

1 [Adopting findings related to the determination that the appeal of the negative declaration for
2 the 606-624 Divisadero Street project was timely.]

3 **Motion adopting findings related to the determination that the appeal of the negative**
4 **declaration for the 606-624 Divisadero Street project was timely filed.**

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6 On October 16, 2004, the Environmental Review Officer of the Planning Department
7 issued a preliminary mitigated negative declaration for 606-624 Divisadero Street (aka
8 "Harding Theater") in accordance with the California Environmental Quality Act ("CEQA"), the
9 CEQA Guidelines and San Francisco Administrative Code Chapter 31.

10 On November 29, 2004, having received no appeal of the preliminary mitigated
11 negative declaration, the Environmental Review Officer of the Planning Department issued a
12 final mitigated negative declaration for 606-624 Divisadero Street ("mitigated negative
13 declaration") in accordance with Administrative Code Section 31.11(h). A copy of said
14 document is on file with the Clerk of the Board of Supervisors in File No. 050287 and is
15 incorporated by reference herein.

16 On February 16, 2005, the Clerk of the Board received an appeal of the mitigated
17 negative declaration from Arthur D. Levy on behalf of the Central City Progressives
18 ("Appellant").

19 The California Public Resources Code Section 21151(c) was amended effective
20 January 1, 2003, to provide that negative declarations are appealable to the elected decision-
21 making body. The Board of Supervisors has not yet adopted specific procedures or time lines
22 providing for appeals of such negative declarations.

23 This Board held a duly noticed public hearing on April 19, 2005, to consider whether
24 the appeal filed by Appellants was timely. Following the conclusion of the public hearing the
25 Board determined that the appeal was timely filed, based on the whole record before the

1 Board, including the written record in File No. 050288, which is hereby declared to be a part of
2 this motion as if set forth fully herein, as well as written submission to, public testimony at, and
3 official written, video and audio records of the Planning Department determination on the
4 negative declaration and subsequent determinations of the Planning Department related to
5 the 606-616 Divisadero Street project, and deliberation of the oral and written testimony at the
6 public hearing before the Board of Supervisors by all parties and the public in support of and
7 opposed to the question of whether the appeal was timely.

8 MOVED, That the Board of Supervisors finds that although the Planning Department
9 followed its normal practice of providing notice to persons within the immediate vicinity of the
10 proposed project, in the newspaper and to persons requesting notice of the project, neither
11 Appellants nor other groups that were knowledgeable about the potential historic resource
12 value of the Harding Theater specifically received notice of the availability of the negative
13 declaration.

14 MOVED, That the Board of Supervisors finds that the negative declaration prepared by
15 the Planning Department, provided to the public and submitted to the Planning Commission
16 and the notices provided regarding the availability of the negative declaration did not identify
17 the project as the "Harding Theater" and, therefore, did not alert persons who may have been
18 knowledgeable about the potential historic resource value of the Harding Theater that the
19 theater building was proposed for demolition.

20 MOVED, That the Board of Supervisors finds that Appellants have raised a new issue
21 concerning the adequacy of the negative declaration's analysis of the effect of the proposed
22 project on historic resources that is not included in the information that the Planning
23 Department presented to the Planning Commission and was apparently not known to the
24 parties that were notified specifically of the availability of the negative declaration.

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1 MOVED, That the Appellants promptly brought the historic resources information to the
2 attention of the Board of Supervisors when they became aware of the project's potential
3 impact on historic resources by filing an appeal with the Board of Supervisors within thirty (30)
4 days of the Planning Commission's approval of the conditional use permit.

5 FURTHER MOVED, That in light of all of the facts and circumstances of the matter the
6 Board of Supervisors finds that the Appellants brought the appeal of the negative declaration
7 within a reasonable period of time.

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