

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
TIMESPACE ALEXANDRIA LLC,)
Appellant(s))
vs.)
ZONING ADMINISTRATOR,)
Respondent)

Appeal No. **23-033**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on July 3, 2023, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on June 15, 2023, of a Notice of Violation (Complaint No. 2022-012075ENF) (The subject property is currently authorized for movie theater use and is a Category A historic resource constructed in 1923 and identified in the eligible San Francisco Neighborhood Movie Theatre Historic District. On 4/25/13, the Planning Commission approved Conditional Use Authorization (Motion No. 18853) for a project consisting of the renovation of the existing historic Alexandria Theater building and the construction of a new mixed-use building. The violation pertains to the general negligence of maintaining and upkeeping the subject historic property as required by the Conditions of Approval in Motion No. 18853. To date none of the permits filed and issued for the repair and restoration of the historic theater building have been pursued or nor completed) at 5400 Geary Blvd.

COMPLAINT NO. 2022-012075ENF

FOR HEARING ON August 16, 2023

Address of Appellant(s):

Address of Other Parties:

Timespace Alexandria LLC, Appellant(s) c/o Nick Colla, Attorney for Appellant(s) Colla & Ray, LLP 1561 Powell Street San Francisco, CA 94133	N/A
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Date Filed: July 3, 2023

**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

PRELIMINARY STATEMENT FOR APPEAL NO. 23-033

I / We, **Timespace Alexandria LLC**, hereby appeal the following departmental action: **ISSUANCE of Notice of Violation Complaint No. 2022-012075ENF** by the **Zoning Administrator** which was issued or became effective on: **June 15, 2023**, for the property located at: **5400 Geary Blvd.**

BRIEFING SCHEDULE:

Appellant's Brief is due on or before: 4:30 p.m. on **July 27, 2023, (no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, corey.teague@sfgov.org, tina.tam@sfgov.org

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **August 10, 2023, (no later than one Thursday prior to hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, corey.teague@sfgov.org, tina.tam@sfgov.org and nick@collaray.com

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, August 16, 2023, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at www.sfgov.org/boa. You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

The reasons for this appeal are as follows:

See attachment to the preliminary Statement of Appeal.

Appellant or Agent:

Signature: Via Email

Print Name: Nick Colla, attorney for appellant

June 30, 2023

Julie Rosenberg, Executive Director
San Francisco Board of Appeals
49 South Van Ness Ave., Suite 1475
San Francisco, CA 94103
Julie.rosenberg@sfgov.org



Sent via Email

Re: Preliminary Statement: Board of Appeal Hearing Regarding Issuance of Planning Department Amended Notice of Violation No. 2022-012075ENF

Dear Ms. Rosenberg:

I hereby submit this preliminary statement in support of appellant Timespace Alexandria LLC's ("Owner") request to overturn the Planning Department's ("Planning") issuance of the above referenced Notice of Violation ("NOV") regarding Owner's real property located at 5400 Geary Street, San Francisco (the "Property"). The basis for the appeal is as follows:

On February 27, 2023, Planning issued a related Notice of Enforcement ("NOE") to Owner regarding historic elements of the Property that had fallen into a state of disrepair over the course of several decades. Following the issuance of the NOE, Owner, its retained design professionals, and my office coordinated with Planning staff, as well as Supervisor Connie Chan's Office, the Department of Building Inspection ("DBI"), and the Mayor's Office of Housing and Community Development ("MOHCD") to agree upon an NOV abatement plan and the scope of a potential future development of the Property.

Throughout the several months that Owner and my office coordinated with Planning to agree upon the scope of work to be completed in the NOV abatement plan, and the scheduling of deadlines in which abatement milestones shall be achieved, Planning has failed to offer meaningful responses to Owner's abatement proposals, allowed other City departments/personnel to unilaterally change agreed upon abatement milestones, and failed to accurately describe the historical timeline of events as the basis for its issuance of the NOV.

For the foregoing reasons, I submit this appeal on Owner's behalf.

Thank you,

Nick Colla

Nick Colla
Attorneys for Timespace Alexandria LLC



AMENDED NOTICE OF VIOLATION

June 15, 2023

Property Owner

Timespace Alexandria LLC
12230 Saratoga-Sunnyvale Rd
Saratoga, CA 95070

Site Address: 5400 Geary Blvd
Assessor's Block/Lot: 1450/048
Zoning District: NCD, Geary Boulevard Neighborhood Commercial District
Complaint Number: 2022-012075ENF
Code Violation: Section 174: Violation of Conditions of Approval
Administrative Penalty: Up to \$250 per Day for Each Violation
Enforcement T & M Fee: \$6,250 (Current Fee for confirmed violations, Additional charges may apply)
Response Due: Within 30 days from the date of this Notice
Staff Contact: Rogelio Baeza, (628) 652-7369, rogelio.baeza@sfgov.org

The Planning Department finds the above referenced property to be in violation of the Planning Code. As the owner of the subject property, you are a responsible-party to bring the above property into compliance with the Planning Code. Details of the violation are discussed below:

Description of Violation

Our records indicate that the subject property is currently authorized for movie theatre use. The subject property is a Category A historic resource constructed in 1923 and identified in the eligible San Francisco Neighborhood Movie Theatre Historic District on both the California Register of Historical Resources and the National Register of Historic Places.

On April 25, 2013, the Planning Commission approved Conditional Use Authorization (CUA) application no. 2004.0482CE and Motion No. 18853 for a project consisting of the renovation of the existing historic Alexandria Theater building and the construction of a new mixed-use building with underground parking on the surface parking lot behind the theater. Specifically, the CUA authorized a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, subject to conditions contained in "Exhibit A" in the approval including the regular maintenance and protection of the historic theater building. (See enclosures)

The violation pertains to the general negligence of maintaining and upkeeping the subject historic property, as required by the Conditions of Approval in Motion No. 18853. Our records show that although you diligently completed the construction of the new mixed-use building by February 1, 2019, to date, none of the permits filed and issued for the repair and restoration of the historic theater building have been pursued, nor completed.

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located.

Pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures including actions on building permits.

Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure in compliance with the Planning Code.

Failure to comply with any Planning Code provisions constitutes a violation of the Planning Code and is subject to an enforcement process under Planning Code Section 176.

Timeline of Investigation

On April 1, 2010, Building Permit No. 201004019509 was filed and issued to, "Comply with NOV 201037065 and Complaint 201038121. Remove display glass, new 6' tall temp fence under building entry. Fence to be thru visible." This permit was never completed.

On May 18, 2012, Building Permit No. 201205180781 was filed and issued "To obtain final inspection for work approved under PA#201004019509. All work is complete." This permit was never completed.

On April 25, 2013, the Planning Commission approved Conditional Use Authorization (CUA) application no. 2004.0482CE and Motion No. 18853 for a project consisting of the renovation of the existing historic Alexandria Theater building and the construction of a new mixed-use building with underground parking on the surface parking lot behind the theater. Specifically, the CUA authorized a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, subject to conditions contained in "Exhibit A" in the approval.

The violation pertains to the general negligence of maintaining and upkeeping the subject property. All Conditions of Approval remain in effect under Motion No. 18853 (see attached). The Planning Commission approved Motion No. 18853, including, but no limited to, the following relevant conditions:

- **Condition #23: Security, Supervision, Maintenance and General Upkeep of the Alexandria Theater Building and the Adjoining Parking Lot Site.** The Project Sponsor shall provide strict security and regular maintenance of the parking lot and the theater building to prevent any vandalism of the theater interior, and to protect its resources (i.e. architectural features and details) until such time the Project is completed as designed.
- **Condition #24: Community Liaison.** Prior to issuance of a Building Permit to construct the Project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of

the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

The project was approved with the following Mitigation Measures, including, but not limited to, the following relevant conditions:

- Preserve and protect original historic finishes and features during construction.
- Finishes: Original features will be preserved and protected during construction and operation. The decorative murals and panels at the walls and ceilings shall be preserved. Interior features and finishes shall be retained and restored. The auditorium's decorative plasterwork, murals and metalwork shall be preserved. Damaged plasterwork and filigree will be retained and repaired. New interior construction shall be reversible and not destroy historic materials.
- Preserve historic materials by covering the auditorium walls and ceiling with plywood.
- Preserve historic integrity differentiating new construction from historic characteristic.

On October 9, 2013, the Notice of Special Restriction (NSR) was recorded stating that the proposed project, at both the subject property (5400 Geary Blvd) and the adjacent rear property (369 18th Ave), are subject to the conditions of approval contained in Motion No. 18853.

On July 15, 2014, Building Permit No. 201407151354 was filed to, "Install 8'-0" tall iron fence (temporary) and gate at main entrance to comply with Planning Dept. NOV. #12744," and issued on August 27, 2014. This permit was never completed.

On June 11, 2015, Building Permit No. 200806275522 was issued to "Erect a 4-story, 41 dwelling units (residential condo/comm & garage), 2 basements." A copy of the NSR is included in the permit drawings. On February 1, 2019, a final Certificate of Final Completion (CFC) was issued, and the permit was completed.

On October 8, 2015, Building Permit No. 201510089265 was filed for "Temporary shoring of site. Refer to approved PA #200806275522 for new construction." This permit was never completed.

On May 12, 2016, Building Permit No. 201605127335 was filed for "Revision to approved shoring PA# 2015/10/08/9265 & foundation PA# 2008/06/27/5521-S1. Change soldier pile spacing from 6' to 8' on center. Decrease row of tiebacks by one in the soldier piles & hand dug pits. Reduce mat slab thickness from 30" to 24"," and issued on June 29, 2016. This permit was completed on February 1, 2019.

On April 22, 2016, Building Permit No. 200806275511 was issued, "To maintain one movie theatre (about 3,510 sf) while converting other two [small screens] into a full service restaurant (about 8,300 sf) on 2nd floor. Expand ground fl. commercial space to about 9,900 sf with 1,800 sf lobby per plans." This permit was never completed.

On March 30, 2017, Building Permit No. 201703292702 was filed and issued for the following scope of work, "This permit is for exploratory demolition work to remove the plaster on the soffit of the marquee." Planning

Department approval language included, “Exploratory permit for marquee only. Removal of soffit for structural assessment.” This permit was never completed.

On September 28, 2017, Building Permit No. 201709289870 was filed to, “repair marquee and sign elements: replace soffit and lighting, repair & repaint marquee, replace neon, repair blade sign, replace neon, repair "parking" sign, replace neon. signage under separate permit,” and issued on November 16, 2017. This permit was never completed.

On November 8, 2017, three Building Permits (BP) were filed including:

1. Building Permit No. 201711083483 for the “Repair neon letter, patch sheet metal & repaint @ existing marquee,” and issued on November 16, 2017. This permit was never completed.
2. Building Permit No. 201711083486 for the “Repair neon letter patch sheet metal & repaint @ existing projecting sign,” and issued on November 16, 2017. This permit was never completed.
3. Building Permit No. 201711083487 for the “Repair neon letter, patch sheet metal & repaint @ existing wall sign,” and issued on November 16, 2017. This permit was never completed.

Between October 11, 2018, and February 1, 2019, seven Building Permits were filed, issued, and completed for the new mixed-use building located at the adjacent rear property (369 18th Ave) including the following:

1. Building Permit No. 201810112896 for “Revision to approved BPA #200806275522/s3. Architectural addendum to clarify location of (n) errc equipment room on p1, revised location of facu, and 2-hr rated chase for errc wiring/conduit.”
2. Building Permit No. 201810264253 for “201004019509ev to pa# 200806275522s3; update bathroom plans to show compliance with ADA requirements.”
3. Building Permit No. 201810264276 for “Installation of a (n) 2-way emergency communication system to the fire alarm system. Ref 200806275522.”
4. Building Permit No. 201811155968 for “Administrative permit to document number of dwelling units from 41 to 43. There are 43 dwelling units as approved on APPLN #200806275522-2 & #200806275522-S3 plans.”
5. Building Permit No. 201811266657 for “As built for fire alarm. Ref PA #200806275522-S5.”
6. Building Permit No. 201811307101 for “Revision to approved BPA# 2018-1115-5968 for planning department sign-off to document unit count. Ref# 2008-0627-5522.”
7. Building Permit No. 201812148371 for “Provide plans for emergency evacuation sign and fire extinguisher locations.”

On July 21, 2021, two Building Permits (BP) were filed including:

1. Building Permit No. 202107214793 for the “Recommendation and completion of work approved under permit application no(s): 201711083487, 50% remaining,” and issued on July 28, 2021. This permit was never completed.
2. Building Permit No. 202107214807 for the “Recommendation and completion of work approved under permit application no(s): 201709289870, 201711083486, 201711083486, 50% REMAINING,” issued on the same day. This permit was never completed.

On January 10, 2023, a Department of Building Inspection (DBI) Notice of Violation (NOV) Complaint No. 202301432 was issued with the following description, “Unsecured signage at the former Alexandria Theatre at 5400 Geary which can be seen swaying during this windy weather.” The NOV pertained to the historic movie theater projecting sign, which had not been maintained and was detaching from the building. DBI Inspector Carl Malchow notified Planning Department staff that the sign was required to be removed immediately due to life safety concerns.

On January 26, 2023, Building Permit No. 202301260850 was filed with the following scope of work, “Partially comply w/ NOV 202301432. For emergency removal due to life safety hazard caused by storms. Removal req by DBI. Restoration and reinstallation of sign as required by planning will be filed in a subsequent permit.” Planning Department staff approved this permit with the following approval language, “Emergency removal required by DBI for life safety. Owner to return to file (n) permit to repair & to reinstall sign. Reinstallation of sign must be completed within 18 months of storm event.” This permit was issued on January 27, 2023, and completed on February 7, 2023.

On February 2, 2023, Planning Department staff Rogelio Baeza and Kelly Wong conducted a site visit with DBI Inspector Carl Malchow of the subject property to review existing conditions of the historic movie theater building including its exterior and interior elements. Staff observed the deteriorated condition of the existing historic building including at the exterior the poor condition of the fence at the theater entrance, the failing netting and missing elements at the marquee, the damaged display panels, as well as graffiti painted at the ground floor storefronts. At the interior, staff observed an opening from the exterior blocked by a garbage can, bird guano on the floor, numerous holes at historic plaster ceilings at the mezzanine, and the piles of sheet metal remnants of the removed historic projecting sign. During the site visit, Planning staff discussed with your representatives including Jeff Fu, York Lee, Robert Trieu, your attorney Nick Colla, and your engineer Gary Varum of the next steps in the enforcement process including the requirement to maintain the historic movie theater and protect its historic elements including, but not limited to, the marquee and display panels at the exterior.

On February 27, 2023, the Planning Department sent you a Notice of Enforcement (NOE) informing you about the violation and the abatement process including: 1) filing a new corrective building permit application for the repair and maintenance of the historic theater and its elements, 2) retaining a qualified historic architect and/or engineer, and 3) submitting a report outlining the current conditions of the historic building and property and proposed treatment recommendations. In this notice, you were advised to take corrective action and provide evidence of compliance to the Planning Department within fifteen (15) days. To date, neither a new building permit application, nor a report outlining the conditions and proposed treatment recommendations have been received by the Planning Department.

On March 9, 2023, the Planning Department met with you and your team, and Supervisor Connie Chan and her staff at City Hall to discuss violations at the subject property, as well as your ideas for a future development project. During this meeting, Planning staff clarified that work to abate the violations would be separate from any future proposed development project and would need to be addressed first and in a separate building permit. Planning staff reminded you that the deadline to respond to the NOE was March 14, 2023.

On March 14, 2023, your attorney Nick Colla submitted a letter to the Planning Department via email to respond to the NOE. This letter indicated that you had retained Aaron Jon Hyland as your qualified historic architect. In this letter, Mr. Colla indicated that a more substantive plan to abate the NOE would be submitted within 30 days, and if approved, a corrective building permit application would be submitted as soon as drawings were drafted. (See enclosures). To date, no such plan has been received by the Planning Department.

On March 23, 2023, Planning staff Rogelio Baeza responded to Mr. Colla's letter submitted on March 14, 2023. In this email, the Planning Department provided you with an extension until Thursday, April 27, 2023 to submit your abatement plan including a schedule for when a permit set of drawings would be submitted to Planning for review, and the date when a new building permit application would be filed. This email also confirmed that the storm event occurred on January 9, 2023, and the requirement to install the historic blade sign and substructure by July 9, 2024.

On April 27, 2023, your attorney Nick Colla submitted a second letter, labeled as "NOE Abatement Plan" to the Planning Department via email to respond to the NOE. In this two-page letter, Mr. Colla outlined that an assessment of the historic blade sign and marquee had been conducted, however the required abatement work to repair/replace the blade sign and marquee would be cost prohibitive to undertake. This letter also outlined that you would submit an update by May 30, 2023, with a date when the building permit application would be submitted. (See enclosures). No update has been received by the Planning Department, nor has a new building permit application been filed.

On May 2, 2023, Planning staff Rogelio Baeza responded to Mr. Colla that the the proposed NOE Abatement Plan did not satisfy the requirements outlined in the NOE. In this email, Mr. Baeza requested that a schedule be submitted for when a full permit set of drawings would be submitted for Planning Department review, and a date when the new building permit application would be filed. No response was received.

To date, the Planning Department has not received any evidence to demonstrate that the above violation has been abated or a corrective action has been taken to bring the subject property into compliance with the Planning Code.

How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation as follows:

1. **New Building Permit Application.** File a new building permit application correct the violation that includes the repair and maintenance of the historic movie theater and its elements.

- a. Scope of work. Include all scopes of work in the new building permit application to address all Conditions of Approval and Mitigation Measures, including but not limited to:
 - i. Repair and re-install historic projecting blade sign (re-installation of blade sign must occur within 18 months storm event).
 - ii. Repair and maintain the historic marquee.
 - iii. Repair and maintain the historic terrazzo flooring at the theater entrance.
 - iv. Repair and maintain the security fence at the theater entrance.
 - v. Repair and maintain the display panels at the theater entrance.
 - vi. Removal of any vandalism at the building exterior.
 - vii. Provide any additional security measures needed to protect the building.
 - viii. Repair and maintain any interior and exterior character defining features.
- b. Drawings. Submit a set of permit drawings including:
 - i. (3) Conditions for all site plans, floor plans, exterior elevations, and sections including:
 1. Existing (the last legal condition, as found in prior permits approved by the Planning Department);
 2. As-Built (as the property exists today); and
 3. Proposed (any new work required to bring this property back into compliance).
 - ii. One sheet after the Cover Sheet with photos showing as-built conditions labeled with dates.
2. **Condition Assessment Report**. Submit a Condition Assessment Report, by a qualified historic architect and/or engineer outlining the current conditions of the historic building and property and proposed treatment recommendations to address the violations, to the Planning Department for review and approval. Supplement this report with photos and drawings showing the location(s) of proposed work.
3. **Community Liaison**. Submit a letter addressed to the Zoning Administrator (ZA) and copy the enforcement planner Mr. Baeza and Code Enforcement Manager Kelly Wong, with written notice of the name, business address, and telephone number of the designated community liaison. Should the contact information subsequently change, the ZA shall be made aware of such changes. The community liaison shall report to the ZA what issues, if any, are of concern to the community and what issues have not been resolved by the property owner.

For questions regarding the building permit process, please contact the **Department of Building Inspection (DBI)** at:

49 South Van Ness Avenue, 2nd/5th Floor
San Francisco, CA 94103
Phone: 628.652.3200
Email: dbicustomerservice@sfgov.org
Website: www.sfdbi.org

For questions regarding the planning permit review process, please contact the **Planning Department** at:

49 South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103
Phone: 628.652.7300
Email: pic@sfgov.org
Website: www.sfplanning.org

For questions about this enforcement case, please email the assigned enforcement planner as noted above. For questions about the Building Code or building permit process, please email DBI at the email address noted above.

Timeline to Respond

The Responsible Party has **thirty (30) days from the date of this notice** to either;

- 1) Take steps to correct the violation as noted above; or
- 2) Appeal this Notice of Violation as noted below.

The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation will result in assessment of administrative penalties at \$250 per day for each violation. The Department may also report any licensed professional responsible for the violation(s) to the appropriate local, state, or federal licensing boards.

Please contact the assigned Enforcement Planner noted above with any questions, to submit evidence of correction, and discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

Appeal Processes

If the Responsible Party believes that this Notice of Violation of the Planning Code is an abuse of discretion by the Zoning Administrator, the following appeal processes are available **within thirty (30) days from the date of this notice**:

1. The Responsible Party may request a Zoning Administrator Hearing under Planning Code Section 176 to show cause why this Notice of Violation is issued in error and should be rescinded by submitting the Request for Zoning Administrator Hearing Form and supporting evidence to the Planning Department. This form is available from the Planning Department's website at <https://sfplanning.org/resources>. The

Zoning Administrator shall render a decision on the Notice of Violation within 30 days of such hearing. The Responsible Party may appeal the Zoning Administrator's decision to the Board of Appeals within 30 days from the date of the decision.

2. The responsible or any interested party may waive the right to a Zoning Administrator Hearing and proceed directly to appeal the Notice of Violation to the **Board of Appeals** located at:

49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
Phone: 628.652.1150
Email: boardofappeals@sfgov.org
Website: www.sfgov.org/bdappeal

If Board of Appeals upholds the Notice of Violation, it may not reduce the amount of penalty below \$100 per day for each day the violation continues unabated, excluding the period of time the matter was pending either before the Zoning Administrator or before the Board of Appeals.

No penalties are assessed during the period when the matter is pending either before the Zoning Administrator or before the Board of Appeals. However, if the Responsible Party requests continuance of the appeal without a reasonable cause with the Board of Appeals, the penalties may still be assessed during the continuation period.

Administrative Penalties

If a Responsible Party does not request any appeal process and does not take corrective action to abate the violation **within 30 days**, this Notice of Violation will become final. However, **administrative penalties will not begin to accrue until the 30-day period to respond expires**, as detailed above. Beginning on the following day, administrative penalties of up to **\$250 per day for each violation** to the Responsible Party will start to accrue for each day the violation continues unabated. If such penalties are assessed, the Planning Department will issue a Notice of Penalty and Fee, and the penalty amount shall be paid **within 30 days** from the issuance date of that notice. Please be advised that payment of penalty does not excuse failure to correct the violation or bar further enforcement action. Additional penalties will continue to accrue until corrective action is taken to abate the violation.

Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting the Planning Code violations. Accordingly, the Responsible Party is currently subject to a fee of **\$6,250** for "Time and Materials" cost associated with the Code Enforcement investigation for confirmed violation. Additional fees will continue to accrue until the violation is abated. **This fee is separate from the administrative penalties described above and is not appealable.**

Failure to Pay Penalties and Fees

If the Responsible Party fails to pay the “Administrative Penalties” and “Time and Materials” fee to the Planning Department within 30 days of the issuance of Notice of Penalty and Fee, the Zoning Administrator may take such actions to collect the “Penalties” and any unpaid “Time and Materials” fee owed to the Department, including:

- (1) Referral of the matter to the Bureau of Delinquent Revenue Collection under Chapter 10, Article V, Section 10.39 of the San Francisco Administrative Code. The BDR may apply a 25% surcharge for their collection services. Please note that such surcharge will be considered part of the cost of correcting the violation, and the Responsible Party will be responsible for such charges.
- (2) Initiation of lien proceedings under Chapter 10, Article XX, Section 10.230 et seq. of the San Francisco Administrative Code; and
- (3) Requesting the San Francisco Office of City Attorney to pursue collection of the “Administrative Penalties” and “Time and Materials” imposed against the Responsible Party in a civil action.

Recordation of Order of Abatement

Upon the expiration of 90 days following the finality of this Notice of Violation, an Order of Abatement may be recorded against the property's records in the Office of the Recorder of the City and County of San Francisco.

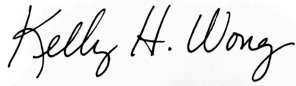
The obligation to correct the violation as set forth in the Order of Abatement shall be Planning Code conditions pursuant to Planning Code Section 174 that run with title to the property. Further, such recordation shall provide notice to each Responsible Party and any subsequent “successor” or “assign of title” to the property that the failure to perform such obligations is a violation of the Planning Code and may be enforced pursuant to Planning Code Section 176.

Any fees associated with recordation of an Order of Abatement will be assessed to the Responsible Party and added to the “Time and Materials” fee discussed above.

Other Applications Under Consideration

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

Sincerely,



Kelly Wong
Acting Zoning Administrator

Enc.: Notice of Enforcement, dated February 27, 2023

cc: Yorke Lee, Timespace Group (Owner's Representative), yorkelee@timespacegroup.com
Jeff Fu (Owner's Representative), yj_fu@yahoo.com
Nick Colla, Colla & Ray LLP (Owner's Attorney), nick@collaray.com
Supervisor Connie Chan, District 1 Supervisor, Board of Supervisors, connie.chan@sfgov.org
Ben Gurewitz, Legislative Aide, District 1 – Supervisor Chan, ben.gurewitz@sfgov.org
Carl Malchow, Senior Building Inspector, Department of Building Inspection, carl.malchow@sfgov.org
Carl Nicita, Department of Building Inspection, carl.nicita@sfgov.org
Kelly Wong, Code Enforcement Manager, Planning Department, kelly.wong@sfgov.org
Richard Sucre, Deputy Current Planning Division Director, Planning Department, richard.sucre@sfgov.org
Sheila Nickolopoulos, Director of Policy and Legislative Affairs, MOHCD, sheila.nickolopoulos@sfgov.org



NOTICE OF ENFORCEMENT

February 27, 2023

Property Owner

Timespace Alexandria LLC
12230 Saratoga-Sunnyvale Rd
Saratoga, CA 95070

Site Address: 5400 Geary Blvd
Assessor's Block/Lot: 1450/048
Zoning District: NCD, Geary Boulevard Neighborhood Commercial District
Complaint Number: 2022-012075ENF
Code Violation: **Section 174:** Violation of Conditions of Approval
Administrative Penalty: Up to \$250 Each Day of Violation
Enforcement T & M Fee: \$2,454.31 (Current Fee for confirmed violations, Additional charges may apply)
Response Due: Within 15 days from the date of this Notice
Staff Contact: Rogelio Baeza, (628) 652-7369, rogelio.baeza@sfgov.org

The Planning Department received a complaint that a Planning Code violation exists on the above referenced property that must be resolved. As the owner of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below:

Description of Violation

Our records indicate that the subject property is currently authorized for movie theatre use. The subject property is a Category A historic resource constructed in 1923 and identified in the eligible San Francisco Neighborhood Movie Theatre Historic District on both the California Register of Historical Resources and the National Register of Historic Places.

On April 1, 2010, Building Permit No. 201004019509 was filed and issued to, "Comply with NOV 201037065 and Complaint 201038121. Remove display glass, new 6' tall temp fence under building entry. Fence to be thru visible." This permit was never completed.

On May 18, 2012, Building Permit No. 201205180781 was filed and issued "To obtain final inspection for work approved under PA#201004019509. All work is complete." This permit was never completed.

On April 25, 2013, the Planning Commission approved Conditional Use Authorization (CUA) application no. 2004.0482CE and Motion No. 18853 for a project consisting of the renovation of the existing historic Alexandria

Theater building and the construction of a new mixed-use building with underground parking on the surface parking lot behind the theater. Specifically, the CUA authorized a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, subject to conditions contained in "Exhibit A" in the approval.

The violation pertains to the general negligence of maintaining and upkeeping the subject property. All Conditional of Approval remain in effect under Motion No. 18853 (see attached). The Planning Commission approved Motion No. 18853, including, but no limited to, the following relevant conditions:

- **Condition #23: Security, Supervision, Maintenance and General Upkeep of the Alexandria Theater Building and the Adjoining Parking Lot Site.** The Project Sponsor shall provide strict security and regular maintenance of the parking lot and the theater building to prevent any vandalism of the theater interior, and to protect its resources (i.e. architectural features and details) until such time the Project is completed as designed.
- **Condition #24: Community Liaison.** Prior to issuance of a Building Permit to construct the Project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

The project was approved with the following Mitigation Measures, including, but no limited to, the following relevant conditions:

- Preserve and protect original historic finishes and features during construction.
- **Finishes:** Original features will be preserved and protected during construction and operation. The decorative murals and panels at the walls and ceilings shall be preserved. Interior features and finishes shall be retained and restored. The auditorium's decorative plasterwork, murals and metalwork shall be preserved. Damaged plasterwork and filigree will be retained and repaired. New interior construction shall be reversible and not destroy historic materials.
- Preserve historic materials by covering the auditorium walls and ceiling with plywood.
- Preserve historic integrity differentiating new construction from historic characteristic.

On October 9, 2013, the Notice of Special Restriction (NSR) was recorded stating that the proposed project, at both the subject property (5400 Geary Blvd) and the adjacent rear property (369 18th Ave), are subject to the conditions of approval contained in Motion No. 18853.

On July 15, 2014, Building Permit No. 201407151354 was filed to, "Install 8'-0" tall iron fence (temporary) and gate at main entrance to comply with Planning Dept. NOV. #12744," and issued on August 27, 2014. This permit was never completed.

On June 11, 2015, Building Permit No. 200806275522 was issued to “Erect a 4-story, 41 dwelling units (residential condo/comm & garage), 2 basements.” A copy of the NSR is included in the permit drawings. On February 1, 2019, a final Certificate of Final Completion (CFC) was issued, and the permit was completed.

On October 8, 2015, Building Permit No. 201510089265 was filed for “Temporary shoring of site. Refer to approved PA #200806275522 for new construction.” This permit was never completed.

On May 12, 2016, Building Permit No. 201605127335 was filed for “Revision to approved shoring PA# 2015/10/08/9265 & foundation PA# 2008/06/27/5521-S1. Change soldier pile spacing from 6' to 8' on center. Decrease row of tiebacks by one in the soldier piles & hand dug pits. Reduce mat slab thickness from 30" to 24”,” and issued on June 29, 2016. This permit was completed on February 1, 2019.

On April 22, 2016, Building Permit No. 200806275511 was issued, “To maintain one movie theatre (about 3,510 sf) while converting other two [small screens] into a full service restaurant (about 8,300 sf) on 2nd floor. Expand ground fl. commercial space to about 9,900 sf with 1,800 sf lobby per plans.” This permit was never completed.

On March 30, 2017, Building Permit No. 201703292702 was filed and issued for the following scope of work, “This permit is for exploratory demolition work to remove the plaster on the soffit of the marquee.” Planning Department approval language included, “Exploratory permit for marquee only. Removal of soffit for structural assessment.” This permit was never completed.

On September 28, 2017, Building Permit No. 201709289870 was filed to, “repair marquee and sign elements: replace soffit and lighting, repair & repaint marquee, replace neon, repair blade sign, replace neon, repair "parking" sign, replace neon. signage under separate permit,” and issued on November 16, 2017. This permit was never completed.

On November 8, 2017, three Building Permits (BP) were filed including:

1. Building Permit No. 201711083483 for the “Repair neon letter, patch sheet metal & repaint @ existing marquee,” and issued on November 16, 2017. This permit was never completed.
2. Building Permit No. 201711083486 for the “Repair neon letter patch sheet metal & repaint @ existing projecting sign,” and issued on November 16, 2017. This permit was never completed.
3. Building Permit No. 201711083487 for the “Repair neon letter, patch sheet metal & repaint @ existing wall sign,” and issued on November 16, 2017. This permit was never completed.

Between October 11, 2018, and February 1, 2019, seven Building Permits were filed, issued, and completed for the new mixed-use building located at the adjacent rear property (369 18th Ave) including the following:

1. Building Permit No. 201810112896 for “Revision to approved BPA #200806275522/s3. Architectural addendum to clarify location of (n) errc equipment room on p1, revised location of facu, and 2-hr rated chase for errc wiring/conduit.”
2. Building Permit No. 201810264253 for “201004019509ev to pa# 200806275522s3; update bathroom plans to show compliance with ADA requirements.”
3. Building Permit No. 201810264276 for “Installation of a (n) 2-way emergency communication system to the fire alarm system. Ref 200806275522.”
4. Building Permit No. 201811155968 for “Administrative permit to document number of dwelling units from 41 to 43. There are 43 dwelling units as approved on APPLN #200806275522-2 & #200806275522-S3 plans.”
5. Building Permit No. 201811266657 for “As built for fire alarm. Ref PA #200806275522-S5.”
6. Building Permit No. 201811307101 for “Revision to approved BPA# 2018-1115-5968 for planning department sign-off to document unit count. Ref# 2008-0627-5522.”
7. Building Permit No. 201812148371 for “Provide plans for emergency evacuation sign and fire extinguisher locations.”

On July 21, 2021, two Building Permits (BP) were filed including:

1. Building Permit No. 202107214793 for the “Recommencement and completion of work approved under permit application no(s): 201711083487, 50% remaining,” and issued on July 28, 2021. This permit was never completed.
2. Building Permit No. 202107214807 for the “Recommencement and completion of work approved under permit application no(s): 201709289870, 201711083486, 201711083486, 50% REMAINING,” issued on the same day. This permit was never completed.

On January 10, 2023, a Department of Building Inspection (DBI) Notice of Violation (NOV) Complaint No. 202301432 was issued with the following description, “Unsecured signage at the former Alexandria Theatre at 5400 Geary which can be seen swaying during this windy weather.” The NOV pertained to the historic movie theater projecting sign, which had not been maintained and was detaching from the building. DBI Inspector Carl Malchow notified Planning Department staff that the sign was required to be removed immediately due to life-safety concerns.

On January 26, 2023, Building Permit No. 202301260850 was filed with the following scope of work, “Partially comply w/ NOV 202301432. For emergency removal due to life safety hazard caused by storms. Removal req by DBI. Restoration and reinstallation of sign as required by planning will be filed in a subsequent permit.” Planning Department staff approved this permit with the following approval language, “Emergency removal required by DBI for life safety. Owner to return to file (n) permit to repair & to reinstall sign. Reinstallation of sign must be completed within 18 months of storm event.” This permit was issued on January 27, 2023, and completed on February 7, 2023.

On February 2, 2023, Planning Department staff conducted a site visit with DBI Inspector Carl Malchow of the subject property to review existing conditions of the historic movie theater building including its exterior and interior elements. Staff observed the deteriorated condition of the existing historic building including at the exterior the poor condition of the fence at the theater entrance, the failing netting and missing elements at the marquee, the damaged display panels, as well as graffiti painted at the ground floor storefronts. At the interior, staff observed an opening from the exterior blocked by a garbage can, bird guano on the floor, numerous holes at historic plaster ceilings at the mezzanine, and the piles of sheet metal remnants of the removed historic projecting sign. During the site visit, Planning staff discussed with your representatives including Jeff Fu, York Lee, Robert Trieu, your attorney Nick Colla, and your engineer Gary Varum of the next steps in the enforcement process including the requirement to maintain the historic movie theater and protect its historic elements including, but not limited to, the marquee and display panels at the exterior.

To date, none of the permits issued for scopes to repair and restore the historic theater building have been completed. As a result, the historic movie theater has not been regularly maintained, nor has its resources been protected, as required by the Conditions of Approval outlined in Motion No. 18853.

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located.

Pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures including actions on building permits.

Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure in compliance with the Planning Code.

Failure to comply with any Planning Code provisions constitutes a violation of the Planning Code and is subject to an enforcement process under Planning Code Section 176.

How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation as follows:

1. File a new Building Permit Application to that includes the repair and maintenance of the historic movie theater and its elements.
 - a. Scope of work. Include all scopes of work in the new building permit application to address all Conditions of Approval and Mitigation Measures, including but not limited to:
 - i. Repair and re-install historic projecting blade sign (re-installation of blade sign must occur within 18 months storm event).
 - ii. Repair and maintain the historic marquee.
 - iii. Repair and maintain the historic terrazzo flooring at the theater entrance.
 - iv. Repair and maintain the security fence at the theater entrance.
 - v. Repair and maintain the display panels at the theater entrance.
 - vi. Removal of any vandalism at the building exterior.
 - vii. Provide any additional security measures needed to protect the building.
 - viii. Repair and maintain any interior and exterior character defining features.
 - b. **Drawings**. Submit a set of permit drawings including:
 - i. (3) Conditions for all site plans, floor plans, exterior elevations, and sections including:
 1. Existing (the last legal condition, as found in prior permits approved by the Planning Department);
 2. As-Built (as the property exists today); and
 3. Proposed (any new work required to bring this property back into compliance).
 - ii. One sheet after the Cover Sheet with photos showing as-built conditions labeled with dates.
2. Retain a qualified preservation architect and/or engineer with not less than 10 years successful experience working on preservation of historic movie theater buildings of comparable size and scope, within the last 10 years. If the structure requires work exceeding general repair and/or restoration work, please submit a report, by a qualified historic engineer with the above experience, outlining the current conditions of the building and property, and proposed treatment recommendations to the Planning Department for review and approval. Supplement this report with photos and drawings showing the location(s) of proposed work.

Please visit DBI website, <https://sf.gov/apply-building-permit> for information on the permit application process. **This permit must be diligently pursued and completed.**

Please be advised that upon review of above applications and plan submittals, if it is determined that additional planning applications and processes are required, the Planning Department will notify you to make such submittals.

For questions regarding the building permit process, please contact the **Department of Building Inspection (DBI)** at:

49 South Van Ness Avenue, 2nd/5th Floor
San Francisco, CA 94103
Phone: 628.652.3200
Email: dbicustomerservice@sfgov.org
Website: www.sfdbi.org

For questions regarding the planning permit review process, please contact the **Planning Department** at:

49 South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103
Phone: 628.652.7300
Email: pic@sfgov.org
Website: www.sfplanning.org

For questions about this enforcement case, please email the assigned enforcement planner as noted above. For questions about the Building Code or building permit process, please email DBI at the email address noted above.

Timeline to Respond

The timeline to respond to this Notice of Enforcement is **fifteen (15) days from the date of this notice**. Delays in abatement of the violation beyond this timeline will result in further enforcement action by the Planning Department, including issuance of Notice of Violation and assessment of administrative penalties at \$250 per day.

Please contact the assigned Enforcement Planner with any questions, to submit evidence of correction, and discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

Penalties and Appeal Rights

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code **within fifteen (15) days from the date of this notice** will result in issuance of a **Notice of Violation** by the Zoning Administrator. Administrative penalties of up to **\$250 per day** will also be assessed to the responsible party for each day beyond the timeline to respond provided for the Notice of Violation if the violation is not abated. The Notice of Violation provides the following appeal options.

1. Request for Zoning Administrator Hearing. The Zoning Administrator's final decision is then appealable to the Board of Appeals.
2. Appeal of the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount

of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter was pending either before the Zoning Administrator or before the Board of Appeals.

Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party is subject to an amount of **\$2,454.31** or more for "Time and Materials" cost associated with the Code Enforcement investigation. **This fee is separate from the administrative penalties described above and is not appealable.**

Other Applications Under Consideration

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

Enc: Conditional Use Authorization (Case no. 2004.0482CE) – Motion No. 18853

cc: Jeff Fu, yj_fu@yahoo.com (Owner's Representative)
Nick Colla, nick@collaray.com (Attorney)
Carl Malchow, San Francisco Department of Building Inspection, carl.malchow@sfgov.org



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- Better Streets Plan (Sec. 138.1)
- First Source Hiring (Admin. Code Chapter 83)
- Transit Impact Development Fee (Sec. 411)

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

Reception:
415.558.6378

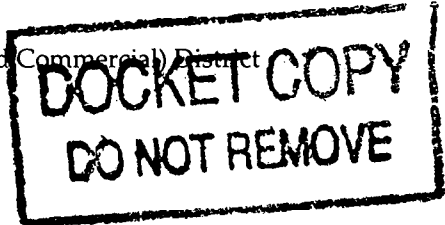
Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion No. 18853

HEARING DATE: APRIL 25, 2013

Date: April 18, 2013
Case No.: 2004.0482CE!
Project Address: 5400 GEARY BOULEVARD
Zoning: NC-3 (Moderate-Scale Neighborhood Commercial) District
 40-X Height and Bulk District
Block/Lot: 1450/008
Project Sponsor: Alexandria Enterprises, LLC
 c/o Ronald Yu
 5418A Geary Boulevard
 San Francisco, CA 94132
Staff Contact: Mary Woods – (415) 558-6315
mary.woods@sfgov.org



ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 121.1, 121.2, 303(C), 712.11 AND 712.21 OF THE PLANNING CODE TO ALLOW A DEVELOPMENT LOT SIZE EXCEEDING 9,999 SQUARE FEET AND A NON-RESIDENTIAL USE SIZE EXCEEDING 5,999 SQUARE FEET, IN AN NC-3 (MODERATE-SCALE NEIGHBORHOOD COMMERCIAL) DISTRICT AND 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On June 1, 2004, Alexandria Enterprises, LLC (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use authorization under Planning Code Sections 121.1, 121.2, 303(c), 712.11 and 712.21 to allow a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, in an NC-3 (Moderate-Scale Neighborhood Commercial) District, and 40-X Height and Bulk District.

On April 25, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2004.0482CE!.

On November 24, 2010, the Preliminary Mitigated Negative Declaration (PMND) for the Project was prepared and published for public review; and,

The PMND was available for public comment until January 24, 2011. No appeal of the PMND was filed with the Department; and

On May 26, 2011, the Department adopted the Final Mitigated Negative Declaration (FMND) and found that the contents of said report and the procedures through which the FMND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), Title 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"); and

The Department found the FMND was adequate, accurate and objective, reflected the independent analysis and judgment of the Planning Department, and approved the FMND for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP), setting forth measures to reduce potential environmental effects. These mitigation measures reduce all potential significant impacts to less than significant levels and are set forth in entirety in the MMRP, attached to the Draft Motion as EXHIBIT C.

These materials were made available to the public and this Commission for this Commission's review, consideration and action.

The Department is the custodian of records, located in the File for Case No. 2004.0482E, at 1650 Mission Street, Fourth Floor, San Francisco, California.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the Project Sponsor, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2004.0482CE!, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Project is located at the northwest corner of Geary Boulevard and 18th Avenue, in Assessor's Block 1450, Lot 008. The property is located within an NC-3 (Moderate-Scale Neighborhood Commercial) District and 40-X Height and Bulk District.

Existing uses on the Project Site include the closed 3-screen Alexandria Theatre, a 53-foot tall, two-story building containing approximately 17,000 square feet, including three small retail establishments fronting on Geary Boulevard, and a 57-space surface parking lot fronting on 18th Avenue. The three existing retail businesses include a gift store, an appliance store and an engineering office. The Alexandria Theatre closed in February, 2004. The parking lot is currently operated by an attendant for fee-based public parking.

3. **Surrounding Properties and Neighborhood.** The Project Site is situated towards the western end of the NC-3 District along the three-mile Geary Boulevard commercial corridor that stretches from the Western Addition to the Outer Richmond, through four neighborhoods. This corridor is bounded by Divisadero Street to the east and 28th Avenue in the west. The MUNI line "38-Geary" runs in front of the Project Site linking the Richmond area to Downtown and the Financial District. Other transit lines are also nearby and are within walking distance of the Site. Except for the commercial uses located on Geary Boulevard, the Project Site is surrounded by predominantly residential dwellings and residentially zoned districts to the west, north and east of the site. To the east of the site on 18th Avenue, existing uses also include a YMCA, a community center, and a church. Buildings on the subject block and facing block on Geary Boulevard range from one to two stories tall with primarily commercial uses on the ground floor and a few residential units on the upper floor. Commercial uses on the subject and facing blocks on Geary Boulevard include a gift store, an appliance store, a comic store, postal supplies store, a dry cleaner, shoe repair, restaurants, banks, grocery stores, a paint store, a medical supply store, and other professional offices. The Clement Street commercial corridor is one block north of the Project Site.
4. **Project Description.** The proposed Project consists of two components: (1) the renovation of the existing Alexandria Theatre building, and (2) the construction of a new mixed-use building with underground parking on the adjacent surface parking lot. Renovations to the Alexandria Theatre building include the conversion from a three-screen theatre to a 221-seat single-screen theatre, the creation of new retail spaces (6,300 square feet) on the ground floor, and a restaurant space (7,000 square feet) on the second floor. The surface parking lot will be removed and replaced with a new four-story mixed-use development with two levels of underground parking (122 spaces). The new building will contain retail spaces (4,800 square feet) on the ground floor, and 37 dwelling units on the upper floors, including 13 one-bedroom units, 18 two-bedroom units, and 6 three-bedroom units. The development would total approximately 109,000 square feet.

Section 312 -neighborhood notification was conducted in conjunction with the Conditional Use authorization process.

5. **Public Comment.** To date, the Department has received one e-mail in opposition to the Project expressing concerns related to building security, construction noise and pollution. Staff has met with one neighbor who expressed concerns about the massing of the new mixed-use building, structural integrity/building safety of adjacent buildings during construction, soil stability, and traffic problems along 18th Avenue. Staff has also received general inquiries about the scope of work related to the proposed Project. Staff has not received any correspondence in support of the

proposed project. The Project Sponsor and its representatives held several community outreach meetings beginning in 2010. Issues discussed ranged from the reuse of the existing theatre building, design of the new mixed-use building with retail/commercial uses on the ground floor and dwelling units above, affordability and type of units proposed, feasibility of retail uses in the theatre building, parking and traffic, and street trees.

6. **First Source Hiring Program.** The Project is subject to the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code) for projects creating ten (10) or more new residential units. The Project Sponsor will comply with the requirements of this Program. Prior to the issuance of any Building Permit or a First Addendum to a Site Permit, the Project Sponsor will have an approved and signed First Source Hiring Memorandum of Understanding (MOU) from the First Source Hiring Administrator, which will be evidenced in writing. This MOU will include Exhibit A, Construction First Source Hiring Agreement, and Exhibit B, End-Use First Source Hiring Agreement. Before the Commission can act on the Project, the Project Sponsor must complete the "Affidavit for First Source Hiring Program".

The Project Sponsor has submitted a complete Affidavit for First Source Hiring Program, a copy of which is attached to the Draft Motion

7. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Large Lot Development.** Sections 121.1 and 712.11 state that a Conditional Use authorization is required for development of large lot size exceeding 9,999 square feet in Neighborhood Commercial Districts.

The existing lot is irregular-shaped with an area of approximately 37,000 square feet.

- B. **Non-Residential Use Size.** Sections 121.2 and 712.21 state that a Conditional Use authorization is required for development of large lot size exceeding 5,999 square feet in Neighborhood Commercial Districts.

The existing theatre building contains approximately 17,000 square feet of non-residential uses. The Project proposes to add an additional 69,000 square feet of non-residential uses, including new retail spaces, a restaurant, and two levels of underground parking for 122 spaces.

- C. **Basic Floor Area Ratio.** Section 124 limits the building square footage to 3.6 square feet of building area for every 1 square feet of lot area, or approximately 134,000 square feet of building area for the subject site. However, in NC Districts, the FAR limits do not apply to dwellings or to other residential uses per Section 124(b).

The entire Project would total approximately 109,000 square feet, of which, approximately 40,000 square feet is related to residential uses.

- D. **Front Setback.** Section 132 is not applicable. There is no front setback requirement for buildings in NC-3 Districts.
- E. **Rear Yard.** Section 134(a)(1) requires that a rear yard equal to 25% of the lot depth be provided opposite the site's frontage. Further, Section 134(a)(1)(C) requires that in NC-3 Districts, rear yards must be provided at the lowest story containing a dwelling unit, and at each succeeding story of the building.

The new mixed-use building has a 30-foot rear yard setback (25% of the 120-foot lot depth) at all the residential levels. The Project provides a single rear yard totaling approximately 6,000 square feet.

- F. **Useable Open Space.** Section 135 typically requires 80 square feet of usable open space be provided for every dwelling unit, when provided as private open space, in NC-3 Districts. The open space requirement must be multiplied by 1.33 when provided as common open space.

For the proposed 37-unit Project, approximately 4,000 square feet of common useable open space would be required. For 30 of the units, the Project will provide common useable open space at the rear yard totaling approximately 4,300 square feet (3,200 square feet required). Additional common useable open space is also provided on the second floor interior courtyard, totaling approximately 1,800 square feet. The remaining seven units contain private useable open space in the form of private decks and yards, totaling approximately 1,300 (560 square feet required). All private open spaces meet the minimum area requirements of the Code.

- G. **Better Streets Plan.** Section 138.1 establishes requirements for the improvement of the public right-of-way associated with development projects, such that the public right-of-way may be safe, accessible, convenient and attractive to pedestrian use and travel by all modes of transportation.

The Project's streetscape and pedestrian improvements include a mid-block bulb-out on 18th Avenue, a small mid-block public plaza on 18th Avenue at the junction of the existing theatre building and the new mixed-use building, new street trees on both Geary Boulevard and 18th Avenue, permeable paving, benches and moveable seating, motorcycle and bike parking, lighting fixtures, and various hedges and plantings along 18th Avenue.

- H. **Dwelling Unit Exposure.** Section 140 requires that all dwelling units face a public street or side yard at least 25 feet in width, a required rear yard, or an open area of 25 feet in width.

All of the units in the proposed Project meet this requirement.

- I. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 requires in NC Districts containing specific uses, including retail stores, that building lobbies do not exceed 40 feet of building frontage, that parking entrances are no more than 20 feet wide, that ground floors have a minimum 10-foot ceiling height, and that the ground floor street

frontage be at least 60% transparent in order to allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or decorated grille work, other than wire mesh, which is placed in front or behind ground floor windows, shall be at least 75 percent open to perpendicular view.

The proposed Project is consistent with the relevant provisions under Section 145.1. The proposed two lobbies totals 20 feet in width. The parking entrance is 15 wide. The ground floor ceiling height is 11 feet. Along 18th Avenue, new transparency/glazing will be added to the existing theatre building totaling 62%, while the new mixed-use building will have 70% transparency at the street frontage.

- J. **Parking.** Section 151 requires one off-street parking space for each dwelling unit; one off-street parking space for each 200 square feet of occupied floor area where the occupied floor area exceeds 5,000 square feet for restaurants; one off-street parking space for each 500 square feet of occupied floor area up to 20,000 where the occupied floor area exceeds 5,000 square feet for retail stores, and one off-street parking space for each 8 seats over 50 seats for movie theatres. Section 152 requires one off-street freight loading space for retail stores where the gross floor area of structure or use is over 10,000 square feet but less than 60,000 square feet in newly constructed structures. Section 155(i) requires one handicapped parking space for each 25 off-street parking spaces provided. Sections 155(j), 155.2(c) and 155.4(e) require 1 bicycle space for every 20 automobile spaces for garages containing between 120 and 500 automobile spaces, where the most restrictive provisions prevail. Section 155.4(f) requires that new and existing commercial buildings must provide adequate signs or notices to advertise the availability of bicycle parking. Section 166 requires one car sharing space for the first 50 spaces plus one for every additional 50 spaces.

The proposed Project meets the provisions of the parking requirements as follows: 37 spaces for the dwelling units, 25 spaces for the retail stores, 32 spaces for the restaurant, 28 spaces for the movie theatre, for a total of 122 spaces for the Project. The Project will also provide two car share spaces and six handicapped spaces at the site.

The Project would not be required to have off-street freight loading spaces because the Project proposes approximately 5,000 square feet of retail uses in a new four-story building. The existing theatre building at approximately 19,000 square feet contains no off-street freight loading space.

The Project would be required to provide 6 bicycle parking spaces. The existing site contains no bicycle parking spaces. The Project proposes to add 20 "Class 1" bicycle parking spaces at the new mixed-use building, as well as additional on-street bicycle and motorcycle parking. Adequate signs or notices of the availability of bicycle parking will be provided at the Project Site.

- K. **Residential Density.** Sections 207.4 and 712.91, which set forth density restrictions for dwelling units in NC Districts, state that one dwelling unit is allowed for each 600 square feet of lot area.

Based on a lot area of approximately 37,000 square feet, 62 dwelling units are permitted. The Project proposes to develop 37 dwelling units, four of which (12%) will be inclusionary affordable units.

- L. **Change in Use/Demolition of a Movie Theatre.** Section 303(k) states that a change in use or demolition of a movie theatre use must meet the additional criteria set forth under this Section in addition to Section 303(c).

This Code Section does not apply to the proposed Project since the Project's environmental evaluation application was filed on May 19, 2004, prior to the effective date of July 27, 2004. However, renovations to the existing theatre building include the conversion from a three-screen theatre to a 221-seat single-screen theatre on the second floor.

- M. **Transit Impact Development Fee.** Sections 411 through 411.8 authorizes the imposition of certain development impact fees on new non-residential development projects or conversion of non-residential space of at least 800 gross square feet to offset impacts on the transit system. Land use categories for all impact fees are defined in Section 401.

The Project Sponsor will comply with the requirements of this section prior to the issuance of a Site Permit.

- N. **Inclusionary Affordable Housing Program.** Section 415 (formerly Section 315) sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements apply to projects that consist of ten or more units, where the first application (EE or BPA) was applied for before July 18, 2006. Pursuant to Planning Code Section 415.5 and 415.6, the Project is meeting the Inclusionary Affordable Housing Program requirement through the On-site Affordable Housing Alternative by providing 12% of the proposed dwelling units as affordable.

The Project Sponsor has demonstrated that it is eligible for the On-Site Affordable Housing Alternative under Planning Code Section 415.5 and 415.6, and has submitted an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to satisfy the requirements of the Inclusionary Affordable Housing Program by providing the affordable housing on-site instead of through payment of the Affordable Housing Fee. In order for the Project Sponsor to be eligible for the On-Site Affordable Housing Alternative, the Project Sponsor must submit an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the project. The Project Sponsor submitted such Affidavit on April 16, 2013. The EE application was submitted on May 19, 2004. Four units (1 one-bedroom, 2 two-bedroom, and 1 three-bedroom) of the 37 units provided will be affordable units. If the Project becomes ineligible to meet its Inclusionary Affordable Housing Program obligation through the On-site Affordable Housing Alternative, it must pay the Affordable Housing Fee with interest, if applicable.

- O. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department and must comply with Article 6 of the Planning Code.
8. **Planning Code Section 303(c)** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the Project does comply with said criteria in that:
- A. The proposed uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The Geary Boulevard corridor is one of the longest continuous neighborhood commercial districts in the City stretching from Divisadero Street to the east to 28th Avenue in the west. The existing Alexandria Theatre building was built in 1923. It was a neighborhood movie theatre until closing in 2004. The theatre building has been vacant since then; however, the three small retail storefronts and engineering office along Geary Boulevard remain in operation. The proposed Project consists of two components: (1) the renovation of the existing Alexandria Theatre building, and (2) the construction of a new mixed-use building with underground parking on the adjacent surface parking lot. Renovations to the Alexandria Theatre building include the conversion from a three-screen theatre to a 221-seat single-screen theatre, the creation of new retail spaces (6,300 square feet) on the ground floor, and a restaurant space (7,000 square feet) on the second floor. The surface parking lot will be removed and replaced with a new four-story mixed-use development with two levels of underground parking for 122 spaces. The new building will contain retail spaces (4,800 square feet) on the ground floor, and 37 dwelling units on the upper floors. The development would total approximately 109,000 square feet. The Project is necessary and desirable because the adaptive re-use of the existing theatre building will remove a blighted site and bring activity to this portion of the commercial corridor. The new mixed-use development will add 37 dwelling units to the City's housing stock, 12% of which will be inclusionary affordable units. New retail storefronts will be provided at the existing and new buildings along 18th Avenue. This will add new pedestrian interest and vitality along 18th Avenue.

The proposed Project will be built to today's Green Building and sustainability requirements under both "Build It Green's" Green Point Rating System and the U.S. Green Building Council's LEED program. In addition, the local codes also have requirements to develop and implement pollution prevention and site run-off controls as required by the City's Public Utilities Commission. The Project proposes to meet or exceed these requirements, according to the Project architect.

- (1) In Neighborhood Commercial Districts, if the proposed development lot exceeds the limitation (9,999 square feet) found in Planning Code Section 121.1, the following shall be considered:
- (i) The mass and façade of the proposed structure are compatible with the existing scale of the district; and

The proposed Project is compatible with the existing scale of the district in that it is typified by ground floor commercial uses with housing on the upper floors. Prominent buildings in mass and scale occupy corner lots, such as the existing Alexandria Theatre building. The new four-story building is typical of the surrounding three to four-story residential buildings in the district.

- (ii) The façade of the proposed structure is compatible with design features of adjacent facades that contribute to the positive visual quality of the district.

The addition of storefront entrances along the east side of the existing theatre building along 18th Avenue will relieve an existing blank wall and create a street façade compatible with those along Geary Boulevard. The design of the residential portions of the new mixed-use building takes into account neighboring residential developments by using scale, materials, and architectural elements, such as bays and cornices to relate to the older residential streetscape to the north along 18th Avenue. The overall character of the new mixed-use building is Spanish/Mediterranean of a type that was popular in the 1920s when both the Alexandria Theatre and much of the housing in the surrounding Richmond neighborhood was built. The visual mass of the asymmetrical silhouette is broken down with square and semi-octagonal bay windows, an arcaded ground floor level, variations in surface color to differentiating the bays and inset balconies at the top floor.

- (2) In Neighborhood Commercial Districts, if the proposed use is to be located at a location in which the square footage exceeds the limitation (5,999 square feet) found in Planning Code Section 121.2(a), the following shall be considered:

- i. The intensity of activity in the district is not such that allowing the larger use will be likely to foreclose the location of other needed neighborhood-serving uses in the area; and

The Project area consists of a wide variety of neighborhood-serving uses. No uses would be foreclosed by the Project. The existing retail stores on the ground floor of the theatre building will not be foreclosed. Any potential tenants in the new retail spaces will need to seek permit approvals and meet the requirements of the NC-3 zoning provisions.

- ii. The proposed use will serve the neighborhood, in whole or in significant part, and the nature of the use requires a larger size in order to function; and

The renovated theatre building will house a variety of uses that are permitted within the zoning district. Although the Project has a total of approximately 12,000 square feet of retail/commercial spaces in the overall project, they are not contiguous; rather, they are broken down into three different components: existing storefronts along Geary Boulevard, new retail spaces inside the existing theatre building, and ground floor storefronts in the

new mixed-use building. The commercial spaces in the existing and new mixed-use buildings may be further reduced in size to suit the needs of potential tenants.

- iii. The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district; and

The Project consists of two discrete buildings. The theatre building has existed at the site since 1923. The building was much larger than its immediate neighboring context, featuring blade signs that towered over the retail strip below, like a church spire. The signs are visible from a distance of many blocks away. In addition, the theatre building is situated on a corner lot, so that its larger form is an anchor as a destination place.

The new mixed-use building, with its varied materials, bay windows and balconies, is broken down to minimize the mass of the building, and provide interest at the pedestrian level.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The height and bulk of the existing theatre building will remain the same. The Project proposes to renovate the inside of the theatre building by adding a new restaurant, a 221-seat theatre, and retail stores. The existing surface parking lot will be replaced with a four-story mixed-use building with two levels of underground parking. The Project Site is a corner lot with two street frontages, Geary Boulevard and 18th Avenue. The design of the new building has been created to be compatible with the scale and context of the surrounding neighborhood.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Project Site is well-served by public transit. Several MUNI transit lines run directly in front of or near the Site. The Project proposes a two-level underground parking for 122 cars, including 2 car share spaces, 20 bicycle spaces, as well as on-street bicycle and motorcycle parking.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

No noxious or offensive emissions will be associated with the Project.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The Project provides both private and common useable open space at the ground floor rear yard and at the upper floor interior courtyard. The Project's streetscape and pedestrian improvements include a mid-block bulb-out on 18th Avenue, a small mid-block public plaza on 18th Avenue at the junction of the existing theatre building and the new mixed-use building, new street trees on both Geary Boulevard and 18th Avenue, permeable paving, benches and moveable seating, motorcycle and bike parking, lighting fixtures, and various hedges and plantings along 18th Avenue.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with relevant requirements and standards of the Planning Code, and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed Project is consistent with the stated purpose of the NC-3 (Moderate-Scale Neighborhood Commercial) District in that the intended use is to renovate an existing theatre building and replace an underutilized parking lot with a mixed use development. The larger lot size and use size are required due to the irregularly-shaped lot.

- 9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

Objectives and Policies

OBJECTIVE 1:

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPEMNT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.1:

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

Policy 1.8:

Promote mixed-use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects.

Policy 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

The new mixed-use building will contain retail spaces (approximately 4,800 square feet) on the ground floor, and 37 dwelling units on the upper floors, including 13 one-bedroom units, 18 two-bedroom units, and 6 three-bedroom units. The Project will provide four on-site inclusionary affordable housing units.

OBJECTIVE 11:

SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

Policy 11.1:

Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

Policy 11.6

Foster a sense of community through architectural design, using features that promote community interaction

The Project will provide streetscape and pedestrian improvements that include a mid-block bulb-out, a small public plaza with seating and open space, allowing people to meet and interact informally and foster the neighborhood's social experiences and offerings.

COMMERCE AND INDUSTRY ELEMENT

Objectives and Policies

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

Policy 6.3

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of existing affordable housing and needed expansion of commercial activity.

Policy 6.9

Regulate uses so that traffic impacts and parking problems are minimized

No commercial tenant would be displaced. The Project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood. The Project will provide desirable goods and services to the neighborhood and will provide resident employment opportunities to those in the community. Further, the Project Site is located within a Neighborhood Commercial District and is thus consistent with activities in the commercial land use plan. The Project will also provide adequate on-site parking to meet the needs of the commercial and residential uses so that the Project will not significantly increase traffic congestion or parking problems in the neighborhood.

URBAN DESIGN ELEMENT

Objectives and Policies

OBJECTIVE 1:

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

Policy 1.3:

Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

Policy 1.10:

Indicate the purposes of streets by adopting and implementing the Better Streets Plan, which identifies a hierarchy of street types and appropriate streetscape elements for each street type.

The Project's streetscape and pedestrian improvements include a mid-block bulb-out on 18th Avenue, a small mid-block public plaza on 18th Avenue at the junction of the existing theatre building and the new mixed-use building, new street trees on both Geary Boulevard and 18th Avenue, permeable paving, benches and moveable seating, motorcycle and bike parking, lighting fixtures, and various hedges and plantings along 18th Avenue.

OBJECTIVE 2:

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

Policy 2.5:

Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.

Policy 2.6:

Respect the character of older development nearby in the design of new buildings.

The Project consists of two components: (1) the renovation of the existing Alexandria Theatre building, built circa 1923, and (2) the construction of a new four-story mixed-use building on the adjacent surface parking lot. Renovations to the Alexandria Theatre building, while retaining all of its unique historic

character defining features, will include new commercial, restaurant and theatre uses. The surface parking lot will be removed and replaced with a new four-story mixed-use development with two levels of underground parking for 122 spaces.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposed Project will preserve a neighborhood theatre while adding new retail spaces and a restaurant to the existing theatre building. The Project will also replace an underutilized parking lot with a new four-story mixed-use development with retail storefronts on the ground floor and 37 dwelling units in the upper floors. The Project's new retail spaces will offer new employment opportunities and business ownerships.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

With the adaptive reuse of the theatre building, the existing neighborhood character will be preserved and enhanced. The design of the new mixed-use building will be compatible with the scale and design of the existing neighborhood.

- C. That the City's supply of affordable housing be preserved and enhanced,

The Project will add four inclusionary affordable housing units to the City's housing stock.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The Project Site is well-served by public transit. Several MUNI transit lines run directly in front of or near the Site. The Project proposes a two-level underground parking for 122 cars, including 2 car share spaces, 20 bicycle spaces, as well as on-street bicycle and motorcycle parking.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project will not displace any service or industry establishment. The Project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this Project.

- F. That the City achieves the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project will comply with all current earthquake safety requirements of the City's Building Code for the new building as well as the existing theatre building.

- G. That landmarks and historic buildings be preserved.

While the existing 1923 theatre building is not a landmark, it is considered a historic resource under CEQA. It will not be significantly altered as part of the Project.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The Project will maintain the existing theatre building's envelope and height, while the new building will not exceed the 40-foot height limit; therefore, the Project will not affect existing parks and open spaces.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Project Sponsor, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2004.0482CE!** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans filed with the Application, dated April 5, 2013 and labeled "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

The Commission has reviewed and considered the Final Mitigated Negative Declaration (FMND) and the Mitigation Monitoring and Reporting Program (MMRP), and the record as a whole and finds that there is no substantial evidence that the project will have a significant effect on the environment with the adoption of the mitigation measures contained in the MMRP to avoid potential significant environmental effects associated with the Project.

The Commission hereby adopts the FMND and MMRP attached hereto as EXHIBIT C and incorporated herein as part of this Motion by this reference thereto. All required mitigation measures identified in the FMND and contained in the MMRP are included as conditions of approval.

The Commission further finds that since the FMND was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the FMND due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FMND.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18853. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on April 25, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES: Commissioners Antonini, Fong, Hillis, Moore and Wu

NAYS: None

ABSENT: Commissioners Borden and Sugaya

ADOPTED: April 25, 2013

EXHIBIT A

Conditions of Approval

AUTHORIZATION

This authorization is for a Conditional Use Authorization to allow a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, pursuant to Planning Code Sections 121.1, 121.2, 303(c), 712.11 and 712.21, in an NC-3 (Moderate-Scale Neighborhood Commercial) District, and 40-X Height and Bulk District; in general conformance with plans dated April 5, 2013 and labeled "EXHIBIT B" included in the docket for **Case No. 2004.0482CE!** and subject to conditions of approval reviewed and approved by the Commission on April 25, 2013 under **Motion No. 18853**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the Building Permit Application or commencement of use for the project, the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the Project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on April 25, 2013 under **Motion No. 18853**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the "EXHIBIT A" of this Planning Commission Motion No. 18853 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building Permit Application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section, or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a Building Permit. The Project Sponsor shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. A Building Permit Application from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed Project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a Site or Building Permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a Site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

3. **Mitigation Measures.** Mitigation measures described in the MMRP for the FMND (Case No. 2004.0482E) attached as EXHIBIT C are necessary to avoid potential significant effects of the proposed Project, and have been agreed to by the Project Sponsor. Their implementation is a condition of Project approval.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

DESIGN – COMPLIANCE AT PLAN STAGE

4. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Planning Department staff review and approval. The Building/Site Permit Application and/or the Architectural Addenda shall be reviewed and approved by the Planning Department prior to issuance.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

5. **Garbage, Composting and Recycling Storage Placement.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and

clearly labeled and illustrated on the Building Permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

6. **Lighting Plan.** The Project Sponsor shall submit an exterior lighting plan to the Planning Department prior to Planning Department's approval of the Building/Site Permit Application.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.
7. **Noise.** Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
8. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the Project is operational, the Building/Site Permit application to implement the Project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
9. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the Building Permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.
10. **Signage Program.** Any proposed signage shall be subject to the review and approval of the Planning Department and must comply with Article 6 of the Planning Code.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.
11. **Street Trees/Streetscape Plan.** Pursuant to Planning Code Section 138.1, the Project Sponsor shall submit a streetscape plan to the Department prior to Department's approval of the Building/Site Permit Application indicating that seventeen (17) street trees shall be provided, including 13 evergreen trees, two palm trees, and two accent trees. Other streetscape and pedestrian improvements shall include a mid-block bulb-out on 18th Avenue, a mid-block public

plaza on 18th Avenue, permeable paving, benches and moveable seating, lighting fixtures, and various hedges and plantings along 18th Avenue.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

12. **Transformer Vault.** The location of individual project PG&E Transformer Vault installations has significant effects to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Therefore, the Department recommends the following preference schedule in locating new transformer vaults, in order of most to least desirable:
- (a) On-site, in a basement area accessed via a garage or other access point without use of separate doors on a ground floor façade facing a public right-of-way;
 - (b) On-site, in a driveway, underground;
 - (c) On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
 - (d) Public right-of-way, underground, under sidewalks with a minimum width of 12 feet, avoiding effects on streetscape elements, such as street trees; and based on Better Streets Plan guidelines;
 - (e) Public right-of-way, underground; and based on Better Streets Plan guidelines;
 - (f) Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;
 - (g) On-site, in a ground floor façade (the least desirable location).

Unless otherwise specified by the Department, Department of Public Work's Bureau of Street Use and Mapping (DPW BSM) should use this preference schedule for all new transformer vault installation requests.

For information about compliance, contact the Bureau of Street use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>.

PARKING AND TRAFFIC

13. **Automobile Parking.** The Project Sponsor shall provide 122 spaces for the Project, including two (2) car share spaces and six (6) handicapped spaces.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
14. **Bicycle Parking.** The Project Sponsor shall provide twenty (20) on-site "Class 1" bicycle parking spaces. Adequate signs or notices of the availability of bicycle parking shall also be provided at the Project Site.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
15. **Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the

Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation impacts during construction of the Project.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

16. **Parking for Affordable Units.** All off-street parking spaces shall be made available to Project residents only as a separate "add-on" option for purchase or rent and shall not be bundled with any Project dwelling unit for the life of the dwelling units. The required parking spaces may be made available to residents within a quarter mile of the Project. All affordable dwelling units pursuant to Planning Code Section 415 shall have equal access to use of the parking as the market rate units, with parking spaces priced commensurate with the affordability of the dwelling unit. Each unit within the Project shall have the first right of refusal to rent or purchase a parking space until the number of residential parking spaces are no longer available. No conditions may be placed on the purchase or rental of dwelling units, nor may homeowner's rules be established, which prevent or preclude the separation of parking spaces from dwelling units.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

PROVISIONS

17. **First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.
For information about compliance, contact the First Source Hiring Manager at 415-581-2335, www.business.services@sfgov.org
18. **Inclusionary Affordable Housing.** The Project Sponsor shall comply with the requirements of the Planning Code Section 415 (formerly Section 315) for the Project as follows:
1. **Number of Required Units.** Pursuant to Planning Code Section 415.6, the Project is required to provide 12% of the proposed dwelling units as affordable to qualifying households. The Project contains 37 units; therefore, four (4) affordable units are required. The Project Sponsor will fulfill this requirement by providing the 4 affordable units on-site. If the number of market-rate units change, the number of required affordable units shall be modified accordingly with written approval from Planning Department staff in consultation with the Mayor's Office of Housing ("MOH").
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.
 2. **Unit Mix.** The Project contains 13 one-bedroom, 18 two-bedroom, and 6 three-bedroom units; therefore, the required affordable unit mix is 1 one-bedroom, 2 two-bedroom, and 1 three-

bedroom units. If the market-rate unit mix changes, the affordable unit mix will be modified accordingly with written approval from Planning Department staff in consultation with MOH.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

3. **Unit Location.** The affordable units shall be designated on a reduced set of plans recorded as a Notice of Special Restrictions on the property prior to the issuance of the first construction permit.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

4. **Phasing.** If any building permit is issued for partial phasing of the Project, the Project Sponsor shall have designated not less than twelve percent (12%) of the each phase's total number of dwelling units as on-site affordable units

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

5. **Duration.** Under Planning Code Section 415.8, all units constructed pursuant to Section 415.6, must remain affordable to qualifying households for the life of the Project.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

6. **Other Conditions.** The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the MOH at 1 South Van Ness Avenue or on the Planning Department or Mayor's Office of Housing's websites, including on the internet at:

<http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>.

As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- a. The affordable unit(s) shall be designated on the building plans prior to the issuance of the first construction permit by the Department of Building Inspection ("DBI"). The affordable unit(s) shall (1) reflect the unit size mix in number of bedrooms of the market rate units, (2) be constructed, completed, ready for occupancy and marketed no later than the market rate units, and (3) be evenly distributed throughout the building; and (4) be of comparable overall quality, construction and exterior appearance as the market rate units in the principal project. The interior features in affordable units should be the same as those of the market units in the

principal project, but need not be the same make, model or type of such item as long they are of good and new quality and are consistent with then-current standards for new housing. Other specific standards for on-site units are outlined in the Procedures Manual.

- b. If the units in the building are offered for sale, the affordable unit(s) shall be sold to first time home buyer households, as defined in the Procedures Manual, whose gross annual income adjusted for household size does not exceed an average of ninety (90) percent of Area Median Income under the income table called "Maximum Income by Household Size" derived from the Unadjusted Area Median Income for HUD Metro Fair Market Rent Area that contains San Francisco. The initial sales price of such units shall be calculated according to the Procedures Manual. Limitations on (i) reselling; (ii) renting; (iii) recouping capital improvements; (iv) refinancing; and (v) procedures for inheritance apply and are set forth in the Inclusionary Affordable Housing Program and the Procedures Manual.
- c. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOH shall be responsible for overseeing and monitoring the marketing of affordable units. The Project Sponsor must contact MOH at least six months prior to the beginning of marketing for any unit in the building.
- d. Required parking spaces shall be made available to initial buyers or renters of affordable units according to the Procedures Manual.
- e. Prior to the issuance of the first construction permit by DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that contains these conditions of approval and a reduced set of plans that identify the affordable units satisfying the requirements of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to the MOH or its successor.
- f. The Project Sponsor has demonstrated that it is eligible for the On-site Affordable Housing Alternative under Planning Code Section 415.6 instead of payment of the Affordable Housing Fee, and has submitted the *Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415*, to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the Project.
- g. If the Project Sponsor fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Planning Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Section 415 et seq. shall constitute cause for the City to record a lien against the development project and pursue any and all available remedies at law.
- h. If the Project becomes ineligible at any time for the On-site Affordable Housing Alternative, the Project Sponsor or its successor shall pay the Affordable Housing Fee prior to issuance of

the first construction permit or may seek a fee deferral as permitted under Ordinances 0107-10 and 0108-10. If the Project becomes ineligible after issuance of its first construction permit, the Project Sponsor shall notify the Department and MOH and pay interest on the Affordable Housing Fee at a rate equal to the Development Fee Deferral Surcharge Rate in Section 107A.13.3.2 of the San Francisco Building Code and penalties if applicable.

19. **Transit Impact Development Fee.** Pursuant to Planning Code Section 411 (formerly Chapter 38 of the Administrative Code), the Project Sponsor shall pay the Transit Impact Development Fee (TIDF) as required by and based on drawings submitted with the Building Permit Application. Prior to the issuance of a temporary certificate of occupancy, the Project Sponsor shall provide the Planning Director with certification that the fee has been paid.

For information about compliance, contact the Case Planner, Planning department at 415-558-6378, www.sfplanning.org

MONITORING - AFTER ENTITLEMENT

20. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

21. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

22. **Changes to Building Design and/or Materials.** A new Conditional Use authorization shall be required if the project design and/or materials, such as windows, storefront, door surround, roof tiles, and canopy elements, to the Alexandria Theatre building and/or the new mixed-use building are modified in the future.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

OPERATION

23. **Security, Supervision, Maintenance and General Upkeep of the Alexandria Theatre Building and the Adjoining Parking Lot Site.** The Project Sponsor shall provide strict security and regular maintenance of the parking lot site and the theatre building to prevent any vandalism of

the theatre interior, and to protect its resources (i.e., architectural features and details) until such time the Project is completed as designed.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

24. **Community Liaison.** Prior to issuance of a Building Permit to construct the Project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

25. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within trash enclosures on the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org/>.

26. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org.

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org.

For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-1012 or 415-5530123, www.sf-police.org

27. **Odor Control.** While it is inevitable that some low level of odor may be detectible to nearby residents and passersby, appropriate odor control equipment shall be installed and maintained to prevent any significant noxious or offensive odors from escaping the premises. The Building Permit Application to implement the Project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans.

For information about compliance with odor or other chemical air pollutants emission standards and air quality regulations contact the Bay Area Air Quality Management District (BAAQMD), 1-800-334-

ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

28. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works' Streets and Sidewalk Maintenance Standards.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org/>

BRIEF SUBMITTED BY THE APPELLANT(S)

1 Nicholas Colla (SBN 278792)
Colla & Ray LLP
2 1561 Powell Street
San Francisco, CA 94133
3 415-579-1414
nick@collaray.com
4

Attorneys for Appellant Timespace Alexandria LLC

5
6 TIMESPACE ALEXANDRIA LLC;
7 Appellant,
8 vs.
9 SAN FRANCISCO PLANNING
10 DEPARTMENT;
11 Respondent.

**APPELLANT TIMESPACE
ALEXANDRIA LLC’S APPEAL BRIEF**
Appeal Date: August 16, 2023
Time: 5:00 PM
Place: City Hall, Room 416

12
13 **INTRODUCTION**

14 In January 2023, a severe rainstorm damaged the already decaying blade sign on the
15 façade of the Alexandria Theater at 5400 Geary Blvd. (the “Property”), jeopardizing the strength
16 of the sign’s connection to the Property. In response, the property owner, Timespace Alexandria
17 LLC (“Appellant”), obtained an emergency building permit to remove the sign from the façade
18 of the Property. Following the removal of the sign, the San Francisco Planning Department
19 (“Planning”) issued Notice of Enforcement (“NOE”) to Appellant regarding the maintenance and
20 preservation of historic elements of the Property that had fallen into a state of disrepair over the
21 course of several decades, including the blade sign. Upon receipt of the NOE, Appellant, its
22 architects, engineers, historic preservation experts, and attorneys, made good faith efforts to
23 coordinate with Planning to set reasonable milestones to abate the NOE in phases. Throughout
24 the process, Planning failed to offer meaningful responses to Appellant’s abatement proposals,

1 allowed other City departments/personnel to unilaterally change agreed upon abatement
2 milestones, misapplied its own Code to impose unwarranted abatement conditions, and failed to
3 accurately describe the historical timeline of events related to the NOE as the basis for its issuance
4 of Notice of Violation No. 2022-012075ENF (“NOV”).

5 **STATEMENT OF FACTS**

6 In 2015, Appellant acquired the Property and shortly thereafter submitted an application
7 to develop a mixed-use project that included a first-floor swim center, and a second floor after
8 school center, and 43 residential units. While the application was pending, Appellant retained
9 Arrow Sign Company (“Arrow”) to perform maintenance on the blade sign and marquee affixed
10 to the façade of the Property. After an initial assessment, Arrow opined that the blade sign had
11 deteriorated over several years and was beyond repair. Attached as Exhibit A is a true and correct
12 copy of a November 18 email from Arrow documenting the condition of the blade sign. Because
13 the estimated cost of replacing the blade sign, repairing the marquee, and strengthening the
14 structure to support the signage and marquee exceeded \$400,000, the Appellant’s only viable
15 option to pay for this work was to include it in the financing of the project. Attached as Exhibit
16 B is a revised Arrow Cost Estimate for signage repairs/replacement. However, by the time the
17 project was approved in late 2019, financing had fallen through. Then, just a few months later,
18 the COVID-19 pandemic commenced, which brought normal business activity to a halt. As such,
19 work to maintain/preserve the façade of the Property could not be completed.

20 During the pandemic, Appellant engaged in discussions with the City and County of San
21 Francisco (the “City”) about the possibility of having the City purchase and develop the Property.
22 Appellant also submitted a project review application to Planning to determine whether Appellant
23
24

1 could utilize the State Density Bonus program or Senate Bill 35 to propose a higher density
2 residential project at the Property.

3 In January 2023, during severe rain and wind storms, Appellant obtained an emergency
4 permit to remove the blade sign from the Property out of fear that it could not withstand the severe
5 weather. Shortly thereafter, on February 27, 2023, Planning issued the NOE to Appellant, a true
6 and correct copy of which is attached hereto as Exhibit C. The NOE ordered Appellant to make
7 several repairs to the Property pertaining to maintaining/preserving the blade sign, marquee, and
8 interior elements of the Property, submit required drawings/plans required to undertake the
9 corrective work, and to reply to the NOE within 15 days of issuance. Notably, the NOE also
10 stated that the blade sign would have to be repaired and re-affixed to the façade of the Property
11 within 18 months of the date of the storm event that triggered its removal. When Appellant's
12 counsel requested that Planning provide a legal basis to impose an 18 month deadline to reinstall
13 the blade sign at the façade of the Property, Planning staff replied by citing to Section 188(b) of
14 the Planning Code, which states as follows:

15 *A noncomplying structure that is damaged or destroyed by fire, or*
16 *other calamity, or by Act of God, or by the public enemy, may be restored*
17 *to its former condition; provided that such restoration is permitted by*
18 *the Building Code, and is started within eighteen months and diligently*
19 *prosecuted to completion. Except as provided in Subsection (c) below, no*
20 *noncomplying structure that is voluntarily razed or required by law to be*
21 *razed by the owner thereof may thereafter be restored except in full*
22 *conformity with the requirements of this Code.*

23 *For purposes of this Subsection (b), "started within eighteen months"*
24 *shall mean that within eighteen months of the fire or other calamity or Act*
of God, the structure's owner shall have filed a building permit
application to restore the structure to its former condition and use.

1 A true and correct copy of the April 12, 2023 email from Planning staff in which Planning
2 Code Section 188(b) is cited as authority to mandate the reinstallation of the blade sign within 18
3 months is hereby attached as Exhibit D.

4 On March 9, 2023, prior to Appellant’s initial NOE response deadline, Appellant, along
5 with its design professionals and legal counsel, attended a meeting at City Hall convened by
6 Supervisor Connie Chan (“Supervisor Chan”), which was also attended by Planning staff, the
7 Mayor’s Office of Housing and Community Development (“MOHCD”), and the Department of
8 Building Inspection (“DBI”). During that meeting, the parties discussed Appellant’s plans to
9 abate the NOE, the potential for future development of the Property, and Supervisor Chan’s
10 proposal to designate the Property as a historic landmark. The meeting concluded with the parties
11 agreeing to hold a follow up meeting to resume discussions after Appellant and Planning agreed
12 upon deadlines for abatement milestones.

13 Following the meeting convened by Supervisor Chan, and Appellant’s timely submission
14 of a written response to the NOE, which is hereby attached as Exhibit E, Planning staff sent a
15 March 23, 2023 email to Appellant’s counsel to confirm an April 27, 2023 deadline to submit
16 Appellant’s proposed NOE abatement schedule. Attached as Exhibit F is a true and correct copy
17 of the March 23, 2023 email from Planning. Subsequently, Supervisor Chan unilaterally cancelled
18 an April 20, 2023 follow up meeting with Appellant, Planning, MOHCD, and DBI on the basis
19 that Appellant had failed to comply with Planning’s abatement deadlines (which had yet to lapse
20 at that point), and her office has refused to communicate with Appellant since then. As such, the
21 City essentially refused to meaningfully communicate with Appellant about how the proposed
22 NOE abatement would take place in conjunction with Supervisor Chan’s proposed landmarking
23 of the Property.

1 On April 27, 2023, Appellant’s counsel timely submitted a proposed NOE abatement
2 schedule to Planning, a true and correct copy of which his hereby attached as Exhibit G. In
3 response, on May 2, 2023, Planning staff sent an email to Appellant’s counsel stating that the
4 proposed NOE abatement schedule was insufficient. Attached as Exhibit H is a true and correct
5 copy of the May 2, 2023 email from Planning.

6 On May 8, 2023, Appellant’s counsel replied to Planning by providing a revised proposed
7 abatement schedule with updated abatement schedules to cure any alleged insufficiency in the
8 previously submitted proposal. Attached as Exhibit I is a true and correct copy of the May 8,
9 2023 email from Appellant’s counsel to Planning. Planning never responded to Appellant’s
10 Counsel’s revised proposal to abate the NOE.

11 On June 14, 2023, Planning issued the NOV to Appellant, a true and correct copy of which
12 is attached hereto as Exhibit J. The NOV incorrectly states that Appellant never replied to
13 Planning’s May 2, 2023 email informing Appellant that the proposed abatement schedule was
14 insufficient. When Appellant’s counsel reached out to Planning to inform staff that Appellant
15 had indeed offered a revised abatement schedule, and that it was in fact Planning that had never
16 responded, Planning issued an Amended NOV that simply added the term “Amended” to the title
17 of the document but failed to correct the factual inaccuracy that Appellant did not reply to
18 Planning’s May 2, 2023 email. A true and correct copy of the Amended NOV is hereby attached
19 as Exhibit K.

20 **ANALYSIS**

21 The Board of Appeals should exercise its discretion to overturn Planning’s issuance of the
22 Amended NOV because Planning failed to afford Appellant due process throughout the
23 enforcement process. First, Planning misinterpreted its own code by citing Planning Code Section

1 188(b) as the basis to impose an 18 month deadline to repair and reinstall the blade sign at the
2 façade of the Property in the NOE, the NOV and the Amended NOV. Section 188(b) states that
3 property owners may rebuild a pre-existing nonconforming condition at a property that suffered
4 damage as a result of fire, act of god, or other calamity if the rebuilding is completed within 18
5 months of the event that caused the damage. This section allows an owner, in the owner's
6 discretion, to rebuild the nonconforming condition so long as the work is completed within 18
7 months. Here, Planning misinterprets the code section in a way that gives it improper authority
8 to impose the rebuilding and reinstallation of the blade sign at the Property. Planning relied on
9 this misinterpretation of the code to claim that the abatement of the NOE could not be completed
10 in conjunction with the redevelopment of the Property. This is an incorrect application of the
11 Planning Code.

12 Second, Planning allowed Supervisor Chan's office to take part in NOE abatement
13 discussions to Appellant's detriment. After the issuance of the NOE, Supervisor Chan's office
14 invited Appellant, Planning, DBI, and MOHCD to meet at City Hall to discuss an abatement plan,
15 future development of the Property, and Supervisor Chan's proposal to have the Property
16 designated as a historic landmark. Following that meeting, Planning and Appellant agreed upon
17 a timeline to submit initial responses to the NOE, but Supervisor Chan's office unilaterally
18 demanded that abatement information be provided to her office in advance of the timeline.
19 Planning staff was included on correspondence from Supervisor Chan's office in which the agreed
20 upon abatement schedule was changed but did not intervene to confirm that Planning and
21 Appellant had already agreed upon a preliminary abatement schedule. As a result, Supervisor
22 Chan's office cut off communication with Appellant, leaving Appellant in a position where it is

1 unable to communicate with the District Supervisor who is sponsoring legislation to landmark its
2 real property.

3 Third, the Board of Appeals should overturn Planning's issuance of the Amended NOV
4 because it is based on the fallacy that Appellant failed to submit a revised abatement schedule to
5 Planning. The facts show that it was Planning that failed to offer a response to Appellant's revised
6 abatement schedule and when Planning's error was brought to its attention, it failed to correct the
7 inaccuracy in its revised Abated NOV and improperly attempted to move forward with
8 enforcement.

9 **CONCLUSION**

10 The Board of Appeals has the discretion to overturn the issuance of the Amended NOV
11 and should do so because Planning failed to properly apply its own code in the issuance and
12 enforcement of the Amended NOV, it failed to respond to Appellant's abatement proposal in a
13 meaningful way, and it allowed outside City personnel to dictate the terms of abatement.

14 DATED: 07/27/23

15 *Nick Colla*

16 _____
17 Nick Colla, Esq.
18 Colla & Ray LLP
19 **Attorneys for Appellant Timespace**
20 **Alexandria LLC**
21
22
23
24

EXHIBIT A



Nick Colla <nick@collaray.com>

FW: Alexandria Theater - Rusted Channel Iron Supports in Vertical Blade Sign

Yorke Lee <yorkelee@timespacegroup.com>

Wed, Apr 26, 2023 at 5:28 PM

To: Nick Colla <nick@collaray.com>

Cc: Robert Trieu <roberttrieu@timespacegroup.com>, Jeff Fu <yj_fu@yahoo.com>

FYI

From: Jack Abele <jabele@arrowsigncompany.com>

Sent: Tuesday, November 6, 2018 12:33 PM

To: Yorke Lee <yorkelee@timespacegroup.com>

Cc: 'Jeff Fu' <yj_fu@yahoo.com>; 'Lamar Zhao' <lamar@lpconstruction.com>; sophiazhang@timespacegroup.com; 'Jonathan Pearlman' <jonathan@elevationarchitects.com>; 'Clement Tesar' <clement@elevationarchitects.com>; Charlie Stroud <charlie@arrowsigncompany.com>; Teresa Best <teresa@arrowsigncompany.com>

Subject: Alexandria Theater - Rusted Channel Iron Supports in Vertical Blade Sign

Yorke,

After identifying the significant rusting and damage to the bulkheads (The horizontal elements at the interior of the vertical blade to keep the shape of the sign – photos sent October 10). We sent our field tech back out to further explore, evaluate and determine what it would take in terms of time, material and methodology to open up the vertical sign and replace the bulkheads.

What we found is that the deterioration is even worse than anticipated. In addition to the rusted bulkheads, we discovered that the channel irons are badly rusted as well. The channel irons are the horizontal supports that hold the weight of the sign. The channel iron at Location 1 - near the bottom of the vertical blade is completely rusted away. The channel iron at Location 2 – near the letter R is intact, but is badly rusted. Please see the attached photos of the channel iron.

Our conclusion is that the vertical blade sign is beyond repair and should be replaced. The amount of rust and deterioration caused by water intrusion and pigeon dropping accumulation over the years make it unrepairable.

I know this is not the news that we had hoped to be able to provide, however, the further we opened it up, the greater the amount of rust damage and deterioration was discovered. We will provide any additional information we can via conference call or meeting to determine next steps.

Jack Abele

Vice President

Arrow Sign Company

510.533.7693 - Cell 925.787.4724

www.arrowsigncompany.com

4 attachments



Rusted thru at top of R.jpg
4049K



Channel Iron Location 2 near R.jpg
6164K



Channel Iron Location 1.jpg
4619K

 **Alexandria Vertical Sign.pdf**
150K

EXHIBIT B



1051 46th Avenue
 Oakland, CA 94601
 Phone 510.533.7693
 Fax 510.533.0815
 www.arrowsigncompany.com

State Contractors Licenses:
 California: 314794, Nevada: 80048, Hawaii: 24742
 Washington: ARROWSC90614, ARROWSC900NB, Arizona: ROC274634

ORDER

Customer Name Time Space Alexandria, LLC
 Customer Address 1201 Sycamore Terrace #114
 City, State, Zip Sunnyvale, CA 94086
 Cust. Contact Yorke Lee
 Phone No. 408-781-7866
 Customer Email yorkelee@timespacegroup.com
 Date 2-4-2021
 Sales Representative Nicole Salmon

Job Name Alexandria Theatre
 Job Address 5400 Geary Blvd @ 18th Ave
 City, State, Zip San Francisco, CA 94121
 Job Contact Lamar Zhao
 Phone No. 415-668-6863 ext. 101 / C: 415-816-4935
 Customer P.O. _____

Scope of Work	Page <u>1</u> of <u>2</u>	Amount
Remove and discard the following: Marquee canopy surface mounted cabinets. Blade Sign. Parking Sign. Arrow to leave all structural elements attached to building. Manufacture and install the following: Canopy: Three (3) individual single face internally illuminated cabinet displays with channel letters reading "Alexandria" and decorative border lighting. Blade Sign: One (1) double face blade sign with one (1) set of internally illuminated letters reading "Alexandria" on each side (two sets total). Parking Sign: One (1) single face internally illuminated parking sign with arrow. All as per customer approved design #10141.		\$268,449.00 \$128,125.00 \$12,869.00
NOTE: Primary wiring to sign location to be by others. Primary Power to be Title 24 compliant as required by Government Agencies and per terms on reverse side of this order. NOTE: Permits, Licenses, Inspections and Traffic Control will be additional at time and material per the terms on the reverse side of this order.		
Payment To Be Made As Follows:	Sub Total: Tax: Total Price:	

The terms on the reverse side are a part of this agreement and Buyer, by executing this agreement, acknowledges acceptance of these terms.

SELLER: ARROW SIGN COMPANY

Sales Representative Nicole Salmon

ACCEPTED: ARROW SIGN COMPANY

By: _____
 Executive Officer

Date of Acceptance: _____

BUYER:

Individual Partnership Corporation

By: _____

Title: _____

Date: _____

GUARANTEE: For value received, I or we the undersigned, jointly and severally, hereby absolutely and unconditionally guarantee prompt payment by Buyer of all monies due and payable under the foregoing Order, at the dates and for the purposes therein stated, and the performance of all other undertakings by Buyer as therein provided, including reasonable attorney's fees. As Guarantor(s) it is understood that the obligations herein provided shall be binding upon and enforceable against the heirs, assigns, successors and personal representative of each of the undersigned. Each undersigned agrees that no notice of acceptance by Seller of the Guarantee shall be required of Seller; waives notice of any default and consents to any changes or modifications hereafter made by Seller and Buyer.

Date: _____ By _____
 Guarantor

Date: _____ By _____
 Guarantor

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, 9835 Goethe Road, Sacramento, CA 95827. Mailing Address: P. O. Box 26000, Sacramento, CA 95826.



1051 46th Avenue
 Oakland, CA 94601
 Phone 510.533.7693
 Fax 510.533.0815
 www.arrowsigncompany.com

ORDER

State Contractors Licenses:
 California: 314794, Nevada: 80048, Hawaii: 24742
 Washington: ARROWS906L4, ARROWS900NB, Arizona: ROC274634

Customer Name Time Space Alexandria, LLC
 Customer Address 1201 Sycamore Terrace #114
 City, State, Zip Sunnyvale, CA 94086
 Cust. Contact Yorke Lee
 Phone No. 408-781-7866
 Customer Email yorkelee@timespacegroup.com
 Date 2-4-2021
 Sales Representative Nicole Salmon

Job Name Alexandria Theatre
 Job Address 5400 Geary Blvd @ 18th Ave
 City, State, Zip San Francisco, CA 94121
 Job Contact Lamar Zhao
 Phone No. 415-668-6863 ext. 101 / C: 415-816-4935
 Customer P.O. _____

Scope of Work	Page <u>2</u> of <u>2</u>	Amount
<p>After removal is completed, customer to have general contractor make modifications of existing structure and building elements needed to support new displays as well as provide smooth finished surface and mount to.</p> <p>Additionally any primary power modifications to be due as needed by customer.</p> <p>NOTE: Primary wiring to sign location to be by others. Primary Power to be Title 24 compliant as required by Government Agencies and per terms on reverse side of this order.</p> <p>NOTE: Permits, Licenses, Inspections and Traffic Control will be additional at time and material per the terms on the reverse side of this order.</p>		<p>Sub Total: \$409,443.00 Tax: Included Total Price: \$409,443.00</p>
<p>Payment To Be Made As Follows: Down payment of 50% due at time of order. Balance due net 10 days after completion of work.</p>		

The terms on the reverse side are a part of this agreement and Buyer, by executing this agreement, acknowledges acceptance of these terms.

SELLER: ARROW SIGN COMPANY

Sales Representative Nicole Salmon 

BUYER:

Individual Partnership Corporation

ACCEPTED: ARROW SIGN COMPANY

By: _____
 Executive Officer

By: _____

Title: _____

Date: _____

Date of Acceptance: _____

GUARANTEE: For value received, I or we the undersigned, jointly and severally, hereby absolutely and unconditionally guarantee prompt payment by Buyer of all monies due and payable under the foregoing Order, at the dates and for the purposes therein stated, and the performance of all other undertakings by Buyer as therein provided, including reasonable attorney's fees. As Guarantor(s) it is understood that the obligations herein provided shall be binding upon and enforceable against the heirs, assigns, successors and personal representative of each of the undersigned. Each undersigned agrees that no notice of acceptance by Seller of the Guarantee shall be required of Seller; waives notice of any default and consents to any changes or modifications hereafter made by Seller and Buyer.

Date: _____ By _____
 Guarantor

Date: _____ By _____
 Guarantor

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, 9835 Goethe Road, Sacramento, CA 95827. Mailing Address: P. O. Box 26000, Sacramento, CA 95826.

Buyer agrees to pay any and all County, State and Federal taxes imposed upon the sale of personal property in addition to the mentioned price immediately upon the rendering of an invoice therefore.

This order is not subject to countermand, cancels all previous understandings, written or oral, constitutes the whole contract between the parties but not binding upon Seller until signed by an executive officer thereof.

Title to said Displays reserved in Seller until all sums provided for herein are paid in full. Payments to Seller are not contingent upon payment to Buyer by others, nor is payment contingent upon proceeds from any loan or escrow. Acceptance of this agreement is representation that funds are available for payment of the work contracted and that Buyer has the authority to enter into this agreement and perform all obligations and conditions hereunder, including payment for the work provided. Upon failure to pay Seller any amount when due and payable hereunder, Seller may, by giving five (5) days written notice thereof to Buyer, terminate its services under this agreement and stop work on the project until all past due payments have been received by Seller and Buyer has posted a bond satisfactory to Seller for the payment of all amounts that will thereafter become due to Seller under this agreement. In the event of default in any payment when due, all unpaid accounts due hereunder, shall at Seller's option, become immediately due and payable and Seller may either repossess said Display, sell the same at public or private sale, without notice, and recover from Buyer any difference between the proceeds, less all expenses of repossessions and sale, and the unpaid remainder due hereunder, or, sue for said entire unpaid remainder. In the event it be necessary for Seller to employ an attorney, Buyer agrees to pay a reasonable sum as attorney's fees.

In the event there shall be any difference between the Buyer's copy of the form of this agreement and the Seller's form, the original form shall prevail and shall be conclusively deemed the true and correct form of this contract.

Permits and Licenses: Seller shall obtain, as Buyer's agent all original permits and licenses from public authorities for the installation of the Display. Charges for permits and local licenses, and/or certification and/or inspection fees will be extra at time and material and are due and payable upon issuance of same. Any special testing and/or certification and/or additional work required by local government agencies to be extra at time and material. Contract price is subject to change contingent upon engineering and building department requirements. In the event of the permit denial, Seller shall be reimbursed all costs and labor incurred in attempting to procure permit. Buyer shall obtain the necessary permits from the owner of the premises and others, exclusive of public authorities, whose permission is requisite for the installation of the Display, and shall be responsible that such permission shall not be revoked. Revocation of any permit required for installation and maintenance of Display shall not relieve Buyer from the payment of all sums due in accordance with the terms of this agreement. Seller's obligation to obtain permits is limited to displays that are installed by Seller. Should Buyer be responsible for installation then all permits are the responsibility of Buyer.

Service Wiring: - Costs of Electricity: - Reinforcement of Building: Physical Conditions: Buyer shall bring feed wires of suitable capacity and approved type to the location of Display prior to installation of Display, make connection thereof to Display, and shall pay for all electrical energy used by Display and shall be responsible for the supply thereof. Unless specifically stated

in writing to the contrary, Buyer shall provide all necessary reinforcements to the building on which Display is installed. Buyer shall pay for costs of relocation power lines, or other obstacles, to comply with the laws of Federal, State, or Municipal agencies. Buyer is solely responsible for locating and protecting all existing non-public utilities and seller is not responsible for any damage to same. Seller is not responsible for landscaping and sprinkler repair. The price fixed herein is based on the assumption that installation will be in normal soil. In the event adverse soil conditions or underground obstructions are encountered, the parties agree to adjust the extra installation costs based on Seller's current time and material rates.

The price fixed herein is also based on the assumption that mounting surfaces are conducive to normal installation procedures. In addition, concrete walls and surfaces are assumed

to be of normal density. Should adverse conditions exist, such as rebar, hidden steel members and/or high specification concrete which impedes drilling of same, then the parties agree to adjust the extra installation costs based on Seller's current time and material rates.

Buyer to provide reasonable access to area around and behind display to complete installation of same and price assumes installation can be completed with Seller's standard equipment. Should special equipment, such as scaffolding, man lifts or cranes be required, then the parties agree to adjust the extra installation costs based on Seller's current time and material rates.

Painting: Upon removal of signs that are attached to building walls, fascias, or other structures, Seller will (unless otherwise specified) patch all mounting and electrical holes in conjunction with the removal and spot paint the patch marks with a color that is determined by Seller to be reasonably close to the existing color. Because of fading, weathering and possible differences in surface textures, Seller makes no guarantee to match the existing colors and textures exactly.

Additionally, there are times when it may be necessary to have entire wall sections or fascia areas repainted to get rid of "shadowing" and ensure color matches. That painting, if required, is to be the sole responsibility of the Buyer.

Fabrication of Display; Price Increases For Deferred Fabrication or Delivery: Seller shall not be obligated to commence fabrication of display until public permits have been issued. Seller shall commence fabrication of Display promptly following receipt of all permits, licenses and consents specified herein unless the terms of this agreement or instruction from Buyer provide for Seller not to commence fabrication of Display until a later date, occurrence of event.

If, for any reason other than fault or neglect of Seller, fabrication shall not be commenced within 90 days from the date of Seller's acceptance of this agreement, or if delivery or tender of Display shall be delayed, deferred or postponed, for any reason other than fault or neglect of Seller, beyond twelve months from the date of such acceptance, then, in any event the price of Display specified herein shall be subject to increase, as determined by seller, on the basis of applicable labor, material and transportation costs increases incurred by Seller subsequent to such acceptance date. Seller shall promptly advise Buyer of any price increase resulting from the provisions of this paragraph.

Fabrication Interruptions: If, after fabrication of Display is commenced, Seller shall cease or extend scheduled fabrication of Display at the request of Buyer or by reason of any act or omission of Buyer, then Buyer, in addition to all its other obligations under this agreement, shall be responsible for all of Seller's costs and expenses thereby resulting and for all additional costs and expenses incurred upon recommencement of fabrication, including, without limitation, increased labor and materials costs incurred by Seller in completion of fabrication. Any cessation or extension of scheduled fabrication requested by Buyer shall be in the sole discretion of Seller and shall not relieve Buyer of any of its obligations under this agreement.

Indemnification: Buyer shall indemnify Seller against and hold Seller harmless from, all claims, actions, proceedings, costs, damages and liabilities, including attorney's fees, arising out of, connected with, or resulting from the installation and maintenance of said Display which arises from the operations or conduct of Buyer or his agents, the use of any trade names, trademarks, copyrights, or patents utilized in the said Display, or, any disputes with the owner or lien holder of the premises, or authority seeking to revoke a permit or license or to enjoin or have the Display declared a nuisance.

Credit References: Seller's obligation of performance is conditioned upon Buyer providing to Seller coincidentally with delivery of this agreement, current financial statements together with financial information and references on forms provided by Seller. Buyer agrees to provide further information promptly upon request by Seller at any time during the term of this agreement, which reflect the financial condition of Buyer's business, not limited to, but including, financial statements for the current accounting period. Buyer further authorizes Seller to obtain TRW, Dunn & Bradstreet or some other similar credit check of Buyer from time to time until Buyer has paid in full for the Display.

Warranty: Seller warrants to Buyer that Display (excluding lamps as to which Seller makes no warranty) at the time of delivery or installation, if applicable, will be free from defects of material and workmanship, and will be in accordance with specifications which are a part of this agreement. Seller's sole obligation under these warranties is limited to either at Seller's option, repairing or furnishing a replacement for display or the parts thereof which Seller determines to not conform with these warranties, and Buyer's exclusive remedy for breach of any such warranty will be enforcement of such obligation of Seller. Seller's obligations hereunder shall extend only to defect for which Buyer shall have given Seller written notice thereof within

MERCHANTABILITY, FITNESS OR PARTICULAR PURPOSE, AND OF ANY OTHER TYPE, WHETHER EXPRESS OR IMPLIED.

Disclaimer of All Other Warranties: Except for the express warranty stated herein, Seller disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to Display, including, without limitation, any and all implied warranties of merchantability or fitness for a particular purpose.

Waiver of Consequential Damages: In no event, and notwithstanding any provision to the contrary elsewhere herein, shall be liable to Buyer whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any special, indirect, incidental or consequential damages of any kind or nature whatsoever.

Dispute Resolution: Buyer agrees to mediate any dispute or claim arising out of or relating to this order before resorting to arbitration or court action. Mediation is a process by which parties attempt to resolve a dispute or claim by submitting it to an impartial neutral mediator, who is authorized to facilitate the resolution of the dispute, but who is not empowered to impose a settlement on the parties. Mediation fees, if any shall be divided equally among the parties involved. Evidence of anything said, any admission made, and any documents prepared, in the course of the mediation, shall not be admissible in evidence, or subject to discovery in any arbitration or court action, pursuant to Evidence Code Section 1152.5. If any party commences an arbitration or court action based on a dispute or claim to which this paragraph applies, without first attempting to resolve the matter through mediation, then in the discretion of the arbitrator(s) or judge, that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such arbitration or court action.

Any dispute or claim in law or in equity arising out of or relating to this order, which is not settled through a mediation, within forty-five (45) days after request thereof, shall be decided by neutral, binding arbitration and not by court action, except as provided by California law for judicial review or arbitration proceedings. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association construction industry rules. The arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties shall have the right to discovery in accordance with Code of Civil Procedure Section 128 3.05. Notwithstanding anything herein to the contrary, vendor may file a superior court action (in the appropriate county) to perfect its Mechanic's Lien rights so long as Vendor agrees to stay the action and first mediate and then arbitrate as set forth hereinabove.

Should either Seller or Buyer employ an attorney to institute arbitration and/or litigation to enforce any of the provisions hereof, to protect its interests in any manner arising under this order or to collect damages for the breach of this order, the prevailing party shall be entitled to recover reasonable attorney's fees, costs, charges and expenses, including consultant and/or expert witness fees, expended or incurred therein. The parties agree that the venue for all dispute resolution, including Mediation and/or Arbitration, shall be Alameda County, California.

Inspection: Buyer shall inspect the Display immediately upon installation, and shall notify Seller in writing of any defects or variances therein. In the absence of any such written notification within five (5) days of installation, the Display shall be deemed in all respects approved and satisfactory to Buyer.

Delivery and Performance: Seller shall commence the construction of Display and prosecute the work thereon with due diligence until the completion. All obligations to be performed by Seller hereunder shall be subject to delay or failure resulting from war, fire, labor disputes, unforeseen commercial delays, acts of God, regulations or restrictions of the Government or public authorities, or other accidents, forces, conditions or circumstances beyond its control. Completion of the Display, ready for installation, shall be deemed equivalent of actual installation in the event that Seller shall be prevented from making the installation by reason of failure or neglect of Buyer to prepare the premise for such installation as herein provided, or other default on the part of Buyer.

Customer acknowledges that Arrow Sign Company's designs and drawing are original unpublished drawings prepared for customer in a sign program designed exclusively for customer's business. The designs and drawings are the exclusive property of Arrow Sign Company and are not to be shown to anyone outside of customer's organization, nor to be reproduced, copied or exhibited in any fashion. Customer specifically agrees that Arrow Sign Company will be entitled to injunctive relief (in addition to all other legal remedies) in a court of competent jurisdiction, for any violation of these terms.

Price is based on simultaneous fabrication and installation of all signage proposed in this agreement.

I/We herewith order said Display in accordance with the above terms and conditions.

SECURITY AGREEMENT

GRANT: Buyer hereby grants to Seller a security interest in the Display together with any improvements, replacements, accessions and additions to the Display (hereinafter called the "Collateral") to secure payment of all existing and future indebtedness and liability of Buyer to Seller, including all amounts due to Seller under this agreement.

WARRANTIES/COVENANTS OF BUYER:

- (1) To pay all existing and future indebtedness and liability of Buyer to Seller, including all amounts due to Seller under this agreement.
- (2) To pay all expenses, including attorney fees, incurred by Seller in the perfection, preservation, realization, enforcement and exercise of Seller's rights under this agreement.
- (3) To indemnify Seller against loss of any kind including reasonable attorneys' fees, caused to Seller by reason of its interest in the Collateral.
- (4) To maintain, preserve and protect the Collateral; not to sell, lease, transfer or otherwise dispose of the Collateral; and not to permit liens on the Collateral, except existing liens and current tax liens.
- (5) To execute and deliver to Seller all financing statements and other documents that Seller requests, in order to maintain a first perfected security interest in the Collateral.
- (6) If any of the Collateral consists of Fixtures, the Collateral subject to this security agreement includes those Fixtures. Buyer has provided Seller all information needed to make the fixture filing required to give Seller's security interest in that Fixture Collateral priority over all third parties with an interest in the real property to which the Fixtures are attached.

EVENTS OF DEFAULT: Buyer shall be in default under this agreement if (1) Buyer fails to pay any existing or future indebtedness or liability of Buyer to Seller, or any portion thereof, when due; (2) Buyer fails to make any remittances required by this agreement; (3) Buyer commits any breach of this agreement or any other agreement between Buyer and Seller; (4) any warranty, representation or statement, made by or on behalf of Buyer in or with respect to this agreement, is false; (5) the Collateral is lost, stolen or damaged; and/or (6) Buyer ceases operations, is dissolved, terminates its existence, becomes insolvent or is unable to meet its debts and liabilities as they mature.

REMEDIES:

UPON DEFAULT, AND AT ANY TIME THEREAFTER, SELLER MAY EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO A SECURED CREDITOR AFTER DEFAULT, INCLUDING BUT NOT LIMITED TO THE RIGHTS AND REMEDIES OF SECURED CREDITORS UNDER THE CALIFORNIA COMMERCIAL CODE, AND DECLARE ALL AMOUNTS SECURED HEREBY IMMEDIATELY DUE AND PAYABLE.

Seller's notice of the time and place of public sale of the Collateral, or the time on or after which a private sale or other disposition of the Collateral will be made, is reasonable if sent to Buyer in the manner for giving notice at least ten (10) days before the public or private sale. Buyer must (1) assemble the Collateral and make it and all records relating to it available to Seller as Seller directs; (2) allow Seller, its representatives, and its agents to enter the premises where all or any part of the Collateral, the records, or both may be, and remove any or all of it; and (3) execute all documents and instruments on Seller's request that Seller considers necessary or advisable to exercise its rights under this agreement. Buyer shall pay all costs and expenses of collection, including Seller's reasonable attorneys' fees. No waiver by Seller of any breach or default will be a waiver of any breach or default occurring later. A waiver will be valid only if it is in writing and signed by an authorized representative of Seller.

Customer Signature

EXHIBIT C



NOTICE OF ENFORCEMENT

February 27, 2023

Property Owner

Timespace Alexandria LLC
12230 Saratoga-Sunnyvale Rd
Saratoga, CA 95070

Site Address: 5400 Geary Blvd
Assessor's Block/Lot: 1450/048
Zoning District: NCD, Geary Boulevard Neighborhood Commercial District
Complaint Number: 2022-012075ENF
Code Violation: **Section 174:** Violation of Conditions of Approval
Administrative Penalty: Up to \$250 Each Day of Violation
Enforcement T & M Fee: \$2,454.31 (Current Fee for confirmed violations, Additional charges may apply)
Response Due: Within 15 days from the date of this Notice
Staff Contact: Rogelio Baeza, (628) 652-7369, rogelio.baeza@sfgov.org

The Planning Department received a complaint that a Planning Code violation exists on the above referenced property that must be resolved. As the owner of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below:

Description of Violation

Our records indicate that the subject property is currently authorized for movie theatre use. The subject property is a Category A historic resource constructed in 1923 and identified in the eligible San Francisco Neighborhood Movie Theatre Historic District on both the California Register of Historical Resources and the National Register of Historic Places.

On April 1, 2010, Building Permit No. 201004019509 was filed and issued to, "Comply with NOV 201037065 and Complaint 201038121. Remove display glass, new 6' tall temp fence under building entry. Fence to be thru visible." This permit was never completed.

On May 18, 2012, Building Permit No. 201205180781 was filed and issued "To obtain final inspection for work approved under PA#201004019509. All work is complete." This permit was never completed.

On April 25, 2013, the Planning Commission approved Conditional Use Authorization (CUA) application no. 2004.0482CE and Motion No. 18853 for a project consisting of the renovation of the existing historic Alexandria

Theater building and the construction of a new mixed-use building with underground parking on the surface parking lot behind the theater. Specifically, the CUA authorized a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, subject to conditions contained in “Exhibit A” in the approval.

The violation pertains to the general negligence of maintaining and upkeeping the subject property. All Conditional of Approval remain in effect under Motion No. 18853 (see attached). The Planning Commission approved Motion No. 18853, including, but no limited to, the following relevant conditions:

- **Condition #23: Security, Supervision, Maintenance and General Upkeep of the Alexandria Theater Building and the Adjoining Parking Lot Site.** The Project Sponsor shall provide strict security and regular maintenance of the parking lot and the theater building to prevent any vandalism of the theater interior, and to protect its resources (i.e. architectural features and details) until such time the Project is completed as designed.
- **Condition #24: Community Liaison.** Prior to issuance of a Building Permit to construct the Project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

The project was approved with the following Mitigation Measures, including, but no limited to, the following relevant conditions:

- Preserve and protect original historic finishes and features during construction.
- **Finishes:** Original features will be preserved and protected during construction and operation. The decorative murals and panels at the walls and ceilings shall be preserved. Interior features and finishes shall be retained and restored. The auditorium's decorative plasterwork, murals and metalwork shall be preserved. Damaged plasterwork and filigree will be retained and repaired. New interior construction shall be reversible and not destroy historic materials.
- Preserve historic materials by covering the auditorium walls and ceiling with plywood.
- Preserve historic integrity differentiating new construction from historic characteristic.

On October 9, 2013, the Notice of Special Restriction (NSR) was recorded stating that the proposed project, at both the subject property (5400 Geary Blvd) and the adjacent rear property (369 18th Ave), are subject to the conditions of approval contained in Motion No. 18853.

On July 15, 2014, Building Permit No. 201407151354 was filed to, “Install 8'-0" tall iron fence (temporary) and gate at main entrance to comply with Planning Dept. NOV. #12744,” and issued on August 27, 2014. This permit was never completed.

On June 11, 2015, Building Permit No. 200806275522 was issued to “Erect a 4-story, 41 dwelling units (residential condo/comm & garage), 2 basements.” A copy of the NSR is included in the permit drawings. On February 1, 2019, a final Certificate of Final Completion (CFC) was issued, and the permit was completed.

On October 8, 2015, Building Permit No. 201510089265 was filed for “Temporary shoring of site. Refer to approved PA #200806275522 for new construction.” This permit was never completed.

On May 12, 2016, Building Permit No. 201605127335 was filed for “Revision to approved shoring PA# 2015/10/08/9265 & foundation PA# 2008/06/27/5521-S1. Change soldier pile spacing from 6' to 8' on center. Decrease row of tiebacks by one in the soldier piles & hand dug pits. Reduce mat slab thickness from 30" to 24",” and issued on June 29, 2016. This permit was completed on February 1, 2019.

On April 22, 2016, Building Permit No. 200806275511 was issued, “To maintain one movie theatre (about 3,510 sf) while converting other two [small screens] into a full service restaurant (about 8,300 sf) on 2nd floor. Expand ground fl. commercial space to about 9,900 sf with 1,800 sf lobby per plans.” This permit was never completed.

On March 30, 2017, Building Permit No. 201703292702 was filed and issued for the following scope of work, “This permit is for exploratory demolition work to remove the plaster on the soffit of the marquee.” Planning Department approval language included, “Exploratory permit for marquee only. Removal of soffit for structural assessment.” This permit was never completed.

On September 28, 2017, Building Permit No. 201709289870 was filed to, “repair marquee and sign elements: replace soffit and lighting, repair & repaint marquee, replace neon, repair blade sign, replace neon, repair "parking" sign, replace neon. signage under separate permit,” and issued on November 16, 2017. This permit was never completed.

On November 8, 2017, three Building Permits (BP) were filed including:

1. Building Permit No. 201711083483 for the “Repair neon letter, patch sheet metal & repaint @ existing marquee,” and issued on November 16, 2017. This permit was never completed.
2. Building Permit No. 201711083486 for the “Repair neon letter patch sheet metal & repaint @ existing projecting sign,” and issued on November 16, 2017. This permit was never completed.
3. Building Permit No. 201711083487 for the “Repair neon letter, patch sheet metal & repaint @ existing wall sign,” and issued on November 16, 2017. This permit was never completed.

Between October 11, 2018, and February 1, 2019, seven Building Permits were filed, issued, and completed for the new mixed-use building located at the adjacent rear property (369 18th Ave) including the following:

1. Building Permit No. 201810112896 for “Revision to approved BPA #200806275522/s3. Architectural addendum to clarify location of (n) errc equipment room on p1, revised location of facu, and 2-hr rated chase for errc wiring/conduit.”
2. Building Permit No. 201810264253 for “201004019509ev to pa# 200806275522s3; update bathroom plans to show compliance with ADA requirements.”
3. Building Permit No. 201810264276 for “Installation of a (n) 2-way emergency communication system to the fire alarm system. Ref 200806275522.”
4. Building Permit No. 201811155968 for “Administrative permit to document number of dwelling units from 41 to 43. There are 43 dwelling units as approved on APPLN #200806275522-2 & #200806275522-S3 plans.”
5. Building Permit No. 201811266657 for “As built for fire alarm. Ref PA #200806275522-S5.”
6. Building Permit No. 201811307101 for “Revision to approved BPA# 2018-1115-5968 for planning department sign-off to document unit count. Ref# 2008-0627-5522.”
7. Building Permit No. 201812148371 for “Provide plans for emergency evacuation sign and fire extinguisher locations.”

On July 21, 2021, two Building Permits (BP) were filed including:

1. Building Permit No. 202107214793 for the “Recommendation and completion of work approved under permit application no(s): 201711083487, 50% remaining,” and issued on July 28, 2021. This permit was never completed.
2. Building Permit No. 202107214807 for the “Recommendation and completion of work approved under permit application no(s): 201709289870, 201711083486, 201711083486, 50% REMAINING,” issued on the same day. This permit was never completed.

On January 10, 2023, a Department of Building Inspection (DBI) Notice of Violation (NOV) Complaint No. 202301432 was issued with the following description, “Unsecured signage at the former Alexandria Theatre at 5400 Geary which can be seen swaying during this windy weather.” The NOV pertained to the historic movie theater projecting sign, which had not been maintained and was detaching from the building. DBI Inspector Carl Malchow notified Planning Department staff that the sign was required to be removed immediately due to life-safety concerns.

On January 26, 2023, Building Permit No. 202301260850 was filed with the following scope of work, “Partially comply w/ NOV 202301432. For emergency removal due to life safety hazard caused by storms. Removal req by DBI. Restoration and reinstallation of sign as required by planning will be filed in a subsequent permit.” Planning Department staff approved this permit with the following approval language, “Emergency removal required by DBI for life safety. Owner to return to file (n) permit to repair & to reinstall sign. Reinstallation of sign must be completed within 18 months of storm event.” This permit was issued on January 27, 2023, and completed on February 7, 2023.

On February 2, 2023, Planning Department staff conducted a site visit with DBI Inspector Carl Malchow of the subject property to review existing conditions of the historic movie theater building including its exterior and interior elements. Staff observed the deteriorated condition of the existing historic building including at the exterior the poor condition of the fence at the theater entrance, the failing netting and missing elements at the marquee, the damaged display panels, as well as graffiti painted at the ground floor storefronts. At the interior, staff observed an opening from the exterior blocked by a garbage can, bird guano on the floor, numerous holes at historic plaster ceilings at the mezzanine, and the piles of sheet metal remnants of the removed historic projecting sign. During the site visit, Planning staff discussed with your representatives including Jeff Fu, York Lee, Robert Trieu, your attorney Nick Colla, and your engineer Gary Varum of the next steps in the enforcement process including the requirement to maintain the historic movie theater and protect its historic elements including, but not limited to, the marquee and display panels at the exterior.

To date, none of the permits issued for scopes to repair and restore the historic theater building have been completed. As a result, the historic movie theater has not been regularly maintained, nor has its resources been protected, as required by the Conditions of Approval outlined in Motion No. 18853.

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located.

Pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures including actions on building permits.

Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure in compliance with the Planning Code.

Failure to comply with any Planning Code provisions constitutes a violation of the Planning Code and is subject to an enforcement process under Planning Code Section 176.

How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation as follows:

1. File a new Building Permit Application to that includes the repair and maintenance of the historic movie theater and its elements.
 - a. Scope of work. Include all scopes of work in the new building permit application to address all Conditions of Approval and Mitigation Measures, including but not limited to:
 - i. Repair and re-install historic projecting blade sign (re-installation of blade sign must occur within 18 months storm event).
 - ii. Repair and maintain the historic marquee.
 - iii. Repair and maintain the historic terrazzo flooring at the theater entrance.
 - iv. Repair and maintain the security fence at the theater entrance.
 - v. Repair and maintain the display panels at the theater entrance.
 - vi. Removal of any vandalism at the building exterior.
 - vii. Provide any additional security measures needed to protect the building.
 - viii. Repair and maintain any interior and exterior character defining features.
 - b. **Drawings**. Submit a set of permit drawings including:
 - i. (3) Conditions for all site plans, floor plans, exterior elevations, and sections including:
 1. Existing (the last legal condition, as found in prior permits approved by the Planning Department);
 2. As-Built (as the property exists today); and
 3. Proposed (any new work required to bring this property back into compliance).
 - ii. One sheet after the Cover Sheet with photos showing as-built conditions labeled with dates.
2. Retain a qualified preservation architect and/or engineer with not less than 10 years successful experience working on preservation of historic movie theater buildings of comparable size and scope, within the last 10 years. If the structure requires work exceeding general repair and/or restoration work, please submit a report, by a qualified historic engineer with the above experience, outlining the current conditions of the building and property, and proposed treatment recommendations to the Planning Department for review and approval. Supplement this report with photos and drawings showing the location(s) of proposed work.

Please visit DBI website, <https://sf.gov/apply-building-permit> for information on the permit application process. **This permit must be diligently pursued and completed.**

Please be advised that upon review of above applications and plan submittals, if it is determined that additional planning applications and processes are required, the Planning Department will notify you to make such submittals.

For questions regarding the building permit process, please contact the **Department of Building Inspection (DBI)** at:

49 South Van Ness Avenue, 2nd/5th Floor
San Francisco, CA 94103
Phone: 628.652.3200
Email: dbicustomerservice@sfgov.org
Website: www.sfdbi.org

For questions regarding the planning permit review process, please contact the **Planning Department** at:

49 South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103
Phone: 628.652.7300
Email: pic@sfgov.org
Website: www.sfplanning.org

For questions about this enforcement case, please email the assigned enforcement planner as noted above. For questions about the Building Code or building permit process, please email DBI at the email address noted above.

Timeline to Respond

The timeline to respond to this Notice of Enforcement is **fifteen (15) days from the date of this notice**. Delays in abatement of the violation beyond this timeline will result in further enforcement action by the Planning Department, including issuance of Notice of Violation and assessment of administrative penalties at \$250 per day.

Please contact the assigned Enforcement Planner with any questions, to submit evidence of correction, and discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

Penalties and Appeal Rights

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code **within fifteen (15) days from the date of this notice** will result in issuance of a **Notice of Violation** by the Zoning Administrator. Administrative penalties of up to **\$250 per day** will also be assessed to the responsible party for each day beyond the timeline to respond provided for the Notice of Violation if the violation is not abated. The Notice of Violation provides the following appeal options.

1. Request for Zoning Administrator Hearing. The Zoning Administrator's final decision is then appealable to the Board of Appeals.
2. Appeal of the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount

of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter was pending either before the Zoning Administrator or before the Board of Appeals.

Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party is subject to an amount of **\$2,454.31** or more for "Time and Materials" cost associated with the Code Enforcement investigation. **This fee is separate from the administrative penalties described above and is not appealable.**

Other Applications Under Consideration

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

Enc: Conditional Use Authorization (Case no. 2004.0482CE) – Motion No. 18853

cc: Jeff Fu, yj_fu@yahoo.com (Owner's Representative)
Nick Colla, nick@collaray.com (Attorney)
Carl Malchow, San Francisco Department of Building Inspection, carl.malchow@sfgov.org



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- Better Streets Plan (Sec. 138.1)
- First Source Hiring (Admin. Code Chapter 83)
- Transit Impact Development Fee (Sec. 411)

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

Reception:
415.558.6378

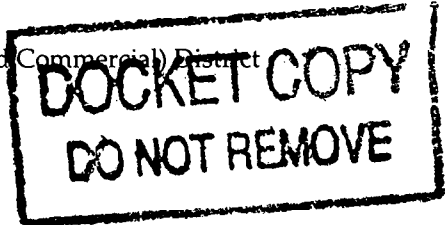
Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion No. 18853

HEARING DATE: APRIL 25, 2013

Date: April 18, 2013
Case No.: 2004.0482CE!
Project Address: 5400 GEARY BOULEVARD
Zoning: NC-3 (Moderate-Scale Neighborhood Commercial) District
 40-X Height and Bulk District
Block/Lot: 1450/008
Project Sponsor: Alexandria Enterprises, LLC
 c/o Ronald Yu
 5418A Geary Boulevard
 San Francisco, CA 94132
Staff Contact: Mary Woods – (415) 558-6315
mary.woods@sfgov.org



ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 121.1, 121.2, 303(C), 712.11 AND 712.21 OF THE PLANNING CODE TO ALLOW A DEVELOPMENT LOT SIZE EXCEEDING 9,999 SQUARE FEET AND A NON-RESIDENTIAL USE SIZE EXCEEDING 5,999 SQUARE FEET, IN AN NC-3 (MODERATE-SCALE NEIGHBORHOOD COMMERCIAL) DISTRICT AND 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On June 1, 2004, Alexandria Enterprises, LLC (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use authorization under Planning Code Sections 121.1, 121.2, 303(c), 712.11 and 712.21 to allow a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, in an NC-3 (Moderate-Scale Neighborhood Commercial) District, and 40-X Height and Bulk District.

On April 25, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2004.0482CE!.

On November 24, 2010, the Preliminary Mitigated Negative Declaration (PMND) for the Project was prepared and published for public review; and,

The PMND was available for public comment until January 24, 2011. No appeal of the PMND was filed with the Department; and

On May 26, 2011, the Department adopted the Final Mitigated Negative Declaration (FMND) and found that the contents of said report and the procedures through which the FMND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), Title 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"); and

The Department found the FMND was adequate, accurate and objective, reflected the independent analysis and judgment of the Planning Department, and approved the FMND for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP), setting forth measures to reduce potential environmental effects. These mitigation measures reduce all potential significant impacts to less than significant levels and are set forth in entirety in the MMRP, attached to the Draft Motion as EXHIBIT C.

These materials were made available to the public and this Commission for this Commission's review, consideration and action.

The Department is the custodian of records, located in the File for Case No. 2004.0482E, at 1650 Mission Street, Fourth Floor, San Francisco, California.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the Project Sponsor, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2004.0482CE!, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Project is located at the northwest corner of Geary Boulevard and 18th Avenue, in Assessor's Block 1450, Lot 008. The property is located within an NC-3 (Moderate-Scale Neighborhood Commercial) District and 40-X Height and Bulk District.

Existing uses on the Project Site include the closed 3-screen Alexandria Theatre, a 53-foot tall, two-story building containing approximately 17,000 square feet, including three small retail establishments fronting on Geary Boulevard, and a 57-space surface parking lot fronting on 18th Avenue. The three existing retail businesses include a gift store, an appliance store and an engineering office. The Alexandria Theatre closed in February, 2004. The parking lot is currently operated by an attendant for fee-based public parking.

3. **Surrounding Properties and Neighborhood.** The Project Site is situated towards the western end of the NC-3 District along the three-mile Geary Boulevard commercial corridor that stretches from the Western Addition to the Outer Richmond, through four neighborhoods. This corridor is bounded by Divisadero Street to the east and 28th Avenue in the west. The MUNI line "38-Geary" runs in front of the Project Site linking the Richmond area to Downtown and the Financial District. Other transit lines are also nearby and are within walking distance of the Site. Except for the commercial uses located on Geary Boulevard, the Project Site is surrounded by predominantly residential dwellings and residentially zoned districts to the west, north and east of the site. To the east of the site on 18th Avenue, existing uses also include a YMCA, a community center, and a church. Buildings on the subject block and facing block on Geary Boulevard range from one to two stories tall with primarily commercial uses on the ground floor and a few residential units on the upper floor. Commercial uses on the subject and facing blocks on Geary Boulevard include a gift store, an appliance store, a comic store, postal supplies store, a dry cleaner, shoe repair, restaurants, banks, grocery stores, a paint store, a medical supply store, and other professional offices. The Clement Street commercial corridor is one block north of the Project Site.
4. **Project Description.** The proposed Project consists of two components: (1) the renovation of the existing Alexandria Theatre building, and (2) the construction of a new mixed-use building with underground parking on the adjacent surface parking lot. Renovations to the Alexandria Theatre building include the conversion from a three-screen theatre to a 221-seat single-screen theatre, the creation of new retail spaces (6,300 square feet) on the ground floor, and a restaurant space (7,000 square feet) on the second floor. The surface parking lot will be removed and replaced with a new four-story mixed-use development with two levels of underground parking (122 spaces). The new building will contain retail spaces (4,800 square feet) on the ground floor, and 37 dwelling units on the upper floors, including 13 one-bedroom units, 18 two-bedroom units, and 6 three-bedroom units. The development would total approximately 109,000 square feet.

Section 312 -neighborhood notification was conducted in conjunction with the Conditional Use authorization process.

5. **Public Comment.** To date, the Department has received one e-mail in opposition to the Project expressing concerns related to building security, construction noise and pollution. Staff has met with one neighbor who expressed concerns about the massing of the new mixed-use building, structural integrity/building safety of adjacent buildings during construction, soil stability, and traffic problems along 18th Avenue. Staff has also received general inquiries about the scope of work related to the proposed Project. Staff has not received any correspondence in support of the

proposed project. The Project Sponsor and its representatives held several community outreach meetings beginning in 2010. Issues discussed ranged from the reuse of the existing theatre building, design of the new mixed-use building with retail/commercial uses on the ground floor and dwelling units above, affordability and type of units proposed, feasibility of retail uses in the theatre building, parking and traffic, and street trees.

6. **First Source Hiring Program.** The Project is subject to the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code) for projects creating ten (10) or more new residential units. The Project Sponsor will comply with the requirements of this Program. Prior to the issuance of any Building Permit or a First Addendum to a Site Permit, the Project Sponsor will have an approved and signed First Source Hiring Memorandum of Understanding (MOU) from the First Source Hiring Administrator, which will be evidenced in writing. This MOU will include Exhibit A, Construction First Source Hiring Agreement, and Exhibit B, End-Use First Source Hiring Agreement. Before the Commission can act on the Project, the Project Sponsor must complete the "Affidavit for First Source Hiring Program".

The Project Sponsor has submitted a complete Affidavit for First Source Hiring Program, a copy of which is attached to the Draft Motion

7. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Large Lot Development.** Sections 121.1 and 712.11 state that a Conditional Use authorization is required for development of large lot size exceeding 9,999 square feet in Neighborhood Commercial Districts.

The existing lot is irregular-shaped with an area of approximately 37,000 square feet.

- B. **Non-Residential Use Size.** Sections 121.2 and 712.21 state that a Conditional Use authorization is required for development of large lot size exceeding 5,999 square feet in Neighborhood Commercial Districts.

The existing theatre building contains approximately 17,000 square feet of non-residential uses. The Project proposes to add an additional 69,000 square feet of non-residential uses, including new retail spaces, a restaurant, and two levels of underground parking for 122 spaces.

- C. **Basic Floor Area Ratio.** Section 124 limits the building square footage to 3.6 square feet of building area for every 1 square feet of lot area, or approximately 134,000 square feet of building area for the subject site. However, in NC Districts, the FAR limits do not apply to dwellings or to other residential uses per Section 124(b).

The entire Project would total approximately 109,000 square feet, of which, approximately 40,000 square feet is related to residential uses.

- D. **Front Setback.** Section 132 is not applicable. There is no front setback requirement for buildings in NC-3 Districts.
- E. **Rear Yard.** Section 134(a)(1) requires that a rear yard equal to 25% of the lot depth be provided opposite the site's frontage. Further, Section 134(a)(1)(C) requires that in NC-3 Districts, rear yards must be provided at the lowest story containing a dwelling unit, and at each succeeding story of the building.

The new mixed-use building has a 30-foot rear yard setback (25% of the 120-foot lot depth) at all the residential levels. The Project provides a single rear yard totaling approximately 6,000 square feet.

- F. **Useable Open Space.** Section 135 typically requires 80 square feet of usable open space be provided for every dwelling unit, when provided as private open space, in NC-3 Districts. The open space requirement must be multiplied by 1.33 when provided as common open space.

For the proposed 37-unit Project, approximately 4,000 square feet of common useable open space would be required. For 30 of the units, the Project will provide common useable open space at the rear yard totaling approximately 4,300 square feet (3,200 square feet required). Additional common useable open space is also provided on the second floor interior courtyard, totaling approximately 1,800 square feet. The remaining seven units contain private useable open space in the form of private decks and yards, totaling approximately 1,300 (560 square feet required). All private open spaces meet the minimum area requirements of the Code.

- G. **Better Streets Plan.** Section 138.1 establishes requirements for the improvement of the public right-of-way associated with development projects, such that the public right-of-way may be safe, accessible, convenient and attractive to pedestrian use and travel by all modes of transportation.

The Project's streetscape and pedestrian improvements include a mid-block bulb-out on 18th Avenue, a small mid-block public plaza on 18th Avenue at the junction of the existing theatre building and the new mixed-use building, new street trees on both Geary Boulevard and 18th Avenue, permeable paving, benches and moveable seating, motorcycle and bike parking, lighting fixtures, and various hedges and plantings along 18th Avenue.

- H. **Dwelling Unit Exposure.** Section 140 requires that all dwelling units face a public street or side yard at least 25 feet in width, a required rear yard, or an open area of 25 feet in width.

All of the units in the proposed Project meet this requirement.

- I. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 requires in NC Districts containing specific uses, including retail stores, that building lobbies do not exceed 40 feet of building frontage, that parking entrances are no more than 20 feet wide, that ground floors have a minimum 10-foot ceiling height, and that the ground floor street

frontage be at least 60% transparent in order to allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or decorated grille work, other than wire mesh, which is placed in front or behind ground floor windows, shall be at least 75 percent open to perpendicular view.

The proposed Project is consistent with the relevant provisions under Section 145.1. The proposed two lobbies totals 20 feet in width. The parking entrance is 15 wide. The ground floor ceiling height is 11 feet. Along 18th Avenue, new transparency/glazing will be added to the existing theatre building totaling 62%, while the new mixed-use building will have 70% transparency at the street frontage.

- J. **Parking.** Section 151 requires one off-street parking space for each dwelling unit; one off-street parking space for each 200 square feet of occupied floor area where the occupied floor area exceeds 5,000 square feet for restaurants; one off-street parking space for each 500 square feet of occupied floor area up to 20,000 where the occupied floor area exceeds 5,000 square feet for retail stores, and one off-street parking space for each 8 seats over 50 seats for movie theatres. Section 152 requires one off-street freight loading space for retail stores where the gross floor area of structure or use is over 10,000 square feet but less than 60,000 square feet in newly constructed structures. Section 155(i) requires one handicapped parking space for each 25 off-street parking spaces provided. Sections 155(j), 155.2(c) and 155.4(e) require 1 bicycle space for every 20 automobile spaces for garages containing between 120 and 500 automobile spaces, where the most restrictive provisions prevail. Section 155.4(f) requires that new and existing commercial buildings must provide adequate signs or notices to advertise the availability of bicycle parking. Section 166 requires one car sharing space for the first 50 spaces plus one for every additional 50 spaces.

The proposed Project meets the provisions of the parking requirements as follows: 37 spaces for the dwelling units, 25 spaces for the retail stores, 32 spaces for the restaurant, 28 spaces for the movie theatre, for a total of 122 spaces for the Project. The Project will also provide two car share spaces and six handicapped spaces at the site.

The Project would not be required to have off-street freight loading spaces because the Project proposes approximately 5,000 square feet of retail uses in a new four-story building. The existing theatre building at approximately 19,000 square feet contains no off-street freight loading space.

The Project would be required to provide 6 bicycle parking spaces. The existing site contains no bicycle parking spaces. The Project proposes to add 20 "Class 1" bicycle parking spaces at the new mixed-use building, as well as additional on-street bicycle and motorcycle parking. Adequate signs or notices of the availability of bicycle parking will be provided at the Project Site.

- K. **Residential Density.** Sections 207.4 and 712.91, which set forth density restrictions for dwelling units in NC Districts, state that one dwelling unit is allowed for each 600 square feet of lot area.

Based on a lot area of approximately 37,000 square feet, 62 dwelling units are permitted. The Project proposes to develop 37 dwelling units, four of which (12%) will be inclusionary affordable units.

- L. **Change in Use/Demolition of a Movie Theatre.** Section 303(k) states that a change in use or demolition of a movie theatre use must meet the additional criteria set forth under this Section in addition to Section 303(c).

This Code Section does not apply to the proposed Project since the Project's environmental evaluation application was filed on May 19, 2004, prior to the effective date of July 27, 2004. However, renovations to the existing theatre building include the conversion from a three-screen theatre to a 221-seat single-screen theatre on the second floor.

- M. **Transit Impact Development Fee.** Sections 411 through 411.8 authorizes the imposition of certain development impact fees on new non-residential development projects or conversion of non-residential space of at least 800 gross square feet to offset impacts on the transit system. Land use categories for all impact fees are defined in Section 401.

The Project Sponsor will comply with the requirements of this section prior to the issuance of a Site Permit.

- N. **Inclusionary Affordable Housing Program.** Section 415 (formerly Section 315) sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements apply to projects that consist of ten or more units, where the first application (EE or BPA) was applied for before July 18, 2006. Pursuant to Planning Code Section 415.5 and 415.6, the Project is meeting the Inclusionary Affordable Housing Program requirement through the On-site Affordable Housing Alternative by providing 12% of the proposed dwelling units as affordable.

The Project Sponsor has demonstrated that it is eligible for the On-Site Affordable Housing Alternative under Planning Code Section 415.5 and 415.6, and has submitted an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to satisfy the requirements of the Inclusionary Affordable Housing Program by providing the affordable housing on-site instead of through payment of the Affordable Housing Fee. In order for the Project Sponsor to be eligible for the On-Site Affordable Housing Alternative, the Project Sponsor must submit an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the project. The Project Sponsor submitted such Affidavit on April 16, 2013. The EE application was submitted on May 19, 2004. Four units (1 one-bedroom, 2 two-bedroom, and 1 three-bedroom) of the 37 units provided will be affordable units. If the Project becomes ineligible to meet its Inclusionary Affordable Housing Program obligation through the On-site Affordable Housing Alternative, it must pay the Affordable Housing Fee with interest, if applicable.

- O. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department and must comply with Article 6 of the Planning Code.
8. **Planning Code Section 303(c)** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the Project does comply with said criteria in that:
- A. The proposed uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The Geary Boulevard corridor is one of the longest continuous neighborhood commercial districts in the City stretching from Divisadero Street to the east to 28th Avenue in the west. The existing Alexandria Theatre building was built in 1923. It was a neighborhood movie theatre until closing in 2004. The theatre building has been vacant since then; however, the three small retail storefronts and engineering office along Geary Boulevard remain in operation. The proposed Project consists of two components: (1) the renovation of the existing Alexandria Theatre building, and (2) the construction of a new mixed-use building with underground parking on the adjacent surface parking lot. Renovations to the Alexandria Theatre building include the conversion from a three-screen theatre to a 221-seat single-screen theatre, the creation of new retail spaces (6,300 square feet) on the ground floor, and a restaurant space (7,000 square feet) on the second floor. The surface parking lot will be removed and replaced with a new four-story mixed-use development with two levels of underground parking for 122 spaces. The new building will contain retail spaces (4,800 square feet) on the ground floor, and 37 dwelling units on the upper floors. The development would total approximately 109,000 square feet. The Project is necessary and desirable because the adaptive re-use of the existing theatre building will remove a blighted site and bring activity to this portion of the commercial corridor. The new mixed-use development will add 37 dwelling units to the City's housing stock, 12% of which will be inclusionary affordable units. New retail storefronts will be provided at the existing and new buildings along 18th Avenue. This will add new pedestrian interest and vitality along 18th Avenue.

The proposed Project will be built to today's Green Building and sustainability requirements under both "Build It Green's" Green Point Rating System and the U.S. Green Building Council's LEED program. In addition, the local codes also have requirements to develop and implement pollution prevention and site run-off controls as required by the City's Public Utilities Commission. The Project proposes to meet or exceed these requirements, according to the Project architect.

- (1) In Neighborhood Commercial Districts, if the proposed development lot exceeds the limitation (9,999 square feet) found in Planning Code Section 121.1, the following shall be considered:
- (i) The mass and façade of the proposed structure are compatible with the existing scale of the district; and

The proposed Project is compatible with the existing scale of the district in that it is typified by ground floor commercial uses with housing on the upper floors. Prominent buildings in mass and scale occupy corner lots, such as the existing Alexandria Theatre building. The new four-story building is typical of the surrounding three to four-story residential buildings in the district.

- (ii) The façade of the proposed structure is compatible with design features of adjacent facades that contribute to the positive visual quality of the district.

The addition of storefront entrances along the east side of the existing theatre building along 18th Avenue will relieve an existing blank wall and create a street façade compatible with those along Geary Boulevard. The design of the residential portions of the new mixed-use building takes into account neighboring residential developments by using scale, materials, and architectural elements, such as bays and cornices to relate to the older residential streetscape to the north along 18th Avenue. The overall character of the new mixed-use building is Spanish/Mediterranean of a type that was popular in the 1920s when both the Alexandria Theatre and much of the housing in the surrounding Richmond neighborhood was built. The visual mass of the asymmetrical silhouette is broken down with square and semi-octagonal bay windows, an arcaded ground floor level, variations in surface color to differentiating the bays and inset balconies at the top floor.

- (2) In Neighborhood Commercial Districts, if the proposed use is to be located at a location in which the square footage exceeds the limitation (5,999 square feet) found in Planning Code Section 121.2(a), the following shall be considered:

- i. The intensity of activity in the district is not such that allowing the larger use will be likely to foreclose the location of other needed neighborhood-serving uses in the area; and

The Project area consists of a wide variety of neighborhood-serving uses. No uses would be foreclosed by the Project. The existing retail stores on the ground floor of the theatre building will not be foreclosed. Any potential tenants in the new retail spaces will need to seek permit approvals and meet the requirements of the NC-3 zoning provisions.

- ii. The proposed use will serve the neighborhood, in whole or in significant part, and the nature of the use requires a larger size in order to function; and

The renovated theatre building will house a variety of uses that are permitted within the zoning district. Although the Project has a total of approximately 12,000 square feet of retail/commercial spaces in the overall project, they are not contiguous; rather, they are broken down into three different components: existing storefronts along Geary Boulevard, new retail spaces inside the existing theatre building, and ground floor storefronts in the

new mixed-use building. The commercial spaces in the existing and new mixed-use buildings may be further reduced in size to suit the needs of potential tenants.

- iii. The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district; and

The Project consists of two discrete buildings. The theatre building has existed at the site since 1923. The building was much larger than its immediate neighboring context, featuring blade signs that towered over the retail strip below, like a church spire. The signs are visible from a distance of many blocks away. In addition, the theatre building is situated on a corner lot, so that its larger form is an anchor as a destination place.

The new mixed-use building, with its varied materials, bay windows and balconies, is broken down to minimize the mass of the building, and provide interest at the pedestrian level.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The height and bulk of the existing theatre building will remain the same. The Project proposes to renovate the inside of the theatre building by adding a new restaurant, a 221-seat theatre, and retail stores. The existing surface parking lot will be replaced with a four-story mixed-use building with two levels of underground parking. The Project Site is a corner lot with two street frontages, Geary Boulevard and 18th Avenue. The design of the new building has been created to be compatible with the scale and context of the surrounding neighborhood.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Project Site is well-served by public transit. Several MUNI transit lines run directly in front of or near the Site. The Project proposes a two-level underground parking for 122 cars, including 2 car share spaces, 20 bicycle spaces, as well as on-street bicycle and motorcycle parking.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

No noxious or offensive emissions will be associated with the Project.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The Project provides both private and common useable open space at the ground floor rear yard and at the upper floor interior courtyard. The Project's streetscape and pedestrian improvements include a mid-block bulb-out on 18th Avenue, a small mid-block public plaza on 18th Avenue at the junction of the existing theatre building and the new mixed-use building, new street trees on both Geary Boulevard and 18th Avenue, permeable paving, benches and moveable seating, motorcycle and bike parking, lighting fixtures, and various hedges and plantings along 18th Avenue.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with relevant requirements and standards of the Planning Code, and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed Project is consistent with the stated purpose of the NC-3 (Moderate-Scale Neighborhood Commercial) District in that the intended use is to renovate an existing theatre building and replace an underutilized parking lot with a mixed use development. The larger lot size and use size are required due to the irregularly-shaped lot.

- 9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

Objectives and Policies

OBJECTIVE 1:

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPEMNT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.1:

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

Policy 1.8:

Promote mixed-use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects.

Policy 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

The new mixed-use building will contain retail spaces (approximately 4,800 square feet) on the ground floor, and 37 dwelling units on the upper floors, including 13 one-bedroom units, 18 two-bedroom units, and 6 three-bedroom units. The Project will provide four on-site inclusionary affordable housing units.

OBJECTIVE 11:

SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

Policy 11.1:

Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

Policy 11.6

Foster a sense of community through architectural design, using features that promote community interaction

The Project will provide streetscape and pedestrian improvements that include a mid-block bulb-out, a small public plaza with seating and open space, allowing people to meet and interact informally and foster the neighborhood's social experiences and offerings.

COMMERCE AND INDUSTRY ELEMENT

Objectives and Policies

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

Policy 6.3

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of existing affordable housing and needed expansion of commercial activity.

Policy 6.9

Regulate uses so that traffic impacts and parking problems are minimized

No commercial tenant would be displaced. The Project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood. The Project will provide desirable goods and services to the neighborhood and will provide resident employment opportunities to those in the community. Further, the Project Site is located within a Neighborhood Commercial District and is thus consistent with activities in the commercial land use plan. The Project will also provide adequate on-site parking to meet the needs of the commercial and residential uses so that the Project will not significantly increase traffic congestion or parking problems in the neighborhood.

URBAN DESIGN ELEMENT

Objectives and Policies

OBJECTIVE 1:

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

Policy 1.3:

Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

Policy 1.10:

Indicate the purposes of streets by adopting and implementing the Better Streets Plan, which identifies a hierarchy of street types and appropriate streetscape elements for each street type.

The Project's streetscape and pedestrian improvements include a mid-block bulb-out on 18th Avenue, a small mid-block public plaza on 18th Avenue at the junction of the existing theatre building and the new mixed-use building, new street trees on both Geary Boulevard and 18th Avenue, permeable paving, benches and moveable seating, motorcycle and bike parking, lighting fixtures, and various hedges and plantings along 18th Avenue.

OBJECTIVE 2:

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

Policy 2.5:

Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.

Policy 2.6:

Respect the character of older development nearby in the design of new buildings.

The Project consists of two components: (1) the renovation of the existing Alexandria Theatre building, built circa 1923, and (2) the construction of a new four-story mixed-use building on the adjacent surface parking lot. Renovations to the Alexandria Theatre building, while retaining all of its unique historic

character defining features, will include new commercial, restaurant and theatre uses. The surface parking lot will be removed and replaced with a new four-story mixed-use development with two levels of underground parking for 122 spaces.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposed Project will preserve a neighborhood theatre while adding new retail spaces and a restaurant to the existing theatre building. The Project will also replace an underutilized parking lot with a new four-story mixed-use development with retail storefronts on the ground floor and 37 dwelling units in the upper floors. The Project's new retail spaces will offer new employment opportunities and business ownerships.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

With the adaptive reuse of the theatre building, the existing neighborhood character will be preserved and enhanced. The design of the new mixed-use building will be compatible with the scale and design of the existing neighborhood.

- C. That the City's supply of affordable housing be preserved and enhanced,

The Project will add four inclusionary affordable housing units to the City's housing stock.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The Project Site is well-served by public transit. Several MUNI transit lines run directly in front of or near the Site. The Project proposes a two-level underground parking for 122 cars, including 2 car share spaces, 20 bicycle spaces, as well as on-street bicycle and motorcycle parking.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project will not displace any service or industry establishment. The Project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this Project.

- F. That the City achieves the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project will comply with all current earthquake safety requirements of the City's Building Code for the new building as well as the existing theatre building.

- G. That landmarks and historic buildings be preserved.

While the existing 1923 theatre building is not a landmark, it is considered a historic resource under CEQA. It will not be significantly altered as part of the Project.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The Project will maintain the existing theatre building's envelope and height, while the new building will not exceed the 40-foot height limit; therefore, the Project will not affect existing parks and open spaces.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Project Sponsor, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2004.0482CE!** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans filed with the Application, dated April 5, 2013 and labeled "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

The Commission has reviewed and considered the Final Mitigated Negative Declaration (FMND) and the Mitigation Monitoring and Reporting Program (MMRP), and the record as a whole and finds that there is no substantial evidence that the project will have a significant effect on the environment with the adoption of the mitigation measures contained in the MMRP to avoid potential significant environmental effects associated with the Project.

The Commission hereby adopts the FMND and MMRP attached hereto as EXHIBIT C and incorporated herein as part of this Motion by this reference thereto. All required mitigation measures identified in the FMND and contained in the MMRP are included as conditions of approval.

The Commission further finds that since the FMND was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the FMND due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FMND.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18853. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on April 25, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES: Commissioners Antonini, Fong, Hillis, Moore and Wu

NAYS: None

ABSENT: Commissioners Borden and Sugaya

ADOPTED: April 25, 2013

EXHIBIT A

Conditions of Approval

AUTHORIZATION

This authorization is for a Conditional Use Authorization to allow a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, pursuant to Planning Code Sections 121.1, 121.2, 303(c), 712.11 and 712.21, in an NC-3 (Moderate-Scale Neighborhood Commercial) District, and 40-X Height and Bulk District; in general conformance with plans dated April 5, 2013 and labeled "EXHIBIT B" included in the docket for **Case No. 2004.0482CE!** and subject to conditions of approval reviewed and approved by the Commission on April 25, 2013 under **Motion No. 18853**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the Building Permit Application or commencement of use for the project, the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the Project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on April 25, 2013 under **Motion No. 18853**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the "EXHIBIT A" of this Planning Commission Motion No. 18853 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building Permit Application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section, or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a Building Permit. The Project Sponsor shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. A Building Permit Application from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed Project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a Site or Building Permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a Site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

3. **Mitigation Measures.** Mitigation measures described in the MMRP for the FMND (Case No. 2004.0482E) attached as EXHIBIT C are necessary to avoid potential significant effects of the proposed Project, and have been agreed to by the Project Sponsor. Their implementation is a condition of Project approval.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

DESIGN – COMPLIANCE AT PLAN STAGE

4. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Planning Department staff review and approval. The Building/Site Permit Application and/or the Architectural Addenda shall be reviewed and approved by the Planning Department prior to issuance.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

5. **Garbage, Composting and Recycling Storage Placement.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and

clearly labeled and illustrated on the Building Permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

6. **Lighting Plan.** The Project Sponsor shall submit an exterior lighting plan to the Planning Department prior to Planning Department's approval of the Building/Site Permit Application.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.
7. **Noise.** Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
8. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the Project is operational, the Building/Site Permit application to implement the Project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
9. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the Building Permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.
10. **Signage Program.** Any proposed signage shall be subject to the review and approval of the Planning Department and must comply with Article 6 of the Planning Code.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.
11. **Street Trees/Streetscape Plan.** Pursuant to Planning Code Section 138.1, the Project Sponsor shall submit a streetscape plan to the Department prior to Department's approval of the Building/Site Permit Application indicating that seventeen (17) street trees shall be provided, including 13 evergreen trees, two palm trees, and two accent trees. Other streetscape and pedestrian improvements shall include a mid-block bulb-out on 18th Avenue, a mid-block public

plaza on 18th Avenue, permeable paving, benches and moveable seating, lighting fixtures, and various hedges and plantings along 18th Avenue.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

12. **Transformer Vault.** The location of individual project PG&E Transformer Vault installations has significant effects to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Therefore, the Department recommends the following preference schedule in locating new transformer vaults, in order of most to least desirable:
- (a) On-site, in a basement area accessed via a garage or other access point without use of separate doors on a ground floor façade facing a public right-of-way;
 - (b) On-site, in a driveway, underground;
 - (c) On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
 - (d) Public right-of-way, underground, under sidewalks with a minimum width of 12 feet, avoiding effects on streetscape elements, such as street trees; and based on Better Streets Plan guidelines;
 - (e) Public right-of-way, underground; and based on Better Streets Plan guidelines;
 - (f) Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;
 - (g) On-site, in a ground floor façade (the least desirable location).

Unless otherwise specified by the Department, Department of Public Work's Bureau of Street Use and Mapping (DPW BSM) should use this preference schedule for all new transformer vault installation requests.

For information about compliance, contact the Bureau of Street use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>.

PARKING AND TRAFFIC

13. **Automobile Parking.** The Project Sponsor shall provide 122 spaces for the Project, including two (2) car share spaces and six (6) handicapped spaces.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
14. **Bicycle Parking.** The Project Sponsor shall provide twenty (20) on-site "Class 1" bicycle parking spaces. Adequate signs or notices of the availability of bicycle parking shall also be provided at the Project Site.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
15. **Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the

Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation impacts during construction of the Project.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

16. **Parking for Affordable Units.** All off-street parking spaces shall be made available to Project residents only as a separate "add-on" option for purchase or rent and shall not be bundled with any Project dwelling unit for the life of the dwelling units. The required parking spaces may be made available to residents within a quarter mile of the Project. All affordable dwelling units pursuant to Planning Code Section 415 shall have equal access to use of the parking as the market rate units, with parking spaces priced commensurate with the affordability of the dwelling unit. Each unit within the Project shall have the first right of refusal to rent or purchase a parking space until the number of residential parking spaces are no longer available. No conditions may be placed on the purchase or rental of dwelling units, nor may homeowner's rules be established, which prevent or preclude the separation of parking spaces from dwelling units.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

PROVISIONS

17. **First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.
For information about compliance, contact the First Source Hiring Manager at 415-581-2335, www.business.services@sfgov.org
18. **Inclusionary Affordable Housing.** The Project Sponsor shall comply with the requirements of the Planning Code Section 415 (formerly Section 315) for the Project as follows:
1. **Number of Required Units.** Pursuant to Planning Code Section 415.6, the Project is required to provide 12% of the proposed dwelling units as affordable to qualifying households. The Project contains 37 units; therefore, four (4) affordable units are required. The Project Sponsor will fulfill this requirement by providing the 4 affordable units on-site. If the number of market-rate units change, the number of required affordable units shall be modified accordingly with written approval from Planning Department staff in consultation with the Mayor's Office of Housing ("MOH").
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.
 2. **Unit Mix.** The Project contains 13 one-bedroom, 18 two-bedroom, and 6 three-bedroom units; therefore, the required affordable unit mix is 1 one-bedroom, 2 two-bedroom, and 1 three-

bedroom units. If the market-rate unit mix changes, the affordable unit mix will be modified accordingly with written approval from Planning Department staff in consultation with MOH.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

3. **Unit Location.** The affordable units shall be designated on a reduced set of plans recorded as a Notice of Special Restrictions on the property prior to the issuance of the first construction permit.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

4. **Phasing.** If any building permit is issued for partial phasing of the Project, the Project Sponsor shall have designated not less than twelve percent (12%) of the each phase's total number of dwelling units as on-site affordable units

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

5. **Duration.** Under Planning Code Section 415.8, all units constructed pursuant to Section 415.6, must remain affordable to qualifying households for the life of the Project.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

6. **Other Conditions.** The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the MOH at 1 South Van Ness Avenue or on the Planning Department or Mayor's Office of Housing's websites, including on the internet at:

<http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>.

As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- a. The affordable unit(s) shall be designated on the building plans prior to the issuance of the first construction permit by the Department of Building Inspection ("DBI"). The affordable unit(s) shall (1) reflect the unit size mix in number of bedrooms of the market rate units, (2) be constructed, completed, ready for occupancy and marketed no later than the market rate units, and (3) be evenly distributed throughout the building; and (4) be of comparable overall quality, construction and exterior appearance as the market rate units in the principal project. The interior features in affordable units should be the same as those of the market units in the

principal project, but need not be the same make, model or type of such item as long they are of good and new quality and are consistent with then-current standards for new housing. Other specific standards for on-site units are outlined in the Procedures Manual.

- b. If the units in the building are offered for sale, the affordable unit(s) shall be sold to first time home buyer households, as defined in the Procedures Manual, whose gross annual income adjusted for household size does not exceed an average of ninety (90) percent of Area Median Income under the income table called "Maximum Income by Household Size" derived from the Unadjusted Area Median Income for HUD Metro Fair Market Rent Area that contains San Francisco. The initial sales price of such units shall be calculated according to the Procedures Manual. Limitations on (i) reselling; (ii) renting; (iii) recouping capital improvements; (iv) refinancing; and (v) procedures for inheritance apply and are set forth in the Inclusionary Affordable Housing Program and the Procedures Manual.
- c. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOH shall be responsible for overseeing and monitoring the marketing of affordable units. The Project Sponsor must contact MOH at least six months prior to the beginning of marketing for any unit in the building.
- d. Required parking spaces shall be made available to initial buyers or renters of affordable units according to the Procedures Manual.
- e. Prior to the issuance of the first construction permit by DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that contains these conditions of approval and a reduced set of plans that identify the affordable units satisfying the requirements of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to the MOH or its successor.
- f. The Project Sponsor has demonstrated that it is eligible for the On-site Affordable Housing Alternative under Planning Code Section 415.6 instead of payment of the Affordable Housing Fee, and has submitted the *Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415*, to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the Project.
- g. If the Project Sponsor fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Planning Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Section 415 et seq. shall constitute cause for the City to record a lien against the development project and pursue any and all available remedies at law.
- h. If the Project becomes ineligible at any time for the On-site Affordable Housing Alternative, the Project Sponsor or its successor shall pay the Affordable Housing Fee prior to issuance of

the first construction permit or may seek a fee deferral as permitted under Ordinances 0107-10 and 0108-10. If the Project becomes ineligible after issuance of its first construction permit, the Project Sponsor shall notify the Department and MOH and pay interest on the Affordable Housing Fee at a rate equal to the Development Fee Deferral Surcharge Rate in Section 107A.13.3.2 of the San Francisco Building Code and penalties if applicable.

19. **Transit Impact Development Fee.** Pursuant to Planning Code Section 411 (formerly Chapter 38 of the Administrative Code), the Project Sponsor shall pay the Transit Impact Development Fee (TIDF) as required by and based on drawings submitted with the Building Permit Application. Prior to the issuance of a temporary certificate of occupancy, the Project Sponsor shall provide the Planning Director with certification that the fee has been paid.

For information about compliance, contact the Case Planner, Planning department at 415-558-6378, www.sfplanning.org

MONITORING - AFTER ENTITLEMENT

20. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

21. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

22. **Changes to Building Design and/or Materials.** A new Conditional Use authorization shall be required if the project design and/or materials, such as windows, storefront, door surround, roof tiles, and canopy elements, to the Alexandria Theatre building and/or the new mixed-use building are modified in the future.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

OPERATION

23. **Security, Supervision, Maintenance and General Upkeep of the Alexandria Theatre Building and the Adjoining Parking Lot Site.** The Project Sponsor shall provide strict security and regular maintenance of the parking lot site and the theatre building to prevent any vandalism of

the theatre interior, and to protect its resources (i.e., architectural features and details) until such time the Project is completed as designed.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

24. **Community Liaison.** Prior to issuance of a Building Permit to construct the Project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

25. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within trash enclosures on the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org/>.

26. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org.

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org.

For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-1012 or 415-5530123, www.sf-police.org

27. **Odor Control.** While it is inevitable that some low level of odor may be detectible to nearby residents and passersby, appropriate odor control equipment shall be installed and maintained to prevent any significant noxious or offensive odors from escaping the premises. The Building Permit Application to implement the Project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans.

For information about compliance with odor or other chemical air pollutants emission standards and air quality regulations contact the Bay Area Air Quality Management District (BAAQMD), 1-800-334-

ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

28. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works' Streets and Sidewalk Maintenance Standards.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org/>

EXHIBIT D



Nick Colla <nick@collaray.com>

RE: Alexandria Theatre at 5400 Geary Blvd (2022-012075ENF) - Notice of Enforcement

Baeza, Rogelio (CPC) <rogelio.baeza@sfgov.org>

Wed, Apr 12, 2023 at 5:22 PM

To: Nick Colla <nick@collaray.com>

Cc: "Malchow, Carl (DBI)" <carl.malchow@sfgov.org>, "Wong, Kelly (CPC)" <kelly.wong@sfgov.org>, Jeff <yj_fu@yahoo.com>, "yorkelee@timespacegroup.com" <yorkelee@timespacegroup.com>

Hi Nick,

Thank you for your email. I am confirming the receipt of the requested information regarding the retained preservation architect. I have also provided the applicable Planning Code Section for your reference.

188(b) A noncomplying structure that is damaged or destroyed by fire, or other calamity, or by Act of God, or by the public enemy, may be restored to its former condition; provided that such restoration is permitted by the Building Code, and is started within eighteen months and diligently prosecuted to completion. Except as provided in Subsection (c) below, no noncomplying structure that is voluntarily razed or required by law to be razed by the owner thereof may thereafter be restored except in full conformity with the requirements of this Code.

For purposes of this Subsection (b), "started within eighteen months" shall mean that within eighteen months of the fire or other calamity or Act of God, the structure's owner shall have filed a building permit application to restore the structure to its former condition and use.

As outlined in the NOE, the owner has failed to follow through with the requirements found in Motion No. 18853. Since April, 22,2016 when BPA#200806275511 was issued to maintain the historic theater up until the storm event this year on January 9th, 2023, the owner has had 2,453 days (6 years, 8 months, 18 days) to complete any work to maintain the historic theater including the blade sign.

Since then, BPA#202301260850 was filed for life-safety concerns and approved by Planning on 1/27/2023 with the requirement that blade sign be re-installed within 18 months. See image below:

Application Number: 202301260850
 Form Number: 8
 Address(es): 1450 /048 /0 5400 GEARY BL
 Description: PARTIALLY COMPLY W/ NOV 202301432 FOR EMERGENCY REMOVAL DUE TO LIFE SAFETY HAZARD CAUSED BY STORMS. REMOVAL REQ BY DBI. RESTORATION AND REINSTALLATION OF SIGN AS REQUIRED BY PLANNING WILL BE FILED IN A SUBSEQUENT PERMIT
 Cost: \$5,000.00
 Occupancy Code: A-1,M
 Building Use: 01 - THEATER

Disposition / Stage:

Action Date	Stage	Comments
1/26/2023	TRIAGE	
1/26/2023	FILING	
1/26/2023	FILED	
1/27/2023	APPROVED	
1/27/2023	ISSUED	
2/7/2023	COMPLETE	6006726 Final Inspection/Approved

Contact Details:

Contractor Details:

License Number: OWN
 Name: OWNER OWNER
 Company Name: OWNER
 Address: OWNER * OWNER CA 00000-0000
 Phone:

Addenda Details:

Description:

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	BID-INSP	1/26/23	1/26/23			1/26/23	GREENE MATT	OK TO PROCESS NO PLANS REQUIRED PER M GREENS
2	CES	1/26/23	1/26/23			1/26/23	GREENE MATT	
3	INTAKE	1/26/23	1/26/23			1/26/23	JINGJING LU	
4	CP-ZOC	1/26/23	1/26/23			1/26/23	WONG KELLY	1/25/23: Approval. Emergency removal required by DBI for life safety. Owner to return to file (n) permit to repair & to reinstall sign. Reinstallation of sign must be completed within 18 months of storm event. KHW kelly.wong@sfgov.org
5	BLDG	1/26/23	1/26/23			1/26/23	HOM CALVIN	APPROVED OTC NO PLANS
6	SFFD	1/26/23	1/26/23			1/26/23	LO JONATHAN	N/A. Repair exterior storm damage, no plans. Returned. JL
7	DPW-BSM	1/26/23	1/26/23			1/26/23	DENNIS RASSENDYLL	Approved no alteration of the right of way and street space under a separate permit, emergency request no plans - RD
8	CPB	1/27/23	1/27/23			1/27/23	YU ZHANG REN	

This permit has been issued. For information pertaining to this permit, please call 628-652-3450.

We look forward to your submitted plan on **Thursday, April 27, 2023** including a schedule for when a full permit set of drawings (as one PDF via email) will be submitted to us at Planning for review and when a new building permit application will be filed.

Thank you,

Rogelio Baeza, Planner

Team 9 & 10/Current Planning

San Francisco Planning

49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103

Direct: 628.652.7369 | www.sfplanning.org

[San Francisco Property Information Map](#)

From: Nick Colla <nick@collaray.com>
Sent: Thursday, March 30, 2023 3:58 PM
To: Baeza, Rogelio (CPC) <rogelio.baeza@sfgov.org>
Cc: Malchow, Carl (DBI) <carl.malchow@sfgov.org>; Wong, Kelly (CPC) <kelly.wong@sfgov.org>; Jeff <yj_fu@yahoo.com>; yorkelee@timespacegroup.com
Subject: Re: Alexandria Theatre at [5400 Geary Blvd](#) (2022-012075ENF) - Notice of Enforcement

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EXHIBIT E

March 14, 2023



Kelly H. Wong, Principal Planner
Code Enforcement Manager
San Francisco Planning Department
49 South Van Ness Avenue, Suite 1400
San Francisco, California 94103
Kelly.wong@sfgov.org

Re: Complaint No. 2022-012075ENF – 5400 Geary Blvd., San Francisco

Dear Ms. Wong:

I write this letter in response to the February 27, 2023 Planning Department Notice of Enforcement (“NOE”) issued to my client, Timespace Alexandria LLC (hereinafter, “Client”), pertaining to the real property it owns at 5400 Geary Blvd. (the “Property”).

The NOE requires that my Client file a building permit application, with a complete set of permit drawings, to repair and maintain certain historic elements of the Property, including but not limited to, a historic projecting blade sign, a marquee, terrazzo flooring, display panels, and other interior or exterior character defining features.

Following the issuance of the NOE, my Client, its design professionals, and I participated a meeting at City Hall on March 9, 2023, hosted by District One Supervisor Connie Chan’s office and also attended by officials from the Department of Building Inspection (“DBI”), the Mayor’s Office of Housing and Community Development (“MOHCD”), and the Planning Department (“Planning”), including Deputy Director and Preservation Planner Richard Sucre and yourself. During that meeting, City officials expressed an openness to the possibility of entering a Project Development Agreement with my Client, which would entail retaining/preserving certain historic elements of the Property but also allowing development of much needed housing stock for the City.

Immediately after the March 9, 2023 meeting at City Hall, my Client’s design team scheduled a consultation with Aaron Jon Hyland, FAIA, a San Francisco based architect with over three decades of experience as an expert in the restoration, rehabilitation, and re-use of historically significant buildings. Mr. Hyland also appears on the City’s Historic Resources Consultant Pool. My Client anticipates that Mr. Hyland will be formally retained to assist with the abatement of the NOE by no later than the end of this week.

Once Mr. Hyland is retained, we intend to submit a more substantive plan to abate the NOE to Planning staff within 30 days and, if approved, we intend to submit corrective building permit applications as soon as the required drawings can be drafted. As such, we respectfully request that a follow-up meeting be scheduled with Planning, DBI, MOHCD, and Supervisor Chan’s Office in

mid-April to discuss our plan to abate the NOE and incorporate historic elements of the Property into a potential housing development project.

Thank you for your time and consideration. Please do not hesitate to contact me at 415-579-1412 or nick@collaray.com, if you have any questions.

Very Truly Yours

Nick Colla

Nick Colla

Colla & Ray LLP

Attorneys for Timespace Alexandria LLC

cc: Supervisor Connie Chan, BOS, connie.chan@sfgov.org
Ben Gurewitz, BOS, ben.gurewitz@sfgov.org
Carl Malchow, DBI, carl.malchow@sfgov.org
Rich Sucre, Planning, richard.sucre@sfgov.org
Rogelio Baeza, Planning, rogelio.baeza@sfgov.org
Sheila Nickolopoulos, MOHCD, sheila.nickolopoulos@sfgov.org

EXHIBIT F

RE: Alexandria Theatre at 5400 Geary Blvd (2022-012075ENF) - Notice of Enforcement

Baeza, Rogelio (CPC) <rogelio.baeza@sfgov.org>

Thu, Mar 23, 2023 at 3:40 PM

To: Nick Colla <nick@collaray.com>

Cc: "Malchow, Carl (DBI)" <carl.malchow@sfgov.org>, "Wong, Kelly (CPC)" <kelly.wong@sfgov.org>, Jeff <yj_fu@yahoo.com>, "yorkelee@timespacegroup.com" <yorkelee@timespacegroup.com>

Hi Nick,

I am confirming receipt of your email. We appreciate your effort on addressing the items outlined in the Notice of Enforcement (NOE) so expeditiously.

Qualified Preservation Architect

Thank you for noting that you are currently working on obtaining Aaron Jon Hyland as the qualified preservation architect to help address the violations at 5400 Geary Blvd. Can you please confirm that Mr. Hyland has experience working with historic theatres and if so, providing a list of these projects, for our record?

Timeline

Based on your response, we can provide you 30 days, so **by COB Thursday, April 13, 2023 to get a qualified historic architect on board**. After this, we can provide an additional two weeks, so **by COB Thursday, April 27, 2023 to submit your plan** including a schedule for when a permit set of drawings (as a PDF via email) will be submitted to us Planning for review and when a new building permit application will be filed. We will expect a full set of architectural and engineering drawings for the repair/restoration of the historic theatre, as the required scope includes reconstructing the blade sign and its substructure. **Please confirm this works for you**. If you believe you need more time, please send us proposed new dates, for our review.

Storm Event Date

Additionally, we'd like to take this opportunity to clarify the storm date so we're working towards the same target date. We assume it was January 9, 2023 (the day before the Department of Building Inspection issued the Notice of Violation to remove the blade sign). If so, since the blade sign is to be reinstalled within 18 months of the storm event, this would take us to July 9, 2024. **Please confirm the date of the storm event**.

I am attaching the NOE, as a reference, that outlines the scope of work and drawings that are required for Planning review. We can meet with the preservation architect to answer any questions/concerns specific to the code enforcement case.

We are also happy to help with any follow up meetings (once schedule) with DBI, MOHCD, and Supervisor's Chan's Office to discuss the potential housing development project, which is a separate review process.

Thank you,

Rogelio Baeza, Planner

Team 9 & 10/Current Planning

San Francisco Planning

[49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103](#)

Direct: 628.652.7369 | www.sfplanning.org

[San Francisco Property Information Map](#)

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Notice of Enforcement (NOE) - 02.27.23 - 5400 Geary BI (ID 1356921).pdf

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EXHIBIT G

April 27, 2023

Rogelio Baeza
San Francisco Planning Department
49 South Van Ness Avenue, Suite 1400
San Francisco, California 94103
rogelio.baeza@sfgov.org

Re: Complaint No. 2022-012075ENF – 5400 Geary Blvd., San Francisco

Dear Mr. Baeza:

I write this letter in response to your request that my client, Timespace Alexandria LLC (hereinafter, “Client”), provide you with an abatement plan and timeline for obtaining any required permits to correct the February 27, 2023 Planning Department Notice of Enforcement (“NOE”), which relates to my Client’s real property at 5400 Geary Blvd. (the “Property”).

While my Client continues to work with Supervisor Connie Chan’s office, the Department of Building Inspection (“DBI”), the Mayor’s Office of Housing and Community Development (“MOHCD”), and the Planning Department (“Planning”), on a plan for future development of the Property, we understand that Planning requires that we pursue a wholly separate pathway to abatement of this NOE. As such, we propose the following plan to address the issues noted in the NOE:

General Maintenance and Beautification

My Client is already undertaking the process of cleaning/beautifying the exterior and interior portions of the Property. This includes power washing the exterior façade and security gate, and cleaning the interior lobby area.

Preservation of Blade Sign and Marquee

My Client’s structural engineering team is currently conducting an assessment of the structural integrity of the Property’s façade and its ability to support the blade sign and marquee. If temporary shoring is required to continue to support the blade sign and marquee, permits to undertake the required shoring work will be submitted within two weeks of reaching that determination.

With respect to the long-term restoration plan for the blade sign, we have already received an opinion from Arrow Sign Company (“Arrow”) that over the lifespan of the Property, the blade sign has incurred significant rusting and damage to the bulkheads and channel irons, which serve as horizontal supports that keep the sign in place. As such, Arrow concluded that the blade sign is beyond repair and should be replaced. It is our intention to salvage as much of the actual sign as possible, which is currently stored at the Property, and incorporate it into a like-kind replacement.

Regarding the marquee, Arrow opined that, like the blade sign, it has also incurred significant rusting and damage over the lifespan of the Property to the point that it is beyond repair. My Client plans to salvage as much of the existing marquee as possible, which will be incorporated into a like-kind replacement.

The estimated cost to repair/replace the blade sign and marquee will exceed \$400,000.00. While Planning has insisted that abatement of the NOE must take place independently of any proposed development of the Property, we face the unfortunate reality that the prohibitively high cost of preserving the blade sign and marquee will require financing from a construction lender in order to do so.¹ As such, we respectfully request that Planning grants us additional time to work with Supervisor Chan's Office, MOHCD, and Planning to explore the Property's development possibilities and obtain construction financing before we commit to a firm deadline to submit building permit applications and plan sets to preserve the blade sign and marquee. We anticipate that we can provide an update as to when permits will be submitted by May 30th.

Interior Elements to be Preserved

As stated in our prior correspondence with Supervisor Chan's Office and Planning, my Client intends to preserve the Property's interior entry, including the terrazzo flooring, and various character defining elements of the lobby (drinking fountain, lighting fixtures, etc.). Further, my Client is exploring ways to preserve the chandelier and murals and incorporate them into any future plans for the Property. My Client is in the process of cleaning these interior elements under the guidance of its retained historic preservation expert. Until any future development of the Property is approved, the interior elements to be preserved will remain intact in their current locations and we will provide Planning with periodic updates on my Client's maintenance efforts.

We look forward to working together in good faith with Planning to address all outstanding issues in the NOE. Thank you for your time and consideration. Please do not hesitate to contact me at 415-579-1412 or nick@collaray.com, if you have any questions.

Very Truly Yours

Nick Colla

Nick Colla

Colla & Ray LLP

Attorneys for Timespace Alexandria LLC

cc: Rich Sucre, Planning, richard.sucre@sfgov.org
Kelly Wong, Planning, Kelly.wong@sfgov.org

¹ This was also the reason preservation efforts were not completed in 2017 when my Client submitted applications to develop a mixed use project with a swimming pool at the Property. By the time the permits were approved, the construction financing had fallen through, which was to be used in part to pay the prohibitively high cost of preserving key historic elements of the Property.

EXHIBIT H



Nick Colla <nick@collaray.com>

5400 Geary - NOE Abatement Proposal

Baeza, Rogelio (CPC) <rogelio.baeza@sfgov.org>

Tue, May 2, 2023 at 4:16 PM

To: Nick Colla <nick@collaray.com>

Cc: "Wong, Kelly (CPC)" <kelly.wong@sfgov.org>, "Sucre, Richard (CPC)" <richard.sucre@sfgov.org>

Hi Nick,

Thank you for your email. Unfortunately, the NOE abatement proposal does not satisfy the requirements outlined in the NOE. To abate the violation, the historic building must be maintained within the required Enforcement process timeline to meet the conditions of approval of the CUA Motion No. 18853. You can build into the scope of work now as if you were to develop it later, however, our recommendation is to retain the historic blade sign as much as possible. If there is any work in progress, please provide images showing what is being worked on. Additionally, my previous email outlined two requirements, and neither were received. See below:

1. A schedule for when a full permit set of drawings (as one PDF via email) will be submitted to us at Planning for review; and
2. A date when the new building permit application will be filed.

Moving forward, any permit that you apply for will need to be reviewed by Planning, specifically myself or Kelly. Since no timeline was provided, we will continue with the Notice of Violation. I am happy to discuss further, if needed.

Thank you,

Rogelio Baeza, Planner

Team 9 & 10/Code Enforcement, Current Planning

San Francisco Planning

[49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103](#)

Direct: 628.652.7369 | www.sfplanning.org

[San Francisco Property Information Map](#)

From: Nick Colla <nick@collaray.com>

Sent: Thursday, April 27, 2023 7:30 PM

To: Baeza, Rogelio (CPC) <rogelio.baeza@sfgov.org>

Cc: Wong, Kelly (CPC) <kelly.wong@sfgov.org>; Sucre, Richard (CPC) <richard.sucre@sfgov.org>

Subject: 5400 Geary - NOE Abatement Proposal

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EXHIBIT I



Nick Colla <nick@collaray.com>

5400 Geary - NOE Abatement Proposal

Nick Colla <nick@collaray.com>

Mon, May 8, 2023 at 12:39 PM

To: "Baeza, Rogelio (CPC)" <rogelio.baeza@sfgov.org>

Cc: "Wong, Kelly (CPC)" <kelly.wong@sfgov.org>, "Sucre, Richard (CPC)" <richard.sucre@sfgov.org>

Bcc: Yorke Lee <yorkelee@timespacegroup.com>

Hi Rogelio,

Thanks for your reply.

For your recommended course regarding blade sign, we are currently working with the Arrow Sign company and structural consultant to provide a revised proposal, which we hope to receive in about 30 days. We believe that the full permit set of the drawings can be ready for submission within 60 days thereafter. Regarding how to retain the blade sign and marquee as much as possible with the required structural support, if our structural engineering team deems that temporary shoring is necessary to support these elements until the development takes place, then shoring permits will be submitted simultaneously.

Regarding the submission date of the new building permit application, as previously stated in my letter, the anticipated cost of preservation is prohibitively high and therefore needs to be financed through the development of the property. In good faith, we provided the related development proposal with its financial analysis to Supe Chan's office about 2 weeks ago and we have yet to receive a response. As such, we do not know when the new building permit application could be filed until we receive response/confirmation from Supe Chan's office and eventually form an agreement with the Board of Supervisors. We are hopeful that perhaps the Planning Department could help to facilitate this process.

Thanks for your understanding and support,

Nick

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EXHIBIT J



NOTICE OF VIOLATION

June 14, 2023

Property Owner

Timespace Alexandria LLC
12230 Saratoga Sunnyvale Rd
Saratoga, CA 95070

Site Address: 5400 Geary Blvd
Assessor’s Block/Lot: 1450/048
Zoning District: NCD, Geary Boulevard Neighborhood Commercial District
Complaint Number: 2022-012075ENF
Code Violation: Section 174, Violation of Conditions of Approval
Administrative Penalty: Up to \$250 per Day for Each Violation
Enforcement T & M Fee: \$6,172 (Current Fee for confirmed violations, Additional charges may apply)
Response Due: Within 30 days from the date of this Notice
Staff Contact: Rogelio Baeza, (628) 652-7369, rogelio.baeza@sfgov.org

The Planning Department finds the above referenced property to be in violation of the Planning Code. As the owner of the subject property, you are a Responsible Party to bring the above property into compliance with the Planning Code. Details of the violation are discussed below:

Description of Violation

Our records indicate that the subject property is currently authorized for movie theatre use. The subject property is a Category A historic resource constructed in 1923 and identified in the eligible San Francisco Neighborhood Movie Theatre Historic District on both the California Register of Historical Resources and the National Register of Historic Places.

On April 1, 2010, Building Permit No. 201004019509 was filed and issued to, “Comply with NOV 201037065 and Complaint 201038121. Remove display glass, new 6' tall temp fence under building entry. Fence to be thru visible.” This permit was never completed.

On May 18, 2012, Building Permit No. 201205180781 was filed and issued “To obtain final inspection for work approved under PA#201004019509. All work is complete.” This permit was never completed.

On April 25, 2013, the Planning Commission approved Conditional Use Authorization (CUA) application no. 2004.0482CE and Motion No. 18853 for a project consisting of the renovation of the existing historic Alexandria Theater building and the construction of a new mixed-use building with underground parking on the surface parking lot behind the theater. Specifically, the CUA authorized a development lot size exceeding 9,999 square

feet and a non-residential use size exceeding 5,999 square feet, subject to conditions contained in “Exhibit A” in the approval.

The violation pertains to the general negligence of maintaining and upkeeping the subject property. All Conditional of Approval remain in effect under Motion No. 18853 (see attached). The Planning Commission approved Motion No. 18853, including, but no limited to, the following relevant conditions:

- **Condition #23: Security, Supervision, Maintenance and General Upkeep of the Alexandria Theater Building and the Adjoining Parking Lot Site.** The Project Sponsor shall provide strict security and regular maintenance of the parking lot and the theater building to prevent any vandalism of the theater interior, and to protect its resources (i.e. architectural features and details) until such time the Project is completed as designed.
- **Condition #24: Community Liaison.** Prior to issuance of a Building Permit to construct the Project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

The project was approved with the following Mitigation Measures, including, but no limited to, the following relevant conditions:

- Preserve and protect original historic finishes and features during construction.
- Finishes: Original features will be preserved and protected during construction and operation. The decorative murals and panels at the walls and ceilings shall be preserved. Interior features and finishes shall be retained and restored. The auditorium's decorative plasterwork, murals and metalwork shall be preserved. Damaged plasterwork and filigree will be retained and repaired. New interior construction shall be reversible and not destroy historic materials.
- Preserve historic materials by covering the auditorium walls and ceiling with plywood.
- Preserve historic integrity differentiating new construction from historic characteristic.

On October 9, 2013, the Notice of Special Restriction (NSR) was recorded stating that the proposed project, at both the subject property (5400 Geary Blvd) and the adjacent rear property (369 18th Ave), are subject to the conditions of approval contained in Motion No. 18853.

On July 15, 2014, Building Permit No. 201407151354 was filed to, “Install 8'-0” tall iron fence (temporary) and gate at main entrance to comply with Planning Dept. NOV. #12744,” and issued on August 27, 2014. This permit was never completed.

On June 11, 2015, Building Permit No. 200806275522 was issued to “Erect a 4-story, 41 dwelling units (residential

condo/comm & garage), 2 basements.” A copy of the NSR is included in the permit drawings. On February 1, 2019, a final Certificate of Final Completion (CFC) was issued, and the permit was completed.

On October 8, 2015, Building Permit No. 201510089265 was filed for “Temporary shoring of site. Refer to approved PA #200806275522 for new construction.” This permit was never completed.

On May 12, 2016, Building Permit No. 201605127335 was filed for “Revision to approved shoring PA# 2015/10/08/9265 & foundation PA# 2008/06/27/5521-S1. Change soldier pile spacing from 6' to 8' on center. Decrease row of tiebacks by one in the soldier piles & hand dug pits. Reduce mat slab thickness from 30" to 24”,” and issued on June 29, 2016. This permit was completed on February 1, 2019.

On April 22, 2016, Building Permit No. 200806275511 was issued, “To maintain one movie theatre (about 3,510 sf) while converting other two [small screens] into a full service restaurant (about 8,300 sf) on 2nd floor. Expand ground fl. commercial space to about 9,900 sf with 1,800 sf lobby per plans.” This permit was never completed.

On March 30, 2017, Building Permit No. 201703292702 was filed and issued for the following scope of work, “This permit is for exploratory demolition work to remove the plaster on the soffit of the marquee.” Planning Department approval language included, “Exploratory permit for marquee only. Removal of soffit for structural assessment.” This permit was never completed.

On September 28, 2017, Building Permit No. 201709289870 was filed to, “repair marquee and sign elements: replace soffit and lighting, repair & repaint marquee, replace neon, repair blade sign, replace neon, repair “parking” sign, replace neon. signage under separate permit,” and issued on November 16, 2017. This permit was never completed.

On November 8, 2017, three Building Permits (BP) were filed including:

1. Building Permit No. 201711083483 for the “Repair neon letter, patch sheet metal & repaint @ existing marquee,” and issued on November 16, 2017. This permit was never completed.
2. Building Permit No. 201711083486 for the “Repair neon letter patch sheet metal & repaint @ existing projecting sign,” and issued on November 16, 2017. This permit was never completed.
3. Building Permit No. 201711083487 for the “Repair neon letter, patch sheet metal & repaint @ existing wall sign,” and issued on November 16, 2017. This permit was never completed.

Between October 11, 2018, and February 1, 2019, seven Building Permits were filed, issued, and completed for the new mixed-use building located at the adjacent rear property (369 18th Ave) including the following:

1. Building Permit No. 201810112896 for “Revision to approved BPA #200806275522/s3. Architectural addendum to clarify location of (n) errc equipment room on p1, revised location of facu, and 2-hr rated chase for errc wiring/conduit.”
2. Building Permit No. 201810264253 for “201004019509ev to pa# 200806275522s3; update bathroom plans to show compliance with ADA requirements.”
3. Building Permit No. 201810264276 for “Installation of a (n) 2-way emergency communication system to the fire alarm system. Ref 200806275522.”
4. Building Permit No. 201811155968 for “Administrative permit to document number of dwelling units from 41 to 43. There are 43 dwelling units as approved on APPLN #200806275522-2 & #200806275522-S3 plans.”
5. Building Permit No. 201811266657 for “As built for fire alarm. Ref PA #200806275522-S5.”
6. Building Permit No. 201811307101 for “Revision to approved BPA# 2018-1115-5968 for planning department sign-off to document unit count. Ref# 2008-0627-5522.”
7. Building Permit No. 201812148371 for “Provide plans for emergency evacuation sign and fire extinguisher locations.”

On July 21, 2021, two Building Permits (BP) were filed including:

1. Building Permit No. 202107214793 for the “Recommendation and completion of work approved under permit application no(s): 201711083487, 50% remaining,” and issued on July 28, 2021. This permit was never completed.
2. Building Permit No. 202107214807 for the “Recommendation and completion of work approved under permit application no(s): 201709289870, 201711083486, 201711083486, 50% REMAINING,” issued on the same day. This permit was never completed.

On January 10, 2023, a Department of Building Inspection (DBI) Notice of Violation (NOV) Complaint No. 202301432 was issued with the following description, “Unsecured signage at the former Alexandria Theatre at 5400 Geary which can be seen swaying during this windy weather.” The NOV pertained to the historic movie theater projecting sign, which had not been maintained and was detaching from the building. DBI Inspector Carl Malchow notified Planning Department staff that the sign was required to be removed immediately due to life safety concerns.

On January 26, 2023, Building Permit No. 202301260850 was filed with the following scope of work, “Partially comply w/ NOV 202301432. For emergency removal due to life safety hazard caused by storms. Removal req by DBI. Restoration and reinstallation of sign as required by planning will be filed in a subsequent permit.” Planning Department staff approved this permit with the following approval language, “Emergency removal required by DBI for life safety. Owner to return to file (n) permit to repair & to reinstall sign. Reinstallation of sign must be completed within 18 months of storm event.” This permit was issued on January 27, 2023, and completed on February 7, 2023.

On February 2, 2023, Planning Department staff conducted a site visit with DBI Inspector Carl Malchow of the subject property to review existing conditions of the historic movie theater building including its exterior and interior elements. Staff observed the deteriorated condition of the existing historic building including at the exterior the poor condition of the fence at the theater entrance, the failing netting and missing elements at the marquee, the damaged display panels, as well as graffiti painted at the ground floor storefronts. At the interior, staff observed an opening from the exterior blocked by a garbage can, bird guano on the floor, numerous holes at historic plaster ceilings at the mezzanine, and the piles of sheet metal remnants of the removed historic projecting sign. During the site visit, Planning staff discussed with your representatives including Jeff Fu, York Lee, Robert Trieu, your attorney Nick Colla, and your engineer Gary Varum of the next steps in the enforcement process including the requirement to maintain the historic movie theater and protect its historic elements including, but not limited to, the marquee and display panels at the exterior.

On February 27, 2023, The Notice of Enforcement (NOE) was issued and detailed the requirements to abate the violation.

As of now, none of the permits issued for scopes to repair and restore the historic theater building have been completed. As a result, the historic movie theater has not been regularly maintained, nor has its resources been protected, as required by the Conditions of Approval outlined in Motion No. 18853.

Pursuant to Planning Code Section 171 structures and land in any zoning district shall be used only for the purposes listed in the Planning Code as permitted in that district, and in accordance with the regulations established for that district.

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located.

Pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures including actions on building permits.

Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure in compliance with the Planning Code.

Failure to comply with any Planning Code provisions constitutes a violation of the Planning Code and is subject to an enforcement process under Planning Code Section 176.

Timeline of Investigation

On February 2, 2023, the Planning Department staff, Kelly Wong and Rogelio Baeza conducted the site visit and confirmed the violation. In general, Staff observed that the historic theater and its elements to be poorly maintained at the exterior and interior. Specifically, graffiti was found covering existing storefront display

windows. Additionally, elements such as the historic marquee were missing components, and the temporary fence and display panels at the building entrance needed repair due to lack of maintenance.

On February 27, 2023, the Planning Department sent you a Notice of Enforcement (NOE) informing you about the violation and the abatement process including: 1) filing a new corrective building permit application for the repair and maintenance of the historic theater and its elements, 2) retaining a qualified historic architect and/or engineer, and 3) submitting a report outlining the current conditions of the historic building and property and proposed treatment recommendations. In this notice, you were advised to take corrective action and provide evidence of compliance to the Planning Department within fifteen (15) days. To date, neither a new building permit application, nor a report outlining the conditions and proposed treatment recommendations have been received by the Planning Department.

On March 9, 2023, the Planning Department met with you and your team, and Supervisor Connie Chan and her staff at City Hall to discuss violations at the subject property, as well as your ideas for a future development project. During this meeting, Planning staff clarified that work to abate the violations would be separate from any future proposed development project and would need to be addressed first and in a separate building permit. Planning staff reminded you that the deadline to respond to the NOE was March 14, 2023.

On March 14, 2023, your attorney Nick Colla submitted a letter to the Planning Department via email to respond to the NOE. This letter indicated that you had retained Aaron Jon Hyland as your qualified historic architect. In this letter, Mr. Colla indicated that a more substantive plan to abate the NOE would be submitted within 30 days, and if approved, a corrective building permit application would be submitted as soon as drawings were drafted. (See enclosures). To date, no such plan has been received by the Planning Department.

On March 23, 2023, Planning staff Rogelio Baeza responded to Mr. Colla's letter submitted on March 14, 2023. In this email, the Planning Department provided you with an extension until Thursday, April 27, 2023 to submit your abatement plan including a schedule for when a permit set of drawings would be submitted to Planning for review, and the date when a new building permit application would be filed. This email also confirmed that the storm event occurred on January 9, 2023, and the requirement to install the historic blade sign and substructure by July 9, 2024.

On April 27, 2023, your attorney Nick Colla submitted a second letter, labeled as "NOE Abatement Plan" to the Planning Department via email to respond to the NOE. In this two-page letter, Mr. Colla outlined that an assessment of the historic blade sign and marquee had been conducted, however the required abatement work to repair/replace the blade sign and marquee would be cost prohibitive to undertake. This letter also outlined that you would submit an update by May 30, 2023, with a date when the building permit application would be submitted. (See enclosures). No update has been received by the Planning Department, nor has a new building permit application been filed.

On May 2, 2023, Planning staff Rogelio Baeza responded to Mr. Colla that the the proposed NOE Abatement Plan did not satisfy the requirements outlined in the NOE. In this email, Mr. Baeza requested that a schedule be submitted for when a full permit set of drawings would be submitted for Planning Department review, and a date when the new building permit application would be filed. No response was received.

To date, the Planning Department has not received any evidence to demonstrate that the above violation has been abated or a corrective action has been taken to bring the subject property into compliance with the Planning Code.

How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation as follows:

1. **File a new Building Permit Application to that includes the repair and maintenance of the historic movie theater and its elements.**
 - a. Scope of work. Include all scopes of work in the new building permit application to address all Conditions of Approval and Mitigation Measures, including but not limited to:
 - i. Repair and re-install historic projecting blade sign (re-installation of blade sign must occur within 18 months storm event).
 - ii. Repair and maintain the historic marquee.
 - iii. Repair and maintain the historic terrazzo flooring at the theater entrance.
 - iv. Repair and maintain the security fence at the theater entrance.
 - v. Repair and maintain the display panels at the theater entrance.
 - vi. Removal of any vandalism at the building exterior.
 - vii. Provide any additional security measures needed to protect the building.
 - viii. Repair and maintain any interior and exterior character defining features.
 - b. Drawings. Submit a set of permit drawings including:
 - i. (3) Conditions for all site plans, floor plans, exterior elevations, and sections including:
 1. Existing (the last legal condition, as found in prior permits approved by the Planning Department);
 2. As-Built (as the property exists today); and
 3. Proposed (any new work required to bring this property back into compliance).
 - ii. One sheet after the Cover Sheet with photos showing as-built conditions labeled with dates.
2. **Submit a Condition Assessment Report**, by a qualified historic architect and/or engineer outlining the

current conditions of the building and property, and proposed treatment recommendations to the Planning Department for review and approval. Supplement this report with photos and drawings showing the location(s) of proposed work.

For questions regarding the building permit process, please contact the **Department of Building Inspection (DBI)** at:

49 South Van Ness Avenue, 2nd/5th Floor
San Francisco, CA 94103
Phone: 628.652.3200
Email: dbicustomerservice@sfgov.org
Website: www.sfdbi.org

For questions regarding the planning permit review process, please contact the **Planning Department** at:

49 South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103
Phone: 628.652.7300
Email: pic@sfgov.org
Website: www.sfplanning.org

For questions about this enforcement case, please email the assigned Enforcement Planner as noted above. For questions about the Building Code or building permit process, please email DBI at the email address noted above.

Timeline to Respond

The Responsible Party has thirty (30) days from the date of this notice to either;

- 1) Take steps to correct the violation as noted above; or
- 2) Appeal this Notice of Violation as noted below.

The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation will result in assessment of administrative penalties at \$250 per day for each violation. The Department may also report any licensed professional responsible for the violation(s) to the appropriate local, state, or federal licensing boards.

Please contact the assigned Enforcement Planner noted above with any questions, to submit evidence of correction, and discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

Appeal Processes

If the Responsible Party believes that this Notice of Violation of the Planning Code is an abuse of discretion by the Zoning Administrator, the following appeal processes are available **within thirty (30) days from the date of this notice**:

1. The Responsible Party may request a Zoning Administrator Hearing under Planning Code Section 176 to show cause why this Notice of Violation is issued in error and should be rescinded by submitting the Request for Zoning Administrator Hearing Form and supporting evidence to the Planning Department. This form is available from the Planning Department's website at <https://sfplanning.org/resources>. The Zoning Administrator shall render a decision on the Notice of Violation within 30 days of such hearing. The Responsible Party may appeal the Zoning Administrator's decision to the Board of Appeals within 30 days from the date of the decision.
2. The responsible or any interested party may waive the right to a Zoning Administrator Hearing and proceed directly to appeal the Notice of Violation to the **Board of Appeals** located at:

49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
Phone: 628.652.1150
Email: boardofappeals@sfgov.org
Website: www.sfgov.org/bdappeal

If Board of Appeals upholds the Notice of Violation, it may not reduce the amount of penalty below \$100 per day for each day the violation continues unabated, excluding the period of time the matter was pending either before the Zoning Administrator or before the Board of Appeals.

No penalties are assessed during the period when the matter is pending either before the Zoning Administrator or before the Board of Appeals. However, if the Responsible Party requests continuance of the appeal without a reasonable cause with the Board of Appeals, the penalties may still be assessed during the continuation period.

Administrative Penalties

If a Responsible Party does not request any appeal process and does not take corrective action to abate the violation **within 30 days**, this Notice of Violation will become final. However, **administrative penalties will not begin to accrue until the 30-day period to respond expires**, as detailed above. Beginning on the following day, administrative penalties of up to **\$250 per day for each violation** to the Responsible Party will start to accrue for each day the violation continues unabated. If such penalties are assessed, the Planning Department will issue a Notice of Penalty and Fee, and the penalty amount shall be paid **within 30 days** from the issuance date of that notice. Please be advised that payment of penalty does not excuse failure to correct the violation or bar further enforcement action. Additional penalties will continue to accrue until corrective action is taken to abate the violation.

Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for ‘Time and Materials’ to recover the cost of correcting the Planning Code violations. Accordingly, the Responsible Party is currently subject to a fee of **\$6,172** for “Time and Materials” cost associated with the Code Enforcement investigation for confirmed violation. Additional fees will continue to accrue until the violation is abated. **This fee is separate from the administrative penalties described above and is not appealable.**

Failure to Pay Penalties and Fees

If the Responsible Party fails to pay the “Administrative Penalties” and “Time and Materials” fee to the Planning Department within 30 days of the issuance of Notice of Penalty and Fee, the Zoning Administrator may take such actions to collect the “Penalties” and any unpaid “Time and Materials” fee owed to the Department, including:

- (1) Referral of the matter to the Bureau of Delinquent Revenue Collection under Chapter 10, Article V, Section 10.39 of the San Francisco Administrative Code. The BDR may apply a 25% surcharge for their collection services. Please note that such surcharge will be considered part of the cost of correcting the violation, and the Responsible Party will be responsible for such charges.
- (2) Initiation of lien proceedings under Chapter 10, Article XX, Section 10.230 et seq. of the San Francisco Administrative Code; and
- (3) Requesting the San Francisco Office of City Attorney to pursue collection of the “Administrative Penalties” and “Time and Materials” imposed against the Responsible Party in a civil action.

Recordation of Order of Abatement

Upon the expiration of 90 days following the finality of this Notice of Violation, an Order of Abatement may be recorded against the property's records in the Office of the Recorder of the City and County of San Francisco.

The obligation to correct the violation as set forth in the Order of Abatement shall be Planning Code conditions pursuant to Planning Code Section 174 that run with title to the property. Further, such recordation shall provide notice to each Responsible Party and any subsequent “successor” or “assign of title” to the property that the failure to perform such obligations is a violation of the Planning Code and may be enforced pursuant to Planning Code Section 176.

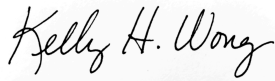
Any fees associated with recordation of an Order of Abatement will be assessed to the Responsible Party and added to the “Time and Materials” fee discussed above.

Other Applications Under Consideration

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until a corrective action is taken to

abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

Sincerely,



Kelly Wong
Acting Zoning Administrator

Enc.: Notice of Enforcement, dated February 27, 2023

cc: Yorke Lee, Timespace Group (Owner's Representative), yorkelee@timespacegroup.com
Jeff Fu (Owner's Representative), yj_fu@yahoo.com
Nick Colla, Colla & Ray LLP (Owner's Attorney), nick@collaray.com
Supervisor Connie Chan, District 1 Supervisor, Board of Supervisors, connie.chan@sfgov.org
Ben Gurewitz, Legislative Aide, District 1 – Supervisor Chan, ben.gurewitz@sfgov.org
Carl Malchow, Senior Building Inspector, Department of Building Inspection, carl.malchow@sfgov.org
Carl Nicita, Department of Building Inspection, carl.nicita@sfgov.org
Kelly Wong, Code Enforcement Manager, Planning Department, kelly.wong@sfgov.org
Richard Sucre, Deputy Current Planning Division Director, Planning Department, richard.sucre@sfgov.org
Sheila Nickolopoulos, Director of Policy and Legislative Affairs, MOHCD, sheila.nickolopoulos@sfgov.org



NOTICE OF ENFORCEMENT

February 27, 2023

Property Owner

Timespace Alexandria LLC
12230 Saratoga-Sunnyvale Rd
Saratoga, CA 95070

Site Address: 5400 Geary Blvd
Assessor's Block/Lot: 1450/048
Zoning District: NCD, Geary Boulevard Neighborhood Commercial District
Complaint Number: 2022-012075ENF
Code Violation: **Section 174:** Violation of Conditions of Approval
Administrative Penalty: Up to \$250 Each Day of Violation
Enforcement T & M Fee: \$2,454.31 (Current Fee for confirmed violations, Additional charges may apply)
Response Due: Within 15 days from the date of this Notice
Staff Contact: Rogelio Baeza, (628) 652-7369, rogelio.baeza@sfgov.org

The Planning Department received a complaint that a Planning Code violation exists on the above referenced property that must be resolved. As the owner of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below:

Description of Violation

Our records indicate that the subject property is currently authorized for movie theatre use. The subject property is a Category A historic resource constructed in 1923 and identified in the eligible San Francisco Neighborhood Movie Theatre Historic District on both the California Register of Historical Resources and the National Register of Historic Places.

On April 1, 2010, Building Permit No. 201004019509 was filed and issued to, "Comply with NOV 201037065 and Complaint 201038121. Remove display glass, new 6' tall temp fence under building entry. Fence to be thru visible." This permit was never completed.

On May 18, 2012, Building Permit No. 201205180781 was filed and issued "To obtain final inspection for work approved under PA#201004019509. All work is complete." This permit was never completed.

On April 25, 2013, the Planning Commission approved Conditional Use Authorization (CUA) application no. 2004.0482CE and Motion No. 18853 for a project consisting of the renovation of the existing historic Alexandria

Theater building and the construction of a new mixed-use building with underground parking on the surface parking lot behind the theater. Specifically, the CUA authorized a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, subject to conditions contained in “Exhibit A” in the approval.

The violation pertains to the general negligence of maintaining and upkeeping the subject property. All Conditional of Approval remain in effect under Motion No. 18853 (see attached). The Planning Commission approved Motion No. 18853, including, but no limited to, the following relevant conditions:

- **Condition #23: Security, Supervision, Maintenance and General Upkeep of the Alexandria Theater Building and the Adjoining Parking Lot Site.** The Project Sponsor shall provide strict security and regular maintenance of the parking lot and the theater building to prevent any vandalism of the theater interior, and to protect its resources (i.e. architectural features and details) until such time the Project is completed as designed.
- **Condition #24: Community Liaison.** Prior to issuance of a Building Permit to construct the Project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

The project was approved with the following Mitigation Measures, including, but no limited to, the following relevant conditions:

- Preserve and protect original historic finishes and features during construction.
- **Finishes:** Original features will be preserved and protected during construction and operation. The decorative murals and panels at the walls and ceilings shall be preserved. Interior features and finishes shall be retained and restored. The auditorium's decorative plasterwork, murals and metalwork shall be preserved. Damaged plasterwork and filigree will be retained and repaired. New interior construction shall be reversible and not destroy historic materials.
- Preserve historic materials by covering the auditorium walls and ceiling with plywood.
- Preserve historic integrity differentiating new construction from historic characteristic.

On October 9, 2013, the Notice of Special Restriction (NSR) was recorded stating that the proposed project, at both the subject property (5400 Geary Blvd) and the adjacent rear property (369 18th Ave), are subject to the conditions of approval contained in Motion No. 18853.

On July 15, 2014, Building Permit No. 201407151354 was filed to, “Install 8'-0" tall iron fence (temporary) and gate at main entrance to comply with Planning Dept. NOV. #12744,” and issued on August 27, 2014. This permit was never completed.

On June 11, 2015, Building Permit No. 200806275522 was issued to “Erect a 4-story, 41 dwelling units (residential condo/comm & garage), 2 basements.” A copy of the NSR is included in the permit drawings. On February 1, 2019, a final Certificate of Final Completion (CFC) was issued, and the permit was completed.

On October 8, 2015, Building Permit No. 201510089265 was filed for “Temporary shoring of site. Refer to approved PA #200806275522 for new construction.” This permit was never completed.

On May 12, 2016, Building Permit No. 201605127335 was filed for “Revision to approved shoring PA# 2015/10/08/9265 & foundation PA# 2008/06/27/5521-S1. Change soldier pile spacing from 6' to 8' on center. Decrease row of tiebacks by one in the soldier piles & hand dug pits. Reduce mat slab thickness from 30" to 24”,” and issued on June 29, 2016. This permit was completed on February 1, 2019.

On April 22, 2016, Building Permit No. 200806275511 was issued, “To maintain one movie theatre (about 3,510 sf) while converting other two [small screens] into a full service restaurant (about 8,300 sf) on 2nd floor. Expand ground fl. commercial space to about 9,900 sf with 1,800 sf lobby per plans.” This permit was never completed.

On March 30, 2017, Building Permit No. 201703292702 was filed and issued for the following scope of work, “This permit is for exploratory demolition work to remove the plaster on the soffit of the marquee.” Planning Department approval language included, “Exploratory permit for marquee only. Removal of soffit for structural assessment.” This permit was never completed.

On September 28, 2017, Building Permit No. 201709289870 was filed to, “repair marquee and sign elements: replace soffit and lighting, repair & repaint marquee, replace neon, repair blade sign, replace neon, repair "parking" sign, replace neon. signage under separate permit,” and issued on November 16, 2017. This permit was never completed.

On November 8, 2017, three Building Permits (BP) were filed including:

1. Building Permit No. 201711083483 for the “Repair neon letter, patch sheet metal & repaint @ existing marquee,” and issued on November 16, 2017. This permit was never completed.
2. Building Permit No. 201711083486 for the “Repair neon letter patch sheet metal & repaint @ existing projecting sign,” and issued on November 16, 2017. This permit was never completed.
3. Building Permit No. 201711083487 for the “Repair neon letter, patch sheet metal & repaint @ existing wall sign,” and issued on November 16, 2017. This permit was never completed.

Between October 11, 2018, and February 1, 2019, seven Building Permits were filed, issued, and completed for the new mixed-use building located at the adjacent rear property (369 18th Ave) including the following:

1. Building Permit No. 201810112896 for “Revision to approved BPA #200806275522/s3. Architectural addendum to clarify location of (n) errc equipment room on p1, revised location of facu, and 2-hr rated chase for errc wiring/conduit.”
2. Building Permit No. 201810264253 for “201004019509ev to pa# 200806275522s3; update bathroom plans to show compliance with ADA requirements.”
3. Building Permit No. 201810264276 for “Installation of a (n) 2-way emergency communication system to the fire alarm system. Ref 200806275522.”
4. Building Permit No. 201811155968 for “Administrative permit to document number of dwelling units from 41 to 43. There are 43 dwelling units as approved on APPLN #200806275522-2 & #200806275522-S3 plans.”
5. Building Permit No. 201811266657 for “As built for fire alarm. Ref PA #200806275522-S5.”
6. Building Permit No. 201811307101 for “Revision to approved BPA# 2018-1115-5968 for planning department sign-off to document unit count. Ref# 2008-0627-5522.”
7. Building Permit No. 201812148371 for “Provide plans for emergency evacuation sign and fire extinguisher locations.”

On July 21, 2021, two Building Permits (BP) were filed including:

1. Building Permit No. 202107214793 for the “Recommendation and completion of work approved under permit application no(s): 201711083487, 50% remaining,” and issued on July 28, 2021. This permit was never completed.
2. Building Permit No. 202107214807 for the “Recommendation and completion of work approved under permit application no(s): 201709289870, 201711083486, 201711083486, 50% REMAINING,” issued on the same day. This permit was never completed.

On January 10, 2023, a Department of Building Inspection (DBI) Notice of Violation (NOV) Complaint No. 202301432 was issued with the following description, “Unsecured signage at the former Alexandria Theatre at 5400 Geary which can be seen swaying during this windy weather.” The NOV pertained to the historic movie theater projecting sign, which had not been maintained and was detaching from the building. DBI Inspector Carl Malchow notified Planning Department staff that the sign was required to be removed immediately due to life-safety concerns.

On January 26, 2023, Building Permit No. 202301260850 was filed with the following scope of work, “Partially comply w/ NOV 202301432. For emergency removal due to life safety hazard caused by storms. Removal req by DBI. Restoration and reinstallation of sign as required by planning will be filed in a subsequent permit.” Planning Department staff approved this permit with the following approval language, “Emergency removal required by DBI for life safety. Owner to return to file (n) permit to repair & to reinstall sign. Reinstallation of sign must be completed within 18 months of storm event.” This permit was issued on January 27, 2023, and completed on February 7, 2023.

On February 2, 2023, Planning Department staff conducted a site visit with DBI Inspector Carl Malchow of the subject property to review existing conditions of the historic movie theater building including its exterior and interior elements. Staff observed the deteriorated condition of the existing historic building including at the exterior the poor condition of the fence at the theater entrance, the failing netting and missing elements at the marquee, the damaged display panels, as well as graffiti painted at the ground floor storefronts. At the interior, staff observed an opening from the exterior blocked by a garbage can, bird guano on the floor, numerous holes at historic plaster ceilings at the mezzanine, and the piles of sheet metal remnants of the removed historic projecting sign. During the site visit, Planning staff discussed with your representatives including Jeff Fu, York Lee, Robert Trieu, your attorney Nick Colla, and your engineer Gary Varum of the next steps in the enforcement process including the requirement to maintain the historic movie theater and protect its historic elements including, but not limited to, the marquee and display panels at the exterior.

To date, none of the permits issued for scopes to repair and restore the historic theater building have been completed. As a result, the historic movie theater has not been regularly maintained, nor has its resources been protected, as required by the Conditions of Approval outlined in Motion No. 18853.

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located.

Pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures including actions on building permits.

Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure in compliance with the Planning Code.

Failure to comply with any Planning Code provisions constitutes a violation of the Planning Code and is subject to an enforcement process under Planning Code Section 176.

How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation as follows:

1. File a new Building Permit Application to that includes the repair and maintenance of the historic movie theater and its elements.
 - a. Scope of work. Include all scopes of work in the new building permit application to address all Conditions of Approval and Mitigation Measures, including but not limited to:
 - i. Repair and re-install historic projecting blade sign (re-installation of blade sign must occur within 18 months storm event).
 - ii. Repair and maintain the historic marquee.
 - iii. Repair and maintain the historic terrazzo flooring at the theater entrance.
 - iv. Repair and maintain the security fence at the theater entrance.
 - v. Repair and maintain the display panels at the theater entrance.
 - vi. Removal of any vandalism at the building exterior.
 - vii. Provide any additional security measures needed to protect the building.
 - viii. Repair and maintain any interior and exterior character defining features.
 - b. **Drawings**. Submit a set of permit drawings including:
 - i. (3) Conditions for all site plans, floor plans, exterior elevations, and sections including:
 1. Existing (the last legal condition, as found in prior permits approved by the Planning Department);
 2. As-Built (as the property exists today); and
 3. Proposed (any new work required to bring this property back into compliance).
 - ii. One sheet after the Cover Sheet with photos showing as-built conditions labeled with dates.
2. Retain a qualified preservation architect and/or engineer with not less than 10 years successful experience working on preservation of historic movie theater buildings of comparable size and scope, within the last 10 years. If the structure requires work exceeding general repair and/or restoration work, please submit a report, by a qualified historic engineer with the above experience, outlining the current conditions of the building and property, and proposed treatment recommendations to the Planning Department for review and approval. Supplement this report with photos and drawings showing the location(s) of proposed work.

Please visit DBI website, <https://sf.gov/apply-building-permit> for information on the permit application process. **This permit must be diligently pursued and completed.**

Please be advised that upon review of above applications and plan submittals, if it is determined that additional planning applications and processes are required, the Planning Department will notify you to make such submittals.

For questions regarding the building permit process, please contact the **Department of Building Inspection (DBI)** at:

49 South Van Ness Avenue, 2nd/5th Floor
San Francisco, CA 94103
Phone: 628.652.3200
Email: dbicustomerservice@sfgov.org
Website: www.sfdbi.org

For questions regarding the planning permit review process, please contact the **Planning Department** at:

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San Francisco, CA 94103
Phone: 628.652.7300
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Website: www.sfplanning.org

For questions about this enforcement case, please email the assigned enforcement planner as noted above. For questions about the Building Code or building permit process, please email DBI at the email address noted above.

Timeline to Respond

The timeline to respond to this Notice of Enforcement is **fifteen (15) days from the date of this notice**. Delays in abatement of the violation beyond this timeline will result in further enforcement action by the Planning Department, including issuance of Notice of Violation and assessment of administrative penalties at \$250 per day.

Please contact the assigned Enforcement Planner with any questions, to submit evidence of correction, and discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

Penalties and Appeal Rights

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code **within fifteen (15) days from the date of this notice** will result in issuance of a **Notice of Violation** by the Zoning Administrator. Administrative penalties of up to **\$250 per day** will also be assessed to the responsible party for each day beyond the timeline to respond provided for the Notice of Violation if the violation is not abated. The Notice of Violation provides the following appeal options.

1. Request for Zoning Administrator Hearing. The Zoning Administrator's final decision is then appealable to the Board of Appeals.
2. Appeal of the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount

of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter was pending either before the Zoning Administrator or before the Board of Appeals.

Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party is subject to an amount of **\$2,454.31** or more for "Time and Materials" cost associated with the Code Enforcement investigation. **This fee is separate from the administrative penalties described above and is not appealable.**

Other Applications Under Consideration

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

Enc: Conditional Use Authorization (Case no. 2004.0482CE) – Motion No. 18853

cc: Jeff Fu, yj_fu@yahoo.com (Owner's Representative)
Nick Colla, nick@collaray.com (Attorney)
Carl Malchow, San Francisco Department of Building Inspection, carl.malchow@sfgov.org



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- Better Streets Plan (Sec. 138.1)
- First Source Hiring (Admin. Code Chapter 83)
- Transit Impact Development Fee (Sec. 411)

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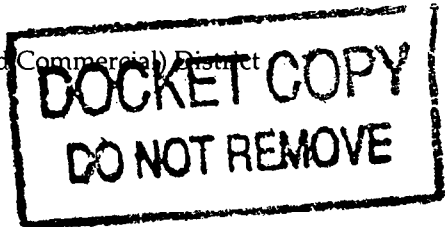
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Information:
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Planning Commission Motion No. 18853

HEARING DATE: APRIL 25, 2013

Date: April 18, 2013
Case No.: 2004.0482CE!
Project Address: 5400 GEARY BOULEVARD
Zoning: NC-3 (Moderate-Scale Neighborhood Commercial) District
 40-X Height and Bulk District
Block/Lot: 1450/008
Project Sponsor: Alexandria Enterprises, LLC
 c/o Ronald Yu
 5418A Geary Boulevard
 San Francisco, CA 94132
Staff Contact: Mary Woods – (415) 558-6315
mary.woods@sfgov.org



ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 121.1, 121.2, 303(C), 712.11 AND 712.21 OF THE PLANNING CODE TO ALLOW A DEVELOPMENT LOT SIZE EXCEEDING 9,999 SQUARE FEET AND A NON-RESIDENTIAL USE SIZE EXCEEDING 5,999 SQUARE FEET, IN AN NC-3 (MODERATE-SCALE NEIGHBORHOOD COMMERCIAL) DISTRICT AND 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On June 1, 2004, Alexandria Enterprises, LLC (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use authorization under Planning Code Sections 121.1, 121.2, 303(c), 712.11 and 712.21 to allow a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, in an NC-3 (Moderate-Scale Neighborhood Commercial) District, and 40-X Height and Bulk District.

On April 25, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2004.0482CE!.

On November 24, 2010, the Preliminary Mitigated Negative Declaration (PMND) for the Project was prepared and published for public review; and,

The PMND was available for public comment until January 24, 2011. No appeal of the PMND was filed with the Department; and

On May 26, 2011, the Department adopted the Final Mitigated Negative Declaration (FMND) and found that the contents of said report and the procedures through which the FMND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), Title 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"); and

The Department found the FMND was adequate, accurate and objective, reflected the independent analysis and judgment of the Planning Department, and approved the FMND for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP), setting forth measures to reduce potential environmental effects. These mitigation measures reduce all potential significant impacts to less than significant levels and are set forth in entirety in the MMRP, attached to the Draft Motion as EXHIBIT C.

These materials were made available to the public and this Commission for this Commission's review, consideration and action.

The Department is the custodian of records, located in the File for Case No. 2004.0482E, at 1650 Mission Street, Fourth Floor, San Francisco, California.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the Project Sponsor, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2004.0482CE!, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Project is located at the northwest corner of Geary Boulevard and 18th Avenue, in Assessor's Block 1450, Lot 008. The property is located within an NC-3 (Moderate-Scale Neighborhood Commercial) District and 40-X Height and Bulk District.

Existing uses on the Project Site include the closed 3-screen Alexandria Theatre, a 53-foot tall, two-story building containing approximately 17,000 square feet, including three small retail establishments fronting on Geary Boulevard, and a 57-space surface parking lot fronting on 18th Avenue. The three existing retail businesses include a gift store, an appliance store and an engineering office. The Alexandria Theatre closed in February, 2004. The parking lot is currently operated by an attendant for fee-based public parking.

3. **Surrounding Properties and Neighborhood.** The Project Site is situated towards the western end of the NC-3 District along the three-mile Geary Boulevard commercial corridor that stretches from the Western Addition to the Outer Richmond, through four neighborhoods. This corridor is bounded by Divisadero Street to the east and 28th Avenue in the west. The MUNI line "38-Geary" runs in front of the Project Site linking the Richmond area to Downtown and the Financial District. Other transit lines are also nearby and are within walking distance of the Site. Except for the commercial uses located on Geary Boulevard, the Project Site is surrounded by predominantly residential dwellings and residentially zoned districts to the west, north and east of the site. To the east of the site on 18th Avenue, existing uses also include a YMCA, a community center, and a church. Buildings on the subject block and facing block on Geary Boulevard range from one to two stories tall with primarily commercial uses on the ground floor and a few residential units on the upper floor. Commercial uses on the subject and facing blocks on Geary Boulevard include a gift store, an appliance store, a comic store, postal supplies store, a dry cleaner, shoe repair, restaurants, banks, grocery stores, a paint store, a medical supply store, and other professional offices. The Clement Street commercial corridor is one block north of the Project Site.
4. **Project Description.** The proposed Project consists of two components: (1) the renovation of the existing Alexandria Theatre building, and (2) the construction of a new mixed-use building with underground parking on the adjacent surface parking lot. Renovations to the Alexandria Theatre building include the conversion from a three-screen theatre to a 221-seat single-screen theatre, the creation of new retail spaces (6,300 square feet) on the ground floor, and a restaurant space (7,000 square feet) on the second floor. The surface parking lot will be removed and replaced with a new four-story mixed-use development with two levels of underground parking (122 spaces). The new building will contain retail spaces (4,800 square feet) on the ground floor, and 37 dwelling units on the upper floors, including 13 one-bedroom units, 18 two-bedroom units, and 6 three-bedroom units. The development would total approximately 109,000 square feet.

Section 312 -neighborhood notification was conducted in conjunction with the Conditional Use authorization process.

5. **Public Comment.** To date, the Department has received one e-mail in opposition to the Project expressing concerns related to building security, construction noise and pollution. Staff has met with one neighbor who expressed concerns about the massing of the new mixed-use building, structural integrity/building safety of adjacent buildings during construction, soil stability, and traffic problems along 18th Avenue. Staff has also received general inquiries about the scope of work related to the proposed Project. Staff has not received any correspondence in support of the

proposed project. The Project Sponsor and its representatives held several community outreach meetings beginning in 2010. Issues discussed ranged from the reuse of the existing theatre building, design of the new mixed-use building with retail/commercial uses on the ground floor and dwelling units above, affordability and type of units proposed, feasibility of retail uses in the theatre building, parking and traffic, and street trees.

6. **First Source Hiring Program.** The Project is subject to the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code) for projects creating ten (10) or more new residential units. The Project Sponsor will comply with the requirements of this Program. Prior to the issuance of any Building Permit or a First Addendum to a Site Permit, the Project Sponsor will have an approved and signed First Source Hiring Memorandum of Understanding (MOU) from the First Source Hiring Administrator, which will be evidenced in writing. This MOU will include Exhibit A, Construction First Source Hiring Agreement, and Exhibit B, End-Use First Source Hiring Agreement. Before the Commission can act on the Project, the Project Sponsor must complete the "Affidavit for First Source Hiring Program".

The Project Sponsor has submitted a complete Affidavit for First Source Hiring Program, a copy of which is attached to the Draft Motion

7. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Large Lot Development.** Sections 121.1 and 712.11 state that a Conditional Use authorization is required for development of large lot size exceeding 9,999 square feet in Neighborhood Commercial Districts.

The existing lot is irregular-shaped with an area of approximately 37,000 square feet.

- B. **Non-Residential Use Size.** Sections 121.2 and 712.21 state that a Conditional Use authorization is required for development of large lot size exceeding 5,999 square feet in Neighborhood Commercial Districts.

The existing theatre building contains approximately 17,000 square feet of non-residential uses. The Project proposes to add an additional 69,000 square feet of non-residential uses, including new retail spaces, a restaurant, and two levels of underground parking for 122 spaces.

- C. **Basic Floor Area Ratio.** Section 124 limits the building square footage to 3.6 square feet of building area for every 1 square feet of lot area, or approximately 134,000 square feet of building area for the subject site. However, in NC Districts, the FAR limits do not apply to dwellings or to other residential uses per Section 124(b).

The entire Project would total approximately 109,000 square feet, of which, approximately 40,000 square feet is related to residential uses.

- D. **Front Setback.** Section 132 is not applicable. There is no front setback requirement for buildings in NC-3 Districts.
- E. **Rear Yard.** Section 134(a)(1) requires that a rear yard equal to 25% of the lot depth be provided opposite the site's frontage. Further, Section 134(a)(1)(C) requires that in NC-3 Districts, rear yards must be provided at the lowest story containing a dwelling unit, and at each succeeding story of the building.

The new mixed-use building has a 30-foot rear yard setback (25% of the 120-foot lot depth) at all the residential levels. The Project provides a single rear yard totaling approximately 6,000 square feet.

- F. **Useable Open Space.** Section 135 typically requires 80 square feet of usable open space be provided for every dwelling unit, when provided as private open space, in NC-3 Districts. The open space requirement must be multiplied by 1.33 when provided as common open space.

For the proposed 37-unit Project, approximately 4,000 square feet of common useable open space would be required. For 30 of the units, the Project will provide common useable open space at the rear yard totaling approximately 4,300 square feet (3,200 square feet required). Additional common useable open space is also provided on the second floor interior courtyard, totaling approximately 1,800 square feet. The remaining seven units contain private useable open space in the form of private decks and yards, totaling approximately 1,300 (560 square feet required). All private open spaces meet the minimum area requirements of the Code.

- G. **Better Streets Plan.** Section 138.1 establishes requirements for the improvement of the public right-of-way associated with development projects, such that the public right-of-way may be safe, accessible, convenient and attractive to pedestrian use and travel by all modes of transportation.

The Project's streetscape and pedestrian improvements include a mid-block bulb-out on 18th Avenue, a small mid-block public plaza on 18th Avenue at the junction of the existing theatre building and the new mixed-use building, new street trees on both Geary Boulevard and 18th Avenue, permeable paving, benches and moveable seating, motorcycle and bike parking, lighting fixtures, and various hedges and plantings along 18th Avenue.

- H. **Dwelling Unit Exposure.** Section 140 requires that all dwelling units face a public street or side yard at least 25 feet in width, a required rear yard, or an open area of 25 feet in width.

All of the units in the proposed Project meet this requirement.

- I. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 requires in NC Districts containing specific uses, including retail stores, that building lobbies do not exceed 40 feet of building frontage, that parking entrances are no more than 20 feet wide, that ground floors have a minimum 10-foot ceiling height, and that the ground floor street

frontage be at least 60% transparent in order to allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or decorated grille work, other than wire mesh, which is placed in front or behind ground floor windows, shall be at least 75 percent open to perpendicular view.

The proposed Project is consistent with the relevant provisions under Section 145.1. The proposed two lobbies totals 20 feet in width. The parking entrance is 15 wide. The ground floor ceiling height is 11 feet. Along 18th Avenue, new transparency/glazing will be added to the existing theatre building totaling 62%, while the new mixed-use building will have 70% transparency at the street frontage.

- J. **Parking.** Section 151 requires one off-street parking space for each dwelling unit; one off-street parking space for each 200 square feet of occupied floor area where the occupied floor area exceeds 5,000 square feet for restaurants; one off-street parking space for each 500 square feet of occupied floor area up to 20,000 where the occupied floor area exceeds 5,000 square feet for retail stores, and one off-street parking space for each 8 seats over 50 seats for movie theatres. Section 152 requires one off-street freight loading space for retail stores where the gross floor area of structure or use is over 10,000 square feet but less than 60,000 square feet in newly constructed structures. Section 155(i) requires one handicapped parking space for each 25 off-street parking spaces provided. Sections 155(j), 155.2(c) and 155.4(e) require 1 bicycle space for every 20 automobile spaces for garages containing between 120 and 500 automobile spaces, where the most restrictive provisions prevail. Section 155.4(f) requires that new and existing commercial buildings must provide adequate signs or notices to advertise the availability of bicycle parking. Section 166 requires one car sharing space for the first 50 spaces plus one for every additional 50 spaces.

The proposed Project meets the provisions of the parking requirements as follows: 37 spaces for the dwelling units, 25 spaces for the retail stores, 32 spaces for the restaurant, 28 spaces for the movie theatre, for a total of 122 spaces for the Project. The Project will also provide two car share spaces and six handicapped spaces at the site.

The Project would not be required to have off-street freight loading spaces because the Project proposes approximately 5,000 square feet of retail uses in a new four-story building. The existing theatre building at approximately 19,000 square feet contains no off-street freight loading space.

The Project would be required to provide 6 bicycle parking spaces. The existing site contains no bicycle parking spaces. The Project proposes to add 20 "Class 1" bicycle parking spaces at the new mixed-use building, as well as additional on-street bicycle and motorcycle parking. Adequate signs or notices of the availability of bicycle parking will be provided at the Project Site.

- K. **Residential Density.** Sections 207.4 and 712.91, which set forth density restrictions for dwelling units in NC Districts, state that one dwelling unit is allowed for each 600 square feet of lot area.

Based on a lot area of approximately 37,000 square feet, 62 dwelling units are permitted. The Project proposes to develop 37 dwelling units, four of which (12%) will be inclusionary affordable units.

- L. **Change in Use/Demolition of a Movie Theatre.** Section 303(k) states that a change in use or demolition of a movie theatre use must meet the additional criteria set forth under this Section in addition to Section 303(c).

This Code Section does not apply to the proposed Project since the Project's environmental evaluation application was filed on May 19, 2004, prior to the effective date of July 27, 2004. However, renovations to the existing theatre building include the conversion from a three-screen theatre to a 221-seat single-screen theatre on the second floor.

- M. **Transit Impact Development Fee.** Sections 411 through 411.8 authorizes the imposition of certain development impact fees on new non-residential development projects or conversion of non-residential space of at least 800 gross square feet to offset impacts on the transit system. Land use categories for all impact fees are defined in Section 401.

The Project Sponsor will comply with the requirements of this section prior to the issuance of a Site Permit.

- N. **Inclusionary Affordable Housing Program.** Section 415 (formerly Section 315) sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements apply to projects that consist of ten or more units, where the first application (EE or BPA) was applied for before July 18, 2006. Pursuant to Planning Code Section 415.5 and 415.6, the Project is meeting the Inclusionary Affordable Housing Program requirement through the On-site Affordable Housing Alternative by providing 12% of the proposed dwelling units as affordable.

The Project Sponsor has demonstrated that it is eligible for the On-Site Affordable Housing Alternative under Planning Code Section 415.5 and 415.6, and has submitted an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to satisfy the requirements of the Inclusionary Affordable Housing Program by providing the affordable housing on-site instead of through payment of the Affordable Housing Fee. In order for the Project Sponsor to be eligible for the On-Site Affordable Housing Alternative, the Project Sponsor must submit an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the project. The Project Sponsor submitted such Affidavit on April 16, 2013. The EE application was submitted on May 19, 2004. Four units (1 one-bedroom, 2 two-bedroom, and 1 three-bedroom) of the 37 units provided will be affordable units. If the Project becomes ineligible to meet its Inclusionary Affordable Housing Program obligation through the On-site Affordable Housing Alternative, it must pay the Affordable Housing Fee with interest, if applicable.

- O. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department and must comply with Article 6 of the Planning Code.
8. **Planning Code Section 303(c)** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the Project does comply with said criteria in that:
- A. The proposed uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The Geary Boulevard corridor is one of the longest continuous neighborhood commercial districts in the City stretching from Divisadero Street to the east to 28th Avenue in the west. The existing Alexandria Theatre building was built in 1923. It was a neighborhood movie theatre until closing in 2004. The theatre building has been vacant since then; however, the three small retail storefronts and engineering office along Geary Boulevard remain in operation. The proposed Project consists of two components: (1) the renovation of the existing Alexandria Theatre building, and (2) the construction of a new mixed-use building with underground parking on the adjacent surface parking lot. Renovations to the Alexandria Theatre building include the conversion from a three-screen theatre to a 221-seat single-screen theatre, the creation of new retail spaces (6,300 square feet) on the ground floor, and a restaurant space (7,000 square feet) on the second floor. The surface parking lot will be removed and replaced with a new four-story mixed-use development with two levels of underground parking for 122 spaces. The new building will contain retail spaces (4,800 square feet) on the ground floor, and 37 dwelling units on the upper floors. The development would total approximately 109,000 square feet. The Project is necessary and desirable because the adaptive re-use of the existing theatre building will remove a blighted site and bring activity to this portion of the commercial corridor. The new mixed-use development will add 37 dwelling units to the City's housing stock, 12% of which will be inclusionary affordable units. New retail storefronts will be provided at the existing and new buildings along 18th Avenue. This will add new pedestrian interest and vitality along 18th Avenue.

The proposed Project will be built to today's Green Building and sustainability requirements under both "Build It Green's" Green Point Rating System and the U.S. Green Building Council's LEED program. In addition, the local codes also have requirements to develop and implement pollution prevention and site run-off controls as required by the City's Public Utilities Commission. The Project proposes to meet or exceed these requirements, according to the Project architect.

- (1) In Neighborhood Commercial Districts, if the proposed development lot exceeds the limitation (9,999 square feet) found in Planning Code Section 121.1, the following shall be considered:
- (i) The mass and façade of the proposed structure are compatible with the existing scale of the district; and

The proposed Project is compatible with the existing scale of the district in that it is typified by ground floor commercial uses with housing on the upper floors. Prominent buildings in mass and scale occupy corner lots, such as the existing Alexandria Theatre building. The new four-story building is typical of the surrounding three to four-story residential buildings in the district.

- (ii) The façade of the proposed structure is compatible with design features of adjacent facades that contribute to the positive visual quality of the district.

The addition of storefront entrances along the east side of the existing theatre building along 18th Avenue will relieve an existing blank wall and create a street façade compatible with those along Geary Boulevard. The design of the residential portions of the new mixed-use building takes into account neighboring residential developments by using scale, materials, and architectural elements, such as bays and cornices to relate to the older residential streetscape to the north along 18th Avenue. The overall character of the new mixed-use building is Spanish/Mediterranean of a type that was popular in the 1920s when both the Alexandria Theatre and much of the housing in the surrounding Richmond neighborhood was built. The visual mass of the asymmetrical silhouette is broken down with square and semi-octagonal bay windows, an arcaded ground floor level, variations in surface color to differentiating the bays and inset balconies at the top floor.

- (2) In Neighborhood Commercial Districts, if the proposed use is to be located at a location in which the square footage exceeds the limitation (5,999 square feet) found in Planning Code Section 121.2(a), the following shall be considered:

- i. The intensity of activity in the district is not such that allowing the larger use will be likely to foreclose the location of other needed neighborhood-serving uses in the area; and

The Project area consists of a wide variety of neighborhood-serving uses. No uses would be foreclosed by the Project. The existing retail stores on the ground floor of the theatre building will not be foreclosed. Any potential tenants in the new retail spaces will need to seek permit approvals and meet the requirements of the NC-3 zoning provisions.

- ii. The proposed use will serve the neighborhood, in whole or in significant part, and the nature of the use requires a larger size in order to function; and

The renovated theatre building will house a variety of uses that are permitted within the zoning district. Although the Project has a total of approximately 12,000 square feet of retail/commercial spaces in the overall project, they are not contiguous; rather, they are broken down into three different components: existing storefronts along Geary Boulevard, new retail spaces inside the existing theatre building, and ground floor storefronts in the

new mixed-use building. The commercial spaces in the existing and new mixed-use buildings may be further reduced in size to suit the needs of potential tenants.

- iii. The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district; and

The Project consists of two discrete buildings. The theatre building has existed at the site since 1923. The building was much larger than its immediate neighboring context, featuring blade signs that towered over the retail strip below, like a church spire. The signs are visible from a distance of many blocks away. In addition, the theatre building is situated on a corner lot, so that its larger form is an anchor as a destination place.

The new mixed-use building, with its varied materials, bay windows and balconies, is broken down to minimize the mass of the building, and provide interest at the pedestrian level.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The height and bulk of the existing theatre building will remain the same. The Project proposes to renovate the inside of the theatre building by adding a new restaurant, a 221-seat theatre, and retail stores. The existing surface parking lot will be replaced with a four-story mixed-use building with two levels of underground parking. The Project Site is a corner lot with two street frontages, Geary Boulevard and 18th Avenue. The design of the new building has been created to be compatible with the scale and context of the surrounding neighborhood.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Project Site is well-served by public transit. Several MUNI transit lines run directly in front of or near the Site. The Project proposes a two-level underground parking for 122 cars, including 2 car share spaces, 20 bicycle spaces, as well as on-street bicycle and motorcycle parking.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

No noxious or offensive emissions will be associated with the Project.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The Project provides both private and common useable open space at the ground floor rear yard and at the upper floor interior courtyard. The Project's streetscape and pedestrian improvements include a mid-block bulb-out on 18th Avenue, a small mid-block public plaza on 18th Avenue at the junction of the existing theatre building and the new mixed-use building, new street trees on both Geary Boulevard and 18th Avenue, permeable paving, benches and moveable seating, motorcycle and bike parking, lighting fixtures, and various hedges and plantings along 18th Avenue.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with relevant requirements and standards of the Planning Code, and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed Project is consistent with the stated purpose of the NC-3 (Moderate-Scale Neighborhood Commercial) District in that the intended use is to renovate an existing theatre building and replace an underutilized parking lot with a mixed use development. The larger lot size and use size are required due to the irregularly-shaped lot.

- 9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

Objectives and Policies

OBJECTIVE 1:

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPEMNT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.1:

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

Policy 1.8:

Promote mixed-use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects.

Policy 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

The new mixed-use building will contain retail spaces (approximately 4,800 square feet) on the ground floor, and 37 dwelling units on the upper floors, including 13 one-bedroom units, 18 two-bedroom units, and 6 three-bedroom units. The Project will provide four on-site inclusionary affordable housing units.

OBJECTIVE 11:

SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

Policy 11.1:

Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

Policy 11.6

Foster a sense of community through architectural design, using features that promote community interaction

The Project will provide streetscape and pedestrian improvements that include a mid-block bulb-out, a small public plaza with seating and open space, allowing people to meet and interact informally and foster the neighborhood's social experiences and offerings.

COMMERCE AND INDUSTRY ELEMENT

Objectives and Policies

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

Policy 6.3

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of existing affordable housing and needed expansion of commercial activity.

Policy 6.9

Regulate uses so that traffic impacts and parking problems are minimized

No commercial tenant would be displaced. The Project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood. The Project will provide desirable goods and services to the neighborhood and will provide resident employment opportunities to those in the community. Further, the Project Site is located within a Neighborhood Commercial District and is thus consistent with activities in the commercial land use plan. The Project will also provide adequate on-site parking to meet the needs of the commercial and residential uses so that the Project will not significantly increase traffic congestion or parking problems in the neighborhood.

URBAN DESIGN ELEMENT

Objectives and Policies

OBJECTIVE 1:

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

Policy 1.3:

Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

Policy 1.10:

Indicate the purposes of streets by adopting and implementing the Better Streets Plan, which identifies a hierarchy of street types and appropriate streetscape elements for each street type.

The Project's streetscape and pedestrian improvements include a mid-block bulb-out on 18th Avenue, a small mid-block public plaza on 18th Avenue at the junction of the existing theatre building and the new mixed-use building, new street trees on both Geary Boulevard and 18th Avenue, permeable paving, benches and moveable seating, motorcycle and bike parking, lighting fixtures, and various hedges and plantings along 18th Avenue.

OBJECTIVE 2:

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

Policy 2.5:

Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.

Policy 2.6:

Respect the character of older development nearby in the design of new buildings.

The Project consists of two components: (1) the renovation of the existing Alexandria Theatre building, built circa 1923, and (2) the construction of a new four-story mixed-use building on the adjacent surface parking lot. Renovations to the Alexandria Theatre building, while retaining all of its unique historic

character defining features, will include new commercial, restaurant and theatre uses. The surface parking lot will be removed and replaced with a new four-story mixed-use development with two levels of underground parking for 122 spaces.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposed Project will preserve a neighborhood theatre while adding new retail spaces and a restaurant to the existing theatre building. The Project will also replace an underutilized parking lot with a new four-story mixed-use development with retail storefronts on the ground floor and 37 dwelling units in the upper floors. The Project's new retail spaces will offer new employment opportunities and business ownerships.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

With the adaptive reuse of the theatre building, the existing neighborhood character will be preserved and enhanced. The design of the new mixed-use building will be compatible with the scale and design of the existing neighborhood.

- C. That the City's supply of affordable housing be preserved and enhanced,

The Project will add four inclusionary affordable housing units to the City's housing stock.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The Project Site is well-served by public transit. Several MUNI transit lines run directly in front of or near the Site. The Project proposes a two-level underground parking for 122 cars, including 2 car share spaces, 20 bicycle spaces, as well as on-street bicycle and motorcycle parking.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project will not displace any service or industry establishment. The Project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this Project.

- F. That the City achieves the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project will comply with all current earthquake safety requirements of the City's Building Code for the new building as well as the existing theatre building.

- G. That landmarks and historic buildings be preserved.

While the existing 1923 theatre building is not a landmark, it is considered a historic resource under CEQA. It will not be significantly altered as part of the Project.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The Project will maintain the existing theatre building's envelope and height, while the new building will not exceed the 40-foot height limit; therefore, the Project will not affect existing parks and open spaces.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Project Sponsor, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2004.0482CE!** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans filed with the Application, dated April 5, 2013 and labeled "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

The Commission has reviewed and considered the Final Mitigated Negative Declaration (FMND) and the Mitigation Monitoring and Reporting Program (MMRP), and the record as a whole and finds that there is no substantial evidence that the project will have a significant effect on the environment with the adoption of the mitigation measures contained in the MMRP to avoid potential significant environmental effects associated with the Project.

The Commission hereby adopts the FMND and MMRP attached hereto as EXHIBIT C and incorporated herein as part of this Motion by this reference thereto. All required mitigation measures identified in the FMND and contained in the MMRP are included as conditions of approval.

The Commission further finds that since the FMND was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the FMND due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FMND.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18853. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on April 25, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES: Commissioners Antonini, Fong, Hillis, Moore and Wu

NAYS: None

ABSENT: Commissioners Borden and Sugaya

ADOPTED: April 25, 2013

EXHIBIT A

Conditions of Approval

AUTHORIZATION

This authorization is for a Conditional Use Authorization to allow a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, pursuant to Planning Code Sections 121.1, 121.2, 303(c), 712.11 and 712.21, in an NC-3 (Moderate-Scale Neighborhood Commercial) District, and 40-X Height and Bulk District; in general conformance with plans dated April 5, 2013 and labeled "EXHIBIT B" included in the docket for **Case No. 2004.0482CE!** and subject to conditions of approval reviewed and approved by the Commission on April 25, 2013 under **Motion No. 18853**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the Building Permit Application or commencement of use for the project, the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the Project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on April 25, 2013 under **Motion No. 18853**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the "EXHIBIT A" of this Planning Commission Motion No. 18853 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building Permit Application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section, or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a Building Permit. The Project Sponsor shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. A Building Permit Application from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed Project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a Site or Building Permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a Site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

3. **Mitigation Measures.** Mitigation measures described in the MMRP for the FMND (Case No. 2004.0482E) attached as EXHIBIT C are necessary to avoid potential significant effects of the proposed Project, and have been agreed to by the Project Sponsor. Their implementation is a condition of Project approval.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

DESIGN – COMPLIANCE AT PLAN STAGE

4. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Planning Department staff review and approval. The Building/Site Permit Application and/or the Architectural Addenda shall be reviewed and approved by the Planning Department prior to issuance.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

5. **Garbage, Composting and Recycling Storage Placement.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and

clearly labeled and illustrated on the Building Permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

6. **Lighting Plan.** The Project Sponsor shall submit an exterior lighting plan to the Planning Department prior to Planning Department's approval of the Building/Site Permit Application.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.
7. **Noise.** Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
8. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the Project is operational, the Building/Site Permit application to implement the Project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
9. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the Building Permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.
10. **Signage Program.** Any proposed signage shall be subject to the review and approval of the Planning Department and must comply with Article 6 of the Planning Code.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.
11. **Street Trees/Streetscape Plan.** Pursuant to Planning Code Section 138.1, the Project Sponsor shall submit a streetscape plan to the Department prior to Department's approval of the Building/Site Permit Application indicating that seventeen (17) street trees shall be provided, including 13 evergreen trees, two palm trees, and two accent trees. Other streetscape and pedestrian improvements shall include a mid-block bulb-out on 18th Avenue, a mid-block public

plaza on 18th Avenue, permeable paving, benches and moveable seating, lighting fixtures, and various hedges and plantings along 18th Avenue.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

12. **Transformer Vault.** The location of individual project PG&E Transformer Vault installations has significant effects to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Therefore, the Department recommends the following preference schedule in locating new transformer vaults, in order of most to least desirable:
- (a) On-site, in a basement area accessed via a garage or other access point without use of separate doors on a ground floor façade facing a public right-of-way;
 - (b) On-site, in a driveway, underground;
 - (c) On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
 - (d) Public right-of-way, underground, under sidewalks with a minimum width of 12 feet, avoiding effects on streetscape elements, such as street trees; and based on Better Streets Plan guidelines;
 - (e) Public right-of-way, underground; and based on Better Streets Plan guidelines;
 - (f) Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;
 - (g) On-site, in a ground floor façade (the least desirable location).

Unless otherwise specified by the Department, Department of Public Work's Bureau of Street Use and Mapping (DPW BSM) should use this preference schedule for all new transformer vault installation requests.

For information about compliance, contact the Bureau of Street use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>.

PARKING AND TRAFFIC

13. **Automobile Parking.** The Project Sponsor shall provide 122 spaces for the Project, including two (2) car share spaces and six (6) handicapped spaces.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
14. **Bicycle Parking.** The Project Sponsor shall provide twenty (20) on-site "Class 1" bicycle parking spaces. Adequate signs or notices of the availability of bicycle parking shall also be provided at the Project Site.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
15. **Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the

Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation impacts during construction of the Project.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

16. **Parking for Affordable Units.** All off-street parking spaces shall be made available to Project residents only as a separate "add-on" option for purchase or rent and shall not be bundled with any Project dwelling unit for the life of the dwelling units. The required parking spaces may be made available to residents within a quarter mile of the Project. All affordable dwelling units pursuant to Planning Code Section 415 shall have equal access to use of the parking as the market rate units, with parking spaces priced commensurate with the affordability of the dwelling unit. Each unit within the Project shall have the first right of refusal to rent or purchase a parking space until the number of residential parking spaces are no longer available. No conditions may be placed on the purchase or rental of dwelling units, nor may homeowner's rules be established, which prevent or preclude the separation of parking spaces from dwelling units.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

PROVISIONS

17. **First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.
For information about compliance, contact the First Source Hiring Manager at 415-581-2335, www.business.services@sfgov.org
18. **Inclusionary Affordable Housing.** The Project Sponsor shall comply with the requirements of the Planning Code Section 415 (formerly Section 315) for the Project as follows:
1. **Number of Required Units.** Pursuant to Planning Code Section 415.6, the Project is required to provide 12% of the proposed dwelling units as affordable to qualifying households. The Project contains 37 units; therefore, four (4) affordable units are required. The Project Sponsor will fulfill this requirement by providing the 4 affordable units on-site. If the number of market-rate units change, the number of required affordable units shall be modified accordingly with written approval from Planning Department staff in consultation with the Mayor's Office of Housing ("MOH").
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.
 2. **Unit Mix.** The Project contains 13 one-bedroom, 18 two-bedroom, and 6 three-bedroom units; therefore, the required affordable unit mix is 1 one-bedroom, 2 two-bedroom, and 1 three-

bedroom units. If the market-rate unit mix changes, the affordable unit mix will be modified accordingly with written approval from Planning Department staff in consultation with MOH.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

3. **Unit Location.** The affordable units shall be designated on a reduced set of plans recorded as a Notice of Special Restrictions on the property prior to the issuance of the first construction permit.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

4. **Phasing.** If any building permit is issued for partial phasing of the Project, the Project Sponsor shall have designated not less than twelve percent (12%) of the each phase's total number of dwelling units as on-site affordable units

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

5. **Duration.** Under Planning Code Section 415.8, all units constructed pursuant to Section 415.6, must remain affordable to qualifying households for the life of the Project.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

6. **Other Conditions.** The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the MOH at 1 South Van Ness Avenue or on the Planning Department or Mayor's Office of Housing's websites, including on the internet at:

<http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>.

As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- a. The affordable unit(s) shall be designated on the building plans prior to the issuance of the first construction permit by the Department of Building Inspection ("DBI"). The affordable unit(s) shall (1) reflect the unit size mix in number of bedrooms of the market rate units, (2) be constructed, completed, ready for occupancy and marketed no later than the market rate units, and (3) be evenly distributed throughout the building; and (4) be of comparable overall quality, construction and exterior appearance as the market rate units in the principal project. The interior features in affordable units should be the same as those of the market units in the

principal project, but need not be the same make, model or type of such item as long they are of good and new quality and are consistent with then-current standards for new housing. Other specific standards for on-site units are outlined in the Procedures Manual.

- b. If the units in the building are offered for sale, the affordable unit(s) shall be sold to first time home buyer households, as defined in the Procedures Manual, whose gross annual income adjusted for household size does not exceed an average of ninety (90) percent of Area Median Income under the income table called "Maximum Income by Household Size" derived from the Unadjusted Area Median Income for HUD Metro Fair Market Rent Area that contains San Francisco. The initial sales price of such units shall be calculated according to the Procedures Manual. Limitations on (i) reselling; (ii) renting; (iii) recouping capital improvements; (iv) refinancing; and (v) procedures for inheritance apply and are set forth in the Inclusionary Affordable Housing Program and the Procedures Manual.
- c. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOH shall be responsible for overseeing and monitoring the marketing of affordable units. The Project Sponsor must contact MOH at least six months prior to the beginning of marketing for any unit in the building.
- d. Required parking spaces shall be made available to initial buyers or renters of affordable units according to the Procedures Manual.
- e. Prior to the issuance of the first construction permit by DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that contains these conditions of approval and a reduced set of plans that identify the affordable units satisfying the requirements of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to the MOH or its successor.
- f. The Project Sponsor has demonstrated that it is eligible for the On-site Affordable Housing Alternative under Planning Code Section 415.6 instead of payment of the Affordable Housing Fee, and has submitted the *Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415*, to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the Project.
- g. If the Project Sponsor fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Planning Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Section 415 et seq. shall constitute cause for the City to record a lien against the development project and pursue any and all available remedies at law.
- h. If the Project becomes ineligible at any time for the On-site Affordable Housing Alternative, the Project Sponsor or its successor shall pay the Affordable Housing Fee prior to issuance of

the first construction permit or may seek a fee deferral as permitted under Ordinances 0107-10 and 0108-10. If the Project becomes ineligible after issuance of its first construction permit, the Project Sponsor shall notify the Department and MOH and pay interest on the Affordable Housing Fee at a rate equal to the Development Fee Deferral Surcharge Rate in Section 107A.13.3.2 of the San Francisco Building Code and penalties if applicable.

19. **Transit Impact Development Fee.** Pursuant to Planning Code Section 411 (formerly Chapter 38 of the Administrative Code), the Project Sponsor shall pay the Transit Impact Development Fee (TIDF) as required by and based on drawings submitted with the Building Permit Application. Prior to the issuance of a temporary certificate of occupancy, the Project Sponsor shall provide the Planning Director with certification that the fee has been paid.

For information about compliance, contact the Case Planner, Planning department at 415-558-6378, www.sfplanning.org

MONITORING - AFTER ENTITLEMENT

20. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

21. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

22. **Changes to Building Design and/or Materials.** A new Conditional Use authorization shall be required if the project design and/or materials, such as windows, storefront, door surround, roof tiles, and canopy elements, to the Alexandria Theatre building and/or the new mixed-use building are modified in the future.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

OPERATION

23. **Security, Supervision, Maintenance and General Upkeep of the Alexandria Theatre Building and the Adjoining Parking Lot Site.** The Project Sponsor shall provide strict security and regular maintenance of the parking lot site and the theatre building to prevent any vandalism of

the theatre interior, and to protect its resources (i.e., architectural features and details) until such time the Project is completed as designed.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

24. **Community Liaison.** Prior to issuance of a Building Permit to construct the Project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

25. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within trash enclosures on the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org/>.

26. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org.

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org.

For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-1012 or 415-5530123, www.sf-police.org

27. **Odor Control.** While it is inevitable that some low level of odor may be detectible to nearby residents and passersby, appropriate odor control equipment shall be installed and maintained to prevent any significant noxious or offensive odors from escaping the premises. The Building Permit Application to implement the Project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans.

For information about compliance with odor or other chemical air pollutants emission standards and air quality regulations contact the Bay Area Air Quality Management District (BAAQMD), 1-800-334-

ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

28. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works' Streets and Sidewalk Maintenance Standards.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org/>

EXHIBIT K



AMENDED NOTICE OF VIOLATION

June 15, 2023

Property Owner

Timespace Alexandria LLC
12230 Saratoga-Sunnyvale Rd
Saratoga, CA 95070

Site Address: 5400 Geary Blvd
Assessor's Block/Lot: 1450/048
Zoning District: NCD, Geary Boulevard Neighborhood Commercial District
Complaint Number: 2022-012075ENF
Code Violation: Section 174: Violation of Conditions of Approval
Administrative Penalty: Up to \$250 per Day for Each Violation
Enforcement T & M Fee: \$6,250 (Current Fee for confirmed violations, Additional charges may apply)
Response Due: Within 30 days from the date of this Notice
Staff Contact: Rogelio Baeza, (628) 652-7369, rogelio.baeza@sfgov.org

The Planning Department finds the above referenced property to be in violation of the Planning Code. As the owner of the subject property, you are a responsible-party to bring the above property into compliance with the Planning Code. Details of the violation are discussed below:

Description of Violation

Our records indicate that the subject property is currently authorized for movie theatre use. The subject property is a Category A historic resource constructed in 1923 and identified in the eligible San Francisco Neighborhood Movie Theatre Historic District on both the California Register of Historical Resources and the National Register of Historic Places.

On April 25, 2013, the Planning Commission approved Conditional Use Authorization (CUA) application no. 2004.0482CE and Motion No. 18853 for a project consisting of the renovation of the existing historic Alexandria Theater building and the construction of a new mixed-use building with underground parking on the surface parking lot behind the theater. Specifically, the CUA authorized a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, subject to conditions contained in "Exhibit A" in the approval including the regular maintenance and protection of the historic theater building. (See enclosures)

The violation pertains to the general negligence of maintaining and upkeeping the subject historic property, as required by the Conditions of Approval in Motion No. 18853. Our records show that although you diligently completed the construction of the new mixed-use building by February 1, 2019, to date, none of the permits filed and issued for the repair and restoration of the historic theater building have been pursued, nor completed.

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located.

Pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures including actions on building permits.

Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure in compliance with the Planning Code.

Failure to comply with any Planning Code provisions constitutes a violation of the Planning Code and is subject to an enforcement process under Planning Code Section 176.

Timeline of Investigation

On April 1, 2010, Building Permit No. 201004019509 was filed and issued to, "Comply with NOV 201037065 and Complaint 201038121. Remove display glass, new 6' tall temp fence under building entry. Fence to be thru visible." This permit was never completed.

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The violation pertains to the general negligence of maintaining and upkeeping the subject property. All Conditions of Approval remain in effect under Motion No. 18853 (see attached). The Planning Commission approved Motion No. 18853, including, but no limited to, the following relevant conditions:

- **Condition #23: Security, Supervision, Maintenance and General Upkeep of the Alexandria Theater Building and the Adjoining Parking Lot Site.** The Project Sponsor shall provide strict security and regular maintenance of the parking lot and the theater building to prevent any vandalism of the theater interior, and to protect its resources (i.e. architectural features and details) until such time the Project is completed as designed.
- **Condition #24: Community Liaison.** Prior to issuance of a Building Permit to construct the Project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of

the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

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1. Building Permit No. 202107214793 for the “Recommendation and completion of work approved under permit application no(s): 201711083487, 50% remaining,” and issued on July 28, 2021. This permit was never completed.
2. Building Permit No. 202107214807 for the “Recommendation and completion of work approved under permit application no(s): 201709289870, 201711083486, 201711083486, 50% REMAINING,” issued on the same day. This permit was never completed.

On January 10, 2023, a Department of Building Inspection (DBI) Notice of Violation (NOV) Complaint No. 202301432 was issued with the following description, “Unsecured signage at the former Alexandria Theatre at 5400 Geary which can be seen swaying during this windy weather.” The NOV pertained to the historic movie theater projecting sign, which had not been maintained and was detaching from the building. DBI Inspector Carl Malchow notified Planning Department staff that the sign was required to be removed immediately due to life safety concerns.

On January 26, 2023, Building Permit No. 202301260850 was filed with the following scope of work, “Partially comply w/ NOV 202301432. For emergency removal due to life safety hazard caused by storms. Removal req by DBI. Restoration and reinstallation of sign as required by planning will be filed in a subsequent permit.” Planning Department staff approved this permit with the following approval language, “Emergency removal required by DBI for life safety. Owner to return to file (n) permit to repair & to reinstall sign. Reinstallation of sign must be completed within 18 months of storm event.” This permit was issued on January 27, 2023, and completed on February 7, 2023.

On February 2, 2023, Planning Department staff Rogelio Baeza and Kelly Wong conducted a site visit with DBI Inspector Carl Malchow of the subject property to review existing conditions of the historic movie theater building including its exterior and interior elements. Staff observed the deteriorated condition of the existing historic building including at the exterior the poor condition of the fence at the theater entrance, the failing netting and missing elements at the marquee, the damaged display panels, as well as graffiti painted at the ground floor storefronts. At the interior, staff observed an opening from the exterior blocked by a garbage can, bird guano on the floor, numerous holes at historic plaster ceilings at the mezzanine, and the piles of sheet metal remnants of the removed historic projecting sign. During the site visit, Planning staff discussed with your representatives including Jeff Fu, York Lee, Robert Trieu, your attorney Nick Colla, and your engineer Gary Varum of the next steps in the enforcement process including the requirement to maintain the historic movie theater and protect its historic elements including, but not limited to, the marquee and display panels at the exterior.

On February 27, 2023, the Planning Department sent you a Notice of Enforcement (NOE) informing you about the violation and the abatement process including: 1) filing a new corrective building permit application for the repair and maintenance of the historic theater and its elements, 2) retaining a qualified historic architect and/or engineer, and 3) submitting a report outlining the current conditions of the historic building and property and proposed treatment recommendations. In this notice, you were advised to take corrective action and provide evidence of compliance to the Planning Department within fifteen (15) days. To date, neither a new building permit application, nor a report outlining the conditions and proposed treatment recommendations have been received by the Planning Department.

On March 9, 2023, the Planning Department met with you and your team, and Supervisor Connie Chan and her staff at City Hall to discuss violations at the subject property, as well as your ideas for a future development project. During this meeting, Planning staff clarified that work to abate the violations would be separate from any future proposed development project and would need to be addressed first and in a separate building permit. Planning staff reminded you that the deadline to respond to the NOE was March 14, 2023.

On March 14, 2023, your attorney Nick Colla submitted a letter to the Planning Department via email to respond to the NOE. This letter indicated that you had retained Aaron Jon Hyland as your qualified historic architect. In this letter, Mr. Colla indicated that a more substantive plan to abate the NOE would be submitted within 30 days, and if approved, a corrective building permit application would be submitted as soon as drawings were drafted. (See enclosures). To date, no such plan has been received by the Planning Department.

On March 23, 2023, Planning staff Rogelio Baeza responded to Mr. Colla's letter submitted on March 14, 2023. In this email, the Planning Department provided you with an extension until Thursday, April 27, 2023 to submit your abatement plan including a schedule for when a permit set of drawings would be submitted to Planning for review, and the date when a new building permit application would be filed. This email also confirmed that the storm event occurred on January 9, 2023, and the requirement to install the historic blade sign and substructure by July 9, 2024.

On April 27, 2023, your attorney Nick Colla submitted a second letter, labeled as "NOE Abatement Plan" to the Planning Department via email to respond to the NOE. In this two-page letter, Mr. Colla outlined that an assessment of the historic blade sign and marquee had been conducted, however the required abatement work to repair/replace the blade sign and marquee would be cost prohibitive to undertake. This letter also outlined that you would submit an update by May 30, 2023, with a date when the building permit application would be submitted. (See enclosures). No update has been received by the Planning Department, nor has a new building permit application been filed.

On May 2, 2023, Planning staff Rogelio Baeza responded to Mr. Colla that the the proposed NOE Abatement Plan did not satisfy the requirements outlined in the NOE. In this email, Mr. Baeza requested that a schedule be submitted for when a full permit set of drawings would be submitted for Planning Department review, and a date when the new building permit application would be filed. No response was received.

To date, the Planning Department has not received any evidence to demonstrate that the above violation has been abated or a corrective action has been taken to bring the subject property into compliance with the Planning Code.

How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation as follows:

1. **New Building Permit Application.** File a new building permit application correct the violation that includes the repair and maintenance of the historic movie theater and its elements.

- a. Scope of work. Include all scopes of work in the new building permit application to address all Conditions of Approval and Mitigation Measures, including but not limited to:
 - i. Repair and re-install historic projecting blade sign (re-installation of blade sign must occur within 18 months storm event).
 - ii. Repair and maintain the historic marquee.
 - iii. Repair and maintain the historic terrazzo flooring at the theater entrance.
 - iv. Repair and maintain the security fence at the theater entrance.
 - v. Repair and maintain the display panels at the theater entrance.
 - vi. Removal of any vandalism at the building exterior.
 - vii. Provide any additional security measures needed to protect the building.
 - viii. Repair and maintain any interior and exterior character defining features.
- b. Drawings. Submit a set of permit drawings including:
 - i. (3) Conditions for all site plans, floor plans, exterior elevations, and sections including:
 1. Existing (the last legal condition, as found in prior permits approved by the Planning Department);
 2. As-Built (as the property exists today); and
 3. Proposed (any new work required to bring this property back into compliance).
 - ii. One sheet after the Cover Sheet with photos showing as-built conditions labeled with dates.
2. **Condition Assessment Report**. Submit a Condition Assessment Report, by a qualified historic architect and/or engineer outlining the current conditions of the historic building and property and proposed treatment recommendations to address the violations, to the Planning Department for review and approval. Supplement this report with photos and drawings showing the location(s) of proposed work.
3. **Community Liaison**. Submit a letter addressed to the Zoning Administrator (ZA) and copy the enforcement planner Mr. Baeza and Code Enforcement Manager Kelly Wong, with written notice of the name, business address, and telephone number of the designated community liaison. Should the contact information subsequently change, the ZA shall be made aware of such changes. The community liaison shall report to the ZA what issues, if any, are of concern to the community and what issues have not been resolved by the property owner.

For questions regarding the building permit process, please contact the **Department of Building Inspection (DBI)** at:

49 South Van Ness Avenue, 2nd/5th Floor
San Francisco, CA 94103
Phone: 628.652.3200
Email: dbicustomerservice@sfgov.org
Website: www.sfdbi.org

For questions regarding the planning permit review process, please contact the **Planning Department** at:

49 South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103
Phone: 628.652.7300
Email: pic@sfgov.org
Website: www.sfplanning.org

For questions about this enforcement case, please email the assigned enforcement planner as noted above. For questions about the Building Code or building permit process, please email DBI at the email address noted above.

Timeline to Respond

The Responsible Party has **thirty (30) days from the date of this notice** to either;

- 1) Take steps to correct the violation as noted above; or
- 2) Appeal this Notice of Violation as noted below.

The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation will result in assessment of administrative penalties at \$250 per day for each violation. The Department may also report any licensed professional responsible for the violation(s) to the appropriate local, state, or federal licensing boards.

Please contact the assigned Enforcement Planner noted above with any questions, to submit evidence of correction, and discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

Appeal Processes

If the Responsible Party believes that this Notice of Violation of the Planning Code is an abuse of discretion by the Zoning Administrator, the following appeal processes are available **within thirty (30) days from the date of this notice**:

1. The Responsible Party may request a Zoning Administrator Hearing under Planning Code Section 176 to show cause why this Notice of Violation is issued in error and should be rescinded by submitting the Request for Zoning Administrator Hearing Form and supporting evidence to the Planning Department. This form is available from the Planning Department's website at <https://sfplanning.org/resources>. The

Zoning Administrator shall render a decision on the Notice of Violation within 30 days of such hearing. The Responsible Party may appeal the Zoning Administrator's decision to the Board of Appeals within 30 days from the date of the decision.

2. The responsible or any interested party may waive the right to a Zoning Administrator Hearing and proceed directly to appeal the Notice of Violation to the **Board of Appeals** located at:

49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
Phone: 628.652.1150
Email: boardofappeals@sfgov.org
Website: www.sfgov.org/bdappeal

If Board of Appeals upholds the Notice of Violation, it may not reduce the amount of penalty below \$100 per day for each day the violation continues unabated, excluding the period of time the matter was pending either before the Zoning Administrator or before the Board of Appeals.

No penalties are assessed during the period when the matter is pending either before the Zoning Administrator or before the Board of Appeals. However, if the Responsible Party requests continuance of the appeal without a reasonable cause with the Board of Appeals, the penalties may still be assessed during the continuation period.

Administrative Penalties

If a Responsible Party does not request any appeal process and does not take corrective action to abate the violation **within 30 days**, this Notice of Violation will become final. However, **administrative penalties will not begin to accrue until the 30-day period to respond expires**, as detailed above. Beginning on the following day, administrative penalties of up to **\$250 per day for each violation** to the Responsible Party will start to accrue for each day the violation continues unabated. If such penalties are assessed, the Planning Department will issue a Notice of Penalty and Fee, and the penalty amount shall be paid **within 30 days** from the issuance date of that notice. Please be advised that payment of penalty does not excuse failure to correct the violation or bar further enforcement action. Additional penalties will continue to accrue until corrective action is taken to abate the violation.

Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting the Planning Code violations. Accordingly, the Responsible Party is currently subject to a fee of **\$6,250** for "Time and Materials" cost associated with the Code Enforcement investigation for confirmed violation. Additional fees will continue to accrue until the violation is abated. **This fee is separate from the administrative penalties described above and is not appealable.**

Failure to Pay Penalties and Fees

If the Responsible Party fails to pay the “Administrative Penalties” and “Time and Materials” fee to the Planning Department within 30 days of the issuance of Notice of Penalty and Fee, the Zoning Administrator may take such actions to collect the “Penalties” and any unpaid “Time and Materials” fee owed to the Department, including:

- (1) Referral of the matter to the Bureau of Delinquent Revenue Collection under Chapter 10, Article V, Section 10.39 of the San Francisco Administrative Code. The BDR may apply a 25% surcharge for their collection services. Please note that such surcharge will be considered part of the cost of correcting the violation, and the Responsible Party will be responsible for such charges.
- (2) Initiation of lien proceedings under Chapter 10, Article XX, Section 10.230 et seq. of the San Francisco Administrative Code; and
- (3) Requesting the San Francisco Office of City Attorney to pursue collection of the “Administrative Penalties” and “Time and Materials” imposed against the Responsible Party in a civil action.

Recordation of Order of Abatement

Upon the expiration of 90 days following the finality of this Notice of Violation, an Order of Abatement may be recorded against the property's records in the Office of the Recorder of the City and County of San Francisco.

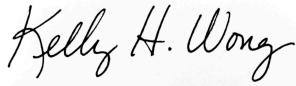
The obligation to correct the violation as set forth in the Order of Abatement shall be Planning Code conditions pursuant to Planning Code Section 174 that run with title to the property. Further, such recordation shall provide notice to each Responsible Party and any subsequent “successor” or “assign of title” to the property that the failure to perform such obligations is a violation of the Planning Code and may be enforced pursuant to Planning Code Section 176.

Any fees associated with recordation of an Order of Abatement will be assessed to the Responsible Party and added to the “Time and Materials” fee discussed above.

Other Applications Under Consideration

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

Sincerely,



Kelly Wong
Acting Zoning Administrator

Enc.: Notice of Enforcement, dated February 27, 2023

cc: Yorke Lee, Timespace Group (Owner's Representative), yorkelee@timespacegroup.com
Jeff Fu (Owner's Representative), yj_fu@yahoo.com
Nick Colla, Colla & Ray LLP (Owner's Attorney), nick@collaray.com
Supervisor Connie Chan, District 1 Supervisor, Board of Supervisors, connie.chan@sfgov.org
Ben Gurewitz, Legislative Aide, District 1 – Supervisor Chan, ben.gurewitz@sfgov.org
Carl Malchow, Senior Building Inspector, Department of Building Inspection, carl.malchow@sfgov.org
Carl Nicita, Department of Building Inspection, carl.nicita@sfgov.org
Kelly Wong, Code Enforcement Manager, Planning Department, kelly.wong@sfgov.org
Richard Sucre, Deputy Current Planning Division Director, Planning Department, richard.sucre@sfgov.org
Sheila Nickolopoulos, Director of Policy and Legislative Affairs, MOHCD, sheila.nickolopoulos@sfgov.org



NOTICE OF ENFORCEMENT

February 27, 2023

Property Owner

Timespace Alexandria LLC
12230 Saratoga-Sunnyvale Rd
Saratoga, CA 95070

Site Address: 5400 Geary Blvd
Assessor’s Block/Lot: 1450/048
Zoning District: NCD, Geary Boulevard Neighborhood Commercial District
Complaint Number: 2022-012075ENF
Code Violation: **Section 174:** Violation of Conditions of Approval
Administrative Penalty: Up to \$250 Each Day of Violation
Enforcement T & M Fee: \$2,454.31 (Current Fee for confirmed violations, Additional charges may apply)
Response Due: Within 15 days from the date of this Notice
Staff Contact: Rogelio Baeza, (628) 652-7369, rogelio.baeza@sfgov.org

The Planning Department received a complaint that a Planning Code violation exists on the above referenced property that must be resolved. As the owner of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below:

Description of Violation

Our records indicate that the subject property is currently authorized for movie theatre use. The subject property is a Category A historic resource constructed in 1923 and identified in the eligible San Francisco Neighborhood Movie Theatre Historic District on both the California Register of Historical Resources and the National Register of Historic Places.

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Theater building and the construction of a new mixed-use building with underground parking on the surface parking lot behind the theater. Specifically, the CUA authorized a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, subject to conditions contained in "Exhibit A" in the approval.

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On July 21, 2021, two Building Permits (BP) were filed including:

1. Building Permit No. 202107214793 for the “Recommencement and completion of work approved under permit application no(s): 201711083487, 50% remaining,” and issued on July 28, 2021. This permit was never completed.
2. Building Permit No. 202107214807 for the “Recommencement and completion of work approved under permit application no(s): 201709289870, 201711083486, 201711083486, 50% REMAINING,” issued on the same day. This permit was never completed.

On January 10, 2023, a Department of Building Inspection (DBI) Notice of Violation (NOV) Complaint No. 202301432 was issued with the following description, “Unsecured signage at the former Alexandria Theatre at 5400 Geary which can be seen swaying during this windy weather.” The NOV pertained to the historic movie theater projecting sign, which had not been maintained and was detaching from the building. DBI Inspector Carl Malchow notified Planning Department staff that the sign was required to be removed immediately due to life-safety concerns.

On January 26, 2023, Building Permit No. 202301260850 was filed with the following scope of work, “Partially comply w/ NOV 202301432. For emergency removal due to life safety hazard caused by storms. Removal req by DBI. Restoration and reinstallation of sign as required by planning will be filed in a subsequent permit.” Planning Department staff approved this permit with the following approval language, “Emergency removal required by DBI for life safety. Owner to return to file (n) permit to repair & to reinstall sign. Reinstallation of sign must be completed within 18 months of storm event.” This permit was issued on January 27, 2023, and completed on February 7, 2023.

On February 2, 2023, Planning Department staff conducted a site visit with DBI Inspector Carl Malchow of the subject property to review existing conditions of the historic movie theater building including its exterior and interior elements. Staff observed the deteriorated condition of the existing historic building including at the exterior the poor condition of the fence at the theater entrance, the failing netting and missing elements at the marquee, the damaged display panels, as well as graffiti painted at the ground floor storefronts. At the interior, staff observed an opening from the exterior blocked by a garbage can, bird guano on the floor, numerous holes at historic plaster ceilings at the mezzanine, and the piles of sheet metal remnants of the removed historic projecting sign. During the site visit, Planning staff discussed with your representatives including Jeff Fu, York Lee, Robert Trieu, your attorney Nick Colla, and your engineer Gary Varum of the next steps in the enforcement process including the requirement to maintain the historic movie theater and protect its historic elements including, but not limited to, the marquee and display panels at the exterior.

To date, none of the permits issued for scopes to repair and restore the historic theater building have been completed. As a result, the historic movie theater has not been regularly maintained, nor has its resources been protected, as required by the Conditions of Approval outlined in Motion No. 18853.

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located.

Pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures including actions on building permits.

Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure in compliance with the Planning Code.

Failure to comply with any Planning Code provisions constitutes a violation of the Planning Code and is subject to an enforcement process under Planning Code Section 176.

How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation as follows:

1. File a new Building Permit Application to that includes the repair and maintenance of the historic movie theater and its elements.
 - a. Scope of work. Include all scopes of work in the new building permit application to address all Conditions of Approval and Mitigation Measures, including but not limited to:
 - i. Repair and re-install historic projecting blade sign (re-installation of blade sign must occur within 18 months storm event).
 - ii. Repair and maintain the historic marquee.
 - iii. Repair and maintain the historic terrazzo flooring at the theater entrance.
 - iv. Repair and maintain the security fence at the theater entrance.
 - v. Repair and maintain the display panels at the theater entrance.
 - vi. Removal of any vandalism at the building exterior.
 - vii. Provide any additional security measures needed to protect the building.
 - viii. Repair and maintain any interior and exterior character defining features.
 - b. **Drawings**. Submit a set of permit drawings including:
 - i. (3) Conditions for all site plans, floor plans, exterior elevations, and sections including:
 1. Existing (the last legal condition, as found in prior permits approved by the Planning Department);
 2. As-Built (as the property exists today); and
 3. Proposed (any new work required to bring this property back into compliance).
 - ii. One sheet after the Cover Sheet with photos showing as-built conditions labeled with dates.
2. Retain a qualified preservation architect and/or engineer with not less than 10 years successful experience working on preservation of historic movie theater buildings of comparable size and scope, within the last 10 years. If the structure requires work exceeding general repair and/or restoration work, please submit a report, by a qualified historic engineer with the above experience, outlining the current conditions of the building and property, and proposed treatment recommendations to the Planning Department for review and approval. Supplement this report with photos and drawings showing the location(s) of proposed work.

Please visit DBI website, <https://sf.gov/apply-building-permit> for information on the permit application process. **This permit must be diligently pursued and completed.**

Please be advised that upon review of above applications and plan submittals, if it is determined that additional planning applications and processes are required, the Planning Department will notify you to make such submittals.

For questions regarding the building permit process, please contact the **Department of Building Inspection (DBI)** at:

49 South Van Ness Avenue, 2nd/5th Floor
San Francisco, CA 94103
Phone: 628.652.3200
Email: dbicustomerservice@sfgov.org
Website: www.sfdbi.org

For questions regarding the planning permit review process, please contact the **Planning Department** at:

49 South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103
Phone: 628.652.7300
Email: pic@sfgov.org
Website: www.sfplanning.org

For questions about this enforcement case, please email the assigned enforcement planner as noted above. For questions about the Building Code or building permit process, please email DBI at the email address noted above.

Timeline to Respond

The timeline to respond to this Notice of Enforcement is **fifteen (15) days from the date of this notice**. Delays in abatement of the violation beyond this timeline will result in further enforcement action by the Planning Department, including issuance of Notice of Violation and assessment of administrative penalties at \$250 per day.

Please contact the assigned Enforcement Planner with any questions, to submit evidence of correction, and discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

Penalties and Appeal Rights

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code **within fifteen (15) days from the date of this notice** will result in issuance of a **Notice of Violation** by the Zoning Administrator. Administrative penalties of up to **\$250 per day** will also be assessed to the responsible party for each day beyond the timeline to respond provided for the Notice of Violation if the violation is not abated. The Notice of Violation provides the following appeal options.

1. Request for Zoning Administrator Hearing. The Zoning Administrator's final decision is then appealable to the Board of Appeals.
2. Appeal of the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount

of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter was pending either before the Zoning Administrator or before the Board of Appeals.

Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party is subject to an amount of **\$2,454.31** or more for "Time and Materials" cost associated with the Code Enforcement investigation. **This fee is separate from the administrative penalties described above and is not appealable.**

Other Applications Under Consideration

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

Enc: Conditional Use Authorization (Case no. 2004.0482CE) – Motion No. 18853

cc: Jeff Fu, yj_fu@yahoo.com (Owner's Representative)
Nick Colla, nick@collaray.com (Attorney)
Carl Malchow, San Francisco Department of Building Inspection, carl.malchow@sfgov.org



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- Better Streets Plan (Sec. 138.1)
- First Source Hiring (Admin. Code Chapter 83)
- Transit Impact Development Fee (Sec. 411)

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Planning
Information:
415.558.6377

Planning Commission Motion No. 18853 HEARING DATE: APRIL 25, 2013

Date: April 18, 2013
Case No.: 2004.0482CE!
Project Address: 5400 GEARY BOULEVARD
Zoning: NC-3 (Moderate-Scale Neighborhood Commercial) District
 40-X Height and Bulk District
Block/Lot: 1450/008
Project Sponsor: Alexandria Enterprises, LLC
 c/o Ronald Yu
 5418A Geary Boulevard
 San Francisco, CA 94132
Staff Contact: Mary Woods – (415) 558-6315
mary.woods@sfgov.org



ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 121.1, 121.2, 303(C), 712.11 AND 712.21 OF THE PLANNING CODE TO ALLOW A DEVELOPMENT LOT SIZE EXCEEDING 9,999 SQUARE FEET AND A NON-RESIDENTIAL USE SIZE EXCEEDING 5,999 SQUARE FEET, IN AN NC-3 (MODERATE-SCALE NEIGHBORHOOD COMMERCIAL) DISTRICT AND 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On June 1, 2004, Alexandria Enterprises, LLC (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use authorization under Planning Code Sections 121.1, 121.2, 303(c), 712.11 and 712.21 to allow a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, in an NC-3 (Moderate-Scale Neighborhood Commercial) District, and 40-X Height and Bulk District.

On April 25, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2004.0482CE!.

On November 24, 2010, the Preliminary Mitigated Negative Declaration (PMND) for the Project was prepared and published for public review; and,

The PMND was available for public comment until January 24, 2011. No appeal of the PMND was filed with the Department; and

On May 26, 2011, the Department adopted the Final Mitigated Negative Declaration (FMND) and found that the contents of said report and the procedures through which the FMND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), Title 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"); and

The Department found the FMND was adequate, accurate and objective, reflected the independent analysis and judgment of the Planning Department, and approved the FMND for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP), setting forth measures to reduce potential environmental effects. These mitigation measures reduce all potential significant impacts to less than significant levels and are set forth in entirety in the MMRP, attached to the Draft Motion as EXHIBIT C.

These materials were made available to the public and this Commission for this Commission's review, consideration and action.

The Department is the custodian of records, located in the File for Case No. 2004.0482E, at 1650 Mission Street, Fourth Floor, San Francisco, California.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the Project Sponsor, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2004.0482CE!, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Project is located at the northwest corner of Geary Boulevard and 18th Avenue, in Assessor's Block 1450, Lot 008. The property is located within an NC-3 (Moderate-Scale Neighborhood Commercial) District and 40-X Height and Bulk District.

Existing uses on the Project Site include the closed 3-screen Alexandria Theatre, a 53-foot tall, two-story building containing approximately 17,000 square feet, including three small retail establishments fronting on Geary Boulevard, and a 57-space surface parking lot fronting on 18th Avenue. The three existing retail businesses include a gift store, an appliance store and an engineering office. The Alexandria Theatre closed in February, 2004. The parking lot is currently operated by an attendant for fee-based public parking.

3. **Surrounding Properties and Neighborhood.** The Project Site is situated towards the western end of the NC-3 District along the three-mile Geary Boulevard commercial corridor that stretches from the Western Addition to the Outer Richmond, through four neighborhoods. This corridor is bounded by Divisadero Street to the east and 28th Avenue in the west. The MUNI line "38-Geary" runs in front of the Project Site linking the Richmond area to Downtown and the Financial District. Other transit lines are also nearby and are within walking distance of the Site. Except for the commercial uses located on Geary Boulevard, the Project Site is surrounded by predominantly residential dwellings and residentially zoned districts to the west, north and east of the site. To the east of the site on 18th Avenue, existing uses also include a YMCA, a community center, and a church. Buildings on the subject block and facing block on Geary Boulevard range from one to two stories tall with primarily commercial uses on the ground floor and a few residential units on the upper floor. Commercial uses on the subject and facing blocks on Geary Boulevard include a gift store, an appliance store, a comic store, postal supplies store, a dry cleaner, shoe repair, restaurants, banks, grocery stores, a paint store, a medical supply store, and other professional offices. The Clement Street commercial corridor is one block north of the Project Site.
4. **Project Description.** The proposed Project consists of two components: (1) the renovation of the existing Alexandria Theatre building, and (2) the construction of a new mixed-use building with underground parking on the adjacent surface parking lot. Renovations to the Alexandria Theatre building include the conversion from a three-screen theatre to a 221-seat single-screen theatre, the creation of new retail spaces (6,300 square feet) on the ground floor, and a restaurant space (7,000 square feet) on the second floor. The surface parking lot will be removed and replaced with a new four-story mixed-use development with two levels of underground parking (122 spaces). The new building will contain retail spaces (4,800 square feet) on the ground floor, and 37 dwelling units on the upper floors, including 13 one-bedroom units, 18 two-bedroom units, and 6 three-bedroom units. The development would total approximately 109,000 square feet.

Section 312 -neighborhood notification was conducted in conjunction with the Conditional Use authorization process.

5. **Public Comment.** To date, the Department has received one e-mail in opposition to the Project expressing concerns related to building security, construction noise and pollution. Staff has met with one neighbor who expressed concerns about the massing of the new mixed-use building, structural integrity/building safety of adjacent buildings during construction, soil stability, and traffic problems along 18th Avenue. Staff has also received general inquiries about the scope of work related to the proposed Project. Staff has not received any correspondence in support of the

proposed project. The Project Sponsor and its representatives held several community outreach meetings beginning in 2010. Issues discussed ranged from the reuse of the existing theatre building, design of the new mixed-use building with retail/commercial uses on the ground floor and dwelling units above, affordability and type of units proposed, feasibility of retail uses in the theatre building, parking and traffic, and street trees.

6. **First Source Hiring Program.** The Project is subject to the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code) for projects creating ten (10) or more new residential units. The Project Sponsor will comply with the requirements of this Program. Prior to the issuance of any Building Permit or a First Addendum to a Site Permit, the Project Sponsor will have an approved and signed First Source Hiring Memorandum of Understanding (MOU) from the First Source Hiring Administrator, which will be evidenced in writing. This MOU will include Exhibit A, Construction First Source Hiring Agreement, and Exhibit B, End-Use First Source Hiring Agreement. Before the Commission can act on the Project, the Project Sponsor must complete the "Affidavit for First Source Hiring Program".

The Project Sponsor has submitted a complete Affidavit for First Source Hiring Program, a copy of which is attached to the Draft Motion

7. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Large Lot Development.** Sections 121.1 and 712.11 state that a Conditional Use authorization is required for development of large lot size exceeding 9,999 square feet in Neighborhood Commercial Districts.

The existing lot is irregular-shaped with an area of approximately 37,000 square feet.

- B. **Non-Residential Use Size.** Sections 121.2 and 712.21 state that a Conditional Use authorization is required for development of large lot size exceeding 5,999 square feet in Neighborhood Commercial Districts.

The existing theatre building contains approximately 17,000 square feet of non-residential uses. The Project proposes to add an additional 69,000 square feet of non-residential uses, including new retail spaces, a restaurant, and two levels of underground parking for 122 spaces.

- C. **Basic Floor Area Ratio.** Section 124 limits the building square footage to 3.6 square feet of building area for every 1 square feet of lot area, or approximately 134,000 square feet of building area for the subject site. However, in NC Districts, the FAR limits do not apply to dwellings or to other residential uses per Section 124(b).

The entire Project would total approximately 109,000 square feet, of which, approximately 40,000 square feet is related to residential uses.

- D. **Front Setback.** Section 132 is not applicable. There is no front setback requirement for buildings in NC-3 Districts.
- E. **Rear Yard.** Section 134(a)(1) requires that a rear yard equal to 25% of the lot depth be provided opposite the site's frontage. Further, Section 134(a)(1)(C) requires that in NC-3 Districts, rear yards must be provided at the lowest story containing a dwelling unit, and at each succeeding story of the building.

The new mixed-use building has a 30-foot rear yard setback (25% of the 120-foot lot depth) at all the residential levels. The Project provides a single rear yard totaling approximately 6,000 square feet.

- F. **Useable Open Space.** Section 135 typically requires 80 square feet of usable open space be provided for every dwelling unit, when provided as private open space, in NC-3 Districts. The open space requirement must be multiplied by 1.33 when provided as common open space.

For the proposed 37-unit Project, approximately 4,000 square feet of common useable open space would be required. For 30 of the units, the Project will provide common useable open space at the rear yard totaling approximately 4,300 square feet (3,200 square feet required). Additional common useable open space is also provided on the second floor interior courtyard, totaling approximately 1,800 square feet. The remaining seven units contain private useable open space in the form of private decks and yards, totaling approximately 1,300 (560 square feet required). All private open spaces meet the minimum area requirements of the Code.

- G. **Better Streets Plan.** Section 138.1 establishes requirements for the improvement of the public right-of-way associated with development projects, such that the public right-of-way may be safe, accessible, convenient and attractive to pedestrian use and travel by all modes of transportation.

The Project's streetscape and pedestrian improvements include a mid-block bulb-out on 18th Avenue, a small mid-block public plaza on 18th Avenue at the junction of the existing theatre building and the new mixed-use building, new street trees on both Geary Boulevard and 18th Avenue, permeable paving, benches and moveable seating, motorcycle and bike parking, lighting fixtures, and various hedges and plantings along 18th Avenue.

- H. **Dwelling Unit Exposure.** Section 140 requires that all dwelling units face a public street or side yard at least 25 feet in width, a required rear yard, or an open area of 25 feet in width.

All of the units in the proposed Project meet this requirement.

- I. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 requires in NC Districts containing specific uses, including retail stores, that building lobbies do not exceed 40 feet of building frontage, that parking entrances are no more than 20 feet wide, that ground floors have a minimum 10-foot ceiling height, and that the ground floor street

frontage be at least 60% transparent in order to allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or decorated grille work, other than wire mesh, which is placed in front or behind ground floor windows, shall be at least 75 percent open to perpendicular view.

The proposed Project is consistent with the relevant provisions under Section 145.1. The proposed two lobbies totals 20 feet in width. The parking entrance is 15 wide. The ground floor ceiling height is 11 feet. Along 18th Avenue, new transparency/glazing will be added to the existing theatre building totaling 62%, while the new mixed-use building will have 70% transparency at the street frontage.

- J. **Parking.** Section 151 requires one off-street parking space for each dwelling unit; one off-street parking space for each 200 square feet of occupied floor area where the occupied floor area exceeds 5,000 square feet for restaurants; one off-street parking space for each 500 square feet of occupied floor area up to 20,000 where the occupied floor area exceeds 5,000 square feet for retail stores, and one off-street parking space for each 8 seats over 50 seats for movie theatres. Section 152 requires one off-street freight loading space for retail stores where the gross floor area of structure or use is over 10,000 square feet but less than 60,000 square feet in newly constructed structures. Section 155(i) requires one handicapped parking space for each 25 off-street parking spaces provided. Sections 155(j), 155.2(c) and 155.4(e) require 1 bicycle space for every 20 automobile spaces for garages containing between 120 and 500 automobile spaces, where the most restrictive provisions prevail. Section 155.4(f) requires that new and existing commercial buildings must provide adequate signs or notices to advertise the availability of bicycle parking. Section 166 requires one car sharing space for the first 50 spaces plus one for every additional 50 spaces.

The proposed Project meets the provisions of the parking requirements as follows: 37 spaces for the dwelling units, 25 spaces for the retail stores, 32 spaces for the restaurant, 28 spaces for the movie theatre, for a total of 122 spaces for the Project. The Project will also provide two car share spaces and six handicapped spaces at the site.

The Project would not be required to have off-street freight loading spaces because the Project proposes approximately 5,000 square feet of retail uses in a new four-story building. The existing theatre building at approximately 19,000 square feet contains no off-street freight loading space.

The Project would be required to provide 6 bicycle parking spaces. The existing site contains no bicycle parking spaces. The Project proposes to add 20 "Class 1" bicycle parking spaces at the new mixed-use building, as well as additional on-street bicycle and motorcycle parking. Adequate signs or notices of the availability of bicycle parking will be provided at the Project Site.

- K. **Residential Density.** Sections 207.4 and 712.91, which set forth density restrictions for dwelling units in NC Districts, state that one dwelling unit is allowed for each 600 square feet of lot area.

Based on a lot area of approximately 37,000 square feet, 62 dwelling units are permitted. The Project proposes to develop 37 dwelling units, four of which (12%) will be inclusionary affordable units.

- L. **Change in Use/Demolition of a Movie Theatre.** Section 303(k) states that a change in use or demolition of a movie theatre use must meet the additional criteria set forth under this Section in addition to Section 303(c).

This Code Section does not apply to the proposed Project since the Project's environmental evaluation application was filed on May 19, 2004, prior to the effective date of July 27, 2004. However, renovations to the existing theatre building include the conversion from a three-screen theatre to a 221-seat single-screen theatre on the second floor.

- M. **Transit Impact Development Fee.** Sections 411 through 411.8 authorizes the imposition of certain development impact fees on new non-residential development projects or conversion of non-residential space of at least 800 gross square feet to offset impacts on the transit system. Land use categories for all impact fees are defined in Section 401.

The Project Sponsor will comply with the requirements of this section prior to the issuance of a Site Permit.

- N. **Inclusionary Affordable Housing Program.** Section 415 (formerly Section 315) sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements apply to projects that consist of ten or more units, where the first application (EE or BPA) was applied for before July 18, 2006. Pursuant to Planning Code Section 415.5 and 415.6, the Project is meeting the Inclusionary Affordable Housing Program requirement through the On-site Affordable Housing Alternative by providing 12% of the proposed dwelling units as affordable.

The Project Sponsor has demonstrated that it is eligible for the On-Site Affordable Housing Alternative under Planning Code Section 415.5 and 415.6, and has submitted an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to satisfy the requirements of the Inclusionary Affordable Housing Program by providing the affordable housing on-site instead of through payment of the Affordable Housing Fee. In order for the Project Sponsor to be eligible for the On-Site Affordable Housing Alternative, the Project Sponsor must submit an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the project. The Project Sponsor submitted such Affidavit on April 16, 2013. The EE application was submitted on May 19, 2004. Four units (1 one-bedroom, 2 two-bedroom, and 1 three-bedroom) of the 37 units provided will be affordable units. If the Project becomes ineligible to meet its Inclusionary Affordable Housing Program obligation through the On-site Affordable Housing Alternative, it must pay the Affordable Housing Fee with interest, if applicable.

- O. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department and must comply with Article 6 of the Planning Code.
8. **Planning Code Section 303(c)** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the Project does comply with said criteria in that:
- A. The proposed uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The Geary Boulevard corridor is one of the longest continuous neighborhood commercial districts in the City stretching from Divisadero Street to the east to 28th Avenue in the west. The existing Alexandria Theatre building was built in 1923. It was a neighborhood movie theatre until closing in 2004. The theatre building has been vacant since then; however, the three small retail storefronts and engineering office along Geary Boulevard remain in operation. The proposed Project consists of two components: (1) the renovation of the existing Alexandria Theatre building, and (2) the construction of a new mixed-use building with underground parking on the adjacent surface parking lot. Renovations to the Alexandria Theatre building include the conversion from a three-screen theatre to a 221-seat single-screen theatre, the creation of new retail spaces (6,300 square feet) on the ground floor, and a restaurant space (7,000 square feet) on the second floor. The surface parking lot will be removed and replaced with a new four-story mixed-use development with two levels of underground parking for 122 spaces. The new building will contain retail spaces (4,800 square feet) on the ground floor, and 37 dwelling units on the upper floors. The development would total approximately 109,000 square feet. The Project is necessary and desirable because the adaptive re-use of the existing theatre building will remove a blighted site and bring activity to this portion of the commercial corridor. The new mixed-use development will add 37 dwelling units to the City's housing stock, 12% of which will be inclusionary affordable units. New retail storefronts will be provided at the existing and new buildings along 18th Avenue. This will add new pedestrian interest and vitality along 18th Avenue.

The proposed Project will be built to today's Green Building and sustainability requirements under both "Build It Green's" Green Point Rating System and the U.S. Green Building Council's LEED program. In addition, the local codes also have requirements to develop and implement pollution prevention and site run-off controls as required by the City's Public Utilities Commission. The Project proposes to meet or exceed these requirements, according to the Project architect.

- (1) In Neighborhood Commercial Districts, if the proposed development lot exceeds the limitation (9,999 square feet) found in Planning Code Section 121.1, the following shall be considered:
- (i) The mass and façade of the proposed structure are compatible with the existing scale of the district; and

The proposed Project is compatible with the existing scale of the district in that it is typified by ground floor commercial uses with housing on the upper floors. Prominent buildings in mass and scale occupy corner lots, such as the existing Alexandria Theatre building. The new four-story building is typical of the surrounding three to four-story residential buildings in the district.

- (ii) The façade of the proposed structure is compatible with design features of adjacent facades that contribute to the positive visual quality of the district.

The addition of storefront entrances along the east side of the existing theatre building along 18th Avenue will relieve an existing blank wall and create a street façade compatible with those along Geary Boulevard. The design of the residential portions of the new mixed-use building takes into account neighboring residential developments by using scale, materials, and architectural elements, such as bays and cornices to relate to the older residential streetscape to the north along 18th Avenue. The overall character of the new mixed-use building is Spanish/Mediterranean of a type that was popular in the 1920s when both the Alexandria Theatre and much of the housing in the surrounding Richmond neighborhood was built. The visual mass of the asymmetrical silhouette is broken down with square and semi-octagonal bay windows, an arcaded ground floor level, variations in surface color to differentiating the bays and inset balconies at the top floor.

- (2) In Neighborhood Commercial Districts, if the proposed use is to be located at a location in which the square footage exceeds the limitation (5,999 square feet) found in Planning Code Section 121.2(a), the following shall be considered:

- i. The intensity of activity in the district is not such that allowing the larger use will be likely to foreclose the location of other needed neighborhood-serving uses in the area; and

The Project area consists of a wide variety of neighborhood-serving uses. No uses would be foreclosed by the Project. The existing retail stores on the ground floor of the theatre building will not be foreclosed. Any potential tenants in the new retail spaces will need to seek permit approvals and meet the requirements of the NC-3 zoning provisions.

- ii. The proposed use will serve the neighborhood, in whole or in significant part, and the nature of the use requires a larger size in order to function; and

The renovated theatre building will house a variety of uses that are permitted within the zoning district. Although the Project has a total of approximately 12,000 square feet of retail/commercial spaces in the overall project, they are not contiguous; rather, they are broken down into three different components: existing storefronts along Geary Boulevard, new retail spaces inside the existing theatre building, and ground floor storefronts in the

new mixed-use building. The commercial spaces in the existing and new mixed-use buildings may be further reduced in size to suit the needs of potential tenants.

- iii. The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district; and

The Project consists of two discrete buildings. The theatre building has existed at the site since 1923. The building was much larger than its immediate neighboring context, featuring blade signs that towered over the retail strip below, like a church spire. The signs are visible from a distance of many blocks away. In addition, the theatre building is situated on a corner lot, so that its larger form is an anchor as a destination place.

The new mixed-use building, with its varied materials, bay windows and balconies, is broken down to minimize the mass of the building, and provide interest at the pedestrian level.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The height and bulk of the existing theatre building will remain the same. The Project proposes to renovate the inside of the theatre building by adding a new restaurant, a 221-seat theatre, and retail stores. The existing surface parking lot will be replaced with a four-story mixed-use building with two levels of underground parking. The Project Site is a corner lot with two street frontages, Geary Boulevard and 18th Avenue. The design of the new building has been created to be compatible with the scale and context of the surrounding neighborhood.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Project Site is well-served by public transit. Several MUNI transit lines run directly in front of or near the Site. The Project proposes a two-level underground parking for 122 cars, including 2 car share spaces, 20 bicycle spaces, as well as on-street bicycle and motorcycle parking.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

No noxious or offensive emissions will be associated with the Project.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The Project provides both private and common useable open space at the ground floor rear yard and at the upper floor interior courtyard. The Project's streetscape and pedestrian improvements include a mid-block bulb-out on 18th Avenue, a small mid-block public plaza on 18th Avenue at the junction of the existing theatre building and the new mixed-use building, new street trees on both Geary Boulevard and 18th Avenue, permeable paving, benches and moveable seating, motorcycle and bike parking, lighting fixtures, and various hedges and plantings along 18th Avenue.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with relevant requirements and standards of the Planning Code, and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed Project is consistent with the stated purpose of the NC-3 (Moderate-Scale Neighborhood Commercial) District in that the intended use is to renovate an existing theatre building and replace an underutilized parking lot with a mixed use development. The larger lot size and use size are required due to the irregularly-shaped lot.

- 9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

Objectives and Policies

OBJECTIVE 1:

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPEMNT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.1:

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

Policy 1.8:

Promote mixed-use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects.

Policy 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

The new mixed-use building will contain retail spaces (approximately 4,800 square feet) on the ground floor, and 37 dwelling units on the upper floors, including 13 one-bedroom units, 18 two-bedroom units, and 6 three-bedroom units. The Project will provide four on-site inclusionary affordable housing units.

OBJECTIVE 11:

SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

Policy 11.1:

Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

Policy 11.6

Foster a sense of community through architectural design, using features that promote community interaction

The Project will provide streetscape and pedestrian improvements that include a mid-block bulb-out, a small public plaza with seating and open space, allowing people to meet and interact informally and foster the neighborhood's social experiences and offerings.

COMMERCE AND INDUSTRY ELEMENT

Objectives and Policies

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

Policy 6.3

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of existing affordable housing and needed expansion of commercial activity.

Policy 6.9

Regulate uses so that traffic impacts and parking problems are minimized

No commercial tenant would be displaced. The Project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood. The Project will provide desirable goods and services to the neighborhood and will provide resident employment opportunities to those in the community. Further, the Project Site is located within a Neighborhood Commercial District and is thus consistent with activities in the commercial land use plan. The Project will also provide adequate on-site parking to meet the needs of the commercial and residential uses so that the Project will not significantly increase traffic congestion or parking problems in the neighborhood.

URBAN DESIGN ELEMENT

Objectives and Policies

OBJECTIVE 1:

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

Policy 1.3:

Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

Policy 1.10:

Indicate the purposes of streets by adopting and implementing the Better Streets Plan, which identifies a hierarchy of street types and appropriate streetscape elements for each street type.

The Project's streetscape and pedestrian improvements include a mid-block bulb-out on 18th Avenue, a small mid-block public plaza on 18th Avenue at the junction of the existing theatre building and the new mixed-use building, new street trees on both Geary Boulevard and 18th Avenue, permeable paving, benches and moveable seating, motorcycle and bike parking, lighting fixtures, and various hedges and plantings along 18th Avenue.

OBJECTIVE 2:

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

Policy 2.5:

Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.

Policy 2.6:

Respect the character of older development nearby in the design of new buildings.

The Project consists of two components: (1) the renovation of the existing Alexandria Theatre building, built circa 1923, and (2) the construction of a new four-story mixed-use building on the adjacent surface parking lot. Renovations to the Alexandria Theatre building, while retaining all of its unique historic

character defining features, will include new commercial, restaurant and theatre uses. The surface parking lot will be removed and replaced with a new four-story mixed-use development with two levels of underground parking for 122 spaces.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The proposed Project will preserve a neighborhood theatre while adding new retail spaces and a restaurant to the existing theatre building. The Project will also replace an underutilized parking lot with a new four-story mixed-use development with retail storefronts on the ground floor and 37 dwelling units in the upper floors. The Project's new retail spaces will offer new employment opportunities and business ownerships.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

With the adaptive reuse of the theatre building, the existing neighborhood character will be preserved and enhanced. The design of the new mixed-use building will be compatible with the scale and design of the existing neighborhood.

- C. That the City's supply of affordable housing be preserved and enhanced,

The Project will add four inclusionary affordable housing units to the City's housing stock.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The Project Site is well-served by public transit. Several MUNI transit lines run directly in front of or near the Site. The Project proposes a two-level underground parking for 122 cars, including 2 car share spaces, 20 bicycle spaces, as well as on-street bicycle and motorcycle parking.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project will not displace any service or industry establishment. The Project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this Project.

- F. That the City achieves the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project will comply with all current earthquake safety requirements of the City's Building Code for the new building as well as the existing theatre building.

- G. That landmarks and historic buildings be preserved.

While the existing 1923 theatre building is not a landmark, it is considered a historic resource under CEQA. It will not be significantly altered as part of the Project.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The Project will maintain the existing theatre building's envelope and height, while the new building will not exceed the 40-foot height limit; therefore, the Project will not affect existing parks and open spaces.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Project Sponsor, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2004.0482CE!** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans filed with the Application, dated April 5, 2013 and labeled "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

The Commission has reviewed and considered the Final Mitigated Negative Declaration (FMND) and the Mitigation Monitoring and Reporting Program (MMRP), and the record as a whole and finds that there is no substantial evidence that the project will have a significant effect on the environment with the adoption of the mitigation measures contained in the MMRP to avoid potential significant environmental effects associated with the Project.

The Commission hereby adopts the FMND and MMRP attached hereto as EXHIBIT C and incorporated herein as part of this Motion by this reference thereto. All required mitigation measures identified in the FMND and contained in the MMRP are included as conditions of approval.

The Commission further finds that since the FMND was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the FMND due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FMND.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18853. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on April 25, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES: Commissioners Antonini, Fong, Hillis, Moore and Wu

NAYS: None

ABSENT: Commissioners Borden and Sugaya

ADOPTED: April 25, 2013

EXHIBIT A

Conditions of Approval

AUTHORIZATION

This authorization is for a Conditional Use Authorization to allow a development lot size exceeding 9,999 square feet and a non-residential use size exceeding 5,999 square feet, pursuant to Planning Code Sections 121.1, 121.2, 303(c), 712.11 and 712.21, in an NC-3 (Moderate-Scale Neighborhood Commercial) District, and 40-X Height and Bulk District; in general conformance with plans dated April 5, 2013 and labeled "EXHIBIT B" included in the docket for **Case No. 2004.0482CE!** and subject to conditions of approval reviewed and approved by the Commission on April 25, 2013 under **Motion No. 18853**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the Building Permit Application or commencement of use for the project, the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the Project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on April 25, 2013 under **Motion No. 18853**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the "EXHIBIT A" of this Planning Commission Motion No. 18853 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building Permit Application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section, or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a Building Permit. The Project Sponsor shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. A Building Permit Application from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed Project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a Site or Building Permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a Site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

3. **Mitigation Measures.** Mitigation measures described in the MMRP for the FMND (Case No. 2004.0482E) attached as EXHIBIT C are necessary to avoid potential significant effects of the proposed Project, and have been agreed to by the Project Sponsor. Their implementation is a condition of Project approval.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

DESIGN – COMPLIANCE AT PLAN STAGE

4. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Planning Department staff review and approval. The Building/Site Permit Application and/or the Architectural Addenda shall be reviewed and approved by the Planning Department prior to issuance.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

5. **Garbage, Composting and Recycling Storage Placement.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and

clearly labeled and illustrated on the Building Permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

6. **Lighting Plan.** The Project Sponsor shall submit an exterior lighting plan to the Planning Department prior to Planning Department's approval of the Building/Site Permit Application.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.
7. **Noise.** Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
8. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the Project is operational, the Building/Site Permit application to implement the Project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
9. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the Building Permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.
10. **Signage Program.** Any proposed signage shall be subject to the review and approval of the Planning Department and must comply with Article 6 of the Planning Code.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.
11. **Street Trees/Streetscape Plan.** Pursuant to Planning Code Section 138.1, the Project Sponsor shall submit a streetscape plan to the Department prior to Department's approval of the Building/Site Permit Application indicating that seventeen (17) street trees shall be provided, including 13 evergreen trees, two palm trees, and two accent trees. Other streetscape and pedestrian improvements shall include a mid-block bulb-out on 18th Avenue, a mid-block public

plaza on 18th Avenue, permeable paving, benches and moveable seating, lighting fixtures, and various hedges and plantings along 18th Avenue.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

12. **Transformer Vault.** The location of individual project PG&E Transformer Vault installations has significant effects to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Therefore, the Department recommends the following preference schedule in locating new transformer vaults, in order of most to least desirable:
- (a) On-site, in a basement area accessed via a garage or other access point without use of separate doors on a ground floor façade facing a public right-of-way;
 - (b) On-site, in a driveway, underground;
 - (c) On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
 - (d) Public right-of-way, underground, under sidewalks with a minimum width of 12 feet, avoiding effects on streetscape elements, such as street trees; and based on Better Streets Plan guidelines;
 - (e) Public right-of-way, underground; and based on Better Streets Plan guidelines;
 - (f) Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;
 - (g) On-site, in a ground floor façade (the least desirable location).

Unless otherwise specified by the Department, Department of Public Work's Bureau of Street Use and Mapping (DPW BSM) should use this preference schedule for all new transformer vault installation requests.

For information about compliance, contact the Bureau of Street use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>.

PARKING AND TRAFFIC

13. **Automobile Parking.** The Project Sponsor shall provide 122 spaces for the Project, including two (2) car share spaces and six (6) handicapped spaces.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
14. **Bicycle Parking.** The Project Sponsor shall provide twenty (20) on-site "Class 1" bicycle parking spaces. Adequate signs or notices of the availability of bicycle parking shall also be provided at the Project Site.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
15. **Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the

Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation impacts during construction of the Project.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

16. **Parking for Affordable Units.** All off-street parking spaces shall be made available to Project residents only as a separate "add-on" option for purchase or rent and shall not be bundled with any Project dwelling unit for the life of the dwelling units. The required parking spaces may be made available to residents within a quarter mile of the Project. All affordable dwelling units pursuant to Planning Code Section 415 shall have equal access to use of the parking as the market rate units, with parking spaces priced commensurate with the affordability of the dwelling unit. Each unit within the Project shall have the first right of refusal to rent or purchase a parking space until the number of residential parking spaces are no longer available. No conditions may be placed on the purchase or rental of dwelling units, nor may homeowner's rules be established, which prevent or preclude the separation of parking spaces from dwelling units.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

PROVISIONS

17. **First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.
For information about compliance, contact the First Source Hiring Manager at 415-581-2335, www.business.services@sfgov.org
18. **Inclusionary Affordable Housing.** The Project Sponsor shall comply with the requirements of the Planning Code Section 415 (formerly Section 315) for the Project as follows:
1. **Number of Required Units.** Pursuant to Planning Code Section 415.6, the Project is required to provide 12% of the proposed dwelling units as affordable to qualifying households. The Project contains 37 units; therefore, four (4) affordable units are required. The Project Sponsor will fulfill this requirement by providing the 4 affordable units on-site. If the number of market-rate units change, the number of required affordable units shall be modified accordingly with written approval from Planning Department staff in consultation with the Mayor's Office of Housing ("MOH").
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.
 2. **Unit Mix.** The Project contains 13 one-bedroom, 18 two-bedroom, and 6 three-bedroom units; therefore, the required affordable unit mix is 1 one-bedroom, 2 two-bedroom, and 1 three-

bedroom units. If the market-rate unit mix changes, the affordable unit mix will be modified accordingly with written approval from Planning Department staff in consultation with MOH.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

3. **Unit Location.** The affordable units shall be designated on a reduced set of plans recorded as a Notice of Special Restrictions on the property prior to the issuance of the first construction permit.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

4. **Phasing.** If any building permit is issued for partial phasing of the Project, the Project Sponsor shall have designated not less than twelve percent (12%) of the each phase's total number of dwelling units as on-site affordable units

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

5. **Duration.** Under Planning Code Section 415.8, all units constructed pursuant to Section 415.6, must remain affordable to qualifying households for the life of the Project.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

6. **Other Conditions.** The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the MOH at 1 South Van Ness Avenue or on the Planning Department or Mayor's Office of Housing's websites, including on the internet at:

<http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>.

As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- a. The affordable unit(s) shall be designated on the building plans prior to the issuance of the first construction permit by the Department of Building Inspection ("DBI"). The affordable unit(s) shall (1) reflect the unit size mix in number of bedrooms of the market rate units, (2) be constructed, completed, ready for occupancy and marketed no later than the market rate units, and (3) be evenly distributed throughout the building; and (4) be of comparable overall quality, construction and exterior appearance as the market rate units in the principal project. The interior features in affordable units should be the same as those of the market units in the

principal project, but need not be the same make, model or type of such item as long they are of good and new quality and are consistent with then-current standards for new housing. Other specific standards for on-site units are outlined in the Procedures Manual.

- b. If the units in the building are offered for sale, the affordable unit(s) shall be sold to first time home buyer households, as defined in the Procedures Manual, whose gross annual income adjusted for household size does not exceed an average of ninety (90) percent of Area Median Income under the income table called "Maximum Income by Household Size" derived from the Unadjusted Area Median Income for HUD Metro Fair Market Rent Area that contains San Francisco. The initial sales price of such units shall be calculated according to the Procedures Manual. Limitations on (i) reselling; (ii) renting; (iii) recouping capital improvements; (iv) refinancing; and (v) procedures for inheritance apply and are set forth in the Inclusionary Affordable Housing Program and the Procedures Manual.
- c. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOH shall be responsible for overseeing and monitoring the marketing of affordable units. The Project Sponsor must contact MOH at least six months prior to the beginning of marketing for any unit in the building.
- d. Required parking spaces shall be made available to initial buyers or renters of affordable units according to the Procedures Manual.
- e. Prior to the issuance of the first construction permit by DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that contains these conditions of approval and a reduced set of plans that identify the affordable units satisfying the requirements of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to the MOH or its successor.
- f. The Project Sponsor has demonstrated that it is eligible for the On-site Affordable Housing Alternative under Planning Code Section 415.6 instead of payment of the Affordable Housing Fee, and has submitted the *Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415*, to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the Project.
- g. If the Project Sponsor fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Planning Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Section 415 et seq. shall constitute cause for the City to record a lien against the development project and pursue any and all available remedies at law.
- h. If the Project becomes ineligible at any time for the On-site Affordable Housing Alternative, the Project Sponsor or its successor shall pay the Affordable Housing Fee prior to issuance of

the first construction permit or may seek a fee deferral as permitted under Ordinances 0107-10 and 0108-10. If the Project becomes ineligible after issuance of its first construction permit, the Project Sponsor shall notify the Department and MOH and pay interest on the Affordable Housing Fee at a rate equal to the Development Fee Deferral Surcharge Rate in Section 107A.13.3.2 of the San Francisco Building Code and penalties if applicable.

19. **Transit Impact Development Fee.** Pursuant to Planning Code Section 411 (formerly Chapter 38 of the Administrative Code), the Project Sponsor shall pay the Transit Impact Development Fee (TIDF) as required by and based on drawings submitted with the Building Permit Application. Prior to the issuance of a temporary certificate of occupancy, the Project Sponsor shall provide the Planning Director with certification that the fee has been paid.

For information about compliance, contact the Case Planner, Planning department at 415-558-6378, www.sfplanning.org

MONITORING - AFTER ENTITLEMENT

20. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

21. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

22. **Changes to Building Design and/or Materials.** A new Conditional Use authorization shall be required if the project design and/or materials, such as windows, storefront, door surround, roof tiles, and canopy elements, to the Alexandria Theatre building and/or the new mixed-use building are modified in the future.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

OPERATION

23. **Security, Supervision, Maintenance and General Upkeep of the Alexandria Theatre Building and the Adjoining Parking Lot Site.** The Project Sponsor shall provide strict security and regular maintenance of the parking lot site and the theatre building to prevent any vandalism of

the theatre interior, and to protect its resources (i.e., architectural features and details) until such time the Project is completed as designed.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

24. **Community Liaison.** Prior to issuance of a Building Permit to construct the Project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

25. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within trash enclosures on the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org/>.

26. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org.

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org.

For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-1012 or 415-5530123, www.sf-police.org

27. **Odor Control.** While it is inevitable that some low level of odor may be detectible to nearby residents and passersby, appropriate odor control equipment shall be installed and maintained to prevent any significant noxious or offensive odors from escaping the premises. The Building Permit Application to implement the Project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans.

For information about compliance with odor or other chemical air pollutants emission standards and air quality regulations contact the Bay Area Air Quality Management District (BAAQMD), 1-800-334-

ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

28. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works' Streets and Sidewalk Maintenance Standards.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org/>

PUBLIC COMMENT

From: [Joel Verby](#)
To: [BoardofAppeals \(PAB\)](#)
Cc: [ChanStaff \(BOS\)](#)
Subject: re: Appeal Nos: 23-033;5400 Geary Blvd - Amended notice of Violation (complaint No. 2022-012075ENF)
Date: Sunday, July 30, 2023 1:44:10 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To whom it may concern,

My name is Joel Verby and my residence is located at 364 19th Avenue, directly behind the old Alexandria Theatre.

I am writing to oppose the appeal of the Amended notice of Violation (complaint No. 2022-012075ENF)

As a resident of this property since 1990, including a time when the Alexandria was operational, I can attest to the gradual degradation of the vibrancy of the block and neighborhood that the theatre is located on ever since it's closing. It has increasingly become an eyesore and urban blight, and attracts graffiti, homelessness, and an overall lessening of the appeal of the area.

It is my understanding that there have been several proposals for the use of the property over the years. Also it is my understanding that in exchange for allowing the condominiums to be built, the new owners of the property agreed to revitalize the Theatre into some usage that would improve the neighborhood.

While it would be my preference that the theatre be restored to its initial usage (aka restored to a movie theatre), as an adjacent resident to the building, at the very least I would hope that the property would be kept up, and ideally renovated to some usage that would add to the neighborhood.

The new owners have failed miserably at this commitment, and it is sad and tiring to have to continually be reminded of this fact on a daily basis.

I would recommend and hope that the city pursues with vigor any and all recourse allowed to compel the ownership of this property to fulfill the obligations regarding the Alexandria Theatre that they agreed to when they were allowed to build the condominiums.

Failure to do so would be, in my opinion, a failure of city governance, and would send the message that a binding agreement can be breached at will.

I can be reached at 415-279-0681 or joelverby@gmail.com for any follow up questions.

Best regards,
Joel Verby
Resident of 364 19th Avenue

From: [REDACTED]
To: [BoardofAppeals \(PAB\)](#)
Subject: Appeal Nos. 23-0333; 5400 Geary Blvd.
Date: Thursday, August 10, 2023 11:21:04 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I hereby provide my public comment FOR the renovation and repair of the Alexandria Theater which is immediately adjacent to my condo. It is a public disgrace to keep such an amazing historical building empty and its dilapidated state should be addressed immediately.

Please redact my personal information from this public notice which includes my full name and email address.

Thank you, [REDACTED]