

## **Agenda Item 1C**

### **Recreation and Park Commission Resolution 1305-015**

HEARING DATE: May 23, 2013

**RECOMMENDING TO THE PLANNING COMMISSION THAT THE NET NEW SHADOW CAST BY THE PROPOSED PROJECT AT 706 MISSION STREET WILL NOT HAVE AN ADVERSE IMPACT ON THE USE OF UNION SQUARE PARK, AS REQUIRED BY PLANNING CODE SECTION 295 (THE SUNLIGHT ORDINANCE).**

#### **PREAMBLE**

Under Planning Code Section 295 (also referred to as Proposition K from 1984), a building permit application for a project exceeding a height of 40 feet cannot be approved if there is any shadow impact on a property under the jurisdiction of the Recreation and Park Department, unless the Planning Commission, upon recommendation from the General Manager of the Recreation and Park Department, in consultation with the Recreation and Park Commission, makes a determination that the shadow impact will not be significant or adverse to the use of the property.

On February 7, 1989, the Recreation and Park Commission and the Planning Commission adopted criteria establishing absolute cumulative limits ("ACL") for additional shadows on 14 parks throughout San Francisco (Planning Commission Resolution No. 11595), as set forth in a February 3, 1989 memorandum (the "1989 Memo"). The ACL for each park is expressed as a percentage of the Theoretically Available Annual Sunlight ("TAAS") on the Park (with no adjacent structures present).

Union Square ("Park"), which is 0.25 miles northwest of 706 Mission Street ("Project Site"), is a public open space that is under the jurisdiction of the Recreation and Park Commission. Union Square is an approximately 2.58-acre park that occupies the entire block bounded by Post Street on the north, Stockton Street on the east, Geary Street on the south, and Powell Street on the west. The plaza is primarily hardscaped and oriented to passive recreational uses, large civic gatherings, and ancillary retail. There are no recreational facilities and some grassy areas exist along its southern perimeter. There are pedestrian walkways and seating areas throughout the park, several retail kiosks, one café on the west side of the park and one cafe on the east side of the park. The park includes portable tables and chairs that can be moved to different locations. A 97-foot-tall monument commemorating the Battle of Manila Bay from the Spanish American War occupies the center of the park. Residents, shoppers, tourists, and workers use the park as an outdoor lunch destination and a mid-block pedestrian crossing. Throughout the year, the park is sunny during the middle of the day; it is shadowed by existing buildings to the east, south, and west during the early morning, late afternoon, and early evening. During the spring and autumn, Union Square is sunny from approximately 9:00 AM until 3:00 PM; it is shadowed by existing buildings during

the early morning, late afternoon, and early evening. During the summer, Union Square is sunny from approximately 10:00 AM until 4:00 PM; it is shadowed by existing buildings during the early morning, late afternoon, and early evening. During the winter, Union Square is mostly sunny from approximately noon until 2:00 PM; it is shadowed by existing buildings during the rest of the day.

Union Square receives about 392,663,521 square-foot-hours ("sfh") of TAAS. Currently, there are about 150,265,376 sfh of existing annual shadow on the Park. The ACL that was established for Union Square in 1989 is additional shadow that was equal to 0.1 percent of the TAAS on Union Square, which is approximately 392,663.5 sfh. Until October of 2012, Union Square had a remaining shadow allocation, or shadow budget, of approximately 323,123.5 sfh. Since the quantitative standard for Union Square was established in 1989, two completed development projects have affected the shadow conditions on Union Square. In 1996, a project to expand Macy's department store altered the massing of the structure and resulted in a net reduction of 194,293 sfh of existing shadow (with a corresponding increase in the amount of sunlight on the park), and in 2003, a project at 690 Market Street added 69,540 sfh of net new shadow on Union Square. Although the Macy's expansion project reduced the amount of existing shadow and increased the amount of available sunlight on Union Square, this amount has not been added back to the shadow budget for Union Square by the Planning Commission and the Recreation and Park Commission to account for these conditions.

Additionally, on October 11, 2012, the Planning Commission and the Recreation and Park Commission held a duly noticed joint public hearing and adopted Planning Commission Resolution No. 18717 and Recreation and Park Commission Resolution No. 1201-001 amending the 1989 Memo and raising the absolute cumulative shadow limits for seven open spaces under the jurisdiction of the Recreation and Park Department that could be shadowed by likely cumulative development sites in the Transit Center District Plan ("Plan") Area, including Union Square. In revising these ACLs, the Commissions also adopted qualitative criteria for each park related to the characteristics of shading within these ACLs by development sites in the Plan Area that would not be considered adverse, including the duration, time of day, time of year, and location of shadows on the particular parks. Under these amendments to the 1989 Memo, any consideration of allocation of "shadow" within these newly increased ACLs for projects within the Plan Area must be consistent with these characteristics. The Commissions also found that the "public benefit" of any proposed project in the Plan Area should be considered in the context of the public benefits of the Transit Center District Plan as a whole. During a joint public hearing on October 11, 2012, the Planning Commission and the Recreation and Park Commission increased the ACLs for seven downtown parks, including Union Square, to allow for shadow cast by development proposed under the Transit Center District Plan (TCDP). The ACL for Union Square was increased from the original limit of 0.1 percent of the TAAS (approximately 392,663.5 sfh) to 0.19 percent of the TAAS (approximately 746,060.7 sfh), but all of the available shadow budget within this ACL was reserved for development within the Plan Area.

On October 11, 2012, following the joint hearing regarding the TCDP, the Recreation and Park Commission reviewed the shadow impacts of the proposed Transbay Tower at 101 First Street and made a formal recommendation to the Planning Commission to allocate a portion of the newly adopted ACL for Union Square to the Transbay Tower. On October 18, 2012, the Planning Commission allocated a portion of the newly adopted ACL to the Transbay Tower (Motion No. 18724, Case No. 2008.0789K).

On November 15, 2012, the Recreation and Park Commission made a formal recommendation to the Planning Commission to allocate a portion of the newly adopted ACL for Union Square to a proposed project at 181 Fremont Street. On December 6, 2012, the Planning Commission allocated a portion of the newly adopted ACL to 181 Fremont Street. As a result of these actions, the remaining ACL for Union Square is 0.1785 percent of the TAAS, which means that approximately 700,904.4 sfh of net new shadow could be cast on Union Square by other development proposed under the TCDP (Motion No. 18763, Case No. 2007.0456K).

On September 25, 2008, Sean Jeffries of Millennium Partners, acting on behalf of 706 Mission Street, LLC ("Project Sponsor") submitted a request for review of a development exceeding 40 feet in height, pursuant to Section 295, analyzing the potential shadow impacts of the Project to properties under the jurisdiction of the Recreation and Parks Department (Case No. 2008.1084K). Department staff prepared a shadow fan depicting the potential shadow cast by the development and concluded that the Project could have a potential impact to properties subject to Section 295.

On October 24, 2012, the Project Sponsor filed an application with the Planning Department ("Department") for a Determination of Compliance pursuant to Planning Code Section ("Section") 309 with requested Exceptions from Planning Code ("Code") requirements for "Reduction of Ground-Level Wind Currents in C-3 Districts", "Off-Street Parking Quantity", "Rear Yard, and "General Standards for Off-Street Parking and Loading" to allow curb cuts on Third and Mission Streets, for a project to rehabilitate an existing 10-story, 144-foot tall building (the Aronson Building), and construct a new, adjacent 47-story tower, reaching a roof height of 520 feet with a 30-foot tall mechanical penthouse. The two buildings would be connected and would contain up to 215 dwelling units, a "core-and-shell" museum space measuring approximately 52,000 square feet, and approximately 4,800 square feet of retail space. The project would reconfigure portions of the existing Jessie Square Garage to increase the number of parking spaces from 442 spaces to 470 spaces, add loading and service vehicle spaces, and would allocate up to 215 parking spaces within the garage to serve the proposed residential uses. The Project Sponsor has proposed a "flex option" that would retain approximately 61,000 square feet of office uses within the existing Aronson Building, and would reduce the residential component of the project to 191 dwelling units. On May 20, 2013, the Project Sponsor reduced the height of the proposed tower from 520 feet (with a 30-foot-tall elevator/mechanical penthouse) to 480 feet (with a 30-foot-tall elevator/mechanical penthouse). As a result, the number of dwelling units in the Project was reduced from a maximum of 215 dwelling units to a maximum of 190 dwelling units, the number of residential parking spaces was reduced from a maximum of 215 spaces to a maximum of 190 spaces, and the "flex option" of retaining office space within the project was deleted. The project is located at 706 Mission Street, Lots 093, 276, and portions of Lot 277 within Assessor's Block 3706 ("Project Site"), within the C-3-R District and the 400-I Height and Bulk District (collectively, "Project", Case No. 2008.1084X).

On October 24, 2012, the Project Sponsor submitted a request for a General Plan Referral Case No. 2008.1084R, regarding the changes in use, disposition, and conveyance of publicly-owned land, reconfiguration of the public sidewalk along Mission Street, and subdivision of the property. On May 23, 2013, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Motion No. 18878 determining that these actions are consistent with the objectives and policies of the General Plan and the Priority Policies of Section 101.1.

On October 24, 2012, the Project Sponsor submitted a request to amend Height Map HT01 of the Zoning Maps of the San Francisco Planning Code to reclassify the Project Site from the 400-I Height and Bulk District to the 520-I Height and Bulk District. (Case No. 2008.1084Z). On May 20, 2013, in association with the reduced height of the Project, the Project Sponsor revised the request for a Height Reclassification to reclassify a portion of the Project Site from the 400-I Height and Bulk District to the 480-I Height and Bulk District. On May 23, 2013, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Resolution No. 18879, recommending that the Board of Supervisors approve the requested Height Reclassification.

On October 24, 2012, the submitted a request to amend Zoning Map SU01 and the text of the Planning Code to establish the "Yerba Buena Center Mixed-Use Special Use District" (SUD) on the property. The proposed SUD would modify specific Planning Code regulations related to permitted uses, the provision of a cultural/museum use within the SUD, floor area ratio limitations, dwelling unit exposure, height of rooftop equipment, bulk limitations, and curb cut locations (Case No. 2008.1084T). On April 11, 2013, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting and adopted Resolution No. 18879, recommending that the Board of Supervisors approve the requested Height Reclassification and Planning Code Text Amendment.

A technical memorandum, prepared by Turnstone Consulting, was submitted on June 9, 2011, analyzing the potential shadow impacts of the Project (at its originally proposed 520-foot roof height) to properties under the jurisdiction of the Recreation and Parks Department (Case No. 2008.1084K). The memorandum concluded that the Project would cast 337,744 sfh of net new shadow on Union Square on a yearly basis, which would be an increase of about 0.09% of the TAAS on Union Square for projects outside of the TCDDP. On May 21, 2013, a technical memorandum prepared by Turnstone Consulting was submitted analyzing the shadow impacts of the Project on Union Square, based on the reduced 480-foot roof height. The memorandum concluded that the Project would cast 238,788 sfh of net new shadow on Union Square on a yearly basis, which would be an increase of about 0.06% of the TAAS on Union Square. The reduction in the height of the tower results in a reduction of approximately 29% of net new shadow compared with the Project's original design.

On March 21, 2013, the Planning Commission reviewed and considered the Final EIR and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) ("CEQA"), 14 California Code of Regulations Sections 15000 et seq. ("the CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31").

The Planning Commission found the Final EIR was adequate, accurate and objective, reflected the independent analysis and judgment of the Department and the Commission, and that the summary of comments and responses contained no significant revisions to the draft EIR, and certified the Final EIR for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

The EIR concludes that the Project would not result in a project-specific significant shadow impact to recreation facilities or other public areas. With respect to Union Square, the EIR indicates that the net new shadow would be of limited duration and the new shadowing would occur at times when the use of Union Square is limited. The EIR concludes that the Project would, however, make a cumulatively

considerable contribution to a significant cumulative shadow impact on public opens spaces when taking into account other reasonably foreseeable future projects, such as the Transit Tower and the Palace Hotel Project, that would also result in new shadowing of public areas, including Union Square.

Three separate appeals of the Commission's certification of the EIR to the Board of Supervisors were filed before the April 10, 2013 deadline. The Board of Supervisors considered these appeals at a duly noticed public hearing on May 7, 2013, and unanimously voted to affirm the Planning Commission's certification of the Final EIR. The Board of Supervisors reviewed and considered the Final EIR and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized, and reviewed complied with CEQA, the CEQA Guidelines and Chapter 31. The Board of Supervisors found the Final EIR was adequate, accurate and objective, reflected the independent analysis and judgment of the Board of Supervisors, and that the summary of comments and responses contained no significant revisions to the draft EIR, and approved the Final EIR in compliance with CEQA, the CEQA Guidelines and Chapter 31.

As part of their actions on October 11, 2012 to increase the ACLs for seven downtown parks, the Planning Commission and the Recreation and Park Commission designated the ACLs exclusively for projects that meet the criteria set forth in the TCDP. Projects that do not meet the criteria set forth in the TCDP may not utilize any portion of the amended ACLs if they cast net new shadow on any of the seven downtown parks for which the ACLs were amended. Such projects would be required to seek their own amendments to the ACLs for these seven downtown parks. The Project is located outside the Plan area and is not eligible to utilize newly adopted ACL on the Park.

On May 23, 2013, the Planning Commission adopted Motion No. 18875, adopting CEQA findings, including a Statement of Overriding Considerations, and adopting the Mitigation Monitoring and Reporting Program ("MMRP"), which findings and adoption of the MMRP are hereby incorporated by reference as though fully set forth herein. The Planning Commission found that the reduction in the height of the Project has resulted in no substantial changes that would require major revisions to the Final EIR or result in new or substantially more severe significant environmental impacts that were not evaluated in the Final EIR, no new information has become available that was not known and could not have been known at the time the Final EIR was certified as complete and that would result in new substantially more severe significant environmental impacts not evaluated in the Final EIR, and no mitigation measures or alternatives previously found infeasible would be feasible or mitigation measures or alternatives considerably different than those analyzed in the Final EIR would substantially reduce significant environmental impacts, but the project proponent declines to adopt them.

The Recreation and Parks Department Commission Secretary, Margaret McArthur, is the custodian of records for this action, and such records are located at 501 Stanyan Street, San Francisco, CA.

The Planning Commission and the Recreation and Park Commission held a duly advertised joint public hearing on May 23, 2013 and adopted Recreation and Park Commission Resolution No. 1305-4015 and Planning Commission Resolution No. 18876, increasing the ACL for Union Square by 0.05 percent of the TAAS for Union Square to account for the additional sunlight that resulted from the Macy's expansion project in 1996, and to increase the ACL an additional 0.01 percent, for a total increase of 0.06 percent of the TAAS for Union Square, for a total of 238,788 sfh of net new shadow (equal to approximately 0.06 percent of the TAAS for Union Square).

The Recreation and Park Commission has reviewed and considered reports, studies, plans and other documents pertaining to the Project.

The Recreation and Park Commission has heard and considered the testimony presented at the public hearing and has further considered the written materials and oral testimony presented on behalf of the Project Sponsor, Department staff, and other interested parties.

### **RECREATION AND PARK COMMISSION FINDINGS**

Having reviewed the materials identified in the recitals above, and having heard all testimony and arguments, the Recreation and Park Commission finds, concludes, and determines as follows:

1. The foregoing recitals are accurate, and also constitute findings of this Commission.
2. The additional shadow cast by the proposed Project on Union Square, while numerically significant, would not be adverse to the use of Union Square, and is not expected to interfere with the use of the Park, for the following reasons: (1) the new shadow would not occur after 9:15 a.m. any day of the year (maximum new shadow range would be 8:30 a.m. to 9:15 a.m. during daylight savings time, or 7:30 a.m. to 8:15 a.m. during standard time ) and would be consistent with the 1989 Memo qualitative standards for Union Square in that the new net shadow would not occur during mid-day hours; (2) the new shadow would generally occur in the morning hours during periods of relatively low park usage; (3) the new shadow would occur for a limited amount of time from October 11th to November 8th and from February 2nd to March 2nd for less than one hour on any given day during the hours subject to Section 295; and (4) the new shadow does not affect the manner in which Union Square is used, which is mainly for passive recreational opportunities.
3. A determination by the Planning Commission and/or the Recreation and Park Commission to allocate net new shadow to the Project does not constitute an approval of the Project.
4. The reduction in the height of the Project has resulted in no substantial changes that would require major revisions to the Final EIR or result in new or substantially more severe significant environmental impacts that were not evaluated in the Final EIR, no new information has become available that was not known and could not have been known at the time the Final EIR was certified as complete and that would result in new substantially more severe significant environmental impacts not evaluated in the Final EIR, and no mitigation measures or alternatives previously found infeasible would be feasible or mitigation measures or alternatives considerably different than those analyzed in the Final EIR would substantially reduce significant environmental impacts, but the project proponent declines to adopt them.

### **DECISION**

Based upon the Record, the submissions by the Project Sponsor and by the staff of the Recreation and Park and Planning Departments, the oral testimony presented to the Commission at the public hearing, and all other written materials submitted by all parties, the Recreation and Park Commission hereby **RECOMMENDS** that the Planning Commission find, under Shadow Analysis Application No.

2008.1084K, that the net new shadow cast by the Project on Union Square will not have an adverse impact on the use of Union Square Park.

I hereby certify that the foregoing Resolution was ADOPTED by the Recreation and Commission at the meeting on May 23, 2013.



Margaret McArthur  
Commission Secretary

AYES: 6  
NOES: 0  
ABSENT: 1

ADOPTED: May 23, 2013