

File No. 161268 Committee Item No. 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Public Safety and Neighborhood Services Date February 8, 2017

Board of Supervisors Meeting Date _____
Cmte Board

- Motion
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- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
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OTHER (Use back side if additional space is needed)

- LL Referral - 11/21/2016
- Response Planning - 12/19/2016
- Response Police - 01/31/2017
- Planning Commission Motion No. 19512
- _____
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Completed by: Erica Major Date February 3, 2016
Completed by: _____ Date _____



San Francisco Police Department
ABC Liaison Unit



Alcoholic Beverage License -
*Public Convenience and
Necessity Recommendation*

To: The San Francisco Board of Supervisors' Committee on Public Safety
and Neighborhood Services

Supervisor Jane Kim
Supervisor John Avalos
Supervisor David Campos

From: Lieutenant Dave Falzon 
Officer in Charge
ABC Liaison Unit (ALU) 415-837-7576

Date: February 1, 2017

Subject: P.C.N. Investigation Regarding: Emporium SF, LLC
DBA: Emporium San Francisco
616 Divisadero Street
San Francisco, CA. 94117-1502
Dan Kramer
(415) 795-2327

Mr. Dan Kramer on behalf of Emporium San Francisco has filed an application with the California Department of Alcoholic Beverage Control seeking a -Type 48 (On – Sale General – Public Premise) License at 616 Divisadero St (located between Hayes Street and Grove Street).

Hours of Operation:
Monday ~ Sunday: 10:00 am -2:00 am

Digest:

The Emporium San Francisco is seeking an On-Sale General license at 616 Divisadero Street. The Emporium San Francisco is looking to operate a venue in the Harding Theater that will have a combination of game arcades, pool tables and a live event

venue. If approved, this license will allow the Emporium to sell on-sale Beer, Wine and Distilled Spirits.

Letters of Protest:

No Record

Letters of Support:

No Record

Police Calls for Service:

From November 2015 to November 2016

1 call for service

Police Reports:

From November 2015 to November 2016

1 police report

San Francisco Plot Information:

This premise is located in Plot: **642**

A High Crime area is defined as **106** or more police reports in a plot for the year of **2015**.

This plot had **164** police reports for **2015**, which is **58** over the Citywide “**High Crime**” average.

State Census Tract Information:

This premise is located in Census Tract: **164.00**
Population for this tract is: **3,778**

On-sale license authorized by census tract: **13**
Active on-sale licenses: **23** with **0** pending

Off-sale licenses authorized by census tract: **3**

Active off-sale licenses: 7 with 0 pending

Departmental Recommendation:

Points of consideration: 2

No opposition from **Northern**

Applicant premise **is** located in a “**High Crime**” area.

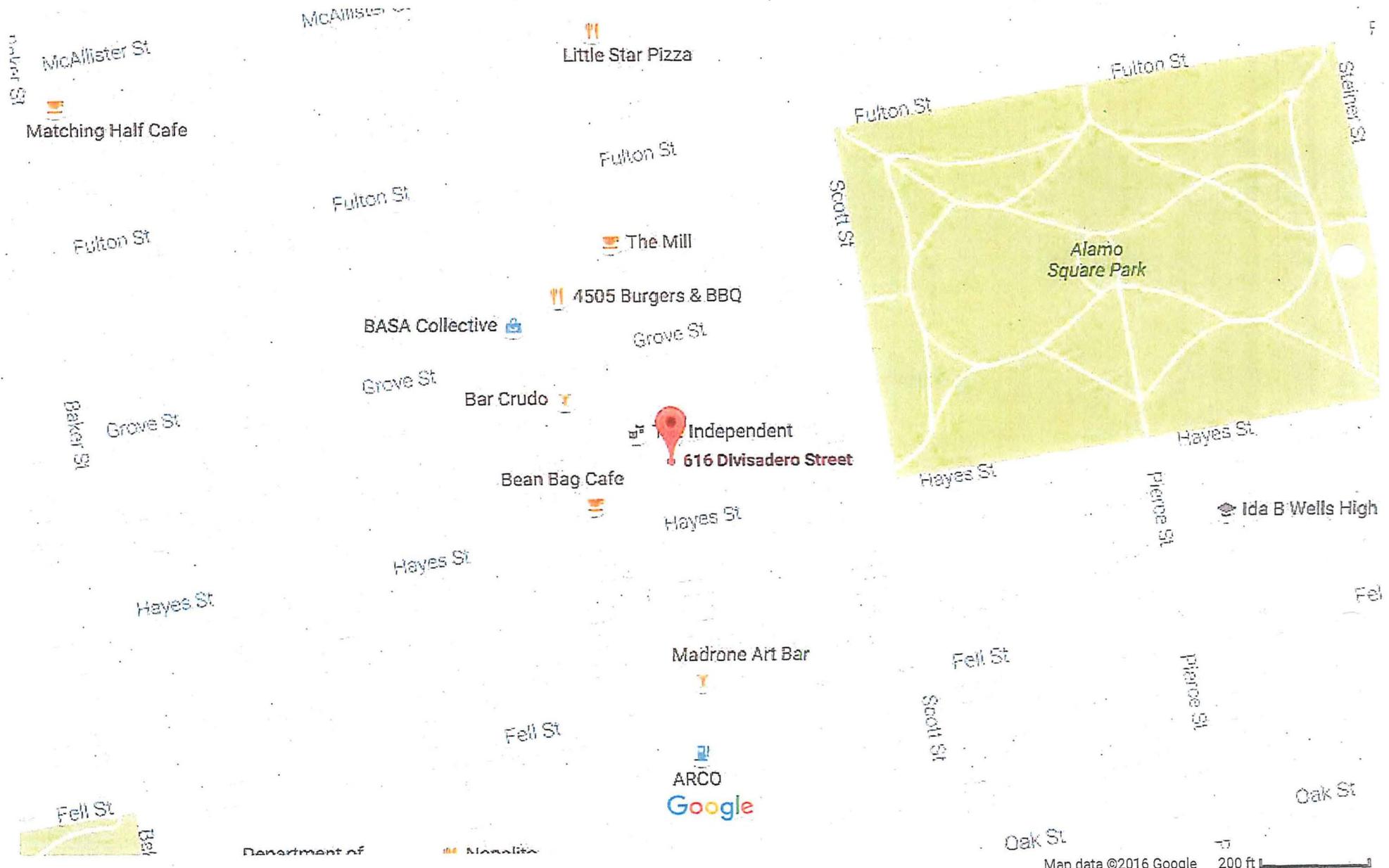
Applicant premise **is** located in an “**undue concentration**” area.

0 - Record of protest.

0 - Record of support.

ALU Recommendation: **Approval with the following conditions:**

1. Sales, service and consumption of alcoholic beverages shall be permitted between the hours of 10:00 a.m. and 2 a.m. daily.
 2. No noise shall be audible beyond the area under the control of the licensee(s) as depicted on ABC-257 dated 10/21/16.
 3. The sales of alcoholic beverages for off- sale consumption is strictly prohibited
 4. Alcoholic beverages shall only be served and poured by premises employees. Patrons are prohibited from serving themselves alcoholic beverages in the premises.
 5. Loitering (loitering is defined as “to stand idly about; linger aimlessly without lawful business”) is prohibited on any sidewalks or property adjacent to the licensed premises under the control of the licensee as depicted on ABC-257 dated 10/21/16.
- ❖ **It should be noted that the Applicant agrees with all the above conditions.**



Little Star Pizza

Matching Half Cafe

The Mill

4505 Burgers & BBQ

BASA Collective

Bar Crudo

Independent
616 Divisadero Street

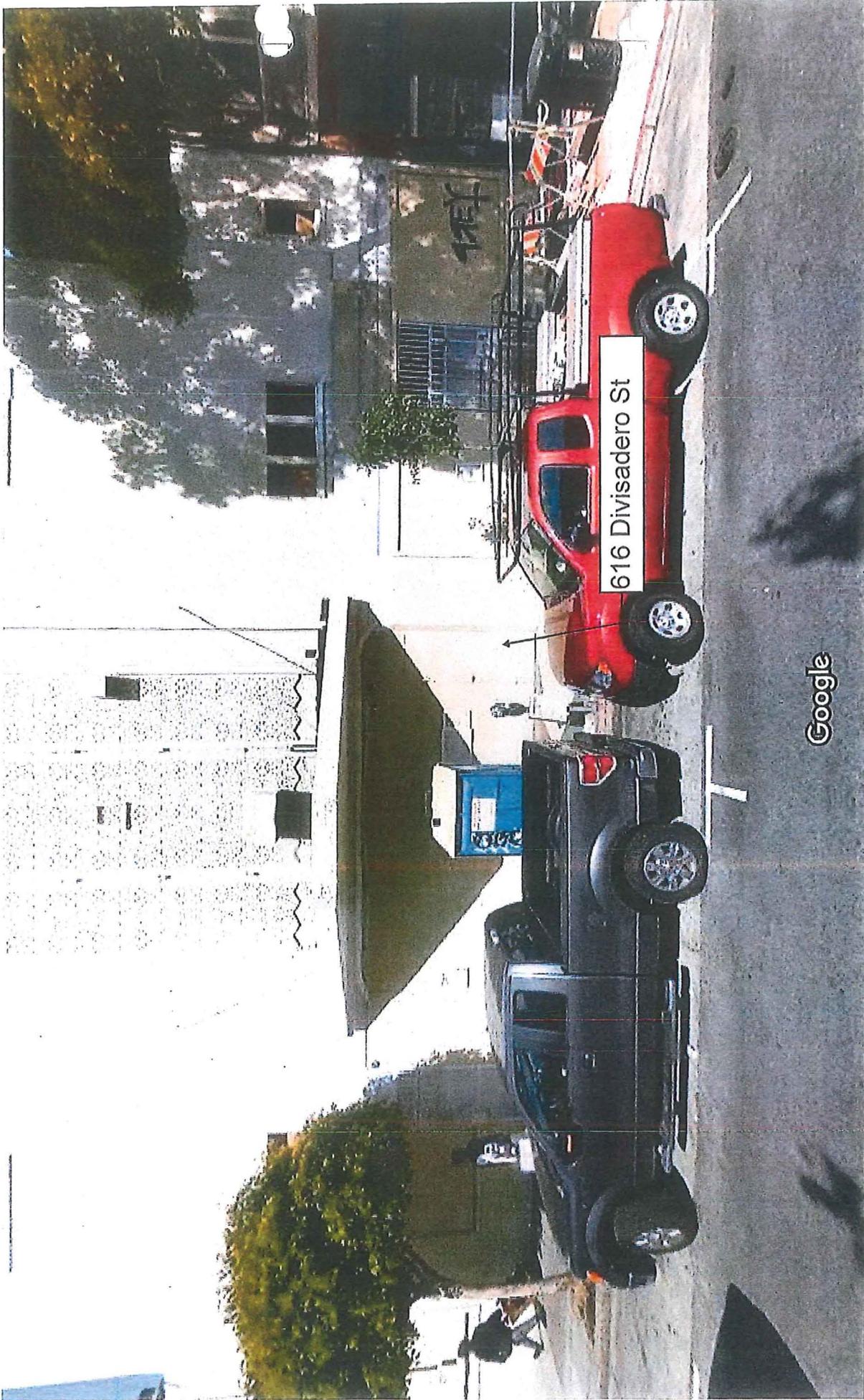
Bean Bag Cafe

Madrone Art Bar

ARCO
Google

Alamo Square Park

Ida B Wells High





C

LIQUOR LICENSE REVIEW

TO: Planning Department
AnMarie Rodgers/CTYPLN/SFGOV
Georgia Powell/CTYPLN/SFGOV@SFGOV
Fax No.: (415) 558-6409

File: 161268

TO: Police Department
Inspector Nelly Gordon
Phone: (415) 837-7273

Block/Lot: 1202/002 J
Zoning: NCT
Quad: NW
Record # 2016-015213 MIC

DATE: November 21, 2016

This item is tentatively scheduled to be heard in four to six weeks.
PLEASE EMAIL YOUR RESPONSE BY: December 28, 2016, to Erica Major,
Public Safety and Neighborhood Services Committee Clerk.
Erica.Major@sfgov.org - Fax No: 554-7771

Applicant Name: Emporium SF, LLC
Emporium San Francisco
and Business Name: (616 Divisadero Street)
Applicant Address: 616 Divisadero Street
San Francisco, CA 94117
and Phone No. (415) 795-2327

PLANNING COMMENTS: Approval Denial

CONDITIONAL USE APPROVED BY PLANNING COMMISSION
MOTION NO. 19512.

Wayne Farrens
Approved Planning Dept. Wayne Farrens

POLICE COMMENTS: Approval Denial



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

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415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion No. 19512 HEARING DATE: NOVEMBER 19, 2015

Date: November 19, 2015
Case No.: **2005.0911C**
Project Addresses: **616 DIVISADERO ST & 1282 HAYES ST**
Zoning: NCT (Divisadero Street Neighborhood Commercial Transit) District
 Fringe Financial Services RUD
 65-A Height and Bulk District
Block/Lot: 1202/002J
Project Sponsor & Owner Divisadero Hayes, LLC
 1812 Noriega Street
 San Francisco, CA 94122
Staff Contact: Chris May – (415) 575-9087
christopher.may@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 746.11, AND 746.69B OF THE PLANNING CODE TO REPURPOSE THE EXISTING HARDING THEATER (LAST USED AS A CHURCH) FOR USE AS A BAR, AMUSEMENT GAME ARCADE, RETAIL, OTHER ENTERTAINMENT AND MOVIE USES (D.B.A. EMPORIUM) AND THE CONSTRUCTION OF A 7-UNIT, 5-STORY RESIDENTIAL BUILDING FRONTING HAYES STREET WITH A ROOFTOP DECK, TWO OFF-STREET PARKING SPACES AND 7 BICYCLE STORAGE SPACES WITHIN THE NCT (DIVISADERO STREET NEIGHBORHOOD COMMERCIAL TRANSIT) DISTRICT, FRINGE FINANCIAL SERVICES RESTRICTED USE DISTRICT AND A 65-A HEIGHT AND BULK DISTRICT.

PREAMBLE

On October 5, 2015 Mark Topetcher, on behalf of Divisadero Hayes, LLC (hereinafter "Project Sponsor") submitted a revised application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Sections 303, 746.11, and 746.69B to permit the repurposing of the existing Harding Theater building (last used as a church) for use as a bar, amusement game arcade, retail, other entertainment and movie uses and general retail sales uses (d.b.a. Emporium) and the construction of a 7-unit, 5-story residential building fronting Hayes Street within the NCT

(Divisadero Street Neighborhood Commercial Transit) District, Fringe Financial Services Restricted Use District and a 65-A Height and Bulk District.

On November 19, 2015, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2005.0911C.

On November 10, 2015 the Project was determined to be exempt from the California Environmental Quality Act ("CEQA") as a Class 32 Categorical Exemption under CEQA as described in the determination contained in the Planning Department files for this Project.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2005.0911C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The project is located on an L-shaped parcel with 80 feet of frontage on the east side of Divisadero Street and 45 feet of frontage on the north side of Hayes Street, Block 1202, Lot 002J. The property is located within the NCT (Divisadero Street Neighborhood Commercial Transit) Zoning District, the Fringe Financial Services RUD and a 65-A Height and Bulk District. The 13,285 square-foot parcel is occupied by the approximately 35-foot high, 15,493 square foot former Harding Theater building, originally constructed circa 1926 and most recently used as a church. The rear stage/fly-loft portion of the building rises to approximately 55 feet in height. The building occupies the majority of the lot, with the remainder of the lot fronting Hayes Street used as a surface parking lot.
3. **Surrounding Properties and Neighborhood.** The project site is located in a neighborhood commercial district with a variety of neighborhood-serving commercial uses, mixed use buildings and larger commercial and residential buildings within the Western Addition neighborhood. Generally, the commercial establishments characterizing the neighborhood include a mixture of retail stores, personal services uses, restaurants, auto repair uses, and entertainment uses. The Independent concert hall is located immediately to the north of the subject building. The majority of lots are fully covered by buildings. Directly across Divisadero Street from the subject property are several 2- and 3-story mixed-use (residential over ground floor commercial) buildings. Directly across Hayes Street from the subject property is a one-story

building most recently used as the Divisadero Street Farmer's Market, a grocery store. The lot on the northeast corner of Divisadero and Hayes Streets, around which the subject property wraps, is occupied by a 3-story building with two floors of residential uses over ground floor commercial uses. Immediately to the east of the vacant portion of the subject property fronting Hayes Street is a one-story elderly care home facility and across the street are 2- and 4-story residential buildings.

- 4. Project Description.** The former Harding Theater building has been vacant for several years. Its most recent use was as a church. The current proposal would repurpose the building for use as a bar, amusement game arcade and entertainment uses, while retaining and restoring the Divisadero Street facade. Two small general retail spaces are proposed along the Divisadero Street façade, flanking the main entrance to the Emporium. The theater structure, inclusive of the rear stage and fly loft will remain in place. All significant character-defining spaces and details will remain.

Proposed alterations to the building include upgrading the restrooms, mechanical, electrical, and plumbing systems; restoration of the former storefronts; restoration of damaged plaster grillwork in the auditorium; and restoration and reconstruction of the marquee canopy at the front facade. Future tenant improvements will supplement the interior spaces to accommodate a bar and amusement game arcade uses. These improvements include creating level floor areas on top of the existing sloped auditorium and stepped balcony floors; restoring the proscenium stage opening to the auditorium; and the addition of a main bar in the auditorium on the ground floor, a smaller bar in the front lobby area and a third bar on the balcony level. The general interior finishes will also be refurbished throughout and support spaces would be created in the basement.

The Emporium is a combination of a bar, game arcade featuring classic video games, pinball machines, pool, foosball, air hockey, shuffleboard and new games designed by local indie game developers. The project also proposes restoring and utilizing the original stage for live music, comedy and theater performances, and installing a large screen to show independent film screenings, interesting background video, game tournaments and large presentations.

The proposed business is family-owned, which is encouraged throughout San Francisco. With only three other locations – all in the greater Chicago area - the proposed Emporium is not considered a Formula Retail use. The proposal is considered a change of use and Section 312-neighborhood notification was conducted in conjunction with the Conditional Use Authorization process. The proposed use is a neighborhood-serving use.

The proposed operation anticipates approximately 25 employees including on-site managers at all times, as well as bartenders, security and bar support staff.

The tenant proposes approximately 5-10 deliveries per week clustered on two primary delivery days. On-street loading deliveries would occur through the front with in coordination with the Independent venue next door (Divisadero Street). It is anticipated that the Emporium and the

Independent would have similar distributors and would receive deliveries primarily in the early afternoon to reduce traffic-related impacts on the community.

Four long-term bicycle parking spaces for employee use are proposed on site, and eight short-term bicycle parking spaces for patrons are proposed along the Divisadero Street sidewalk in front of the subject building. The Planning Code does not require vehicular parking spaces for the proposed bar, amusement game arcade and entertainment uses, and the project therefore does not propose any vehicular parking spaces.

The proposal also includes the construction of a new 5-story residential building on the vacant portion of the lot fronting Hayes Street. A small 11 foot by 17 foot one-story mechanical room appendage on the south side of the Emporium building, near the rear, would be removed to accommodate its construction. The new residential building will contain seven units with five one-bedroom units that range in size from 705 square feet to 755 square feet and two three-bedroom units of approximately 1,784 square feet.

The ground floor will accommodate two egress passageways from the side and rear of the Emporium structure through to the Hayes Street public right-of-way for emergency purposes, a private lobby area servicing the residential units, along with one residential unit. Floors two and three will each contain two one-bedroom units and floors four and five will each have one three bedroom unit. A common shared outdoor roof deck will occupy the roof area above the top floor and will have elevator and stair access. Seven bicycle parking spaces would be provided in the basement with ramp access to Hayes Street. Although no vehicular parking is required, the project proposes two parking spaces on the ground floor of the residential building.

There will be special attention to sound isolation and noise insulation for the new residential building including a compliance review conducted by an acoustical consultant, and a written disclosure will be made to future residential occupants of the existing proximity of nearby entertainment venues and the potential for noise generation by their operation.

5. **Public Comment.** As of November 10, 2015, the Department has received 1 telephone call requesting additional information related to the proposed amusement game arcade use and 1 letter in support of both the proposed entertainment use and the new residential building.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Neighborhood Notification.** Planning Code Section 312 requires notification to all owners and occupants within 150-feet of the subject property if the property converts from one land use category to another and is located in Neighborhood Commercial District.

The proposal is located in the Divisadero Street Neighborhood Commercial Transit (NCT) District which is considered a Neighborhood Commercial District pursuant to Planning Code Section 702.1. The project proposes the conversion of a building most recently used as a church for use as a bar,

amusement game arcade, other entertainment uses and general retail uses. These changes of use require Neighborhood Notification per Planning Code Section 312. Accordingly, notification was conducted in conjunction with the noticing for the Conditional Use Authorization. The applicant also conducted a pre-application meeting prior to submission on October 8, 2015.

- B. Development of Large Lots.** Planning Code Sections 121.1 and 746.11 state that in order to promote, protect, and maintain a scale of development which is appropriate to each district and compatible with adjacent buildings, new construction or significant enlargement of existing buildings on lots in excess of 10,000 square feet in the Divisadero Street Neighborhood Commercial Transit (NCT) District shall be permitted only as conditional uses.

The Project proposes the development of a 13,285 square foot lot. While technically on one large lot, the proposed Emporium building and residential building would function as two smaller developments on separate street frontages. The additional required findings are listed below under Subsection 8.

- C. Use Size Limits.** Per Planning Code Sections 121.2 and 746.21, non-residential uses greater than 4,000 gross square feet require Conditional Use Authorization. A conforming use which is above the threshold but which predates the use size limit requirement may change to a different use occupying the same floor area without a Conditional Use Authorization as long as there is no significant increase in the floor area.

The Project proposes one tenant space (d.b.a. Emporium) with a floor area of approximately 15,493 square feet. The two proposed general retail sales spaces would occupy approximately 875 square feet. Since the most recent use of the building as a church was above the use size limit threshold but predated Planning Code Section 121.2, Conditional Use Authorization is not required for the proposed change of use, as it would occupy the same floor area.

- D. Permitted Uses.** Planning Code Sections 746.40, 746.41, 746.48 and 746.90 state that retail, bar, other entertainment and residential uses are permitted as of right within the Divisadero Street Neighborhood Commercial Transit (NCT) Zoning District. Planning Code Section 746.69B states that a Conditional Use Authorization is required for an Amusement Game Arcade use, as defined by Planning Code Section 790.4.

The proposed other entertainment would include live music and possible dramatic performances. The live music would be restricted to the inside area and the sound equipment must be inspected and permitted by the Entertainment Commission prior to operation. At the November 19, 2015 Planning Commission hearing, the Planning Commission strongly encouraged the Project Sponsor to promote the serving of food on the premises as part of their business model.

- E. Entertainment Commission Outreach.** Planning Code Section 314 requires that the Planning Department and Planning Commission consider the compatibility of uses when approving residential uses adjacent to or near existing permitted Places of Entertainment and shall take all reasonably available means through the City's design review and approval processes to

ensure that the design of such new residential development project takes into account the needs and interests of both the Places of Entertainment and the future residents of the new development.

The Project Sponsor has provided documentation to the Entertainment Commission outlining the noise insulation materials to be incorporated into the proposed residential building fronting Hayes Street.

- F. **Rear Yard Requirement in the NCT District.** Planning Code Section 134 requires that the project provide a rear yard equal to 25 percent of the total lot depth at the lowest level containing a residential unit, and at each succeeding level or story of the building, but in no case less than 15 feet. Alternatively, the rear yard requirement in NC Districts may be modified or waived by the Zoning Administrator pursuant to the procedures which are applicable to variances, provided that residential uses are included in the new development and a comparable amount of usable open space is provided elsewhere within the development where it is more accessible to the residents of the development, and that the proposed new structure will not significantly impede the access of light and air to and views or adversely affect the interior block open space formed by the rear yards of from adjacent properties.

As the L-shaped lot has its frontage along Divisadero Street, the rear lot line is the lot line that would separate the proposed residential building from the adjacent elderly care facility at 1250 Hayes Street. The depth of the vacant portion of the subject property in this location is 45 feet, and therefore the minimum required rear yard setback would be 15 feet, leaving only 30 feet of developable area. The unique dimensions of the vacant portion of the lot fronting Hayes Street create a situation where it could not be reasonably developed for residential use in the absence of a variance to the rear yard requirements of the Planning Code. The Zoning Administrator will consider a modification to the rear yard concurrent with the Planning Commission hearing for this Conditional Use Authorization request.

- G. **Residential Usable Open Space.** Planning Code Section 135 requires that the project provide a minimum of 100 square feet of open space per dwelling unit, if not publically accessible. Further, any private usable open space shall have a minimum horizontal dimension of six feet and a minimum area of 36 square feet if located on a deck, balcony, porch or roof, and shall have a minimum horizontal dimension of 10 feet and a minimum area of 100 square feet if located on open ground, a terrace or the surface of an inner or outer court. Alternatively, common useable open space, at a rate of 133 square feet per dwelling unit, shall be at least 15 feet in every horizontal dimension and shall be a minimum of 300 square feet.

While each proposed dwelling unit would have at least one private balcony, all of the proposed balconies would have a horizontal dimension of four feet and therefore would not count toward the private open space requirement. As such, the Project proposes a common rooftop deck comprising 931 square feet, for an amount equal to 133 square feet per dwelling unit. The proposed rooftop deck satisfies the Planning Code requirements for common usable open space.

- H. **Dwelling Unit Mix.** In order to ensure an adequate supply of family-sized units in existing and new housing stock, new residential construction must include a minimum percentage of units of at least 2 bedrooms. Planning Code Sections 207.6 and 746.91 require that no less than 40 percent of the total number of proposed dwelling units contain at least two bedrooms, or no less than 30 percent of the total number of proposed dwelling units contain at least three bedrooms.

For the 7 proposed dwelling units, the Project is required to provide at least 3 two-bedroom units or 2 three-bedroom units. The Project provides 5 one-bedroom units and 2 three-bedroom units. Therefore, the Project meets the requirements for dwelling unit mix.

- I. **Streetscape and Pedestrian Improvements.** Planning Code Sections 138.1 and 746.17 require one street tree for each 20 feet of street frontage of the property containing the development project, with any remaining fraction of 10 feet or more of frontage requiring an additional tree.

The subject property occupies a total frontage of 125 feet along both Divisadero Street and Hayes Street. There are two existing street trees within the right-of-way in front of the proposed Emporium building and the Project proposes four new street trees along the Hayes Street right-of-way in front of the proposed new residential building.

- J. **Non-Residential Off-Street Parking.** Planning Code Sections 151.1 and 746.22 state that no parking is required for non-residential uses in an NCT Zoning District, but permits off-street parking to a maximum of 1 space per 1,500 square feet of occupied floor area.

The proposed Emporium use does not require nor propose any off-street parking, and therefore complies with the Planning Code.

- K. **Residential Off-Street Parking.** Planning Code Sections 151.1 and 746.94 state that no parking is required for residential uses in an NCT Zoning District, although residential off-street parking may be provided at a rate not exceeding 0.5 spaces per dwelling unit.

Although the proposed residential building does not require any off-street parking, 2 parking spaces are proposed on the ground floor. The proposed off-street parking does not exceed the maximum permitted by the Planning Code, and therefore complies.

- L. **Non-Residential Bicycle Parking.** Planning Code Sections 155.2 and 746.22 require the provision of Class 1 and Class 2 bicycle parking spaces, unless a change of occupancy or increase in intensity of use is proposed which would increase the number of total required bicycle parking spaces (inclusive of Class 1 and 2 spaces in aggregate) by 15 percent.

The former Harding Theater building was most recently used as a church, which would have required ten (10) Class 2 bicycle parking spaces and sixteen (16) Class 2 bicycle parking spaces, based on its

occupancy load. The proposed bar, amusement game arcade, other entertainment uses and retail sales uses would require seven (7) Class 1 bicycle parking spaces and eleven (11) Class 2 bicycle parking spaces, representing a decrease in the number of total required bicycle parking spaces, thereby exempting the Emporium from having to provide off-street bicycle parking for employees and patrons. Despite this, the Project would provide four (4) Class 1 bicycle parking spaces and eight (8) Class 2 bicycle parking spaces.

- M. **Residential Bicycle Parking.** Planning Code Sections 155.2 and 746.94 require one Class 1 bicycle parking space per dwelling unit, one Class 2 bicycle parking spaces for every 20 dwelling units.

The proposed residential building would provide seven (7) Class 1 bicycle parking spaces – 1 per dwelling unit - within the basement level, with ramp access to street level along the Hayes Street frontage. Because there would be only 7 dwelling units, no Class 2 bicycle parking spaces are required nor are any proposed.

- N. **Non-Residential Off-Street Loading.** Planning Code Sections 152 and 746.23 require 1 off-street loading space for non-residential uses with a gross floor area between 10,001 square feet and 60,000 square feet.

The Emporium bar, amusement game arcade, other entertainment uses and retail sales uses would occupy approximately 15,493 square feet, and would therefore generate demand for one (1) off-street loading space. The Project Sponsor is requesting a Variance from this requirement, per Section 161 of the Planning Code, to permit on-street loading to occur in front of the Emporium in coordination with the adjacent Independent music hall and to provide no off-street loading space.

- O. **Street Frontage in Neighborhood Commercial Districts.** Sections 145.1 and 746.13 of the Planning Code requires that within NC Districts space for active uses shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. In addition, the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Frontages with active uses must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Off-street parking at street grade on a development lot must be set back at least 25 feet on the ground floor and at least 15 feet on floors above, from any facade facing a street at least 30 feet in width.

The proposed residential building has two stacked off-street parking spaces on the ground floor within 18 feet of the main front building wall and would therefore require a Variance. The Zoning Administrator will consider the Variance concurrent with the Planning Commission hearing for this Conditional Use Authorization request.

- P. **Shadow.** Planning Code Section 295 restricts net new shadow, cast by structures exceeding a height of 40 feet, upon property under the jurisdiction of the Recreation and Park Commission. Any project in excess of 40 feet in height and found to cast net new shadow must be found by the Planning Commission, with comment from the General Manager of the Recreation and Parks Department, in consultation with the Recreation and Park Commission, to have no adverse impact upon the property under the jurisdiction of the Recreation and Park Commission.

Based upon a detailed shadow analysis, the Project does not cast any net new shadow upon property under the jurisdiction of the Recreation and Parks Commission.

- Q. **Transit Impact Development Fees.** Planning Code Section 411 is applicable to any new construction, or addition to or conversion of an existing structure under one or more building or site permits issued on or after February 1, 2013 that cumulatively result in 800 gross square feet or more of a use covered by the Transit Impact Development Fee (TIDF).

The Project includes 15,493 gross square feet of new retail and entertainment uses. These uses are subject to Transit Impact Development Fees, as outlined in Planning Code Section 411. These fees must be paid prior to the issuance of the building permit application.

- R. **Inclusionary Affordable Housing.** Planning Code Section 415 sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements would apply to projects that consist of 10 or more units.

The Project proposes only seven (7) dwelling units and therefore is exempt from the requirements of Inclusionary Affordable Housing Program.

- S. **First Source Hiring.** The Project is subject to the requirements of the First Source Hiring Program as they apply to permits for residential development (Section 83.4(m) of the Administrative Code), and the Project Sponsor shall comply with the requirements of this Program as to all construction work and on-going employment required for the Project. Prior to the issuance of any building permit to construct or a First Addendum to the Site Permit, the Project Sponsor shall have a First Source Hiring Construction and Employment Program approved by the First Source Hiring Administrator, and evidenced in writing. In the event that both the Director of Planning and the First Source Hiring Administrator agree, the approval of the Employment Program may be delayed as needed.

The Project Sponsor submitted a First Source Hiring Affidavit and prior to issuance of a building permit will execute a First Source Hiring Memorandum of Understanding and a First Source Hiring Agreement with the City's First Source Hiring Administration.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The adaptive reuse of the former Harding Theater building would preserve a historic building that has been identified by neighborhood residents as being an integral part of the urban fabric along the Divisadero Street corridor. The proposed retail, bar, amusement game arcade, other entertainment and movie uses are desirable and compatible with the community as they would provide goods and services to neighborhood residents and would activate a long-vacant commercial storefront.

The proposed residential use is desirable in that it will provide high-density infill housing on a vacant portion of a lot on an established residential street without the displacement of any existing residents or businesses. The proposed residential building, with its high quality building materials and architectural details such as projecting bay windows, is compatible with the surrounding neighborhood.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:
- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The existing building on the site, formerly the Harding Theater, lends itself to be reconfigured as a bar, amusement game arcade and entertainment venue in a minimally intrusive way. The proposed uses would be completely contained within the existing building and would therefore not be detrimental to the health, convenience and wellbeing of neighborhood residents.

The proposed residential building fronting Hayes Street represents the infill of a vacant street frontage which would improve safety of those living and working in the neighborhood by adding more active uses to the streetscape and removing a vacant lot which could otherwise attract activities that might be detrimental to their health and safety.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

Although the Planning Code does not require off-street vehicular parking for the bar, amusement game arcade, other entertainment and movie uses or general retail sales uses proposed within the Emporium building, the subject property is located within the Divisadero Street Neighborhood Commercial Transit (NCT) District which is well served by public transit. The proposed uses are not anticipated to generate significant amounts of vehicular trips from the immediate

neighborhood or citywide. Freight loading is proposed to be coordinated with that of the adjacent Independent music hall, to reduce any traffic-related impacts on Divisadero Street.

Although the Planning Code does not require off-street vehicular parking for the seven (7) dwelling units within the proposed residential building, two off-street vehicular parking spaces are proposed on the ground floor within a garage.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The proposed bar, amusement game arcade, other entertainment and movie uses are subject to the standard conditions of approval for places of entertainment and outlined in Exhibit A. Conditions 7, 8, 16 and 17 specifically obligate the project sponsor to mitigate noise and odor generated by the proposed uses.

There are no anticipated noxious or offensive emissions associated with the proposed residential building. The building will be constructed with upgraded acoustical insulation to prevent any noise from the proposed Emporium and the nearby Independent music hall from negatively affecting the building's future residents.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The proposed Emporium use does not propose any off-street parking, loading or landscaping. The Project Sponsor shall ensure that all light fixtures on the subject property are directed away from adjacent properties in accordance with Condition 21 of Exhibit A.

The proposed residential building would provide open space for its residents by means of a common rooftop deck, and four new street trees are proposed to be planted along the Hayes Street right-of-way.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

Consistent with the Divisadero Street Neighborhood Commercial Transit (NCT) District objectives, neighborhood-serving businesses are strongly encouraged and new commercial development is permitted at the ground and second stories. Eating, drinking and entertainment uses are primarily confined to the ground story, however additional flexibility is offered for such uses on the second floors

of existing non-residential buildings to encourage the preservation and reuse of such buildings. The proposed Emporium, with its bar, amusement game arcade, other entertainment and movie uses and general retail sales uses on the ground floor and second floor would facilitate the preservation of the existing building for a use similar to its original purpose, and would provide convenience goods and services to the surrounding neighborhoods as well as limited comparison shopping goods for a wider market.

The proposed residential building meets the general intent of the Divisadero Street NCT District objectives in that it would contribute to the dense, walkable, mixed-use character of the neighborhood and would provide adequate open space for its future residents.

8. **Planning Code Section 121.1.** In addition to the criteria of Section 303(c) of the Planning Code, as it pertains to the development of large lots, the City Planning Commission shall consider the extent to which the following criteria are met:

- A. The mass and facade of the proposed structure are compatible with the existing scale of the district.

The massing and façade of the proposed Emporium building will be restored, but will largely remain unchanged.

At five stories, the massing and façade of the proposed residential building fronting Hayes Street will be compatible with the existing scale of the surrounding district, which is characterized primarily by mixed-use and residential buildings ranging from 1 to 4 stories in height.

- B. The facade of the proposed structure is compatible with design features of adjacent facades that contribute to the positive visual quality of the district.

The façade of the proposed Emporium building will be restored, but will largely remain unchanged.

The façade of the proposed residential building will be in keeping with the facades of other residential buildings fronting Hayes Street. It will feature a brick veneer base, cornice rooftop, three vertical series of projecting bay windows and a ground floor dwelling unit with direct access to the street.

9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

HOUSING

Objectives and Policies

OBJECTIVE 1:

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.2:

Focus housing growth and infrastructure necessary to support growth according to community plans. Complete planning underway in key opportunity areas.

Policy 1.10:

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

The proposed residential building fronting Hayes Street would be located in a Neighborhood Commercial Transit (NCT) District, which have been identified as areas where public transit infrastructure can support residential growth. Future residents of the proposed building will be able to rely on public transit, walking and bicycling for the majority of their daily trips.

OBJECTIVE 4:

FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFESTYLES.

Policy 4.1:

Develop new housing, and encourage the remodeling of existing housing, for families with children.

The proposed residential building fronting Hayes Street will provide two 3-bedroom units which would be suitable for families with children.

OBJECTIVE 11:

SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

Policy 11.1:

Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

Policy 11.2:

Ensure implementation of accepted design standards in project approvals.

Policy 11.3:

Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

Policy 11.7:

Respect San Francisco's historic fabric, by preserving landmark buildings and ensuring consistency with historic districts.

Policy 11.9:

Foster development that strengthens local culture sense of place and history.

The proposed residential building fronting Hayes Street would make use of a vacant portion of an underutilized site in order to create seven (7) new dwelling units and would enhance the residential character of the street and surrounding neighborhood. The historic former Harding Theater building would be preserved and repurposed for a use that would serve neighborhood residents.

OBJECTIVE 12:

BALANCE HOUSING GROWTH WITH ADEQUATE INFRASTRUCTURE THAT SERVES THE CITY'S GROWING POPULATION.

Policy 12.1:

Encourage new housing that relies on transit use and environmentally sustainable patterns of movement.

Policy 12.2:

Consider the proximity of quality of life elements, such as open space, child care, and neighborhood services, when developing new housing units.

Policy 12.3:

Ensure new housing is sustainably supported by the City's public infrastructure systems.

The proposed residential building fronting Hayes Street is already adequately served by the City's water, and sewer systems, electricity and gas utilities, MUNI public transit, will receive solid waste collection and is near public open spaces such as Alamo Square.

OBJECTIVE 13:

PRIORITIZE SUSTAINABLE DEVELOPMENT IN PLANNING FOR AND CONSTRUCTING NEW HOUSING.

Policy 13.3:

Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share.

The proposed residential building fronting Hayes Street would provide seven (7) weather-protected bicycle parking spaces for its residents to encourage bicycling, and is located within walking distance to Divisadero Street where there are several public transit lines.

GENERAL/CITYWIDE COMMERCE

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The Emporium will provide desirable goods and services to the neighborhood and will provide resident employment opportunities to those in the community. Further, the Project Site is located within a Neighborhood Commercial District and is thus consistent with activities in the commercial land use plan. The Emporium would operate within the business hours permitted per Section 746.27 of the Planning Code.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

Policy 2.3:

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The Project will retain an existing commercial activity and will enhance the diverse economic base of the City. The City's social and cultural climate are what attracted the proposed tenant to the area.

OBJECTIVE 3:

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 3.1:

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

Policy 3.2:

Promote measures designed to increase the number of San Francisco jobs held by San Francisco residents.

Policy 3.4:

Assist newly emerging economic activities.

The Project will create approximately 25 jobs for local residents across a variety of skill levels.

OBJECTIVE 4:

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

Policy 4.1:

Maintain and enhance a favorable business climate in the city.

The adaptive reuse of the former Harding Theater for use as a bar, amusement game arcade, other entertainment and movie use and general retail sales uses would maintain a commercial use in an existing building which will enhance the favorable business climate in the City.

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

Policy 6.2:

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to the economic and technological innovation in the marketplace and society.

Policy 6.8:

Preserve historically and/or architecturally important buildings or groups of buildings in neighborhood commercial districts.

The Emporium is a family-run business and is not a Formula Retail use. No commercial tenant would be displaced by the project and it would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood. The proposal would preserve the historically important former Harding Theater building and would restore its aging façade.

The following guidelines, in addition to others in this objective for Neighborhood Commercial districts, should be employed in the development of overall district zoning controls as well as in

the review of individual permit applications, which require case-by-case review and City Planning Commission approval. Pertinent guidelines may be applied as conditions of approval of individual permit applications. In general, uses should be encouraged which meet the guidelines; conversely, uses should be discouraged which do not.

Eating and Drinking Establishments

Eating and drinking establishments include bars, sit-down restaurants, fast food restaurants, self-service restaurants, and take-out food. Associated uses, which can serve similar functions and create similar land use impacts, include ice cream stores, bakeries and cookie stores. Guidelines for eating and drinking establishments are needed to achieve the following purposes:

- Regulate the distribution and proliferation of eating and drinking establishments, especially in districts experiencing increased commercial activity;
- Control nuisances associated with their proliferation;
- Preserve storefronts for other types of local-serving businesses; and
- Maintain a balanced mix of commercial goods and services.
- The regulation of eating and drinking establishments should consider the following:
 - Balance of retail sales and services;
 - Current inventory and composition of eating and drinking establishments;
 - Total occupied commercial linear frontage, relative to the total district frontage;
 - Uses on surrounding properties;
 - Available parking facilities, both existing and proposed;
 - Existing traffic and parking congestion; and
 - Potential impacts on the surrounding community.

There is a concern in some Neighborhood Commercial districts with the potential over-concentration of eating and drinking establishments. The Commerce and Industry Element of the General Plan contains Guidelines for such uses in districts where the proliferation of eating and drinking establishments could generate problems.

Within the Divisadero Street Neighborhood Commercial Transit (NCT) district, neighborhood serving businesses are strongly encouraged, and eating and drinking establishments are permitted as-of-right on the ground floor of commercial buildings. Additional flexibility is offered for second-floor eating and drinking, and entertainment uses in existing non-residential buildings to encourage the preservation and reuse of such buildings.

Entertainment Uses

Entertainment uses may be appropriate in certain districts or parts of districts. The following guidelines should be used in their review:

- Except in the Broadway district, where later hours may be appropriate under carefully regulated conditions, entertainment uses should not be open after 2:00 a.m. in order to minimize disruption to residences in and around a district. For uses involving liquor service,

potentially loud music, dancing or large patron volumes, earlier closing hours may be necessary.

- Entertainment uses should be adequately soundproofed or insulated for noise, as certified by an acoustical engineer, and operated so as to reasonably protect surrounding residences. Fixed source equipment noise should not exceed the decibel levels specified in the San Francisco Noise Control Ordinance. Ventilation systems should be adequate to permit doors to stay closed during performances.
- Except for movie theaters with substantial soundproofing, entertainment uses should not involve electronic amplification after midnight, in order to minimize disruption to surrounding residences.

The Emporium's proposed hours of operation would be from 12 p.m. – 2 a.m. in accordance with Section 746.27 of the Planning Code.

TRANSPORTATION ELEMENT

Objectives and Policies

OBJECTIVE 2:

USE THE TRANSPORTATION SYSTEM AS A MEANS FOR GUIDING DEVELOPMENT AND IMPROVING THE ENVIRONMENT.

Policy 2.1:

Use rapid transit and other transportation improvements in the city and region as the catalyst for desirable development, and coordinate new facilities with public and private development.

The Divisadero Street corridor has been identified as one with significant public transit infrastructure and one major objective of the Neighborhood Commercial Transit (NCT) zoning is to maximize residential and commercial opportunities on or near major transit services. The development of the proposed Emporium use and new residential building along this corridor would take advantage of these improvements to rapid transit in the area.

OBJECTIVE 28:

PROVIDE SECURE AND CONVENIENT PARKING FACILITIES FOR BICYCLES.

Policy 28.1:

Provide secure bicycle parking in new governmental, commercial, and residential developments.

Policy 28.3:

Provide parking facilities which are safe, secure, and convenient.

The Emporium use will provide four (4) Class 1 bicycle parking spaces and eight (8) Class 2 bicycle parking spaces that will accommodate both employees and patrons of the building's uses.

The proposed residential building fronting Hayes Street would provide seven (7) Class 1 bicycle parking spaces for residents in a secure room on the basement level.

OBJECTIVE 34:

RELATE THE AMOUNT OF PARKING IN RESIDENTIAL AREAS AND NEIGHBORHOOD COMMERCIAL DISTRICTS TO THE CAPACITY OF THE CITY'S STREET SYSTEM AND LAND USE PATTERNS.

Policy 34.1:

Regulate off-street parking in new housing so as to guarantee needed spaces without requiring excesses and to encourage low auto ownership in neighborhoods that are well served by transit and are convenient to neighborhood shopping.

Policy 34.3:

Permit minimal or reduced off-street parking supply for new buildings in residential and commercial areas adjacent to transit centers and along transit preferential streets.

Policy 34.5:

Minimize the construction of new curb cuts in areas where on-street parking is in short supply and locate them in a manner such that they retain or minimally diminish the number of existing on-street parking spaces.

The proposed Emporium use does not require nor propose any off-street parking, and is therefore consistent with the objectives of the General Plan for commercial areas along transit preferential streets.

The proposed residential building does not require any off-street parking, however two (2) parking spaces on the ground floor are proposed. The proposed off-street parking does not exceed the maximum permitted by the Planning Code, but does require a Variance as it would be located within 25 feet of the main front wall.

URBAN DESIGN

Objectives and Policies

OBJECTIVE 2:

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

Policy 2.4:

Preserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.

Policy 2.5:

Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.

The front façade of the historic former Harding Theater building would be preserved and restored by the Project Sponsor.

OBJECTIVE 3:

MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.

Policy 3.1:

Promote harmony in the visual relationships and transitions between new and older buildings.

Policy 3.6:

Relate the bulk of buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction.

Policy 3.7:

Recognize the special urban design problems posed in development of large properties.

The subject site, while large, is proposed to be redeveloped with two separate projects, allowing both to respond to the surrounding context in terms of bulk and massing. The proposed Emporium building would not change in terms of its bulk or massing. The proposed residential building fronting Hayes Street would meet the requirements of the 65-A Height and Bulk District within which it is located, and would represent an appropriate scale of development.

ARTS

Objectives and Policies

OBJECTIVE VI-1:

SUPPORT THE CONTINUED DEVELOPMENT AND PRESERVATION OF ARTISTS' AND ARTS ORGANIZATIONS' SPACES.

Policy VI-1.4

Preserve existing performing spaces in San Francisco.

Policy VI-1.9:

Create opportunities for private developers to include arts spaces in private developments city-wide.

The Project proposes to maintain the large stage area at the rear of the former Harding Theater building. The Emporium tenant proposes to program this space with live entertainment such as musical performances, comedy acts and small theater productions which would promote local artists and strengthen the City's identity as a center of arts and culture for visitors, tourists and residents.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposal would enhance the district by preserving an existing neighborhood-serving commercial building for an entertainment use that would create approximately 25 employment opportunities for the community.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The existing units in the surrounding neighborhood would not be adversely affected. The proposed residential building fronting Hayes Street will be compatible with the mass, scale, and design of the neighborhood within which the Project Site is located.

- C. That the City's supply of affordable housing be preserved and enhanced.

No housing is removed for this Project. The Project would add seven (7) dwelling units to the City's housing stock.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The Project is located within a Neighborhood Commercial Transit (NCT) district and is well served by public transit. It is presumable that the employees and patrons of the proposed Emporium would arrive by transit, bicycling and walking, thereby mitigating possible effects on street parking. The seven (7) dwelling units within the proposed residential building are unlikely to overburden MUNI transit service or generate a significant demand for neighborhood parking.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project will not displace any service or industry establishment. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code. This proposal will not impact the property's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

The historic former Harding Theater building is proposed to be retained and restored.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The project will have no negative effect on existing parks and open spaces. The Project does not have an effect on open spaces.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2005.0911C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated November 9, 2015, and November 6, 2015, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 19512. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission **ADOPTED** the foregoing Motion on November 19, 2015.

Jonas P. Ionin
Commission Secretary

AYES: Commissioners Fong, Wu, Antonini, Johnson, Hillis, Moore and Richards

NAYS: None

ABSENT: None

ADOPTED: November 19, 2015

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a bar, amusement game arcade, other entertainment and movie uses and general retail sales uses (d.b.a. Emporium) located at 616 Divisadero Street and a 7-unit, 5-story residential building located at 1282 Hayes Street pursuant to Planning Code Sections 303, 746.11 and 746.69B within the Divisadero Street Neighborhood Commercial Transit (NCT) District and a 65-A Height and Bulk District; in general conformance with plans, dated November 9, 2015, and November 6, 2015 and stamped "EXHIBIT B" included in the docket for Case No. 2005.0911C and subject to conditions of approval reviewed and approved by the Commission on November 19, 2015 under Motion No 19512. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on November 19, 2015 under Motion No 19512.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 19512 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

3. **Diligent pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

DESIGN

6. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

7. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the architectural addenda. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

8. **Street Trees.** Pursuant to Planning Code Section 138.1 (formerly 143), the Project Sponsor shall submit a site plan to the Planning Department prior to Planning approval of the building permit application indicating that street trees, at a ratio of one street tree of an approved species for every 20 feet of street frontage along public or private streets bounding the Project, with any remaining fraction of 10 feet or more of frontage requiring an extra tree, shall be provided. The street trees shall be evenly spaced along the street frontage except where proposed driveways or other street obstructions do not permit. The exact location, size and species of tree shall be as approved by the Department of Public Works (DPW). In any case in which DPW cannot grant approval for installation of a tree in the public right-of-way, on the basis of inadequate sidewalk width, interference with utilities or other reasons regarding the public welfare, and where installation of such tree on the lot itself is also impractical, the requirements of this Section 428 may be modified or waived by the Zoning Administrator to the extent necessary.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

PARKING AND TRAFFIC

9. **Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation effects during construction of the Project.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

10. **Bicycle Parking.** Pursuant to Planning Code Sections 155.1, 155.4, and 155.5, the Project shall provide no fewer than 19 bicycle parking spaces (7 Class 1 spaces for the residential portion of the Project, 4 Class 1 spaces for the commercial portion of the Project, and 8 Class 2 spaces for the commercial portion of the Project).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

11. **Transformer Vault.** The location of individual project PG&E Transformer Vault installations has significant effects to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Therefore, the Planning Department recommends the following preference schedule in locating new transformer vaults, in order of most to least desirable:

1. On-site, in a basement area accessed via a garage or other access point without use of separate doors on a ground floor façade facing a public right-of-way;
2. On-site, in a driveway, underground;
3. On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
4. Public right-of-way, underground, under sidewalks with a minimum width of 12 feet, avoiding effects on streetscape elements, such as street trees; and based on Better Streets Plan guidelines;
5. Public right-of-way, underground; and based on Better Streets Plan guidelines;
6. Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;
7. On-site, in a ground floor façade (the least desirable location).

Unless otherwise specified by the Planning Department, Department of Public Work's Bureau of Street Use and Mapping (DPW BSM) should use this preference schedule for all new transformer vault installation requests.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>

12. **Noise, Ambient.** Interior occupiable spaces shall be insulated from ambient noise levels. Specifically, in areas identified by the Environmental Protection Element, Map1, "Background Noise Levels," of the General Plan that exceed the thresholds of Article 29 in the Police Code, new developments shall install and maintain glazing rated to a level that insulate interior occupiable areas from Background Noise and comply with Title 24.

For information about compliance, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org

13. **Noise.** Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

PROVISIONS

14. **First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.

For information about compliance, contact the First Source Hiring Manager at 415-581-2335, www.onestopSF.org

15. **Transit Impact Development Fee.** Pursuant to Planning Code Section 411, the Project Sponsor shall pay the Transit Impact Development Fee (TIDF) as required by and based on drawings submitted with the Building Permit Application. Prior to the issuance of a temporary certificate of occupancy, the Project Sponsor shall provide the Planning Director with certification that the fee has been paid.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

MONITORING

16. **Commission Update.** The project sponsor shall notify the Planning Department when the bar and amusement game arcade use begins operations. Following a six-month period after opening to the public, the Planning Department shall update the Planning Commission, in the form of a written memo, describing the impacts, if any, that the operations of the bar and amusement game arcade use have had on the neighboring community, including its hours of operation.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

17. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

18. **Monitoring.** The Project requires monitoring of the conditions of approval in this Motion. The Project Sponsor or the subsequent responsible parties for the Project shall pay fees as established under Planning Code Section 351(e) (1) and work with the Planning Department for information about compliance.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

19. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

20. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>

21. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>

22. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org

For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-0123, www.sf-police.org

23. **Odor Control.** While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises.

For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

24. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

25. **Notices Posted at Bars and Entertainment Venues.** Notices urging patrons to leave the establishment and neighborhood in a quiet, peaceful, and orderly fashion and to not litter or block driveways in the neighborhood, shall be well-lit and prominently displayed at all entrances to and exits from the establishment.

For information about compliance, contact the Entertainment Commission, at 415 554-6678, www.sfgov.org/entertainment

26. **Other Entertainment.** The Other Entertainment shall be performed within the enclosed building only. The building shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance. Bass and vibrations shall also be contained within the enclosed structure. The Project Sponsor shall obtain all necessary approvals from the Entertainment Commission prior to operation. The authorized entertainment use shall also comply with all of the conditions imposed by the Entertainment Commission.

For information about compliance, contact the Entertainment Commission, at 415 554-6678, www.sfgov.org/entertainment

27. **Lighting.** All Project lighting shall be directed onto the Project site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org



DAN KRAMER LAW GROUP

November 14, 2016

Via US Mail

San Francisco Board of Supervisors
Public Safety and Neighborhood Services Committee
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
Attn: Ms. Erica Major, Clerk

DEPT. OF PUBLIC SAFETY
SAN FRANCISCO
2016 NOV 17 PM 3:45
ST

Re: Emporium San Francisco; 616 Divisadero St.;
Request for Determination of Public Convenience or Necessity

Dear Ms. Major and Members of the Public Safety and Neighborhood Services Committee:

This firm represents Emporium SF, LLC *dba* Emporium San Francisco (“Emporium”). Emporium recently applied for a Type-48 license (ABC file no. 576170) for its venue located at 616 Divisadero St, San Francisco, CA (the “Venue”), and was advised by the Department of Alcoholic Beverage Control (“ABC”) that a determination of public convenience or necessity by the Board of Supervisors is a condition to the ABC’s issuance of this license. On behalf of Emporium, we respectfully request that the Board determine that the issuance of a Type-48 license to the Venue will serve public convenience or necessity.

Located in the old Harding Theater, Emporium will be a combination of a classic game arcade and live-event venue. It will feature approximately 25 classic video games and new games designed by local indie game developers, as well as pinball machines, pool tables, foosball, air hockey and shuffleboard tables. The Harding Theater has a rich legacy spanning from early cinema to concerts, and the Emporium intends to restore the old stage to host live performances, and to install a large movie screen for independent film screenings, video game tournaments and large presentations.

With respect to food and beverage offerings, Emporium will partner with local restaurants to offer a wide array of meals and appetizers that customers can have delivered to the Venue. In addition to its food offerings, Emporium intends to offer a curated bar menu featuring high-end American craft beer weighted with offerings from local and regional breweries plus a selection of small-batch whiskeys.

Emporium’s planned hours of operation will be Monday – Thursday from 5pm to 2am, Fridays from 3pm to 2am, and Saturday – Sunday 12pm to 2am. Live entertainment and movie screenings will typically occur 2-3 evenings per week.

Conditional Use Permit (2005.0911C) has been issued for the Venue to allow for a bar, amusement game arcade and other entertainment and movie use. In addition, the Entertainment Commission approved the Entertainment Permit for this Venue (see EC-1372).

161268

The owners of Emporium are experienced operators with two locations in Chicago - one in Logan Square and one in Wicker Park. Emporium takes great pride in being an integral part of each community in which it is located, partnering with members of the community in a number of different ways such as featuring local artists' murals on the walls and beers made by small local breweries on tap. The owners and management take the responsibility of being good neighbors very seriously, especially as it relates to the service of alcohol. As a result, they have developed strong relationships with law enforcement, local government, and neighbors at both of the Chicago locations, and intend to do the same in San Francisco. Emporium has reached out to the local neighborhood regarding the intended operations at the Venue and letters of support were given by both NOPNA and the Hayes Valley Neighborhood Association in connection with Emporium's Entertainment Permit application. In addition, Emporium has received support for this project from Supervisor Breed.

Emporium will take all necessary steps to comply with San Francisco Police Code Section 1060.5 with respect to security at the premises. One security guard will be present for every one-hundred patrons, and all security personnel will be LEAD certified. Proof of age for every person seeking to enter the Venue will be verified by security personnel with an ID scanning machine. A closed circuit television (CCTV) system with adequate lighting will monitor the exterior of the premises at all hours of the day. The venue will operate in compliance with all local noise ordinances, and soundproofing will be installed if necessary to comply with such ordinances.

Therefore, while the benefits to the community from both a cultural and social perspective will be significant, the operations will be conducted in such a manner as to limit any negative impact on the surrounding neighborhood. Accordingly, on behalf of Emporium, we respectfully request that the Committee determine public convenience or necessity will be served by the issuance of a Type-48 license to Emporium San Francisco.

I can be reached at (415) 795-2327 or dan@djklawgroup.com if you need any further information regarding this matter.

Sincerely,



Dan Kramer

LIQUOR LICENSE REVIEW

TO: Planning Department
AnMarie Rodgers/CTYPLN/SFGOV
Georgia Powell/CTYPLN/SFGOV@SFGOV
Fax No.: (415) 558-6409

File: 161268

TO: Police Department
Inspector Nelly Gordon
Phone: (415) 837-7273

DATE: November 21, 2016

This item is tentatively scheduled to be heard in four to six weeks.
PLEASE EMAIL YOUR RESPONSE BY: December 28, 2016, to Erica Major,
Public Safety and Neighborhood Services Committee Clerk.

Erica.Major@sfgov.org - Fax No: 554-7771

Applicant Name: Emporium SF, LLC
Emporium San Francisco
and Business Name: (616 Divisadero Street)
Applicant Address: 616 Divisadero Street
San Francisco, CA 94117
and Phone No. (415) 795-2327

PLANNING COMMENTS: Approval Denial

POLICE COMMENTS: Approval Denial