

File No. 240513

Committee Item No. \_\_\_\_\_

Board Item No. 26

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: \_\_\_\_\_

Date: \_\_\_\_\_

Board of Supervisors Meeting

Date: May 21, 2024

#### Cmte Board

- |                          |                                     |  |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Motion                                       |
| <input type="checkbox"/> | <input type="checkbox"/>            | Resolution                                   |
| <input type="checkbox"/> | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/> | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/> | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/> | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/> | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/> | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/> | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER

<input type="checkbox"/>	<input type="checkbox"/>	_____
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Prepared by: Lisa Lew

Date: May 17, 2024

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Adoption of Findings Related to Disapproval of Conditional Use Authorization - 2351 Mission  
2 Street]

3 **Motion adopting findings in support of the Board of Supervisors' disapproval of the**  
4 **decision of the Planning Commission by its Motion No. 21497, approving a Conditional**  
5 **Use Authorization, identified as Planning Case No. 2022-008254CUA, for a proposed**  
6 **project at 2351 Mission Street, and approving a Conditional Use Authorization for the**  
7 **same Planning Case and property with new conditions.**

8  
9 WHEREAS, On January 25, 2024, the Planning Commission approved a Conditional  
10 Use Authorization identified as Planning Case No. 2022-008254CUA, by its Motion No.  
11 21497, to permit an outdoor activity area for an existing restaurant use in the subject  
12 property's public parking lot and to expand the existing liquor establishment within the Mission  
13 Street NCT (Neighborhood Commercial Transit) Zoning District and 40-X and 55-X Height and  
14 Bulk Districts, for a proposed project located at: 2351 Mission Street, Assessor's Parcel Block  
15 No. 3595, Lot No. 024; and

16 WHEREAS, As a condition of its approval of the Conditional Use Authorization, the  
17 Planning Commission limited the operational hours of the Outdoor Activity Area to between  
18 9:00 a.m. and 10:00 p.m. daily; and

19 WHEREAS, The Project Site contains the El Capitan Theater and Hotel, a three-story  
20 Residential Hotel building with 165 feet of frontage on Mission Street and an Article 10-  
21 designated Landmark; the ground floor features multiple commercial spaces and a public  
22 parking lot (d.b.a. "California Parking Company"); ten of the parking spaces adjacent to the  
23 subject commercial unit, partially beneath the upper stories of the building, were converted to  
24 an outdoor patio for the restaurant use through the Shared Spaces program; and  
25

1           WHEREAS, The Project Site is located within the Mission Street NCT Zoning District in  
2 the Mission Area Plan; the neighborhood is mixed in character with residential and  
3 commercial uses; the immediate context includes two-to-four story commercial development  
4 with residential uses above to the north and south, and west across Mission Street; to the  
5 east, development is primarily two-to-three-story residential properties, as well as a public  
6 park (Alioto Mini Park); and

7           WHEREAS, The Planning Department determined that the Project is exempt from  
8 environmental review; and

9           WHEREAS, On February 21, 2024, Down With This Sort of Thing LLC dba Casements  
10 (Appellant) filed a timely appeal protesting the approval of the Conditional Use Authorization  
11 by the Planning Commission because of the condition requiring that the outdoor space be  
12 closed at 10:00 p.m.; and

13           WHEREAS, On April 2, 2024, this Board held a duly noticed public hearing to consider  
14 the appeal; and

15           WHEREAS, In deciding the appeal, the Board considered the entire written record  
16 before the Board and all the presentations and public comments made in support of and in  
17 opposition to the appeals; and

18           WHEREAS, The written record and oral testimony in support of and opposed to the  
19 appeal and deliberation of the oral and written testimony at the public hearing before the  
20 Board of Supervisors by all parties and the public in support of and opposed to the appeal is  
21 in the Clerk of the Board of Supervisors' File No. 240162, and is incorporated in this Motion as  
22 though set forth in its entirety; and

23           WHEREAS, Following the conclusion of the public hearing on April 2, 2024, as  
24 reflected in Board of Supervisors Motion No. M24-028, the Board voted to disapprove the  
25 decision of the Planning Commission, and approve a Conditional Use Authorization for the

1 same Planning Case and property with the same conditions imposed by the Planning  
2 Commission, except that the operational hours of the Outdoor Activity Area shall be limited to  
3 between 9:00 a.m. and 11:00 p.m. Sunday through Thursday, and between 9:00 a.m. and  
4 midnight on Friday and Saturday; the Project Sponsor shall implement a three-step sound  
5 mitigation strategy; and if the sound mitigation strategy has not been implemented by January  
6 1, 2025, the operational hours of the outdoor activity area shall revert back to between 9:00  
7 a.m. and 10:00 p.m., until such time as the Project Sponsor fully implements the sound  
8 mitigation measures; now, therefore, be it

9 MOVED, That the Board finds that:

- 10 • Since the Planning Commission's limitation on the operational hours of the  
11 Outdoor Activity Area to between 9:00 a.m. and 10:00 p.m. daily, the Appellant  
12 has seen a two-thirds reduction in sales on weekends, and has been operating  
13 at a loss; it has had to cut its workforce by 17%; and its staff have seen a  
14 significant reduction in income from tips; approval of the Conditional Use  
15 Authorization with expanded outdoor hours will serve to retain, enhance, and  
16 promote a neighborhood business that enhances economic and workforce  
17 opportunities for local residents; preserve and enhance the existing character-  
18 defining elements of the built environment; and retain, enhance, and promote  
19 active community involvement in neighborhood development;
- 20 • Other similarly situated establishments in the neighborhood have been granted  
21 permission to stay open until 11:00 p.m.;
- 22 • The Appellant's establishment has a history of operating as a neighborhood-  
23 serving business that also promotes active community involvement by sourcing  
24 and procuring products and services from neighboring businesses and hosting  
25 dozens of neighborhood groups and organizations in their Outdoor Activity Area;

1 the proposed project therefore contributes to the Mission Street NCT District's  
2 mixed use character and purpose;

- 3 • The sounds emanating from the Project Site can be mitigated by: 1) raising the  
4 height of the existing wall that surrounds the outdoor activity to restrict sound  
5 transmission; 2) adding sound-dampening materials to the interior of the  
6 business; and 3) reconfiguring the sound system to redirect sound inside; these  
7 improvements will ensure that the proposed project is compatible with  
8 surrounding uses by preventing offensive noise and other emissions, and  
9 ensuring that the privacy and livability of surrounding residences are not  
10 disturbed.

## Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

I hereby submit the following item for introduction (select only one):

- ☐ 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- ☒ 2. Request for next printed agenda (For Adoption Without Committee Reference)  
(Routine, non-controversial and/or commendatory matters only)
- ☐ 3. Request for Hearing on a subject matter at Committee
- ☐ 4. Request for Letter beginning with "Supervisor [ ] inquiries..."
- ☐ 5. City Attorney Request
- ☐ 6. Call File No. [ ] from Committee.
- ☐ 7. Budget and Legislative Analyst Request (attached written Motion)
- ☐ 8. Substitute Legislation File No. [ ]
- ☐ 9. Reactivate File No. [ ]
- ☐ 10. Topic submitted for Mayoral Appearance before the Board on [ ]

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- ☐ Small Business Commission    ☐ Youth Commission    ☐ Ethics Commission
- ☐ Planning Commission    ☐ Building Inspection Commission    ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- ☐ Yes    ☐ No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Clerk of the Board

Subject:

Adoption of Findings Related to Disapproval of Conditional Use Authorization - 2351 Mission Street

Long Title or text listed:

Motion adopting findings in support of the Board of Supervisors' disapproval of the decision of the Planning Commission by its Motion No. 21497, approving a Conditional Use Authorization, identified as Planning Case No. 2022-008254CUA, for a proposed project at 2351 Mission Street, and approving a Conditional Use Authorization for the same Planning Case and property with new conditions.

Signature of Requester:

