Hall and to district meetings from my home and intend to continue to do so until the end of my Supervisor term and probably for longer.

In the following weeks, Supervisor Daly made similar statements to other members of the press, explaining that he considers the Stevenson Street condominium his home but that he regularly spends time in Fairfield with his family.

III. SCOPE OF THE CITY ATTORNEY'S REVIEW

On July 27 and August 11, Supervisor Daly provided us a number of documents, including 2008 tax returns; a copy of his driver's license; his vehicle insurance card; recent statements from four personal bank accounts; and cable, electricity, and phone/internet bills and bill summaries covering the past year. We also reviewed information in public filings regarding Supervisor Daly, Ms. Low Daly, and the Stevenson Street roommates, and we obtained additional voter registration records and election-related filings from the San Francisco Department of Elections.

We interviewed Supervisor Daly at his Stevenson Street residence on July 27, and followed up with additional questions on August 5 and 6. We inspected the unit during our first meeting with Supervisor Daly, and also visited it for an interview with one of Supervisor Daly's roommates on July 28.

In addition to our meetings with Supervisor Daly, we interviewed a number of other witnesses regarding Supervisor Daly's current living arrangements and Ms. Low Daly's move. On August 3, we spoke with Ms. Low Daly. On July 28 and August 5 and 6, we interviewed the three individuals Supervisor Daly identified as his Stevenson Street roommates. The Stevenson Street building has five units, and between July 28 and August 7, we contacted individuals in the four units other than Supervisor Daly's. Between July 30 and August 4, we also made contact with every household on the Fairfield cul-de-sac where Ms. Low Daly now resides, including Ms. Low Daly's father.

Our review focused on Supervisor Daly's residency between February 2009, when he and Ms. Low Daly purchased the first Fairfield property, and August 10, 2009. We did not specifically look into whether Supervisor Daly has been a resident of the Stevenson Street condominium in District Six continuously since 2001. That fact does not appear to be in question, and indeed all the evidence we obtained supports the assertion that he has been a resident there for that period.

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IV. DISCUSSION

A. Under The Charter, Supervisor Daly Must Reside In District Six Throughout His Term of Elective Office.

1. The San Francisco Charter Requires Each Supervisor To Be Domiciled In The District That The Supervisor Represents.

San Francisco has eleven Supervisors who serve as its legislative body. Each Supervisor is elected by the voters of a distinct supervisorial district. *See* Charter §§ 2.100, 13.110(a), (b).

To ensure that each candidate for Supervisor, and each elected Supervisor, possesses a sufficient connection with the district from which that person seeks to be or has been elected, the Charter requires that the Supervisor be a resident of the district before seeking office and throughout the Supervisor's term. Specifically, the Charter provides that each San Francisco Supervisor "must have resided in the district in which he or she is elected for a period of not less than 30 days immediately preceding the date he or she files a declaration of candidacy for the office of supervisor, and must continue to reside therein during his or her incumbency, and upon ceasing to be such resident shall be removed from office." Charter § 13.110(e).

While the Charter conditions one's ability to serve as Supervisor on where one "resides" or "ha[s] resided," neither the Charter nor the City's Municipal Elections Code ("MEC") specifically defines that term (including its variants, such as "resident" or "residence"). But the Charter specifies that where local law is silent, "all City and County elections shall be governed by the provisions of applicable state laws." Charter § 13.100. Section 100 of the MEC, similarly, states that except where the Charter or the MEC provide otherwise, "applicable provisions of State and federal law shall apply" to electoral matters in San Francisco. MEC § 100.

California statutes, in turn, make clear that where one "resides" for electoral purposes turns on where one is domiciled. Under California Elections Code section 349(a), "[r]esidence' for voting purposes means a person's domicile." Government Code Section 244 likewise defines "residence" in terms that – although not employing the word "domicile" – equate to that concept. *See Walters v. Weed*, 45 Cal.3d 1, 7 (1988); *Smith v. Smith*, 45 Cal.2d 235, 239 (1955). Moreover, the Attorney General has explained that the term "residence" "generally . . . connote[s] 'domicile,' i.e., the place where a person's habitation is fixed, at which the person intends to remain, and to which the person intends to return whenever absent." 75 Ops. Cal. Atty. Gen. 287, 289 (1992).

Accordingly, whether Supervisor Daly satisfies Charter section 13.110(e)'s residency requirements depends on whether he has retained his domicile in District Six.

2. Physical Habitation And Intent To Remain Are Both Necessary To Establish A Domicile.

Under the law, a domicile is more than a mere residence. "[T]he test for determining a person's domicile is physical presence plus an intention to make that place his permanent home." *Fenton v. Bd. of Directors of Groveland Community Services Dist.*, 156 Cal. App. 3d 1107, 1116 (1984). Beyond just being a place that one inhabits, one's domicile is the place where one's "habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning." Cal. Elec. Code § 349(b). A person's domicile is "the place where one remains when not called elsewhere for labor or special

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or temporary purpose, and to which he or she returns in seasons of repose." Cal. Gov't Code § 244(a). As the California Supreme Court has explained, a person's

'domicile' is the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning[.]

Smith, 45 Cal.2d at 239. While a person may have multiple residences, he or she can only have one domicile. See Elec. Code § 349(b), (c); *Smith*, 45 Cal.2d at 239.

Courts generally hold "that two elements are indispensable" to establishing domicile in a particular place: actual residence plus the intent to remain there. *DeMiglio v. Mashore*, 4 Cal. App. 4th 1260, 1268 (1992). "The acquisition of a new domicile requires the union of act and intent." *Walters*, 45 Cal.3d at 14; Cal. Gov't Code § 244(f). Therefore, a person's mere intent to make a certain location his domicile is not meaningful legally, unless and until the person actually inhabits that location with the intent to live there permanently. Cal. Elec. Code § 2024. "A person does not gain a domicile in any precinct into which he or she comes for temporary purposes merely, without the intention of making that precinct his or her home." *Id.* § 2021(b).

Once a person establishes domicile in one place, the individual does not lose that domicile "until a new one is acquired." 84 Ops. Cal. Atty. Gen. 154 (2001). In considering what it means to *change* one's domicile, we find that the Court of Appeal's analysis in *Fenton* is instructive. In that case, an official purchased a home inside her district in 1950 and lived there for nearly a decade. During that period, the district home unquestionably was her domicile. *Id.* at 1112, 1117. In 1959, the official purchased a second home outside the district, and she split time between the two for several years. *Id.* Starting in 1968, the official lived "almost exclusively" at the second home and took a homeowner's property tax exemption there. *Id.* at 1111-12. While her voter registration and driver's license listed her as a resident of her district, and she visited the district home regularly "to check on its welfare," she did not "reside" there in the colloquial sense of that word. *Id.* at 1112, 1117-18. Despite the official's nearly full-time residence at the second home over 14 years, the court found "ample evidence" that she had not changed domiciles. In reaching this conclusion, the court considered the official's declaration that she "continue[d] to consider the [district] property as her home," and "her actions as manifested by her consistent listing of the . . . address as her residence, and the fact that she consistently returned to the property" to establish that she did not intend to change her residence. *Id.* at 1112, 1117-18.

3. Purchasing And Spending Time At A Residence Outside The District Does Not Establish A Change Of Domicile.

A long line of consistent California legal authority provides that officials may split time between two homes without losing their domicile in the district from which they were elected or appointed, as long as their actions corroborate their declared intent to remain in the district. As the Attorney General has explained, "[w]hile an individual may have only one domicile, he or she may have multiple dwellings. . . . Accordingly, the acquisition of a new dwelling does not necessarily establish a change of domicile." 84 Ops. Cal. Atty. Gen. 154 (2001) (citations omitted).

The reported authority most analogous to Supervisor Daly's circumstance is the Attorney General's 2003 opinion regarding an elected member of the San Diego Unified School District. See 86 Ops. Cal. Atty. Gen. 194 (2003). The official was first elected in 1992, and when he

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remarried nine years later, he rented a house with his new wife in Coronado, outside the district. The official's wife registered to vote in Coronado, and her children enrolled in Coronado schools. While the official kept an apartment in the district, he split his personal belongings between the two homes, and he acknowledged that he "divide[d] his time between the two residences and [spent] more time at the Coronado house" than at his apartment inside the district. A parking attendant at the San Diego apartment saw the official two or three times a week, but a neighboring tenant reported having seen the official three times in the two years following his marriage.

But the official received mail at the in-district apartment, and the utilities there were in his name. His driver's license, vehicle registration, voter registration, wage and tax statements all used the San Diego address, and the official explained that he considered that apartment to be his permanent home. The official declared that he had been domiciled in the district for 18 years and that "he has never formed an intention to make the Coronado rental house his permanent home." For that reason, the Attorney General concluded that the evidence did not support the conclusion that the official had changed his domicile to Coronado.

Similarly, in 75 Ops. Cal. Atty. Gen. 26 (1991), the Attorney General declined to find substantial questions about an community college district trustee's domicile after the trustee and her spouse sold their home in the district and purchased a new home outside the district. The trustee "allocate[d] her time between" her family's new home and a rented residence in the district, but maintained voter registration, vehicle registration, phone service and bank accounts in the district. The Attorney General concluded that the "allegations that [the trustee] has purchased a residence outside of the District and resides there part-time, even when coupled with a conclusory belief that [the trustee] does not intend to remain at her residence within the District, are not sufficient when weighed against the direct evidence of intent on the part of defendant which is materially corroborated by her conduct."

Also, in 72 Ops. Cal. Atty. Gen. 8 (1989), the Attorney General denied a challenge to the residency of a member of the Huron City Council. The official owned a home outside the jurisdiction but spent one to three nights a week in Huron in a mobile home owned by his brother-in-law. The official considered the mobile home to be his "permanent residence," he voted in Huron, and his vehicle registration and driver's license listed that address as his residence. Based on these facts, the Attorney General concluded that the official intended to maintain his domicile in Huron.

In 87 Cal. Ops. Atty. Gen. 30 (2004), the official in question also divided his time between two residences – the home of his mother and sister in the district and the home of his girlfriend outside the district. But he received mail at the in-district home, and his driver's license, insurance and voter registration listed that address as his residence. Although the official spent time at the girlfriend's home as well, the Attorney General concluded that "it is clear that such a residence, even if it were a house owned by him and occupied by his family, does not establish domicile – especially where, as here, [the official] affirms his intent to maintain his domicile in [the district] and supports his declaration of intent with substantial evidence from other sources."

The Attorney General has reached the same conclusion in other comparable situations as well. *See* 84 Ops. Cal. Atty. Gen. 154 (2001) (district trustee signed a lease, paid rent, and received mail at a residence outside district, but evidence was "insufficient" to raise substantial questions regarding trustee's domicile, "especially where [the trustee] has denied an intent to

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change his domicile," and where voter and vehicle registration and other documentation supported that assertion); 75 Ops. Cal. Atty. Gen. 287 (1992) ("[A]llegations that defendant has purchased or moved to a residence outside the district is not probatively significant, since an individual may well have multiple residences as that term is commonly understood and as distinguished from the concept of domicile."); 73 Ops. Cal. Atty. Gen. 427 (1990) ("[W]hile a change of mailing address and telephone listing to a location outside the District may indicate some presence outside the District, they are not inherently inconsistent with also maintaining physical presence within the District with an intention to return whenever absent.").

The Attorney General summarized many of these opinions in 81 Ops. Cal. Atty. Gen. 94 (1998), explaining:

[The] allegation that defendant has purchased a home outside the District, taken alone, is not dispositive, since an individual may have multiple dwellings as distinguished from the concept of domicile. . . . In prior opinions, therefore, where such an allegation was insufficient to overcome direct evidence of an expressed intent to remain in and to return to the officer's domicile within the public agency's boundaries whenever absent for purposes of work, where such an expression was coupled with corroborative conduct, we have denied applications for leave to sue in quo warranto.

(citations omitted). Under this standard, the fact that Supervisor Daly and his wife purchased a home outside District Six, or that he spends time at the Fairfield home, does not necessarily mean that he has established a new domicile.

4. A Person's Domicile May Be Different From The Domicile Of The Person's Spouse.

As some of the opinions described above indicate, an official may have a different domicile from that person's spouse. California Elections Code section 2029 provides, "[t]he domicile of one spouse shall not be presumed to be that of the other, but shall be determined independently." Elections Code section 2028 similarly states:

If a person has a family fixed in one place, and he or she does business in another, the former is his or her place of domicile, but any person having a family, who has taken up an abode with the intention of remaining and whose family does not so reside with him or her, is a domiciliary where he or she has so taken up the abode.

See also Cal. Gov't Code, § 244(g) ("A married person shall have the right to retain his or her legal residence in the State of California notwithstanding the legal residence or domicile of his or her spouse.").

The Attorney General underscored this point in 86 Cal. Ops. Atty. Gen. 194 (2003). There, the party seeking to remove an official from office submitted as its "primary contention . . . that [the official] has abandoned his domicile in the District by moving" to a house outside the district with his wife and their children. The Attorney General rejected that contention, noting that "[i]mplied in Relator's argument is a presumption that a person may not maintain a domicile separate from the residence shared with his or her spouse and children. But the law provides otherwise." Likewise, here, Ms. Low Daly's domicile in Fairfield does not necessarily determine Supervisor Daly's domicile.

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B. Supervisor Daly Has Not Changed His Domicile To Fairfield.

Applying these established legal standards to the facts of Supervisor Daly's current circumstances as described above, we conclude that his current domicile remains at Stevenson Street in San Francisco. In determining a person's intent to make a particular place home, "the declarations of the party involved must be taken into consideration." *Fenton*, 156 Cal. App. 3d at 1117. At the same time, because "[o]ne's intent can be determined by one's acts," *id.*, a court "is not necessarily bound by the person's statement of his intention, particularly where his acts contradict his statement." *Mauro v. Department of Mental Hygiene*, 207 Cal. App. 2d 381, 389 (1962). As the Attorney General has observed, "the most important evidence of [a person's] intent is his conduct." 85 Ops. Cal. Atty. Gen. 90, 93 (2002). *See also* 81 Ops. Cal. Atty. Gen. 98 (1998) (finding substantial questions regarding official's domicile because of evidence contradicting official's statements and "unexplained discrepancy" in her story).

Here, as discussed below, the evidence does not show that Supervisor Daly intended to change his domicile when he purchased the Fairfield properties or at any time since.

1. Supervisor Daly Has Consistently Stated That He Has Not Changed His Domicile To Fairfield

In three interviews with this Office and in several statements to the media, Supervisor Daly consistently has stated that he resides at the Stevenson Street condominium. During his conversations with us, he stated that his wife and children stayed at her parents' house in Fairfield periodically over the course of the spring, and that they completed their move to Fairfield in late May. Since then, he reports that he has spent an average of four nights a week in the Stevenson Street condominium. He said that he regularly travels to Fairfield by taking BART and a surface bus. To corroborate this practice, he presented his BART and bus passes.

In his written request that this Office review his residency, Supervisor Daly stated, "I continue to live here in San Francisco at [the Stevenson Street address], where I have lived since 2001. I have the intention of remaining in this abode."

While not dispositive, Supervisor Daly's consistent statements have legal significance, particularly where the other evidence supports his statements. *See Fenton*, 156 Cal. App. 3d at 1117. And as discussed below, the other evidence we have accumulated and reviewed is consonant with Supervisor Daly's statements regarding his intent.

2. The Evidence Supports Supervisor Daly's Declaration That He Is Domiciled At Stevenson Street.**a. Documents Linking Supervisor Daly to the Stevenson Street Residence**

A number of documents we reviewed confirm Supervisor Daly's connection to the Stevenson Street property. In determining domicile, courts and the Attorney General have looked at numerous factors including the address shown on the person's voter registration, driver's license, vehicle registration, tax returns, homeowner's property tax exemption, and telephone listings. *Fenton*, 156 Cal. App. 3d at 1116; 84 Ops. Cal. Atty. Gen. 154 (2001); 87 Ops. Cal. Atty. Gen. at 33; 75 Ops. Cal. Atty. Gen. 287, 289 (1992). Here, every document we have reviewed links Supervisor Daly to the Stevenson Street address:

- *Voter Registration Records*: Based on our review of the Department of Elections' computer database, Supervisor Daly has been registered to vote at the Stevenson

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Street address since November 2001. He has not changed his registration since purchasing the Fairfield properties.

- *Department of Motor Vehicle Records:* Department of Motor Vehicle records show that Supervisor Daly's driver's license lists the Stevenson Street address. The driver's license was most recently renewed on August 17, 2006.
- *Vehicle Insurance and Registration:* Supervisor Daly provided this Office a copy of an insurance card for the vehicle registered to Ms. Low Daly. The policy is effective April 1, 2009, and lists Sarah L. Daly and Christopher E. Daly as the insured, with the Stevenson Street address. The vehicle is registered in Ms. Low Daly's name, and the vehicle registration lists the Stevenson Street address.
- *Elections Filings:* In his Declaration of Candidacy and Affidavit of Nominee, filed with the Department of Elections on August 11, 2006, and his Declaration of Intention to Solicit or Accept Contributions for Local Office, filed with the same office on December 20, 2004, Supervisor Daly stated that he resided at the Stevenson Street address.
- *Property Tax (Homeowner's) Exemption:* Elections Code section 2031 provides that taking a property tax exemption on a residence creates a rebuttable presumption that the residence is the person's domicile unless another residence is listed as the person's residence address on a driver's license or vehicle registration issued to that person. According to their 2008 tax returns, Supervisor Daly and Ms. Low Daly took a homeowner's exemption on the Stevenson Street property. Supervisor Daly stated to us that he intends to claim his homeowner's exemption for the Stevenson Street condominium for the 2009 tax year as well.
- *Fairfield Title Documents:* In public documents filed in connection with the purchases of both Fairfield properties, Supervisor Daly and Ms. Low Daly listed Stevenson Street as their mailing address.
- *Bank Records:* Supervisor Daly provided us with printouts of statements from four personal bank accounts in his and Ms. Low Daly's names. Three of the statements covered periods including June and July 2009, and the fourth covered a period from April to June 2009. All four statements are addressed to Supervisor Daly and Ms. Low Daly at the Stevenson Street residence.
- *Mail Service:* Supervisor Daly provided us with several bills, discussed below, addressed to him at the Stevenson Street address. He also informed us that he receives the bulk of his mail at Stevenson Street. He has not changed his address with the U.S. Postal Service, and he says he does not intend to. He also stated that Ms. Low Daly now receives the bulk of her mail in Fairfield, although she has not yet submitted a change-of-address form to the Postal Service.
- *Public Database Search Results:* In addition to reviewing the documents listed above, we searched for Supervisor Daly's address using directory databases that deliver a wide range of information derived from various sources, including public records, business and consumer information, credit-based sources, and other sources. While these databases do not always reflect very recent address changes, our searches revealed database records for Supervisor Daly's Stevenson Street roommates reflecting address changes as recently as July 2009. By contrast, the databases

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consistently indicated that Supervisor Daly's address is on Stevenson Street. They show no change of residence for Supervisor Daly since 2001.

Supervisor Daly also provided us with copies of recent bills that he received at the Stevenson Street address. These bills indicate that phone, internet, cable and electricity usage has been consistent for at least the last year. (Supervisor Daly did not provide water or waste disposal bills because he pays for those services through his homeowner's association fees.)

- *Phone, Internet and Cable Bills:* Supervisor Daly provided us sets of monthly bills from Comcast showing continuous cable service for the past year, and from AT&T showing continuous landline telephone and internet service for approximately the same period. The bills all are addressed to Supervisor Daly at the Stevenson Street address.
- *Electricity Bills:* Supervisor Daly provided his most recent PG&E bill for the Stevenson Street address, along with payment records reflecting continuous payments to PG&E for this account over the last year. For the most recent period from June 5, 2009 through July 2, 2009, it shows electrical usage of 223 Kwh, or an average of 8.0 Kwh per day. This compares to an average of 11.5 Kwh for roughly the same period last year, based on earlier payment records provided by Supervisor Daly. There is no gas service for the unit.

b. Visual Inspection of the Stevenson Street Residence

Based on our visual inspections of the Stevenson Street residence, including the living area, bathrooms and two of the bedrooms, the unit appears to be lived in. The unit has three bedrooms – two upstairs and one downstairs. The living and dining areas were furnished, the kitchen and refrigerator appeared to be fully-stocked, and during our meeting, Supervisor Daly pointed out duplicate stocks of certain items in the refrigerator that he attributed to multiple persons living in the unit. According to Supervisor Daly, most of his family's furniture is in Fairfield, and the current furnishings at the Stevenson Street residence are a combination of items owned by him and his roommates.

The room Supervisor Daly identified as his bedroom had a futon with sheets, bedspread and pillows; a desk; and several framed photos and a large poster on the walls. The room's closet was stocked with suits, shirts, pants and other clothes.

The dial-in system at the building entrance lists the residents of the unit as "Daly/Low," and one of the building's mailboxes is identified as "Daly/Low."

c. Corroborating Statement By Ms. Low Daly

In our interview with her, Ms. Low Daly provided information consistent with Supervisor Daly's statements. She explained that when she first moved to the Fairfield house, she and Supervisor Daly planned to use what Ms. Low Daly called a firefighter's schedule – with Supervisor Daly spending a few days in San Francisco followed by a day in Fairfield. Instead, Supervisor Daly now spends most weeknights at the Stevenson Street residence and tries to spend most weekend nights in Fairfield. Ms. Low Daly stated that, on the whole, Supervisor Daly currently spends the majority of his time in San Francisco.

Further corroborating Supervisor Daly's statements, Ms. Low Daly also stated that Supervisor Daly usually takes public transportation to and from Fairfield. She explained that the

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couple owns a single vehicle, and that Supervisor Daly only occasionally uses it to drive between San Francisco and Fairfield.

d. Roommates' Statements

The statements of Supervisor Daly's three Stevenson Street roommates were consistent with each other's and with Supervisor Daly's statements. According to all of the roommates, Supervisor Daly spends about half of his time at the Stevenson Street residence, usually spending weekdays in San Francisco and weekends in Fairfield.

The four residents of the unit split monthly bills for electricity, cable and internet evenly, suggesting that all four roommates are evenly responsible for usage. Supervisor Daly informed us that he pays for landline telephone service because his roommates do not regularly use that phone.

In the other particulars, the roommates' statements match those of Supervisor Daly and Ms. Low Daly. Supervisor Daly's brother-in-law told us that he became interested in moving into the Stevenson Street condominium with Supervisor Daly after learning that his sister and her children were planning to move to Fairfield. Supervisor Daly's brother-in-law and his girlfriend both recalled that they moved into the unit around May 1, 2009. They also stated that for the following month, Ms. Low Daly and the children continued to reside at the condominium, but spent time in Fairfield as well, and that during Memorial Day weekend, Ms. Low Daly and the children moved to Fairfield.

e. Interviews with Neighbors in the Stevenson Street Building

Our interviews with occupants of the other apartments in the Stevenson Street building also corroborated Supervisor Daly's statements about his use of the unit. The building has five units, including Supervisor Daly's, with entrances on three floors. The entrance to Supervisor Daly's unit is on the third floor of the building, along with one other unit. Other than a courtyard, there is no common area for neighbors to congregate. We understand that both before and after the purchase of the Fairfield properties, interactions between Supervisor Daly and the other residents of the building have been relatively infrequent.

We spoke with individuals in all four units of the Stevenson Street property other than Supervisor Daly's. Residents in three of the units knew the Daly family by sight and through interactions over the years. The neighbors' observations were consistent with Supervisor Daly's statement that he continues to spend time at the Stevenson Street unit. The resident of the unit on Supervisor Daly's floor stated that she sees Supervisor Daly "all the time," and that she has seen him continuously over the past three to six months. She said that she often notices him coming in and out of the building with his bicycle. Another neighbor reported that he had not seen Supervisor Daly recently, but that he regularly hears him coming and going. A third neighbor reported that she sees Supervisor Daly only occasionally but that she saw him recently leaving the building carrying a cake. The same neighbor also observed that she had not seen the Dalys' car in recent months. This is consistent with Supervisor Daly's statement that Ms. Low Daly usually keeps the car in Fairfield.

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3. The Evidence Supports Supervisor Daly's Declaration That He Has Not Changed His Domicile To Fairfield.

a. Interviews with Neighbors in Fairfield

The observations of Ms. Low Daly's neighbors in Fairfield are consistent with the statements of Supervisor Daly and Ms. Low Daly that Supervisor Daly spends only a minority of his time there. As discussed above, Ms. Low Daly and the children now reside in a house on a cul-de-sac in Fairfield. We made contact with occupants of every house on the cul-de-sac – eight houses in all, including Ms. Low Daly's parents'. Some people we contacted were unwilling to speak with us, but most were willing to share their observations.

Ms. Low Daly's father, the neighbor who probably has the most contact with Supervisor Daly, stated that he sees Supervisor Daly around the house once or twice a week. Based on his observations, he believes that Supervisor Daly spends the majority of his time in San Francisco.

Most of the other neighbors have seen some members of the Daly family since Ms. Low Daly moved in approximately two months ago. Four of them knew who Supervisor Daly was and acknowledged having seen him on the street, but none stated that they see him on a daily basis. One neighbor reported that she sees Ms. Low Daly almost every day and sees Supervisor Daly about once a week. Another neighbor remembers having seen Supervisor Daly only a few times. The resident of the house adjacent to the Dalys' reported that Supervisor Daly visited frequently while the family made improvements to the property shortly after the purchase this Spring, but that he has seen Supervisor Daly less frequently since then. The neighbors consistently stated that the Daly family appears to have only one vehicle, a van that is regularly parked at the house. All of these statements are consistent with the statements made by Supervisor Daly about his intentions and his actions.

On July 30, we also interviewed the tenant renting the Fairfield property that Supervisor Daly and Ms. Low Daly purchased before buying the cul-de-sac home. The tenant has rented the house for approximately three months. No member of the Daly family lives at the house, and she has never met personally with Supervisor Daly. Again, this is consistent with Supervisor Daly's statements.

b. Documents Regarding the Fairfield House

In our review of the documents and the public database searches described above on pages 9-10, we found no documents suggesting that Supervisor Daly is a full-time resident of the Fairfield house where Ms. Low Daly and their children live, or that he has taken any steps indicating that he intends to make that house his domicile.¹

Supervisor Daly provided us a bill for gas and electric service at the Fairfield house where Ms. Low Daly resides. It covers the period from April 16 to April 29, 2009, and it is addressed to Ms. Low Daly.

¹ Although loan documents often include information about whether a purchaser intends to make a property his or her primary residence, Supervisor Daly and Ms. Low purchased both Fairfield properties with cash, so there are no loan applications associated with those purchases.

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C. Supervisor Daly's Circumstances Are Factually and Legally Different From Those Of Former Supervisor Edmund Jew.

In 2007, this Office investigated the residency of District Four Supervisor Edmund Jew and concluded that Supervisor Jew was not domiciled in his electoral district. We reach a different conclusion here because the two Supervisors' situations are legally and factually distinct. Because we are aware that some members of the public have drawn comparisons between the two, we address the main differences here.

First, although the ultimate issue in each case was whether the Supervisor resided in his district, the legal framework was different. In Supervisor Jew's case, because there was no evidence that he had ever resided in the District Four house that he claimed as his residence, we were called upon to determine whether he had actually established residence there and accordingly whether he was qualified to serve as a Supervisor to begin with. Here, because it is undisputed that Supervisor Daly resided at Stevenson Street before purchasing the Fairfield properties, we must determine whether he has changed his domicile from his established domicile in District Six. That difference is legally significant because a party alleging a change of domicile bears the burden of proving the change. *See DeMiglio*, 4 Cal. App. 4th at 1269; 81 Ops. Cal. Atty. Gen. 98 (1998). In 2007, Supervisor Jew had the burden of proving that he had changed his domicile by moving to the district. But here, any party challenging Supervisor Daly's residency would bear the burden of proving he changed his domicile to Fairfield, outside the district.

Perhaps more importantly, the facts of the two cases are starkly different. In 2007, nearly all the evidence disproved Supervisor Jew's claim of domicile in District Four. Here, every document we have reviewed and the statements of every person we have interviewed support Supervisor Daly's claim that he is domiciled at Stevenson Street:

- *The Supervisor's statements:* Supervisor Jew refused to meet with us to answer questions about his residency, he never explicitly declared where his wife and child resided, and his public statements about his own residency were vague and inconsistent. Supervisor Daly has spoken with us on three occasions and has answered all our questions, and both his private and public statements about his and his family's residencies have been consistent.
- *The home:* Supervisor Jew's purported residence in District Four was empty and appeared un-lived-in. Here, our inspection showed numerous signs that Supervisor Daly resides at the Stevenson Street condominium.
- *Utilities and other services:* Supervisor Jew had received almost no utilities or other services at his purported home. Supervisor Daly has shown us bills in his name indicating continuous electric, phone, internet and cable service.
- *Neighbors' observations:* Supervisor Jew's neighbors consistently stated that he had never lived in the house he claimed as his residence, explaining instead that the house had been empty for years. Here, the observations of Supervisor Daly's roommates, the Stevenson Street neighbors and the Fairfield neighbors are all consistent with Supervisor Daly's claims that he spends most of his nights in San Francisco and stays in Fairfield about three nights a week.
- *Homeowner's exemption:* Supervisor Jew took a homeowner's exemption for a house in Burlingame, outside his district. Supervisor Daly takes a homeowner's exemption

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for the Stevenson Street condominium and says he plans to continue to do so in the future.

- *Mail and bills:* Supervisor Jew received almost no mail at his purported home, and received all his bills at another address. Supervisor Daly receives almost all his mail at Stevenson Street, including bank statements and various household bills.
- *Other public documents:* Our public database review found almost no public documents linking Supervisor Jew to his purported home in District Four. Similar searches regarding Supervisor Daly turn up no documents linking him to any home other than Stevenson Street.

Based on the facts and the applicable law, this Office could only conclude in 2007 that Supervisor Jew had not established his domicile in District Four during the relevant period. And here, based on the different facts described above and on the applicable law, we can only conclude as of this date that Supervisor Daly has not changed his domicile in District Six since purchasing the houses in Fairfield.

V. CONCLUSION

Based on the information we have discovered in the course of reviewing Supervisor Daly's residency, we conclude that Supervisor Daly currently remains domiciled at Stevenson Street in District Six. Supervisor Daly was domiciled at Stevenson Street when he and Ms. Low Daly purchased the Fairfield properties. Under established legal standards, we look to both Supervisor's Daly's actions and evidence of his intent. Although his wife and children now reside in Fairfield, he continues to maintain a residence at Stevenson Street, where he spends the majority of his nights. He has consistently asserted that he considers Stevenson Street his fixed residence – the place to which he intends to return whenever he leaves temporarily – and all of the documentary evidence we examined and the witnesses we interviewed corroborate those statements. We are aware of no contrary evidence. For these reasons, we conclude that Supervisor Daly currently continues to be domiciled in District Six.

Under the Charter, Supervisor Daly must continue to be domiciled in District Six throughout the remainder of his term. If Supervisor Daly were to change his domicile to a residence outside of District Six, he would be required to resign office, and the failure to do so would be official misconduct requiring removal from office. Since no one can foresee Supervisor Daly's actions or intentions concerning his residence during the 17 months that remain in his term, we can reach no conclusions regarding whether Supervisor Daly will continue to meet the Charter's residency requirements in the future. We conclude only that he meets those requirements now.