REUBEN, JUNIUS & ROSE, LLP

February 8, 2022

Via Email (pilar.lavalley@sfgov.org)

Pilar LaValley
San Francisco Planning Department
49 South Van Ness Ave.
San Francisco, CA 94103

Re: Letter on Behalf of the Owner – Augmenting Record
Allegory of California Fresco at 155 Sansome Street
Board of Supervisors File No.: 210352
Planning Case No.: 2021-005992DES

Our File No.: 5990.07

Dear Ms. LaValley:

This office represents Stock Exchange Tower Associates, the long-term local owner ("**Owner**") of the property at 155 Sansome Street, commonly known as the Stock Exchange Tower (the "**Property**"). On November 3, 2021, the Historic Preservation Commission ("**HPC**") heard this matter and made a recommendation to support the designation.

We are in receipt of your letter to the Board dated January 31, 2022 that contains "research notes from research undertaken" by Planning Department staff and others. We appreciate your diligence in supplementing the record with your research. However, we believe that all of this data provides even more evidence to support the claims we made at the HPC hearing and in our prior submittals: (a) that the Diego Rivera mural has, since its creation, been located in a private club, on the 10th floor of a private office building; and (b) that while specific members of the general public have occasionally been allowed into the City Club (hereinafter defined) to see the mural, each of those occasions were exclusively in connection with private invitation only events. Such private invitation only events continue to this day at the City Club in its current form.

There is no evidence whatsoever in the record that the City Club has ever been "open to the general public." As we discuss at length below, this is a key fact that must be clarified for the record. Two groups of people are allowed entry into the City Club: members, and invited guests of members, or others who have arranged for private invitation only events at the City Club.

The long list of events you have provided in the January 31st letter, beginning in 1932 through 1987, are comprised almost exclusively of private organizations, clubs and business

groups renting space for private events from the private City Club. There is no indication that the general public would've been part of any of these private events.

In addition, the first six events you have listed, dating from 1932 to 1940, did not even take place in the City Club. Each of these events was held at a different part of the private office building located at 155 Sansome Street, and had nothing to do with the City Club.

Below we summarize and reiterate our opposition to, and concerns about, this designation, as well as to supplement the record and correct various errors and omissions in the staff report regarding the Allegory of California Fresco that was painted by Diego Rivera (the "**Artwork**").

We request that this letter be added to the record provided to the Board of Supervisors in connection with this matter. We incorporate by reference our letter and materials provided on October 26, 2021.

The City Club is a Private Space

As we discussed at the HPC hearing, one of the most troubling elements of this proposal is that it may inadvertently give people the wrong impression about the nature of the location of the Artwork. As we will discuss in detail, the Artwork is located in the City Club. The City Club of San Francisco, and its predecessor the Stock Exchange Luncheon Club (herein referred to as the "**City Club**") is a private, members only club whose space includes the 10th and 11th floors of a private office building located at 155 Sansome Street. The staff case report and the draft landmarking ordinance appear to be asserting that somehow the City Club is open to the public. It is not. Let me be clear for the record: the City Club is a private space, and we object to all statements in the staff report and draft ordinance that argue to the contrary.

A key issue here is whether the space where the Artwork is located is a private or public space. If a space is truly public, the general public may enter upon and use the property. Parks are great examples of this. If a space is truly private, only the owners of that property may grant entry. A private home is such an example.

There are more complex examples, but in the end, we usually can agree on when a space is public or private by what purpose it serves. Retail establishments located on the ground floor of a building are clearly designed to invite the public to enter the business. That is not to say the owner of the shop doesn't have the right to close his door, have reasonable rules of engagement (no shirt, no shoes, no service…). But the business owners in these cases want the public to come in; the invitation is open.

Compare this to private office space in a downtown office building. The accountant or consultant that has rented office space on the 30th floor of a building is in a private office. The public is not permitted to enter, except by express invitation. That is the function of a security

desk…to make sure that only invited guests are permitted to get in the elevator and visit the private offices. The operation and location of the City Club is like the private office, not like the ground floor retailer.

We also take issue with some of the draft ordinance findings. Section 7…on page 3, the City gives a number of examples to justify the contention that the City Club is not a private club, but has somehow been transformed into public space. These findings are inaccurate, mischaracterizations and misinterpretation of the facts:

- 7.A. - In this section, my own statements are misrepresented - Tours for organizations such as SF Heritage of the Art Deco Society do happen, but they are by invitation only by the City Club and/or its members.

- 7.C. - The statement in the section regarding City Guides fails to acknowledge that the City Guides' own materials state that the location of the mural is "normally closed to the public." City Guides is, again, invited in by the City Club.

- 7.D. - The same inaccuracy is in this finding: these tours are by invitation only.

- 7.E. - This finding seems to indicate that the rental of a private facility for individual invitation only events transforms the space into public space. This cannot be the law.

- 7.F. and G. - The fact that in the 1930s, upon the opening of the building, these were invitation only events – that is hardly a shock.

In every situation cited by the City, and all of the new information presented, the key fact that is left out is that the members of the general public who had an opportunity to see the mural were invited guests.

And the fact that the City Club rents out club facilities for various private events does not turn a private space into a public space. These private events are no different from a private, invitation only, event at a hotel. That hotel ballroom that gets rented for a wedding is still a private hotel ballroom owned and operated by the hotel. Nobody in the general public is permitted to simply walk in and begin using the ballroom. And while the private event is underway, entrance is restricted to those invited. Just like events at the City Club. None of this changes the space from private to public.

Private homes are another example. In the City, it is not uncommon for large private homes to invite members of the public in for a fundraising event. The Decorator Showcase is a good example of this. Thousands of members of the public are invited in for the fundraiser to see the beautiful home and décor. At the end of the event, the home remains a private home. These properties are opened up for a limited purpose, and for a specific date and time.

Article 10 Was Never Intended to Apply to Artworks

Planning Code ("**Code**") Section 1004(c) provides that "The property included in any such designation shall upon designation be subject to the controls and standards set forth in this Article 10."

Article 10 was designed to deal with buildings, sites and areas. It was never intended to deal with artwork. We are at a loss to understand exactly what landmarking a work of art really means. This is another reason the Owner is so concerned about this designation. If the Code doesn't clearly describe what landmarking a piece of art means, we have created a situation where the unintended consequences of this action may prove harmful to the ability to care for or protect the Artwork. Whether it be future changes to Article 10, or changes in the financial or insurance worlds that result in the inability to obtain financing or properly insure the Artwork, or some other unforeseen event, these are real concerns.

Private Property Not Historically Publicly Accessible Should Not be Eligible for Landmarking

As we discuss in our October 2021 submittal, since its construction, the Stock Exchange Tower has remained a private building and not open to the general public. In 1931, Diego Rivera painted the Allegory of California. The Artwork was created in the interior space of the Stock Exchange Tower on the wall and ceiling of the 10th floor stairwell, in the private Stock Exchange Luncheon Club (now the City Club). At all times since the Artwork's creation, the interior space of the Stock Exchange Tower, including where the Artwork is located, has never been open to the public.

Under Article 10, the City has significant latitude to landmark various buildings, sites and areas within the City. And I think it is critical to keep in mind why the Code is structured this way. The focus on buildings, sites or areas is because these are all part of the public realm, and as such, can be viewed or enjoyed by the public. No public purpose is served by landmarking something in a space that has never been open to the public.

The Artwork is located on the 10th floor of a private office building, within a private club. It is not a public space. The City Club is not a museum. It is not a restaurant open to the public. It is not a banking hall frequented by members of the general public. It is not a hotel lobby. It is a private club, like many private clubs in the City. It is on the 10th floor of a private building. This landmark proposal does not further the public's interest in historic preservation.

Planning Code Article 10 sets forth very specific policies and goals that have almost exclusively been applied to (a) buildings, and (b) sites and areas, in the public realm. The landmarking of interior spaces is uncommon. The purpose of Article 10 is set forth in Planning Code Section 1004, the full text of which is as follows:

> It is hereby found that **structures, sites and areas of special character or special historical, architectural or aesthetic interest or value** have been and continue to be unnecessarily destroyed or impaired, despite the feasibility of preserving them. It is further found that the prevention of such needless destruction and impairment is essential to the health, safety and general welfare of the public. The purpose of this legislation is to promote the health, safety and general welfare of the public through:
>
> (a) The protection, enhancement, perpetuation and use of s**tructures, sites and areas** that are reminders of past eras, events and persons important in local, State or national history, or which provide significant examples of architectural styles of the past or are landmarks in the history of architecture, or which are unique and irreplaceable assets to the City and its neighborhoods, or which provide for this and future generations examples of the physical surroundings in which past generations lived;
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> (b) The development and maintenance of appropriate settings and environment for such **structures, and in such sites and areas**;
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> (c) The enhancement of property values, the stabilization of neighborhoods and areas of the City, the increase of economic and financial benefits to the City and its inhabitants, and the promotion of tourist trade and interest;
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> (d) The preservation and encouragement of a City of varied architectural styles, reflecting the distinct phases of its history: cultural, social, economic, political and architectural; and
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> (e) The enrichment of human life in its educational and cultural dimensions in order to serve spiritual as well as material needs, by fostering knowledge of the living heritage of the past.

While the Owners are honored by the recognition of the Artwork, in reviewing the purposes of Article 10, we cannot square this effort to landmark a work of art with the stated policy goals of Article 10. The underlying public benefit of landmarking "structures, sites and areas" is so that people can continue to see and appreciate them. The focus of Article 10 is on preserving architectural styles, stabilization of neighborhoods, promotion of tourism, and educational and cultural enrichment. *All of these preservation goals are achieved in the public realm*. The structures, sites and areas subject to Article 10 jurisdiction are by definition things the public can see and places the public can go. Private interior spaces, including those on the 10th floor of a private office building, in a private club, are not covered because they cannot be, and never have been, accessed by the general public.

Interior Spaces are Specifically Addressed in Article 10

The Artwork is located on the 10th floor of a private building. As discussed above, this space has been used continuously, since its construction, as a private club since the building's construction. Its location 10 stories above the street in a private club means it cannot be viewed

even casually by passersby through a window or lobby door. Its location, and the lack of any visibility or unrestricted access by the public, is the key fact here that deprives the City of jurisdiction.

The Planning Code allows the Historic Preservation Commission and Board of Supervisors to landmark "an individual structure or feature."[1] The Code goes on to specifically address the issue of "significant interior architectural features." Planning Code Section 1004 says, in relevant part:

> (a) The HPC shall have the authority to recommend approval, disapproval, or modification of landmark designations and historic district designations under this Code to the Board of Supervisors. Pursuant to the procedures set forth hereinafter:
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> (1) The Board of Supervisors may, by ordinance, designate an individual structure or other feature or an integrated group of structures and features on a single lot or site, having a special character or special historical, architectural or aesthetic interest or value, as a landmark, and shall designate a landmark site for each landmark; and
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> …
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> (b) Each such designating ordinance shall include, or shall incorporate by reference to the pertinent resolution of the HPC then on file with the Clerk of the Board of Supervisors, as though fully set forth in such designating ordinance, the location and boundaries of the landmark site or historic district, a description of the characteristics of the landmark or historic district that justify its designation, and a description of the particular features that should be preserved. Any such designation shall be in furtherance of and in conformance with the purposes of this Article 10 and the standards set forth herein.
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> (c) The property included in any such designation shall upon designation be subject to the controls and standards set forth in this Article 10. In addition, the said property shall be subject to the following further controls and standards if imposed by the designating ordinance:
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> (1) For a publicly-owned landmark, review of proposed changes to significant interior architectural features.
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> (2) For a privately-owned landmark, **review of proposed changes requiring a permit to significant interior architectural features in those areas of the landmark that are or historically have been accessible to members of the public**. The designating ordinance must clearly describe each significant interior architectural feature subject to this restriction. (emphasis added)

[1] Planning Code, § 1004(a)(1).

Section 1004(c)(2) expressly provides that the interior feature must be "in those areas of the landmark that are or historically have been accessible to members of the public." The Artwork here is and always has been in a non-public setting.

Conclusion

In closing, we point out that Diego Rivera's original decision to create the Artwork in a private club appears to have been a carefully considered one. As we know, bringing Diego Rivera to do work in the United States at that time was extremely controversial. Timothy Pflueger, architect for the building, and the one who hired Diego Rivera, had this to say at the height of the controversy:

> *"The mural is not in any of the public rooms of the stock exchange but is in the rooms of the stock exchange lunch club, an entirely different institution…it is a private club, and what they choose to put on their walls is their business…"*

Along these same lines, the staff report, at the top of page 10, goes into more detail about the selection of this location. Originally, Rivera's patrons had planned his first commission at the California School of Fine Arts. Criticism over this decision may have led Rivera to do the club mural first…where a private commercial space rather than an academic public space ruled out "arguing in the public sphere." So the mural was purposely located in a private club. The private nature of the space was integral to Rivera's decision to create the Artwork there in the first place.

The space where the Artwork is located has been used as a private club since the construction of the building in 1930. In summary, we believe this designation proposal should be rejected as it does not further the policy goals of Article 10 and is improper because the subject of the proposal is located in a private space that has never been open to the general public.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP

Andrew J. Junius

cc: Stock Exchange Tower Associates