

FILE NO. 031930

ORDINANCE NO. 77-04

1 [Planning Code Amendments – The Old Mint.]

2
3 **Ordinance amending the San Francisco Planning Code by amending Section 128 to**
4 **allow a City-owned landmark in a P (Public) zoning district that is adjacent to**
5 **properties zoned C-3 (Downtown Commercial) to sell Transferable Development Rights**
6 **and by amending Section 149 to authorize the landmark to receive artwork**
7 **contributions in order to finance rehabilitation and restoration of the exterior of the**
8 **property; adopting findings.**

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.
12 Board amendment deletions are ~~strikethrough normal~~.

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

14 Section 1. Findings. This Board of Supervisors finds and determines as follows:

15 (a) Pursuant to Planning Code Section 302, these amendments to the Planning
16 Code will serve the public necessity, convenience and welfare for the reasons set forth below
17 and in Planning Commission Resolution No. 16739 _____, which reasons are
18 incorporated herein by reference as though fully set forth. A copy of Resolution No.
19 16739 _____ is on file with the Clerk of the Board of Supervisors in File No.
20 031930 _____.

21 (b) This ordinance is in conformity with the Priority Policies of Section 101.1 of the
22 San Francisco Planning Code and is consistent with the General Plan for the reasons set forth
23 in Planning Commission Resolution No. 16739 _____, which reasons are
24 incorporated herein by reference as though fully set forth.

25 (c) The San Francisco Planning Department, acting as the Lead Agency, issued a
categorical exemption for this Planning Code amendment on 02/25/04 _____ pursuant to

1 the California Environmental Quality Act ("CEQA"), CEQA Guidelines Sections 15061(b)(3)
2 and 15305, and Chapter 31 of the San Francisco Administrative Code. A copy of the
3 categorical exemption is on file with the Clerk of the Board of Supervisors in File No.
4 031930. This Board has reviewed and considered the categorical exemption and
5 hereby affirms the Planning Department's determination that the project would constitute a
6 minor alteration in land use limitations without the potential for significant environmental
7 impact. The Board further finds that there have been no substantial changes in
8 circumstances and no information of substantial importance that would change the
9 conclusions set forth in the categorical exemption.

10 (d) City-owned buildings that are both federal and local landmarks are important
11 contributors to San Francisco's urban landscape as well as to its history. The importance of
12 these landmarks is of such magnitude that their restoration and rehabilitation, especially of the
13 buildings' exteriors, adds a desirable artistic component to the San Francisco experience. In
14 doing so, it expands tourism, an important part of the San Francisco economy, while at the
15 same time preserving the architectural artistry of another era for generations of San
16 Franciscans.

17 (e) Allowing such landmark buildings that are located in a P District adjacent to a C-
18 3 District to transfer Transferable Development Rights ("TDR") under Planning Code Section
19 128, and to receive art contributions under Section 149 for a limited period of time, creates a
20 funding source that would permit the restoration and rehabilitation of these important
21 buildings.

22 Section 2. The San Francisco Planning Code is hereby amended by amending Section
23 128, to read as follows:

24 SEC. 128. TRANSFER OF DEVELOPMENT RIGHTS IN C-3 DISTRICTS.

25 (a) Definitions.

1 (1) "Development Lot." A lot to which TDR may be transferred to increase the
2 allowable gross floor area of development thereon beyond that otherwise permitted by Section
3 124.

4 (2) "Owner of Record." The owner or owners of record in fee.

5 (3) "Preservation Lot." A parcel of land on which is either (i) a Significant or
6 Contributory building (as designated pursuant to Article 11); or (ii) a Category V Building that
7 has complied with the eligibility requirement for transfer of TDR as set forth in Section
8 1109(c); or (iii) a structure designated a landmark pursuant to Article 10 of this Code. The
9 boundaries of the Preservation Lot shall be the boundaries of the Assessor's lot on which the
10 building is located at the time the ordinance or, as to Section 1109(c), resolution, making the
11 designation is adopted, unless boundaries are otherwise specified in the ordinance.

12 (4) "Transfer Lot." A Preservation Lot located in a C-3 District from which TDR may
13 be transferred. A lot zoned P (public) may in no event be a Transfer Lot unless a building on
14 that lot is (i) owned by the City and County of San Francisco, and (ii) located in a P District adjacent
15 to a C-3 District, and (iii) designated as an historical landmark by Article 10 of this Code or
16 designated as a Category I Significant Building by Article 11 of this Code and listed as a National
17 Historical Landmark on the National Historic Register, and (iv) the TDR proceeds are used to finance,
18 in whole or in part, a project to rehabilitate and restore the building in accordance with the Secretary
19 of Interior standards. For the purposes of Section 128(b), a lot zoned P which satisfies the
20 criteria of this subsection (4) to qualify as a "Transfer Lot" shall be deemed to have an
21 allowable gross floor area of 7.5:1 under Section 124.

22 (5) "Transferable Development Rights (TDR)." Units of gross floor area which may
23 be transferred, pursuant to the provisions of this Section and Article 11 of this Code, from a
24 Transfer Lot to increase the allowable gross floor area of a development on a Development
25 Lot.

1 (6) "Unit of TDR." One unit of TDR is one square foot of gross floor area.

2 (b) Amount of TDR Available for Transfer. The maximum TDR available for transfer
3 from a Transfer Lot consists of the difference between (aa) the allowable gross floor area
4 permitted on the Transfer Lot by Section 124 and (bb) the gross floor area of the development
5 located on the Transfer Lot.

6 (c) Eligibility of Development Lots and Limitation on Use of TDR on Development
7 Lots. TDR may be used to increase the allowable gross floor area of a development on a
8 Development Lot if the following requirements and restrictions are satisfied:

9 (1) (i) The Transfer Lot and the Development Lot are located in the same C-3
10 Zoning District, or (ii) the Transfer Lot is located in a C-3-O, or C-3-R District and the
11 Development Lot is located in the C-3-O(SD) Special Development District; or (iii) the Transfer
12 Lot is a Preservation Lot that contains a Significant building and is located in the Extended
13 Preservation District or a C-3-G or C-3-S District and the Development Lot is located in the C-
14 3-O(SD) Special District, or (iv) the Transfer Lot is in a C-3-R District or a District designated
15 C-3-O (SD) in the Yerba Buena Center Redevelopment Plan and is located in the Yerba
16 Buena Center Redevelopment Project Area and the Development Lot is located in a C-3-O
17 District; or (v) the Transfer Lot is in a P District adjacent to a C-3 District and meets the requirements
18 established in subsection (a)(4) above and the Development Lot is located in a C-3 District.

19 (2) TDR may not be transferred for use on any lot on which is or has been located a
20 Significant or Contributory building; provided that this restriction shall not apply if the
21 designation of a building is changed to Unrated; nor shall it apply if the City Planning
22 Commission finds that the additional space resulting from the transfer of TDR is essential to
23 make economically feasible the reinforcement of a Significant or Contributory building to meet
24 the standards for seismic loads and forces of the 1975 Building Code, in which case TDR may
25 be transferred for that purpose subject to the limitations of this Section and Article 11,

1 including Section 1111.6. Any alteration shall be governed by the requirements of Sections
2 1111 to 1111.6.

3 (3) Notwithstanding any other provision of this Section, development on a
4 Development Lot is limited by the provisions of this Code, other than those on floor area ratio,
5 governing the approval of projects, including the requirements relating to height, bulk,
6 setback, sunlight access, and separation between towers, and any limitations imposed
7 pursuant to Section 309 review applicable to the Development Lot. The total allowable gross
8 floor area of a development on a Development Lot may not exceed the limitation imposed by
9 Section 123(c).

10 (d) Effect of Transfer of TDR.

11 (1) Transfer of TDR from a Transfer Lot permanently reduces the development
12 potential of the Transfer Lot by the amount of the TDR transferred. In addition, transfer of TDR
13 from a Preservation Lot containing a Contributory building or a landmark designated pursuant
14 to Article 10 causes such building to become subject to the same restrictions on demolition
15 and alteration, and the same penalties and enforcement remedies, that are applicable to
16 Significant buildings Category I, as provided in Article 11.

17 (e) Procedure for Determining TDR Eligibility.

18 (1) In order to obtain a determination of whether a lot is a Transfer Lot and, if it is, of
19 the amount of TDR available for transfer, the owner of record of the lot may file an application
20 with the Zoning Administrator for a Statement of Eligibility. The application for a Statement of
21 Eligibility shall contain or be accompanied by plans and drawings and other information which
22 the Zoning Administrator determines is necessary in order to determine whether a Statement
23 of Eligibility can be issued. Any person who applies for a Statement of Eligibility prior to
24 expiration of the time for request of reconsideration of designation authorized in Section 1105
25 shall submit in writing a waiver of the right to seek such reconsideration.

1 (2) The Zoning Administrator shall, upon the filing of an application for a Statement
2 of Eligibility and the submission of all required information, issue either a proposed Statement
3 of Eligibility or a written determination that no TDR are available for transfer and shall mail that
4 document to the applicant and to any other person who has filed with the Zoning Administrator
5 a written request for a copy. Any appeal of the proposed Statement of Eligibility or
6 determination of noneligibility shall be filed with the Board of Permit Appeals within 20 days of
7 the date of issuance of the document. If not appealed, the proposed Statement of Eligibility or
8 the determination of noneligibility shall become final on the 21st day after the date of
9 issuance. The Statement of Eligibility shall contain at least the following information: (i) the
10 name of the owner of record of the Transfer Lot; (ii) the address, legal description and
11 Assessor's Block and Lot of the Transfer Lot; (iii) the C-3 use district within which the Transfer
12 Lot is located; (iv) whether the Transfer Lot is a Preservation Lot or Development Lot; (v) if a
13 Preservation Lot, whether the Transfer Lot contains a Significant or Contributory building, a
14 Category V building, or an Article 10 landmark; (vi) the amount of TDR available for transfer;
15 and (vii) the date of issuance.

16 (3) Once the proposed Statement of Eligibility becomes final, whether through lack
17 of appeal or after appeal, the Zoning Administrator shall record the Statement of Eligibility in
18 the Office of the County Recorder. The County Recorder shall be instructed to mail the
19 original of the recorded document to the owner of record of the Transfer Lot and, if a copy of
20 the document is presented at the time of the recordation, shall conform the copy and mail it to
21 the Zoning Administrator.

22 (f) Cancellation of Eligibility.

23 (1) If reasonable grounds should at any time exist for determining that a building on
24 a Preservation Lot may have been altered or demolished in violation of Articles 10 or 11,
25 including Sections 1110 and 1112 thereof, the Zoning Administrator may issue and record

1 with the County Recorder a Notice of Suspension of Eligibility for the affected lot and, in cases
2 of demolition of a Significant or Contributory building, a notice that the restriction on the floor
3 area ratio of a replacement building, pursuant to Section 1114, may be applicable and shall
4 mail a copy of such notice to the owner of record of the lot. The notice shall provide that the
5 property owner shall have 20 days from the date of the notice in which to request a hearing
6 before the Zoning Administrator in order to dispute this initial determination. If no hearing is
7 requested, the initial determination of the Zoning Administrator is deemed final on the twenty-
8 first day after the date of the notice, unless the Zoning Administrator has determined that the
9 initial determination was in error.

10 (2) If a hearing is requested, the Zoning Administrator shall notify the property
11 owner of the time and place of hearing, which shall be scheduled within 21 days of the
12 request, shall conduct the hearing, and shall render a written determination within 15 days
13 after the close of the hearing. If the Zoning Administrator shall determine that the initial
14 determination was in error, that officer shall issue and record a Notice of Revocation of
15 Suspension of Eligibility. Any appeal of the determination of the Zoning Administrator shall be
16 filed with the Board of Permit Appeals within 20 days of the date of the written determination
17 following a hearing or, if no hearing has been requested, within 20 days after the initial
18 determination becomes final.

19 (3) If after an appeal to the Board of Permit Appeals it is determined that an
20 unlawful alteration or demolition has occurred, or if no appeal is taken of the determination by
21 the Zoning Administrator of such a violation, the Zoning Administrator shall record in the
22 Office of the County Recorder a Notice of Cancellation of Eligibility for the lot, and shall mail to
23 the property owner a conformed copy of the recorded Notice. In the case of demolition of a
24 Significant or Contributory Building, the Zoning Administrator shall record a Notice of Special
25 Restriction noting the restriction on the floor area ratio of the Preservation Lot pursuant to the

1 provisions of Section 1114, and shall mail to the owner of record a certified copy of the Notice.
2 If after an appeal to the Board of Permit Appeals it is determined that no unlawful alteration or
3 demolition has occurred, the Zoning Administrator shall issue and record a Notice of
4 Revocation of Suspension of Eligibility and, if applicable, a Notice of Revocation of the Notice
5 of Special Restriction pursuant to Section 1114, and shall mail conformed copies of the
6 recorded notices to the owner of record.

7 (4) No notice recorded under this Section 128(f) shall affect the validity of TDR that
8 have been transferred from the affected Transfer Lot in compliance with the provisions of this
9 Section prior to the date of recordation of such notice, whether or not such TDR have been
10 used.

11 (g) Procedure for Transfer of TDR.

12 (1) TDR from a single Transfer Lot may be transferred as a group to a single
13 transferee or in separate increments to several transferees. TDR may be transferred either
14 directly from the original owner of the TDR to the owner of a Development Lot or to persons,
15 firms or entities who acquire the TDR from the original owner of the TDR and hold them for
16 subsequent transfer to other persons, firms, entities or to the owners of a Development Lot or
17 Lots.

18 (2) When TDR are transferred, they shall be identified in each Certificate of Transfer
19 by a number. A single unit of TDR transferred from a Transfer Lot shall be identified by the
20 number "1." Multiple units of TDR transferred as a group for the first time from a Transfer Lot
21 shall be numbered consecutively from "1" through the number of units transferred. If a fraction
22 of a unit of TDR is transferred, it shall retain its numerical identification. (For example, if 5,000-
23 ½TDR are transferred in the initial transfer from the Transfer Lot, they would be numbered "1
24 through 5,000 and one-half of 5,001.") TDR subsequently transferred from the Transfer Lot
25 shall be identified by numbers taken in sequence following the last number previously

1 transferred. (For example if the first units of gross floor area transferred from a Transfer Lot
2 are numbered 1 through 10,000, the next unit transferred would be number 10,001.) If multiple
3 units transferred from a Transfer Lot are subsequently transferred separately in portions, the
4 seller shall identify the TDR sold by numbers which correspond to the numbers by which they
5 were identified at the time of their transfer from the Transfer Lot. (For example, TDR
6 numbered 1 through 10,000 when transferred separately from the Transfer Lot in two equal
7 portions would be identified in the two Certificates of Transfer as numbers 1 through 5,000
8 and 5,001 through 10,000.) Once assigned numbers, TDR retain such numbers for the
9 purpose of identification through the process of transferring and using TDR. The phrase
10 "numerical identification," as used in this section, shall mean the identification of TDR by
11 numbers as described in this Subsection.

12 (3) Transfer of TDR from the Transfer Lot shall not be valid unless (i) a Statement of
13 Eligibility has been recorded in the Office of the County Recorder prior to the date of
14 recordation of the Certificate of Transfer evidencing such transfer and (ii) a Notice of
15 Suspension of Eligibility or Notice of Cancellation of Eligibility has not been recorded prior to
16 such transfer or, if recorded, has thereafter been withdrawn by an appropriate recorded Notice
17 of Revocation or a new Statement of Eligibility has been thereafter recorded.

18 (4) Transfer of TDR, whether by initial transfer from a Transfer Lot or by a
19 subsequent transfer, shall not be valid unless a Certificate of Transfer evidencing such
20 transfer has been prepared and recorded. The Zoning Administrator shall prepare a form of
21 Certificate of Transfer and all transfers shall be evidenced by documents that are substantially
22 the same as the Certificate of Transfer form prepared by the Zoning Administrator, which form
23 shall contain at least the following:

24 (i) For transfers from the Transfer Lot only:
25

1 (aa) Execution and acknowledgment by the original owner of TDR as the
2 transferor(s) of the TDR; and
3 (bb) Execution and acknowledgment by the Zoning Administrator; and
4 (cc) A notice, prominently placed and in all capital letters, preceded by the
5 underlined heading "Notice of Restriction," stating that the transfer of TDR from the Transfer
6 Lot permanently reduces the development potential of the Transfer Lot by the amount of TDR
7 transferred, with reference to the provisions of this Section.

8 (ii) For all transfers:

9 (aa) The address, legal description, Assessor's Block and Lot, and C-3 use district of
10 the Transfer Lot from which the TDR originates; and

11 (bb) The amount of TDR transferred; and

12 (cc) Numerical identification of the TDR being transferred; and

13 (dd) The names and mailing addresses of the transferors and transferees of the
14 TDR; and

15 (ee) Execution and acknowledgment by the transferors and transferees of the TDR;
16 and

17 (ff) A reference to the Statement of Eligibility, including its recorded instrument
18 number and date of recordation, and a recital of all previous transfers of the TDR, including
19 the names of the transferors and transferees involved in each transfer and the recorded
20 instrument number and date of recordation of each Certificate of Transfer involving the TDR,
21 including the transfer from the Transfer Lot which generated the TDR.

22 (5) When a Certificate of Transfer for the transfer of TDR from a Transfer Lot is
23 presented to the Zoning Administrator for execution, that officer shall not execute the
24 document if a transfer of the TDR would be prohibited by any provision of this Section or any
25 other provision of this Code. The Zoning Administrator shall, within five business days from

1 the date that the Certificate of Transfer is submitted for execution, either execute the
2 Certificate of Transfer or issue a written determination of the grounds requiring a refusal to
3 execute the Certificate.

4 (6) Each duly executed and acknowledged Certificate of Transfer containing the
5 information required herein shall be presented for recordation in the Office of the County
6 Recorder and shall be recorded by the County Recorder. The County Recorder shall be
7 instructed to mail the original Certificate of Transfer to the person and address designated
8 thereon and shall be given a copy of the Certificate of Transfer and instructed to conform the
9 copy and mail it to the Zoning Administrator.

10 (h) Certification of Transfer of TDR for a Project on a Development Lot.

11 (1) When the use of TDR is necessary for the approval of a building permit for a
12 project on a Development Lot, the Superintendent of the Bureau of Building Inspection shall
13 not approve issuance of the permit unless the Zoning Administrator has issued a written
14 certification that the owner of the Development Lot owns the required number of TDR. When
15 the transfer of TDR is necessary for the approval of a site permit for a project on a
16 Development Lot, the Zoning Administrator shall impose as a condition of approval of the site
17 permit the requirement that the Superintendent of the Bureau of Building Inspection shall not
18 issue the first addendum to the site permit unless the Zoning Administrator has issued a
19 written certification that the owner of the Development Lot owns the required number of TDR.

20 (2) In order to obtain certification as required in Section 128(h)(1), the permit
21 applicant shall present to the Zoning Administrator:

22 (i) Information necessary to enable the Zoning Administrator to prepare the Notice
23 of Use of TDR, which information shall be at least the following:

24 (aa) The address, legal description, Assessor's Block and Lot, and zoning
25 classification of the Development Lot;

1 (bb) The name and address of the owner of record of the Development Lot;
2 (cc) Amount and numerical identification of the TDR being used;
3 (dd) A certified copy of each Certificate of Transfer evidencing transfer to the owner
4 of the Development Lot of the TDR being used; and

5 (ii) A report from a title insurance company showing the holder of record of the TDR
6 to be used, all Certificates of Transfer of the TDR, and all other matters of record affecting
7 such TDR. In addition to showing all such information, the report shall guarantee that the
8 report is accurate and complete and the report shall provide that in the event that its
9 guarantee or any information shown in the report is incorrect, the title company shall be liable
10 to the City for the fair market value of the TDR at the time of the report. The liability amount
11 shall be not less than \$10,000 and no more than \$1,000,000, the appropriate amount to be
12 determined by the Zoning Administrator based on the number of TDR being used.

13 (iii) An agreement whereby the owner of the Development Lot shall indemnify the City
14 against any and all loss, cost, harm or damage, including attorneys' fees, arising out of or
15 related in any way to the assertion of any adverse claim to the TDR, including any loss, cost,
16 harm or damage occasioned by the passive negligence of the City and excepting only that
17 caused by the City's sole and active negligence. The indemnity agreement shall be secured
18 by a first deed of trust on the Development Lot, or other security satisfactory to the
19 Department of City Planning and the City Attorney.

20 (3) If the Zoning Administrator determines that the project applicant has complied
21 with the provisions of Subsection (h)(2) and all other applicable provisions of this Section, and
22 that the applicant is the owner of the TDR, that officer shall transmit to the Superintendent of
23 the Bureau of Building Inspection, with a copy to the project applicant, written certification that
24 the owner of the Development Lot owns the TDR. Prior to transmitting such certification, the
25 Zoning Administrator shall prepare a document entitled Notice of Use of TDR stating that the

1 TDR have been used and may not be further transferred, shall obtain the execution and
2 acknowledgment on the Notice of the owner of record of the Development Lot, shall execute
3 and acknowledge the Notice, shall record it in the Office of the County Recorder, and shall
4 mail to the owner of record of the Development Lot a conformed copy of the recorded Notice.
5 If the Zoning Administrator determines that the project applicant is not the owner of the TDR,
6 or has not complied with all applicable provisions of this Section, that determination shall be
7 set forth in writing along with the reasons therefor. The Zoning Administrator shall either
8 transmit certification or provide a written determination that certification is inappropriate within
9 10 business days after the receipt of all information required pursuant to Subsection (h)(2).

10 (i) Cancellation of Notice of Use; Transfer from Development Lot.

11 (1) The owner of a Development Lot for which a Notice of Use of TDR has been
12 recorded may apply for a Cancellation of Notice of Use if (i) the building permit or site permit
13 for which the Notice of Use was issued expires or was revoked or cancelled prior to
14 completion of the work for which such permit was issued and the work may not be carried out;
15 or (ii) any administrative or court decision is issued or any ordinance or initiative or law is
16 adopted which does not allow the applicant to make use of the permit; or (iii) a portion or all of
17 such TDR are not used.

18 (2) If the Zoning Administrator determines that the TDR have not been and will not
19 be used on the Development Lot based on the reasons set forth in subsection (i)(1), the
20 Zoning Administrator shall prepare the Cancellation of Notice of Use of TDR. If only a portion
21 of the TDR which had been acquired are not being used, the applicant may identify which
22 TDR will not be used and the Cancellation of Notice of Use of TDR shall apply only to those
23 TDR. The Zoning Administrator shall obtain on the Cancellation of Notice of Use of TDR the
24 signature and acknowledgment of the owner of record of the Development Lot as to which the
25

1 Notice of Use of TDR was recorded, shall execute and acknowledge the document, and shall
2 record it in the office of the County Recorder.

3 (3) Once a Cancellation of Notice of Use of TDR has been recorded, the owner of
4 the Development Lot may apply for a Statement of Eligibility in order to transfer the TDR
5 identified in that document. The procedures and requirements set forth in this Section
6 governing the transfer of TDR shall apply to the transfer of TDR from the owner of a
7 Development Lot after a Notice of Use has been filed, except for the provisions of this Section
8 permanently restricting the development potential of a Transfer Lot upon the transfer of TDR;
9 provided, however, that the district or districts to which the TDR may be transferred shall be
10 the same district or districts to which TDR could have been transferred from the Transfer Lot
11 that generated the TDR.

12 (j) Erroneous Notice of Use; Revocation of Permit. If the Zoning Administrator
13 determines that a Notice of Use of TDR was issued or recorded in error, that officer may direct
14 the Superintendent of the Bureau of Building Inspection to suspend any permit issued for a
15 project using such TDR, in which case the Superintendent shall comply with that directive.
16 The Zoning Administrator shall thereafter conduct a noticed hearing in order to determine
17 whether the Notice of Use of TDR was issued or recorded in error. If it is determined that the
18 Notice of Use of TDR was issued or recorded in error, the Superintendent of the Bureau of
19 Building Inspection shall revoke the permit; provided, however, that no permit authorizing
20 such project shall be revoked if the right to proceed thereunder has vested under California
21 law. If it is determined that the Notice of Use of TDR was not issued or recorded in error, the
22 permit shall be reinstated.

23 (k) Effect of Repeal or Amendment. TDR shall convey the rights granted herein only
24 so long and to the extent as authorized by the provisions of this Code. Upon repeal of such
25 legislative authorization, TDR shall thereafter convey no rights or privileges. Upon amendment

1 of such legislative authorization, TDR shall thereafter convey only such rights and privileges
2 as are permitted under the amendment. No Statement of Eligibility shall convey any right to
3 use, transfer or otherwise utilize TDR if the maximum floor area ratio for the Transfer Lot is
4 reduced after the Statement of Eligibility is issued.

5 Section 3. The San Francisco Planning Code is hereby amended by amending Section
6 149, to read as follows:

7 SEC. 149. ARTWORKS, RECOGNITION OF ARCHITECT AND ARTISTS AND
8 MODEL REQUIREMENTS IN C-3 DISTRICTS.

9 (a) Artworks. In the case of construction of a new building or addition of floor area in
10 excess of 25,000 square feet to an existing building in a C-3 District, works of art costing an
11 amount equal to one percent of the construction cost of the building or addition as determined
12 by the Director of the Department of Building Inspection shall be installed and maintained (i) in
13 areas on the site of the building or addition and clearly visible from the public sidewalk or the
14 open-space feature required by Section 138, or (ii) on the site of the open-space feature
15 provided pursuant to Section 138, or (iii) upon the approval of any relevant public agency, on
16 adjacent public property, or (iv) in a publicly accessible lobby area of a hotel. ~~or (v) in, upon or~~
17 ~~as part of publicly visible ornamental features of buildings that are located in the C-3 District or in P~~
18 ~~Districts adjacent to the C-3 District and that are designated as historical landmarks by Article 10, as~~
19 ~~Category I Significant Buildings by Article 11 of this Code or are listed as National Historical~~
20 ~~Landmarks on the National Historic Register; provided however that the right to elect to use item (v) to~~
21 ~~satisfy the obligations of this Section shall terminate three years from the effective date of this~~
22 ~~ordinance~~ In lieu of installing and maintaining works of art pursuant to subsections (i) through (iv)
23 above, a project sponsor may elect to contribute a sum of money at least equivalent to the cost of the
24 artwork to finance, in whole or in part, rehabilitation and restoration of the exterior of a publicly-
25 owned building provided that the building is (i) owned by the City and County of San Francisco, and

1 (ii) located in a P District adjacent to a C-3 District, and (iii) designated as an historical landmark by
2 Article 10 of this Code or designated as a Category I Significant Building by Article 11 of this Code
3 and listed as a National Historical Landmark on the National Historic Register; provided, however,
4 that the right to elect to use this in-lieu provision to satisfy the obligations of this Section shall
5 terminate five years from the effective date of this ordinance. Said works of art shall be installed
6 prior to issuance of the first certificate of occupancy; provided, however, that if the Zoning
7 Administrator concludes that it is not feasible to install the works within that time and that
8 adequate assurance is provided that the works will be installed in a timely manner, the Zoning
9 Administrator may extend the time for installation for a period of not less than 12 months. Said
10 works of art may include sculpture, bas-relief, murals, mosaics, decorative water features,
11 tapestries or other artworks permanently affixed to the building or its grounds, or a
12 combination thereof, but may not include architectural features of the building, except as
13 provided by (v) above permitted with respect to the in lieu contribution regarding publicly
14 owned buildings meeting the criteria described above. Artworks shall be displayed in a
15 manner that will enhance their enjoyment by the general public. The type and location of
16 artwork, but not the artistic merits of the specific artwork proposed, shall be approved in
17 accordance with the provisions of Section 309. The term "construction cost" shall be
18 determined in the manner used to determine the valuation of work as set forth in Section
19 107.2 of the Building Code.

20 (b) Recognition of Architects and Artists. In the case of construction of a new
21 building or an addition of floor area in excess of 25,000 square feet to an existing building in a
22 C-3 District, a plaque or cornerstone identifying the project architect and the creator of the
23 artwork provided pursuant to Subsection (a) and the erection date shall be placed at a publicly
24 conspicuous location on the building prior to the issuance of the first certificate of occupancy.
25

1 (c) Models. In a C-3 District, in the case of construction of a new building, or any
2 addition in height in excess of 40 feet to an existing building, two models shall be submitted to
3 the Department of City Planning prior to approval of the project, as follows:

4 (1) One model of the building at a scale of 1=100; and

5 (2) One model of the block in which the building is located at a scale of 1=32, which
6 model shall include all the buildings on the block on which the building is located and the
7 streets surrounding the block to the centerline of the streets and shall use as its base the land
8 form starting at sea level; provided, however, that if the Department of City Planning
9 determines that it has an up-to-date model of the block in which the building is located, only a
10 model of the building shall be submitted.

11 (d) Procedure Regarding Certificate of Occupancy. The Director of the Department
12 of Building Inspection shall provide notice in writing to the Zoning Administrator at least five
13 business days prior to issuing the first certificate of occupancy for any building subject to the
14 provisions of this Section. If the Zoning Administrator notifies the Director within such time that
15 the provisions of this Section have not been complied with, the Director shall deny the permit.
16 If the Zoning Administrator notifies the Director that the provisions of this Section have been
17 complied with or fails to respond within five business days, the permit of occupancy shall not
18 be disapproved pursuant to this Section. As used herein, the "first certificate of occupancy"
19 shall mean either a temporary certificate of occupancy or a Certificate of Final Completion and
20 Occupancy as defined in San Francisco Building Code Sections 109.3 and 109.4, whichever

21 ///

22 ///

23 ///

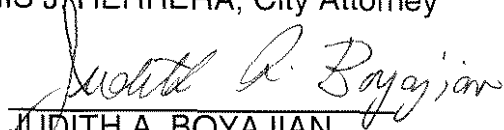
24 ///

25 ///

1 is issued first. The procedure set forth in this subsection is not intended to preclude
2 enforcement of the requirements of this Section through any means otherwise authorized.

3 APPROVED AS TO FORM:
4 DENNIS J. HERRERA, City Attorney

5 By:


6 JUDITH A. BOYAJIAN
7 Deputy City Attorney

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 031930

Date Passed:

Ordinance amending the San Francisco Planning Code by amending Section 128 to allow a City-owned landmark in a P (Public) zoning district that is adjacent to properties zoned C-3 (Downtown Commercial) to sell Transferable Development Rights and by amending Section 149 to authorize the landmark to receive artwork contributions in order to finance rehabilitation and restoration of the exterior of the property; adopting findings.

April 20, 2004 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Peskin, Sandoval

April 27, 2004 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Peskin, Sandoval

File No. 031930

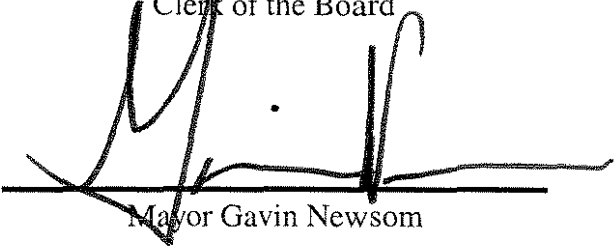
I hereby certify that the foregoing Ordinance was FINALLY PASSED on April 27, 2004 by the Board of Supervisors of the City and County of San Francisco.

MAY 06 2004

Date Approved

Gloria L. Young

for Gloria L. Young
Clerk of the Board



Mayor Gavin Newsom