

1 [Special Use District to allow an approved live/work project convert to residential.]  
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3 **Ordinance amending the San Francisco Planning Code by adding Section 249.23 to**  
4 **create the Fourth and Freelon Streets Special Use District encompassing the property**  
5 **zoned Service Light Industrial and bounded by Fourth Street, Freelon Street, Zoe Street**  
6 **and Welsh Street and by adding Section 263.16 to create special height and bulk**  
7 **exceptions for the Fourth and Freelon Streets Special Use District, which would allow**  
8 **previously approved but unbuilt live/work units to convert to market-rate residential**  
9 **units and additional market-rate residential units to be constructed with an allowable**  
10 **increase in height from 50' to 85' and a dwelling unit density governed by the**  
11 **permissible building envelope; provided that (i) the developer shall construct at the**  
12 **developer's sole expense, on land owned or purchased by the developer in either the**  
13 **South of Market Area or the North of Market Residential Special Use District, off-site**  
14 **affordable rental housing with square footage equal to 15% of the total residential units**  
15 **to be constructed offset by the cost of land acquisition, with a minimum of 56 units**  
16 **dwellings constructed of no less than 400 square feet each, (ii) the units dwellings shall**  
17 **be rental units affordable to low- and lower income households with income not**  
18 **exceeding ~~40%~~50% of San Francisco's median income, which shall remain affordable**  
19 **for ~~55 years or for the life of the building whichever is longer~~ for a period of 50 years**  
20 **from their date of initial occupancy, and (iii) upon completion, ~~the affordable housing~~**  
21 **~~development shall be owned, managed and operated by a nonprofit housing~~**  
22 **~~organization with reversion to the City if the nonprofit housing organization is~~**  
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1 dissolved land title shall be transferred to and the off-site affordable housing building  
2 shall be owned, managed and operated by a nonprofit housing organization. If the  
3 nonprofit housing organization is dissolved, the affordable housing building and land  
4 shall be transferred to another nonprofit housing organization or, if no such  
5 organization can be found, shall revert to the City. Approval of the market rate housing  
6 project shall be through a conditional use authorization with payment of a \$10,000 fee if  
7 application is made within one year.

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9 Note: Additions are *single-underline italics Times New Roman*;  
10 deletions are ~~*strikethrough italics Times New Roman*~~.  
11 Board amendment additions are double underlined.  
12 Board amendment deletions are ~~strikethrough normal~~.

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

14 Section 1. The San Francisco Planning Code is hereby amended by adding Section 249.23,  
15 to read as follows:

16 Findings. The Board of Supervisors makes the following findings:

17 1. The San Francisco Planning Department publishes an annual Housing Inventory  
18 Report. This Report provides a 20-year overview of the City's housing production trends,  
19 housing units approved for construction, and housing units completed. Between 1990 and  
20 2000, a total of 12,460 units were completed and 1,540 units were demolished or lost by  
21 alterations, merger of units, or both, resulting in a net gain of 11,173 units. More than 50% of  
22 the new units constructed are located in the City's Downtown, Western Addition and South of  
23 Market districts.

24 2. Of the housing units constructed between 1990 and 2000, 3,492 units were for  
25 low- and very low-income households and families.

1           3.     The vacancy rate in the year 2000 was 2.50% for rental units and 0.80% for sale  
2 units.

3           4.     The Association of Bay Area Governments (“ABAG”) has determined that San  
4 Francisco’s share of the regional housing need for 1999 through June 2006 is 20,374 units, or  
5 2,717 units per year. San Francisco would need a total production rate of 2,852 units a year  
6 through June 2006 to achieve a 5% vacancy rate over the City’s housing need. Of the 20,374  
7 housing units required to meet the City’s housing demand between 1999 and 2006, 7,270  
8 units are needed for low- or very low-income households or families.

9           5.     The City has a total of 20,779 publicly-assisted housing units, of which 6,096  
10 units are operated by the San Francisco Housing Authority, 6,641 units are tenant-based  
11 Section 8 units, and 8,042 units are in project-based Section 8 buildings. Only 3,957 units in  
12 project-based Section 8 buildings are operated by nonprofit organizations. Availability of  
13 tenant-based Section 8 units and for-profit project-based Section 8 buildings are in part  
14 influenced by market dynamics.

15          6.     The City’s General Plan calls for an increase in the production of new housing  
16 and for the development of mixed-income housing to achieve social and cultural diversity.  
17 Objective 1 of the Residence Element states that it is the objective of the City “to provide new  
18 housing, especially permanently affordable housing, in appropriate locations, which meets the  
19 identified housing needs and takes into account the demand for affordable housing created by  
20 employment growth.” Objective 2 of the Residence Element states that the City should  
21 “increase the supply of housing without overcrowding or adversely affecting the prevailing  
22 character of existing neighborhoods.”

23          7.     To achieve the aforementioned objectives, Policy 2 of Objective 2 “encourage[s]  
24 higher residential density in areas adjacent to downtown, in underutilized commercial and  
25 industrial areas proposed for conversion to housing, and in neighborhood commercial districts

1 where higher density will not have harmful effects, especially if the higher density provides a  
2 significant number of units that are permanently affordable to lower income households.”  
3 Policy 3 of Objective 2 allows “flexibility in the number and size of units within permitted  
4 volumes of larger multi-unit structures, and especially if the flexibility results in creation of a  
5 significant number of dwelling units that are permanently affordable to lower income  
6 households.”

7 8. The 2000 Consolidated Plan for July 1, 2000 – June 30, 2005 issued by the  
8 Mayor’s Office of Community Development and the Mayor’s Office of Housing establishes that  
9 extreme housing pressures face San Francisco, particularly in regard to low- and lower-  
10 income residents.

11 9. Many elements constrain housing production in San Francisco. This is  
12 especially true of affordable housing. San Francisco is approximately 49 square miles, is  
13 largely built out, and its geographical location at the northern end of a peninsula inherently  
14 prevents substantial new development. There is no available adjacent land to be annexed, as  
15 the cities located on San Francisco’s southern border are also dense urban areas. Thus, new  
16 construction of housing is limited to areas of the City not previously designated as residential  
17 areas, infill sites, or areas with increased density. New market-rate housing absorbs a  
18 significant amount of the remaining supply of land and other resources available for  
19 development and thus limits the land available for affordable housing.

20 10. In order to ensure that the City’s limited land supply is used efficiently to meet  
21 the needs of housing, commerce and industry, the City has adopted a policy of balancing the  
22 preservation of land used for industry against the need for additional housing, especially  
23 market-rate housing developments that will produce housing units affordable to low- and  
24 lower-income households.

25

1           11.    The City's industrial or mixed-use zoning districts contain large parcels of land.  
2 Inclusion of market-rate housing in these districts that is linked to the production of affordable  
3 housing units furthers the policies and objectives of the City's General Plan and is desirable.

4           12.    Given the limited availability of land in the City, an increase in dwelling unit  
5 density is necessary to meet the housing needs of the City's low-income and lower-income  
6 families and households. With appropriate controls and in appropriate locations, higher  
7 density and height for residential or residential/mixed-use development which will produce  
8 affordable housing units may be achieved without affecting the livability of a neighborhood,  
9 especially when they are located near public transit.

10          13.    The Board of Supervisors has determined that live/work development is no  
11 longer a desirable use. The Board has prohibited live/work projects permanently. Therefore,  
12 allowing the conversion of an already approved but as yet unbuilt live/work project to  
13 residential units would allow a more desirable use to be constructed.

14          14.    Allowing an exception to the height limit on condition that the developer build off-  
15 site affordable housing will increase both the City's total housing supply and its affordable  
16 housing supply, and would be in the interest of the public health, safety and welfare.

17          15.    To ensure that the affordable housing development will be permanently  
18 affordable, it is desirable that such housing be owned, managed and operated by a nonprofit  
19 housing organization.

20          16.    The Planning Department has undertaken community planning efforts in the  
21 South of Market Area. Since February 2002, the Department has conducted four community  
22 workshops inviting community input into establishing priorities and goals for future land use in  
23 the South of Market Area. Approximately 100 individuals attended the fourth community  
24 workshop, at which the Department presented three future land use alternatives. The  
25 proposed Special Use District would be located in the area considered to be rezoned

1 residential and mixed-use development in the first two alternatives while the third alternative  
2 would preserve the site for production, distribution and repair uses. Those who attended the  
3 November 19, 2002 workshop were divided into nine study groups. At the end of the meeting,  
4 seven of the study groups indicated their preference for rezoning the Fourth Street Corridor  
5 for residential use. Additionally, residents in the area indicated to their District Supervisor that  
6 they do not wish to impose interim controls for the South of Market Study Area and that they  
7 do not object to reasonable developments. The proposed Special Use District is, therefore,  
8 consistent with and will not adversely affect the ongoing community planning effort.

9 17. At the public hearing before the Finance Committee on the proposed Special  
10 Use District, representatives of nonprofit housing and nonprofit social service agencies  
11 testified to the dire need for affordable housing in the South of Market Area. Many gainfully  
12 employed individuals currently residing in residential hotel rooms testified that they were  
13 unable to find affordable studio units that would provide them a quality living environment.  
14 Testimony before the Finance Committee also showed that many qualified individuals and  
15 households residing in residential hotel rooms in the South of Market and Tenderloin Areas  
16 who applied for the affordable units constructed under the City's inclusionary housing policy  
17 were not selected because no preference was given to area residents. The proposed Special  
18 Use District will allow the City to target one of the areas with the highest need for affordable  
19 housing.

20 18. On November 26, 2002, the Planning Commission conducted an informational  
21 hearing on the proposed Special Use District legislation. At the Commission hearing, the  
22 Planning Director informed the Commissioners that the proposed Special Use District, which  
23 would propose rezoning of the Special Use District and its surrounding areas for housing and  
24 mixed-use development, is consistent with the direction of the community planning effort for  
25

1 the South of Market Area. ~~The Planning Commissioners expressed their support for the~~  
2 ~~proposed Special Use District because of its affordable housing component.~~

3 19. The use of a percentage area in lieu of a percentage of unit type equivalency  
4 would allow the nonprofit agency that would own and manage the affordable housing building  
5 to tailor the building to meet the specific needs of the area by providing smaller units and  
6 increasing the total number of affordable units. ~~The rental income accruing to the nonprofit~~  
7 ~~agency will allow it the option of providing some or all of the units at levels affordable to~~  
8 ~~individuals with income below 40% of the City's median income, thereby further increasing the~~  
9 ~~affordability of the affordable residential building.~~ The income provided to the nonprofit  
10 agency would also allow the agency to provide a social services component to at-risk  
11 residents or to use the income to provide additional affordable housing units.

12 20. With budget deficits facing the City, State and Federal governments, less public  
13 funds will be available for affordable housing and social service programs. The affordable  
14 units produced by the proposed Special Use District will not require any public funds subsidy  
15 and will eliminate the lengthy application and selection process associated with affordable  
16 housing financed in whole or in part by public funding and will deliver affordable units for  
17 occupancy in a short period of time.

18 21. The nonprofit agency that has been designated as the future owner of the  
19 affordable housing building constructed under the proposed Special Use District legislation is  
20 the Tenderloin Housing Clinic, which agency proposed the innovative affordable housing  
21 concept, and which currently contracts with the City and County of San Francisco to provide  
22 quality affordable housing.

23 22. The increased cost of housing in the Tenderloin and South of Market  
24 neighborhoods has reduced access to studio and one-bedroom units for very low income  
25 individuals and households. Such individuals and households have often been able to find

1 housing only in residential hotels, and have in turn reduced housing opportunities for persons  
2 seeking to transition from homelessness to permanent housing. Increasing the stock of  
3 affordable permanent housing for individuals and small households in the Tenderloin and  
4 South of Market will also allow the residential hotel stock to better serve the needs of persons  
5 seeking exits from homelessness.

6 23. The proposed Special Use District targets an approved live/work project with no  
7 affordable housing component and is not applicable to other projects.

8 24. The Board of Supervisors has reviewed and considered the information  
9 contained in the Final Environmental Impact Report (dated September 7, 2000) and the  
10 Addendum (dated November 7, 2002) contained in Board of Supervisors File Nos. 020549  
11 and 020550, and hereby adopts the California Environmental Quality Act (“CEQA”) findings  
12 adopted by the Planning Commission in its Motion No. 15975, including the mitigation  
13 monitoring program, and hereby incorporates those findings herein as though fully set forth.

14 Based on the Final Environmental Impact Report (~~dated September 7, 2000~~) and the  
15 Addendum (~~published November 7, 2002~~), which are in Board of Supervisors File No.  
16 \_\_\_\_\_ and incorporated herein by reference, the Board further finds that there is  
17 no need to prepare a subsequent environmental impact report under California Environmental  
18 Quality Act Guidelines Title 14 CCR Section 15162 for the actions contemplated herein.

19 25. The project sponsor has selected Webcor, a contractor that will pay prevailing  
20 wages and use union workers in the the construction of the project. A contractor for the off-  
21 site portion of the project shall also be selected who will pay prevailing wages.

22 ~~25.26.~~ The proposed Special Use District is consistent with Planning Code Section  
23 101.1(b) in that:

24 A. Except for the small parcel at the intersection of Freelon and Zoe Streets that is  
25 occupied by an automotive use, the proposed Special Use District site is vacant and will not



1     displace any neighborhood-serving uses and thus is consistent with the provisions of Section  
2     101.1(b)(1).

3             B.     The environmental analysis shows that the proposed Special Use District, which  
4     contains no residential units, will have no significant effect on the land use or visual effects of  
5     the area. Therefore, both the existing housing and neighborhood character will be preserved,  
6     consistent with the provisions of Section 101.1(b)(2).

7             C.     The proposed Special Use District will add up to 330 market-rate residential  
8     units to the City's housing stock and 56 units or more of affordable housing units in either the  
9     South of Market Area, where in the past five years mainly market-rate live/work units were  
10    constructed, or in the North of Market Residential Special Use District Area. The proposed  
11    project is consistent with and will promote the provisions of Section 101.1(b)(3).

12            D.     The proposed Special Use District authorizing a residential/retail mixed-use  
13    development will not contribute to commuter traffic, will not impede MUNI services or  
14    overburden the City streets, and is located in the Third Street Transit Corridor and within three  
15    blocks of other MUNI lines and the Caltrans Station. The proposed project will provide one  
16    off-street parking space for each residential unit and will not aggravate existing on-street  
17    parking problems. The proposed project is consistent with the provisions of Section  
18    101.1(b)(4).

19            E.     The proposed Special Use District will not displace industrial or service sector  
20    uses and is consistent with the provisions of Section 101.1(b)(5).

21            F.     Any residential/retail mixed-use building and the affordable residential building  
22    that would be constructed pursuant to the proposed Special Use District will meet current fire  
23    safety and seismic standards and therefore will promote the provisions of Section 101.1(b)(6).

24            G.     There are no architecturally or historically significant or City-designated  
25    landmark buildings on or adjacent to the proposed Special Use District. The proposed

1 Special Use District is not located in an historic or conservation district. Therefore, the  
2 proposed Special Use District is consistent with the provisions of Section 101.1(b)(7).

3 H. The shadow analysis performed as part of the environmental review for the  
4 proposed Special Use District shows that a building constructed to the maximum height  
5 allowed by this ordinance will not cast any new shadow on any park or recreational facilities  
6 subject to the provisions of Planning Code Section 295 (Proposition K Shadow Ordinance).  
7 Therefore, the proposed Special Use District is consistent with the provisions of Section  
8 101.1(b)(8).

9 Section 2. The San Francisco Planning Code is hereby amended by adding Section  
10 249.23, to read as follows:

11 SEC. 249.23. FOURTH AND FREELON STREETS SPECIAL USE DISTRICT. There shall be  
12 a special use district known as the Fourth Street, Freelon Street, Zoe Street and Welsh Street, as  
13 designated on Sectional Map No. 1SU of the Zoning Map of the City and County of San Francisco. The  
14 following controls shall apply within this Special Use District.

15 (a) Conversion of Previously Approved But Not Yet Constructed Live/Work Units to Market-  
16 Rate Housing. The developer of previously approved but not yet constructed live/work units may  
17 convert the units to market-rate residential units and construct additional new market-rate residential  
18 units on the site provided that (i) the developer, at his, her or its sole expense, constructs affordable  
19 housing off-site with square footage equal to 15% of the total residential units proposed to be  
20 constructed offsetting the developer's site acquisition costs against the costs of construction, and (ii)  
21 the affordable housing is constructed of similar high quality construction to the market rate units  
22 on land owned or purchased by the developer and is located in the South of Market Area or the North  
23 of Market Residential Special Use District, (iii) the off-site affordable housing building, after  
24 offsetting the land acquisition costs, shall contain a minimum of 56 units dwellings of no less than  
25 400 square feet each, (iv) the off-site affordable units shall be rental units, (v) the initial marketing

1 ~~plan for~~ the off-site affordable rental units shall ~~be certified by the Mayor's Office of Housing with~~  
2 be marketed and monitored in accordance with the requirements of the Procedures Manual  
3 approved under Section 315.1 (33) of the Planning Code, except that the owner shall, to the  
4 extent permitted by law, give top priority ~~given~~ to current Single Room Occupancy tenants and  
5 families with low- and very-low income, (vi) the affordable rental units shall remain subject to the  
6 affordability requirements of the Procedures Manual for a period of 50 years from their date of  
7 initial occupancy affordable for 55 years or the life of the building, whichever is longer, (vii)  
8 upon completion, the off-site affordable residential building and associated land title shall be  
9 transferred to and the off-site affordable housing building shall be owned, managed and operated  
10 by a nonprofit housing organization, and (viii) the deed to the off-site affordable housing building and  
11 the associated land shall revert to the City be transferred to a non-profit affordable housing  
12 organization which currently contracts with the City and County of San Francisco to provide  
13 quality affordable housing selected by the Mayor's Office of Housing if the original nonprofit  
14 housing organization is dissolved. If no such nonprofit housing organization can be found, the  
15 off-site affordable housing building and the associated land shall revert to the City. The off-  
16 site affordable housing building and the associated land shall not be sold or transferred  
17 without the consent of the Mayor's Office of Housing. The nonprofit housing organization shall be  
18 responsible for securing all required City approvals and permits for the affordable housing project,  
19 with the cost of securing such approvals and permits borne by the developer as its costs of  
20 development.

21 For purposes of this section, "affordable" shall be defined as affordable to low- and lower-  
22 income households with income not exceeding 40%50% of San Francisco's median income. The  
23 developer shall pay to the San Francisco School District School Fees for the new market rate units less  
24 the amount of school fees already paid, to the District for the previously approved live/work units.

25

1           **(b) Principal Permitted Uses.** *The principal permitted uses in this Special Use District shall*  
2 *be a residential and retail mixed-use development. Office use is not allowed, except for office use*  
3 *accessory to a permitted retail use. Live/work is not permitted in this Special Use District. The*  
4 *construction of market-rate residential units is permitted only if the provisions of subsection (a) above*  
5 *are met.*

6           **(c) Dwelling Unit Density.** *The dwelling unit density shall be governed by the allowable*  
7 *building envelope.*

8           **(d) Rear Yard.** *The rear yard requirement shall be 15% of the lot depth. However, the*  
9 *Zoning Administrator may administratively modify the location of the required rear yard, provided that*  
10 *a comparable amount of open space is provided elsewhere in this Special Use District or within the*  
11 *development where it is more accessible to the residents of the development.*

12           **(e) Usable Open Space.** *The usable open space shall be 36 square feet per unit for private*  
13 *usable open space, or 48 square feet per unit for common usable open space.*

14           **(f) Sunlight Exposure Requirements.** ~~The requirements of Section 135(g)(2) and~~  
15 ~~Section 140 of this Code shall not apply to this Special Use District.~~ **Sunlight and Dwelling**  
16 **Unit Exposure Requirements.** *The Planning Commission may grant an exception to Section*  
17 *135(g)(2) and Section 140 of this Code pursuant to subsection 249.23(j) of this Ordinance.*

18           **(g) Off-Street Parking.** ~~No more than one~~ ~~One~~ *off-street parking space shall be provided*  
19 *for each dwelling unit. The off-street parking space shall meet the standards set forth in Section 154 of*  
20 *this Code.*

21           **(h) Height and Bulk Restrictions.** *The base height and bulk applicable to this Special Use*  
22 *District is 50-X. An exception to the height requirement up to a maximum of 85 feet may be approved*  
23 *pursuant to subsection (j) of this Section.*

24           **(i) Setbacks Yards.** ~~No front or side, or rear setback yard~~ *shall be required in this*  
25 *Special Use District.*

1           (j) Project Approval. *The Planning Commission shall conduct a duly noticed public*  
2 *hearing on the application for an alteration to the previously approved live/work project. ~~No~~*  
3 *Conditional use authorization is required for a project in this Special Use District meeting the*  
4 *requirements set forth in subsection (a) of this Section. The Planning Commission may grant an*  
5 *exception to the 50' height limit up to 85 feet and may approve the project, provided that the*  
6 *Commission finds that (i) the height of the building or structure does not exceed 85 feet (ii) the project*  
7 *complies with the provisions of subsection (a) of this Section, (iii) the proposed project meets the*  
8 *additional criteria set forth in Section 303(c) of this Code, and (iv) the project sponsor has provided*  
9 *evidence that a mechanism will be in place to assure completion and maintenance of the off-site*  
10 *affordable housing and insurance against construction defects. The creation of this Special Use*  
11 *District shall not limit the discretion vested in the Planning Commission in its review including but not*  
12 *limited to height, building scale, required setbacks and street frontage treatments of the project.*

13           (k) ~~Issuance of Certificate of Occupancy. No Certificate of Occupancy for a market-~~  
14 ~~rate housing development in this Special Use District constructed in compliance with the~~  
15 ~~provisions of subsection (a) above shall be issued until such time as construction of the off-~~  
16 ~~site affordable housing development has been completed; provided, however, that a~~  
17 ~~certificate of occupancy may be issued if the failure to complete the off-site affordable housing~~  
18 ~~development is through no fault of the developer and is solely as a result of fire, earthquake or~~  
19 ~~other natural disaster or legal challenge to the affordable housing building and, the developer~~  
20 ~~provides evidence satisfactory to the Zoning Administrator and acceptable to the nonprofit~~  
21 ~~housing organization that such off-site affordable units will be constructed on land owned or~~  
22 ~~purchased by the developer within eighteen months after the fire, earthquake or other natural~~  
23 ~~disaster or after resolution of the legal challenge. Timing of Construction. The project~~  
24 ~~applicant shall insure that the off-site units are constructed, completed, and ready for~~  
25 ~~occupancy no later than the market rate units in the principal project. The off-site inclusionary~~

1 units requirements as specified in Section 249.23 (a) shall be met on-site pursuant to the  
2 provisions of Section 315.4 of this Code in the event that no off-site project is built by the  
3 project applicant.

4 (l) Notice. Upon receipt of an alteration permit application for a residential development  
5 meeting the requirements of subsection (a) of this Section, the Planning Department shall provide  
6 notice of the development to property owners and occupants within a 300 foot radius of this Special  
7 Use District.

8 Section 3. The San Francisco Planning Code is hereby amended by adding Section  
9 263.16, to read as follows:

10 SEC. 263.16. SPECIAL HEIGHT AND BULK EXCEPTIONS: FOURTH AND FREELON  
11 STREETS SPECIAL USE DISTRICT.

12 (a) In order to provide additional housing opportunities for low- and lower-income  
13 households, in the Fourth and Freelon Streets Special Use District established pursuant to Section  
14 249.23 of this Code and within the boundaries of the 50/85-X height and bulk district as designated on  
15 Sectional Map 1H of the Zoning Map of the City and County of San Francisco, an exception to the 50  
16 foot base height limit up to 85 feet may be approved by the Planning Commission in accordance with  
17 subsection (j) of Section 249.23 of this Code.

18 Section 4. Fees

19 An applicant seeking approval within one year of the effective date of this ordinance  
20 pursuant to Section 249.23 (j) shall pay a fee of \$10,000 to the San Francisco Planning  
21 Department. If time and materials exceed \$10,000, the applicant shall also pay those costs.  
22 After one year, the fee shall be governed by the fees set forth for conditional use  
23 authorization.

24 Section 5. SEVERABILITY.  
25

1           If any part or provision of this ordinance, or the application thereof to any person or  
2 circumstance, is held invalid, the remainder of this ordinance, including the application of such  
3 part or provision to other persons or circumstances, shall not be affected thereby and shall  
4 continue in full force and effect. To this end, provisions of this ordinance are severable.

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

8 By \_\_\_\_\_  
9           JUDITH A. BOYAJIAN  
10           Deputy City Attorney