

1 [Planning Code—Conditional Use Authorization for New Construction Shading Existing
2 Registered Solar Energy Systems.]

3 **Ordinance amending the San Francisco Planning Code to amend Section 303 to require**
4 **a conditional use authorization for any new construction that would shade a registered**
5 **solar energy system, as defined, and provide for the registration of existing and new**
6 **solar energy systems; and making findings, including environmental findings and**
7 **findings of consistency with the priority policies of Planning Code Section 101.1 and**
8 **the General Plan.**

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.
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) General Plan and Planning Code Findings.

16 (1) On _____ at a duly noticed public hearing, the Planning Commission
17 in Resolution No. _____ found that the proposed Planning Code amendments
18 contained in this ordinance were consistent with the City’s General Plan and with Planning
19 Code Section 101.1(b). In addition, the Planning Commission recommended that the Board
20 of Supervisors adopt the proposed Planning Code amendments. A copy of said Resolution is
21 on file with the Clerk of the Board of Supervisors in File No. _____ and is
22 incorporated herein by reference. The Board finds that the proposed Planning Code
23 amendments contained in this ordinance are consistent with the City’s General Plan and with
24 Planning Code Section 101.1(b) for the reasons set forth in said Resolution.
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1 (2) Pursuant to Planning Code Section 302, the Board finds that the proposed
2 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
3 Planning Commission Resolution No. _____, which reasons are incorporated
4 herein by reference as though fully set forth.

5 (b) Environmental Findings. The Planning Department has determined that the
6 actions contemplated in this Ordinance are in compliance with the California Environmental
7 Quality Act (California Public Resources Code section 21000 et seq.). Said determination is
8 on file with the Clerk of the Board of Supervisors in File No. _____ and is
9 incorporated herein by reference.

10 (c) General Findings.

11 (1) Solar energy has been found to be an inexhaustible, reliable, and non-polluting
12 energy resource that can contribute to the public health, safety, and welfare of the citizens of
13 San Francisco by lessening dependence on non-renewable and imported energy sources.

14 (2) The successful use of solar energy systems for supplying space heating and
15 cooling, water heating, and the production of electricity is dependant on sufficient access to
16 direct sunlight.

17 (3) While the California Shade Control Act protects solar energy systems from
18 shading by vegetation, current state and local laws do not protect installed solar energy
19 systems from shading caused by new construction and this represents a significant deterrent
20 to the use of solar energy systems.

21 (4) San Francisco is located at the tip of a peninsula and is connected to the
22 electricity grid at a single point, the Martin Substation. This single point of service makes San
23 Francisco uniquely vulnerable to supply disruptions. Protecting consumers' investments in
24 solar energy will help incentivize installation of such systems, reducing San Francisco's
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1 dependence on the single grid connection thus decreasing its vulnerability to supply
2 disruptions.

3 (5) The world's leading climate scientists have documented a clear global warming
4 trend and the unmistakable impact of human activities on that trend. As a coastal city
5 surrounded on three sides by water, San Francisco is extremely vulnerable to climate change
6 caused by global warming and the associated rise in sea levels. Replacing fossil fuel
7 generated power with renewable passive solar energy systems can help San Francisco
8 reduce its share of the greenhouse gas emissions that are a significant contributor to global
9 warming.

10 (6) In 2002, in response to the global warming threat, the Board of Supervisors
11 unanimously adopted Resolution No. 158-02, which, among other things, established for San
12 Francisco a greenhouse gas emissions reduction target of 20 percent below 1990 levels by
13 the year 2012 and called for continued actions toward achieving these goals.

14 (7) In Resolution No. 158-02, the Board found that global warming and the
15 associated rise in sea levels would be particularly devastating to San Francisco and that
16 increasing reliance on solar generated power, among other efforts, was a critical component
17 in a local action plan for climate protection. The Board further found that greenhouse gas
18 reduction activities would contribute substantially to the achievement of many of the City's
19 highest priority goals, including but not limited to: energy security and cost reduction,
20 affordable housing, mobility and transportation choices, solid waste reduction and recycling,
21 reliable and affordable water supply, urban and rural forest protection, sustainable economic
22 development, and clean air.

23 (8) In response to Board Resolution No. 158-02, San Francisco's Department of
24 Environment and Public Utilities Commission published a Climate Action Plan for San
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1 Francisco in September 2004. The Plan states that in San Francisco, the impacts of climate
2 change will be variable and widespread and identifies a number of specific serious impacts
3 that global warming and the associated rise in sea levels would have on San Francisco's
4 weather, water resources, physical landscape, ecosystem, human health, economy, and
5 infrastructure.

6 (9) The City's Climate Action Plan found that energy use in buildings and facilities is
7 responsible for approximately 50 percent of San Francisco's greenhouse gas emissions. In
8 1990, San Francisco's total energy consumption was about 5,000 gigawatt-hours of electricity
9 and 300 million therms of natural gas. San Francisco's energy use resulted in a total of
10 approximately 4.5 million tons of CO₂ emissions released into the atmosphere in 1990: 1.7
11 million tons of CO₂ was released by the City's 300,000 households, 1.5 million tons of CO₂
12 was released by the City's 32,000 businesses, 894,000 tons of CO₂ was released by the
13 City's industrial sector, and 402,000 tons of CO₂ was released by the City's municipal
14 buildings and facilities.

15 (10) The Climate Action Plan states that the potential for CO₂ reductions through
16 electricity and gas savings in San Francisco's buildings is tremendous and that key actions
17 required to reach this potential include incorporating policies in both the private and public
18 sectors such as designing new buildings beyond code and implementing energy efficient
19 retrofit projects in existing buildings. Reducing electricity demand means in-city power plants
20 run less, creating fewer emissions.

21 (11) As a participant in the Cities of Climate Protection campaign sponsored by the
22 International Council on Local Environmental Initiatives, San Francisco has joined with more
23 than 500 cities around the world to inventory its emissions of greenhouses gases, set
24 reduction targets, and take action to meet those targets.

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1 (12) As part of California’s “Million Solar Roofs Program”, the state has set a goal to
2 create 3,000 megawatts of new, solar-produced electricity by 2017 and allocated \$3.3 billion
3 in incentives to install solar power. San Francisco has set a goal of 10,000 solar roofs within
4 the city limits.

5 (13) Many homeowners, businesses and building professionals have voluntarily
6 sought to incorporate green building techniques into their projects. One of the single largest
7 investments made in green buildings is the installation of solar panels to supplement a
8 building’s power supply.

9 (14) In 2004, the City adopted Chapter 7 of the San Francisco Environment Code,
10 which, among other things, mandates green building standards for City construction projects.
11 This ordinance will continue San Francisco's efforts to mitigate the effects of global warming
12 by reducing the emissions of greenhouse gases by San Francisco's residential, commercial
13 and industrial sectors.

14 (15) In 2006, the State enacted the California Global Warming Solutions Act of 2006
15 (AB 32) which added Section 38501 et seq. to the California Health and Safety Code. This
16 legislation requires, among other things, that by January 1, 2008, the State Air Resources
17 Board approve a statewide greenhouse gas emissions limit that is equivalent to the emissions
18 level in 1990. This ordinance will further the State's efforts to reduce greenhouse gas
19 emissions statewide by reducing San Francisco's emissions.

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21 Section 2. The San Francisco Planning Code is hereby amended by amending Section
22 303, to read as follows:

23 **SEC. 303 CONDITIONAL USES**

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1 (a) General. The City Planning Commission shall hear and make determinations
2 regarding applications for the authorization of conditional uses in the specific situations in
3 which such authorization is provided for elsewhere in this Code. The procedures for
4 conditional uses shall be as specified in this Section and in Sections 306 through 306.6,
5 except that Planned Unit Developments shall in addition be subject to Section 304, medical
6 institutions and post-secondary educational institutions shall in addition be subject to the
7 institutional master plan requirements of Section 304.5, and conditional use and Planned Unit
8 Development applications filed pursuant to Article 7, or otherwise required by this Code for
9 uses or features in Neighborhood Commercial Districts, and conditional use applications
10 within South of Market Districts, shall be subject to the provisions set forth in Sections 316
11 through 316.8 of this Code, in lieu of those provided for in Sections 306.2 and 306.3 of this
12 Code, with respect to scheduling and notice of hearings, and in addition to those provided for
13 in Sections 306.4 and 306.5 of this Code, with respect to conduct of hearings and
14 reconsideration.

15 (b) Initiation. A conditional use action may be initiated by application of the owner,
16 or authorized agent for the owner, of the property for which the conditional use is sought. For
17 a conditional use application to relocate a general advertising sign under subsection (l) below,
18 application shall be made by a general advertising sign company that has filed a Relocation
19 Agreement application and all required information with the Planning Department pursuant to
20 Section 2.21 of the San Francisco Administrative Code.

21 (c) Determination. After its hearing on the application, or upon the recommendation
22 of the Director of Planning if the application is filed pursuant to Sections 316 through 316.8 of
23 this Code and no hearing is required, the City Planning Commission shall approve the
24 application and authorize a conditional use if the facts presented are such to establish:
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1 (1) That the proposed use or feature, at the size and intensity contemplated and at
2 the proposed location, will provide a development that is necessary or desirable for, and
3 compatible with, the neighborhood or the community:

4 (A) In Neighborhood Commercial Districts, if the proposed use is to be located at a
5 location in which the square footage exceeds the limitations found in Planning Code §
6 121.2(a) or 121.2(b), the following shall be considered:

7 (i) The intensity of activity in the district is not such that allowing the larger use will
8 be likely to foreclose the location of other needed neighborhood-servicing uses in the area;
9 and

10 (ii) The proposed use will serve the neighborhood, in whole or in significant part,
11 and the nature of the use requires a larger size in order to function; and

12 (iii) The building in which the use is to be located is designed in discrete elements
13 which respect the scale of development in the district; and

14 (2) That such use or feature as proposed will not be detrimental to the health,
15 safety, convenience or general welfare of persons residing or working in the vicinity, or
16 injurious to property, improvements or potential development in the vicinity, with respect to
17 aspects including but not limited to the following:

18 (A) The nature of the proposed site, including its size and shape, and the proposed
19 size, shape and arrangement of structures;

20 (B) The accessibility and traffic patterns for persons and vehicles, the type and
21 volume of such traffic, and the adequacy of proposed off-street parking and loading;

22 (C) The safeguards afforded to prevent noxious or offensive emissions such as
23 noise, glare, dust and odor;

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1 (D) Treatment given, as appropriate, to such aspects as landscaping, screening,
2 open spaces, parking and loading areas, service areas, lighting and signs; and

3 (3) That such use or feature as proposed will comply with the applicable provisions
4 of this Code and will not adversely affect the Master Plan; and

5 (4) With respect to applications filed pursuant to Article 7 of this Code, that such use
6 or feature as proposed will provide development that is in conformity with the stated purpose
7 of the applicable Neighborhood Commercial District, as set forth in zoning control category .1
8 of Sections 710 through 729 of this Code; and

9 (5) (A) With respect to applications filed pursuant to Article 7, Section 703.2(a),
10 zoning categories .46, .47, and .48, in addition to the criteria set forth above in Section
11 303(c)(1--4), that such use or feature will:

12 (i) Not be located within 1,000 feet of another such use, if the proposed use or
13 feature is included in zoning category .47, as defined by Section 790.36 of this Code; and/or

14 (ii) Not be open between two a.m. and six a.m.; and

15 (iii) Not use electronic amplification between midnight and six a.m.; and

16 (iv) Be adequately soundproofed or insulated for noise and operated so that
17 incidental noise shall not be audible beyond the premises or in other sections of the building
18 and fixed-source equipment noise shall not exceed the decibel levels specified in the San
19 Francisco Noise Control Ordinance.

20 (B) Notwithstanding the above, the City Planning Commission may authorize a
21 conditional use which does not satisfy the criteria set forth in (5)(A)(ii) and/or (5)(A)(iii) above,
22 if facts presented are such to establish that the use will be operated in such a way as to
23 minimize disruption to residences in and around the district with respect to noise and crowd
24 control.

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1 (C) The action of the Planning Commission approving a conditional use does not
2 take effect until the appeal period is over or while the approval is under appeal.

3 (6) With respect to applications for live/work units in RH and RM Districts filed
4 pursuant to Section 209.9(f) or 209.9(h) of this Code, that:

5 (A) Each live/work unit is within a building envelope in existence on the effective
6 date of Ordinance No. 412-88 (effective October 10, 1988) and also within a portion of the
7 building which lawfully contains at the time of application a nonconforming, nonresidential use;

8 (B) There shall be no more than one live/work unit for each 1,000 gross square feet
9 of floor area devoted to live/work units within the subject structure; and

10 (C) The project sponsor will provide any off-street parking, in addition to that
11 otherwise required by this Code, needed to satisfy the reasonably anticipated auto usage by
12 residents of and visitors to the project.

13 Such action of the City Planning Commission, in either approving or disapproving the
14 application, shall be final except upon the filing of a valid appeal to the Board of Supervisors
15 as provided in Section 308.1.

16 (d) Conditions. When considering an application for a conditional use as provided
17 herein with respect to applications for development of "dwellings" as defined in Chapter 87 of
18 the San Francisco Administrative Code, the Commission shall comply with that Chapter which
19 requires, among other things, that the Commission not base any decision regarding the
20 development of "dwellings" in which "protected class" members are likely to reside on
21 information which may be discriminatory to any member of a "protected class"(as all such
22 terms are defined in Chapter 87 of the San Francisco Administrative Code). In addition, when
23 authorizing a conditional use as provided herein, the City Planning Commission, or the Board
24 of Supervisors on appeal, shall prescribe such additional conditions, beyond those specified in
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1 this Code, as are in its opinion necessary to secure the objectives of the Code. Once any
2 portion of the conditional use authorization is utilized, all such conditions pertaining to such
3 authorization shall become immediately operative. The violation of any condition so imposed
4 shall constitute a violation of this Code and may constitute grounds for revocation of the
5 conditional use authorization. Such conditions may include time limits for exercise of the
6 conditional use authorization; otherwise, any exercise of such authorization must commence
7 within a reasonable time.

8 (e) Modification of Conditions. Authorization of a change in any condition previously
9 imposed in the authorization of a conditional use shall be subject to the same procedures as a
10 new conditional use. Such procedures shall also apply to applications for modification or
11 waiver of conditions set forth in prior stipulations and covenants relative thereto continued in
12 effect by the provisions of Section 174 of this Code.

13 (f) Conditional Use Abatement. The Planning Commission may consider the
14 possible revocation of a conditional use or the possible modification of or placement of
15 additional conditions on a conditional use when the Planning Commission determines, based
16 upon substantial evidence, that the applicant for the conditional use had submitted false or
17 misleading information in the application process that could have reasonably had a substantial
18 effect upon the decision of the Commission or the conditional use is not in compliance with a
19 condition of approval, is in violation of law if the violation is within the subject matter
20 jurisdiction of the Planning Commission or operates in such a manner as to create hazardous,
21 noxious or offensive conditions enumerated in Section 202(c) if the violation is within the
22 subject matter jurisdiction of the Planning Commission and these circumstances have not
23 been abated through administrative action of the Director, the Zoning Administrator or other
24 City authority. Such consideration shall be the subject of a public hearing before the Planning
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1 Commission but no fee shall be required of the applicant or the subject conditional use
2 operator.

3 (1) The Director of Planning or the Planning Commission may seek a public hearing
4 on conditional use abatement when the Director or Commission has substantial evidence
5 submitted within one year of the effective date of the Conditional Use authorization that the
6 applicant for the conditional use had submitted false or misleading information in the
7 application process that could have reasonably had a substantial effect upon the decision of
8 the Commission or substantial evidence of a violation of conditions of approval, a violation of
9 law, or operation which creates hazardous, noxious or offensive conditions enumerated in
10 Section 202(c).

11 (2) The notice for the public hearing on a conditional use abatement shall be subject
12 to the notification procedure as described in Sections 306.3 and 306.8 except that notice to
13 the property owner and the operator of the subject establishment or use shall be mailed by
14 regular and certified mail.

15 (3) In considering a conditional use revocation, the Commission shall consider
16 whether and how the false or misleading information submitted by the applicant could have
17 reasonably had a substantial effect upon the decision of the Commission, or the Board of
18 Supervisors on appeal, to authorize the conditional use, substantial evidence of how any
19 required condition has been violated or not implemented or how the conditional use is in
20 violation of the law if the violation is within the subject matter jurisdiction of the Planning
21 Commission or operates in such a manner as to create hazardous, noxious or offensive
22 conditions enumerated in Section 202(c) if the violation is within the subject matter jurisdiction
23 of the Planning Commission. As an alternative to revocation, the Commission may consider
24 how the use can be required to meet the law or the conditions of approval, how the
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1 hazardous, noxious or offensive conditions can be abated, or how the criteria of Section
2 303(c) can be met by modifying existing conditions or by adding new conditions which could
3 remedy a violation.

4 (4) Appeals. A decision by the Planning Commission to revoke a conditional use, to
5 modify conditions or to place additional conditions on a conditional use or a decision by the
6 Planning Commission refusing to revoke or amend a conditional use, may be appealed to the
7 Board of Supervisors within 30 days after the date of action by the Planning Commission
8 pursuant to the provisions of Section 308.1(b) The Board of Supervisors may disapprove the
9 action of the Planning Commission in an abatement matter by the same vote necessary to
10 overturn the Commission's approval or denial of a conditional use. The Planning
11 Commission's action on a conditional use abatement issue shall take effect when the appeal
12 period is over or, upon appeal, when there is final action on the appeal.

13 (5) Reconsideration. The decision by the Planning Commission with regards to a
14 conditional use abatement issue or by the Board of Supervisors on appeal shall be final and
15 not subject to reconsideration within a period of one year from the effective date of final action
16 upon the earlier abatement proceeding, unless the Director of Planning determines that:

17 (A) There is substantial new evidence of a new conditional use abatement issue that
18 is significantly different than the issue previously considered by the Planning Commission; or

19 (B) There is substantial new evidence about the same conditional use abatement
20 issue considered in the earlier abatement proceeding, this new evidence was not or could not
21 be reasonably available at the time of the earlier abatement proceeding, and that new
22 evidence indicates that the Commission's decision in the earlier proceeding have not been
23 implemented within a reasonable time or raises significant new issues not previously
24 considered by the Planning Commission. The decision of the Director of Planning regarding
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1 the sufficiency and adequacy of evidence to allow the reconsideration of a conditional use
2 abatement issue within a period of one year from the effective date of final action on the
3 earlier abatement proceeding shall be final.

4 (g) Hotels and Motels.

5 (1) With respect to applications for development of tourist hotels and motels, the
6 Planning Commission shall consider, in addition to the criteria set forth in Subsections (c) and
7 (d) above:

8 (A) The impact of the employees of the hotel or motel on the demand in the City for
9 housing, public transit, childcare, and other social services. To the extent relevant, the
10 Commission shall also consider the seasonal and part-time nature of employment in the hotel
11 or motel;

12 (B) The measures that will be taken by the project sponsor to employ residents of
13 San Francisco in order to minimize increased demand for regional transportation; and

14 (C) The market demand for a hotel or motel of the type proposed.

15 (2) Notwithstanding the provisions of Sub-sections (f)(1) above, the Planning
16 Commission shall not consider the impact of the employees of a proposed hotel or motel
17 project on the demand in the City for housing where:

18 (A) The proposed project would be located on property under the jurisdiction of the
19 San Francisco Port Commission; and

20 (B) The sponsor of the proposed project has been granted exclusive rights to
21 propose the project by the San Francisco Port Commission prior to June 1, 1991.

22 (3) Notwithstanding the provisions of Subsection (f)(1) above, with respect to the
23 conversion of residential units to tourist hotel or motel use pursuant to an application filed on
24 or before June 1, 1990 under the provisions of Chapter 41 of the San Francisco
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1 Administrative Code, the Planning Commission shall not consider the criteria contained in
2 Subsection (f)(1) above; provided, however, that the Planning Commission shall consider the
3 criteria contained in Subsection (f)(1)(B) at a separate public hearing if the applicant applies
4 for a permit for new construction or alteration where the cost of such construction or alteration
5 exceeds \$100,000. Furthermore, no change in classification from principal permitted use to
6 conditional use in Section 216(b)(i) of this Code shall apply to hotels or motels that have filed
7 applications on or before June 1, 1990 to convert residential units to tourist units pursuant to
8 Chapter 41 of the San Francisco Administrative Code.

9 (h) Internet Services Exchange.

10 (1) With respect to application for development of Internet Services Exchange as
11 defined in Section 209.6(c), the Planning Commission shall, in addition to the criteria set forth
12 in Subsection (c) above, find that:

13 (A) The intensity of the use at this location and in the surrounding neighborhood is
14 not such that allowing the use will likely foreclose the location of other needed neighborhood-
15 serving uses in the area;

16 (B) The building in which the use is located is designed in discrete elements, which
17 respect the scale of development in adjacent blocks, particularly any existing residential uses;

18 (C) Rooftop equipment on the building in which the use is located is screened
19 appropriately.

20 (D) The back-up power system for the proposed use will comply with all applicable
21 federal state, regional and local air pollution controls.

22 (E) Fixed-source equipment noise does not exceed the decibel levels specified in
23 the San Francisco Noise Control Ordinance.

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1 (F) The building is designed to minimize energy consumption, such as through the
2 use of energy-efficient technology, including without limitation, heating, ventilating and air
3 conditioning systems, lighting controls, natural ventilation and recapturing waste heat, and as
4 such commercially available technology evolves;

5 (G) The project sponsor has examined the feasibility of supplying and, to the extent
6 feasible, will supply all or a portion of the building's power needs through on-site power
7 generation, such as through the use of fuel cells or co-generation;

8 (H) The project sponsor shall have submitted design capacity and projected power
9 use of the building as part of the conditional use application; and

10 (2) As a condition of approval, and so long as the use remains an Internet Services
11 Exchange, the project sponsor shall submit to the Planning Department on an annual basis
12 power use statements for the previous twelve-month period as provided by all suppliers of
13 utilities and shall submit a written annual report to the Department of Environment and the
14 Planning Department which shall state: (a) the annual energy consumption and fuel
15 consumption of all tenants and occupants of the Internet Services Exchange; (b) the number of
16 all diesel generators located at the site and the hours of usage, including usage for testing
17 purposes; (c) evidence that diesel generators at the site are in compliance with all applicable
18 local, regional, state and federal permits, regulations and laws; and (d) such other information
19 as the Planning Commission may require.

20 (3) The Planning Department shall have the following responsibilities regarding
21 Internet Services Exchanges:

22 (A) Upon the effective date of the requirement of a conditional use permit for an
23 Internet Services Exchange, the Planning Department shall notify property owners of all
24 existing Internet Services Exchanges that the use has been reclassified as a conditional use;

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1 (B) Upon the effective date of the requirement of a conditional use permit for an
2 Internet Services Exchange, the Planning Department shall submit to the Board of
3 Supervisors and to the Director of the Department of Building Inspection a written report
4 covering all existing Internet Services Exchanges and those Internet Services Exchanges
5 seeking to obtain a conditional use permit, which report shall state the address, assessor's
6 block and lot, zoning classification, square footage of the Internet Services Exchange
7 constructed or to be constructed, a list of permits previously issued by the Planning and/or
8 Building Inspection Departments concerning the Internet Services Exchange, the date of
9 issuance of such permits, and the status of any outstanding requests for permits from the
10 Planning and/or Building Inspection Departments concerning Internet Services Exchange; and

11 (C) Within three years from the effective date of the requirement of a conditional use
12 permit for an Internet Services Exchange, the Planning Department, in consultation with the
13 Department of Environment, shall submit to the Board of Supervisors a written report, which
14 report shall contain the Planning Commission's evaluation of the effectiveness of the
15 conditions imposed on Internet Services Exchanges, and whether it recommends additional or
16 modified conditions to reduce energy and fuel consumption, limit air pollutant emissions, and
17 enhance the compatibility of industrial uses, such as Internet Services Exchanges, located
18 near or in residential or commercial districts.

19 (i) Formula Retail Uses.

20 (1) With respect to an application for a formula retail use as defined in Section
21 703.3, whenever a conditional use permit is required per Section 703.3(f), the Planning
22 Commission shall consider, in addition to the criteria set forth in Subsection (c) above:

23 (A) The existing concentrations of formula retail uses within the Neighborhood
24 Commercial District.

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1 (B) The availability of other similar retail uses within the Neighborhood Commercial
2 District.

3 (C) The compatibility of the proposed formula retail use with the existing
4 architectural and aesthetic character of the Neighborhood Commercial District.

5 (D) The existing retail vacancy rates within the Neighborhood Commercial District.

6 (E) The existing mix of Citywide-serving retail uses and neighborhood-serving retail
7 uses within the Neighborhood Commercial District.

8 (j) Large-Scale Retail Uses. With respect to applications for the establishment of
9 large-scale retail uses under Section 121.6, in addition to the criteria set forth in Subsections
10 (c) and (d) above, the Commission shall consider the following:

11 (A) The extent to which the retail use's parking is planned in a manner that creates
12 or maintains active street frontage patterns;

13 (B) The extent to which the retail use is a component of a mixed-use project or is
14 designed in a manner that encourages mixed-use building opportunities;

15 (C) This shift in traffic patterns that may result from drawing traffic to the location of
16 the proposed use; and

17 (D) The impact that the employees at the proposed use will have on the demand in
18 the City for housing, public transit, childcare, and other social services.

19 (k) Movie Theater Uses.

20 (1) With respect to a change in use or demolition of a movie theater use as set forth
21 in Sections 221.1, 703.2(b)(1)(B)(ii), 803.2(b)(2)(B)(iii) or 803.3(b)(1)(B)(ii), in addition to the
22 criteria set forth in Subsections (c) and (d) above, the Commission shall make the following
23 findings:

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1 (A) Preservation of a movie theater use is no longer economically viable and cannot
2 effect a reasonable economic return to the property owner;

3 (i) For purposes of defining "reasonable economic return," the Planning
4 Commission shall be guided by the criteria for "fair return on investment" as set forth in
5 Section 228.4(a).

6 (B) The change in use or demolition of the movie theater use will not undermine the
7 economic diversity and vitality of the surrounding Neighborhood Commercial District; and

8 (C) The resulting project will preserve the architectural integrity of important historic
9 features of the movie theater use affected.

10 (l) Relocation of Existing General Advertising Signs pursuant to a General
11 Advertising Sign Company Relocation Agreement.

12 (1) Before the Planning Commission may consider an application for a conditional
13 use to relocate an existing lawfully permitted general advertising sign as authorized by
14 Section 611 of this Code, the applicant sign company must have:

15 (A) Obtained a current Relocation Agreement approved by the Board of Supervisors
16 under Section 2.21 of the San Francisco Administrative Code that covers the sign or signs
17 proposed to be relocated; and

18 (B) Submitted to the Department a current sign inventory, site map, and the other
19 information required under Section 604.2 of this Code; and

20 (C) Obtained the written consent to the relocation of the sign from the owner of the
21 property upon which the existing sign structure is erected.

22 (D) Obtained a permit to demolish the sign structure at the existing location.

23 (2) The Department, in its discretion, may review in a single conditional use
24 application all signs proposed for relocation by a general advertising company or may require
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1 that one or more of the signs proposed for relocation be considered in a separate application
2 or applications. Prior to the Commission's public hearing on the application, the Department
3 shall have verified the completeness and accuracy of the general advertising sign company's
4 sign inventory.

5 (3) Only one sign may be erected in a new location, which shall be the same square
6 footage or less than the existing sign proposed to be relocated. In no event may the square
7 footage of several existing signs be aggregated in order to erect a new sign with greater
8 square footage.

9 (4) In addition to applicable criteria set forth in subsection (c) above, the Planning
10 Commission shall consider the size and visibility of the signs proposed to be located as well
11 as the following factors in determining whether to approve or disapprove a proposed
12 relocation:

13 (A) The factors set forth in this subsection (A) shall weigh in favor of the
14 Commission's approval of the proposed relocation site:

15 (i) The sign or signs proposed for relocation are lawfully existing but are not in
16 conformity with the sign regulations that existed prior to the adoption of Proposition G on
17 March 5, 2002.

18 (ii) The sign or signs proposed for relocation are on a City list, if any, of priorities for
19 sign removal or signs preferred for relocation.

20 (iii) The sign or signs proposed for relocation are within, adjacent to, or visible from
21 property under the jurisdiction of the San Francisco Port Commission, the San Francisco
22 Unified School District, or the San Francisco Recreation and Park Commission.

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1 (iv) The sign or signs proposed for relocation are within, adjacent to, or visible from
2 an Historic District or conservation district designated in Article 10 or Article 11 of the Planning
3 Code.

4 (v) The sign or signs proposed for relocation are within, adjacent to, or visible from
5 a zoning district where general advertising signs are prohibited.

6 (vi) The sign or signs proposed for relocation are within, adjacent to, or visible from
7 a designated view corridor.

8 (B) The factors set forth in this Subsection (B) shall weigh against the Commission's
9 approval of the proposed relocation:

10 (i) The sign or signs proposed for relocation are or will be obstructed, partially
11 obstructed, or removed from public view by another structure or by landscaping.

12 (ii) The proposed relocation site is adjacent to or visible from property under the
13 jurisdiction of the San Francisco Port Commission, the San Francisco Unified School District,
14 or the San Francisco Recreation and Park Commission.

15 (iii) The proposed relocation site is adjacent to or visible from an Historic District or
16 conservation district designated in Article 10 or Article 11 of the Planning Code.

17 (iv) The proposed relocation site is within, adjacent to, or visible from a zoning
18 district where general advertising signs are prohibited.

19 (v) The proposed relocation site is within, adjacent to, or visible from a designated
20 view corridor.

21 (vi) There is significant neighborhood opposition to the proposed relocation site.

22 (5) In no event may the Commission approve a relocation where:

23 (A) The sign or signs proposed for relocation have been erected, placed, replaced,
24 reconstructed, or relocated on the property, or intensified in illumination or other aspect, or
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1 expanded in area or in any dimension in violation of Article 6 of this Code or without a permit
2 having been duly issued therefore; or

3 (B) The proposed relocation site is not a lawful location under Planning Code
4 Section 611(c)(2); or

5 (C) The sign in its new location would exceed the size, height or dimensions, or
6 increase the illumination or other intensity of the sign at its former location; or

7 (D) The sign in its new location would not comply with the Code requirements for
8 that location as set forth in Article 6 of this Code; or

9 (E) The sign has been removed from its former location; or

10 (F) The owner of the property upon which the existing sign structure is erected has
11 not consented in writing to the relocation of the sign.

12 (6) The Planning Commission may adopt additional criteria for relocation of general
13 advertising signs that do not conflict with this Section 303(l) or Section 611 of this Code.

14 (m) General Grocery Store Uses.

15 (1) With respect to a change in use or demolition of general grocery store use as
16 set forth in Sections 218.2, 703.2(b)(1)(B)(iii), 803.2(b)(2)(B)(iv) or 803.3 (b)(1)(B)(iii), in
17 addition to the criteria set forth in Subsections (c) and (d) above, the Commission shall make
18 the following findings:

19 (A) Preservation of a general grocery store use is no longer economically viable and
20 cannot effect a reasonable economic return to the property owner. The Commission may
21 disregard the above finding if it finds that the change in use or replacement structure in the
22 case of demolition will contain a general grocery store that is of a sufficient size to serve the
23 shopping needs of nearby residents and offers comparable services to the former general
24 grocery store.

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1 (i) For purposes of defining "reasonable economic return," the Planning
2 Commission shall be guided by the criteria for "fair return on investment" as set forth in
3 Section 228.4(a).

4 (B) The change in use or demolition of the general grocery store use will not
5 undermine the economic diversity and vitality of the surrounding neighborhood.

6 (n) New Construction That Would Shade Registered Solar Energy Systems.

7 (1) It is the intent of this subsection (n) to protect and encourage the use of solar energy
8 systems by requiring conditional use authorization for any new construction that would shade a
9 registered solar energy system. New construction, which for the purposes of this subsection (n) shall
10 include additions to existing buildings if the addition results in an increase in shading, that results in
11 obstruction of more than 10% of the sunlight available to a registered solar energy system between the
12 hours of 10 a.m. and 2 p.m. on December 21, shall require a conditional use authorization.

13 (2) Definitions. For the purposes of this subsection (n), the following definitions shall
14 apply.

15 (A) "Registered solar energy system" means a solar energy system registered with the
16 Planning Department as set forth in subsection (n)(3) prior to the date of first application for the
17 proposed new construction.

18 (B) "Solar energy system" means any solar collector or other solar energy device, or any
19 structural design feature of a building whose primary purpose is to provide for the collection of solar
20 energy for space heating or cooling, water heating, or electricity and that: (i) provides the replacement
21 of at least 1 kilowatt of electricity, or the equivalent thereof as determined by the Planning Department;
22 or (ii) occupies the building's maximum footprint available for a solar energy system if the resulting
23 replacement capacity is less than 1 kilowatt. Glazing facing within 45 degrees of south is included in

1 this definition when at least 60% of the space heating load of the building is designed to be supplied by
2 passive solar energy collection through such glazing.

3 (C) "Solar impacting property" means any property whose buildings, fences, or other
4 structures interfere with, or are likely in the future to interfere with, the solar access of a registered
5 solar energy system.

6 (3) Registration of Solar Energy Systems.

7 (A) The owner of an existing permitted solar energy system or the applicant for a building
8 permit for a proposed solar energy system desiring solar access protection under this subsection must
9 apply to the Planning Department for registration of the solar energy system. In addition to the
10 information required for any permit application to install the solar energy system and any other
11 information the Planning Department may require, the applicant for registration shall provide the
12 following:

13 (i) Names and addresses of solar impacting property owners and addressed, stamped
14 envelopes for all solar impacting property owners;

15 (ii) The location and shadow patterns of all buildings, walls, and fences on the property and
16 on the adjacent parcels to the west, south and east;

17 (iii) Location and height above grade of the existing or proposed solar energy system;

18 (iv) Information sufficient to adequately demonstrate, as determined by the Planning
19 Department, the proportion of heating load supplied to the building by solar energy.

20 (B) The Planning Department shall review all completed applications for solar energy
21 system registration for location of the system, size of the system and other factors and shall notify all
22 solar impacting property owners identified in the application of the application. The Planning
23 Department shall consider the comments submitted by solar impacting property owners, and may
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1 condition the application for registration of the solar energy system in order to reduce development
2 restrictions on solar impacting property owners, based on the following standards:

3 (i) The existing or proposed solar energy system shall be designed and located so as to
4 cause the least restriction of development on solar impacting properties. In order to approve the
5 registration, the Planning Department may require relocation of an existing or proposed solar energy
6 system resulting in a reduction in system efficiency if the Planning Department determines that the
7 applicant's selected site results in undue restriction of development on a solar impacting property.

8 (ii) The request for solar access protection shall be consistent, to the maximum extent
9 feasible, with other design criteria included in the San Francisco Planning and Building Codes.

10 (iii) Solar access shall not be protected under this subsection (n) from construction
11 occurring on any properties not identified by the applicant as a solar impacting property.

12 (C) Registration of New Solar Energy Systems. Applications for registration of new solar
13 energy systems may be conditionally approved for registration by the Planning Department, pending
14 construction and final approval. Upon such conditional approval, the solar energy system shall be
15 constructed within six (6) months of the date of conditional approval, which deadline may be extended
16 at the sole discretion of the Zoning Administrator. The Planning Department shall finally approve the
17 application for registration of the new solar energy system upon its determination that the solar energy
18 system as constructed conforms to the conditionally approved application. Any proposed solar energy
19 system not constructed within the deadline set forth herein and finally approved by the Planning
20 Department shall not be considered a registered solar energy system within the meaning of this
21 subsection (n).

22 (D) Invalidation of A Registered Solar Energy System. The registration of any solar energy
23 system shall be considered invalid and the protections afforded by registration unavailable upon:
24 permanent removal or change in location of the solar energy system, unless an application for
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1 registration of the solar energy system at the new location has been approved; permanent
2 abandonment of the use of the solar energy system as determined by the Zoning Administrator.

3 (5) With respect to applications for new construction under this subsection (n), the Planning
4 Commission shall consider, in addition to the criteria set forth in subsection (c) above:

5 (A) Whether the proposed new construction has been designed to mitigate to the maximum
6 extent feasible its impact on the registered solar energy system; and

7 (B) Whether the proposed new construction includes solar energy systems or other green
8 building elements and design features that make it necessary or desirable for, and compatible with, the
9 neighborhood or the community, despite its shading effect on the registered solar energy system;

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11 Section 3.

12 The Planning Department shall develop informational materials regarding the solar
13 energy system registration process to be provided to applicants for solar energy system
14 permits.

15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

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17 By: _____
18 Marlena G. Byrne
19 Deputy City Attorney

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