

1 [Community stabilization and PDR replacement fees and funds.]

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3 **Draft Ordinance amending the Planning Code to add Sections 319A et seq. to create a**  
4 **community stabilization fund and PDR replacement fund and imposing fees on**  
5 **specified new developments in the Eastern Neighborhoods Area Plans, as defined**  
6 **herein; making a declaration of policy concerning pending residential development**  
7 **projects in the Eastern Neighborhoods Area Plans that are compliant with the current**  
8 **Planning Code; and making environmental findings and findings of consistency with**  
9 **the General Plan and priority policies of Planning Code Section 101.1.**

10 Note: This entire section is new.

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

13 Section 1. Environmental Findings, General Plan Findings, and Other Required  
14 Findings.

15 (a) The Planning Department has determined that the actions contemplated in this  
16 Ordinance are in compliance with the California Environmental Quality Act (California Public  
17 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the  
18 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference.

19 (b) On \_\_\_\_\_, 2008, the Planning Commission, in Resolution No.  
20 approved and recommended for adoption by the Board, this Ordinance, and adopted findings  
21 that the legislation is consistent, on balance, with the City's General Plan and eight priority  
22 policies of Planning Code Section 101.1 The Board adopts these findings as its own. A copy  
23 of said Resolution is on file with the Clerk of the Board of Supervisors in File No.  
24 \_\_\_\_\_, and is incorporated by reference herein.

1 (c) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this  
2 Ordinance will serve the public necessity, convenience and welfare for the reasons set forth in  
3 Planning Commission Resolution No. \_\_\_\_\_, and incorporates such reasons by  
4 reference herein.

5 Section 2. The San Francisco Planning Code is hereby amended by adding Sections  
6 319A et seq., to read as follows:

7 SEC. 319A. EASTERN NEIGHBORHOODS AREA PLANS COMMUNITY  
8 STABILIZATION AND PDR REPLACEMENT PROGRAM.

9 This Ordinance shall be known as the Eastern Neighborhoods Area Plans Community  
10 Stabilization and PDR Replacement Fees Act.

11 SEC. 319A.1. FINDINGS AND POLICY.

12 (a) The population of California has grown by more than 11 percent since 1990 and  
13 is expected to continue increasing. The San Francisco Bay Area is growing at a similar rate.  
14 New residential construction in San Francisco is necessary to accommodate the additional  
15 population. In recent years, new residential development has increased in the Rincon Hill  
16 Plan area, the Van Ness Corridor, the C-3 District South of Market Street and in all of the  
17 Eastern Neighborhoods. The Eastern Neighborhoods are composed of the South of Market  
18 Plan Area (SoMa), Show Place Square/Potrero, the Mission, and Bayview Hunters Point;  
19 these neighborhoods have both large and small projects that are already pending in the  
20 Planning Department that have the potential for substantial changes of use.

21 (b) San Francisco's growing population and severe housing crisis require the  
22 development of new housing. For the past thirteen (13) years, the Eastern Neighborhoods  
23 have been the subject of numerous planning efforts by the Planning Department and  
24 Commission. The first Planning Commission effort was the adoption of a series of  
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1 Resolutions between 1994 and 2004 directed at protecting Production, Distribution and Repair  
2 (PDR) uses and other actions regarding the Eastern Neighborhoods Area Plans. Some of  
3 these actions are as follows:

4 1. Resolution No. 13794 designated the Northwest Mission Industrial Zone  
5 (NEMIZ) protecting industrial opportunities in the NEMIZ from residential uses and live/work  
6 projects.

7 2. After introduction of zoning options for industrial land by the Planning  
8 Department in April 1999, the Planning Commission adopted Resolution No. 14861 in August  
9 1999 establishing interim controls that delineated areas in the Eastern Neighborhood  
10 designed to protect PDR activities and identified areas that would be suitable for housing  
11 production.

12 3. The Commission, in August 2001, then adopted Resolution No. 16202, which  
13 was patterned after Resolution No. 14861, to discourage the new development or conversion  
14 of existing uses to office, housing and/or live/work in industry protection zones (IPZs). Both of  
15 these Resolutions identified the allowable uses by lot and block. The Planning Department  
16 also initiated the on-going rezoning of the Eastern Neighborhoods in 2001.

17 4. The Planning Department released a draft report for Community Planning in the  
18 Eastern Neighborhoods in February 2003.

19 5. The Commission adopted Resolution No. 16727 in February 2004 establishing  
20 interim policies patterned after Option B for Eastern SoMa, Mission, and Show Place  
21 Square/Potrero neighborhoods. Hunters Point and West SoMa were remove from this  
22 resolution because these areas were made subject to separate resolutions and interim  
23 controls.

1 (c) To respond to the need for housing, the Planning Department and the Planning  
2 Commission approved approximately 100 residential projects with over 2,900 dwelling units  
3 in the Eastern Neighborhood between February 2004 and January 2007. Currently there are  
4 106 applications pending at the City's Planning Department to develop housing. Forty-four  
5 (44) of these pending applications were filed between October 16, 2003 and March 28, 2007.  
6 Together, the 106 applications would represent 3,941 new dwelling units in areas previously  
7 contemplated for office, industrial, and housing uses. Some of these applications will require  
8 rezoning while other applications comply with the current Planning Code provisions and the  
9 policies set forth in Planning Commission Resolution No. 16727.

10 (d) In March 2007, the Planning Department released the Draft San Francisco's  
11 Eastern Neighborhoods Rezoning Socioeconomic Impact Report prepared by Hausrath  
12 Economics Group (Hausrath Report). This draft report states that the proposed Eastern  
13 Neighborhood rezoning would double the housing development potential in San Francisco.

14 (e) The Eastern Neighborhoods are currently occupied by office, industrial or  
15 residential uses. The proposed rezoning would provide a stable land supply with restrictions  
16 limiting development of incompatible uses and would result in better long-term benefits for  
17 many PDR businesses. The Hausrath report concluded that prior to the addition of new land  
18 use regulations, it is important to address a wide range of community needs. This report  
19 further found that planning goals, financial resources for improved or new infrastructure, and  
20 interagency coordination to better target existing programs and resources will be required to  
21 provide a cohesive land use regulation proposal.

22 (f) For decades, most of the Eastern Neighborhoods have been devoted to  
23 industrial uses with minimal community infrastructure to support a significant residential  
24 population. New residential development in these areas will impact the limited existing  
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1 community infrastructure and will generate a substantial need for additional community  
2 improvements as the neighborhood's residential population grows. Substantial new  
3 investment in community infrastructure, including recreational space, community facilities,  
4 and other public services will become necessary to mitigate the impacts of new development.

5 (g) Additional community facilities, open space, and infrastructure to serve the  
6 current and future population are discussed in the February 6, 2007 draft Eastern  
7 Neighborhood Area Plans, which are proposed as new additions to the City's General Plan.

8 (h) As a result of the new residential or mixed-use developments, property tax  
9 revenue is projected to increase. These revenues will become part of the City's general fund  
10 and will not be ear marked for spending in the areas from which the revenues would be  
11 collected. However, the need for additional community facilities and infrastructure in these  
12 neighborhoods, especially in some of the subareas, such as South of Market, parts of the  
13 Mission, Show Place Square/Potrero will be comparatively greater than to those typically  
14 funded by City government through property tax revenues because of the lack of or deficiency  
15 in community facilities and infrastructure. The relative cost of capital improvements and the  
16 reduced availability of State and federal funding sources to cover the costs of necessary open  
17 space, libraries, and recreational centers, among other community resources will necessitate  
18 additional funding source to address the impacts of the new development. The influx of new  
19 residents into the these neighborhoods have placed additional demands on the limited  
20 existing community facilities that are currently available, such as open space, recreational  
21 facilities, libraries, streets and public transportation. As more residents move into the area,  
22 there is a need to immediately augment the existing infrastructure to prevent them from being  
23 further overburdened.

1 (i) To provide for needed community infrastructure to serve the residents of new  
2 residential development in the City, the City has assessed a number of City-wide fees to  
3 address the impacts that new development creates for affordable housing, school facilities,  
4 transit impacts, childcare, job training, wastewater capacity and downtown parks. In addition,  
5 the City has adopted ordinances imposing area-specific impact fees in developing residential  
6 areas, such as Rincon Hill, South of Market, Visitacion Valley. Currently additional impact  
7 fees are under consideration for the Market and Octavia Plan Area. The Market and Octavia  
8 Draft Community Improvement Program Document dated March 20, 2007 demonstrates that  
9 there is a reasonable relationship between development of new residential and commercial  
10 space created by those development and the need for new open space, recreational facilities,  
11 community facilities and services in the Market and Octavia Plan Area. A copy of this report is  
12 on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is  
13 incorporated herein by reference.

14 (j) The amendments to the General Plan, Planning Code and/or Zoning Maps that  
15 are necessary to facilitate residential developments proposed in the Eastern Neighborhood  
16 Area Plans will substantially increase the number of new residents. Implementation of the  
17 rezoning proposal for the Eastern Neighborhoods would result in a 21% increase in population  
18 or a 28% increase in household numbers in the Eastern Neighborhoods and would have a  
19 profound impact on the neighborhood's dated infrastructure, especially those in areas that  
20 were almost entirely devoted to industrial uses.

21 (k) Development impact fees are a cost-effective, realistic way to mitigate impacts  
22 to a local neighborhood from new development. Therefore, a Community Stabilization Fund  
23 should be established to collect funds that will be dedicated to the neighborhoods that are  
24 impacted by the new developments. The proposed new fees will provide funds to remedy  
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1 those impacts and are not intended to remedy already existing deficiencies. These  
2 deficiencies will be addressed through other funding sources.

3 (l) Additional financial resources for community infrastructure in the Eastern  
4 Neighborhoods also will increase property values due to the enhanced neighborhood  
5 amenities financed with the proceeds from the fee.

6 (m) For the last ten years, residential development in the Eastern Neighborhood has  
7 often displaced vacant industrial sites or sites with vacant buildings that were previously used  
8 for industrial uses. Many of these industrial uses in the Eastern Neighborhoods area are one  
9 form of industrial use referred to as PDR, a critical use that comprises an important but  
10 shrinking component of San Francisco's business and employment sector. These PDR uses  
11 are threatened directly when development replaces the use with residential and/or commercial  
12 use and indirectly when adjacent uses are converted into residential and/or commercial use,  
13 which places pressure on the PDR site to remain as a viable use in the neighborhood.

14 (n) To alleviate the impact of loss of PDR uses, to revitalize PDR uses and to attract  
15 technology and biotech businesses to the City, it is necessary for the City to aggressively  
16 pursue retention of PDR and its associated job sectors. Development that removes PDR use  
17 should have the option of replacing the lost space at a one-to-one ratio or paying an in lieu  
18 replacement fee. To accomplish this, a PDR replacement fee should be established.

19 (o) The Board of Supervisors finds that the fees imposed in this Ordinance will  
20 provide needed improvement, including, but not limited to, education, recreation, pedestrian,  
21 infrastructure and streetscape improvement, proportionate to the need generated by  
22 residential development projects in the Eastern Neighborhoods.

23 (p) The current excessive delays in processing building permits increases the  
24 carrying costs of residential development in the City which ultimately increases the costs of  
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1 housing. Imposition of the proposed fees in this Ordinance on projects that comply with  
2 current Planning Code provisions would only add further to the pre-construction costs of such  
3 Planning Code complying projects. The Planning Department has interpreted the Board of  
4 Supervisor's decision to remand the mitigated negative declaration for 2660 Harrison Street to  
5 require a level of environmental review for pending residential development projects that have  
6 caused delays to these projects in excessive of 12 months. Therefore, to help remedy the  
7 shortfall of new housing inventory in the City, it is the intent of the Board of Supervisors to  
8 instruct the Planning Department to release all pending Planning Code complying projects as  
9 soon as all legal requirements have been satisfied possible so that the dwelling units will be  
10 added to the City's housing stock.

11 SEC. 319A.2. DEFINITIONS.

12 The following definitions shall govern this Ordinance:

13 (a) "Community facilities" shall include affordable housing, community centers,  
14 library facilities, open space, playgrounds, parks, and recreational facilities.

15 (b) "Community services" shall include assistance for affordable housing and  
16 community asset building, small business assistance, rental subsidies for low-income  
17 households, down payment assistance for home ownership for low-income households,  
18 eviction prevention, employment development and neighborhood capacity building, job  
19 development and job placement, small business assistance, arts programs, leadership  
20 development, community cohesion, civic participation, community-based programs and  
21 economic development.

22 (c) "Eastern Neighborhoods Area Plans" or "Area Plans" shall mean those portions  
23 of San Francisco that comprise the four (4) areas referred to as East SOMA (the eastern  
24 portion of the South of Market District), the Mission, Showplace Square/Potrero Hill, and the  
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1 Central Waterfront. The East SOMA Plan is bounded generally by Folsom Street on the  
2 northwest, the Rincon Hill Plan area (essentially Second Street) on the east, Townsend Street  
3 on the south, and Fourth Street on the west, with an extension to the northwest bounded by  
4 Harrison, Seventh, Mission, Sixth (both sides), Natoma, Fifth, and Folsom Streets. The  
5 Mission Plan is bounded by 13<sup>th</sup> and Division Streets on the north, Potrero Avenue on the  
6 east, Cesar Chavez on the south, and Guerrero Street on the west. The Showplace  
7 Square/Potrero Hill Plan is generally bonded by Bryant Street and 10<sup>th</sup> Street on the  
8 northwest, Seventh Street on the northeast, Interstate Highway 280 (I-280) on the east, 25<sup>th</sup>  
9 and 26<sup>th</sup> Streets on the south, and Potrero Avenue on the west. The Central Waterfront Plan  
10 is bounded by Mariposa Street on the north, San Francisco Bay on the east, Islais Creek on  
11 the south, and I-280 on the west. A copy of the boundaries of the Area Plans are identified in  
12 the Eastern Neighborhoods Rezoning and Area Plans Draft Environmental Impact Report  
13 (Planning Department Case No. 2004.0160E, State Clearinghouse Number 2005032048,  
14 dated June 30, 2007) and the relevant pages showing these boundaries are on file with the  
15 Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and are incorporated herein by  
16 reference.

17 (d) "Infrastructure" shall include street improvements and other amenities in the  
18 public right-of-way.

19 (e) "Production, Distribution, and Repair" or "PDR" is defined as set forth in  
20 Planning Commission Resolution Number 16727 (2004), a copy of which is on file with the  
21 Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and incorporated herein by  
22 reference.

23 (f) "Residential development project" shall mean any new construction, addition,  
24 extension, conversion or enlargement, or combination thereof, which includes any occupied  
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1 floor area of residential use and which has five (5) residential units or more; provided,  
2 however, that for projects that solely comprise an addition to an existing structure which would  
3 add occupied floor area in an amount less than 10 percent of the current occupied floor area  
4 of the existing structure, the provisions of this Section shall only apply to the new occupied  
5 square footage.

6 (g) "Residential use" shall mean any structure or portion thereof intended for  
7 occupancy by uses as defined in Section 890.88 of this Code and shall not include any use  
8 which qualifies as an accessory use, as defined and regulated in Sections 204 through 204.5.

9 (h) "Sponsor" shall mean an applicant seeking approval for construction of a  
10 residential development project subject to this Section and such applicant's successors and  
11 assigns.

#### 12 SEC. 319A.3. COMMUNITY STABILIZATION FEE.

13 (a) The community stabilization fee shall apply to all residential development  
14 projects in the Eastern Neighborhoods Area Plans that have not filed an application for a  
15 building permit, site permit, conditional use, planned unit development, or environmental  
16 evaluation prior to April 1, 2006, and require rezoning, amendments to the current Planning  
17 Code, or variance from the Zoning Administrator, including but not limited to, an increase to  
18 the current maximum allowable height limit or increase in the residential density.

19 (b) Payment of Fees. Prior to the Department of Building Inspection's issuance of  
20 the first temporary certificate of occupancy or certificate of occupancy, whichever first occurs,  
21 for any building, the Sponsor shall submit payment to the Treasurer the entire Fee of \$25.00  
22 for each additional square foot of residential use within the building for which the site or  
23 building permit was sought. The Sponsor shall obtain from the Treasurer a certificate of  
24 payment and, in turn, present this certificate to the Department of Building Inspection as a  
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1 prerequisite to obtaining a temporary certificate of occupancy or a certificate of occupancy,  
2 whichever first occurs.

3 SEC. 319A.4. PDR REPLACEMENT FEE.

4 (a) Prior to the issuance of a building permit or site permit, whichever first occurs,  
5 for a building that will demolish, replace, or convert PDR space with a use that does not  
6 qualify as PDR, the Sponsor shall provide one-for-one replacement of the PDR space to be  
7 demolished, replaced, or converted by one of the following methods:

8 (1) Construct or cause to be constructed a comparable PDR space to be made  
9 available at comparable rent to offset each square foot of PDR to be demolished, replaced, or  
10 converted; or

11 (2) Cause to be brought back into the PDR market comparable PDR space from  
12 any building which was not subject to the provisions of this Section; or

13 (3) Pay to the City and County of San Francisco \$125.00 per square foot of  
14 demolished, replaced, or converted PDR space; or

15 (4) Pay to the City and County of San Francisco an amount equal to 80 percent of  
16 the cost of construction of equivalent PDR space to that being demolished, replaced, or  
17 converted plus site acquisition cost. All such payments shall go into the PDR Replacement  
18 Fee Fund. The Department of Real Estate shall determine this amount based upon two  
19 independent appraisals.

20 (b) For purposes of this Section, the PDR space proposed for demolition,  
21 conversion, or replacement applies to both vacant and occupied PDR space.

22 (c) Any replacement of PDR within the Eastern Neighborhood Area Plans to offset  
23 the demolition, replacement, or conversion of PDR under Subsection (a)(1) or (2) shall  
24 continue to be subject to the provisions of this Section.

1 (d) The funds deposited in the PDR Replacement Fund may be used to (i) create  
2 new PDR space anywhere in the City to replace the PDR lost as a result of the replacement,  
3 conversion, or demolition of PDR subject to this Ordinance and (ii) defend the PDR  
4 Replacement fee against legal challenge, including the legal costs and attorney's fees  
5 incurred in the defense.

6 (e) Payment of Fees under Subsection (a)(3) or (4). Prior to the Department of  
7 Building Inspection's issuance the first temporary certificate of occupancy or certificate of  
8 occupancy, whichever first occurs, the Sponsor shall submit payment to the Treasurer for the  
9 full amount specified in Subsections (a)(3) or (4) for the building for which the site or building  
10 permit was sought. The Sponsor shall obtain from the Treasurer a certificate of payment and,  
11 in turn, present this certificate to the Department of Building Inspection as a prerequisite to  
12 obtaining a temporary certificate of occupancy or a certificate of occupancy, whichever first  
13 occurs. If the Sponsor intends to seek a waiver or reduction as set forth in Subsection (e),  
14 payment of the fee to the Treasurer shall be accompanied by a letter protesting the fee and  
15 stating the intent to file for a waiver, reduction, or other such adjustment with the Board of  
16 Supervisors. Failure to submit such a letter of protest shall constitute a waiver of the right to  
17 an appeal the fee to the Board of Supervisors.

18 (f) Fee Waiver or Reduction.

19 (1) Any Sponsor who has paid the fees pursuant to Subsection (a)(3) or (4) may  
20 appeal to the Board of Supervisors for a waiver , reduction, or other such adjustment of the  
21 fee requirements based upon the absence of any reasonable relationship or nexus between  
22 the impact of development and the amount of the fee charged.

23 (2) Any such appeal shall be made in writing and filed with the Clerk of the Board of  
24 Supervisors no later than 15 days after the date the Sponsor paid the Treasurer the fee as  
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1 required in this Section. The appeal shall set forth in detail the factual and legal basis for the  
2 claim of waiver, reduction, or adjustment and shall be accompanied with a copy of the letter of  
3 fee protest submitted to the Treasurer. The Board of Supervisors shall consider the appeal at  
4 the hearing within 60 days after the filing of the appeal. If the Board is unable to or otherwise  
5 fails to render a decision within 120 days of the filing of an appeal, the Sponsor's request shall  
6 be deemed approved. The appellant shall bear the burden of presenting substantial evidence  
7 to support the appeal, including comparable technical information to support appellant's  
8 position. The Board shall adopt findings specifying the basis of its decision. Such decision  
9 shall be final. If the Board grants a waiver, reduction, or other adjustment, any subsequent  
10 change in use within the project shall invalidate the waiver, reduction, or other such  
11 adjustment of the fee. After the Board grants a waiver, reduction, or other such adjustment  
12 and adopts its findings, the Clerk of the Board shall promptly transmit the Board's decision to  
13 the Treasurer, and the Treasurer shall take the appropriate steps to refund the fees or take  
14 other such action as the Board has specified.

15 SEC. 319A.5. COMMUNITY STABILIZATION AND PDR REPLACEMENT FUNDS.

16 (a) The Controller shall establish and maintain two funds entitled the "Community  
17 Stabilization Fund" and " PDR Replacement Fund", respectively. All monies collected by the  
18 Treasurer pursuant to Section 319A shall be deposited in the appropriate Fund.

19 (b) The funds in the Community Stabilization Fund are subject to the budgetary and  
20 fiscal provisions of the Charter and shall be used solely to fund community facilities,  
21 infrastructure, and community services, as defined in Section 319A.2, in impacted  
22 neighborhoods in the Eastern Neighborhood Area Plans or to defend the Community  
23 Stabilization fee against legal challenge, including the legal costs and attorney's fees incurred  
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1 in the defense. The funds in the PDR Replacement Fund are subject to the budgetary and  
2 fiscal provisions of the Charter and shall be used for the purposes set forth in Section 319A.4.

3 (c) The Controller shall allocate monies from the Funds based on appropriation  
4 through the legislative process delineated in the San Francisco Charter. During the  
5 appropriation process, the Board of Supervisors shall determine the relative impact from the  
6 residential development on community facilities, infrastructure, and community services in  
7 impacted neighborhoods and shall make findings that the expenditures are consistent with  
8 mitigating the impacts from the development. The same procedures shall apply to the PDR  
9 Replacement Fund except that the Board's determinations and findings shall relate to the  
10 impacts on PDR loss from development.

11 (d) The Controller's Office shall file an annual report with the Board of Supervisors  
12 beginning one year after the effective date of this ordinance, such report shall  
13 comprehensively account for the amount of money collected and expended from the Funds.

14 Section 3. This Section is uncoded.

15 Declaration of policy concerning Planning Code compliant residential projects in the  
16 Eastern Neighborhoods Area Plans. It is the intent of the Board of Supervisors that projects  
17 with a residential component within in the Eastern Neighborhoods Area Plans that currently  
18 have pending building permit or site permit applications and are compliant with the current  
19 Planning Code, but were put on hold as a result of the Board of Supervisors' remand of the  
20 mitigated negative declaration for 2660 Harrison Street, be released for processing  
21 immediately. The 2660 Harrison Street decision was meant to account for physical  
22 environmental impacts from development. This legislation is intended to offset some of these  
23 impacts as well as address other impacts in the Eastern Neighborhoods Area Plans that are  
24 related to and stem from new residential development.

1           Section 4. Severability. If any section, subsection, clause, phrase, or portion of this  
2 Ordinance is for any reason held invalid or unconstitutional by any court or federal or State  
3 agency of competent jurisdiction, such portion shall be deemed a separate, distinct and  
4 independent provision and such holding shall not affect the validity of the remaining portions  
5 thereof.

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

8 By: \_\_\_\_\_  
9 Deputy City Attorney