BOARD of SUPERVISORS

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MEMORANDUM

Date: July 8, 2024

To: Planning Department/Planning Commission

From: John Carroll, Assistant Clerk, Land Use and Transportation Committee

Subject: Board of Supervisors Legislation Referral - File No. 240725
Planning Code - Landmark Designation - Rainbow Flag at Harvey Milk Plaza

☒ California Environmental Quality Act (CEQA) Determination
(California Public Resources Code, Sections 21000 et seq.)
- ☒ Ordinance / Resolution
- ☐ Ballot Measure

☐ Amendment to the Planning Code, including the following Findings:
(Planning Code, Section 302(b): 90 days for Planning Commission review)
☐ General Plan ☐ Planning Code, Section 101.1 ☐ Planning Code, Section 302

☐ Amendment to the Administrative Code, involving Land Use/Planning
(Board Rule 3.23: 30 days for possible Planning Department review)

☐ General Plan Referral for Non-Planning Code Amendments
(Charter, Section 4.105, and Administrative Code, Section 2A.53)
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)

☐ Historic Preservation Commission
- ☐ Landmark *(Planning Code, Section 1004.3)*
- ☐ Cultural Districts *(Charter, Section 4.135 & Board Rule 3.23)*
- ☐ Mills Act Contract *(Government Code, Section 50280)*
- ☐ Designation for Significant/Contributory Buildings *(Planning Code, Article 11)*

Please send the Planning Department/Commission recommendation/determination to John Carroll at john.carroll@sfgov.org.

[Planning Code - Landmark Designation - Rainbow Flag at Harvey Milk Plaza]

Ordinance amending the Planning Code to designate the Rainbow Flag Installation at Harvey Milk Plaza, by Gilbert Baker, located at the southwest corner of the intersection of Market Street and Castro Street, as a Landmark consistent with the standards set forth in Article 10 of the Planning Code; affirming the Planning Department's determination under the California Environmental Quality Act; and making public necessity, convenience, and welfare findings under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

(a) CEQA and Land Use Findings.

(1) The Planning Department has determined that the Planning Code amendment proposed in this ordinance is subject to a Categorical Exemption from the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq., hereinafter "CEQA") pursuant to Section 15308 of California Code of Regulations, Title 14, Sections 15000 et seq., the Guidelines for implementation of the statute, for actions by regulatory agencies for protection of the environment (in this case, landmark designation). Said determination is on file with the Clerk of the Board of Supervisors in File No.

_____ and is incorporated herein by reference. The Board of Supervisors affirms this determination.

(2) Pursuant to Planning Code Section 302, the Board of Supervisors finds that the proposed landmark designation of Rainbow Flag will serve the public necessity, convenience, and welfare for the reasons set forth in Historic Preservation Commission Resolution No. 1395, recommending approval of the proposed designation, which is incorporated herein by reference.

(3) The Board of Supervisors finds that the proposed landmark designation of Rainbow Flag is consistent with the General Plan and with Planning Code Section 101.1(b) for the reasons set forth in Historic Preservation Commission Resolution No. 1395, which is incorporated herein by reference.

(b) General Findings.

(1) On April 4, 2024, the Board of Supervisors adopted Resolution No. 170-24, initiating landmark designation of Gilbert Baker's Rainbow Flag Installation (the "Rainbow Flag") at Harvey Milk Plaza as a San Francisco Landmark pursuant to Section 1004.1 of the Planning Code. On April 12, 2024, the Mayor approved the resolution. Said resolution is on file with the Clerk of the Board of Supervisors in File No. 240311.

(2) Pursuant to Charter Section 4.135, the Historic Preservation Commission has authority "to recommend approval, disapproval, or modification of landmark designations and historic district designations under the Planning Code to the Board of Supervisors."

(3) The Landmark Designation Fact Sheet was prepared by Planning Department Preservation staff. All preparers meet the Secretary of the Interior's Professional Qualification Standards for historic preservation program staff, as set forth in Code of Federal Regulations Title 36, Part 61, Appendix A. The report was reviewed for accuracy and conformance with the purposes and standards of Article 10 of the Planning Code.

(4) The Historic Preservation Commission, at its regular meeting of May 15, 2024, reviewed Planning Department staff's analysis of the historical significance of the Rainbow Flag set forth in the Landmark Designation Fact Sheet dated May 1, 2024.

(5) On May 15, 2024, after holding a public hearing on the proposed designation and having considered the specialized analyses prepared by Planning Department staff and the Landmark Designation Fact Sheet, the Historic Preservation Commission recommended designation of the Rainbow Flag as a landmark consistent with the standards set forth in Section 1004 of the Planning Code, by Resolution No. 1395. Said resolution is on file with the Clerk of the Board in File No. 240725.

(6) The Board of Supervisors hereby finds that the Rainbow Flag has a special character and special historical, architectural, and aesthetic interest and value, and that its designation as a Landmark will further the purposes of and conform to the standards set forth in Article 10 of the Planning Code. In doing so, the Board hereby incorporates by reference the findings of the Landmark Designation Fact Sheet.

Section 2. Designation.

Pursuant to Section 1004.3 of the Planning Code, the Rainbow Flag Installation at Harvey Milk Plaza by Gilbert Baker is hereby designated as a San Francisco Landmark consistent with the standards set forth in Section 1004. Appendix A to Article 10 of the Planning Code is hereby amended to include this property.

Section 3. Required Data.

(a) The description, location, and boundary of the Landmark site consists of the historic structural footprint of the Rainbow Flag, inclusive of the concrete plinth, concrete foundation above the Castro MUNI Station at the southwest corner of the intersection of

Market Street and Castro Street at Harvey Milk Plaza in San Francisco's Castro neighborhood.

(b) The characteristics of the Landmark that justify its designation are described and shown in the Landmark Designation Fact Sheet and other supporting materials contained in Planning Department Record Docket No. 2023-003679DES. In brief, the Rainbow Flag is eligible for local designation as a traditional cultural property with global recognition under National Register of Historic Places Criterion A and as a significant artwork by the political artist Gilbert Baker under Criterion C. The artist Gilbert Baker (1951-2017) is widely known for creating a six-striped Rainbow Flag artwork based on an eight-striped version made in San Francisco in 1978. Baker's six-color Rainbow Flag rapidly became associated with the greater Lesbian, Gay, Bisexual, Transgender and Queer+ (LGBTQ+) community, not only in terms of the diversity of whom it represented but also in its global recognition. For nearly two decades, Baker produced variations on the theme of the six-stripe Rainbow Flag for different anniversaries and events. The Rainbow Flag at Harvey Milk Plaza, installed in 1997 in commemoration of Harvey Milk's election to the Board of Supervisors twenty years earlier, is a site-specific permanent artwork and is the only such made by Baker. It honors the political achievements of Harvey Milk and the next generation of LGBTQ+ politicians; it serves as a beacon of hope, visibility, and power; and, it is the singular physical manifestation of LGBTQ+ pride for everyone.

(c) The particular features that should be preserved, or replaced in-kind as determined necessary, are those generally shown in photographs and described in the Landmark Designation Fact Sheet, which can be found in Planning Department Record Docket No. 2023-003679DES, and which are incorporated in this designation by reference as though fully set forth herein. Specifically, the following features are character-defining and shall be preserved or replaced in kind:

(1) Siting of the flagpole at Harvey Milk Plaza in alignment with Market Street to the Ferry Building;

(2) All necessary foundation elements required to maintain the stability of the plinth and flagpole flying a 20-foot by 30-foot flag;

(3) Aluminum flagpole with internal halyard;

(4) Concrete plinth with beveled corners;

(5) Metal plaque mounted on the plinth;

(6) 20-foot by 30-foot six-striped Rainbow Flag with the colors red, orange, yellow, green, blue, and violet.

Section 4. Standards of Review for Applications.

(a) The following scopes of work shall not require a Certificate of Appropriateness:

(1) Work consisting of "ordinary maintenance and repairs," pursuant to Planning Code Section 1005(e)(3). For purposes of this ordinance, "ordinary maintenance and repairs" for the Rainbow Flag includes known cyclical in-kind replacement of deteriorated 20-foot by 30-foot six-striped flags, which generally occurs about four times a year as old ones fray, become faded, or are otherwise damaged by weather events, and corrective actions required to treat acts of vandalism that do not require replacement of the aluminum pole, concrete plinth, or metal plaque;

(2) Non-structural interior alterations and maintenance within non-character-defining internal halyard mechanisms, including trucks, pulleys, snaphooks, snaphook covers, finial, and ropes or for dented flash collar replacement at the base where the pole meets the plinth; and

(3) New plantings, pruning, changes to vegetation, changes to driveways, pathways, retaining walls, or other structures within the surroundings of Harvey Milk Plaza.

Nothing in this ordinance shall be construed to regulate maintenance of or changes to vegetation, driveways, pathways, retaining walls or other features aside from those specified herein, within Harvey Milk Plaza.

(b) An Administrative Certificate of Appropriateness shall be required for work delegated by the Historic Preservation Commission to Planning Department Preservation staff pursuant to Planning Code Section 1006.2. An Administrative Certificate of Appropriateness shall also be required for restoring the Rainbow Flag after "force majeure" events, including, but not limited to, earthquakes, storms, vehicle collisions, or sabotage which may necessitate replacement of the aluminum pole, concrete plinth, or metal plaque, provided that the replacement also be of the same material and of the same dimensions as the existing.

(c) A Certificate of Appropriateness shall be required for the disassembly and/or relocation, without regard to duration, of any of the following: the flagpole; concrete plinth; and metal plaque, provided that the Arts Commission be consulted and its recommendation be presented to the Historic Preservation Commission, in advance of the Historic Preservation Commission hearing or at a joint hearing.

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Section 5. Effective Date.

This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/ Peter Miljanich

PETER MILJANICH
Deputy City Attorney

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FILE NO. 240725

LEGISLATIVE DIGEST

[Planning Code - Landmark Designation - Rainbow Flag at Harvey Milk Plaza]

Ordinance amending the Planning Code to designate the Rainbow Flag Installation at Harvey Milk Plaza, by Gilbert Baker, located at the southwest corner of the intersection of Market Street and Castro Street, as a Landmark consistent with the standards set forth in Article 10 of the Planning Code; affirming the Planning Department's determination under the California Environmental Quality Act; and making public necessity, convenience, and welfare findings under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

Under Article 10, Section 1004 of the Planning Code, the Board of Supervisors may, by ordinance, designate an individual structure that has special character or special historical, architectural or aesthetic interest or value as a City landmark. Unless prohibited by state law, once a structure has been named a landmark, any construction, alteration, removal or demolition for which a City permit is required necessitates a Certificate of Appropriateness from the Historic Preservation Commission. (Planning Code § 1006; Charter of the City and County of San Francisco, § 4.135.) Thus, landmark designation generally affords a high degree of protection to historic and architectural structures of merit in the City. There are currently more than 300 individual landmarks in the City under Article 10, in addition to structures and districts in the downtown area that are protected under Article 11. (See App. A to Article 10.)

Amendments to Current Law

This ordinance amends the Planning Code to add a new historic landmark to the list of individual landmarks under Article 10: the Rainbow Flag Installation at Harvey Milk Plaza, by Gilbert Baker. The ordinance finds that the Rainbow Flag is eligible for local designation as a traditional cultural property with global recognition under National Register of Historic Places Criterion A and as a significant artwork by the political artist Gilbert Baker under Criterion C. The artist Gilbert Baker (1951-2017) is widely known for creating a six-striped Rainbow Flag artwork based on an eight-striped version made in San Francisco in 1978. Baker's six-color Rainbow Flag rapidly became associated with the greater Lesbian, Gay, Bisexual, Transgender and Queer+ (LGBTQ+) community, not only in terms of the diversity of whom it represented but also in its global recognition. For nearly two decades, Baker produced variations on the theme of the six-stripe Rainbow Flag for different anniversaries and events. The Rainbow Flag at Harvey Milk Plaza, installed in 1997 in commemoration of Harvey Milk's election to the Board of Supervisors twenty years earlier, is a site-specific permanent artwork and is the only such made by Baker. It honors the political achievements of Harvey Milk and

the next generation of LGBTQ+ politicians; it serves as a beacon of hope, visibility, and power; and, it is the singular physical manifestation of LGBTQ+ pride for everyone.

As required by Section 1004, the ordinance lists the particular features that shall be preserved, or replaced in-kind, as determined necessary.

Background Information

On May 15, 2024, after holding a public hearing on the proposed designation and having considered the specialized analyses prepared by Planning Department staff and the Landmark Designation Fact Sheet, the Historic Preservation Commission voted to recommend landmark designation of the Rainbow Flag to the Board of Supervisors.

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Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

I hereby submit the following item for introduction (select only one):

- [x] 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- [ ] 2. Request for next printed agenda (For Adoption Without Committee Reference)
  (Routine, non-controversial and/or commendatory matters only)
- [ ] 3. Request for Hearing on a subject matter at Committee
- [ ] 4. Request for Letter beginning with "Supervisor _____ inquires..."
- [ ] 5. City Attorney Request
- [ ] 6. Call File No. _____ from Committee.
- [ ] 7. Budget and Legislative Analyst Request (attached written Motion)
- [ ] 8. Substitute Legislation File No. _____
- [ ] 9. Reactivate File No. _____
- [ ] 10. Topic submitted for Mayoral Appearance before the Board on _____

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

☐ Yes ■ No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Mandelman

Subject:

[Planning Code - Landmark Designation - Rainbow Flag at Harvey Milk Plaza]

Long Title or text listed:

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Signature of Sponsoring Supervisor: