

March 13, 2024

Via email and hand delivery (to Mayor's Office only)

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Re: Landmark Designation of the Grand Theater
per Board of Supervisors Ordinance adopted March 5, 2024

Dear Mayor Breed, City Attorney Chiu and Planning Department:

On behalf of FCW Corporation ("FCW") and the Young China Daily Publishing Co. Stock Transfer Trust (the "YCD Trust"), we respectfully request that the Mayor veto/disapprove the Board of Supervisor's Ordinance adopted on March 5, 2024, to designate the Grand Theater (Planning File No. 231257, the "Ordinance") as a landmark per SF Charter Section 3.103. Since the Ordinance was adopted on March 5, 2024, we request that the veto be issued by March 15, 2024. Alternatively, we request that the Board's ordinance be vacated for the reasons set forth herein.

In short, the actions by the Board on February 27, 2024, and March 5, 2024, and the action of the Historic Preservation Commission ("HPC") on November 15, 2023 (hearing at which the HPC recommended that the Theater be declared a landmark), violated the notice provisions contained in San Francisco Ordinance Code sections 1004.2(a), 1004.3 and 1004.5. Each of those provisions require "due notice to the owners of the property included in the

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proposal” *prior* to the public hearings to consider the designation, as well as notice once a landmark has been designated. Here, no such notice was provided to the property owner, FCW, of the HPC meeting at which it recommended landmark designation or the two Board meetings where the landmark designation was approved, in violation of those sections. As such, FCW and related members of the Trust were unaware of the proceedings, denied an opportunity to be heard and to provide evidence relevant to the question of whether the Theater should be declared a landmark.

Moreover, the Board abused its discretion in declaring the Grand Theater a landmark as to both the exterior of the structure, as well as extensive portions of the interior. In 1995, the Planning Commission and the Board of Supervisors both considered, and rejected, landmark status for the building. Since then, the already extensively altered interior has been further altered compounding the loss of historic integrity of the interior of the building. Nothing has changed since 1995 to make the building, especially the interior, more historic than in 1995. The opposite is true. The interior has less historic integrity now than it did in 1995.

For these reasons, the Board’s Ordinance should be vetoed and/or vacated and further hearings held to allow the FCW and related persons and entities an opportunity to comment on the proposed designation.

This decision appears to be a thinly veiled attempt to depress the property value and limit the owner’s ability to redevelop and/or adaptively reuse portions of the building for other purposes, including, but not limited to, housing, rather than for historical merit.

Property Ownership and Alterations to the Theater:

The Grand Theater was built in 1940 and is located at 2665 Mission Street, Assessor’s Parcel Block No. 3637, Lot No. 023. FCW Corporation was incorporated in 1985, for the sole purpose of holding the Theater for a trust consisting of owners of Young China Daily (“YCD”) which published and distributed a daily Chinese language newspaper in San Francisco for 75 years. The Theater was one of several assets owned by Young China Daily, which wound down operations in the mid-1980s. The Theater was transferred to the YCD Trust¹ and later to FCW Corporation in late 1985.

¹ Young China Daily and four of its minority shareholders, Burk Chung, Kun-Kan Woo, Tien-Shan Wang, and Ta-Chuan Fang, acting as the Representatives of Minority Shareholders, entered into the Trust in 1985. Yu-Ching Chen, a shareholder and Chairman of the Board of Directors of Young China Daily, was a Trustee of Young China Daily. At the time of its formation, approximately 65 people compromised the Minority Shareholders.

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The Theater shut down in the late 1980s. In 1990, a building permit was issued to convert the former theater into two retail spaces. At the foyer, a new opening was cut into the former auditorium wall and paired doors in the original openings to the theater aisles were removed. In the former theater auditorium, the floor was raised and flattened, the movie screen and seats were removed, walls were built around the proscenium, and a demising wall was added along the center of the former theater, dividing it into two long, narrow retail spaces. Two decorative 7' x 7' bas reliefs (of Neptune and a ship on the sea) on the north and south walls of the theater space were removed by a tenant subsequent to the 1995 landmark hearing. In 2009, another building permit was issued to remove the interior demising wall to create a single large retail space. At some point between 1990 and 2009, the former theater ticket booth may have been removed as it is not depicted in the 2009 building permit plans.

When the current occupant, Gray Area Foundation for the Arts, took possession of the premises on September 1, 2014, it substantially removed most of the decorative architectural features in the lobby, including the concession stand, the streamline lighting and ceiling over the stand, the original walls and doors behind the stand, the box office, and the projection room. Gray Area also added a new mezzanine of modern architectural design, where none existed before. It built an extensive stage area and side staging areas to accommodate concerts, TED talks and large sound amplification systems, and a "green room.. The Theater was originally constructed as a movie theater, with virtually no stage area. Gray Area also constructed a mid-century modern style bar on the right side of the lobby where none existed, a conference room/office space and a ticket booth at the left side of the lobby, opposite the bar. The building's façade and neon sign have been preserved and/or restored.

The mixing of so many eclectic and inauthentic architectural styles violates the very purpose of historic preservation. At the original hearings in 1995, the Planning Commission cited many better examples of this particular style of architecture elsewhere in San Francisco, and many more illustrious theaters designed by the Grand Theater's architect, including the War Memorial Opera House on Van Ness Avenue.

Required Notice to the Property Owner Was Not Provided:

As noted, required notice was not provided to FCW. The HPC met on November 15, 2023, to consider whether to recommend that the Board determine the Theater to be a landmark. Section 1004.2(a) requires notice of the time, place and purpose of such hearing shall be given by at least one publication in a newspaper of general circulation not less than 20 days prior to the date of hearing, and notice **“shall also be mailed not less than 10 days prior to the date of hearing to the owners of all property included in the proposed designation, using for this purpose the names and addresses of the last known owners as shown on the records of the**

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Tax Collector ...” The Resolution No. 1359, adopted by the HPC on November 15, 2023, lists FCW as the property owner and includes its proper address of 150 Gardenside Dr., Apt. 102, San Francisco, CA 94131. However, FCW never received any notice of the HPC meeting as required by Section 1004.2(a) and was denied the opportunity to participate in said hearing.²

The Board met on February 27, 2024, to consider the potential designation. Section 1004.3 provides that “The Board of Supervisors shall hold a public hearing on any proposal so transmitted to it, after due notice to the owners of the property included in the proposal, and such other notice as the Board may deem necessary.” No such notice of that meeting was provided to FCW.³ After passing the Ordinance on first reading, the Board met on March 5, 2024, to finally consider the Ordinance and adopted it after a second reading. Again, no notice was provided to FCW regarding this meeting in violation of Section 1004.3, again denying it the opportunity to comment and object to the designation.

Neither the Ordinance, nor the Staff report for the Board, indicates that notice was provided to the property owner of the two Board meetings where the landmark designation was adopted. The Staff report states that no public comment was received on the proposed designation. Had FCW been notified as required, it would have vigorously participated in the hearings and submitted comments. Instead, it was denied this opportunity and the Board and public were denied the critical input of the entity that has owned the property for decades.

Section 1004.5 requires notice of the designation to the property owner by the Planning Department “promptly” after the Board’s decision. However, FCW has yet to receive notice of the designation but only learned about the decision from a third party after the Board’s March 5, 2024 action.

Such failures to adequately provide notice to FCW constitute an abuse of discretion, a failure to provide a fair hearing and a failure to proceed as required by law.

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² FCW received notice on January 20, 2024 of the HPC’s November 15, 2023 resolution, i.e., over two months after the fact and not in compliance with Section 1004.2(a).

³ The Board packet included a copy of a Public Hearing Notice to a February 12, 2024 meeting of the Land Use and Transportation Committee meeting (i.e., not a full Board meeting). That notice was sent to FCW on February 9, 2024, however that notice does not provide notice of the full Board meetings at which the designation would be considered. No notice of either the February 27, 2024, or the March 5, 2024 Board meetings was provided to FCW. Moreover, the Board packet does not include evidence of any notice of either of the Board meetings where the Ordinance was actually considered and adopted.

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The Board Abused its Discretion In Granting Landmark Designation to the Interior and Exterior of the Theater⁴

As noted above, the Theater was proposed for landmark designation in 1995 and such designation was rejected by both the Planning Commission and the Board of Supervisors. Extensive alterations have been made to the interior of the building diminishing its historic integrity below the level that existed in 1995. If anything, the building – especially the interior spaces – are less eligible for designation than they were in 1995. Moreover, the Ordinance is overbroad and attempts to apply the designation to the entire interior of the building for areas that have “historically been accessible to the public” and noting “features” such as the “regular rectangular plan” of the lobby and auditorium, certain plaster decoration at walls and ceilings, metal vents with a sunrise motif, plaster moldings on the walls and ceiling of the auditorium and certain “decorative features” in the former lobby, including curved walls and stairs with metal hand rails. (Ordinance at Section 4(c)(2).)

These fairly mundane and commonplace features hardly rise to the level of landmark status for the entire interior of the building, especially considering the numerous and eclectic alterations. The designation itself is overly broad and restricts the entire building including areas that have lost integrity and were extensively altered. The effort to designate the Theater as a landmark appears to be an attempt to discourage – or prevent – any future renovation or redevelopment of the entire building (as opposed to preservation of the façade) by subjecting any work to the building to go through an arduous and restrictive certificate of appropriateness process.⁵

In summary, the Board’s decision lacks substantial evidence to support the findings that the entire Theater, inside and outside, meets the criteria for landmark designation and as such, is an abuse of discretion.

Conclusion:

The City failed to provide required notice in violation of its Planning Code. In addition, the evidence supporting the Board’s decision to landmark the entire Theater interior and exterior, constitutes an abuse of discretion and lacks evidentiary support. For the reasons stated here, we

⁴ Given that FCW just learned of the designation, it is beyond the scope of this letter to provide a detailed set of reasons in opposition to the substance of the designation, but a non-exhaustive list of shortcomings is provided.

⁵ While there are no current development plans, several former theaters in San Francisco and throughout the Bay Area have been successfully and thoughtfully redeveloped to more viable uses, including, but not limited to, housing.

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request that the Mayor disapprove/veto the Ordinance, and/or that the Ordinance be vacated for failure to provide the required notice and as an abuse of discretion.

Sincerely,

FENNEMORE WENDEL



Todd A. Williams

/taw

cc: Angela Calvillo, Clerk of the Board of Supervisors
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Board of Supervisors
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