



# SAN FRANCISCO PLANNING DEPARTMENT

---

## Historic Preservation Commission

### Resolution No. 1106

HEARING DATE: NOVEMBER 20, 2019

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

*Case No.:* 2019-012970PCADVA  
*Project Name:* 34 Properties Owned or Leased by the Academy of Art  
University ("Academy")  
*Zoning:* Multiple Zoning Districts  
*Block/Lot:* Multiple Blocks and Lots  
*Project Sponsor:* Jim Abrams  
J. Abrams Law, P.C.  
One Maritime Plaza, Suite 1900  
San Francisco, CA 94111  
*Property Owner(s):* Multiple LLCs  
79 New Montgomery Street, 3<sup>rd</sup> Floor  
San Francisco, CA 94105  
*Staff Contact:* Elizabeth Gordon Jonckheer – (415) 575-8728  
[elizabeth.gordon-jonckheer@sfgov.org](mailto:elizabeth.gordon-jonckheer@sfgov.org)

RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND THE STEPHENS INSTITUTE (ACADEMY OF ART UNIVERSITY) AND ITS AFFILIATED ENTITIES, AS TO THE ACADEMY'S PROPERTIES, WHICH AGREEMENT PROVIDES FOR VARIOUS PUBLIC BENEFITS, INCLUDING, AMONG OTHERS, AN "AFFORDABLE HOUSING PAYMENT" OF \$37,600,000 AND A PAYMENT OF APPROXIMATELY \$8,200,000 TO THE CITY'S SMALL SITES FUND; AMENDING THE PLANNING CODE TO PROVIDE REVIEW PROCEDURES FOR LARGE NONCONTIGUOUS POST-SECONDARY EDUCATIONAL INSTITUTIONS; WAIVING CONFLICTING PROVISIONS IN THE PLANNING AND ADMINISTRATIVE CODES; CONFIRMING COMPLIANCE WITH OR WAIVING CERTAIN PROVISIONS OF ADMINISTRATIVE CODE CHAPTERS 41 AND 56; AND RATIFYING CERTAIN ACTIONS TAKEN IN CONNECTION WITH THE DEVELOPMENT AGREEMENT AND AUTHORIZING CERTAIN ACTIONS TO BE TAKEN CONSISTENT WITH THE DEVELOPMENT AGREEMENT; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND FINDINGS OF CONFORMITY WITH THE GENERAL PLAN AND WITH THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1(B); AND ADOPTING FINDINGS OF PUBLIC CONVENIENCE, NECESSITY, AND WELFARE UNDER PLANNING CODE SECTION 302.

WHEREAS, California Government Code Section 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within the jurisdiction of the city, county, or city and county.

WHEREAS, Chapter 56 of the San Francisco Administrative Code ("Chapter 56") sets forth certain procedures by which a request for a development agreement will be processed and approved in the City and County of San Francisco.

WHEREAS, the Stephens Institute, dba Academy of Art University ("Stephens Institute") is a private for-profit postsecondary academic institution that currently occupies 40 buildings in the City (predominantly in the northeast quadrant) for its educational programs, recreational activities, and student housing. The buildings are owned or leased by the Stephens Institute from affiliated entities (collectively, the "LLC Parties"). This ordinance sometimes refers to the Stephens Institute and the LLC Parties, collectively and individually, as the "Academy."

WHEREAS, in 2007, the Stephens Institute occupied 34 buildings. In 28 of those buildings, the Academy had implemented various tenant improvements and changes of use without benefit of required conditional uses, building permits, or other entitlements. To evaluate the potential impacts associated with bringing these 28 buildings into compliance with the Planning Code and to analyze the Academy's then-proposed plans for growth, an Environmental Impact Report ("EIR") and an Existing Sites Technical Memorandum ("ESTM") were prepared between 2010 and 2016. During this period, one or more LLC Parties acquired an additional six buildings beyond the 34 already occupied, bringing the total number of properties owned or occupied by the Academy to 40. Collectively, the 40 properties described in this paragraph are referred to as the "Academy Properties;" the Academy Properties are more particularly described in the July 5, 2019 Academy of Art University Institutional Master Plan, a copy of which is on file with the Planning Department in File No. 2019-012970IMP. The Planning Commission approved the ESTM and certified the Final Environmental Impact Report ("FEIR"), which analyzed the 40 properties, on July 28, 2016.

WHEREAS, on May 6, 2016, the City Attorney of the City and County of San Francisco, on behalf of the City and the People of the State of California, commenced litigation against the Academy and certain LLC Parties in *People v. Stephens Institute, et. al*, San Francisco Superior Court Number CGC-16-551832 (the "Lawsuit"). In the Lawsuit, the City and state alleged violations of the City's Administrative Code, Planning Code, Building Code and the State Unfair Competition Law, California Business and Professions Code Sections 17200 et seq. (the "UCL").

WHEREAS, during court-supervised settlement discussions to resolve the Lawsuit, the Academy expressed its commitment to bring its existing uses into compliance with the Planning Code; relocate existing Academy uses or change Academy uses in buildings in accordance with applicable laws in those instances where the Planning Department has determined that legalization is not appropriate or the Academy has agreed to withdraw its use; compensate the City for past violations, including providing affordable housing public benefits to the City; legalize or reverse prior alterations performed without required permits or approvals in order to bring its properties into compliance with City codes; and work cooperatively with the City in planning for future Stephens Institute growth in a manner that accounts for the urban nature of the Stephens Institute campus, without adversely impacting the City's affordable or rent-controlled housing stock, or burdening its transportation system, including, as a part of that plan, building new housing for its students on property zoned for such use.

WHEREAS, as a result of those settlement discussions, and under the auspices of the Superior Court, the Academy and the City (collectively "Parties") entered into a non-binding Term Sheet for Global Resolution, dated November 15, 2016 (the "Initial Term Sheet"), as later supplemented by the Parties under the Superior Court's supervision in the Supplement to Term Sheet for Global Resolution, dated July 10, 2019 (the "Supplement"). This ordinance refers to the Initial Term Sheet and the Supplement collectively as the "Term Sheet". The Term Sheet was intended to provide a basis to resolve all of the outstanding issues relating to the Lawsuit with respect to land use matters, and to establish appropriate principles and processes for land use compliance by the Academy. The Parties made the Term Sheet public, each time with the Court's consent, and the Planning Commission held public hearings relating to the matters addressed in the Term Sheet.

WHEREAS, as contemplated by the Term Sheet, the Parties will enter into a comprehensive consent judgment that they will file with the Superior Court seeking the Court's approval and entry of judgment (the "Consent Judgment"). The Consent Judgment contains four main parts: (1) a Settlement Agreement (the "Settlement Agreement"), which is subject to approval by the Board of Supervisors and includes obligations of the LLC Parties to make payments to the City (including the Affordable Housing Public Benefit, defined below); (2) a Stipulated Injunction (the "Injunction"), which is an exhibit to the Settlement Agreement and provides a mechanism for judicial enforcement of the Academy's obligations under the Settlement Agreement and the Development Agreement; and (3) the Development Agreement, which is also an exhibit to the Settlement Agreement. Also critical to the global resolution that the Consent Judgment would achieve is the instrument securing the LLC Parties' financial obligations under the Settlement Agreement and the Development Agreement. The obligations of the LLC Parties to make the full settlement payments under the Settlement Agreement will be secured by a Guaranty (the "Guaranty") from the Stephens Family Revocable Trust, the Elisa Stephens Revocable Trust, the Scott Alan Stephens Revocable Trust, Elisa Stephens, Scott Alan Stephens, and Susanne Stephens.

WHEREAS, as contemplated by the Term Sheet, the Academy proposes to withdraw from, and cease any Stephens Institute operations at, nine of the 40 Academy Properties referenced in subsection (d), to occupy three additional properties, and to bring all of the remaining 34 properties owned by the LLC Parties and used by the Stephens Institute or intended for future Stephens Institute use into compliance with the Planning Code ("Project"). The Project requires the City's approval of a variety of permits and authorizations, including: (1) approval of a Master Conditional Use Authorization by the Planning Commission to reflect the approval of the use of 34 properties (primarily in the northeast quadrant of the City) and to grant certain exceptions to the Planning Code, (2) the approval of Master Permits to Alter and Certificates of Appropriateness by the Historic Preservation Commission, (3) amendment of the Planning Code to permit uses that are currently not permitted at certain properties, and (4) building permits and associated approvals from other City departments for a variety of other building alterations and street improvements including without limitation the removal and installation of signage, the removal and repair of nonconforming awnings and exterior alterations, the installation of Class 1 and Class 2 bike racks, the removal of curb cuts, and the replacement of certain windows.

WHEREAS, the Stephens Institute filed an application with the Planning Department for approval of a development agreement relating to the Project (the "Development Agreement") under Chapter 56. As set forth in the Development Agreement, the Academy requests legalization of certain previously unpermitted alterations and changes in use at the Academy Properties. The Academy also seeks approval of the work necessary to correct or reverse other previously unpermitted alterations and changes, and to bring these

properties into compliance with the Planning Code including, where applicable, Planning Code Articles 10 and 11.

WHEREAS, the Development Agreement requires the Academy to obtain all necessary permits to perform corrective work at the 34 properties referenced in subsection (i) and complete all work necessary to bring these buildings into compliance with the Planning Code pursuant to the Schedule of Performance Schedule set forth as Exhibit E to the Development Agreement.

WHEREAS, while the Development Agreement is between the City, acting primarily through the Planning Department, and the Academy, other City agencies retain a role in reviewing and issuing certain later approvals for the Project, including approval of building permits. All affected City agencies have consented or will consent to the Development Agreement.

WHEREAS, concurrently with adopting this ordinance, the Board will take a number of actions in furtherance of the Project, including approval of a Settlement Agreement, Consent Judgment, Stipulated Injunction and Guaranty, and other approvals as generally described in the Development Agreement, including Exhibit D to the Development Agreement (the "Approvals").

WHEREAS, public benefits to the City from the Project include: (1) an "Affordable Housing Benefit" defined as the cash payment by the LLC Parties of \$37,600,000 to the City to be used solely for affordable housing purposes, with a first priority for uses related to the creation or preservation of single room occupancy (SRO) units in those supervisorial districts in which the City alleges the Academy unlawfully converted SRO buildings to student housing, in such manner as the City, acting by and through the Mayor's Office of Housing and Community Development, may determine in its sole discretion; (2) a cash payment by the LLC Parties to the City's Small Sites Fund approximately \$8,200,000; (3) an agreement by the Stephens Institute to meet all future housing needs for its students through new construction on property that is zoned for such use, or conversion of existing non-residential, non-PDR (not zoned or operated as production, distribution and repair businesses) structures to student housing use, to not promise new students more housing units than the number of lawful units that are at its disposal, to not temporarily house its students in non-Academy facilities with limited exceptions, and to increase the percentage of housing it provides to On Campus Students (defined as on-site, full-time undergraduate and graduate students taking no more than one course online per semester) pursuant to a "Housing Metering" formula agreed to by the Parties; (4) payment by the LLC Parties to the Planning Department of Planning Code penalties totaling \$1,000,000; and (5) payment by the LLC Parties to the City Attorney's Office of Unfair Competition Law penalties totaling \$6,000,000. In addition, the Academy will pay impact, fair share, and in lieu fees of approximately \$58,000,000. Further, the Academy will pay permit fees and the City's administrative costs in connection with the processing of the Development Agreement.

WHEREAS, on July 28, 2016, by Motion No. 19704, the Planning Commission certified as adequate, accurate, and complete the FEIR for the Project pursuant to the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) ("CEQA").

WHEREAS, on October 9, 2019, the Planning Department issued an Addendum to the FEIR ("Addendum"), in which it determined that the actions contemplated in this ordinance comply with CEQA; that no supplemental or subsequent environmental review is required, as there are no substantial changes to the proposed Project, or to the circumstances under which the Project will be undertaken, involving new

significant environmental effects or a substantial increase in the severity of previously identified environmental effects; and that there is no new information of substantial importance that shows that the Project will have one or more effects not discussed in the FEIR, that the previously identified effects will be more severe, or that there are mitigation measures or alternatives that would reduce such effects, but the Project proponents refuse to adopt them.

WHEREAS, on November 5, 2019, pursuant to Planning Code section 302(b), Supervisor Aaron Peskin introduced an ordinance to approve a Development Agreement between the City and County of San Francisco and the Stephens Institute (Academy of Art University) and its affiliated entities, and amend the Planning Code to provide review procedures for Large Noncontiguous Post-Secondary Educational Institutions, to waive conflicting provisions in the Planning and Administrative Codes, and confirm compliance with or waive certain provisions of Administrative Code Chapters 41 and 56, in order to implement the Academy of Art University Project (the "Ordinance").

WHEREAS, the Ordinance would enable the Project. The Project involves the withdrawal of all Academy use from nine (9) properties and the legalization and/or establishment of uses associated with the Academy at 34 properties within the City and County of San Francisco. Also included in the Project are building modifications, both internal and external, that have either been made by the Academy and require legalization, are required for purposes of establishing Academy uses at these various properties, or are required to bring the buildings into conformance with the Planning Code including, where applicable, Articles 10 and 11 of the Planning Code. The Project also includes signage proposals for all properties.

WHEREAS, the Ordinance would add Planning Code Sections 304.6 and 304.7 to establish comprehensive and consolidated public review processes and procedures for Large Noncontiguous Post-Secondary Educational Institutions that meet prescribed criteria and would otherwise be subject to multiple approval processes and hearings. Any number of individual Conditional Use Authorizations, Certificates of Appropriateness, or Permits to Alter may be sought by a Large Noncontiguous Post-Secondary Educational Institution under a single application for a Master Conditional Use Authorization, a Master Certificate of Appropriateness, or a Master Permit to alter, respectively. In making a determination on a Master Conditional Use Authorization, the Commission is authorized to grant exceptions to Code requirements subject to the criteria of Planning Code Section 303(c). Under Section 304.6, no application for Certificate of Appropriateness or Permit to Alter shall be considered a Minor Alteration under either Section 1006.2 or 1111.1 of the Planning Code. Additionally, where the City enters into a Development Agreement with a Large Noncontiguous Post-Secondary Educational Institution the following shall apply: (1) where such Development Agreement compensates the City for the loss of Residential Units, the restrictions of Section 317(e) may be waived by the Master Conditional Use Authorization; and (2) where such Development Agreement authorizes the conversion of no more than one property from an industrial use subject to Section 202.8 to an institutional use, the requirements and restrictions of Section 202.8 shall be met by application for a Master Conditional Use Authorization; and (3) where such Development Agreement would expand the number of residential hotel rooms subject to the provisions of Administrative Code Chapter 41, the density limitations of Article 2 of the Planning Code shall not apply to the property where expansion occurs.

WHEREAS, on November 20, 2019, by Motion No. 0401, the Historic Preservation Commission adopted CEQA findings; including a statement of overriding considerations and a mitigation monitoring and reporting program (MMRP), pursuant to CEQA.

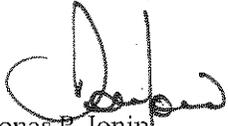
WHEREAS, the Commission has reviewed the Development Agreement and the Ordinance, and recommends their approval by the Board of Supervisors. This Resolution recommending the approval of the Ordinance is a companion to other legislative approvals relating to the Project, including the Master Conditional Use Authorization, Master Certificate of Appropriateness and Master Permit to Alter to authorize the Project (Motion Nos. 20574 , 0403 and 0402).

WHEREAS the Planning Department Commission Secretary is the Custodian of Records, located in Case No. 2019-012970PRJ, at 1650 Mission Street, Fourth Floor, San Francisco,

WHEREAS, on November 20, 2019, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on the proposed Ordinance.

**AND BE IT FURTHER RESOLVED**, that the Commission authorizes the Planning Director to take such actions and make such changes as deemed necessary and appropriate to implement this Commission's recommendation of approval and to incorporate recommendations or changes from other City agencies and/or the Board of Supervisors, provided that such changes do not materially modify the proposed legislation approved by the Commission, or materially increase any obligations of the City or materially decrease any benefits to the City contained in the Development Agreement attached as Exhibit D.

I hereby certify that the Historic Preservation Commission ADOPTED the foregoing Resolution on November 20, 2019.



Jonas P. Ionini  
Commission Secretary

AYES: Black, Foley, Hyland, Johns, Pearlman, So

NOES: None

ABSENT: Matsuda

ADOPTED: November 20, 2019

1 [Planning, Administrative Codes - Approval of Development Agreement, Conditional Use  
2 Procedures for Large Noncontiguous Post-Secondary Educational Institutions, Planning and  
3 Administrative Code Waivers]

4 **Ordinance approving a Development Agreement between the City and County of San**  
5 **Francisco and the Stephens Institute (Academy of Art University) and its affiliated**  
6 **entities, as to the Academy’s properties, which agreement provides for various public**  
7 **benefits, including, among others, an “affordable housing payment” of \$37,600,000 and**  
8 **a payment of approximately \$8,200,000 to the City’s Small Sites Fund; amending the**  
9 **Planning Code to provide review procedures for Large Noncontiguous Post-Secondary**  
10 **Educational Institutions; waiving conflicting provisions in the Planning and**  
11 **Administrative Codes, including Planning Code Section 169; confirming compliance**  
12 **with or waiving certain provisions of Administrative Code, Chapters 41 and 56; and**  
13 **ratifying certain actions taken in connection with the Development Agreement and**  
14 **authorizing certain actions to be taken consistent with the Development Agreement;**  
15 **affirming the Planning Department’s determination under the California Environmental**  
16 **Quality Act and findings of conformity with the General Plan, and with the eight priority**  
17 **policies of Planning Code, Section 101.1(b); and adopting findings of public**  
18 **convenience, necessity, and welfare under Planning Code, Section 302.**

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

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

25 Section 1. General Background and Findings.

1 (a) California Government Code Sections 65864 et seq. authorizes any city, county,  
2 or city and county to enter into an agreement for the development of real property within the  
3 jurisdiction of the city, county, or city and county.

4 (b) Chapter 56 of the San Francisco Administrative Code (“Chapter 56”) sets forth  
5 certain procedures for the processing and approval of development agreements in the City  
6 and County of San Francisco (the “City”).

7 (c) The Stephens Institute, dba Academy of Art University (“Stephens Institute”) is a  
8 private for-profit postsecondary academic institution that currently occupies 40 buildings in the  
9 City (predominantly in the northeast quadrant) for its educational programs, recreational  
10 activities, and student housing. The buildings are owned or leased by the Stephens Institute  
11 from affiliated entities (collectively, the “LLC Parties”). This ordinance sometimes refers to the  
12 Stephens Institute and the LLC Parties, collectively and individually, as the “Academy.”

13 (d) In 2007, the Stephens Institute occupied 34 buildings. In 28 of those buildings,  
14 the Academy had implemented various tenant improvements and changes of use without  
15 benefit of required conditional uses, building permits, or other entitlements. To evaluate the  
16 potential impacts associated with bringing these 28 buildings into compliance with the  
17 Planning Code and to analyze the Academy’s then-proposed plans for growth, an  
18 Environmental Impact Report (“EIR”) and an Existing Sites Technical Memorandum (“ESTM”)  
19 were prepared between 2010 and 2016. During this period, one or more LLC Parties acquired  
20 an additional six buildings beyond the 34 already occupied, bringing the total number of  
21 properties owned or occupied by the Academy to 40. Collectively, the 40 properties described  
22 in this paragraph are referred to as the “Academy Properties”; the Academy Properties are  
23 more particularly described in the July 5, 2019 Academy of Art University Institutional Master  
24 Plan, a copy of which is on file with the Planning Department in File No. 2019-012970IMP.  
25 The Planning Commission approved the ESTM and certified the Final Environmental Impact

1 Report (“FEIR”), which analyzed the 40 properties, on July 28, 2016.

2 (e) On May 6, 2016, the City Attorney of the City and County of San Francisco (the  
3 “City Attorney”), on behalf of the City and the People of the State of California, commenced  
4 litigation against the Academy and certain LLC Parties in *People v. Stephens Institute, et. al*,  
5 San Francisco Superior Court Number CGC-16-551832 (the “Lawsuit”). In the Lawsuit, the  
6 City Attorney alleged violations of the City’s Administrative Code, Planning Code, Building  
7 Code and the State Unfair Competition Law, California Business and Professions Code  
8 Sections 17200 et seq. (the “UCL”).

9 (f) During court-supervised settlement discussions to resolve the Lawsuit, the  
10 Academy expressed its commitment to bring its existing uses into compliance with the  
11 Planning Code; relocate existing Academy uses or change Academy uses in buildings in  
12 accordance with applicable laws in those instances where the Planning Department has  
13 determined that legalization is not appropriate or the Academy has agreed to withdraw its use;  
14 compensate the City for past violations, including providing affordable housing public benefits  
15 to the City; and work cooperatively with the City in planning for future Stephens Institute  
16 growth in a manner that accounts for the urban nature of the Stephens Institute campus,  
17 without adversely impacting the City’s affordable or rent-controlled housing stock, or  
18 burdening its transportation system, including, as a part of that plan, building new housing for  
19 its students on property zoned for such use.

20 (g) As a result of those settlement discussions, and under the auspices of the  
21 Superior Court, the Academy and the City (collectively “Parties”) entered into a non-binding  
22 Term Sheet for Global Resolution, dated November 15, 2016 (the “Initial Term Sheet”), as  
23 later supplemented by the Parties under the Superior Court’s supervision in the Supplement  
24 to Term Sheet for Global Resolution, dated July 10, 2019 (the “Supplement”). This ordinance  
25 refers to the Initial Term Sheet and the Supplement collectively as the “Term Sheet”. The

1 Term Sheet was intended to provide a basis to resolve all of the outstanding issues relating to  
2 the Lawsuit with respect to land use matters, and to establish appropriate principles and  
3 processes for land use compliance by the Academy. The Parties made the Term Sheet  
4 public, each time with the Court’s consent, and the Planning Commission held public hearings  
5 relating to the matters addressed in the Term Sheet.

6 (h) As contemplated by the Term Sheet, the Parties will enter into a comprehensive  
7 consent judgment that they will file with the Superior Court seeking the Court’s approval and  
8 entry of judgment (the “Consent Judgment”). The Consent Judgment contains four main parts:  
9 (1) a Settlement Agreement (the “Settlement Agreement”), which is subject to approval by the  
10 Board of Supervisors in the ordinance in File No. \_\_\_\_\_ and includes  
11 obligations of the LLC Parties to make payments to the City (including the Affordable Housing  
12 Public Benefit, defined below); (2) a Stipulated Injunction (the “Injunction”), which is an exhibit  
13 to the Settlement Agreement and provides a mechanism for judicial enforcement of the  
14 Academy’s obligations under the Settlement Agreement and the Development Agreement;  
15 and (3) the Development Agreement, which is also an exhibit to the Settlement Agreement.  
16 Also critical to the global resolution that the Consent Judgment would achieve is the  
17 instrument securing the LLC Parties’ financial obligations under the Settlement Agreement  
18 and the Development Agreement. The obligations of the LLC Parties to make the full  
19 settlement payments under the Settlement Agreement will be secured by a Guaranty (the  
20 “Guaranty”) from the Stephens Family Revocable Trust, the Elisa Stephens Revocable Trust,  
21 the Scott Alan Stephens Revocable Trust, Elisa Stephens, Scott Alan Stephens, and Susanne  
22 Stephens.

23 (i) As contemplated by the Term Sheet, the Academy proposes to withdraw from,  
24 and cease any Stephens Institute operations at nine of the 40 Academy Properties referenced  
25 in subsection (d), to occupy three additional properties, and to bring all of the remaining 34

1 properties owned by the LLC Parties and used by the Stephens Institute or intended for future  
2 Stephens Institute use into compliance with the Planning Code (“Project”). The Project  
3 requires the City’s approval of a variety of permits and authorizations, including: (1) approval  
4 of a conditional use authorization by the Planning Commission to reflect the approval of the  
5 use of 34 properties (primarily in the northeast quadrant of the City) and to grant certain  
6 exceptions to the Planning Code, (2) the approval of permits to alter and certificates of  
7 appropriateness by the Historic Preservation Commission, (3) amendment of the Planning  
8 Code to permit uses that are currently not permitted at certain properties, and (4) building  
9 permits and associated approvals from other City departments for a variety of other building  
10 alterations and street improvements including without limitation the removal and installation of  
11 signage, the removal and repair of nonconforming awnings and exterior alterations, the  
12 installation of Class 1 and Class 2 bike racks, the removal of curb cuts, and the replacement  
13 of certain windows.

14 (j) The Stephens Institute filed an application with the Planning Department for  
15 approval of a development agreement relating to the Project (the “Development Agreement”)  
16 under Chapter 56. A copy of the Development Agreement is on file with the Clerk of the Board  
17 of Supervisors in File No. \_\_\_\_\_.

18 (k) As set forth in the Development Agreement, the Academy requests legalization  
19 of certain previously unpermitted alterations and changes in use at the Academy Properties.  
20 The Academy also seeks approval of the work necessary to correct or reverse other  
21 previously unpermitted alterations and changes, and to bring these properties into compliance  
22 with the Planning Code including, where applicable, Planning Code Articles 10 and 11.

23 (l) The Development Agreement requires the Academy to obtain all necessary  
24 permits to perform corrective work at the 34 properties referenced in subsection (i) and  
25 complete all work necessary to bring these buildings into compliance with the Planning Code

1 pursuant to the Schedule of Performance Schedule set forth as Exhibit E to the Development  
2 Agreement.

3 (m) While the Development Agreement is between the City, acting primarily through  
4 the Planning Department, and the Academy, other City agencies retain a role in reviewing and  
5 issuing certain later approvals for the Project, including approval of building permits. All  
6 affected City agencies have consented to or will consent to the Development Agreement.

7 (n) Concurrently with this ordinance, the Board is taking a number of actions in  
8 furtherance of the Project, including approval of a Settlement Agreement, Consent Judgment,  
9 Stipulated Injunction and Guaranty, and other approvals as generally described in the  
10 Development Agreement, including Exhibit D to the Development Agreement (the  
11 “Approvals”).

12 (o) Public benefits to the City from the Project include: (1) an “Affordable Housing  
13 Benefit” defined as the cash payment by the LLC Parties of \$37,600,000 to the City to be  
14 used by the City solely for affordable housing purposes, with a first priority for uses related to  
15 the creation or preservation of single room occupancy (SRO) units in those supervisorial  
16 districts in which the City alleges the Academy unlawfully converted SRO buildings to student  
17 housing, in such manner as the City, acting by and through the Mayor’s Office of Housing and  
18 Community Development, may determine in its sole discretion; (2) a cash payment by the LLC  
19 Parties to the City’s Small Sites Fund approximately \$8,200,000; (3); an agreement by the  
20 Stephens Institute to meet all future housing needs for its students through new construction  
21 on property that is zoned for such use, or conversion of existing non-residential, non-PDR (not  
22 zoned or operated as production, distribution and repair businesses) structures to student  
23 housing use, to not promise new students more housing units than the number of lawful units  
24 that are at its disposal, to not temporarily house its students in non-Academy facilities with  
25 limited exceptions, and to provide housing to increase the percentage of housing it provides to

1 On Campus Students (defined as on-site, full-time undergraduate and graduate students  
2 taking no more than one course online per semester) pursuant to a “Housing Metering”  
3 formula agreed to by the Parties; (4) payment by the LLC Parties to the Planning Department  
4 of Planning Code penalties totaling \$1,000,000; and (5) payment by the LLC Parties to the  
5 City Attorney’s Office of Unfair Competition Law penalties totaling \$6,000,000. In addition, the  
6 Academy will pay impact, fair share, and in lieu fees totaling in excess of \$3,500,000. The  
7 total of all payments detailed in this subsection (o) will exceed \$58,000,000. Further, the  
8 Academy will pay permit fees and the City’s administrative costs in connection with the  
9 processing of the Development Agreement.

10 Section 2: Environmental Findings.

11 (a) On July 28, 2016, by Motion No. 19704, the Planning Commission certified as  
12 adequate, accurate, and complete the FEIR for the Project pursuant to the California  
13 Environmental Quality Act (California Public Resources Code Sections 21000 et seq.)  
14 (“CEQA”). A copy of Planning Commission Motion No. 19704 is on file with the Clerk of the  
15 Board of Supervisors in File No. \_\_\_\_\_.

16 (b) On October 9, 2019, the Planning Department issued an Addendum to the FEIR  
17 (“Addendum”), in which it determined that the actions contemplated in this ordinance comply  
18 with CEQA. The Addendum is on file with the Clerk of the Board of Supervisors in File No.  
19 \_\_\_\_\_ and is incorporated herein by reference. The Board affirms this determination.

20 (c) On November 20, 2019, by Motion No. \_\_\_\_\_, the Historic Preservation  
21 Commission adopted CEQA findings; on November 21, 2019, by Motion No. \_\_\_\_\_, the  
22 Planning Commission adopted findings (the “CEQA Findings”). These motions are on file with  
23 the Clerk of the Board of Supervisors in File No. \_\_\_\_\_. In accordance with the actions  
24 contemplated in this ordinance, the Board has reviewed the FEIR, the Addendum, and related  
25 documents, and adopts as its own and incorporates by reference as though fully set forth

1 herein the CEQA Findings, including the statement of overriding considerations, and the  
2 MMRP.

3 Section 3. Planning Code Findings.

4 (a) On November 7, 2019, the Planning Commission, in Resolution No.  
5 \_\_\_\_\_, adopted findings that the actions contemplated in this ordinance are consistent,  
6 on balance, with the City’s General Plan and eight priority policies of Planning Code Section  
7 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with  
8 the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by  
9 reference.

10 (b) Pursuant to Planning Code Section 302, the Board finds that these Planning  
11 Code amendments will serve the public necessity, convenience, and welfare for the reasons  
12 set forth in Planning Commission Resolution No. \_\_\_\_\_, and the Board incorporates  
13 such reasons herein by reference. A copy of said Resolution is on file with the Board of  
14 Supervisors in File No. \_\_\_\_\_.

15 Section 4. Article 3 of the Planning Code is hereby amended by adding Sections 304.6  
16 and 304.7, to read as follows:

17 **SEC. 304.6. REVIEW PROCEDURES FOR LARGE NONCONTIGUOUS POST-**  
18 **SECONDARY EDUCATIONAL INSTITUTIONS.**

19 **(a) Intent.** *This Section 304.6 establishes a comprehensive and consolidated public review*  
20 *process through which the Planning Commission shall review proposals involving Post-Secondary*  
21 *Educational Institutions that meet prescribed criteria and would otherwise be subject to multiple*  
22 *approval processes and hearings.*

23 **(b) Applicability.** *This Section 304.6 applies to all properties owned, occupied, or operated, in*  
24 *any capacity, by a Large Noncontiguous Post-Secondary Educational Institution. For purposes of this*  
25 *Section, a Large Noncontiguous Post-Secondary Educational Institution is an organization or entity*

1 that, regardless of certification by the Western Association of Schools and Colleges or primary course  
2 of study, meets all other requirements for a Post-Secondary Educational Institution, and satisfies all of  
3 the following conditions:

4 \_\_\_\_\_ (1) is subject to the Institutional Master Plan requirements of Section 304.5 of this  
5 Code;

6 \_\_\_\_\_ (2) is a for-profit institution; and

7 \_\_\_\_\_ (3) owns, occupies, or operates, in any capacity, 10 or more properties that are located  
8 in three or more non-overlapping Clusters anywhere in the City. For purposes of this subsection (b)(3),  
9 a Cluster is a circular area with a ¼-mile diameter that encompasses one or more properties. Clusters  
10 shall be drawn so that the fewest number of Clusters are required to encompass all such properties,  
11 without any one Cluster overlapping with any other.

12 **(c) Master Conditional Use Authorization.** Any number of individual Conditional Use  
13 Authorizations or building permits sought by a Large Noncontiguous Post-Secondary Educational  
14 Institution under this Section 304.6 may be sought under a single application for Conditional Use  
15 Authorization, also referred to as a “Master Conditional Use Authorization,” and may be acted on in a  
16 single action of the Planning Commission, regardless of the number of distinct properties involved.  
17 Determination on such Master Conditional Use Authorization shall be made pursuant to the criteria in  
18 Section 303(c) of this Code. In considering such Master Conditional Use Authorization, the  
19 Commission may consider such exceptions to the Planning Code as may be necessary to implement the  
20 Master Conditional Use Authorization.

21 **(d) Master Certificate of Appropriateness.** Any number of individual Certificates of  
22 Appropriateness may be sought by a Large Noncontiguous Post-Secondary Educational Institution  
23 under a single application for a Certificate of Appropriateness, also referred to as a “Master  
24 Certificate of Appropriateness,” and acted on by single action of the Historic Preservation  
25 Commission, regardless of the number of distinct properties involved. Determination on such Master

1 Certificate of Appropriateness shall be made as set forth in Section 1006.6 of this Code and in other  
2 provisions of the Municipal Code, as applicable. Additionally, no application made under this Section  
3 304.6 shall be considered a Minor Alteration under Section 1006.2 of this Code.

4 **(e) Master Permit to Alter.** Any number of individual Permits to Alter may be sought by a  
5 Large Noncontiguous Post-Secondary Educational Institution under a single application for a Permit  
6 to Alter, also referred to as a “Master Permit to Alter,” and acted on by single action of the Historic  
7 Preservation Commission, regardless of the number of distinct properties involved. Determination on  
8 such Master Permit to Alter shall be made as set forth in Section 1111 of this Code and in other  
9 provisions of the Municipal Code, as applicable. Additionally, no application made under this Section  
10 304.6 shall be considered a Minor Alteration under Section 1111.1 of this Code.

11 **(f) No Discretionary Review.** No requests for Discretionary Review shall be accepted by the  
12 Planning Department or heard by the Planning Commission for any permits or other applications  
13 subject to this Section 304.6(c).

14 **(g) Sunset.** This Section 304.6 shall remain in effect until the later of: (1) the date on which all  
15 work has been completed as required pursuant to the Schedule of Performance (Exhibit E) of the  
16 Development Agreement by and among the City and County of San Francisco and the Stephens  
17 Institute, dba Academy of Art University and the LLC Parties, and (2) January 1, 2025.

18 **SEC. 304.7. ADDITIONAL PROVISIONS APPLICABLE TO LARGE**  
19 **NONCONTIGUOUS POST-SECONDARY EDUCATIONAL INSTITUTIONS.**

20 In cases where the City enters into a Development Agreement with a Large Noncontiguous  
21 University, all of the following additional provisions apply:

22 (a) where such Development Agreement provides the City compensation for the loss of specific  
23 Residential Units that are not Student Housing units, the restrictions of Section 317(e) of this Code may  
24 be waived through a Master Conditional Use Authorization under Section 304.6;

25 (b) where such Development Agreement authorizes the conversion of no more than one property

1 from an industrial use subject to Section 202.8 of this Code to an Institutional Use, the Conditional Use  
2 Authorization requirements and other restrictions of Section 202.8 shall be met by application for a  
3 Master Conditional Use Authorization under Section 304.6; and

4 (c) where such Development Agreement would expand the number of guest rooms subject to the  
5 provisions of Chapter 41 of the Administrative Code, the density limitations of Article 2 of this Code  
6 shall not apply to the property with the expanded number of guestrooms.

7 Section 5. Development Agreement.

8 (a) The Board of Supervisors approves all of the terms and conditions of the  
9 Development Agreement, in substantially the form on file with the Clerk of the Board of  
10 Supervisors in File No. \_\_\_\_\_.

11 (b) The Board of Supervisors approves and authorizes the execution, delivery and  
12 performance by the City of the Development Agreement as follows: (1) the Director of  
13 Planning is authorized to execute and deliver the Development Agreement, and (2) the  
14 Director of Planning and other applicable City officials are authorized to take all actions  
15 reasonably necessary or prudent to perform the City's obligations under the Development  
16 Agreement in accordance with the terms of the Development Agreement.

17 (c) The Director of Planning, at the Director's discretion and in consultation with the  
18 City Attorney, is authorized to enter into any additions, amendments, or other modifications to  
19 the Development Agreement that the Director of Planning determines are in the best interests  
20 of the City and that do not materially increase the obligations or liabilities of the City or  
21 materially decrease the benefits to the City as provided in the Development Agreement.

22 (d) The approval of the Development Agreement under this ordinance is contingent  
23 on the Board of Supervisors' approval of the companion ordinance approving the Settlement  
24 Agreement, in Board of Supervisors File No. \_\_\_\_\_.

25 ///

1 Section 6. Board Authorization and Appropriation; Waiver/Override of Municipal Code  
2 Provisions.

3 (a) By approving the Development Agreement, the Board of Supervisors authorizes  
4 the Controller and City Departments to accept the funds paid by the Academy as set forth  
5 therein, and to appropriate and use the funds for the purposes described therein. The Board  
6 expressly approves the use of the Impact Fees as described and set forth in the Development  
7 Agreement.

8 (b) The Board of Supervisors waives or overrides any provision in Article 4 of the  
9 Planning Code and Chapter 10 of the Administrative Code that would conflict with the uses of  
10 these funds as described in the Development Agreement.

11 Section 7. Administrative Code Conformity and Waivers.

12 In connection with the Development Agreement, the Board of Supervisors finds that the  
13 City has substantially complied with the requirements of Administrative Code Chapters 41 and  
14 56, and waives any requirement to the extent not strictly followed. The Development  
15 Agreement shall prevail in the event of any conflict between the Development Agreement and  
16 Administrative Code Chapters 41 and 56, and without limiting the generality of the foregoing,  
17 the following provisions of Administrative Code Chapter 56 are waived or deemed satisfied as  
18 follows:

19 (a) The Project comprises 43 discrete properties located throughout the City and is  
20 the type of large multi-phase and/or mixed-use development contemplated by the  
21 Administrative Code and therefore satisfies the provisions of Chapter 56, Section 56.3(g).

22 (b) Any provisions of the Development Agreement that conflict with the provisions of  
23 Administrative Code Chapter 56 shall apply.

24 (c) The provisions of the Development Agreement regarding any amendment or  
25 termination, including those relating to "Material Change," shall apply in lieu of the provisions

1 of Chapter 56, Sections 56.15 and Section 56.18.

2 (d) The provisions of Chapter 56, Section 56.20 have been satisfied by agreement  
3 set forth in the Settlement Agreement and Development Agreement for the reimbursement of  
4 City costs.

5 (e) The Board of Supervisors waives the applicability of Section 56.4 (“Application,  
6 Forms, Initial Notice, Hearing”) and Section 56.10 (“Negotiation Report and Documents”).

7 (f) The Board of Supervisors waives the applicability of Section 56.3(b)  
8 (“Applicant/Developer”).

9 Section 8. Planning Code Waivers.

10 (a) The Board of Supervisors finds that the Impact Fees due under the  
11 Development Agreement will provide greater benefits to the City than the impact fees and  
12 exactions under Planning Code Article 4 and waives the application of, and to the extent  
13 applicable exempts the Project from, impact fees and exactions under Planning Code Article 4  
14 on the condition that Developer pays the Impact Fees due under the Development  
15 Agreement.

16 (b) The Board of Supervisors finds that the Transportation Management Plan  
17 (“TMP”) attached as Exhibit H to the Term Sheet includes provisions requiring that the  
18 Academy develop, implement, and provide a shuttle management plan, and provide bicycle  
19 parking, and other provisions that meet the goals of the City’s Transportation Demand  
20 Management Program in Planning Code Section 169, and waives the application of  
21 Section 169 to the Project on the condition that the Academy implements and complies with  
22 the TMP.

23 Section 9. Ratification.

24 All actions taken by City officials in preparing and submitting the Development  
25 Agreement to the Board of Supervisors for review and consideration are hereby ratified and

1 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken  
2 by City officials consistent with this ordinance.

3 Section 10. Effective Date. This ordinance shall become effective 30 days after  
4 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
5 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
6 of Supervisors overrides the Mayor’s veto of the ordinance.

7 Section 11. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
8 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
9 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
10 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
11 additions, and Board amendment deletions in accordance with the “Note” that appears under  
12 the official title of the ordinance.

13  
14  
15 APPROVED AS TO FORM:  
16 DENNIS J. HERRERA, City Attorney

17 By: \_\_\_\_\_  
18 KRISTEN A. JENSEN  
19 Deputy City Attorney

20 n:\legal\as2019\2000164\01404439.docx