

1 [Requesting City Attorney to Investigate and Take Appropriate Action.]
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4 **Resolution requesting the City Attorney to investigate whether adequate public notice**
5 **was provided by the Bay Area Air Quality Management District to the affected**
6 **community regarding Permit Application #2136 for increasing fuel throughput at the**
7 **Shell Oil gasoline station at 4298 Mission Street and requesting the City Attorney to**
8 **take all appropriate steps to protect the City’s interests, including possible filing of a**
9 **timely administrative appeal regarding the issuance of the permit.**

10 WHEREAS, On November 1, 2002, the Bay Area Air Quality Management District
11 (“BAAQMD”) approved Permit Application # 2136 for the expansion of the Shell Oil/Equilon
12 station at 4298 Mission Street, in the Excelsior District of San Francisco (District 11), allowing
13 an increase in the facility’s throughput of to 2.870 million gallons per year; and,
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15 WHEREAS, gasoline contains benzene, a toxic air contaminant and known carcinogen;
16 and

17 WHEREAS, The BAAQMD’s risk assessment acknowledges a ten in one million (or 1
18 in 100,000) increased risk of contracting cancer for residents who live near the facility due to
19 exposure to and inhalation of benzene; and,

20 WHEREAS, This increased cancer risk is the highest level of risk deemed acceptable
21 by the BAAQMD for such a permit; and,

22 WHEREAS, Prior to approving a permit to expand operations and increase emissions
23 of a toxic air contaminant, the BAAQMD is required by State law (California Health & Safety
24 Code § 42301.6 and BAAQMD Regulation 2-1-412) to provide public notice, distributed at the
25 expense of the permit applicant, to parents of children enrolled in schools within one-quarter

1 mile and to residents who live within 1000 feet of the facility, in which the proposed project
2 and increased emissions are fully explained; and,

3 WHEREAS, Prior to the approval of such a permit, BAAQMD must provide for a 30-
4 day public comment period during which all comments received must be reviewed and
5 considered by the BAAQMD; and,

6 WHEREAS, There are three elementary schools located within one-quarter mile of the
7 facility— San Francisco Community School, Corpus Christie Elementary, and Monroe
8 Elementary; and,

9 WHEREAS, More children under five years of age live in District 11 than any other San
10 Francisco District; and,

11 WHEREAS, More foreign-born immigrants reside in District 11 than any other San
12 Francisco District, and it is the only District where such residents form a majority of the
13 population; and,

14 WHEREAS, A majority of children attending said elementary schools live in homes with
15 non-or limited-English-speaking parents or guardians; and,

16 WHEREAS, On August 15, 2002, the BAAQMD issued a public notice regarding the
17 potential expansion of the Shell station and resulting emissions increase in English only; and,

18 WHEREAS, The public notice required to be distributed by the BAAQMD was not
19 received by numerous residents who live within 1000 feet of the facility; and,

20 WHEREAS, Numerous parents of students enrolled in the schools who received the
21 notice were unable to read it or provide public comment as it was distributed in a language
22 they could not understand, such as Chinese, Spanish or Tagalog; and,

23 WHEREAS, Based on these and other factors, the notice failed to inform a majority of
24 the affected community of the project and the proposed emissions increase, including the
25 resulting increased risk of cancer; and

1 WHEREAS, The notice provided that interested members of the public could review the
2 relevant health risk reports at the three local schools, however school staff were not prepared
3 by the BAAQMD to assist with the public notice process, despite staff members' ability to
4 provide multilingual translation for concerned community members; and,

5 WHEREAS, Public comments were submitted by English-speaking members of the
6 community on behalf of concerned parents, residents and students who live, work, study and
7 play near the facility, opposing the expansion due to the increased cancer risk and prevalence
8 of other such facilities already in the community; and,

9 WHEREAS, Such public comments were received by the BAAQMD within the 30-day
10 period (including a petition of 200 parents of students at said schools); and,

11 WHEREAS, Public comments received by the BAAQMD informed the agency that
12 residents within 1000 feet of the facility did not in fact receive the public notice, and that
13 notices sent to parents of students did not inform them of the project or comment period as
14 the majority of them are non- or limited-English speaking; and,

15 WHEREAS, Such public comments requested that the BAAQMD withhold approval of
16 the permit application until a multilingual meeting was held in the impacted community
17 regarding the permit and increased cancer risk, with multilingual outreach assistance to be
18 conducted by community members and school staff; and,

19 WHEREAS, BAAQMD staff agreed to meet with community members prior to issuance
20 of the permit but then failed to do so; and,

21 WHEREAS, Said permit was issued on November 1, 2002, despite BAAQMD staff's
22 knowledge of and request to attend a community meeting scheduled for November 13, 2002
23 to discuss the issues; and,

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1 WHEREAS, Members of the public requested that the BAAQMD rescind the permit due
2 to defective notice and demanded that the public comment period be re-opened for impacted
3 residents to provide comments after the notice was translated into Spanish and Chinese; and,

4 WHEREAS, The denial of such requests by BAAQMD staff in effect denied affected
5 residents of their right to know about the risks posed to their health and of their rightful
6 opportunity to provide public comment on the permit application; and,

7 WHEREAS, The BAAQMD's actions violated its own policies on Environmental Justice
8 (to assure that "no segment of the population, regardless of race, national origin or income,
9 bears disproportionately high and adverse health impacts of air pollution" by ensuring "equal
10 access to ... permit evaluation" and to "[s]olicit concerns and ideas from communities" where
11 there may be "disproportionately high levels of pollution and adverse health effects"); and,

12 WHEREAS, The BAAQMD's actions may have denied residents of the affected
13 community of their rights under State law; now, therefore, be it

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15 RESOLVED, That the San Francisco Board of Supervisors, to protect the interests of
16 San Francisco and the welfare of its residents, requests that the City Attorney investigate
17 whether adequate public notice was in fact provided to the affected community regarding the
18 issuance of the permit; whether proper risk evaluation procedures were in fact followed
19 regarding the issuance of the permit and whether other infirmities may exist; and, be it

20 FURTHER RESOLVED, That the San Francisco Board of Supervisors requests the
21 City Attorney to take all appropriate steps to protect the City's interests, including filing a
22 timely administrative appeal at the BAAQMD Hearing Board regarding the issuance of Permit
23 Application #2136, and appropriate litigation regarding this matter if necessary.