

April 27, 2013

Board President David Chiu and Members of the Board of Supervisors  
c/o Ms. Angela Calvillo  
Clerk of the Board of Supervisors  
City of San Francisco  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

Re: Argument in Support of Appeal of Planning Commission Certification of Final EIR  
for the 706 Mission Street - Residential Tower and Mexican Museum Project (Case No.  
2008.1084E; SCH # 2011042035)

● **Shadow Impacts on Union Square** ● **Noise Impacts**

Dear President Chiu and Supervisors:

This office represents appellants 765 Market Street Residential Owner's Association ("ROA"), Friends of Yerba Buena ("FYB"), Paul Sedway, Ron Wornick, Matthew Schoenberg, Joe Fang, and Margaret Collins (collectively "Appellants") regarding the 706 Mission Street - Residential Tower and Mexican Museum Project ("the Project"). I am writing to provide additional argument in support of appellants' grounds for appeal relating to Shadow Impacts on Union Square and Noise Impacts.

## 1. **Shadow Impacts on Union Square**

By adopting Proposition K (codified at Planning Code § 295), the voters of San Francisco adopted a substantive limit on development prohibiting the approval of buildings subject to the ordinance casting new shadows on Union Square between one hour after sunrise and one hour before sunset unless the Planning Commission finds the resulting adverse impact on use of the park to be less than significant.

For purposes of CEQA, this ordinance establishes a threshold of significance for shadow impacts: i.e., any new shadow between one hour after sunrise and one hour before sunset is potentially significant. It also establishes a mitigation measure: disapproval of the project unless the Planning Commission finds the impact on use of the park is less than significant.

Proposition K tasked the Planning Commission and the Recreation and Park Commission with adopting "criteria for the implementation" of this law. In 1989, these agencies adopted numerical performance standards (known as "cumulative shadow limits") for each park under the

jurisdiction the Recreation and Park Commission.<sup>1</sup> These numerical limits are the performance standard by which the Planning Commission determines if individual projects will have a significant or less-than-significant impact on use of a park. In CEQA terminology, the “cumulative shadow limits” are mitigation measures.

In October of 2012, the Planning Commission and Park and Recreation Commission increased the cumulative shadow limit for Union Square, making it less environmentally protective.<sup>2</sup> Now, these agencies are proposing to do the same thing again.<sup>3</sup>

Under CEQA however, before deleting or modifying a previously adopted mitigation measure, the lead agency “must state a legitimate reason” and “must support that statement of reason with substantial evidence.” (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359 [“when an earlier adopted mitigation measure has been deleted, the deference provided to governing bodies with respect to land use planning decisions must be tempered by the presumption that the governing body adopted the mitigation measure in the first place only after due investigation and consideration”]; accord *Katzeff v. California Dept. of Forestry and Fire Protection* (2010) 181 Cal.App.4th 601, 612; *Lincoln Place Tenants Association v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1507-1508.)

Here, the EIR offers no legitimate reason to water down the protections afforded by Proposition K and the previous decision of the Planning and Recreation and Park Commissions establishing the cumulative shadow limit for Union Square. The EIR’s casual assertion that “There is no feasible mitigation for the proposed project’s contribution to cumulative shadow impacts, because any theoretical mitigation would fundamentally alter the project’s basic design and programming parameters”<sup>4</sup> is not a legitimate reason, because these are not legally valid grounds to find that leaving the cumulative shadow limit intact is infeasible. “The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.” *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181.

Moreover, the Planning Commission’s proposal to increase the cumulative shadow limit is inconsistent with several policies of the Downtown Plan, including:

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<sup>1</sup>Exhibit 1 [Joint Resolution 11595 (2-7-1989)].

<sup>2</sup>Exhibit 2 [706 Mission, Executive Summary of Planning Commission Staff Report], pp. 6-7.)

<sup>3</sup>Exhibit 2, pp. 6-7; DEIR, p. IV.I-60.

<sup>4</sup>DEIR, p. IV.I-60.

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POLICY 9.3 Give priority to development of two categories of highly valued open space; sunlit plazas and parks.

Providing ground level plazas and parks benefits the most people. If developed according to guidelines for access, sunlight design, facilities, and size, these spaces will join those existing highly prized spaces such as Redwood Park, Sidney Walton Park, Justin Herman Plaza, and the State Compensation Building Plaza.

POLICY 10.5 Address the need for human comfort in the design of open spaces by minimizing wind and maximizing sunshine.

## 2. **Noise Impacts**

The EIR's analysis of whether Noise Impact NO-1 (Construction Noise) will be significant with the adoption of Mitigation Measures M-NO-1a and -1b does not meet CEQA's requirements for the informational content of an EIR.

As discussed in the attached letter report from acoustical engineer Frank Hubach (Exhibit 3), the EIR does not provide sufficient information to evaluate the significance of the construction noise that will be experienced by sensitive noise receptors in the area even with adoption of the mitigation measures identified in the EIR. The missing information includes specifying the amount of noise attenuation (i.e., reduction) that will occur as a result of the distances between the generation of noise by construction equipment and sensitive noise receptors in the area; specifying the amount of noise attenuation that will occur as a result of the various types of noise reduction techniques that are identified as mitigation measures; and specifying when mitigation measures that will only be used when "feasible" or "possible" will actually be feasible or possible. Without this information, it is not possible to independently review the EIR's conclusions.

Several mitigation measures included in Mitigation Measure M-NO-1a will only be implemented when "feasible" or "possible," as shown here:

The following practices shall be incorporated into the construction contract agreement documents to be implemented by the construction contractor:

- Provide best available noise control techniques for equipment and trucks, such as providing acoustic enclosures and mufflers for stationary equipment, shroud or shield impact tools, and installing barriers around particularly noisy activities at the construction sites so that the line of sight between the construction activities and nearby sensitive receptor locations is blocked to the maximum feasible extent. The placement of barriers or acoustic blankets shall be reviewed and approved by the Director of Public Works prior to issuance of permits for construction activities.
- Use construction equipment with lower noise emission ratings whenever possible, particularly for air compressors.
- Provide sound-control devices on equipment no less effective than those provided

by the manufacturer.

- Locate stationary equipment, material stockpiles, and vehicle staging areas as far as practicable from sensitive receptor locations.
- Prohibit unnecessary idling of internal combustion engines.
- Require applicable construction-related vehicles and equipment to use designated truck routes to access the project sites.
- Prior to the issuance of the building permit, along with the submission of construction documents, the project sponsor shall designate a Noise Disturbance Coordinator (on-site construction complaint and enforcement manager) and submit to the Planning Department and Department of Building Inspection (DBI) a protocol to respond to and track complaints pertaining to construction noise. This shall include (1) a procedure and phone numbers for notifying DBI, the Department of Public Health, and the Police Department (during regular construction hours and off-hours); (2) a sign conspicuously posted on-site describing noise complaint procedures and a complaint hotline number that shall be answered at all times during construction; (3) identification of the Noise Disturbance Coordinator for the project (name, phone number, email address); and (4) notification of property owners and occupants within 300 feet of the project construction area at least 14 days in advance of extreme noise generating activities (activities expected to generate levels of 90 dBA or greater) about the estimated duration of the activity.
- Obtain a work permit from the Director of Public Works or the Director of Building Inspection for any nighttime work, pursuant to San Francisco Noise Ordinance Section 2908.
- Obtain noise variances (as necessary) consistent with San Francisco Police Code Section 2910.

#### Mitigation Measure M-NO-1b: Noise-Reducing Techniques and Muffling Devices for Pile Installation

If piles are determined to be necessary, the project sponsor shall require its construction contractor to use noise-reducing pile installation techniques including: avoiding impact pile driving where possible, pre-drilling pile holes (if feasible, based on soils; see Mitigation Measure M-NO-2b, pp. IV.F.26-IV.F.27) to the maximum feasible depth, installing intake and exhaust mufflers on pile installation equipment, vibrating piles into place when feasible, and installing shrouds around the pile driving hammer where feasible. Should impact pile driving be necessary for the proposed project, the project sponsor would require that the construction contractor limit pile driving activity to result in the least disturbance to neighboring uses, and establish pile-driving hours, in consultation with the Director of Public Works, to disturb the fewest people. At least 48 hours prior to pile driving activities, the project sponsor shall notify building owners and occupants within 500 feet of the project site of the dates, hours, and expected duration of pile driving.

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(DEIR, p. IV.F-20.) Thus, the EIR anticipates that there will be occasions when these mitigation measure are ineffective because they are not possible or feasible. Since the EIR finds this impact to be “Less than Significant with Mitigation,” the EIR must disclose that the uncertainty surrounding the implementation of these measures requires determining that the impact is “Significant.”

Also, subdivision (d) of section 2909 of the San Francisco Noise Ordinance establishes thresholds for determining significance of noise impacts on nearby residents of 45 dBA nighttime/55 dBA daytime noise, stating:

Fixed Residential Interior Noise Limits. In order to prevent sleep disturbance, protect public health and prevent the acoustical environment from progressive deterioration due to the increasing use and influence of mechanical equipment, no fixed noise source may cause the noise level measured inside any sleeping or living room in any dwelling unit located on residential property to exceed 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. or 55 dBA between the hours of 7:00 a.m. to 10:00p.m. with windows open except where building ventilation is achieved through mechanical systems that allow windows to remain closed.<sup>5</sup>

This standard is based on the experience of sensitive receptors (i.e., preventing sleep disturbance, protecting public health, and preventing the acoustical environment from progressive deterioration).

But the EIR suggests that the Project can violate these interior noise standards without causing a significant impact because, as “non-permanent” generators of noise, the Project’s construction equipment is exempt from section 2909(d). The EIR does so by falsely asserting that section 2909 includes the word “permanent” as a limitation on the types of noise sources that will be considered “fixed” and therefore subject to these interior noise standards. (DEIR, p. IV.F-16.) This false assertion indicates that the EIR assumes that “complying” with the San Francisco Noise Ordinance equates to achieving less than significant impacts.

The EIR’s assumption in this regard violates CEQA, because compliance with regulatory standards cannot be used as a substitute for a fact based analysis of whether an impact is significant. While San Francisco is free to adopt a Noise Ordinance that exempts specific noise sources from its regulatory effect, it is not free, under CEQA, to fail to disclose the significance of noise that exceeds these interior noise limits.<sup>6</sup>

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<sup>5</sup>Exhibit 4 [San Francisco Noise Ordinance].

<sup>6</sup>*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 [“the fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant. . . . a threshold of significance cannot be applied in a way that would foreclose the consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant”].)

Board President David Chiu and Members of the Board of Supervisors  
706 Mission Street - EIR Appeal

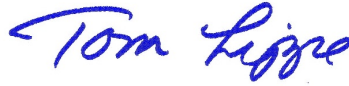
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Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe

**List of Exhibits**

1. Joint Resolution 11595, Planning Commission and Recreation and Park Commission, (2-7-1989)
2. 706 Mission, Executive Summary of Planning Commission Staff Report (March 28, 2013).
3. Letter dated April 26, 2013 from Acoustical Engineer Frank Hubach.
4. San Francisco Noise Ordinance

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# **EXHIBIT 1**

SAN FRANCISCO  
CITY PLANNING COMMISSION  
RESOLUTION NO. 11595

JOINT RESOLUTION OF THE CITY PLANNING COMMISSION AND RECREATION AND PARK COMMISSION ADOPTING CRITERIA FOR DETERMINATIONS OF SIGNIFICANT SHADOWS IN FOURTEEN DOWNTOWN PARKS WHICH ARE SUBJECT TO BEING SHADOWED BY NEW DEVELOPMENT AND DECLARING THE INTENTION TO APPLY THESE CRITERIA REGARDING SHADOW IMPACTS PRIOR TO CONSIDERATION OF AN APPLICATION FOR A STRUCTURE THAT WOULD SHADOW A PROTECTED PROPERTY.

WHEREAS, The people of the City and County of San Francisco in June 1984 adopted an initiative ordinance, commonly known as Proposition K; and

WHEREAS, Proposition K requires that the City Planning Commission disapprove any building permit application authorizing the construction of any structure that will have any adverse impact on the use of property under the jurisdiction of the Recreation and Park Department because of the shading or shadowing that it will cause, unless it is determined that the impact would be insignificant; and

WHEREAS, Proposition K provides that the City Planning Commission and the Recreation and Park Commission shall adopt criteria for the implementation of that ordinance; and

WHEREAS, Proposition K can most effectively be implemented by analyzing properties in the City protected by that legislation which could be shadowed by new development, the current patterns of use of such properties, how such properties might be used in the future including considerations of possible future design and redevelopment of the property, and the various shadowing that could be created by various structures, including the amount of shadowing, the duration, and location; and

WHEREAS, The City Planning Commission and Recreation and Park Commission endorsed the submission by the Department of City Planning to the Mayor of a request for a supplemental appropriation in order to fund an analysis of properties that could be shadowed by new development (Resolution No. 13887); and

WHEREAS, A contract was awarded to the University of California at Berkeley's College of Environmental Design to develop a computerized system which could analyze existing shadow conditions on Proposition K properties and provide information to these Commissions necessary to establish rules or guidelines delineating the type of shadowing that can be determined to be significant or insignificant; and

WHEREAS, a computerized system of analysis was developed and used to analyze existing shadow conditions on fourteen downtown parks under the jurisdiction of the Recreation and Park Department; and

WHEREAS, The information developed by this computer analysis was then evaluated jointly by the staffs at the Department of City Planning and the Recreation and Park Department; and

WHEREAS, Recommendations for determinations of significant new shadows based on these staff evaluations were presented jointly to the Commissions in October and November of 1987; and

WHEREAS, Additional presentations were made to both Commissions in 1988 and 1989; and



WHEREAS, A duly advertised public hearing was held on these recommendations; and

THEREFORE BE IT RESOLVED, That the criteria and the staff proposal for consideration by both Commissions presented in the memorandum to the Planning Commission and the Recreation and Park Commission dated February 3, 1989 regarding "Proposition K -- The Sunlight Ordinance" and describing criteria for determining significance be adopted as rules and guidelines for the determinations of significant shadows for the fourteen downtown parks analyzed.

I hereby certify that the foregoing Resolution was ADOPTED by the City Planning Commission on February 7, 1989.

Lori Yamauchi  
Secretary

AYES	Commissioners Bierman, Dick, Engmann, Hu, Johnson, Morales and Tom
NOES	None
ABSENT	None
ADOPTED	February 7, 1989

AKG:181



City and County of San Francisco  
The Planning Department

1660 Mission Street  
San Francisco, CA 94103-2414

MEMORANDUM

February 3, 1989\*

TO: The City Planning Commission  
The Recreation and Parks Commission

FROM: Department of Parks and Recreation  
Department of City Planning

RE: Proposition K—The Sunlight Ordinance

**BACKGROUND**

The Sunlight Ordinance (Section 295 of the City Planning Code) requires the Planning Commission, prior to the issuance of a permit for a project that exceeds 40 feet in height, to make a finding that any shadow on property under the jurisdiction of the Park and recreation Department cast by the project is insignificant.

The Ordinance further requires that the Planning Commission and the Parks and Recreation Commission jointly adopt the criteria to be used by the Planning Commission in the implementation of the Ordinance.

**PROPOSED CRITERIA FOR DETERMINING SIGNIFICANCE**

The approach recommended by staff involves two steps. The first step is to set an absolute cumulative limit for new shadow allowed in an open space. The Absolute Cumulative Limit is the additional shadow-foot-hours expressed as a percentage of the total foot-hours for each park over a period of one year. The second step is to determine individual building impacts and allocate a portion of the additional allowable shadow among specific projects within the Absolute Cumulative Limit.

Details on the methodology for measuring and modeling shadows are explained in the memorandum to the Recreation and Parks Commission and the Planning Commission on "Proposition K--The Sunlight Ordinance," dated November 1, 1987.

**Absolute Limit**

It is recommended that a quantitative limit be set on the amount of new shadow (summed up over a period of one year) which could be allowed in each park based on the current shadow conditions in the park and the size of the park. A large park with little shadow could be permitted a larger Absolute Cumulative Limit than a smaller park with a lot of shadow, for example.

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This absolute cumulative limit could be used up by one or more new buildings, but, the final determination of how much of this limit could be used by an individual building and what form the new shadow will take should be determined on a case by case basis. However, any shadow cast beyond this limit would be considered significant and could not be allowed.

#### Allocation of The Absolute Cumulative Limit Among Individual Buildings

Each open space has distinctive characteristics of existing shadows and the shadow that would be created by a new building. Each potential shadow also has distinctive characteristics. Depending on the proposed new building's location the shadow could be fast or slow moving (shadows of buildings near the open space will move through the open space slower than a building farther away from the open space). The proposed new building's height and location will also determine the size and shape of potential new shadow in the park, when (e.g. time of day, time of season) and where in the park the new shadow would be cast. Since a potential shadow may have immensely varied impacts at different times of day, or different seasons; or duration of the shadow, or the size or the location of the shadow, the evaluation of impact depends on a variety of qualitative factors.

The factors to be considered in allocating additional shadow within the Absolute Cumulative Limit will vary from park to park based on the characteristics of that park and the pattern of its existing shadows.

Qualitative criteria for each park should be based on existing shadow profiles, important times of day, important seasons in the year, size and duration of new shadows and the public good served by buildings casting new shadow. These bases are explained below:

#### Value of the Sunlight

##### Time of Day (morning, mid-day, afternoon)

Based on existing shadow conditions and location of a given park, the time of day values of sunlight will have to be established. For example, afternoon and morning sun resources may be more important for preservation in neighborhood parks whereas mid-day sun may be more important in downtown parks. Additionally, some parks may have more shadow during certain times of the day when compared with other parks.

##### Time of Year (Spring, Summer, Fall, Winter)

In the same way that the time of day value of sunlight has to be established, sunlight value during times of year will also have to be determined.

#### Shadow Characteristics

##### Size of Shadow

Small shadows will generally be preferred to large shadows unless they last for long periods of time or fall on parts of the park where sunlight is particularly critical to users.

#### Duration of Shadow

Shadows lasting a short period of time will generally be preferred to shadows which last a long time unless the fleeting shadows fall during a critical time of day or season and/or are so large that they disrupt use of the park.

#### Location of Shadow

Efforts should be made to avoid shadows in areas of the park where existing or future use of the park is intense and where a new shadow could have detrimental effects on park vegetation.

#### Building Characteristics

##### Public Good Served By Shadow Caster

Buildings in the public interest in terms of a needed use or building design and urban form may be allocated a larger portion of the Absolute Cumulative Limit than other buildings. For example, the Civic Center Urban Design Plan calls for a building at the same height as the existing library to continue the cornice on Marshall Square thus completing the gap in the framing of Civic Center Plaza. A new library building to accommodate the growing needs of the Public Library is proposed at that space. This new building would cast new shadows in the morning hours on Civic Center Plaza. If the new building could not cast shadows, the ability to use the site for the library would be severely limited. Most of the Civic Center Plaza shadow "budget" could perhaps be allocated to be used by this library.

#### STAFF PROPOSAL FOR CONSIDERATION BY BOTH COMMISSIONS

The Proposition K mandate is to minimize new shadow impacts and protect the sun resource on San Francisco open spaces. On the basis of several public hearings on the subject, the objective is to construe Proposition K very strictly in terms of the additional shadow on parks. In order to accomplish this objective an Absolute Cumulative Limit is proposed for each individual park. This limit is the additional amount of shadow-foot-hours expressed as a percentage of total-foot-hours of each park as measured by the Sunlight Access Computer System (SACS) developed for the City by the University of California at Berkeley. Additionally, for each open space, criteria for the approval of new buildings have been proposed to evaluate allocations within the Absolute Cumulative Limit.

There are two major factors affecting the impact of shadow on the use of a park which are relevant to setting standards. One is the size of the park and the other is the amount of existing shadow on the park. Taking these two factors into account the staff recommends that the following standards be adopted.

In smaller parks (less than two acres) which are already shadowed 20% or more of the time during the year, it is recommended that no additional shadow

be permitted. On this basis the Absolute Cumulative Limit should be set at zero for the following parks:

<u>Name Of Park</u>	<u>Absolute Cumulative Limit</u>
Maritime Plaza	0%
Embarcadero Plaza I (north)	0%
Portsmouth Square	0%
St. Mary's Square	0%
Boeddecker Park	0%
Chinese Playground	0%
Sgt. Macaulley Park	0%
Huntington Park	0%
South of Market Park	0%

In larger parks (two acres or more) which are shadowed between 20% and 40% of the time during the year it is recommended that up to an additional 0.1% of the current shadow should be permitted if the specific shadow meets the additional qualitative criteria for the park. On this basis the Absolute Cumulative Limit for the following parks should be set at 0.1%:

<u>Name of Park</u>	<u>Absolute Cumulative Limit</u>
Embarcadero Plaza II (south)	0.1%
Union Square	0.1%

Some parks, although within this category above, have surrounding height limits that preclude the possibility of any new shadow. Therefore, the Absolute Cumulative Limit for these parks should be set at 0%. These parks are:

<u>Name of Park</u>	<u>Absolute Cumulative Limit</u>
Washington Square	0%
North Beach	0%

In larger parks which are shadowed less than 20% of the time during the year, it is recommended that additional shadow of up to 1.0% could be permitted if the specific shadow meets the additional qualitative criteria for that park. On this basis the Absolute cumulative criteria for the following park should be set at 1.0%:

<u>Name of Park</u>	<u>Absolute Cumulative Limit</u>
Civic Center Plaza	1.0%

For the three parks on which additional shadow is recommended, it is further recommended that individual project shadows within the Absolute Cumulative Limit be allocated according to the following qualitative criteria for each park.

## Union Square

- LOCATION:** Geary, Post, Powell, Stockton  
Located in the center of the City's retail district.
- SIZE:** 105,515 square feet  
This park ranks as the third largest Downtown park.
- CHARACTERISTICS:** The park is surrounded by tall buildings to the east, west and the south. This relatively flat formal park is slightly elevated from the surrounding streets. Features include park furniture for sitting and lawn areas. The greatest intensity of park use occurs during mid-day hours. Users are downtown workers, shoppers, tourists. Many pedestrians use the park as a mid-block crossing. This park is the location for many civic demonstrations and cultural activities. Union Square is near the Powell Street cable car line and major hotels. A parking facility is located beneath the park.

### **SUN AND SHADOW CONDITIONS:**

#### Yearly Shadow:

38.3% of the total year round sunshine is used up by existing shadows. The shadow profile for this park is generally a "U" shaped shadow distribution with significant shadows in the morning and even greater shadows in the afternoon hours. The "U" shaped distribution is increasingly flat in the Winter due to increased mid-day shadows.

#### Seasonal Shadow:

- Summer:** Least shadow impacts - greatest sun resource. Shadowed in early morning and late afternoon with relatively more shadow during the afternoon hours. Approximately 30% of the sun resource is in shadows at the time of the Summer Solstice.
- Spring/Fall:** Major shadow impacts during the early morning and late afternoon hours. Morning shadows increase as Fall approaches. The least shadow impacts occur between 9:30 AM and 2:30 PM. During Equinox approximately 35% of the park sun resource is in shade.
- Winter:** The greatest shadow impacts on Union Square occur during the Winter months. In Winter, nearly 50% of the park is in shadow for the entire day. There is very little sunlight available before 9:30 AM and after 2:30 PM during the winter. The Winter Solstice conditions are such that 60% of the park sun resource is in shadow.

**ADDITIONAL SHADOW**

**Absolute Limit:**

Increase of up to 0.1% of total  
foot-hours for the park based on size  
and amount of existing shadow.  
A maximum of 392,663.5 new shadow  
foot-hours could be allowed.

**Qualitative Criteria:**

- Avoid additional shadows during mid-day.

## Civic Center Plaza

- LOCATION:** Polk, Grove, Larkin, McAllister  
In the Civic Center, with major government offices, library and Brook Hall surrounding the open space.
- SIZE:** 222,995 square feet  
Civic Center Plaza is the largest downtown park.
- CHARACTERISTICS:** Heaviest use occurs during mid-day hours. Users are civic center workers, tourists and street people. Features include some park furniture for sitting, lawn area and fountain. This park is the location for many civic demonstrations, assemblies and cultural activities. This is a relatively flat formal park. A parking garage is located beneath the park. Adopted redesign of the park will accommodate more use by neighborhood children and day care providers.

### **SUN AND SHADOW CONDITIONS:**

#### Yearly Shadow:

7.4% of the total year round sunshine is used up by existing shadows. Civic Center is one of the sunniest of the downtown parks. During most of the year the daily shadow distribution profile is that of a relatively flat "U" shape with greater shadows in the afternoon than in the morning. By Winter the "U" shape has flattened further by decreases in shadows early and late and increased shadows at mid-day.

#### Seasonal Shadow:

- Summer:** Sunny all day except in the late afternoon hours when an average of less than 40% of the park is in shade. Some shadows very early in the morning and very late in the afternoon. Almost no shadows from 9 AM to 4 PM. Approximately 5% in shadows during the Summer Solstice.
- Spring/Fall:** In general summer shadow conditions continue from the Spring and into the Fall. There are however less shadow impacts during the early morning hours and more shadows in the afternoon than occur during the Summer months. Approximately 5% in shadows during the Equinox.
- Winter:** Nearly 75% of the park remains in sun during the Winter months. In late afternoon hours there are increased shadow impacts on the open space. Approximately 10% in shadows during the Winter Solstice.



**ADDITIONAL SHADOW**

**Absolute Limit:**

Increase of up to 1.0% of total foot-hours for the park based on size of the park and the amount of existing shadow.

A maximum of 8,272,486.1 new shadow foot hours could be allowed.

**Qualitative Criteria:**

Preserve afternoon sun, particularly on seating areas and lawn areas.

## Embarcadero Center 2

- LOCATION:** Embarcadero, Clay & Steuart  
This open space is located at the Eastern edge of the Financial District.
- SIZE:** 149,698 square feet  
The second largest Downtown park.
- CHARACTERISTICS:** This park is a plaza surrounded by large office buildings with many ground floor restaurants opening on to the space. The plaza contains a large fountain, open air cafes and is predominately paved. There is a flat grass area at the South end of the plaza. The space has excellent access from Market Street and South of Market Street. During lunch hour the park is heavily used by workers from the Financial District. Tourist use of the park is also heavy due to its location at the base of Market Street, proximity to the Ferry Building, California Street cable car line and the Hyatt Regency. Noon concerts, fashion shows and performances create a great deal of day use of the park.

### **SUN AND SHADOW CONDITIONS:**

Yearly Shadow: This open space has significant sun resources during the morning hours. Afternoon shadows are heavy. The "J" shape to the shadow profile is consistent throughout the Spring, Fall and Summer due to the morning sun and the heavy afternoon shadows. The "J" shaped shade curve disappears in the Winter. In the Winter no more than 50% of the park is in the sun after the noon hour. The shape of the curve in Winter is represented by a shaft of sun in the morning and a nearly solid block of shadow in the post morning hours. Overall, 37.6% of the annual sun resource is currently in shadow.

### Seasonal Shadow:

**Summer:** Between 8:30 am and noon there are almost no shadows in the plaza. Before 8:30 am nearly 40% of the space is in the shade. After the mid-morning sun the shadows gradually increase until 100% of the park is in shadow at the end of the day. 30% shaded during the Summer Solstice.

**Spring/Fall:** For two hours in the mid-morning there is 100% sun in the park. After 11:30 am the shadows increase such that mid-afternoon shadows are greater than in Summer but never reach the 100% shadows of late afternoon Summer days. 60% shaded during the Equinox.

Winter: During the Winter there is a brief two hour period where the park is in the sun. After 10 am shadows increase rapidly and by noon in mid-December 90% of the plaza is in the shade. 80% shaded during the Winter Solstice.

#### ADDITIONAL SHADOW

Absolute Limit: Increase of up to 0.1% of total foot-hours for the park based on size of park and amount of existing shadows. A maximum of 557,086.1 new shadow foot-hours could be allowed.

Qualitative Criteria: Avoid mid-day and Winter shadows.

## **EXHIBIT 2**



# SAN FRANCISCO PLANNING DEPARTMENT

## Executive Summary

### SECTION 309 DETERMINATION OF COMPLIANCE ZONING MAP AMENDMENT PLANNING CODE TEXT AMENDMENT GENERAL PLAN REFERRAL SECTION 295 SHADOW ANALYSIS

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HEARING DATE: APRIL 11, 2013

*Date:* March 28, 2013  
*Case No.:* 2008.1084EHKXRTZ  
*Project Address:* 706 Mission Street  
*Project Site Zoning:* C-3-R (Downtown, Retail, Commercial)  
400-I Height and Bulk District  
*Block/Lots:* 3706/093, 275, portions of 277 (706 Mission Street)  
0308/001 (Union Square)  
*Project Sponsor:* 706 Mission Street, LLC  
c/o Sean Jeffries of Millennium Partners  
735 Market Street, 4<sup>th</sup> Floor  
San Francisco, CA 94107  
*Staff Contact:* Kevin Guy – (415) 558-6163  
[Kevin.Guy@sfgov.org](mailto:Kevin.Guy@sfgov.org)  
*Recommendations:* **Adopt CEQA Findings**  
**Approve Section 309 Determination of Compliance with Conditions**  
**Recommend Approval (Zoning Map/Planning Code Text Amendments)**  
**Adopt General Plan Referral Findings**  
**Raise Cumulative Shadow Limit for Union Square**  
**Adopt Findings Regarding Shadow Impacts**

#### PROJECT DESCRIPTION

The Project would rehabilitate the existing 10-story, 144-foot tall Aronson Building, and construct a new, adjacent 47-story tower, reaching a roof height of 520 feet with a 30-foot tall mechanical penthouse. The two buildings would be connected and would contain up to 215 dwelling units, a “core-and-shell” museum space measuring approximately 52,000 square feet that will house the permanent home of the Mexican Museum, and approximately 4,800 square feet of retail space. The project would reconfigure portions of the existing Jessie Square Garage to increase the number of parking spaces from 442 spaces to 470 spaces, add loading and service vehicle spaces, and would allocate up to 215 parking spaces within the garage to serve the proposed residential uses. The Project Sponsor has proposed a “flex option” that would retain approximately 61,000 square feet of office uses within the existing Aronson Building, and would reduce the residential component of the project to approximately 191 dwelling units.

The Project includes the reclassification of the subject property from the existing 400-foot height limit to a 520-foot height limit, as well as the adoption of the “Yerba Buena Center Mixed-Use Special Use District” (“SUD”). The proposed SUD would modify specific Planning Code regulations related to permitted uses, the provision of a cultural/museum use within the SUD, floor area ratio limitations, dwelling unit exposure, height of rooftop equipment, bulk limitations, and curb cut locations.

Through transactional documents between the project sponsor and the Successor Agency to the Redevelopment Agency (“Successor Agency”), the Successor Agency would convey to the Project Sponsor the Jessie Square garage and the portion of property located between the Aronson Building parcel and Jessie Square that would be developed with the tower portion of the Project (portions of Lot 277, Assessor’s Block 3706). The Successor Agency would also convey to the Project Sponsor the parcel containing the garage access driveway (Lot 275, Assessor’s Block 3706) from Stevenson Street. In addition, the Project Sponsor would provide \$5 million endowment for the operation of the Mexican Museum, and would contribute an additional affordable housing fee to the Successor Agency equal to 8% of the residential units.

## SITE DESCRIPTION AND PRESENT USE

The Project Site measures 72,181 sq. ft. and is comprised of three separate parcels within Assessor’s Block 3706. Lot 093 is located at the northwest corner of Third and Mission Streets, and is currently developed with the existing 10-story, 144-foot tall Aronson Building. The Aronson Building is designated as a Category I (Significant) Building in Article 11 of the Planning Code, and is located within the New Montgomery-Mission-Second Street Conservation District. The building contains approximately 96,000 sq. ft. of office uses and approximately 10,600 sq. ft. of ground-floor retail uses.

Lot 275 is improved with an existing vehicular access ramp that leads from Stevenson Street into the subterranean Jessie Square Garage. Lot 277 includes the property located between the Aronson Building parcel and Jessie Square, fronting along Mission Street. This property is the location of the proposed tower portion of the Project, and is currently unimproved except for a subsurface foundation structure. Lot 277 also includes the subterranean Jessie Square Garage, which is improved with the Jessie Square public plaza on the surface. The Project would reconfigure and utilize a portion of the Jessie Square garage, which is considered a part of the Project Site. However, the Jessie Square plaza located on the surface of a portion of Lot 277 would not be changed by this Project, and is not considered part of the Project Site.

## SURROUNDING PROPERTIES & NEIGHBORHOOD

The Project Site is situated within the C-3-R Downtown Commercial zoning district, and is within the former Yerba Buena Center Redevelopment Area, a context characterized by intense urban development and a diverse mix of uses. Numerous cultural institutions are clustered in the immediate vicinity, including SFMOMA, the Yerba Buena Center for the Arts, the Museum of the African Diaspora, the Contemporary Jewish Museum, the Cartoon Art Museum, the Children’s Creativity Museum, the California Historical Museum, and others. Multiple hotels and high-rise residential and office buildings are also located in the vicinity, including the W Hotel, the St. Regis Hotel and Residences, the Four Seasons, the Palace Hotel, the Paramount Apartments, One Hawthorne Street, the Westin, the Marriott Marquis, and the Pacific Telephone building. Significant open spaces in the vicinity include Yerba Buena

Gardens to the south, and Jessie Square immediately to the west of the project site. The Moscone Convention Center facilities are located one block to the southwest, and the edge of the Union Square shopping district is situated two blocks northwest of the site. The Financial District is located in the blocks to the northeast and to the north. The western edge of the recently-adopted Transit Center District Plan area is located one-half block to the east at Annie Street.

## ENVIRONMENTAL REVIEW

On June 27, 2012, the Department published a draft Environmental Impact Report (EIR) for public review (Case No. 2008.1084E). The draft EIR was available for public comment until August 13, 2012. On August 2, 2012, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to solicit comments regarding the draft EIR. On March 7, 2013, the Department published a Comments and Responses document, responding to comments made regarding the draft EIR prepared for the Project. On March 21, 2013, the Planning Commission held a duly noticed public hearing and certified the final EIR for the Project.

## HEARING NOTIFICATION REQUIREMENTS

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Classified News Ad	20 days	March 22, 2013	March 22, 2013	20 days
Posted Notice	20 days	March 22, 2013	March 22, 2013	20 days
Mailed Notice	20 days	March 22, 2013	March 22, 2013	20 days

## PUBLIC COMMENT

To date, the Department has not received any specific communications related to the requested entitlements. However, numerous written and verbal comments were provided during the public comment period for the draft EIR prepared for the Project. These comments related to a wide variety of topic areas, and were addressed as part of the Comments and Responses document prepared during the environmental review of the Project.

## ISSUES AND OTHER CONSIDERATIONS

- **Height Reclassification/Special Use District.** The Project proposes to reclassify the property from the 400-I to the 520-I Height and Bulk District, and to establish the “Yerba Buena Center Mixed-Use Special Use District” (SUD) on the property. The proposed SUD would modify specific Planning Code regulations related to permitted uses, the provision of a cultural/museum use within the SUD, floor area ratio limitations, dwelling unit exposure, height of rooftop equipment, bulk limitations, and curb cut locations, as follows:
  - Permitted Uses – The SUD specifies that development within the SUD must include a cultural, museum, or similar public-serving institutional use measuring at least 35,000 sq. ft., no fewer than 162 dwelling units, and ground-floor retail or cultural uses within the Aronson Building.
  - Floor Area Ratio – Section 124 establishes basic floor area ratios (FAR) for all zoning districts. As set forth in Section 124(a), the FAR for the C-3-R District is 6.0 to 1. Under Sections 123 and 128, the FAR can be increased to a maximum of 9.0 to 1 with the purchase of transferable development rights (TDR). The FAR of the Project would exceed the base maximum FAR limit, as well as the

maximum FAR that could be achieved through the purchase of TDR . The proposed SUD would exempt the Project from the FAR limitations of Section 124, and the Project would not require the purchase of TDR.

- Dwelling Unit Exposure – Dwelling units on the south side of the Project would have exposure onto Mission Street, and units within the east side of the Aronson Building would have exposure onto Third Street. However, units that solely have exposure to the Westin walkway to the north, to Jessie Square to the west, and east-facing units within the tower above the 20<sup>th</sup> floor do not meet the requirements for dwelling unit exposure onto on-site open areas. The proposed SUD would exempt the Project from the exposure requirements of Section 140. It should be noted that Jessie Square and the Westin walkway are open spaces that are unlikely to be developed with structures in the future. Therefore, units that face these areas would continue to enjoy access to light and air. Additionally, units in the Tower that face east would have exposure onto the open area above the Aronson Building, as well as the width of Third Street beyond. Therefore, these units would also continue to enjoy access to light and air.
- Rooftop Equipment Height - The Project would reach a height of 520 feet to the roof, with rooftop mechanical structures and screening reaching a maximum height of approximately 550 feet. The Project Sponsor has proposed to reclassify the Project Site from the 400-I Height and Bulk District to the 520-I Height and Bulk District. In addition, the SUD would allow for an additional 30 feet of height above the roof to accommodate mechanical equipment and screening.
- Bulk Limitations - Section 270 establishes bulk controls by district. In the “-I” Bulk District, all portions of the building above a height of 150 feet are limited to a maximum length dimension of 170 feet and a maximum diagonal dimension of 200 feet. Above a height of 150 feet, the maximum horizontal length of the Project is approximately 123 feet, and the maximum diagonal dimension is approximately 158 feet. Therefore, the Project complies with the bulk controls of the “-I” Bulk District. The proposed SUD would further limit the maximum bulk controls to the maximum horizontal and diagonal dimensions proposed for the Project.
- Curb Cuts - Section 155 regulates the design of parking and loading facilities. Section 155(r)(3) specifies that no curb cuts may be permitted on the segment of Mission Street abutting the Project, except through Conditional Use authorization. The SUD proposed for the project would modify the regulations of Section 155 to allow a curb cut on Mission Street through an exception granted through the Section 309 review process, rather than through Conditional Use authorization.
- **Planning Code Exceptions.** The project does not strictly conform to several aspects of the Planning Code. As part of the Section 309 review process, the Commission may grant exceptions from certain requirements of the Planning Code for projects that meet specified criteria. The Project requests exceptions regarding "Rear Yard" (Section 134), "Reduction of Ground-Level Wind Currents in C-3 Districts" (Section 148), "Limitations on Residential Accessory Parking" (Section 151.1), and "General Standards for Off-Street Parking and Loading" to allow curb cuts on Mission and Third Streets (Section 155). Compliance with the specific criteria for each exception is summarized below, and is described in the attached draft Section 309 motion.
- **Rear Yard.** The Planning Code requires that the project provide a rear yard equal to 25 percent of the lot depth at the first level containing a dwelling unit, and at every subsequent level.



Exceptions to the rear yard requirements may be granted if the building location and configuration assure adequate light and air to the residential units and the open space provided. The property fronts on both Mission and Third Streets. Therefore, a complying rear yard would be situated toward the interior of the property, either abutting the Westin walkway or Jessie Square. It is unlikely that these open areas on the adjacent properties would be redeveloped in the foreseeable future. Therefore, adequate light and separation will be provided by the open spaces for residential units within the Project. The Project exceeds the Code requirements for common and private residential open space. In addition, residents would have convenient access to Jessie Plaza, Yerba Buena Gardens, and other large open public open spaces in the vicinity.

- **Ground Level Wind Currents.** The Code requires that new buildings in C-3 Districts must be designed so as to not cause ground-level wind currents to exceed specified comfort levels. When preexisting ambient wind speeds exceed the comfort levels, new buildings must be designed to attenuate ambient wind speeds to meet the specified comfort level. According to the wind analysis prepared for the project, 67 of the 95 test points in the vicinity currently exceed the pedestrian comfort level. Seven of the existing comfort exceedances would be eliminated, and nine new exceedances would be created, for a net increase of two exceedances. An exception under Section 148 (a) is therefore required. An exception to these requirements may be granted if the building cannot be shaped to meet the requirements without creating an ungainly building form and unduly restricting the development potential of the building site.

The Project would result in relatively modest changes in ground-level winds. The average wind speed would increase slightly from 12.6 to 12.7 mph. the average wind speed across all test points (nine mph) would not change appreciably, nor would the amount of time (17 percent) during which winds exceed the applicable criteria. The Project would not create any new exceedances in areas used for public seating. The Project incorporates several design features intended to baffle winds and reduce ground-level wind speeds. The third floor of the museum cantilevers over the on-site open space below, shielding this open space and redirecting some wind flows away from Jessie Square. The exterior of this cantilever includes projecting fins that will capture and diffuse winds before reaching the ground. In addition, the exterior of the museum at the first and second floors is chamfered to avoid localized wind eddies that would result from a typical rectilinear exterior.

- **Residential Accessory Parking.** The Planning Code does not require that residential uses in the C-3-R District provide off-street parking, but allows up to .25 cars per dwelling unit as-of-right. Residential uses may provide up to .75 cars per dwelling unit (or up to one car for each dwelling unit with at least two bedrooms and at 1,000 square feet of floor area), if the Commission makes specific findings that the parking is provided in a space-efficient manner, that the additional parking will not adversely affect pedestrian, bicycle, and transit movement, that the parking will not degrade the quality of the streetscape, and that free carshare memberships will be provided to households in the project.

While the parking is being provided at the maximum possible 1:1 ratio, the relatively small number of 215 off-street parking spaces is not expected to generate substantial traffic that would adversely impact pedestrian, transit, or bicycle movement. Given the proximity of the Project Site to the employment opportunities and retail services of the Downtown Core, it is expected that residents will prioritize walking, bicycle travel, or transit use over private automobile travel. In

addition, the proposed residential spaces are being reallocated from spaces within the existing garage that are currently used for general public parking. Residential uses generally generate fewer daily trips than the uses that are served by the existing public parking. Therefore, the conversion of spaces for residential use would not create new vehicular movement compared with existing conditions.

- **Curb Cuts.** Section 155 regulates the design of parking and loading facilities. Section 155(r)(4) specifies that no curb cuts may be permitted on the segment of Third Street abutting the Project. Within the C-3 Districts, the Planning Commission may grant an exception for this curb cut through the Section 309 Review process. Section 155(r)(3) specifies that no curb cuts may be permitted on the segment of Mission Street abutting the Project, except through Conditional Use authorization. The SUD proposed for the project would modify the regulations of Section 155 to allow a curb cut on Mission Street through an exception granted through the Section 309 review process, rather than through Conditional Use authorization.

Currently, the access for the Jessie Square garage is provided by an ingress/ egress driveway from Stevenson Street, as well as an egress-only driveway that exits onto Mission Street. The Project would retain the Mission Street curb cut, but would relocate it slightly, approximately 2.5 feet to the east. This curb cut would continue its present function to provide egress from the Jessie Street garage, helping to divide vehicular travel between the Stevenson Street and Mission Street driveways.

The Project also proposes to utilize an existing curb cut on Third Street for ingress-only vehicular access for residents. This curb-cut would access a driveway leading to two valet-operated car elevators, which would move vehicles into the Jessie Square garage. This curb cut was previously used to access a loading dock for the Aronson Building. This loading dock would be demolished as part of the Project. The EIR concludes that the Project, including the use of the existing curb-cuts on Third Street and Mission Street, would not result any significant pedestrian impacts, such as overcrowding on public sidewalks or creating potentially hazardous conditions. Given the limitations on the use of the curb cut (for inbound, valet service only), and given that the use of the curb cut would not cause any significant pedestrian impacts, the exception to allow the Project to utilize the Third Street curb cut is appropriate. However, because there could be improvements that might enhance pedestrian comfort and/or provide pedestrian amenities at the project site and in the vicinity, a condition of approval has been added requiring that the Project Sponsor collaborate with the Planning Department, DPW, and SFMTA to conduct a study to assess the existing pedestrian environment on the subject block, and to make recommendations for improvements that could be implemented to enhance pedestrian comfort and provide pedestrian amenities.

- **Shadow Impacts.** Section 295 (also known as Proposition K from 1984) requires that the Planning Commission disapprove any building permit application to construct a structure that will cast shadow on property under the jurisdiction of the Recreation and Park Department, unless it is determined that the shadow would not have an adverse impact on park use. In 1989, the Planning Commission and the Recreation and Park Commission adopted criteria for the implementation of Section 295, which included the adopting of Absolute Cumulative Shadow Limits (ACLs) for certain parks in and around the Downtown core.

A technical memorandum, prepared by Turnstone Consulting, was submitted on June 9, 2011, analyzing the potential shadow impacts of the Project to properties under the jurisdiction of the Recreation and Parks Department (Case No. 2008.1084K). The memorandum concluded that the Project would cast 337,744 sfh of net new shadow on Union Square on a yearly basis, which would be an increase of about 0.09% of the theoretical annual available sunlight ("TAAS") on Union Square.

October 11, 2012, the Planning Commission and the Recreation and Park Commission held a joint public hearing and raised the absolute cumulative shadow limits for seven open spaces under the jurisdiction of the Recreation and Park Department that could be shadowed by likely cumulative development sites in the Transit Center District Plan ("TCDP") Area, including Union Square. As part of this action, the Planning Commission and the Recreation and Park Commission designated the ACLs exclusively for shadows that are anticipated from the development of projects within the TCDP. Because the proposed Project lies outside the TCDP area, the Project requires a separate amendment to the ACL for Union Square.

The impact of the shadow cast by the Project on Union Square would be limited. The new shadow would occur for a limited amount of time during the year, from October 11<sup>th</sup> to November 8<sup>th</sup>, and from February 2<sup>nd</sup> to March 2<sup>nd</sup> for no more than one hour on any given day. The new shadow would not occur after 9:30 a.m. (the maximum new shadow range would be 8:30 a.m. to 9:30 a.m.), and would be consistent with the 1989 Memo qualitative standards for Union Square in that the new net shadow would not occur during mid-day hours. Usage of Union Square is relatively low in the morning hours.

## REQUIRED ACTIONS

In order for the project to proceed, the Commission must 1) Adopt findings under the California Environmental Quality Act, including findings rejecting alternatives as infeasible and adopting a Statement of Overriding Considerations and Mitigation, Monitoring, and Reporting Programs; 2) Adopt Findings of Consistency with the General Plan and Priority Policies of Planning Code Section 101.1; 3) Approved jointly with the Recreation and Park Commission an increase of the absolute cumulative shadow limit for Union Square; 4) Adopt findings that the net new shadow cast by the project on Union Square will not be adverse to the use of the park, and to allocate to the Project the absolute cumulative shadow limit for Union Square; 5) Recommend that the Board of Supervisors approve a Height Reclassification to reclassify the site from the 400-I Height and Bulk District to the 520-I Height and Bulk District; 6) Recommend that the Board of Supervisors approve a Zoning Text Amendment and Zoning Map Amendment to establish the "Yerba Buena Center Mixed-Use Special Use District"(SUD) on the site; and, 7) Approve a Determination of Compliance pursuant to Planning Code Section 309, with requests for exceptions from Planning Code requirements including "Reduction of Ground-Level Wind Currents in C-3 Districts", "Off-Street Parking Quantity", "Rear Yard, and "General Standards for Off-Street Parking and Loading" to allow curb cuts on Third and Mission Streets.

## BASIS FOR RECOMMENDATION

- The Project will add housing opportunities within an intense, walkable urban context.
- The Project will provide space for a permanent home for the Mexican Museum, within a cluster of art museums and cultural institutions, in an area served by abundant existing and planned transit service.

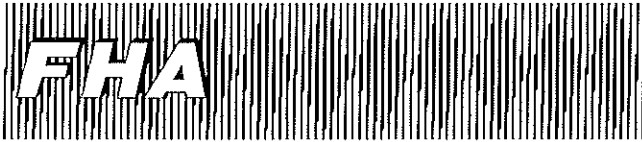
- The Project will contribute to an operating endowment for the Mexican Museum.
- The Project will rehabilitate the existing Aronson Building, which is a Category I (Significant) Building in Article 11 of the Planning Code located within the New Montgomery-Mission-Second Street Conservation District
- The Project would enhance the City's supply of affordable housing by participating in the Inclusionary Affordable Housing Program. The project will also contribute an additional affordable housing fee to the Successor Agency equal to 8% of the residential units.
- Residents of the Project would be able to walk or utilize transit to commute and satisfy convenience needs without reliance on the private automobile. This pedestrian traffic will activate the sidewalks and open space areas in the vicinity.
- The project meets all applicable requirements of the Planning Code, aside from the exceptions requested pursuant to Planning Code Section 309, and the Planning Code provisions that would be modified by the proposed SUD.

<b>RECOMMENDATION:</b> <b>Approval with Conditions</b>
--------------------------------------------------------

**Attachments:**

- Draft CEQA Findings, including Mitigation, Monitoring, and Reporting Program (to be transmitted under separate cover)
- Draft Section 309 Motion
- Draft Section 295 Resolution
- Draft Section 295 Motion
- Draft General Plan Referral Motion
- Draft Resolution for Height Reclassification and Planning Code Text Amendment
  - Including Draft Ordinance
- Shadow Analysis Technical Memorandum
- Residential Pipeline Report
- Term Sheet, excerpt from Exclusive Negotiation Agreement between Project Sponsor and Successor Agency
- Block Book Map
- Aerial Photograph
- Zoning District Map
- Graphics Package from Project Sponsor

# **EXHIBIT 3**



26 April 2013

Mr. Tom Lippe, Esq.  
Lippe Gaffney Wagner LLP  
329 Bryant Street, Suite 3D  
San Francisco, CA 94107

Project: 706 Mission Street

Dear Mr. Lippe,

I have reviewed the draft EIR dated 27 June 2012 and *Chapter IV. Environmental Setting, Impacts and Mitigation F. Noise*. This letter report comprises an analysis critique and example calculations. Pile driving is the focus as the greatest source of noise and vibration.

## **NOISE –**

### **Criteria -**

Impact Evaluation on page IV.F.19, item NO-1 states "less than significant with mitigation". The following is stated in the 2<sup>nd</sup> paragraph on page IV.F.21:

*"However, **as long as** construction activities that would occur as part of the proposed project **comply with the Noise Ordinance** and feasible mitigation measures to reduce noise levels at sensitive receptor locations are implemented, construction noise impacts would be **reduced to less-than-significant** levels and be consistent with all applicable construction noise standards established in the Noise Ordinance (Article 29 of the Police Code)."*

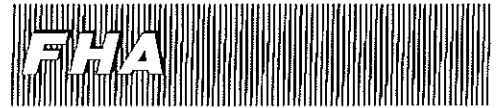
Note this merely states the obvious that if there is compliance with the Noise Ordinance, then the impact is less than significant. "Feasible mitigation measures" is vague and ambiguous. It seems likely there will be some cases where the Noise Ordinance will be exceeded even with mitigation. This is not stated.

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In Chapter IV.F. page 15 the San Francisco Noise Ordinance Section 2907 Construction Equipment is cited as:

“...limits noise levels from construction equipment as specified under the ordinance to 80 dBA Leq at 100 feet...”

On the following page 16 Section 2909 is cited as:

*“Section 2909 also states in subsection (d) that no fixed (**permanent**) noise source (as defined by the Noise Ordinance)...”*

The Noise Ordinance Section 2901 Definitions (e) states:

*“Fixed source” means a machine or device capable of creating a noise level at the property upon which it is **regularly located**...”*

The word “permanent” is not used in this definition given by the Noise Ordinance and only appears in the EIR. It falsely implies the wording is from Section 2909. Due to the length of time pile driving will occur it may be considered “regularly located”. In that case, the daytime limit would be **55 dBA** for residential property as per Section 2909.

It is stated on page IV.F.20 that pile driving could be as loud as 95 dBA at 100 feet. That implies 15 dBA of feasible mitigation would be needed to comply with San Francisco Noise Ordinance Section 2907 for Construction Equipment.

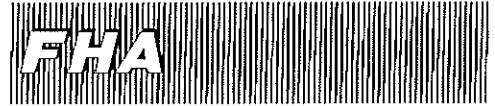
Direct comparison to these criteria above are not given in the EIR analyses.

#### **Analyses -**

In Chapter IV.F. page 22 Mitigation Measure M-NO-1a discussed giving notice for anticipated noise levels of 90 dBA, or greater. However, this is not fully defined as no distance is given. This needs to be clarified before it can be analyzed meaningfully and put into context.

A table of sensitive receptors, distances, and predicted interior noise levels both **with and without** mitigation is needed. The following sample calculations demonstrate what is missing in the draft EIR.

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The following calculation uses the 101 dBA typical pile driving source level from Table IV.F.5 on page 20 and predicts interior noise impact at the Four Seasons Hotel at an approximate 300 feet distance. The parameters are attenuation over distance and window Transmission Loss. The attenuation value is given by fundamental physics. The window is assumed to be closed with mechanical ventilation. The Transmission Loss is an estimate based on typical exterior glazing. These attenuation and transmission loss parameters are not studied in the EIR. The result is at the Noise Ordinance interior residential limit. Buildings that are closer would clearly require mitigation.

<b>Four Seasons Hotel</b>				
pile driving	101	dB	at	50 feet
distance attenuation	-16	dB	over	300 feet
window Transmission Loss				
Loss	-30	dB		
interior	55	dB		

The next calculation has assumed non-operable window Transmission Loss and distance attenuation (similar to the Four Seasons Hotel example above), but now taken at 90 feet for the Paramount Residences.

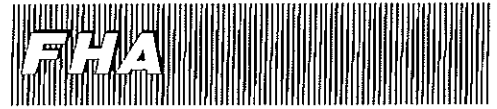
<b>Paramount Residences</b>				
pile driving	101	dB	at	50 feet
distance attenuation	-5	dB	over	90 feet
window Transmission Loss	-30	dB		
interior	66	dB		

The next example calculation adds a shroud on the pile driver as a mitigation. The shroud value of 10 dB is a rough estimate of the insertion loss. The EIR should state anticipated dB values for shrouds and all other potential mitigations.

<b>Paramount Residences WITH mitigation</b>				
pile driving	101	dB	at	50 feet
shroud	-10	dB		
distance attenuation	-5	dB	over	90 feet
window Transmission Loss	-30	dB		
interior	56	dB		

The following example is at the closest distance cited in the EIR - 40 feet. Again a





shroud is used, but still results in 8 dBA over the 55 dBA interior residential limit.

**Westin Hotel WITH mitigation**

pile driving	101	dB at	50	feet
shroud	-10	dB		
distance attenuation	2	dB over	40	feet
window Transmission Loss	-30	dB		
interior	63	dB		

Operable windows are frequently assumed to have 15 dB Transmission Loss due to relatively small window area compared to the total wall area. Note that in all four of the example calculations above if operable windows are used the results would be a nominal 15 dBA louder.

## Vibration -

Paragraph 4 on page IV.F.23 states:

*“impact activities” (such as demolition and impact pile driving, if needed) within the project site could produce detectable vibration within nearby buildings, which could cause human annoyance and result in significant impacts unless proper mitigation is implemented.”*

While “proper mitigation” is needed, it is never stated that “proper” is even possible. It may be that proper mitigation includes giving 14 days notice.

Table IV.F.6 on page 24 does show the results of calculations for vibration impact to various receptors without mitigation. They are just a fraction of a dB below the “threshold for potential annoyance” for “Other Off-site Buildings”. It is unrealistic to assume three significant digits (79.6 VdB) of accuracy in the model to conveniently be less than the 80 VdB limit. Buildings that are closer will suffer annoyance and/or potential damage. Mitigation includes a community liaison to address complaints. However, this does not discuss if true mitigation will actually reduce impact to less than significant. Similar predictions with mitigation are needed.

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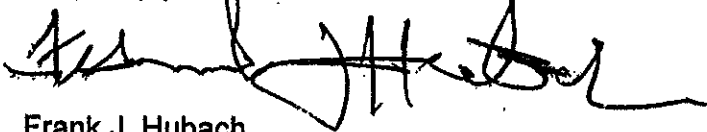
### **MITIGATION -**

There have been several mitigation techniques implied e.g. shrouds, pre-drilling, etc. It is also stated that these are to be employed "if feasible". There needs to be a technical comment in terms of the decibel benefit of each of these mitigations. Feasibility needs to be expanded to demonstrate the probability of any of the mitigations to actually be of benefit. If none of the mitigation techniques in application for this project is feasible, then there is no mitigation.

### **SUMMARY -**

The full magnitude of the noise and vibration impact has been implied, but not fully disclosed and documented with calculations. The data show the predicted noise and vibration are both right at the limit at 300 feet distance. Mitigation of both noise and vibration will be needed, but perhaps there are locations where that may not be enough. There is a need to present in greater detail some of the mitigation techniques described and assure with calculations that noise and vibration will be less than the limits given.

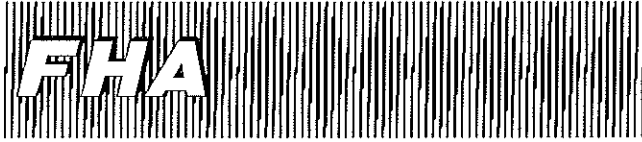
Very truly yours,



Frank J. Hubach  
President

FJH:fjh

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## Frank J. Hubach - Expert Witness Experience

- 2007 Bendahan v. Dovichi, Superior Court, Sacramento County. Residential noise nuisance case. Conducted acoustical tests of air-conditioning equipment at residence as related to noise code and advised counsel. (case settled)
- 2007 500 Bryant Street HOA v. 500 Bryant Street Partners, Superior Court, San Francisco County. Conducted acoustical tests in condominiums and analyzed data related to traffic noise control and California Building Code. Made recommendations to counsel and participated in Joint Expert Meeting. (case pending)
- 2007 Paseo Plaza Homeowners' Assoc. v. SFC Block 4 Residential Associates, et al, Superior Court, Santa Clara County. Reviewed acoustical tests, construction documents and depositions of other experts. Gave deposition related to urban noise control for condominiums and California Building Code. (case settled)
- 2006 Smolich v. Meritage Homes and Sierra Pacific Industries v. Meritage Homes, Superior Court, Placer County. Reviewed test reports and conducted acoustical test related to City of Lincoln Conditions of Use for industrial noise and residential subdivision adjacency. Conducted noise mitigation analyses and offered design solutions. Provided extensive consultation to counsel and participated in acousticians meeting. (case pending)
- 2006 Lyle v. Bogavich, Superior Court, Sacramento County. Residential noise nuisance case. Conducted acoustical tests of wood working tools at residence as related to noise code.
- 2003 Seagate Technology LLC and CH2M Hill Industrial Design Corporation and Tasso Katselas Associates, Pittsburgh, PA. Reviewed construction documents, test reports and design reports relative to excessive vibration, structural dynamics and mechanical equipment vibration control for sensitive electronics cleanroom. Supervised independent design analyses using Finite Element Analyses. Provided consultation to counsel regarding industry standards, design criteria and procedures, and potential for mitigation.
- 2001 Retained by counsel for pre-filing investigation. Conducted acoustical tests of interior noise at residence in San Jose, California. Civil case regarding construction deficiency and noise code.
- 2001 Retained by counsel for pre-filing investigation. Conducted acoustical tests of interior noise at residence in Oakland, California. Civil case regarding mechanical equipment noise control and industry standards.

**Frank Hubach Associates, Inc**

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Frank J. Hubach  
Expert Witness Experience



- 2000 OC America Construction, Inc. v. KCH Services, Inc., Superior Court, State of Washington. Reviewed acoustical tests, construction documents and depositions. Gave deposition in arbitration proceedings for construction litigation regarding specifications for noise control of large industrial exhaust systems.
- 1999 Kidd v. City of Fairfield, et al, United States District Court, Eastern District of California. Reviewed depositions and investigated crime site regarding speech intelligibility during incident. Provided consultation to counsel.
- 1997 Orlando v. Robbins, Superior Court, San Francisco County. Conducted acoustical tests in apartment and analyzed data related to noise ordinance. Consulted with counsel before and during deposition of acoustical expert.
- 1993 Lakeside v. State of California, Superior Court, Alameda County. Conducted acoustical tests regarding noise impact to residences from proposed CalTrans freeway construction. Gave deposition.
- 1991 Retained as expert in Municipal Court, San Francisco. Conducted acoustical tests and testified in Civil case regarding nightclub noise and noise ordinance.
- 1989 Retained as expert in Municipal Court, Berkeley, CA. Conducted acoustical tests. Civil case regarding acoustical privacy, neighbor's noise and noise ordinance.
- 1983, 1987 Retained as expert by Alameda County Public Defender. Conducted acoustical tests at crime scene. Criminal case regarding speech intelligibility at crime scene.
- 1986 Retained as expert in Superior Court, Marin County. Criminal case regarding acoustical privacy and intelligibility in courtroom between counsel and handcuffed client in murder case (shackles motion). Advised counsel regarding acoustical standards and test methodologies.
- 1984 Stephens v. Stephens, Superior Court, Marin County. Conducted acoustical tests at crime scene. Criminal case regarding speech intelligibility at crime scene.
- 1982 "Wrongful Death Case" v. Richmond Police ("Richmond Cowboys"), Federal Court, San Francisco. Retained as expert in high profile case. Conducted objective and subjective acoustical tests and recreated crime scene. Provided extensive court room testimony regarding speech intelligibility at crime scene.

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## RESUME



## FRANK J. HUBACH

Frank J. Hubach, President of FHA, has over twenty years experience in noise and vibration control for advanced technology, industrial and commercial projects. Design and testing of facilities where micro-vibration is of great concern for metrology and lithography has been his focus. Projects range from comprehensive campus master planning to remodeling in the private, public and institutional sectors. Structural dynamics and mechanical systems for cleanrooms and laboratories have been the specialty. His musical and audio engineering background also makes him well suited for acoustic design of critical listening rooms for recording, broadcast and performance.

Mr. Hubach has over thirty years experience in construction, electronics and audio engineering. He is considered a leading authority on noise and vibration control for microelectronics manufacturing. Mr. Hubach has published several papers and been a speaker at numerous conferences and seminars. He has given expert witness testimony in state and federal courts for acoustic forensics, noise control and construction.

### EDUCATION

1971 Bachelor of Engineering  
Electrical Engineering

New York University  
Bronx, NY

1970 to 1972 Coursework  
Graduate Studies in Acoustics and  
Electronics

New York University  
Bronx, NY

### PROFESSIONAL HISTORY

1984 to Present  
President

Frank Hubach Associates, Inc.  
Richmond, CA

1978 to 1984  
Associate/V.P./Treas./President

Acoustical Consultants, Inc.  
San Francisco, CA

1975 to 1978  
President/Owner/Audio Engineer

Pacific Application Systems  
Mill Valley, CA

1974 to 1975  
V.P./Commercial Contractors

American Wall Systems, Inc.  
Middletown, NY

1971 to 1974  
Recording Engineer

Record Plant Recording/Freelance  
New York, NY

## SEMINARS/PAPERS



### SEMINARS (contributing speaker)

#### UNIVERSITY OF WISCONSIN

"Controlling Vibration in Microelectronic Manufacturing Facilities" - 1989 and 1990

#### UNIVERSITY OF GLASGOW

"Design of Vibration Free Environments for Precision Manufacturing" - 1986

### PAPERS

Advanced Techniques for Controlling Building Vibration. 1993 CleanRooms West Convention Conference in Santa Clara, CA, September 1993.

Hubach, Frank J. and Edwards, Bob, Empirical Determination of Sound Isolation Requirements for Recording Studio Isolation Booths. 93rd Audio Engineering Society (AES) Convention in San Francisco, CA, October 1992.

Controlling Horizontal Microscale Vibration in Building Floor Entablatures. 1991 Symposium on Optical Science and Engineering (for SPIE) in San Jose, CA, October 1991.

Vibration Attenuation in Soil. National Conference on Noise Control Engineering (for INCE) in Tarrytown, NY, July 1991.

Neal, Stephen R.W. and Hubach, Frank J., Historic Artwork Preservation and Vibration Mitigation During Building Renovation. National Conference on Noise Control Engineering (for INCE) in Tarrytown, NY, July 1991.

# **EXHIBIT 4**

## San Francisco Police Code

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**ARTICLE 29:  
REGULATION OF NOISE**

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- Sec. 2900. Declaration of Policy.
- Sec. 2901. Definitions.
- Sec. 2902. Noise Level Measurement.
- Sec. 2904. Waste Disposal Services.
- Sec. 2905. Vehicles and Nonstationary Source Repairs.
- Sec. 2907. Construction Equipment.
- Sec. 2908. Construction Work at Night.
- Sec. 2909. Noise Limits.
- Sec. 2910. Variances.
- Sec. 2912. Additional Responsibilities of the Department of Public Health and the Department of Building Inspection.
- Sec. 2913. Use of Amplified Sound on Unenclosed Tour Buses.
- Sec. 2916. Enforcement.
- Sec. 2917. Violations.
- Sec. 2918. City Agency Noise Task Force.
- Sec. 2920. Authority to Adopt Rules and Regulations.
- Sec. 2922. Preemption.
- Sec. 2924. City Undertaking Limited to Promotion of General Welfare.
- Sec. 2926. Severability.

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**SEC. 2900. DECLARATION OF POLICY.**

- (a) Building on decades of scientific research, the World Health Organization and the U.S.



Environmental Protection Agency have determined that persistent exposure to elevated levels of community noise is responsible for public health problems including, but not limited to: compromised speech, persistent annoyance, sleep disturbance, physiological and psychological stress, heart disease, high blood pressure, colitis, ulcers, depression, and feelings of helplessness.

(b) The General Plan for San Francisco identifies noise as a serious environmental pollutant that must be managed and mitigated through the planning and development process. But given our dense urban environment. San Francisco has a significant challenge in protecting public health from the adverse effects of community noise arising from diverse sources such as transportation, construction, mechanical equipment, entertainment, and human and animal behavior.

(c) In order to protect public health, it is hereby declared to be the policy of San Francisco to prohibit unwanted, excessive, and avoidable noise. It shall be the policy of San Francisco to maintain noise levels in areas with existing healthful and acceptable levels of noise and to reduce noise levels, through all practicable means, in those areas of San Francisco where noise levels are above acceptable levels as defined by the World Health Organization's Guidelines on Community Noise.

(d) It shall be the goal of the noise task force described in this Article to determine if there are additional adverse and avoidable noise sources not covered in this statute that warrant regulation and to report to the Board of Supervisors and recommend amendments to this Article over the next three years. In addition, the noise task force shall develop interdepartmental mechanisms for the efficient disposition and any enforcement required in response to noise complaints.

(Added by Ord. 274-72, App. 9/20/72; Ord. 278-08, File No. 081119, App. 11/25/2008)

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## **SEC. 2901. DEFINITIONS.**

(a) "Ambient" means the lowest sound level repeating itself during a minimum ten-minute period as measured with a type 1, precision sound level meter, using slow response and "A " weighting. The minimum sound level shall be determined with the noise source at issue silent, and in the same location as the measurement of the noise level of the source or sources at issue. However, for purposes of this chapter, in no case shall the ambient be considered or determined to be less than: (1) Thirty-five dBA for interior residential noise, and (2) Forty-five dBA in all other locations. If a significant portion of the ambient is produced by one or more individual identifiable sources of noise that contribute cumulatively to the sound level and may be operating continuously during the minimum ten-minute measurement period, determination of the ambient shall be accomplished with these separate identifiable noise sources silent or otherwise removed or subtracted from the measured ambient sound level.

(b) "Director" means the Director or department head of any City department having administrative or enforcement responsibilities under this Article or any other provision of the Municipal Code regarding noise control, as well as his or her designee.

(c) "Dwelling Unit" means

(1) a dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living and sleeping;

(2) a room in group housing, even if such room lacks private cooking facilities and private plumbing facilities, such as rooms in senior citizen housing, single room occupancy or residential hotels, dorms, hostels, or shelters; or,

(3) a housekeeping room as defined in the Housing Code.

(d) "Emergency work" means work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger or work by private or public utilities when restoring utility service. This term shall not include testing of emergency equipment.

(e) "Fixed source" means a machine or device capable of creating a noise level at the property upon which it is regularly located, including but not limited to: industrial and commercial process machinery and equipment, pumps, fans, air-conditioning apparatus or refrigeration machines.

(f) "Low frequency ambient" means the lowest sound level repeating itself during a ten-minute period as measured with a sound level meter, using slow response and "C" weighting. The minimum sound level shall be determined with the music or entertainment noise source at issue silent, and in the same location as the measurement of the noise level of the source or sources at issue. However, for purposes of this chapter, in no case shall the local ambient be considered or determined to be less than: (1) Forty-five dBC for interior residential noise, and (2) Fifty-five dBC in all other locations. If a significant portion of the ambient is produced by one or more individual identifiable sources that would otherwise be operating continuously during the minimum ten-minute measurement period, determination of the low-frequency ambient shall be accomplished with these separate identifiable noise sources silent or otherwise removed or subtracted from the measured ambient sound.

(g) "Noise level" means the maximum continuous sound level or repetitive peak sound level, produced by a source or group of sources as measured with a sound level meter. In order to measure a noise level, the controls of the sound level meter should be arranged to the setting appropriate to the type of noise being measured. For example, the settings should be slow response for continuous noise sources and fast response for noises with rapid onset and decline.

(h) "Person" means a person, firm, association, copartnership, joint venture, corporation, or any entity, public or private in nature, but shall not include the City and County of San Francisco.

(i) "Place of Entertainment" has the same meaning as the term is defined in San Francisco Police Code Section 1060.

(j) "Powered construction equipment" means any tools, machinery, or equipment used in connection with construction operations which can be driven by energy in any form other than manpower, including all types of motor vehicles when used in the construction process of any construction site, regardless of whether such construction site be located on-highway or off-highway, and further including all helicopters or other aircraft when used in the construction process except as may be preempted for regulation by State or Federal law.

(k) "Property plane" means a vertical plane including the property line that determines the property boundaries in space.

(l) "Public Property " means property leased or owned by a governmental entity, to which the public or a substantial group of persons has access, including but not limited to any street, highway, parking lot, plaza, transportation facility, school, place of amusement, park, or playground located within the City and County of San Francisco.

(m) "Residential Property" means any property that has at least one dwelling unit and has been

approved for human habitation by the City and County of San Francisco.

(n) "Sound level," expressed in decibels (dB), means a logarithmic indication of the ratio between the acoustic energy present at a given location and the lowest amount of acoustic energy audible to sensitive human ears and weighted by frequency to account for characteristics of human hearing, as given in the American National Standards Institute Standard S1.1, "Acoustic Terminology," paragraph 2.9, or successor reference. All references to dB in this chapter refer to the A-level or C-level weighting scale, abbreviated dBA or dBC, measured as set forth in this section.

(o) "Limited Live Performance Locale" has the same meaning as the term is defined in San Francisco Police Code Section 1060.

(Amended by Ord. 309-73, App. 8/10/73; Ord. 278-08, File No. 081119, App. 11/25/2008; Ord. [172-11](#), File No. 110506, App. 9/12/2011, Eff. 10/12/2011; Ord. [100-12](#), File No. 120405, App. 6/8/2012, Eff. 7/8/2012)

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## **SECS. 2901.1-2901.14. RESERVED.**

(Repealed by Ord. 278-08, File No. 081119, App. 11/25/2008)

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## **SEC. 2902. NOISE LEVEL MEASUREMENT.**

A person measuring the outside noise level shall take measurements with the microphone not less than four feet above the ground, at least four and one-half feet distant from walls or similar large reflecting surfaces, and protected from the effects of wind noises and other extraneous sounds by the use of appropriate windscreens. A person measuring the inside noise level measurements shall take measurements with the microphone at least three feet distant from any wall, and the average measurement of at least three microphone positions throughout the room shall be used to determine the inside noise level measurement.

(Added by Ord. 274-72, App. 9/20/72; Ord. 278-08, File No. 081119, App. 11/25/2008)

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## **SEC. 2903. RESERVED.**

(Added by Ord. 274-72, App. 9/20/72; repealed by Ord. 278-08, File No. 081119, App. 11/25/2008)

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## **SEC. 2904. WASTE DISPOSAL SERVICES.**

It shall be unlawful for any person authorized to engage in waste removal, collection, or disposal services or recycling removal or collection services to provide such services so as to create an unnecessary amount of noise, in the judgment of the Director of Public Health. For the purpose of this Section, noise emitted by equipment shall not be deemed unnecessary or without justification if the person engaged in such services hast to the extent the Director of Public Health has Judged reasonably feasible, incorporated available sound-deadening devices into equipment used in rendering those services.

Notwithstanding the foregoing, it shall be unlawful for any person authorized to engage in waste removal, collection, or disposal services, or recycling removal or garbage-collection services to operate hydraulic compaction or mechanical processing systems on any truck-mounted waste, recycling, or

garbage loading and/or compacting equipment or similar mechanical device so as to create mechanical or hydraulic noise exceeding 75 dBA when measured at a distance of 50 feet from the equipments. This maximum noise level does not apply to the noise associated with crushing, impacting, dropping, or moving garbage on the truck, but only to the truck's mechanical processing system. All other waste disposal or collection noises are subject to the Director of Public Health's judgment as described in this Section.

(Added by Ord. 274-72, App. 9/20/72; Ord. 278-08, File No. 081119, App. 11/25/2008)

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## **SEC. 2905. VEHICLE AND NONSTATIONARY SOURCE REPAIRS.**

It shall be unlawful for any person within any residential area of the City and County to repair, rebuild, or test any motor vehicle or nonstationary source in such a manner as to cause unnecessary, excessive or offensive noise.

(Added by Ord. 274-72, App. 9/20/72)

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## **SEC. 2906. RESERVED.**

(Added by Ord. 274-72, App. 9/20/72; repealed by Ord. 278-08, File No. 081119, App. 11/25/2008)

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## **SEC. 2907. CONSTRUCTION EQUIPMENT.**

(a) Except as provided in Subsections (b), (c), and (d) hereof, it shall be unlawful for any person to operate any powered construction equipment if the operation of such equipment emits noise at a level in excess of 80 dBA when measured at a distance of 100 feet from such equipment, or an equivalent sound level at some other convenient distance.

(b) The provisions of Subsections (a) of this Section shall not be applicable to impact tools and equipment, provided that such impact tools and equipment shall have intake and exhaust mufflers recommended by the manufacturers thereof and approved by the Director of Public Works or the Director of Building Inspection as best accomplishing maximum noise attenuation, and that pavement breakers and jackhammers shall also be equipped with acoustically attenuating shields or shrouds recommended by the manufacturers thereof and approved by the Director of Public Works or the Director of Building Inspection as best accomplishing maximum noise attenuation.

(c) The provisions of Subsection (a) of this Section shall not be applicable to construction equipment used in connection with emergency work.

(d) Helicopters shall not be used for construction purposes for more than two hours in any single day or more than four hours in any single week.

(Amended by Ord. 309-73, App. 8/10/73; Ord. 278-08, File No. 081119, App. 11/25/2008)

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## **SEC. 2908. CONSTRUCTION WORK AT NIGHT.**

It shall be unlawful for any person, between the hours of 8:00 p.m. of any day and 7:00 a.m. of the following day to erect, construct, demolish, excavate for, alter or repair any building or structure if the noise level created thereby is in excess of the ambient noise level by 5 dBA at the nearest property plane, unless a special permit therefor has been applied for and granted by the Director of Public Works or the Director of Building Inspection. In granting such special permit the Director of Public Works or the Director of Building Inspection shall consider: if construction noise in the vicinity of the proposed work site would be less objectionable at night than during daytime because of different population levels or different neighboring activities if obstruction and interference with traffic, particularly on streets of major importance, would be less objectionable at night than during daytime; if the kind of work to be performed emits noises at such a low level as to not cause significant disturbance in the vicinity of the work site, if the neighborhood of the proposed work site is primarily residential in character wherein sleep could be disturbed: if great economic hardship would occur if the work were spread over a longer time if the work will abate or prevent hazard to life or property; and if the proposed night work is in the general public interest. The Director of Public Works or the Director of Building Inspection shall prescribe such conditions, working times, types of construction equipment to be used, and permissible noise emissions, as required in the public interest.

The provisions of this Section shall not be applicable to emergency work.

(Added by Ord. 274-72, App. 9/20/72; Ord. 278-08, File No. 081119, App. 11/25/2008)

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## **SEC. 2909. NOISE LIMITS.**

### **(a) Residential Property Noise Limits.**

(1) No person shall produce or allow to be produced by any machine, or device, music or entertainment or any combination of same, on residential property over which the person has ownership or control, a noise level more than five dBA above the ambient at any point outside of the property plane.

(2) No person shall produce or allow to be produced by any machine, or device, music or entertainment or any combination of same, on multi-unit residential property over which the person has ownership or control, a noise level more than five dBA above the local ambient three feet from any wall, floor, or ceiling inside any dwelling unit on the same property, when the windows and doors of the dwelling unit are closed, except within the dwelling unit in which the noise source or sources may be located.

**(b) Commercial And Industrial Property Noise Limits.** No person shall produce or allow to be produced by any machine or device, music or entertainment or any combination of same, on commercial or industrial property over which the person has ownership or control, a noise level more than eight dBA above the local ambient at any point outside of the property plane. With respect to noise generated from a licensed Place of Entertainment or licensed Limited Live Performance Locale, in addition to the above dBA criteria a secondary low frequency dBC criteria shall apply to the definition above. No noise or music associated with a licensed Place of Entertainment or licensed Limited Live Performance Locale shall exceed the low frequency ambient noise level defined in Section 2901(f) by more than 8 dBC.

**(c) Public Property Noise Limits.** No person shall produce or allow to be produced by any machine or device, or any combination of same, on public property, a noise level more than ten dBA above the local ambient at a distance of twenty-five feet or more, unless the machine or device is being

operated to serve or maintain the property or as otherwise provided in this Article.

(d) **Fixed Residential Interior Noise Limits.** In order to prevent sleep disturbance, protect public health and prevent the acoustical environment from progressive deterioration due to the increasing use and influence of mechanical equipment, no fixed noise source may cause the noise level measured inside any sleeping or living room in any dwelling unit located on residential property to exceed 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. or 55 dBA between the hours of 7:00 a.m. to 10:00p.m. with windows open except where building ventilation is achieved through mechanical systems that allow windows to remain closed.

(e) **Noise Caused By Activities Subject To Permits From the City and County of San Francisco.** None of the noise limits set forth in this Section apply to activity for which the City and County of San Francisco has issued a permit that contains noise limit provisions that are different from those set forth in this Article.

(Added by Ord. 274-72, App. 9/20/72; amended by Ord. 278-08, File No. 081119, App. 11/25/2008; Ord. [172-11](#), File No. 110506, App. 9/12/2011, Eff. 10/12/2011)

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## **SEC. 2910. VARIANCES.**

The Directors of Public Health, Public Works, Building Inspection, or the Entertainment Commission, or the Chief of Police may grant variances to noise regulations, over which they have jurisdiction pursuant to Section 2916. All administrative decisions granting or denying variances are appealable to the San Francisco Board of Appeals.

(Added by Ord. 274-72, App. 9/20/72; Ord. 278-08, File No. 081119, App. 11/25/2008)

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## **SEC. 2911. RESERVED.**

(Added by Ord. 274-72, App. 9/20/72; repealed by Ord. 278-08, File No. 081119, App. 11/25/2008)

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## **SEC. 2912. ADDITIONAL RESPONSIBILITIES OF THE DEPARTMENT OF PUBLIC HEALTH AND THE DEPARTMENT OF BUILDING INSPECTION.**

(a) The Department of Public Health shall designate a Noise Prevention and Control Officer to coordinate the responsibilities of the Department of Public Health under this Article and the Health Code with respect to noise.

(b) The Department of Public Health may monitor the noise complaint response by all City agencies charged with regulating noise under this Article. City Departments and Agencies charged with responsibility for responding to noise complaints shall cooperate and share information with the Department of Public Health in tracking and monitoring complaint responses.

(c) At least every two years the Department of Public Health shall make recommendations to the Planning Commission for noise assessment and prevention in land use planning or environmental review.

(d) The Department of Public Health may investigate and take enforcement action on any noise complaint resulting in human health impacts. The Director of the Department of Public Health shall be the sole determiner of what constitutes a human health impact with respect to noise.

(e) The Department of Building Inspection shall send acoustical reports submitted with each building permit to the Department of Public Health within 15 days of the date the building permit applicant submits the acoustical report to the Department of Building Inspection.

(Added by Ord. 274-72, App. 9/20/72; Ord. 278-08, File No. 081119, App. 11/25/2008)

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## **SEC. 2913. USE OF AMPLIFIED SOUND ON UNENCLOSED TOUR BUSES.**

(a) For purposes of this Section, "Unenclosed Tour Bus" shall mean a privately-owned passenger vehicle for hire with a capacity of nine or more passengers, including the driver, that:

(1) is used primarily for the conveyance of passengers over the public streets, for the purpose of visiting or viewing places of interest; and

(2) lacks either a permanently attached solid roof covering all seating areas of the vehicle or permanently attached side panels, which with any doors or windows closed, fully enclose the sides of the vehicle.

(b) Effective October 1, 2012, it shall be a violation of this Section for any Person to operate an Unenclosed Tour Bus using electronically amplified sound to communicate with passengers without having received authorization from the Director of the Department of Public Health or his or her designee ("Director of Public Health") that the sound system is in compliance with the requirements of this Section.

(c) The Director of Public Health may approve the electronically amplified sound system on an Unenclosed Tour Bus and issue a Certificate of Authorization to Operate Electronically Amplified Sound on Unenclosed Tour Buses ("Certificate") where the Director of Public Health determines that either:

(1) At maximum volume and without modification, the sound system is not audible at a distance of 50 or more feet outside the vehicle with the vehicle windows open and any operable or removable roof or side panels opened or removed; or

(2) The sound system includes volume limiting technology, which in its default mode prevents the sound system from being heard at a distance of 50 or more feet outside the vehicle. Such a system may include an override mode for use in emergencies.

(d) Following a hearing, the Director of Public Health may suspend or revoke a Certificate for any violation of this Section. The Director of Public Health may base such action on 1) the Director of Public Health's determination that the Certificate holder has violated this Section; or 2) a citation from the San Francisco Police Department for any violation of this Section or California Vehicle Code Section 27007, or any successor provisions. A Certificate holder may appeal the suspension or revocation of a Certificate to the Board of Appeals.

(e) The Owner or Operator of the Unenclosed Tour Bus shall post the Certificate in a clearly visible location on the exterior of the vehicle.

(f) The Director of Public Health shall review the compliance history of each approved Unenclosed Tour Bus and reinspect the Unenclosed Tour Bus annually, and upon any change in ownership, and if found in compliance with this Section and any implementing regulations, the Director of Public Health may reissue the Certificate.

(g) The Director of Public Health shall report to the Board of Supervisors one year from the effective date of this ordinance and every two years thereafter:

(1) the number of Certificates issued to Unenclosed Tour Buses;

(2) the number of complaints received by the Director of Public Health regarding Unenclosed Tour Buses; and

(3) the effectiveness of the Department of Public Health's program to regulate amplified sound from Unenclosed Tour Buses and any suggested changes to the program.

(h) Decisions by the Director of Public Health regarding the issuance or reissuance of Certificates may be appealed to the Board of Appeals.

(i) The fee for the initial application to obtain a Certificate and for each yearly renewal shall be \$394, payable to the Director of Public Health. The initial application fee shall be due at the time of application. The annual fee to renew the Certificate shall be due on July 1.

Beginning with fiscal year 2013-2014, fees set forth in this Section may be adjusted each year, without further action by the Board of Supervisors, as set forth in this Section.

Not later than April 1, the Director of Public Health shall report to the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as well as any other information that the Controller determines appropriate to the performance of the duties set forth in this Section.

Not later than May 15, the Controller shall determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of providing the services for which the fees are assessed and that the fees will not produce revenue that is significantly more than the costs of providing the services for which the fees are assessed.

The Controller shall, if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operation without producing revenue which is significantly more than such costs. The adjusted rates shall become operative on July 1.

(j) The requirements of this Section shall not apply to an Unenclosed Tour Bus equipped with and using electronically amplified sound to communicate with passengers where all non-emergency communications through the system are audible to passengers only through technology designed to make such communications audible only to the individual listener, such as individual headsets or headphones.

(k) The noise standards set forth in Section 2909 shall not apply to Unenclosed Tour Buses.



(Added by Ord. [100-12](#), File No. 120405, App. 6/8/2012, Eff. 7/8/2012)

(Former Sec. 2913 repealed by Ord. 278-08, File No. 081119, App. 11/25/2008)

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## SECS. 2914-2915. RESERVED.

(Repealed by Ord. 278-08, File No. 081119, App. 11/25/2008)

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## SEC. 2916. ENFORCEMENT.

The Director of Public Health may enforce the provisions of Section 2904, 2909, and 2912 of this Article.

The Department of Building Inspection may enforce the provisions of Sections 2907 and 2908 of this Article insofar as said provisions relate to construction operations conducted on private property under appropriate permits issued pursuant to the San Francisco Building Code, Housing Code, Electrical Code and Plumbing Code. Insofar as these provisions relate to construction operations conducted on publicly-owned property subject to the police power of the City and County of San Francisco, the Department of Public Works may enforce the provisions of Sections 2907 and 2908 of this Article. The Executive Director of the Entertainment Commission may enforce noise standards associated with licensed Places of Entertainment and licensed Limited Live Performance Locales.

The Chief of Police or his or her designee ("Chief of Police") shall also enforce the provisions of Section 2913. The Chief of Police shall make law enforcement activities related to Unenclosed Tour Buses under Section 2913 a priority for one year after the effective date of the ordinance enacting that Section.

The Chief of Police may enforce the provisions of this Article that relate to noise created by humans or any other noise source not specifically assigned or designated to another Department or Agency.

(Added by Ord. 274-72, App. 9/20/72; amended by Ord. 278-08, File No. 081119, App. 11/25/2008; Ord. [172-11](#), File No. 110506, App. 9/12/2011, Eff. 10/12/2011; Ord. [100-12](#), File No. 120405, App. 6/8/2012, Eff. 7/8/2012)

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## SEC. 2917. VIOLATIONS.

(a) **Criminal Penalties.** Any person violating any of the provisions of this Article shall be deemed guilty of an infraction and upon conviction thereof, shall be fined in an amount not exceeding (1) \$100 for a first violation of this Article; (2) \$200 for a second violation of this Article; and (3) up to \$300 for each additional violation of this Article within one year of the date of a second or subsequent violation. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(b) **Administrative Penalties.** Administrative penalties shall be assessed and collected by the Departments specified in Section 2916 in accordance with San Francisco Administrative Code Chapter 100.

(Added by Ord. 274-72, App. 9/20/72; Ord. 278-08, File No. 081119, App. 11/25/2008)

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## SEC. 2918. CITY AGENCY NOISE TASK FORCE.

(a) **Membership.**

(1) **Voting Members.** The Director of Public Health shall convene and coordinate an interdepartmental task force for the purpose of coordinating and evaluating enforcement of this Article and recommending to the Planning Department necessary changes in the General Plan to address, maintain, and improve the acoustical quality of the San Francisco environment. The task force shall be comprised of one representative from each of the following City departments: the Department of Public Health, the Department of Public Works, the Department of Building Inspection, the Planning Department, the Police Department, the Entertainment Commission, and Animal Care and Control. The members of the task force shall be appointed by their respective Department Directors.

(2) **Non-Voting Members.** The Task Force shall invite other City departments, such as the Fire Department, the 311 Customer Service Center, and the Municipal Railway, to send a representative to sit as a non-voting member of the task force with respect to vehicle noise, and community representatives when the Director of Public Health deems necessary additional expertise, resources, or other assistance.

(b) **Meetings.** The task force shall meet on a regular basis and exchange information regarding noise abatement matters including but not limited to: motor vehicle noise control, coordination of complaint response, animal noise control, implementation of building codes related to acoustical insulation of new residential construction, oversight of complaints regarding entertainment noise, implementation of General Plan Policies related to noise, environmental review, maintenance and upgrades to noise control ordinance as needed, and coordination of noise abatement activities that involve more than one department. Upon the Director of Public Health's request, the Task Force shall provide consultation services and assistance to the Director of Public Health for the purpose of facilitating coordinated implementation of the duties imposed on the Director of Public Health by this ordinance.

(c) **Reporting.** The Director of Public Health shall report to the Board of Supervisors every year for three years with respect to progress and findings of the Task Force and any necessary changes in the Regulation of Noise Ordinance, Article 29, San Francisco Police Code, that may be required to maintain and improve the acoustical environment of San Francisco. At the end of three years, the task force shall sunset unless continued by the Board of Supervisors.

(Added by Ord. 274-72, App. 9/20/72; Ord. 278-08, File No. 081119, App. 11/25/2008)

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## SEC. 2920. AUTHORITY TO ADOPT RULES AND REGULATIONS.

The Director of Public Health may issue and amend rules, regulations, standards, guidelines, or conditions to implement and enforce this Article.

(Added by Ord. 278-08, File No. 081119, App. 11/25/2008)

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## SEC. 2922. PREEMPTION.

In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights or authority of the State to do those things that are required, directed, or expressly authorized by Federal or State law. Further, in adopting this Article, the Board of Supervisors does not intend to prohibit that which is prohibited by Federal or State law. This Article shall be construed so as not to conflict with applicable federal or state laws, rules, or regulations. Nothing in this Article shall authorize any City agency or department to impose any duties or obligations in conflict with limitations on municipal authority established by state or federal law at the time such agency or department action is taken.

(Added by Ord. 278-08, File No. 081119, App. 11/25/2008; amended by Ord. [100-12](#), File No. 120405, App. 6/8/2012, Eff. 7/8/2012)

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## **SEC. 2924. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.**

In undertaking the adoption and enforcement of this Article, the City is assuming an undertaking only to promote the general welfare. The City does not intend to impose the type of obligation that would allow a person to sue for money damages for an injury that the person claims to suffer as a result of a City officer or employee taking or failing to take an action with respect to any matter covered by this Article.

(Added by Ord. 278-08, File No. 081119, App. 11/25/2008)

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## **SEC. 2926. SEVERABILITY.**

If any of the provisions of this Article or the application thereof to any person or circumstance is held invalid, the remainder of this Article, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Article are severable.

(Added by Ord. 278-08, File No. 081119, App. 11/25/2008)

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