

1 [Planning Code Amendments to implement the Van Ness and Market Downtown Residential
2 Special Use District.]

3 **Ordinance amending the San Francisco Planning Code to implement the Market and**
4 **Octavia Area Plan of the General Plan by adding Section 249.33 to establish the Van**
5 **Ness and Market Downtown Residential Special Use District (VNMDR-SUD); and**
6 **adopting environmental findings and findings of consistency with the General Plan and**
7 **the eight priority policies of Planning Code Section 101.1.**

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

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

13 Section 1. Findings. The Board of Supervisors of the City and County of San
14 Francisco hereby finds and determines that:

15 (a) Under Planning Code Section 302, the Board of Supervisors finds that this
16 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
17 Planning Commission Resolution No. 17460 recommending the approval of this Planning
18 Code Amendment, and incorporates such reasons by this reference thereto. A copy of said
19 resolution is on file with the Clerk of the Board of Supervisors in File No. _____.

20 (b) Under Planning Code Section 101.1, the Board of Supervisors finds that this
21 ordinance is consistent with the Priority Policies of Planning Code Section 101.1(b) of the
22 Planning Code and with the General Plan as proposed to be amended in companion
23 legislation and hereby adopts the findings of the Planning Commission, as set forth in
24 Planning Commission Resolution No. 17460, and incorporates said findings by this reference
25 thereto.

1 (c) In accordance with the actions contemplated herein, this Board adopted Motion
2 No. 17407, concerning findings pursuant to the California Environmental Quality Act
3 (California Public Resources Code sections 21000 et seq.). A copy of said Motion is on file
4 with the Clerk of the Board of Supervisors in File No. _____ and is incorporated by
5 reference herein.

6 (d) This ordinance duplicates and adds to Section 249.33 of Planning Code Text
7 Amendments approved on April 5, 2007 by the Planning Commission and recommended for
8 adoption to the Board of Supervisors in Planning Commission Motion No. 17409_. It is the
9 intention of the Planning Commission and the Board of Supervisors that the proposed Section
10 249.33 in this ordinance would replace in its entirety the Section 249.33 included in the
11 ordinance attached to Motion No. 17409__.

12 Section 2. The San Francisco Planning Code is hereby amended by adding new
13 Section 249.33, to read as follows.

14 **SEC. 249.33 VAN NESS & MARKET DOWNTOWN RESIDENTIAL SPECIAL USE DISTRICT**

15 (a) Purpose. There shall be a Van Ness & Market Downtown Residential Special Use District,
16 which is comprised of the parcels zoned C-3-G in the Market Octavia Better Neighborhoods Plan area,
17 and whose boundaries are designated on Sectional Map No. 2SU and 7SU of the Zoning Map of the
18 City and County of San Francisco. This district is generally comprised of parcels focused at the
19 intersections of Van Ness Avenue at Market Street and South Van Ness Avenue at Mission Street, along
20 with parcels on both sides of Market and Mission Streets between 10th and 12th Streets. This district is
21 intended to be a transit-oriented, high-density, mixed-use neighborhood with a significant residential
22 presence. This area is encouraged to transition from largely a back-office and warehouse support
23 function to downtown into a more cohesive downtown residential district, and serves as a transition
24 zone to the lower scale residential and neighborhood commercial areas to the west of the C-3. A

1 notable amount of large citywide commercial and office activity will remain in the area, including
2 government offices supporting the Civic Center and City Hall. This area was initially identified in the
3 Downtown Plan of the General Plan as an area to encourage housing adjacent to the downtown. As
4 part of the city's Better Neighborhoods Program, this concept was fully articulated in the Market and
5 Octavia Area Plan, and is described therein.

6 (b) Use Controls.

7 (1) Non-residential uses. For newly-constructed buildings or additions which exceed 20 percent
8 or more of an existing structure's gross floor area, non-residential uses are not permitted above the 4th
9 story, and at least two occupied square feet of residential use shall be provided for each occupied
10 square foot of non-residential use. In order to accommodate local government office uses near City
11 Hall, publicly-owned or leased buildings or lots are exempted from the requirements of this subsection.

12 (2) Residential Density. There shall be no density limit for residential uses by lot area, but by
13 the applicable requirements and limitations elsewhere in this Code, including but not limited to height,
14 bulk, setbacks, open space, and exposure, as well as by the Market & Octavia Area Plan Fundamental
15 Principals for Design, other applicable design guidelines, applicable elements and area plans of the
16 General Plan, and design review by the Planning Department. The limitations of Section 215 shall not
17 apply.

18 (3) Residential Affordable Housing Program. All projects in this district shall be subject to all
19 the terms of Section 315 and following of the Residential Inclusionary Affordable Housing Program.
20 Notwithstanding the foregoing, projects within the Van Ness and Market Downtown Residential
21 Special Use District shall at a minimum fulfill the requirements to the levels specified in this section.
22 Should Section 315 require greater contributions to the affordable housing program, those
23 requirements shall supercede this section. Proposed exceptions to these requirements due to hardships
24 associated with construction type, specifically heights above 120 feet, are not applicable in this

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1 Special Use District because parcels are receiving an up zoning through increased density and
2 benefits through the general transformation of the district to a transit oriented neighborhood with a
3 mixed use character. Requirements and administration of this program shall follow the conditions
4 outlined in Section 315 of the Planning Code unless otherwise specified in this section.

5 (A) On site housing requirements and benefits. For projects that choose to fulfill the
6 requirements of Section 315 through the provision of onsite housing, the Planning Department shall
7 require that 15% of all units constructed on the project site shall be affordable to qualifying
8 households so that a project applicant must construct .15 times the total number of units produced in
9 the principal project beginning with the construction of the fifth unit. If the total number of units is not
10 a whole number, the project applicant shall round up to the nearest whole number for any portion of
11 .5 or above.

12 (B) Compliance through in-lieu fees. Projects in the Van Ness and Market Special Use
13 District may choose to fulfill no more than fifty percent (50%) of the requirements of Section 315 and
14 following through the payment of in-lieu fees as provided in Section 315.6.

15 (C) Compliance through off-site housing development. For projects that choose to fulfill the
16 requirements of Section 315 through the provision of off-site housing, the Planning Department shall
17 require that 20% of all units constructed on the project site shall be affordable to qualifying households
18 so that a project applicant must construct .20 times the total number of units produced in the principal
19 project beginning with the construction of the fifth unit. If the total number of units is not a whole
20 number, the project applicant shall round up to the nearest whole number for any portion of .5 or
21 above.

22 (4) Open Space Provider. The off-site open space permitted by this Section may be provided
23 individually by the project sponsor or jointly by the project sponsor and other project sponsors,
24 provided that each square foot of jointly developed open space may count toward only one sponsor's
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1 requirement. With the approval of the Planning Commission, a public or private agency may develop
2 and maintain the open space, provided that (i) the project sponsor or sponsors pay for the cost of
3 development of the number of square feet the project sponsor is required to provide, (ii) provision
4 satisfactory to the Commission is made for the continued maintenance of the open space for the actual
5 lifetime of the building giving rise to the open space requirement, and (iii) the Commission finds that
6 there is reasonable assurance that the open space to be developed by such agency will be developed
7 and open for use by the time the building, the open space requirement of which is being met by the
8 payment, is ready for occupancy.

9 (A) Off-site provision of required open space. Up to 40 percent of usable open space required
10 by Sections 135 and 138 may be provided off-site if it is within the SUD or within 900 feet of the project
11 site and meets the standards described below for publicly accessible open space described below.

12 (B) Publicly-Accessible Open Space Standards.

13 (C) Open space must be of one or more of the following types:

14 (i) An unenclosed park or garden at street grade or following the natural topography, including
15 improvements to hillsides or other unimproved public areas according to the Market & Octavia Area
16 Plan;

17 (ii) An unenclosed plaza at street grade, with seating areas and landscaping and no more than
18 10 percent of the floor area devoted to food or beverage service;

19 (iii) An unenclosed pedestrian pathway that meets the minimum standards described in Section
20 827(g)(3)(A)-(E);

21 (iv) A terrace or roof garden with landscaping;

22 (v) Streetscape improvements with landscaping and pedestrian amenities that result in
23 additional space beyond the pre-existing sidewalk width and conform to the Market & Octavia Area
24 Plan, such as sidewalk widening or building setbacks; and

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1 (vi) Streetscape improvements with landscaping and pedestrian amenities on alleyways from
2 building face to building face, beyond basic street tree planting or street lighting as otherwise required
3 by this Code, in accordance with the Market & Octavia Area Plan.

4 (D) Open space must meet the following standards:

5 (i) Be in such locations and provide such ingress and egress as will make the area convenient,
6 safe, secure and easily accessible to the general public;

7 (ii) Be appropriately landscaped;

8 (iii) Be protected from uncomfortable winds;

9 (iv) Incorporate ample seating and, if appropriate, access to limited amounts of food and
10 beverage service, which will enhance public use of the area;

11 (v) Be well signed and accessible to the public during daylight hours;

12 (vi) Be well lighted if the area is of the type requiring artificial illumination;

13 (vii) Be designed to enhance user safety and security;

14 (viii) Be of sufficient size to be attractive and practical for its intended use; and

15 (ix) Have access to drinking water and toilets if feasible.

16 (E) Maintenance. Open spaces shall be maintained at no public expense, except as might be
17 provided for by any community facilities district that may be formed. The owner of the property on
18 which the open space is located shall maintain it by keeping the area clean and free of litter and
19 keeping in a healthy state any plant material that is provided. Conditions intended to assure continued
20 maintenance of the open space for the actual lifetime of the building giving rise to the open space
21 requirement may be imposed in accordance with the provisions of Section 309.1.

22 (F) Informational Plaque. Prior to issuance of a permit of occupancy, a plaque of no less than
23 24 inches by 36 inches in size shall be placed in a publicly conspicuous location outside the building at
24 street level, or at the site of any publicly-accessible open space, identifying said open space feature and

1 its location, stating the right of the public to use the space and the hours of use, describing its principal
2 required features (e.g., number of seats, availability of food service) and stating the name and address
3 of the owner or owner's agent responsible for maintenance.

4 (G) The Zoning Administrator shall have authority to require a property owner to hold
5 harmless the City and County of San Francisco, its officers, agents and employees, from any damage or
6 injury caused by the design, construction or maintenance of open space, and to require the owner or
7 owners or subsequent owner or owners of the property to be solely liable for any damage or loss
8 occasioned by any act or neglect in respect to the design, construction or maintenance of the open
9 space.

10 (5) Lot coverage. The rear yard requirements of Section 134 shall not apply. Lot coverage is
11 limited to 80 percent at all residential levels except on levels in which all residential units face onto a
12 public right-of-way. The unbuilt portion of the lot shall be open to the sky except for those obstructions
13 permitted in yards per Section 136(c). Exceptions to the 20 percent open area may be granted pursuant
14 to the procedures of Section 309 for conversions of existing non-residential structures where it is
15 determined that provision of 20 percent open area would require partial demolition of the existing non-
16 residential structure.

17 (6) Floor Area Ratio.

18 (A) The maximum FAR allowed, except as allowed in this Section, shall be that described in
19 Section 123(C), provided that it shall not be greater than 9:1. The definition of Gross Floor Area shall
20 be that in Section 102.9 as of the date of approval of this Ordinance, and shall include all residential
21 uses. The provisions of Section 124(g) shall not apply in this special use district.

22 (B) Floor Area Bonus Permitted for Public Improvements or In-lieu Contributions to the Van
23 Ness and Market Neighborhood Infrastructure Fund and In lieu Contributions to the Citywide
24 Affordable Housing Fund.

1 (i) The gross floor area of a structure or structures on a lot may exceed the maximum ratio
2 described in Section 123(c) through participation in the Van Ness and Market Affordable Housing and
3 Neighborhood Infrastructure Program, according to the procedures described below in subsection
4 (b)(7).

5 (ii) Projects are eligible to apply bonus FAR only for that floor area above the maximum ratio
6 permitted in Section 123(c) and provided that the project has acquired Transferable Development
7 Rights from a Transfer Lot or Lots pursuant to the provisions of Sections 127-128 for that increment of
8 FAR above the base FAR limit in Section 124 up to the maximum FAR described in Section 123(c). If a
9 project sponsor demonstrates that the potential supply of TDR from all remaining potential eligible
10 Transfer Lots as provided in Section 128, is insufficient to satisfy the demand produced by a specific
11 project, the Planning Commission may permit the substitution of the Van Ness and Market Affordable
12 Housing and Neighborhood Infrastructure Program described in subsection (b)(6) and (7) for that
13 square footage that would otherwise require TDR.

14 (7) Van Ness and Market Affordable Housing and Neighborhood Infrastructure Program.

15 (A) Purpose and Findings.

16 (i) Affordable Housing: The Van Ness and Market Residential SUD enables the creation of a very
17 dense residential neighborhood through significant increases in development potential. This increase in
18 development potential permits an increase in market rate housing development. As described in Section
19 315.2 affordable housing is a priority for San Francisco and additional demand for affordable housing
20 is closely correlated to the development of new market rate housing. At the direction of the Board of
21 Supervisors and as part of a larger analysis of development impact fees in the City, the City contracted
22 with Keyser Marston Associates to prepare a nexus analysis in support of the Inclusionary Housing
23 Program, or an analysis of the impact of development of market rate housing on affordable housing
24 supply and demand.

1 The City's current position is that the City's Inclusionary Housing Program including the in lieu
2 fee provision which is offered as an alternative to building units within market rate projects, is not
3 subject to the requirements of the Mitigation Fee Act, Government Code Sections 66000 et seq. While
4 the City does not expect to alter its position on this matter, due to past legislative actions supporting
5 such a study, the Citywide study being undertaken to conduct nexus studies in other areas, and a
6 general interest in determining whether the Inclusionary Program can be supported by a nexus type
7 analysis as an additional support measure, the City contracted to undertake the preparation of a nexus
8 analysis.

9 The final study can be found in Board of Supervisors File No. _____ and is incorporated
10 by reference herein. The Board of Supervisors has reviewed the study and staff analysis and report of
11 the study and, on that basis finds that the study supports the current inclusionary housing requirements
12 as specified in this Section 249.33 combined with this Affordable Housing FAR Bonus Program.
13 Specifically, the Board finds that the nexus study: identifies the purpose of the fee to mitigate impacts
14 on the demand for affordable housing in the City; identifies the use to which the fee is to be put as
15 being to increase the City's affordable housing supply; and establishes a reasonable relationship
16 between the use of the fee for affordable housing and the need for affordable housing and the
17 construction of new market rate housing. Moreover, the Board finds that the current inclusionary
18 requirements combined with the Affordable Housing FAR Bonus Program are less than the cost of
19 mitigation and do not include the costs of remedying any existing deficiencies. The Board also finds
20 that the study establishes that the current inclusionary requirements combined with the Affordable
21 Housing FAR Bonus Program do not duplicate other city requirements or fees.

22 Moreover, according to the study undertaken by Seifel Consulting at the direction of the
23 Planning Department, increased development potential in the Van Ness and Market Downtown
24 Residential Special Use district through the increased FAR allowance enables an increased
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1 contribution to the Citywide Affordable Housing Fund without discouraging the development of new
2 market rate housing. A copy of said study is on file with the Clerk of the Board of Supervisors in File
3 No. _____.

4 (ii) Neighborhood Infrastructure. The Van Ness & Market Residential SUD enables the creation of
5 a very dense residential neighborhood in an area built for back-office and industrial uses. Projects that
6 seek the FAR bonus above the maximum cap would introduce a very high localized density in an area
7 generally devoid of necessary public infrastructure and amenities, as described in the Market
8 & Octavia Area Plan. While envisioned in the Plan, such projects would create localized levels of
9 demand for open space, streetscape improvements, community facilities and public transit above and
10 beyond the levels both existing in the area today and funded by the Market & Octavia Community
11 Improvements Fee. Such projects also entail construction of relatively taller or bulkier structures in a
12 concentrated area, increasing the need for offsetting open space for relief from the physical presence of
13 larger buildings. Additionally, the FAR bonus provisions herein are intended to provide an economic
14 incentive for project sponsors to provide public infrastructure and amenities that improve the quality of
15 life in the area. The bonus allowance is calibrated based on the cost of responding to the intensified
16 demand for public infrastructure generated by increased densities available through the FAR density
17 bonus program.

18 (iii) Public Improvements. The public improvements acceptable in exchange for granting the
19 FAR bonus, and that would be necessary to serve the additional population created by the increased
20 density, are listed below. All public improvements shall be consistent with the Market & Octavia Area
21 Plan.

22 (a) Open Space Acquisition and Improvement: Brady Park (as described in the Market &
23 Octavia Area Plan), or other open space of comparable size and performance. Open space shall be
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1 dedicated for public ownership or permanent easement for unfettered public access and improved for
2 public use, including landscaping, seating, lighting, and other amenities.

3 (b) Streetscape and Pedestrian Improvements: Streetscape improvements within the Special Use
4 District as described in the Market & Octavia Area Plan, including Van Ness and South Van Ness
5 Avenues, Gough, Mission, McCoppin, Otis, Oak, Fell, 11th and 12th Streets, along with adjacent
6 alleys. Improvements include sidewalk widening, landscaping and trees, lighting, seating and other
7 street furniture (e.g. newsracks, kiosks, bicycle racks), signage, transit stop and subway station
8 enhancements (e.g. shelters, signage, boarding platforms), roadway and sidewalk paving, and public
9 art.

10 (c) Affordable Housing. The type of affordable housing needed in San Francisco is documented
11 in the City's Consolidated Plan and the Residence Element of the General Plan. New affordable rental
12 housing and ownership housing affordable to households earning less than the median income is
13 greatly needed in San Francisco.

14 (B) The Van Ness and Market Affordable Housing and Neighborhood Infrastructure Program
15 ("Program") is hereby established and shall be implemented through In-Kind public improvements,
16 participation in Community Facilities (Mello-Roos) District, or in-lieu payment into the Van Ness and
17 Market Neighborhood Infrastructure Fund ("Fund") or in lieu payments to the Citywide Affordable
18 Housing Fund.

19 (i) The Program shall be administered by the Board of Supervisors, except for the in lieu fee
20 payments to the Citywide Affordable Housing Fund which shall be administered as provided for in
21 Section 315 et seq.

22 (C) Value, Form, and Timing of Contribution to the Program.

23 (i) The total value of the contribution ("contribution") to the Program shall be equal to \$15 per
24 additional gross square foot above a site FAR of 9:1. The contribution must be made or the fee paid

1 prior to issuance by the Department of Building Inspection of the first site or building permit for the
2 subject project. Except as provided in Section 7(C)(vii), \$0 must be paid as a fee to the Citywide
3 Affordable Housing Fund as described below in subsection (7)(C)(v); and \$15 or its equivalent must
4 be paid or contributed to the Van Ness and Market Neighborhood Infrastructure Program in one of the
5 ways described below in subsections (ii) through (iii) including any form of any combination, either in
6 whole or in part, of an In-Kind Agreement to provide neighborhood improvements, In-Lieu Payment to
7 the City Treasurer, or a Community Facilities District Agreement to participate in a Mello-Roos
8 Community Facilities District. The fee may be adjusted in accordance with the procedures described in
9 Section 326.3(d) or 315.6(b)3.

10 (ii) In-Kind Improvements. The Planning Commission may allow the provision of In-Kind
11 Improvements, through the approval of an In-Kind Agreement in accordance with the procedures
12 outlined in Section 326.3(e).

13 (iii) In-Lieu Payment. Because the total cost of the individual public improvements (e.g. a public
14 park or a streetscape project) may be greater than the proportional contribution to the Program or the
15 need created by any one project, and because it may be infeasible or impractical to make a fractional
16 public improvement (e.g. acquisition of a fraction of a park) it is necessary to allow direct payments, at
17 the rate described in subsection (7)(C)(i) above, in-lieu of providing In-Kind improvements, as a form
18 of contribution, either in whole or in part, to the Program. Such payment shall be made to the City
19 Treasurer for deposit in the Van Ness and Market Neighborhood Infrastructure Fund. Upon payment of
20 the In-Lieu Payment in full to the Treasurer, the Treasurer shall issue a certification that the credit has
21 been paid.

22 (iv) Community Facilities District. The Planning Commission may allow the participation in a
23 Community Facilities (Mello-Roos) District through the procedures described in Section 326.3 (f) and
24 (g).

1 (v) Zero dollars per square foot (\$0) except as provided in 7(C)(vii) shall be deposited in the
2 special fund maintained by the Controller called the Citywide Affordable Housing Fund as established
3 by section 313.12. Except as specifically provided in this Section, collection, management,
4 enforcement, and expenditure of funds shall conform to the requirements related to in lieu fees in
5 Planning Code Sections 315 et seq., specifically including, but not limited to, the provisions of Section
6 315.6.

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8 (vi) The sponsor shall present Treasurer certification of In-Lieu Payment, a signed In-Kind
9 Agreement and/or Community Facilities District Agreement totaling the full value of the contribution to
10 the Planning Department and Department of Building Inspection prior to the issuance by DBI of the
11 first site or building permit for the project. A failure of the Treasurer, DBI or the Planning Department
12 to give any notice under this Section shall not relieve a sponsor from compliance with this Section.

13 (vii) At the close of the fiscal year in which the Market and Octavia Community Improvements
14 Program has generated funding for no less than \$211 million for expenditure in the plan area,
15 including revenue generated through Planning Code Section 249.33 and Section 326 fee payment, in-
16 kind and community facility district contributions; public grants; San Francisco general funds;
17 assessment districts; and other sources which contribute to the overall programming; all future funds
18 generated through this section, 249.33 of the Planning Code shall be redirected one-hundred (100)
19 percent to the Citywide Affordable Housing Fund.

20 (D) There is hereby established a separate fund set aside for a special purpose entitled the Van
21 Ness and Market Neighborhood Infrastructure Fund (“Fund”). All monies collected by the Treasurer
22 pursuant to subsection (7)(C)(i) above shall be deposited in this fund to be maintained by the
23 Controller. The receipts of the Fund are hereby appropriated in accordance with law to be used solely
24 to fund public infrastructure subject to the following conditions:

1 (i) All monies deposited in the Fund, plus accrued interest, shall be used solely to design,
2 engineer, acquire and develop neighborhood open spaces and streetscape improvements that result in
3 new publicly-accessible facilities within the Van Ness and Market Special Use District or the area
4 bounded by 10th Street, Howard Street, South Van Ness Avenue, the northeastern line of the Central
5 Freeway, Market Street, Franklin Street, Hayes Street, and Polk Street. These improvements shall be
6 consistent with the Market and Octavia Area Plan of the General Plan and any Plan that is approved
7 by the Board of Supervisors in the future for the area covered by this SUD, except that monies from the
8 Fund may be used by the Planning Commission to commission studies to revise the fee pursuant to
9 subsection (7)(C)(i) above, or to commission landscape, architectural or other planning, design and
10 engineering services in support of the proposed public improvements.

11 (ii) No portion of the Fund may be used, by way of loan or otherwise, to pay any administrative,
12 general overhead, or similar expense of any public entity.

13 (iii) The Controller's Office shall file an annual report with the Board of Supervisors beginning
14 one year after the effective date of this ordinance, which report shall set forth the amount of money
15 collected in the Fund. Monies in the Fund shall be appropriated by the Board of Supervisors and
16 administered by the Director of Planning.

17 (iv) Expenditure of funds shall be coordinated with appropriate city agencies as detailed in
18 Section 326.6 (d) and (e).

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20 (v) The Director of Planning shall have the authority to prescribe rules and regulations
21 governing the Fund, which are consistent with this ordinance. The Director of Planning shall make
22 recommendations to the Board regarding allocation of funds.

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24 APPROVED AS TO FORM:
25 DENNIS J. HERRERA, City Attorney

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By: _____
Audrey Williams Pearson
Deputy City Attorney