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MEMORANDUM

TO: Members of the San Francisco Arts Commission
Tom DeCaigny, Director of Cultural Affairs

FROM: Lauren Curry *LC*
Deputy City Attorney

DATE: May 3, 2018

RE: Process for Rehearing the Appeal of the Approval to Remove the Early Days Portion of the Pioneers Monument

At Director DeCaigny's request, and in light of questions that have been asked or may arise concerning the process for the request to the Board of Appeals (the "Board") to rehear appeal number 18-035 (the "Appeal"), regarding issuance of a Certificate of Appropriateness ("COA") to remove the "Early Days" portion of the Pioneer Monument, I have prepared the following summary of the process to assist you. I have also referenced the provisions of the Board rules that apply.

Rehearing Request Process

- **Board Action** – On April 18, the Board voted to grant the Appeal and overturn the Historic Preservation Commission's ("HPC") issuance of a COA to remove Early Days. The Board's rules require that a party file a request for rehearing within 10 days of the hearing at which the Board made its decision. (Board rules, Art. 5, Sec. 9(a).)
- **Rehearing Request** – On April 27, the Arts Commission and the HPC filed a joint Rehearing Request for the Appeal (the "Rehearing Request") on the grounds that (1) this is an extraordinary case and reversal of the Board's decision will prevent a manifest injustice to the community that will occur if Early Days remains on site, and (2) there are new facts and circumstances that merit a rehearing. (Rehearing Request, p.1.)
- **Appellant's response to Rehearing Request** – The Board delivered the Rehearing Request to the Appellant on April 27. Appellant's response to the Rehearing Request is due on May 7 (10 days from the date of the filing of the request). (Board rules, Art. 5, Sec. 9(a).) The Board rules do not provide for a reply to the Appellant's response.
- **Board of Supervisors resolution urging the Board to grant rehearing** – On May 1, the Board of Supervisors unanimously passed a resolution supporting the removal of the Pioneer Monument's "Early Days" sculpture and urging the Board to rehear the Appeal. The Mayor has 10 days to sign the resolution.
- **Hearing to consider the Rehearing Request** – The Board's Executive Director has said that the Board will consider the Rehearing Request on June 13. At this meeting, the Board may act to deny the request or vote to rehear the matter at a later date. Under Section 16 of the Business and Tax Regulations Code, at least four members of the Board must vote to grant a rehearing.

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- ***Denial of rehearing*** – If the Board denies the Rehearing Request, then, consistent with the description in the Rehearing Request (pp. 4-5), the Arts Commission could find that the Board is preventing the Arts Commission from carrying out its core Charter functions under Charter Section 5.103. Under those circumstances, the Arts Commission would have the authority under the Charter to proceed with removal of Early Days.
- ***Approval of rehearing*** – If the Board approves the Rehearing Request, the Board would consider the matter *de novo* at a new hearing, likely in July.
 - ***Decision granting Appeal on rehearing*** – If, on rehearing the matter, the Board grants the Appeal, then again, consistent with the description in the Rehearing Request (pp. 4-5), the Arts Commission could find that the Board is preventing the Arts Commission from carrying out its core Charter functions under Charter Section 5.103 and could proceed with removal of Early Days.
 - ***Decision denying Appeal on rehearing*** – If, on rehearing the matter, the Board denies the Appeal, then the HPC's decision approving removal of Early Days would be final.

Attachments:

Rehearing Request
Board Rules