

1 [Planning Code, Zoning Map - Central Subway Tunnel Boring Machine Extraction Site Special
2 Use District]

3 **Ordinance amending the Planning Code, by adding Section 249.70, to create the**
4 **Central Subway Tunnel Boring Machine Extraction Site Special Use District for the**
5 **property located at Assessor’s Block No. 0101, Lot No. 004, known as 1731-1741 Powell**
6 **Street, to facilitate the removal of the tunnel boring machines used in the construction**
7 **of the Central Subway Project and allow the construction of a previously approved**
8 **mixed-use residential/retail building; amending Sectional Zoning Maps HT 01 and SU**
9 **01 to reflect the Central Subway Tunnel Boring Machine Extraction Site Special Use**
10 **District; adopting findings, including environmental findings, and findings of**
11 **consistency with the General Plan.**

12 NOTE: Additions are *single-underline italics Times New Roman*;
13 deletions are ~~*strike-through italics Times New Roman*~~.
14 Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

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

16 Section 1. General

17 (a) The San Francisco Municipal Transportation Agency (SFMTA) is constructing a
18 continuation of the T-Third Light Rail Vehicle line from the Caltrain Station at Fourth and King
19 Streets to an underground station in Chinatown (the "Project") to create a critical
20 transportation improvement linking neighborhoods in the southeastern portion of the City and
21 County of San Francisco (the "City") with the retail and employment centers in the City's
22 downtown and Chinatown neighborhoods.

23 (b) The Project will provide direct rail service to regional destinations, including the
24 City's Chinatown, Union Square, Moscone Convention Center, Yerba Buena, SoMa and
25 AT&T Park neighborhoods; connect BART and Caltrain; serve a low-auto-ownership

Supervisor Chiu
BOARD OF SUPERVISORS

1 population of transit customers; increase transit use and reduce travel time; reduce air and
2 noise pollution and provide congestion relief.

3 (c) Construction of the subway portion of the extension, from underneath Interstate
4 80 to the Chinatown Station, requires the use of two tunnel boring machines. The Project
5 originally included plans to remove the tunnel boring machines from a location in North Beach
6 in the right-of-way of Columbus Avenue, between Powell Street and Union Street,
7 approximately 2000 feet beyond the Chinatown Station. Retrieval of the machines from
8 Columbus Avenue will require closing two lanes of Columbus Avenue for almost a year. After
9 further consideration, and in order to avoid the traffic disruptions caused by the original
10 retrieval location, the SFMTA proposes to change the location where the tunnel boring
11 machines are retrieved to an off-street location at 1731-1741 Powell Street.

12 (d) The proposed new location for the removal of the machines is currently
13 occupied by the former Pagoda Palace, or Pagoda Theater. The Pagoda Palace is a former
14 movie and live performance theater built around 1908. The building is approximately 56 feet
15 tall. The building height is consistent with other building heights in the same block where it is
16 located, including the height of the building directly adjacent to the Pagoda Palace to the
17 south; however, it exceeds the current height limit in the area, which is 40 feet. The building
18 has been officially closed since 1994, is currently vacant.

19 (e) On January 8, 2009, in Motion number 17797, the San Francisco Planning
20 Commission approved a conditional use authorization to allow the building to be converted
21 from a movie theater use to a mixed-use residential, parking and ground floor retail project
22 with basement parking. The Planning Commission approved an amended conditional use
23 authorization on October 28, 2010, in Motion number 18204, which did not alter the project,
24 but allowed the project sponsor to change the method by which the project sponsor complied
25 with the City's affordable housing requirements.

1 (f) As approved by the Planning Commission in Motion numbers 17797 and 18204,
2 the reuse of 1731-1741 Powell as a mixed-use residential and retail project would have
3 consisted of a seismic/structural retrofit, and would not have constituted structural demolition.
4 As an alteration of a non-complying structure, and not demolition, the approved project would
5 comply with the applicable zoning regulations relative to building height, which allows altered
6 non-conforming buildings to remain at their current height. However, use of the site by the
7 Central Subway to remove the tunnel boring machines will require the demolition of the
8 structure in order to provide the necessary construction access. This Ordinance will allow the
9 Central Subway to demolish the non-complying structure while preserving the ability of the
10 project sponsor to construct the previously approved mixed-use residential/retail use, which
11 included a building consistent with the previously existing height. By adopting a special use
12 district exclusively for the site, the 40 foot height limit remains applicable for other parcels in
13 the area.

14 (g) In addition, since the time that the Planning Commission approved Motions
15 17797 and 18204, several Planning Code provisions have been added or amended which, if
16 applicable to the project site, would trigger additional restrictions on the ability of the project
17 sponsor to construct the previously approved project. These restrictions would not apply to the
18 previously approved project. This Ordinance would allow the construction of the previously
19 approved project without requiring compliance with these later enacted Planning Code
20 provisions.

21 Section 2. Findings.

22 (a) On August 7, 2008, the City's Planning Commission certified that the Final
23 Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report
24 ("Final Supplemental EIS/EIR") for the Central Subway/Third Street Light Rail Phase 2
25 ("Central Subway") was in compliance with the California Environmental Quality Act,

1 (California Public Resources Code section 21000, *et seq*) ("CEQA"), the CEQA Guidelines,
2 and Administrative Code Chapter 31 in Planning Commission Motion No. 17668. The Final
3 Supplemental EIS/EIR and Motion No. 17668 are on file with the Clerk of the Board of
4 Supervisors in File No. _____ and are incorporated by reference.

5 (b) On August 19, 2008, the SFMTA's Board of Directors, by Resolution No. 08-
6 150, approved the Project, and adopted CEQA Findings, including a Statement of Overriding
7 Considerations and a Mitigation Monitoring and Reporting Program (MMRP) as required by
8 CEQA. Resolution No. 08-150 is on file with the Clerk of the Board of Supervisors in File
9 No. 130019 and is incorporated by reference.

10 (c) On September 16, 2008, the City's Board of Supervisors (this "Board") adopted
11 Motion No. 08-145, in Board File No. 081138, affirming the City's Planning Department
12 decision to certify the Final Supplemental EIS/EIR. Motion No. 08-145 is on file with the Clerk
13 of the Board of Supervisors in File No. 130019 and is incorporated by reference.

14 (d) On _____, the City's Planning Department found in an
15 Addendum to the Final Supplemental EIS/EIR, that the proposed changes to the Project are
16 not substantial and would not require major revisions to the Final Supplemental EIS/EIR or
17 result in significant environmental impacts that were not evaluated in the Final Supplemental
18 EIS/EIR; and no new information has become available that was not known and could not
19 have been known at the time the Final Supplemental EIS/EIR was certified as complete and
20 that would result in significant environmental impacts not evaluated in the Final Supplemental
21 EIS/EIR.

22 (e) In accordance with the actions contemplated herein, this Board has reviewed
23 the Final Supplemental EIS/EIR and the Addendum, and adopts and incorporates by
24 reference as though fully set forth herein the findings, including the mitigation monitoring and
25 reporting program, adopted by the Planning Commission on _____ in

1 Motion No. _____. The Board further finds that there is no need to prepare a
2 subsequent environmental impact report under CEQA Guidelines Section 15162 for the
3 actions contemplated herein.

4 (f) On _____, the Planning Commission conducted a duly
5 noticed public hearing on the proposed Zoning Map amendments and, by Resolution No.
6 _____ recommended them for approval. The Planning Commission found that the
7 proposed Zoning Map amendments were, on balance, consistent with the City's General Plan,
8 and with Planning Code Section 101.1(b). A copy of said Resolution is on file with the Clerk
9 of the Board of Supervisors in File No. _____ and is incorporated herein by
10 reference.

11 (g) The Board finds that these Zoning Map amendments are on balance consistent
12 with the General Plan and with the Priority Policies of Planning Code Section 101.1 for the
13 reasons set forth in Planning Commission Resolution No. _____ and the Board
14 hereby incorporates such reasons herein by reference.

15 (h) Pursuant to Planning Code Section 302, the Board finds that the proposed
16 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
17 Planning Commission Resolution No. _____, which reasons are incorporated by
18 reference as though fully set forth.

19
20 Section 3. The San Francisco Planning Code is hereby amended by adding Section
21 249.70 to read as follows:

22 Section 249.70 Central Subway Tunnel Boring Machine Extraction Site Special Use District
23 (a) Purposes. In order to facilitate the removal of the tunnel boring machines used to
24 construct the Central Subway Project from an off-street location at 1731-1741 Powell Street while
25 allowing the construction of a mixed-use residential and ground floor retail building in substantial

1 conformity to a mixed-use residential/retail project conditionally authorized in 2009 and 2010, there
2 shall be a special use district known as the Central Subway Tunnel Boring Machine Extraction Site
3 Special Use District, as designated on Sectional Map No. 1SU of the Zoning Map of the City and
4 County of San Francisco.

5 (b) Controls: All otherwise applicable provisions of the Planning Code shall apply to this
6 Special Use District, except as specifically provided in this Section 249.70:

7 (1) Restaurant Use: Section 780.3, prohibiting new restaurants in specified locations, shall
8 not apply in this Special Use District.

9 (2) Use Size: In this District, the maximum use size in the North Beach Neighborhood
10 Commercial District found in Section 121.2(b) shall be 5,000 square feet.

11 (3) Parking: Notwithstanding any other provision of this Code, no more than one parking
12 space per dwelling unit, up to .5 accessory spaces per dwelling unit, and up to 3 accessory parking
13 spaces for non-residential uses, up to a total maximum of 27 spaces, shall be allowed.

14 (4) Rear Yard. The provisions of Section 134 shall not apply in this District.

15 (5) Ground Floor Ceiling Heights. Notwithstanding the provisions of section 145.1, ground
16 floor non-residential uses in this District shall have a minimum floor-to-floor height of 8.5 feet.

17 (6) Exposure. The requirements of Section 140 shall not apply. Any dwelling unit shall
18 either face onto a public street or a lightwell measuring at least 25 feet.

19 (7) Demolition. Notwithstanding any other provision in this Code, in this District, an
20 application authorizing demolition of a building may be granted prior to final approval of a building
21 permit for construction of a replacement building, as long as the replacement building has been
22 conditionally authorized.

23 (8) Height and Bulk. The height and bulk applicable to this Special Use District shall be
24 55-X, provided, however, that in no case shall the height of any new structure exceed the height of the
25 existing Pagoda Palace structure. For purposes of measurement of height in this District, the height of

1 a projecting business sign shall be exempt, provided that such sign is the reconstruction or
 2 rehabilitation of an existing projecting movie theater blade sign as provided in Section 9 herein. Prior
 3 to demolition of the existing structure, the owner or owners authorized agent shall prepare and submit
 4 to the Planning Department a detailed survey, including elevations and sections, which accurately
 5 dimension the height of the existing theater building, including the heights of all rooftop features.

6 (9) Signage. The existing Pagoda Palace’s projecting movie theater blade sign provided a
 7 prominent visual landmark within the North Beach Neighborhood Commercial District. In order to
 8 preserve this visual landmark, any new structure in the Special Use District shall include as an
 9 architectural element, a reconstructed projecting movie theater blade sign in general conformity with
 10 the overall design, scale and character of the existing movie theater sign.

11 (10) Streetscape and Pedestrian Improvements. The requirements of Section 138.1(c)(1)
 12 shall apply.

13 (c) Fees. The provisions of Section 352 shall apply to this District, provided however, that if
 14 the Planning Commission has approved a conditional use authorization for a substantially similar
 15 project within the previous 4 years of the effective date of this ordinance, such fees shall be waived.

16 (d) Sunset Provision. This Section 249.70 shall be repealed 5 years after its initial effective
 17 date unless the Board of Supervisors, on or before that date, extends or re-enacts it.

18
 19 Section 4. The San Francisco Planning Code is hereby amended by amending
 20 Sectional Map HT01 of the Zoning Map of the City and County of San Francisco, as follows:

<u>Description of Property</u>	<u>Height and Bulk</u> <u>Districts to be Superseded</u>	<u>Height and Bulk</u> <u>Districts Hereby Approved</u>
Assessor's Block/Lot 0101/04	40-X	55-X

1 Section 5. The San Francisco Planning Code is hereby amended by amending
2 Sectional Map SU01 of the Zoning Map of the City and County of San Francisco, as follows:

<u>Description of Property</u>	<u>Special Use District Hereby Approved</u>
Assessor's Block/Lot 0101/04	Central Subway Tunnel Boring Machine Extraction Site Special Use District

7
8 Section 6. This section is uncodified. Effective Date and Operative Date. This
9 ordinance shall become effective 30 days from the date of passage. This Ordinance shall
10 become operative only upon the later of 30 days from the date of passage or the date that a
11 lease authorized by SFMTA Resolution _____, regarding use of 1731 Powell for extraction
12 of the tunnel boring machines for the Central Subway project, becomes effective. A copy of
13 said Resolution is on file with the Board of Supervisors in Board File Number _____.

14 Section 7. This section is uncodified. In enacting this Ordinance, the Board intends
15 to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
16 punctuation, charts, diagrams, or any other constituent part of the Planning Code that are
17 explicitly shown in this legislation as additions, deletions, Board amendment additions, and
18 Board amendment deletions in accordance with the "Note" that appears under the official title
19 of the legislation.

20
21 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

22
23 By: _____
Audrey Pearson
24 Deputy City Attorney