BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
BECKER BOARDS LLC,)
Appellant(s))
)
vs.)
)
PLANNING DEPARTMENT,)
Respondent

Appeal No. **21-009**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on February 2, 2021, 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 DISAPPROVAL on January 28, 2021, of a Denial of Building, Demolition Or Site Permit (remove existing 25'x40' billboard and replace with new 25'x40' billboard at the same location on building; the Planning Dept. does not approve this permit because the proposed scope of work constitutes the removal and replacement of a general advertising sign in violation of Planning Code section 604(h)) at 530 Howard Street.

APPLICATION NO. 2020/10/19/6882

FOR HEARING ON March 24, 2021

Address of Appellant(s):	Address of Other Parties:
Becker Boards LLC, Appellant(s) c/o Brett Gladstone, Attorney for Appellant(s) Goldstein, Gellman, Melbostad, Harris & McSparran, LLP 1388 Sutter Street, Suite 1000 San Francisco, CA 94109-5494	N/A

Date Filed: February 2, 2021

CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS

PRELIMINARY STATEMENT FOR APPEAL NO. 21-009

I / We, **Becker Boards LLC**, hereby appeal the following departmental action: **ISSUANCE** of **Notice of Cancellation of Building Permit No. 2020/10/19/6882** by the **Department of Building Inspection (Planning Department Disapproval)** which was issued or became effective on: **January 28, 2021**, for the property located at: **530 Howard Street**.

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: 4:30 p.m. on **March 4, 2021**, **(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 should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org and scott.sanchez@sfov.org .

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **March 18, 2021**, **(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 should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org and bgladstone@g3mh.com .

The Board's physical office is closed to the public and hard copies of the brief do NOT need to be submitted.

Only photographs and drawings may be submitted by the parties at the hearing.

Hearing Date: **Wednesday, March 24, 2021, 5:00 p.m.,** 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 change 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/boaYou may also request a copy of the packet of 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 (Circle One):

Signature: Via Email
Print Name: Brett Gladstone, Attorney for Appellant

GOLDSTEIN, GELLMAN, MELBOSTAD, HARRIS & MCSPARRAN, LLP
ATTORNEYS AT LAW
1388 SUTTER STREET
SUITE 1000
SAN FRANCISCO, CALIFORNIA 94109-5494
TELEPHONE: (415)673-5600
FACSIMILE: (415)673-5606

Date: **February 2. 2021**
To: **San Francisco Board Of Appeals**
From: **Becker Boards, LLC**
RE: **530 Howard Street – Billboard**

APPEAL STATEMENT RE: Appeal of Denial of BPA#202010196882, 530 Howard St.

I, Brett Gladstone and my law firm Goldstein, Gellman, Melbostad, Harris & McSparran, LLP., represent Becker Boards, LLC, an outdoor advertising company, which is making an appeal to your Board on behalf of the owner of the building in question, One Timberlake, INC. Attached is a letter of authorization from the building owner authorizing my law firm and Becker Boards to make this appeal.

We are appealing the denial of the building permit application **#202010196882** to erect a new billboard, and that denial is attached.

The Board of Appeals has ruled several times in the past that the right to have a billboard runs with the property owner, and not the billboard company. Thus, when a billboard company's lease ends and it removes its structure, the Board has allowed the building owner to enter into an agreement with another billboard owner to erect a new billboard structure. Several court cases instigated by competitor billboard companies have tested the decisions of the Board in court, and the courts have followed the decisions of the Board.

However, the San Francisco Planning Department has not followed the decision of your Board or the court decisions. Instead, the Planning Department has taken the position that even a new billboard of the same size and location as the one removed is prohibited by City law which allegedly does not allow new billboards once a billboard structure has come down.

Very truly yours,

M. Brett Gladstone

City and County of San Francisco
Department of Building Inspection

London N. Breed, Mayor
Patrick O'Riordan, Interim Director

January 28, 2021

NOTICE OF CANCELLATION
Building Permit Application No: 202010196882
Job Address: 530 Howard Street
Cancel Date: March 28, 2021

PATRICK REVIVES
PO BOX 1251
SAN BRUNO, CA 94066

Dear Applicant(s):

The above referenced application has been cancelled by the San Francisco Planning Department for the following reason(s):

- Scope of work not approvable per Section 604(h) of the Planning Code

If you have questions regarding this matter, please contact Ada Tan from Planning at (628) 652-7403 within 60 days of this letter or else your permit application will be cancelled per 2019 SFBC 106A.3.8 on **March 28, 2021.**

You may appeal the cancellation of this building permit application to the Board of Appeals within fifteen (15) days of the date of this letter. To file an appeal, bring a copy of this letter to the Board of Appeals, Suite 1475 of 49 South Van Ness, San Francisco. If you have questions regarding the appeals process, please call the Board of Appeals at (628) 652-1150.

If you have further questions, please call the Department of Building Inspection, Permit Processing Center at (628) 652-3785.

Sincerely,

Natalie Lua
Permit Processing Center

CC: AGS SIGNS
PO BOX 1251
SAN BRUNO, CA 94066

J:common\PPC\Cancellation Letters\2021\530 Howard St -202010196882

CERTIFIED MAIL RETURN RECEIPT

CERTIFIED MAIL RETURN RECEIPT ON FILE

San Francisco Planning

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
628.652.7600
www.sfplanning.org

December 24, 2020

Re: **Permit 202010196882**

Dear Mr. Karnilowicz,

The Planning Department has determined that Building Permit Application 202010196882 for 530 Howard Street is **not** approvable because the proposed scope of work on this permit ("Remove (e) 25' x 40' billboard and replace with new 25' x 40' billboard at the same location on building") constitutes the removal and replacement of a general advertising sign in violation of Planning Code Section 604(h).

Planning Code Section 604(h) states the following:

A sign which is voluntarily destroyed or removed by its owner or which is required by law to be removed may be restored only in full conformity with the provision of this Code, except as authorized in Subsection (i) below. A general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location, and the erection, construction, and/or installation of a general advertising sign at that location to replace the previously existing sign shall be deemed to be a new sign in violation of Section 611(a) of this Code; provided, however, that such reinstallation, replacement, or reconstruction pursuant to a permit duly issued prior to the effective date of this requirement shall not be deemed a violation of Section 611(a) and shall be considered a lawfully existing nonconforming general advertising sign; and further provided that this prohibition shall not prevent a general advertising sign from being relocated to that location pursuant to a Relocation Agreement and conditional use authorization under Sections 611 and 303 (k) of this Code and Section 2.21 of the San Francisco Administrative Code.

The proposed replacement and reconstruction of the general advertising sign on the subject property is considered to be a "new" sign in violation of Section 611(a). As such, the subject permit violates the plain language of Section 604(h).

Sincerely,

Ada Tan
General Advertising Sign Program Manager

Welcome to our Permit / Complaint Tracking System!

Permit Details Report

Report Date: **3/16/2021 8:09:32 AM**

Application Number:	202010196882
Form Number:	4
Address(es):	3721 / 014 / 0 530 HOWARD ST
Description:	REMOVE (E) 25'X40' BILLBOARD AND REPLACE WITH NEW 25'X40' BILLBOARD AT THE SAME LOCATION ON BUILDING.
Cost:	$4,000.00
Occupancy Code:	
Building Use:	-

Disposition / Stage:

Action Date	Stage	Comments
10/19/2020	TRIAGE	
10/19/2020	FILING	
10/19/2020	FILED	

Contact Details:

Contractor Details:

License Number:	1032267
Name:	FRED HERSCHEND
Company Name:	AGS SIGNS
Address:	PO BOX 1251 * SAN BRUNO CA 94066-0000
Phone:	

Addenda Details:

Description:

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Phone	Hold Description
1	INTAKE	10/19/20	10/19/20			10/19/20	LEE ERIC	415-999-9999	TO DCP
2	CP-ZOC	10/21/20	10/22/20	11/3/20	11/12/20	11/12/20	TAN ADA	628-652-7300	DENIAL - Scope of work not approvable per Section 604(h) of the Planning Code.
3	BLDG							628-652-3780	
4	DPW-BSM							628-271-2000	
5	PERMIT-CTR	11/30/20	11/30/20				YAMAMURA WENDY	628-652-3200	11/30/2020 Comments have been issued by plan review staff. Plan set has been routed to Permit Center hold room. Project agent must collect the plan set to resume review. Comments pick-up hours are 10:00 am - 3:00 pm at the forum entrance of 49 South Van Ness Avenue. You do not need an appointment to collect your plan set. To submit revisions, applicant or project agent must return the original plan set and permit application with superseded sheets collated into the original plan set. All revisions must be done per Administrative Bulletin-031: https://www.sfdbi.org/ftp/uploadedfiles/dbi/downloads/AB-031.pdf. Revision drop-off hours are 10:00 am - 3:00 pm at the forum entrance of 49 South Van Ness Avenue. You do not need an appointment to submit your revision.
5	CPB						LEE ERIC	628-652-3240	MISSING SIGNATURE ON PLANS-EL

6	PERMIT-CTR	3/15/21	3/15/21					628-652-3200	03/15/2021-Comments issued by plan review staff. Plan set has been routed to Permit Center hold room. Project agent must collect the plan set to resume review. Pick-up hours are 10:00 AM - 3:00 PM at the entrance of 49 South Van Ness Ave. You do not need an appointment to collect your plan set. To submit revisions, applicant or project agent must return the original plan set and permit application with superseded sheets removed from the original plans and new sheets collated into the original plan set. The superseded sheets shall be rolled up, separated from the original plans, and returned to the plan checker. All revisions must be done per Administrative Bulletin-031: https://sfdbi.org/administrative-bulletins Revision drop-off hours are 10:00 AM - 3:00 PM at the forum entrance of 49 South Van Ness Avenue. You do not need an appointment to submit your revision. ***AUTHORIZED AGENT MUST SHOW PERMIT CENTER STAFF THE EMAIL SENT BY PERMITCENTER@SFGOV.ORG TO COLLECT COMMENTS.***NB.
7	PPC	1/28/21	1/28/21				LUA NATALIE	628-652-3780	1/28/21: Cancellation letter sent; NL

Appointments:

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots

Inspections:

Activity Date	Inspector	Inspection Description	Inspection Status

Special Inspections:

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks

For information, or to schedule an inspection, call 628-652-3400 between 8:30 am and 3:00 pm.

Station Code Descriptions and Phone Numbers

Online Permit and Complaint Tracking home page.

Technical Support for Online Services

If you need help or have a question about this service, please visit our FAQ area.

BRIEF(S) SUBMITTED BY APPELLANT(S)

g3mh

GOLDSTEIN, GELLMAN, MELBOSTAD, HARRIS & McSPARRAN LLP

ATTORNEYS AT LAW

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SUITE 1000
SAN FRANCISCO
CALIFORNIA 94109
(415) 673-5600 TEL
(415) 673-5606 FAX
www.g3mh.com

March 4, 2021

Via E-mail and U.S. Mail

Ann Lazarus
President
Board of Appeals
49 South Van Ness Ave.
San Francisco, CA 94103

Re: ***Application for General Advertising for 530 Howard Street, San Francisco***
Appeal No.: 21-009

Dear President Lazarus and Board Members:

We represent Becker Boards LLC, a general advertising company, which has been authorized by One Timberlake, Inc (the owner of the above referenced building) to apply for a new general advertising sign of the same size and height as the existing one shown at **Exhibit A**. The existing one was placed there by CBS Outdoor ("CBS") (now rebranded as Outfront Media), and the property owner now seeks its own permit now that its lease with CBS lease has ended. The owner now wishes to lease the location to Becker Boards. As soon as a new billboard permit is issued, the property owner will obtain (or will authorize CBS to obtain) a permit to remove the billboard. The current billboard is made out of vinyl and has a dimension of 25 feet x 40 feet. We are appealing the Planning Department's recent decision to deny a permit for a billboard of the same size and height. The denial can be found at **Exhibit B**. A portion of the denial states the following: "The proposed replacement and reconstruction of the general advertising sign on the subject property is considered to be a "new" sign in violation of Section 611(a)".

Section 611(a) says that: "(a) No new general advertising signs shall be permitted at any location within the City as of March 5, 2002, except as provided in Subsection (b) of this ordinance" **Section (b) says**: (b) Nothing in this ordinance shall be construed to prohibit the placement of signs on motor vehicles or in the public right-of-way as permitted by local law". Section 611 was enacted pursuant to the voter's Proposition G which created a moratorium on "new" billboards. The key issue in this appeal (and an issue that has been discussed in previous decisions of your Board and of various California courts) is whether a billboard replacing an existing one at same size and location is a "new" billboard prohibited by Prop G and Code Section 611 (a). Your Board is bound by precedents , consisting of your decisions (and court decisions) concerning the same Code sections and similar facts. Those precedents make it clear that a replacement billboard is not a "new" billboard.

Background:

Over 20 years ago, Ms. Margie Pocoroba asked for my assistance in obtaining a billboard permit to replace the permit issued to Clear Channel Outdoors's predecessor, after the lease with Clear Channel expired. Like the owner of the property in this appeal at 530 Howard Street, Ms. Pocoroba found her current billboard tenant's lease terms to be inadequate and she wished to lease to a different company when the previous lease ended. Clear Channel was unhappy about not being able to continue as tenant and asked your Board to turn down the new permit application. **The Planning Department supported Ms. Pocoroba's position;** however, Clear Channel advised your Board that it alone had the right to a billboard there because its predecessor- in- interest had obtained the billboard permit in its name and because existing zoning no longer allowed a billboard there. Clear Channel also stated that its removal of the billboard permanently extinguished her right to have a billboard at this location. In supporting Ms. Pocoroba, your Board stated: "Under

the City's Planning and Building Codes, the permit authorizing such land use is an entitlement that runs with the land, belongs to the property owner, and which the property owner may transfer to subsequent owners of the property. The right to use such land use does not belong to the sign company. Pocoroba Decision, see **Exhibit C**. Therefore, Clear Channel could remove its sign structures, but could not terminate the Property Owner's vested right to use the location specified in the 1986 variance to display general advertising on the Property."[1] Your Board further stated*:* "… the Board finds that the Planning Department considered the Property Owner and not Clear Channel to own the right to display general advertising signs at the specified location on the Property. Accordingly, the Planning Department concluded, and the Board concurs, that Clear Channel could not abandon the permits. The Planning Department also concluded, and the Board concurs, that the Property Owner could obtain building permits to reinstall new sign structures at the permitted location on the Property after Clear Channel removed its signs." *Id*., at paragraph 9. Several years later, the Planning Department decided to take an altogether different position and has done so in its recent denial of my current client's application. In **Exhibit B**, Planning claims that the proposed work would "constitute the removal and replacement of a billboard in violation of Code Section 604(h) which says that every general advertising sign must have a permit." First, this is odd, because what my client seeks is a permit. Second, Planning's current position reverses its previous position that a billboard company cannot terminate future billboards on a site by removing its billboard. Planning's position has leaned so far toward the current billboard company that I learned in an email the other day from SF planner Ada Tan that Planning has recently notified CBS that the property owner Timberlake One and Becker Boards have applied

[1] *Clear Channel Outdoor v. Dept. of Building Inspection, Planning Dept. Approval, Appeal No(s). 03-036 Findings of Fact Oct. 8, 2003. [Pocoroba Decision].*

for a new permit; *yet there is no reason for that notification and no requirement that Planning Staff do that notification because our permit application is not to take the CBS sign down, but merely for Becker and the property owner to put a new billboard there*. The property owner will authorize CBS to take out a permit to remove its billboard later, or the owner will get his own permit to do that and return CBS's vinyl sign to CBS. *Due to that notification, we expect that CBS will file a brief prior to our hearing, and that it will apply for a permit to remove its vinyl sign.* Planning Staff has in recent years done something more inexplicable: besides denying a permit to an owner (or to a new billboard company as owner's agent), Planning's current custom and practice is if an existing billboard company applies for removal, it will require a property owner to sign a statement that the property owner approves the removal "voluntarily". If after a certain number of days, the property owner refuses to sign, the Department will issue the removal permit to the billboard company anyway, thus ending future billboards on the site forever.

The request from Planning that an owner state he or she agree to "voluntarily" allow a billboard company to remove its billboard does several things: (1) for the benefit of the billboard company, it reduces the chance a property owner will file a claim against the billboard company stating that he or she were coerced into forever giving up billboard rights; and (2) for the benefit of the City, it provides the City a justification to deny permits for any future billboards, since the word "voluntarily" appears in the following statement in the Planning Code: "A sign which is voluntarily destroyed or removed by its owner or which is required by law to be removed may be restored only in full conformity with the provisions of this Code, except as authorized in Subsection (i) below." Planning Code Sec. 604(h) [Emphasis Added]. And to be "in full conformity" with the provisions of the Code today, according to Planning, a new billboard permit can issue only if a current billboard with permits is in danger of falling on the public. The

implications of allowing a tenant to deny a permit to a building owner are enormous and would turn the City's permitting system upside down. Yet that is the practical effect of the way the Planning Department continues to interpret *Section 604 (h)* of the Code. [2]

In the year 2008 in the case of my client Tony Lee (*Cheol Hoon Lee & Tony Lee v. Dept. of Building Inspection, Planning Department Approval, San Francisco Board of Appeals, Appeal No(s) 07-075 (March 19, 2008) {"Lee Decision")* at **Exhibit D**, the Planning Department took a position different from its position in the Pocoroba case. It pointed out that the Pocoroba Decision in favor of the property owner was no longer binding on the Department because since that time, the City enacted Ordinance 140-06. The Department took the position that when that new law was enacted, Code Section 604 (h) was amended so as to overturn Pocoroba and so as to vest rights to the nonconforming use in the sign company rather than the property owner. In making the argument that the amendment changed the law (and thus voiding your Board's decisions and court decisions stating that billboard rights "run with the land"), the Department pointed to the following sentence added to Section 604 (h) by that Ordinance: "*A general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location, and the erection, construction, and/or installation of a general advertising sign at that location to replace the previously existing sign shall be deemed to be a new sign in violation of [Proposition G]… provided that this prohibition shall not prevent a general advertising sign from being relocated to that location pursuant to a Relocation Agreement [as provided in Ordinance 140-*

[2] **Your Board has several times found the tactics of the larger national billboard companies to be oppressive. In the Lee Decision, your Board referred to "a pattern of heavy-handed business practices by general advertising sign companies in lease renewal negotiations that is not in the best interests of the City's business. community or residents because those companies will threaten the extinguishment of future billboard rights by their removal of their billboard, if a property owner does not agree to lower lease payments."** **Exhibit D**

06J]." [Emphasis Added]. In the Lee Decision at **Exhibit D,** however, your Board completely disagreed and commented on that legal position as follows: "We find this language [quoted by the SF Planning Department], especially the passive voice phrase "that has been removed," at best unclear. If this phrase modifies the previous sentence, then the unstated "subject" removing entity is the property owner undertaking a voluntary act. If the passive voice phrase means ANY removal of a sign structure- lawful or unlawful; intended or inadvertent, by any person, then the vague passive phrase works a reversal not only of *Pocoroba*, but of long standing land use principles that recognize the right to continue a non-conforming use until it is voluntarily terminated and establishes an apparently unprecedented right in a discontented tenant to forfeit the rights of its landlord. A more likely interpretation is that the added sentence refers to voluntary removal by the holder of the lawful right to the signage, which, under *Pocoroba*, is the owner of the real property." [Emphasis Added]. *Id*. at paragraph 14.

Likewise, when a retail tenant makes its improvements to a shell retail space through a permit it obtains, and then it removes its improvements (fixtures, cabinets, etc.) at the end of a lease, the Planning Department does not deny the property owner's next tenant a lease to renovate and install fixtures; thus, the Department does not take away a property owner's right to continue the retail use, notwithstanding the fact that the zoning changed from commercial to residential after the date the first retail tenant went into the space. Just as a change in zoning can prohibit a new commercial use begun after a zoning change to a residential district, Prop G changed the zoning citywide so that no zoning district in the City will ever have new billboards in locations *where none have been in the past.* We believe, as does your Board and the courts, that under the Code, a "new" billboard is one put in a place where a legal one has not been in the past. In fact, the Non-Conforming Use/Structures portions of the Planning Code support the idea that just like

corner retail stores in residential districts, all general advertising billboards are Non-Conforming Uses/Structures under Sections 180-188 of the Code that can continue without expansion or intensification. My client is not planning any expansion or intensification here (no new lighting, no size increase, etc.).

A May 1990 Decision/Interpretation of the Planning Code by the ZA discusses the non-conforming use provisions of Code Section 181(d) and states the following: **"**This Section states that a nonconforming use destroyed by an act of God may be reconstructed according to its legal configuration and uses. **This right of reconstruction is unaffected by any change in private ownership [Emphasis Not Added]** even though the ownership changed between the time of the building's destruction and its proposed rebuilding. *The right rides with the land – not the owner.* [**Emphasis Added.]** This principle applies as well to the right of reconstruction stated in Section 188(b)."

Previous Court Decisions. In three lawsuits Clear Channel has filed against your Board[3] in the past when your Board ruled that billboard rights run with the land like other land use permits, courts have continued to support the decisions of your Board. No courts have taken the position that Proposition G's moratorium on new billboards amended the Non-Conforming Use sections of the Code. This is not surprising given that neither the text of Prop G (nor its voter pamphlet – see both at **Exhibit** F) mention that to be the intent of the amendment. No "billboard exception" to the law on continuation of legal non-conforming uses/structures has ever been created. That would take a Code amendment but more likely a ballot initiative amending Prop G, to say that the prohibition of "new" billboards refers also to billboards which exactly replace existing

[3] The Lee Decision, the Pocoroba Decision and the decision in *Clear Channel Outdoor Inc. vs. David Suckle, et all, S.F. Superior Court, Statement of Decision, Case No 428537* **Exhibit E.**

legal ones when a legal one is removed. It is well known that the Board of Supervisors cannot amend a Proposition enacted by voters, only voters can . In the Lee case, your Board stated: "The record of the proceedings of the Board of Supervisors' Land Use and Economic Development Committee (June 7, 2006) provide no support for the City Attomey's conclusion that the Board of Supervisors intended to overturn *Pocoroba* and dramatically alter the economic leverage of sign tenants." It also stated: "When the Board of Supervisors considered Ordinance 140-06 in Committee, the two staff reports by the legislative aide for the Ordinance Sponsor and the representative from the Planning Department identified the legislation's three objectives – to authorize relocation agreements, sign inventories, and fees. Neither report mentioned the amendments to Planning Code section 604(h) or discussed any intent for the legislation to reverse *Pocoroba*. Several public speakers raised concerns that the legislation would alter *Pocoroba*; others testified that legislation left the existing law unchanged. [**Emphasis Added**] The members of the Land Use and Economic Development Committee approved the legislation without comment."[4]

Billboard companies such as Clear Channel have taken the position that a permit must be issued to a billboard company to take down a structure because they own the materials in the structure -- and we agree that they have the right to their materials. Should your Board rule on March 11 that removal of the materials at the Subject Property does not terminate billboard rights there forever, our client will cooperate to either obtain a permit for removal or work with CBS to obtain its permit for removal.

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[4] *Cn Cheol Hoon Lee & Tony Lee v. Dept. of Building Inspection, Planning Department Approval, San Francisco Board of Appeals, Appeal No(s) 07-075, paragraph 16-18 (March 19, 2008).*

The Board of Appeals has been so protective of the rights of the building owner that when it determined in the Lee Decision that the Planning and Building Departments issued Clear Channel a removal permit without seeking the Lee Family approval, it ruled that this was an involuntary removal and that an involuntary removal of the sign was the equivalent of destruction of the billboard by a "calamity", the word used in Code Section 188 (b) to describe one of circumstances in which a noncomplying structure can be taken down and then be legally rebuilt by a property owner.

During the Board of Appeals hearings on the Lee appeal, the Board's own Deputy City Attorney took a position supporting that of the Lee Family, although a Deputy City Attorney from another division of the same office supported the Clear Channel position. In any event, Dennis Herrera of the City Attorney's Office vigorously defended the decision of your Board of Appeals in the litigation brought against your Board by Clear Channel in the Lee matter. (*see Dennis Herrera's legal brief supporting the Lee Family and your Board (**Exhibit G**) and, in particular, his statement about the harmful consequences of allowing Clear Channel to prevail in the Lee Family litigation*). Please note the Lee Court's statement that "The Board [of Appeals] contends that Clear Channel has made it clear that its real motive is to safeguard its economic leverage vis-à-vis other landlord's and other advertising companies in San Francisco."

Recent Positions of the Planning Department. When turning down property owners attempts to obtain their own permits to replace billboards in the last few years, Planning has argued that the legal precedents supporting previous land owners have unusual facts, and because of that, the decisions do not act as legal precedents binding on the Department. *Planning will likely argue the same here*. In fact, in advising us recently why Planning turned down Becker Board's permit,

Planning notified us that in a Haight St. billboard case that came to your Board more recently than the *Lee* and *Pocoroba* and *Suckle* cases, the Board of Appeals took the position that the right to have a billboard is not that of the property owner. Specifically, Planning is referring to Appeal No. 11-021 involving CBS and property owner of 1633-1649 Haight Street (Front Properties), decided February 15, 2011. See **Exhibit H.** If there was ever a case with unusual and distinguishable facts, however, the Front Properties case would certainly qualify. The Board simply ruled (see **Exhibit H**) that the property owner did not prove that he did not authorize the removal of the billboard by CBS, and that this was evidenced by the fact that the property owner took too much time before objecting to the removal. The Board did not rule that the removal of the sign structure caused any right to a billboard on the property to be extinguished for good. In fact, in the later court case of *CBS Outdoor Inc v Front Properties LLC, et al, S.F. Superior Court, Case No. CGC-09488613,* the Planning Department filed a brief and at page 9 of its brief, the Planning Department stated: "The Appellant [Front Properties] refers to the City's brief filed in connection with the Lee case, which stated that the "restoration of a general advertising sign structure removed without the consent of the property owner would not constitute a new general advertising sign under Proposition G. **This is true."** [Emphasis Added]. As a result, this Front Properties case is limited to its facts and does not represent your Board's reversal of its many previous decisions. Nor does it represent the Planning Department's reversal of its prior positions (See *Pocoroba* and other cases) that billboard rights run with the land. But even if your Board had meant to overturn its many previous decisions on whether the right to have a billboard runs with the land (something of which there is no evidence), the Board must follow judicial precedent, and the courts have never changed their position. On February 25, 2011 (after your Board's decision on the Haight St. billboard), the California First District Court of Appeals, in *Clear*

Channel Outdoor, Inc. v. Board of Appeals of San Francisco, a case where Clear Channel unsuccessfully asked a Court of Appeals to reverse the judgement of your Board and the Superior Court (attached as **Exhibit D**), held that: "Clear Channel does not have standing to challenge the Board's determination that the "owner" of signage rights under section 604, subdivision (h) is the property owner, not the signage company". 2011 WestLaw 675976, at *13 (Cal.App. 1 Dist. 2011). That Court further stated that "the right to continue to display general advertising on a property as a legal, non-conforming use belongs to the [property owner] and is not subject to forfeiture by termination of a tenant's lease and a tenant's unilateral removal of tenant improvements." Finally, your Board's end of year FY 2015 Annual Report (**See Exhibit I**), issued four years after the Haight St. billboard case, states that the Court of Appeals in the Lee Decision confirmed your Board's decision in that case, and restated the Court's ruling that Clear Channel did not have standing to challenge your Board's decision to grant the property owners the right to reinstall a sign on their property. That Court found that the only interest in the matter that Clear Channel had was an interest in impeding competition, and that this was not a sufficient legal interest to give it standing. But even if in the Haight St. case your Board had meant to overturn its many previous decisions, your Board today must follow legal precedents set by the Court, particularly an Appeals Court that geographically covers the Bay Area. And please keep in mind that judicial precedents stating that permits run with the land have existed well before any of these billboard cases came to your Board starting with the Pocoroba Decision 18 years ago. *Anza Parking Corp. v. City of Burlingame* is one of the critical decisions in California land use law and is a case which law students learn in Land Use 101 (See **Exhibit I**), and that California court made it very clear for

the first time that in California as in in most other jurisdictions, that permits run with the land[5].

California courts continue to follow the Anza decision (See **Exhibit J**) today.

Very truly yours,

Brett Gladstone

CC: Zoning Administrator
Ada Tan, Planning Department
Joseph Duffy, Building Department
Property Owner
Becker Boards

[5] **The only exceptions are permits involving an individual's good character, such as ABC permits, message permit, dance hall permits and the like**.

EXHIBIT A


DISPENSARY
PUBLIC PARKING

EXHIBIT B

San Francisco Planning

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
628.652.7600
www.sfplanning.org

December 24, 2020

Re: **Permit 202010196882**

Dear Mr. Karnilowicz,

The Planning Department has determined that Building Permit Application 202010196882 for 530 Howard Street is not approvable because the proposed scope of work on this permit ("Remove (e) 25' x 40' billboard and replace with new 25' x 40' billboard at the same location on building") constitutes the removal and replacement of a general advertising sign in violation of Planning Code Section 604(h).

Planning Code Section 604(h) states the following:

A sign which is voluntarily destroyed or removed by its owner or which is required by law to be removed may be restored only in full conformity with the provision of this Code, except as authorized in Subsection (i) below. A general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location, and the erection, construction, and/or installation of a general advertising sign at that location to replace the previously existing sign shall be deemed to be a new sign in violation of Section 611(a) of this Code; provided, however, that such reinstallation, replacement, or reconstruction pursuant to a permit duly issued prior to the effective date of this requirement shall not be deemed a violation of Section 611(a) and shall be considered a lawfully existing nonconforming general advertising sign; and further provided that this prohibition shall not prevent a general advertising sign from being relocated to that location pursuant to a Relocation Agreement and conditional use authorization under Sections 611 and 303 (k) of this Code and Section 2.21 of the San Francisco Administrative Code.

The proposed replacement and reconstruction of the general advertising sign on the subject property is considered to be a "new" sign in violation of Section 611(a). As such, the subject permit violates the plain language of Section 604(h).

Sincerely,

Ada Tan
General Advertising Sign Program Manager

From: Tan, Ada (CPC) <ada.tan@sfgov.org>
Sent: Thursday, November 12, 2020 9:07 AM
To: M. Brett Gladstone <BGladstone@g3mh.com>
Cc: Sanchez, Scott (CPC) <scott.sanchez@sfgov.org>; Teague, Corey (CPC) <corey.teague@sfgov.org>
Subject: RE: Becker Boards Ltr to Planning Dep

Dear Mr. Gladstone,

We have determined that Building Permit Application 202010196882 for 530 Howard is **not** approvable because the proposed scope of work on this permit ("Remove (e) 25' x 40' billboard and replace with new 25' x 40' billboard at the same location on building") constitutes the removal and replacement of a general advertising sign in violation of Planning Code Section 604(h).

Planning Code Section 604(h) states the following:

A sign which is voluntarily destroyed or removed by its owner or which is required by law to be removed may be restored only in full conformity with the provision of this Code, except as authorized in Subsection (i) below. A general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location, and the erection, construction, and/or installation of a general advertising sign at that location to replace the previously existing sign shall be deemed to be a new sign in violation of Section 611(a) of this Code; provided, however, that such reinstallation, replacement, or reconstruction pursuant to a permit duly issued prior to the effective date of this requirement shall not be deemed a violation of Section 611(a) and shall be considered a lawfully existing nonconforming general advertising sign; and further provided that this prohibition shall not prevent a general advertising sign from being relocated to that location pursuant to a Relocation Agreement and conditional use authorization under Sections 611 and 303 (k) of this Code and Section 2.21 of the San Francisco Administrative Code.
The proposed replacement and reconstruction of the general advertising sign on the subject property is considered to be a "new" sign in violation of Section 611(a). As such, the subject permit violates the plain language of Section 604(h).

The Planning Department is in receipt of your letter dated November 2, 2020. While the letter repeatedly references "530 Harrison Street" it is our assumption that you are referring to the property at 530 Howard Street. The arguments contained in the letter are not persuasive and do not align with the facts of this case or the requirements of the Planning Code. To the extent that your citations are relevant, I would note that in the case of 1633 Haight Street, the Planning Department disapproved Building Permit Application No. 201010283932 to replace the general advertising sign on the property because the replacement violated Section 604(h). The denial was appealed to the Board of Appeals (Appeal No. 11- 021) and the Board of Appeals upheld the denial and affirmed the Planning Department's determination that the permit did not comply with Section 604(h).

Please let us know if you have any other questions and whether you would like the Department to proceed with disapproval of the permit or if you would like to withdraw the permit. If we do not receive a response within one week, we will proceed with disapproval of the permit.

Ada Tan
Planner | Zoning and Compliance Division
Manager | General Advertising Sign Program

San Francisco Planning Department
PLEASE NOTE MY NEW ADDRESS AND PHONE NUMBER:
49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103
Direct: 628-652-7403 | www.sfplanning.org
San Francisco Property Information Map

Due to COVID-19, San Francisco Planning is not providing any in-person services, but we are operating remotely. Our staff are available by e-mail, and the Planning and Historic Preservation Commissions are convening remotely. The public is encouraged to participate. Find more information on our services here.

From: Tan, Ada (CPC) <ada.tan@sfgov.org>
Sent: Tuesday, November 3, 2020 4:18 PM
To: M. Brett Gladstone <BGladstone@g3mh.com>
Cc: Sanchez, Scott (CPC) <scott.sanchez@sfgov.org>; Teague, Corey (CPC) <corey.teague@sfgov.org>
Subject: Re: Becker Boards Ltr to Planning Dep

Hi Mr. Gladstone,

I received your message below. I will discuss the permit application with Department staff and get back to you.

Ada Tan
Planner | Zoning and Compliance Division
Manager | General Advertising Sign Program

San Francisco Planning Department
PLEASE NOTE MY NEW ADDRESS AND PHONE NUMBER:
49 South Van Ness Avenue, Suite 1400, San Francisco, CA 94103
Direct: 628-652-7403 | www.sfplanning.org
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Due to COVID-19, San Francisco Planning is not providing any in-person services, but we are operating remotely. Our staff are available by e-mail, and the Planning and Historic Preservation Commissions are convening remotely. The public is encouraged to participate. Find more information on our services here.

From: "M. Brett Gladstone" <BGladstone@g3mh.com>
Date: Tuesday, November 3, 2020 at 1:25 PM
To: "Tan, Ada (CPC)" <ada.tan@sfgov.org>
Cc: "Sanchez, Scott (CPC)" <scott.sanchez@sfgov.org>, "Teague, Corey (CPC)" <corey.teague@sfgov.org>
Subject: FW: Becker Boards Ltr to Planning Dep

Dear Ms. Tan, I have been asked to reply to your email to the sign company which has applied for a new wall sign with vinyl for the pictured Howard Street location. Your reply indicates that the application is being rejected.

Best,

M. Brett Gladstone

M. Brett Gladstone, Attorney Of Counsel
Goldstein, Gellman, Melbostad, Harris & McSparran, LLP
1388 Sutter Street, Suite 1000
San Francisco CA 94109-5494
Voice: 415/673-5600
Fax: 415/673-5606
Email: BGladstone@g3mh.com

EXHIBIT C

BOARD OF APPEALS
CITY & COUNTY OF SAN FRANCISCO

Appeal No(s). 03-036

CLEAR CHANNEL OUTDOOR, Appellant(s)

vs.

DEPT. OF BUILDING INSPECTION,
PLANNING DEPT. APPROVAL Respondent

On June 4, 2003, this Appeal of Permit 2003.02.24.8142, a sign permit to reinstall two 12 by 24 foot signs issued by the Department of Building Inspection to Margaret Pocoroba on February 24, 2003 came before a duly noticed hearing of the Board of Appeals. Having heard all of the public testimony and reviewed the record on this matter, the Board of Appeals hereby denies the appeal and upholds the issuance of sign permit 2003.02.24.8142 based on the following findings:

FINDINGS OF FACT

1. Real party in interest Margaret Pocoroba ("Property Owner") is the owner of property located at the southwest corner of Steiner and Lombard Streets (3251 Steiner, also known as 2205 Lombard Street), San Francisco ("Property").

2. Appellant Clear Channel Outdoor ("Clear Channel") is an outdoor general advertising company that maintained two sign structures containing general advertising on the upper wall of a building on the Property (the "Billboards").

3. General advertising signs have been located at the Property on the building's Lombard Street frontage for many decades. Prior to 2002, the San Francisco Department of Public Works, Central Permit Bureau ("City") issued permits relating to general advertising signs on the Property in 1941,1946, and 1971. These permits were for locations different from the sign location of the Billboards at issue in this appeal.

4. In 1986, the Zoning Administrator granted a variance to the property owner who was Pocoroba's predecessor in title for alterations to the Property. The variance included drawings that showed the relocation of the signs on the Property to a new area, higher on the same wall as the signs had previously been placed. Neither the Property Owner nor Patrick Media Group, Clear Channel's predecessor in interest, obtained new sign permits for the new location, although the City required such permits at that time. Based on the testimony of Jonas Ionin, on behalf of the Planning Department, the Board finds that the City approved the relocation of the billboards, without a separate permit, as part of the variance approval.

5. In early 2002, the Planning Department served an enforcement complaint on the Property Owner because the City did not have a sign permit authorizing the Billboards in the upper wall

location to which they had been moved in 1986. In response to the complaint, on February 28, 2002, the Property Owner applied for a permit to clarify the record. ("2002 relocation permit")

6. On March 5, 2002, City voters adopted Proposition G, which added Section 611 to the City Planning Code. Proposition G provides that "'[n]o new general advertising signs shall be permitted at any location within the City as of March 5, 2002 ... ."

7. On July 10, 2002, after the effective date of Proposition G, the City issued the 2002 relocation permit to Property Owner. This permit was never appealed.

8. On February 14, 2003, Clear Channel notified the City by letter to the Planning Department, copied to the Department of Building Inspection, that it intended to abandon its permits authorizing the Billboards at the Property and requested that the City immediately cancel the permits. Thereafter Clear Channel removed its sign structures from the Property.

9. At the June 4, 2003 Hearing, based on the testimony of Jonas Ionin on behalf of the Planning Department, the Board finds that the Planning Department considered the Property Owner and not Clear Channel to own the right to display general advertising signs at the specified location on the Property. Accordingly, the Planning Department concluded, and the Board concurs, that Clear Channel could not abandon the permits. The Planning Department also concluded, and the Board concurs, that the Property Owner could obtain building permits to reinstall new sign structures at the permitted location on the Property after Clear Channel removed its signs.

10. In order to address a leak in the wall behind the billboards, Property Owner obtained a permit to temporarily remove existing sign structures for painting/ waterproofing work and permit 2003.02.24.8142, the permit under appeal, to reinstall sign structures after the repairs.

11. In March, 2003, Clear Channel appealed the issuance of permit 2003.02.24.8142.

12. Based on the testimony of Chief Building Inspector Kornfield at the June 4, 2003 hearing, the Board finds that it is the long standing interpretation of the Department of Building Inspection that sign permits belong to the property owner. According to the Department of Building Inspection, when a permit is issued to an entity other than the property owner, the permit is issued to the entity only as agent of the property owner. The Board concurs in this conclusion.

13. The Board received various documents and testimony into the record relating to the lease and other contractual arrangements between Clear Channel and Property Owner. However, the Board makes no findings regarding the private agreements between Clear Channel and Property Owner, if any.

CONCLUSIONS OF LAW

1 The 1986 Variance constituted the City's implicit approval to relocate the general advertising signage on the Property. Therefore, as of October 15, 1986, the Property Owner had a vested right to the use of the Property to display general advertising at the new Billboard location. As long as Property Owner does not abandon the use, the City may only require the Property Owner to obtain appropriate building permits for the erection of sign structures to effectuate her vested right in the use of the Property. The Property Owner does not now need a separate permit to use the Property for general advertising signage in the 1986 Billboard location.

2 The Property Owner's vested right to display general advertising at the 1986 Billboard location is independent of permits issued in connection with general advertising signage on the Property in 1941, 1946, 1971. Therefore, the Board of Appeals makes no decision as to the legal effect, if any, of any of those permits.

3 Permission to use property for display of general advertising is a matter of land use. Therefore, a permit authorizing the use of property for general advertising displays is governed by the law in effect at the time that the City issued the permit, *Russian Hill Improvement Assn. V. Board of Appeals*, (1967) 6 Cal2d 24. The permit is not governed by the law in effect when the Property owner applied for the permit. Therefore the relocation permit issued to Property Owner in July, 2002 simply documented the Property Owner's 1986 vested rights to use the Property at the designated location for the display of general advertising. It did not and could not legalize a new general advertising sign use of the Property that was not legally existing on March 5, 2002.

4 Permission to use property for display of general advertising is a matter of land use. Under the City's Planning and Building Codes, the permit authorizing such land use is an entitlement that runs with the land, belongs to the property owner, and which the property owner may transfer to subsequent owners of the property. The right to such land use does not belong to the sign company. Therefore, Clear Channel could remove its sign structures, but could not terminate Property Owner's vested right to use the location specified in the 1986 variance to display general advertising on the Property.

5 Because the 1986 variance gave the Property Owner a vested right to display the Billboards prior to the effective date of Proposition G, the 2003 permit under appeal is simply a permissible authorization for the reinstallation of existing legal billboards after necessary maintenance.

The undersigned hereby certify that the findings above were adopted by the Board of Appeals at its regular meeting of October 8th, 2003.

Arnold Y.K. Chin, President

Robert H. Feldman, Executive Secretary

EXHIBIT D

Court of Appeal, First District, Division 2, California.
CLEAR CHANNEL OUTDOOR, INC., Plaintiff and Appellant,
v.
BOARD OF APPEALS OF THE CITY AND COUNTY OF SAN FRANCISCO, Defendant and Respondent;
Cheol Hoon Lee et al., Real Parties in Interest and Respondents.

No. A125636.
(City and County of San Francisco Super. Ct. No. CPF-08-508443).
Feb. 25, 2011.

Corinne Isabel Calfee, Christine Wade Griffith, SSL Law Firm LLP, San Francisco, CA, for Plaintiff and Appellant.

Victoria Wong, San Francisco, CA, Thomas S. Lakritz, Office of the City Attorney, San Francisco, CA, for Defendant and Respondent.

William M. Lukens, Lukens & Drummond, San Francisco, CA, for Intervener and Respondent.

LAMBDEN, J.

***1** Appellant Clear Channel Outdoor, Inc. (Clear Channel) appeals from a judgment issued by the Superior Court of the City and County of San Francisco dismissing Clear Channel's amended petition for a writ of administrative mandate after the court sustained respondents' demurrers on the ground that Clear Channel lacked standing. Clear Channel sought to vacate a March 2008 decision by the Board of Appeals (Board) for the City and County of San Francisco (City). The Board overturned a permit issued to Clear Channel allowing it to remove a sign structure on real property owned by real parties in interest Cheol Hoon Lee and Bula Lee (Lees), pursuant to which permit, the Board found, Clear Channel had already substantially removed the structure; found that the Lees had the right to reinstall and continue to display general advertising signage on their property; and authorized a revision of the permit to allow the Lees to restore the sign structure, which could be rebuilt on top of remnants left by Clear Channel.

Clear Channel argues it has standing to challenge the Board's decision in its entirety because it has a beneficial interest in the decision on a number of grounds. The Board and the Lees (collectively, respondents) challenge each of Clear Channel's beneficial interest claims, and also argue that we should affirm the court's judgment because Clear Channel's amended petition was time-barred.

We conclude Clear Channel has standing to challenge significant portions of the Board's decision because a number of Clear Channel's beneficial interest claims involve potential "injuries in fact" that fall within the "zone of interests" protected or regulated by the decision. (See *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 361 (*Associated Builders*) [California's "beneficial interest" standing requirement is equivalent to the federal "injury in fact" test]; *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1233-1234 (*Waste Management*) [the interest must come within the "zone of interests to be protected or regulated"].) Clear Channel has established a beneficial interest in those portions of the decision that relate to its rights and conduct in managing any signage remnants it left on the Lees' property and signage it owns elsewhere in San Francisco, including the Board's rulings regarding Clear Channel's related permit rights. It does not have a beneficial interest in the Board's rulings that the Lees have the right to reinstall a sign structure and continue to display general advertising signage on their property to the extent these rulings are unrelated to Clear Channel's rights and conduct in managing its own signage. It also does not have a beneficial interest in the entirety of the Board's decision based on its business interests because these are not within the zone of interests implicated by the decision, nor does it have a beneficial interest based solely on its participation as a party in the Board proceedings, or its status as a permit holder, because these do not, by themselves, establish "injuries in fact."

***2** We reject respondents' argument that Clear Channel's amended petition was time-barred. We reverse and remand for further proceedings consistent with this opinion.

BACKGROUND

In our review of the court's order sustaining respondents' demurrers, we consider Clear Channel's petition allegations, and matters which may be judicially noticed. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) Therefore, we focus on these allegations, and those matters for which judicial notice was properly requested below [FN1] or granted by this court. Our discussion of facts and law in this background section is taken from Clear Channel's amended petition because we are reviewing the lower court's demurrer rulings. Nothing herein should be construed as our agreement with any of Clear Channel's allegations unless so stated.

> FN1. Each of the parties submitted requests for judicial notice of certain materials to the trial court. The parties do not indicate whether the superior court specifically ruled on their requests for judicial notice, and we have not found such a ruling in the record. We have the authority to take judicial notice of these materials pursuant to Evidence Code section 459.

Clear Channel's Amended Petition Allegations

Local Law Regarding General Advertising Signs

According to Clear Channel, rooftop billboards are considered non-conforming structures under the San Francisco Municipal Code. Generally, existing structures and uses can remain, but cannot be replaced or expanded. Also, San Francisco's Planning Code, as amended by the City's voters in 2002 via Proposition G, designates general advertising signs as non-conforming land uses and structures, and prohibits new general advertising signs. Thus, "non-conforming land uses and structures may not be replaced or rebuilt under most circumstances," and "general advertising signs, once removed may not be replaced or rebuilt." San Francisco's Planning Code section 604, subdivision (h) (section 604, subd. (h)) specifically states:

" 'A sign which is voluntarily destroyed or removed by its owner or which is required by law to be removed may be restored only in full conformity with the provisions of this Code.... A general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location, and the erection, construction, and/or installation of a general advertising sign at that location to replace the previous existing sign shall be deemed to be a new sign in violation of Section 611 [subdivision] (a) of this Code ....' " (§ 604, subd. (h).)

Clear Channel's Removal of its Signs

Clear Channel owned two outdoor general advertising signs on the rooftop of commercial property located at Market and 16th Streets in San Francisco, which space it leased from Cheol Hoon Lee and Bula Lee. The parties' rights and responsibilities were governed by a 1987 lease agreement (lease), which contained two particularly relevant provisions. The first, as alleged in Clear Channel's petition, gave Clear Channel the right to remove its signs at any time, stating, " '[A]ll signs, structures and improvements placed on the premises by or for the Lessee [Clear Channel] shall remain the property of the Lessee, and ... *Lessee shall have the right to remove the same at any time during the term of the Lease or after the expiration of the Lease.*' "

***3** The second lease provision, as alleged, gave Clear Channel the right to "apply for and control all governmental permits for the [s]igns." It stated, " '[T]he Lessee shall have the right to make any necessary applications with, and obtain permits from, governmental bodies for the construction and maintenance of Lessee's [Clear Channel's] signs, at the sole discretion of the Lessee. All such permits shall always remain the property of Lessee.' "

In 2006, the Lees notified Clear Channel that they would not renew the lease, set to expire on May 14, 2007, and would charge a holdover rent of $150,000 per week if Clear Channel did not terminate its occupancy. In response, Clear Channel applied to the City's Planning Department and the Department of Building Inspection "for a removal permit in order to exercise its option to remove its [s]igns." The departments approved this application on May 9, 2007, and issued a removal permit to Clear Channel.

The Lees' Appeal to the Board

After Clear Channel removed the signs, the Lees appealed to the Board. FN2 They argued Clear Channel was not authorized to apply for the removal permit, and asked the Board to change it to a building permit that would allow the Lees to build new rooftop billboards on

their property, notwithstanding, Clear Channel alleged, "the Planning Code's prohibition against building new signs to replace signs that have been removed by their owner."

FN2. Clear Channel alleges that respondent and real party in interest Tony Lee, the Lees' son, and Cheol Hoon Lee were the actual parties to the appeal.

At its October 2007 hearing, the Board declined to consider the lease's terms. It found Clear Channel did not have the authority to apply for a removal permit and had submitted a defective application, and decided to revoke the permit as issued to Clear Channel. The Board also discussed how it could order the City to allow the Lees to erect new rooftop signs on their property, despite the views of representatives from the city attorney's office and the Planning Department that local law prevented the City from doing so.

In March 2008, the Board denied a rehearing request by Clear Channel. It granted the Lees' appeal and adopted 27 findings of fact and conclusions of law in support of its written decision (decision), which contained three parts. First, the Board overturned the permit as issued to Clear Channel by the Department of Building Inspection; second, it found that the Lees had the right to reinstall and to display general advertising signage on their property; and third, it authorized revision of the removal permit previously issued to Clear Channel so as to allow the Lees to restore the sign structure on their roof. FN3

FN3. Respondents requested below that the court take judicial notice of the decision in support of their demurrers pursuant to Evidence Code section 452, subdivision (c) and related case law. We have found no indication that the court ruled on this request. All of the parties discuss the decision in their appellate papers. We construe their references as requests that we take judicial notice of the decision, and do so pursuant to Evidence Code section 459.

Clear Channel sought a writ from the superior court pursuant to Code of Civil Procedure section 1094.5 directing the Board to set aside and vacate its decision and findings in their entirety, restore Clear Channel's permit, revoke any related permits issued to the Lees, and reverse any action taken by the Lees based on permits issued to them. According to Clear Channel, the Board's decision was invalid for numerous reasons, including that the Board did not give Clear Channel a fair hearing by refusing to consider the terms of the lease, committed numerous prejudicial abuses of discretion, acted outside of its jurisdiction, adopted findings unsupported by the evidence, and issued a decision unsupported by the findings. Clear Channel alleged it had standing because it had a beneficial interest in the Board's decision over and above the general public interest on numerous grounds.

Respondents' Demurrers

*4 In January 2009, the court granted the Board's demurrer to Clear Channel's original petition, with leave to amend, because Clear Channel failed to allege a sufficient beneficial interest in the Board's findings and decision. The court found that Clear Channel's "interest consisted of having a permit to remove the signs; once removed [Clear Channel] had no further interest. Competition with the Lee's [*sic*] is not a sufficient interest."

Clear Channel filed an amended petition, to which respondents demurred. Each argued

Clear Channel lacked the requisite beneficial interest to establish standing. Clear Channel argued it had a sufficient beneficial interest for a variety of reasons, including because it was a permit holder challenging an order revoking and revising its permit, an active participant in the subject administrative hearings, and a party whose interests were inextricably connected to the Board's interpretation of section 604, subdivision (h).

The superior court sustained both demurrers without leave to amend, stating in its written order simply that "petitioner has no standing," and entered judgment in favor of respondents. Clear Channel filed a timely notice of appeal from the court's order and judgment.

DISCUSSION

I. *Our Review of Demurrers*

We conduct a de novo review of a trial court's order sustaining a demurrer. (*Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 631.) We treat demurrers " ' "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." ' " (*Zelig v. County of Los Angeles, supra,* 27 Cal.4th at p. 1126.) As we have already indicated, we also consider matters which may be judicially noticed. (*Ibid.*) We give the amended petition " 'a reasonable interpretation, reading it as a whole and its parts in their context,' " to determine whether it states facts sufficient to constitute a cause of action." (*Ibid.*) We reverse the trial court "if the plaintiff has stated a cause of action under any possible legal theory." (*Mendoza v. Town of Ross, supra,* at p. 631.) Conversely, "unless failure to grant leave to amend was an abuse of discretion, the appellate court must affirm the judgment if it is correct on any theory." (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742.) The appellant bears the burden of demonstrating error. (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879.)

II. *Clear Channel's Standing Arguments*

Clear Channel argues we must reverse the trial court judgment because Clear Channel has standing to challenge the Board's decision in its entirety. Clear Channel argues it has standing based on its legal right to participate in the Board proceedings; because it was the permit applicant and holder of a permit revoked by the Board; because "important rights remain at stake in possession of the permit and the Board's erroneous findings continue to affect Clear Channel's rights and conduct," based both on Clear Channel's interests in managing its signage and its business interests; and because the Board's decision establishes administrative precedent.

***5** Respondents dispute each of Clear Channel's arguments. They argue that Clear Channel's legal right to participate, and its status, in the Board's proceedings are by themselves not sufficient to establish standing; Clear Channel does not have a beneficial interest regarding its permit or signage because its removal of its sign structure on the Lees' property rendered moot any concerns it might have about the Board's decision; and Clear Channel's business interests fall outside the zone of interests to be protected or regulated by the duty asserted by the Board.

We conclude that Clear Channel has standing to challenge significant portions of the Board's decision. Specifically, it has standing to challenge the Board's rulings regarding the remnants of sign structure the Board found Clear Channel left on the Lees' property and, if these remnants in fact remain, to challenge the Board's overturning of Clear Channel's permit.

It also has standing to challenge the Board's rulings in support of overturning its permit because these rulings potentially affect Clear Channel's ability to manage signage it owns elsewhere in San Francisco.

Clear Channel does not have a beneficial interest in the Board's rulings that the Lees have the right to reinstall a sign structure and continue to display general advertising signage on their property to the extent that these rulings do not affect Clear Channel's management of any remnants it left on the Lees' property. Clear Channel also has not established standing to challenge the entirety of the Board's decision based on its business interests, or based solely on its participation or status in the Board's proceedings, because these do not involve "injuries in fact" within the "zone of interests" protected or regulated by the decision. (See *Associated Builders, supra,* 21 Cal.4th at p. 361; *Waste Management, supra,* 79 Cal.App.4th at p. 1233.)

A. *The Board's Decision*

The Board overturned the permit as issued to Clear Channel, confirmed the Lees' right to reinstall and display general advertising signage on their property, and authorized the revision of the permit previously issued to Clear Channel "to allow reconstruction of general advertising signage at the [p]roperty in the same size and location as previously existed. It made numerous findings in support of its decision, including the following:

General advertising signs had been located at the Lees' property for nearly 70 years. When the permit was issued to Clear Channel, general advertising on the property was a lawful, nonconforming use and the signage was a lawful, non-complying structure pursuant to San Francisco Planning Code section 611, subdivision (a).

The Clear Channel agent who applied for the permit to remove the sign structure did not properly complete certain portions of the permit application, which omissions were overlooked by the City.

The Lees neither authorized the permit application, nor agreed to "voluntarily" surrender their rights to display signage on their property. They intended that Clear Channel remove its signage so they could lease the space to a different tenant, and did not intend to "voluntarily" forfeit their right to the future use of the rooftop for general advertising.

***6** Clear Channel "substantially" removed the signage at the property during the 15-day period to appeal the issuance of the permit to the Board.

The Board determined that in a previous case, also involving Clear Channel (*Clear Channel Outdoor v. Dept. of Building Inspection* (*Pocoroba*) (Oct. 8, 2003, No. 03-036) [nonpub. opn.]), "the right to display general advertising signs on a property belongs to the property owner, that the removal of a legal non-complying general advertising sign structure without the consent of a property owner does not constitute removal or destruction of the nonconforming use, and that the restoration of a general advertising sign structure removed without the consent of a property owner would not constitute a new general advertising sign" under San Francisco Planning Code section 611, subdivision (a).

The Board recounted that after *Pocoroba,* an ordinance was passed amending certain pro-

visions in section 604, subdivision (h). The City Attorney concluded in a 2007 opinion that the plain language of the amended ordinance "vested the right to maintain a nonconforming use in the tenant sign company and not the property owner," and the Planning Department agreed. Nonetheless, the Board concluded that "the right to continue to display general advertising on a property as a legal, non-conforming use belongs to [the Lees] and is not subject to forfeiture by termination of a tenant's lease and a tenant's unilateral removal of tenant improvements." Therefore, the Lees did not forfeit their rights to continue to display general advertising on their property.

The Board also concluded, as an "independent basis" for its decision,[FN4] that section 106.3.1.6 of the San Francisco Building Code requires building permits to be issued only to an owner of the real property to which the permit pertains, or the owner's authorized agent. The Board, noting Clear Channel's contention that its lease with the Lees gave it the right to seek the permit unilaterally, "decline[d] to interpret the private contract." Because the Lees did not authorize the permit, it "was issued to a party that did not demonstrate apparent authority to obtain it," and the permit did not forfeit the Lees' rights to a non-complying structure or non-conforming use.

> FN4. The Board claimed that a number of its findings were each an "independent basis" for its decision, without further explanation. We have carefully reviewed the Board's decision, and conclude that no one finding supports all three parts of its decision, and that at least some aspects of the Board's decision necessarily implicate beneficial interests of Clear Channel, as we discuss herein.

The Board also found, as another "independent" basis for its decision, that the "sign structure ... was not 'destroyed or removed' within the meaning of [section 604, subdivision (h)]." It based this finding on evidence that "Clear Channel 'sealed off remnants of the wood affixed to the roof' that had been part of its sign structure and did not remove these portions of the sign structure. Because these portions of the sign structure remain, [the Lees] may revise the [permit] to accomplish alterations required to replace the signboard...."

The Board decided, as another purported "independent basis" for its decision, to exercise its discretionary authority pursuant to Business and Tax Regulation Code, article 1, section 26. It found, based on testimony of property owners, "a pattern of heavy-handed business practices by general advertising sign companies in lease renewal negotiations that is not in the best interests of the City's business community or residents," and "decline[d] to approve a building permit that would encourage and reward such practices."

*7 The Board also found that the Lees did not voluntarily remove the signage on their property because they did not authorize Clear Channel's removal of it. The removal was "akin to a 'calamity' under Planning Code section 188[, subdivision] (b)," and did not forfeit the Lees' rights to continue the non-conforming use and maintain the non-complying structure, allowing for restoration of the signage without conflicting with section 604, subdivision (h).

B. *The Beneficial Interest Requirement*

Clear Channel filed its amended petition pursuant to Code of Civil Procedure section

1094.5, which authorizes writs of mandate for administrative orders that may issue only if the petitioner is a "party beneficially interested." (Code Civ. Proc., § 1086.) This "has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796 (*Carsten*), followed in *Associated Builders, supra,* 21 Cal.4th at p. 361.)

The petitioner must have a sufficient interest to vigorously press its position in an actual controversy with the respondent. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439 .) Relief is unavailable where the plaintiff fails to show the writ will subserve or protect plaintiff's rights or interests, or where it is apparent plaintiff has no direct interest in the governmental action, and would not accrue any benefit from the writ. (*J & K Painting Co. v. Bradshaw* (1996) 45 Cal.App.4th 1394, 1399.) Lack of standing is a jurisdictional defect that mandates dismissal. (*Common Cause,* at p. 438.) If a writ petition indicates the petitioner lacks standing to obtain relief, the petition is vulnerable to a general demurrer on the ground that it fails to state a cause of action. (*Carsten, supra,* 27 Cal.3d at p. 796.)

Our Supreme Court has held that the "beneficial interest" standard "is equivalent to the federal 'injury in fact' test, which requires a party to prove by a preponderance of the evidence that it has suffered 'an invasion of a legally protected interest that is "(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." ' " (*Associated Builders, supra,* 21 Cal.4th at pp. 361-362.) The Third District has held that implicit in our standing rules is the requirement that, like the federal rules, the interest asserted must be within the "zone of interests to be protected or regulated by the legal duty asserted" (*Waste Management, supra,* 79 Cal.App.4th at pp. 1233-1234), meaning "the plaintiff's interest in the legal duty asserted must be direct rather than indirect or attenuated." (*Id.* at p. 1234.)

Clear Channel seems to suggest in its reply brief that this summary statement in *Waste Management* is a lower "zone of interests" standard than the federal standard. We disagree. Our courts' views of the standards are the same. As the *Waste Management* court states in introducing this summary statement, "the federal law of standing is persuasive ... [and] aptly states a qualification that is implicit in our rules of standing." (*Waste Management, supra,* 79 Cal.App.4th at p. 1234.)

***8** This "zone of interests" test has been applied by other appellate courts, including in this district. (See *Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099, 1107 [Division Five of this District]), *Regency Outdoor Advertising, Inc. v. City of West Hollywood* (2007) 153 Cal.App.4th 825, 829-830 (*Regency*) [Second District]; and *Burrtec Waste Industries, Inc. v. City of Colton* (2002) 97 Cal.App.4th 1133, 1136-1140 [Fourth District].) In other words, as Division Five of this District has stated, "[t]o demonstrate a beneficial interest sufficient to pursue a mandamus action, a party must show a direct and substantial interest that falls within the zone of interests to be protected by the legal duty asserted." (*Lindelli,* at p. 1107, citing *Parker v. Bowron* (1953) 40 Cal.2d 344, 351 [" 'a writ of mandate ... will be granted only when necessary to protect a substantial right and only when it is shown that some substantial damage will be suffered by the petitioner if said writ is denied' "] and *Waste Man-*

agement, supra, 79 Cal.App.4th at pp. 1233-1234 .)

Therefore, we must determine whether Clear Channel has a direct and substantial interest in the Board's decision, i.e., an injury in fact, that falls within the zone of interests regulated or protected by the decision.

C. *Clear Channel's Standing Based on Its Interest in Managing Its Signage*

Clear Channel's rights and conduct regarding its management of its signage are directly affected by significant portions of the Board's decision, such as the Board's finding that it left behind remnants of its signage on the Lee's property. To the extent these remnants in fact remain and Clear Channel seeks to remove them, its rights to do so are directly affected by the Board's overturning of the permit as issued to Clear Channel. The Board's rulings supporting the overturning of the permit also potentially directly impact Clear Channel's ability to manage the signage it alleges to own elsewhere in San Francisco pursuant to other leases. All of these matters are within the zone of interests protected and regulated by the decision. Therefore, Clear Channel has standing to challenge these portions of the Board's decision.

In its amended petition, Clear Channel alleged standing because, among other things, as owner and operator of the signage, it was directly and prejudicially injured by the Board's decision. It alleged that it removed its signage before the Board revoked its permit, and that the Board abused its discretion in finding that the signage had not been "destroyed or removed" under the terms of section 604, subdivision (h) because Clear Channel left behind sealed remnants of the signage, upon which the Lees could replace the signboard. Clear Channel contends on appeal that, because it owns all of the signage, including the remnants, under the lease, it is open to possible liability by third parties if the signage constructed over these remnants causes injury to anyone in the future. Therefore, it "still has beneficial interest in maintaining the permit to remove the sign." It also contends that the Board's decision regarding its right to the permit to remove the remnants of its signage potentially affects its rights and conduct regarding signage it owns throughout San Francisco. We agree that Clear Channel has standing to challenge these portions of the Board's decision.

***9** Our task in determining standing is not to decide the merits of the parties' arguments, such as whether or not signage remnants remain on the property, or whether or not the Board should have considered the terms of the lease. At the demurrer stage, we determine only whether Clear Channel's allegations and arguments establish the requisite beneficial interest, i.e., "a direct and substantial interest that falls within the zone of interests to be protected by the legal duty asserted." (*Lindelli v. Town of San Anselmo, supra,* 111 Cal.App.4th at p. 1107.)

The Board's decision to overturn Clear Channel's permit was based on its findings about Clear Channel's rights and conduct, and its decision to authorize revision of the permit to allow the Lees to reconstruct signage appears to be based on its finding that Clear Channel left remnants of signage (which revision it refers to only in regard to these remnants). This includes the Board's finding that, because Clear Channel left these remnants behind, the sign structure was not "destroyed or removed" as that phrase is used in section 604, subdivision (h). Clear Channel has the requisite beneficial interest in these portions of the Board's decision

because they directly relate to Clear Channel's management of its purported property, the signage remnants. These rights are not moot in light of the disputed continued existence of these remnants.

Furthermore, Clear Channel's rights and conduct in managing its signage are plainly within the "zone of interests" protected and regulated by the City's signage ordinances, contained in article 6 of its Planning Code, including section 604, subdivision (h). Planning Code section 601 states the purposes of these ordinances:

"This Article 6 is adopted in recognition of the important function of signs and of the need for their regulation under the Comprehensive Zoning Ordinance of the City and County. In addition to those purposes of the City Planning Code stated in Section 101, it is the further purpose of this article 6 to safeguard and enhance property values in residential, commercial and industrial areas; to protect public investment in and the character and dignity of public buildings, open spaces and thoroughfares; to protect the distinctive appearance of San Francisco which is produced by its unique geography, topography, street patterns, skyline and architectural features; to provide an environment which will promote the development of business in the City; to encourage sound practices and lessen the objectionable effects of competition in respect to size and placement of signs; to aid in the attraction of tourists and other visitors who are so important to the economy of the City and County; to reduce hazards to motorists and pedestrians traveling on the public way; and thereby to promote the public health, safety and welfare." (S.F. Planning Code, § 601.)

Given section 601's emphasis on the regulation of signage, there is no question that Clear Channel's ability to manage its signage comes within the zone of interests protected or regulated by the Board's decision.

***10** Clear Channel's rights and conduct in managing signage it alleges to own elsewhere in San Francisco are also directly and substantially affected by the Board's rulings overturning Clear Channel's permit. A company has a beneficial interest in an administrative decision if its business operations are inextricably intertwined into the operation of an ordinance, as interpreted by an administrative decision, and within the zone of interests protected or regulated. Thus, in *Gowens v. City of Bakersfield* (1960) 179 Cal.App.2d 282 (*Gowens*), the City of Bakersfield passed an ordinance requiring hotel owners to impose a tax on "transient" guests. (*Id.* at p. 283.) A hotel owner sued for a judgment that the ordinance was unconstitutional and for injunctive relief against its enforcement, contending that the City of Bakersfield was threatening to enforce this ordinance against him and other hotel owners. (*Ibid.*) The trial court sustained defendants' demurrer to this complaint and dismissed the action, and the hotel owner appealed. (*Id.* at p. 282.)

Defendants argued that the hotel owner did not have standing because he was not the person taxed (that was the transient), and therefore suffered no legal injury. (*Gowens, supra,* 179 Cal.App .2d at p. 283.) The appellate court rejected this argument. Instead, it found that the hotel owner was "vitally interested in the validity of the ordinance." (*Id.* at p. 285.) The hotel owner, along with his business interests,[FN5] had an interest in the decision because his "business operations are inextricably interwoven into the operation of the ordinance. Under

threat of criminal and civil penalties, he is required to inform his prospective customers of the basis upon which the tax is levied and to collect, record, report and pay the tax to the tax collector. We are satisfied he has a sufficient interest to maintain the type of action here involved." (*Id.* at p. 286) The court reversed the trial court's judgment. (*Ibid.*)

> FN5. Clear Channel actually cites these cases in support of its argument that it has standing because the Board's decision affects its business interests, an argument with which we do not agree.

Similarly, in *Andal v. City of Stockton* (2006) 137 Cal.App.4th 86, the plaintiffs, which included three cell phone companies, alleged in a declaratory relief action that a local government fee imposed by the City of Stockton for the city's 911 communication system was unconstitutional because it had not been submitted for voter approval. (*Id.* at p. 88.) The City of Stockton won dismissal of the action by demurrer for failure to exhaust administrative remedies. (*Id.* at pp. 89-90.) The appellate court found this was not a bar (*id.* at pp. 91-92), and addressed plaintiffs' argument that the cell phone companies lacked standing because they were not directly affected by the law. (*Id.* a pp. 90, 94.) The court rejected the argument, finding that the cell phone companies' business operations were inextricably intertwined into the operation of the ordinance, relying on *Gowens,* and reversed the trial court's judgment (*Id.* at pp. 94-95; see also *Atlas Hotels, Inc. v. Acker* (1964) 230 Cal.App.2d 658, 660 [following *Gowens* to note that mandamus is a proper remedy in a case involving a challenge by hotel owners to a tax on transient hotel room occupants].)

***11** These cases indicate Clear Channel has a beneficial interest in the Board's rulings in support of overturning the permit based on Clear Channel's management of signage elsewhere in San Francisco, even though the Board's decision was regarding the Lees' property alone. The Board overturned Clear Channel's permit for two independent reasons. First, it interpreted the City's permit procedures so as to require lessees who purportedly own signage on a lessor's property to obtain the lessor's approval to any permit application to remove signage. Second, it overturned the permit under its discretionary authority because it found general advertising sign companies had engaged in heavy handed business practices in lease negotiations. Clear Channel's rights and conduct in managing signage it alleges to own elsewhere, e.g., its ability to obtain permits to remove signage, is inextricably interwoven into each of these rulings. These interests are within the zone of interests protected and regulated by the decision, as indicated by the statement of purpose contained in San Francisco Planning Code section 601. Therefore, Clear Channel has a beneficial interest in these portions of the Board's decision.

Respondents' arguments that Clear Channel does not have a beneficial interest in the Board's decision based on Clear Channel's rights and conduct in managing its signage are unpersuasive. The Board argues that nothing in the Board's decision affected Clear Channel's rights under its permit and, therefore, such rights and conducts are not a basis for standing. This is incorrect in light of the Board's finding that Clear Channel left remnants of signage remaining on the Lees' property, and because the Board's determinations in overturning Clear Channel's permit could affect Clear Channel's rights and conduct in managing signage elsewhere.

The Board also contends that Clear Channel has "made clear that its real motive is to safeguard its economic leverage vis-à-vis other landlords and other advertising companies in San Francisco." We agree that Clear Channel's business interests are not a basis for standing, as we discuss further below. However, Clear Channel's "real motive" is not relevant in our review of whether or not it holds a sufficient beneficial interest in the Board's decision. Our review is limited to whether Clear Channel makes allegations which establish a beneficial interest, whether or not it is "really" interested in what it asserts.

The Board further argues that Clear Channel cannot maintain standing because the Board asserted as an "independent ground" for its decision its exercise of its equitable authority pursuant to San Francisco Business and Tax Regulation Code section 26 (section 26). The Board notes, "it is well established that section 26 administrative discretion is not cabined by specific criteria that may be set forth in city codes or ordinances. Instead, the discretion is informed by the public interest, encompassing anything impacting the public health, safety or general welfare." (*Martin v. City and County of San Francisco* (2005) 135 Cal.App.4th 392, 407, fn. omitted.) Section 26 does not obligate the City to exercise its discretion in the same fashion with regard to all permit applications. (*Martin,* at p. 407, fn. 8.) Therefore, argues the Board, its determinations about Clear Channel's permit do not have any relevance to Clear Channel's signage elsewhere.

***12** This argument is not persuasive. The Board has broad discretion to act under section 26, but its exercise of such authority is not unreviewable. It exercised this authority specifically to "decline to approve a building permit that would encourage and reward" what the Board found was "a pattern of heavy-handed business practices by general advertising sign companies in lease renewal negotiations that is not in the best interests of the City's business community or residents." The Board obviously considered Clear Channel's lease negotiation practices with the Lees to be so unacceptable as to justify overturning its permit. The ruling potentially affects Clear Channel's ability to remove any remnants of signage that might remain on the property, and could impact Clear Channel's removal of other signage in the City, thereby giving Clear Channel a beneficial interest in the decision, as we have discussed.

The Board also argues that Clear Channel has conceded that the removal of the signage remnants is an "insignificant right," based on Clear Channel's voluntary dismissal of its federal action. This is utterly unpersuasive. Nothing in the dismissal contains such a concession.

Finally, the Board argues that Clear Channel's challenge of the Board's decision based on signs it alleges to own elsewhere in the City amounts to a request for an advisory opinion. It contends *Gowens, supra,* 179 Cal.App.2d 282, does not apply here because the hotel owner was required to apply the tax under threat of criminal penalties, while Clear Channel is not compelled to do anything. We disagree. At a minimum, the Board's decision indicates that Clear Channel cannot remove any signage it has placed on San Francisco real property pursuant to leases with property owners without obtaining the property owners' consent to its permit application. The Board's decision, therefore, potentially has a direct and substantial impact on Clear Channel's ability to manage its signage.[FN6]

FN6. The focus of the Board's argument actually is regarding Clear Channel's lack of a

beneficial interest in the Board's enforcement of section 604, subdivision (h).

The Lees make three arguments why Clear Channel lacks standing to challenge the overturning of its permit. First, the Lees contend that "it is undisputed that Clear Channel removed its property from the Lees' building long before the Board revised the permit to allow the Lees to erect their own signs." This too ignores the Board's finding that Clear Channel left remnants of signage on the Lees' property.

Second, the Lees argue that Clear Channel's concern that it will be liable to anyone who suffers an injury in the future from the signage lacks merit because the lease does not contain a provision providing for continuing liability. This, however, is a lease issue that is not before us.[FN7]

FN7. The Lees also argue that Clear Channel's claim of potential liability is not relevant to signage owned elsewhere by Clear Channel. We agree with the Lees on this issue.

Third, the Lees argue that "[s]ince the existence of Clear Channel's supposed 'beneficial interest' in 'fully remov[ing] the sign' derives solely from the factual finding it disputes and seeks to have overturned in through mandamus, the 'beneficial interest' will evaporate should Clear Channel be successful; the very 'interest' sought to be protected by the writ will disappear upon its issuance." We fail to see why this should act to bar Clear Channel from obtaining a writ that vacates what it considers to be an erroneous Board finding.

***13** Although Clear Channel has standing to challenge the Board's interpretation of the phrase "destroyed or removed" as used in section 604, subdivision (h) because it relates directly to Clear Channel's management of any remaining signage remnants on the Lees' property, Clear Channel does not have standing to challenge the Board's determination that the "owner" of signage rights under section 604, subdivision (h) is the property owner, not the signage company. Clear Channel argues it has standing because the Board's determination affects its rights "to exclusive maintenance and removal of signs under hundreds of other leases throughout the City." We disagree with this argument, which is based on Clear Channel's business interests. The Board's interpretation of section 604, subdivision (h), as stated, relates only to whether or not the Lees forfeited their rights to reinstall a sign structure and display general advertising signage on their property. The Board concluded, based on *Pocoroba,* that under section 604, subdivision (h) "the right to continue to display general advertising on a property as a legal, non-conforming use belongs to the [Lees] and is not subject to forfeiture by termination of a tenant's lease and a tenant's unilateral removal of tenant improvements." This conclusion as stated relates only to the Lees' rights, and not to Clear Channel's. Therefore, Clear Channel has no basis to challenge it.

This portion of the Board's decision only establishes the Lees' rights generally to reinstall a sign structure and continue to display general advertising. It does not address the Board's overturning of the permit as to Clear Channel, its authorization of a revision of that particular permit to allow the Lees to restore the sign structure on top of existing signage remnants, or Clear Channel's rights regarding any remaining signage remnants. Therefore, although Clear

Channel does not have standing to challenge this portion of the Board's decision, it is not a basis for affirming the trial court's sustaining of respondents' demurrers. The Board's finding that the Lees did not "voluntarily" remove the general advertising from their property, making the removal "akin to a 'calamity' under Planning Code Section 188 [, subdivision] (b)," is similarly limited in its scope.

D. *Clear Channel's Business Interests*

Clear Channel also argues that it has standing because the Board's decision has a direct impact on its business interests. We reject this argument because these interests are not within the "zone of interests" to be protected or regulated by the Board's decision.

Clear Channel alleged in its amended petition that its "very ability to conduct its business in San Francisco" was directly damaged because the Board's decision set a precedent that undermines Clear Channel's rights to ownership of nearly 350 signs in the City, "many of which are governed by leases between the landowner and Clear Channel with provisions nearly identical to those in the lease ." Clear Channel contends that in its lease with the Lees and other landlords in the City, it has bargained for the exclusive right to have a sign on the property and to apply for and hold all permits in connection with these signs. It claims that under the circumstances, including the limitations on new signage in section 604, subdivision (h), it has a substantial business interest in the "continuing value" of permits related to its signage throughout the City.

***14** Specifically, Clear Channel argues that "[a]t its core, the controversy between the parties is not about one set of signs or the other, it is about ownership of *a permit* to build, maintain or remove advertising signs in a city that has placed severe constraints on the construction of new signs. Clear Channel held such a permit for the signs on Landlords' property before the Board's decision. After the Board's decision, Clear Channel no longer holds that permit-Landlords do. Landlords' extensive participation in this case speaks volumes about the value inherent in such a permit, and about the interests at stake in the Board's decision."

Clear Channel further argues that it will lose its "bargained-for right under the lease to be the lawful holder of any right to maintain an advertising sign on the Lees' property. As with any land use permit, the value rests with the right to conduct the use as much as with the physical representation of the use itself. The dispute in this case centers on the right, or permit, to conduct general advertising at a particular location. The right holds a value separate and apart from the physical advertising signs. Clear Channel obtained the right to maintain general advertising signs on the Lee property through a lease and a permit from the City of San Francisco. Since San Francisco has made new billboards unlawful, the rights to existing signs are even more valuable, because once a sign is removed, it cannot be replaced. The lease agreement between the Lees and Clear Channel provides that Clear Channel not only has the right to maintain general advertising signs on the property but also has the right to remove the signs any time before or after termination of the lease." According to Clear Channel, the Board's findings, particularly that under section 604, subdivision (h), the property owner, not the signage tenant, is the "owner" of the rights to non-complying signage, also "do concrete and particularized harm" to Clear Channel's business interests by, among other things, "eliminating the valuable right to control all permits that Clear Channel has negotiated for in its many other

leases throughout the City."

Clear Channel must demonstrate that its business interests come within the "zone of interests to be protected or regulated by the legal duty asserted" by the Board. (*Waste Management, supra,* 79 Cal.App.4th at pp. 1233-1234.) It argues that the purpose the City's signage ordinances extends to its business interests, based on its interpretation of one of the stated purposes in San Francisco Planning Code section 601. Clear Channel contends that the phrase, "it is the ... purpose of this Article 6 ... to provide an environment which will promote the development of business in the City" (S.F. Planning Code, § 601), extends protection to San Francisco's *business* environment generally, and, therefore, extends to Clear Channel's business interests in such things as the value of the permits it has purportedly bargained for in leases throughout the City. The Lees argue that this phrase does not establish the signage ordinances protect or regulate Clear Channel's business interests because it refers to the City's *physical* environment only. The Board argues that article 6 was "enacted to reduce and control the blight caused by business and general advertising signs. [Citation.] Nothing in the text of Article 6 supports Clear Channel's contention that it was intended to protect the financial or competitive interests [of] advertisers in San Francisco."

***15** We agree with respondents. As we have already discussed, San Francisco Planning Code section 601 indicates the signage ordinances are intended to regulate signage in San Francisco. Its emphasis is on the signage itself. The use of the term "promote" in the phrase highlighted by Clear Channel indicates that the "environment," physical or otherwise, relates specifically to the regulation of promotional signage that helps develop business in the City, and not to business interests such as those of Clear Channel. Therefore, Clear Channel fails to establish that its business interests are within the zone of interests involved here.

Our conclusion is consistent with those reached by other courts evaluating similar "business interest" arguments. In *Driving Sch. Assn. of Cal. v. San Mateo Union High Sch. Dist.* (1992) 11 Cal.App.4th 1513, Division One of this District held that a private association of driving schools that challenged a school district's charging high school students for driver training classes did not have a beneficial interest in the outcome of the relevant administrative proceeding because its only interest was in reducing competition, and was "not actually aggrieved by the fact that fees are charged." (*Id.* at p. 1517.) Similar economic competition arguments were rejected as outside the purposes of CEQA in *Waste Management, supra,* 79 Cal.App.4th at page 1235, and *Regency, supra,* 153 Cal.App.4th at pages 829-830. In short, Clear Channel's business interests are not a basis for standing.

E. *Clear Channel's Participation and Status in the Board's Proceedings*

Clear Channel also argues that its legal right to participate in the Board proceedings, and its status as a party in those proceedings and a permit holder, each is *alone* enough to establish standing to challenge the Board's decision in its entirety. It relies on language in a number of cases suggesting that petitioners who participate, as parties, permit holders, or otherwise, in administrative proceedings have a sufficient beneficial interest to establish standing. However, as indicated by the "injury in fact" and "zone of interests" standards, more is needed. (See *Associated Builders, supra,* 21 Cal.4th at p. 361; *Waste Management, supra,* 79 Cal.App.4th at p. 1233.)

As respondents point out, "a writ will not issue to enforce a technical, abstract or moot right." (*Braude v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 87.) This Division has emphasized petitioners' actual interests over their status in administrative proceedings when reviewing standing issues. We have stated, "it is not necessary that someone who petitions for a writ of mandate be a party to the action below," but that the person "must demonstrate that he is beneficially interested in the outcome of the proceeding." (*Brotherhood of Teamsters & Auto Truck Drivers v. Unemployment Ins. Appeals Bd.* (1987) 190 Cal.App.3d 1515, 1521.)

***16** The Supreme Court has specifically rejected a form of the "participation" argument. In *Carsten, supra,* 27 Cal.3d 793, the court considered whether a member of an administrative board could seek a writ to challenge the legality of an action taken by that board. (*Id.* at p. 795.) The board member/petitioner challenged the board's decision to replace a board-written examination with an objective national examination for psychology license applicants. (*Id.* at pp. 795-796.) The court concluded that, since the petitioner was "neither seeking a psychology license, nor in danger of losing any license she possesses under the rule adopted by the board, she is not a beneficially interested person within the meaning of Code of Civil Procedure section 1086." (*Id.* at p. 797.) It concluded that standing is established for " '[o]ne who is in fact adversely affected by governmental action' " that is judicially reviewable. (*Carsten,* at pp. 796-797, quoting Davis, 3 Administrative Law Treatise (1958) p. 291.) FN8

> FN8. Similarly, our Supreme Court has held that a petitioner does not establish standing by merely showing it has the right to sue from an administrative decision. (*People Ex Rel. Dept. of Conservation v. El Dorado County* (2005) 36 Cal.4th 971, 988 [the Director of the California Department of Conservation, although ultimately found to have standing, did not have standing based solely on a statutory authorization to sue].)

Clear Channel's participation and status arguments are based on language in opinions, most of them at least several decades old, which suggests mere participation or party/permit holder status is sufficient to establish standing. However, when viewed in light of the circumstances involved in each case, it is apparent that significant, ongoing beneficial interests also were typically involved.

Clear Channel points out that our Supreme Court has stated "that elemental principles of justice require that parties to the administrative proceeding be permitted to retain their status as such throughout the final judicial review by a court of law, for the fundamental issues in litigation remain essentially the same." (*Bodinson Mfg. Co. v. California Employment Com.* (1941) 17 Cal.2d 321, 330 (*Bodinson*), followed in *Temescal Water Co. v. Dept. Public Works* (1955) 44 Cal.2d 90, 107 [if respondents "show their participation as interested parties in that proceeding, they may establish as well their interest in a judicial proceeding to review the department's determination"].)

Furthermore, based on *Bodinson* and other cases, one appellate court has stated that "[i]t is settled law in California that if a person is permitted by statute to appear and take part in an administrative hearing, he is sufficiently beneficially interested to seek a writ of mandate to review the administrative decision or disposition." (*Memorial Hosp. of Southern Cal. v. State Health Planning Council* (1972) 28 Cal.App.3d 167, 178 (*Memorial Hospital*); see also *Cov-*

ert v. State Board of Equalization (1946) 29 Cal.2d 125, 130 [the right to complain to the State Board of Equalization about a licensee "would be of little value if the complainant could not compel the board to perform its duties"].)

However, most of the cases cited by Clear Channel involve petitioners with direct and substantial ongoing interests in the subject matter of the administrative proceedings as well. In *Bodinson,* the statute at issue specifically granted standing to an " 'employer whose reserve account may be affected by the payment of benefits to any individual formerly in his employ.' " (*Bodinson, supra,* 17 Cal.2d at p. 330.) The court concluded that the petitioner met these criteria. (*Ibid.*) Clear Channel cites other cases where the petitioners held similarly direct and substantial ongoing interests, although they were not extensively discussed. (See *Tieberg v. Superior Court* (1966) 243 Cal.App.2d 277, 283 [statute specifically granted department director standing, he was party to the administrative proceeding, and the decision to be reviewed directly affected his administration of the fund at issue]; *Temescal Water Co. v. Dept. of Public Works, supra,* 44 Cal.2d at pp. 93-94 & fn. 1 [petitioners have standing to challenge the issuance of the permit which would have deprived them access to water]; *Bakkebo v. Municipal Court* (1981) 124 Cal.App.3d 229, 233-234 [sureties subject to enforcement of amended judgment against them had standing to seek relief from entry of judgment].)

***17** Clear Channel also cites to *Beverly Hills Fed. S & L Assn. v. Superior Court,* (1968) 259 Cal.App.2d 306, in which the court stated, "the requisite standing to maintain an action for administrative mandamus ... exists where ... the petitioner was a party to the administrative proceeding which the court is to review. Thus 'party status' in the administrative proceeding is equated with the 'beneficial interest' required by [Code of Civil Procedure] section 1086." (*Id.* at pp. 316-317, fn. 7.) However, this discussion is dicta regarding an issue that was not raised by the parties. (*Id.* at p. 316, fn. 7["[t]he issue of petitioners' standing to maintain the present proceeding is not raised before this court"].) Therefore, we do not give weight to it.

The existence of an ongoing interest is also suggested in *Memorial Hospital, supra,* 28 Cal.App.3d 167, which Clear Channel relies on prominently for its participation argument. The plaintiffs, four Los Angeles area accredited acute medical facilities, objected in administrative proceedings to another hospital's application to an area health planning council to convert that hospital from a convalescent to an acute facility. (*Id.* at pp. 171, 173.) After the application approval, an overseeing state council received a notice of appeal and petition for a hearing, apparently initiated by more than one-third of the board members of the area health planning council. (*Id.* at pp. 172-173.) After some of these members had their names removed, the state council withdrew the petition and closed the appeal. (*Ibid.*) The plaintiff hospitals, contending this was invalid, demanded that a poll of voting members of the state council occur, as purportedly required by statute; defendants refused to do so, leading to the petition. (*Id.* at pp. 173-174.)

The real parties in interest demurred, including on the ground that the plaintiff hospitals lacked a beneficial interest, and the trial court agreed. (*Memorial Hosp., supra,* 28 Cal.App.3d at pp. 170-171, 174.) The plaintiff hospitals appealed. (*Id.* at p. 171.) The appellate court found that the plaintiff hospitals had standing based on their right by statute and administrative regulations to take part in the administrative proceedings below, another actual participa-

tion. (*Id.* at pp. 177-179.) For these and other reasons, the court reversed the judgment. (*Id.* at pp. 179-180.)

Thus, Clear Channel argues, the court in *Memorial Hospital* held that a party's right to participate in an administrative hearing was sufficient to establish standing. To the extent this is the case, we disagree with the decision for the reasons stated herein. However, the appellate court's discussion of the facts suggests it did not intend its holding to extend this far because it stated, without further explanation, that the plaintiff hospitals were "affected" by the application of the real party in interest. (*Memorial Hosp., supra,* 28 Cal.App.3d at p. 171.) [FN9] In other words, *Memorial Hospital's* discussion suggests the petitioners had ongoing interests as well.

> FN9. The court's discussion gives no insight into how the plaintiff hospitals were affected, although they may well have had their business interests affected by a new competitor. We do not mean to suggest, however, that business interests necessarily provide the requisite beneficial interest. To the contrary, given the zone of interests protected and regulated by the Board's decision, we conclude business interests do not establish a beneficial interest here.

***18** As support for its status argument, Clear Channel also cites cases that found a permit holder has standing to challenge administrative rulings. However, the facts of each case also indicate that the permit holder was seeking to engage in continuing activities. In *County of Okanogan v. Nat'l Marine Fisheries Serv.* (9th Cir.2003) 347 F.3d 1081, the court concluded that one of the plaintiffs seeking declaratory relief "indisputably had standing" as a permit holder. (*Id.* at pp. 1083-1084.) The case involved a challenge to the Forest Service's new special use permit requirements that would restrict the plaintiff's access and use of water from a stream, which plaintiff had been using for some time. (*Ibid.*) The plaintiff's ongoing interest in the use of the stream water was so obvious it did not merit discussion.

Similarly, in *Covert v. State Board of Equalization, supra,* 29 Cal.2d 125, the court reviewed a decision by the Board of Equalization to revoke the on-sale liquor license issued to an operator of a café that was an ongoing concern. The café owner's desire to have the ongoing use of the license was apparent.

The parties also had direct and substantial continuing interests in *Sierra Club, Inc. v. California Coastal Com.* (1979) 95 Cal.App.3d. 495 (*Sierra Club*), and *Greif v. Dullea* (1944) 66 Cal.App.2d 986, relied upon by Clear Channel for the proposition that a permit holder, as an indispensable party in administrative proceedings regarding the permit, had a right to appear as a party in court and defend its legal rights. In *Sierra Club,* the petitioner, an environmental group, sought to challenge the grant of a permit to a building developer for a development in a scenic area along the Pacific coast. (*Sierra Club,* at p. 498.) In *Grief,* the permit holder was a taxi cab company, in an action seeking to cancel permits authorizing it to operate taxi cabs in San Francisco. (*Greif,* at pp. 994-995.) In both cases, the courts found the permit holders were indispensable parties because, if they were not joined, the grant of relief sought would affect their interests. (*Sierra Club,* at p. 501; *Greif,* at p. 994.)

In short, in order to establish a beneficial interest in an administrative decision, California law requires that a petitioner demonstrate that it will suffer an "injury in fact" that comes within the "zone of interests" affected by the decision (See *Associated Builders, supra,* 21 Cal.4th at p. 361; *Waste Management, supra,* 79 Cal.App.4th at p. 1233). Participation in the proceedings, or status as a party or permit holder, are not *alone* sufficient to establish standing. The case law cited by Clear Channel does not contradict this requirement because their discussions indicate the petitioners had direct and substantial ongoing interests that were affected by the challenged administrative decisions. Therefore, we conclude that Clear Channel's participation and status arguments are without merit.

III. *The Service Requirements of Government Code Section 65009*

***19** Respondents argue as a separate ground for affirming the trial court's sustaining of their demurrers that Clear Channel's amended petition was barred because Clear Channel did not serve the real parties in interest within the 90-day deadline for service stated in Government Code section 65009 (section 65009). We conclude that this 90-day service deadline does not apply to real parties in interest and, therefore, reject respondents' argument.

Respondents made this same service argument in their demurrers below. The court did not address this issue in its order, sustaining respondents' demurrers without leave to amend based on standing only. At the demurrer hearing, it said that it "quite frankly didn't think so" when the Board's counsel asserting that it was "an important issue and an equally valid ground for sustaining the demurrer." Regardless, as we have indicated, "unless failure to grant leave to amend was an abuse of discretion, the appellate court must affirm the judgment if it is correct on any theory." (*Hendy v. Losse, supra,* 54 Cal.3d at p. 742.) Therefore, we address the issues raised by respondents.

In interpreting statutory language, " '[w]e begin with the fundamental rule that our primary task is to determine the lawmakers' intent.' [Citation.] The process of interpreting the statute to ascertain that intent may involve up to three steps.... [Citations.] We have explained this three-step sequence as follows: 'we first look to the plain meaning of the statutory language, then to its legislative history and finally to the reasonableness of a proposed construction.' " (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082.)

"In the first step of the interpretive process we look to the words of the statute themselves. [Citations.] The Legislature's chosen language is the most reliable indicator of its intent because ' "it is the language of the statute itself that has successfully braved the legislative gauntlet." ' [Citations.] We give the words of the statute 'a plain and commonsense meaning' unless the statute specifically defines the words to give them a special meaning." (*MacIsaac v. Waste Management Collection & Recycling, Inc., supra,* 134 Cal.App.4th at pp. 1082-1083.) " 'It is axiomatic that in the interpretation of a statute where the language is clear, its plain meaning should be followed.' " (*Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998.) Furthermore, we are not empowered to insert language into a statute. "Doing so would violate the cardinal rule of statutory construction that courts must not add provisions to statutes." (*Ibid.;* see also Code Civ. Proc., § 1858 ["[i]n the construction of a statute ..., the office of the Judge is simply to ascertain and declare what is in terms or in substance contained

therein, not to insert what has been omitted"].)

We are also mindful, however, that "[o]ur primary goal is to implement the legislative purpose, and, to do so, we may refuse to enforce a literal interpretation of the enactment if that interpretation produces an absurd result at odds with the legislative goal." (*Honig v. San Francisco Planning Dept.* (2005) 127 Cal.App.4th 520, 527.)

***20** Section 65009 relates to actions challenging local government decisions. It provides that an action or proceeding cannot be maintained (subject to an inapplicable exception) "to attack, review, set aside, void or annul any decision on the matters listed in Sections 65901 or 65903, or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit" (§ 65009, subd. (c)(1)(E)), "*unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body's decision.* " (§ 65009, subd. (c)(1), italics added.) This limitations period applies "to a broad range of local zoning and planning decisions" (*Honig v. San Francisco Planning Dept., supra,* 127 Cal.App.4th at p. 526), including "the grant, denial, or imposition of conditions on a variance or permit." (*Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 765.)

Respondents point out that section 65009's purpose "is to provide certainty for property owners and local governments regarding decisions made pursuant to this division." (§ 65009, subd .(a)(3).) Furthermore, "[u]pon the expiration of the time limits provided for in this section, all persons are barred from any further action or proceeding." (§ 65009, subd. (e).) Division Five of this District has stated that "[t]he short limitations period provided by [section 65009], subdivision (c) serves the important legislative purpose of permitting the rapid resolution of legal challenges to local zoning and planning decisions. [Citation.] 'The express and manifest intent of section 65009 is to provide local governments with certainty, after a short 90-day period for facial challenges, in the validity of their zoning enactments' and their zoning and planning decisions." (*Honig v. San Francisco Planning Dept., supra,* 127 Cal.App.4th at p. 528.)

The parties do not contest that section 65009 applies to Clear Channel's petition, nor do they contest that Clear Channel properly served the Board within the 90-day deadline set in section 65009, subdivision (c)(1)(E). They dispute the date the Lees were served, but do not dispute that the Lees were served more than 90 days after the Board's March 19, 2008 decision, but before the demurrers were filed.

The Board argues that "[u]nder [section 65009], parties like Clear Channel seeking to challenge a [Board] decision are required to file and serve *all* parties within 90 days of the [Board's] decision" (italics added), relying on *Beresford Neighborhood Assn. v. City of San Mateo* (1989) 207 Cal.App.3d 1180 (*Beresford*), as well as the case *Beresford* follows, *Sierra Club, supra,* 95 Cal.App.3d 495. The Board argues that *Beresford* "held that a party challenging various permit approvals *was required* to file and serve both the governmental respondent and the private real party in interest within the timeline set forth in ... section 65009." (Italics added.)

***21** Like the Board, the Lees argue that Clear Channel's amended petition is time barred by section 65009 because of Clear Channel's failure to serve the Lees within the 90-day service deadline. The Lees argue that, "[a]lthough the code section refers to 'legislative bodies,' [section] 65009's service requirements apply equally to real parties in interest as they do to governmental respondents," and that, given the legislative purpose, it would be absurd to enforce a literal interpretation of section 65009. Like the Board, the Lees rely significantly on *Beresford, supra,* 207 Cal.App.3d 1180, and *Sierra Club, supra,* 95 Cal.App.3d 495.

Respondents' arguments are not persuasive. *Beresford* and *Sierra Club* determined that under the circumstances, it was within the trial court's *discretion* pursuant to Code of Civil Procedure section 389 to conclude that the failure to name and serve an indispensable party were grounds for dismissal, not that such a dismissal was *required* by a limitations period such as that stated in section 65009.

The *Beresford* court reviewed the lower court's sustaining, without leave to amend, of a demurrer by the City of San Mateo to a complaint filed by the Beresford Neighborhood Association and an individual (collectively, Beresford). (*Beresford, supra,* 207 Cal.App.3d at p. 1185.) Beresford sought declaratory and injunctive relief, and a writ of mandate against the City of San Mateo regarding certain zoning and planning approvals for a senior citizens housing project. (*Ibid.*) The trial court sustained the City of San Mateo's demurrer without leave to amend, and Beresford appealed. (*Ibid.*) The trial court dismissed certain zoning claims because the amended complaint had failed to name the developer as a defendant; San Mateo argued, and the trial court apparently agreed, that the developer was an indispensable party, and that the claims had to be dismissed because the developer had not been joined prior to the expiration of the 120-day deadline for statute of limitations. (*Id.* at pp. 1187-1188.)

The appellate court affirmed the trial court, relying heavily on *Sierra Club.* (*Beresford, supra,* 207 Cal.App.3d at pp. 1188-1190.) The court concluded, based on *Sierra Club,* that it was too late for Beresford to add the developer because "[a] developer should not be required to postpone a project while awaiting commencement of litigation challenging its legality." (*Beresford,* at pp. 1189-1190.)

Beresford is inapposite to the present case. Beresford failed to name or serve at all the developer prior to the court's review of the demurrer. Here, however, the Lees were named in the original petition, and served prior to the demurrer being held. This is significant because *Sierra Club* makes clear that a court's determination to sustain a demurrer to an action for a party's failure to join an indispensable party (presuming that the Lees are indispensable parties) is *discretionary,* not mandatory, and determined pursuant to the guidelines articulated in Code of Civil Procedure section 389. (*Sierra Club, supra,* 95 Cal.App.3d at pp. 499-500.) Respondents have not argued the application of those criteria to the present case, insisting instead that the court *must* sustain a demurrer based on the 90-day deadline articulated in section 65009, subdivision (c)(1)(E). The cases simply do not support this argument.

***22** The Board also cites as support *Gonzalez v. County of Tulare* (1998) 65 Cal.App.4th 777, which is equally unpersuasive. There, the appellate court affirmed the trial court's sustaining of a demurrer to a mandamus petition, based on its holding that the petition was barred

because it "was not served upon *respondents* within the then existing ... limit of ... former section 65009, subdivision (c), even though the action was timely filed." (*Id.* at p. 791, italics added.) The Board argues that this is a direct reference to all of the respondents to the appeal, including the real party in interest, Borba-Mikaelian, Inc. (Borba) (*id.* at p. 780), who stands in a position analogous to the Lees. This argument is an understandable misreading of the case. Although it appears that Borba was a respondent in the appeal, the *Gonzalez* court's reference to "respondents" plainly refers to the multiple legislative bodies, and not Borba. The court notes that the demurrer was argued by "respondents County of Tulare, Tulare County Board of Supervisors and Tulare County Planning Commission ..." (*id.* at pp. 780, 782-783, 791), and consistently refers to the legislative bodies as "respondents" throughout its discussion of this service issue. (E.g., *id.* at p. 781["[a]ppellants sought a writ of mandate compelling *respondents* to rescind ordinance No. 3130 and the use permits and to review and act upon Borba's applications"]; *id.* at p. 791 [referring to "*respondents'* demurrer"], italics added.) Therefore, *Gonzalez* does not provide precedent for respondents' position here.

Section 65009's service deadline refers only to service on a "legislative body." It cannot be interpreted in the manner suggested by respondents without our inserting additional language. We conclude from its plain language that section 65009 does not require service on real parties in interest within 90 days. We do not consider our construction to be contrary to legislative intent, particularly in light of the courts' discretionary powers regarding joinder of indispensable parties, as explained in *Beresford, supra,* 207 Cal.App.3d 1180, and *Sierra Club, supra,* 95 Cal.App .3d 495.

"If the statutory language is clear and unambiguous, our task is at an end, for there is no need for judicial construction. [Citations.] In such a case, there is nothing for the court to interpret or construe." (*MacIsaac v. Waste Management Collection & Recycling, Inc., supra,* 134 Cal.App.4th at p. 1083.) Therefore, we need not further address the other arguments made by the parties.

DISPOSITION

The judgment is reversed, and the matter remanded to the trial court to proceed consistent with this opinion. The parties are to bear their own costs of appeal.

We concur: KLINE, P.J., and HAERLE, J.

Cal.App. 1 Dist.,2011.
Clear Channel Outdoor, Inc. v. Board of Appeals of the City and County of San Francisco
Not Reported in Cal.Rptr.3d, 2011 WL 675976 (Cal.App. 1 Dist.)

Briefs and Other Related Documents (Back to top)

• 2009 WL 5502594 (Appellate Brief) Respondent's Brief (Dec. 9, 2009) Original Image of this Document (PDF)
• 2009 WL 5502593 (Appellate Brief) Respondents' Brief (Dec. 7, 2009) Original Image of this Document (PDF)
• A125636 (Docket) (Jul. 2, 2009)

Judges and Attorneys(Back to top)

Judges | Attorneys

Judges

• **Haerle, Hon. Paul R.**
State of California Court of Appeal, 1st Appellate District
San Francisco, California 94102
Litigation History Report | Judicial Reversal Report | Judicial Expert Challenge Report | Profiler

• **Kline, Hon. John Anthony**
State of California Court of Appeal, 1st Appellate District
San Francisco, California 94102
Litigation History Report | Judicial Reversal Report | Judicial Expert Challenge Report | Profiler

• **Lambden, Hon. James Robert**
State of California Court of Appeal, 1st Appellate District
San Francisco, California 94102
Litigation History Report | Judicial Reversal Report | Judicial Expert Challenge Report | Profiler

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EXHIBIT E

Research file — Richards

ENDORSED
FILED
San Francisco County Superior Court

AUG 31 2005

GORDON PARK-LI, Clerk
BY: GAIL PEERLESS
Deputy Clerk

CALIFORNIA SUPERIOR COURT

CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

DEPARTMENT NUMBER 318

CLEAR CHANNEL OUTDOOR INC., a Delaware corporation, Plaintiff, vs. DAVID SUCKLE, an individual; BRYANT STREET ASSOCIATES, a California general partnership; ROSS E. SCHENDEL, an individual; THE SCHENDEL FAMILY TRUST, a Living Trust; ADVERTISING DISPLAY SYSTEMS, a California general partnership; RAYMOND REUDY, an individual; KEVIN HICKS, an individual; and DOES 1 through 100, Defendants. and RELATED CROSS-ACTION.	NO. 428537 STATEMENT OF DECISION

On February 14, 2005 this matter proceeded to trial without a jury before the Honorable Alex Saldamando in Department 318. Timothy F. O'Leary appeared for plaintiff, Clear Channel, Inc. (hereinafter "Clear Channel"); Gerald Murphy appeared for defendants Advertising Display Systems, Mark Kevin Hicks and Raymond Reudy (hereinafter "ADS"); and Dana Slack appeared for defendants Bryant Street Associates, David Suckle, the Schendel Family Trust and Ross Schendel (hereinafter "BSA").

The parties have filed cross-claims seeking declaratory relief. In addition, Clear Channel seeks a determination that ADS should be enjoined from engaging in unfair business practices under California Business & Professions Code § 17200.

The dispute involves the validity of separate permits issued on different dates by the San Francisco Department of Building Inspection to Clear Channel and ADS for the purpose of constructing an outdoor advertising sign on BSA's property. Clear Channel was in possession of the advertising space under lease with BSA which expired in 2004. ADS has had a lease with BSA for the same purpose since 2001 and has been in possession of the space since Clear Channel vacated the site in March 2004.

I. FACTUAL AND PROCEDURAL BACKGROUND

Clear Channel's original billboard lease with BSA for 504 6th Street, San Francisco, California (the "subject property") originated in 1986 and was automatically renewable in the absence of a timely notice of termination. As modified and extended, Clear Channel's most recent three-year lease term commenced on March 1, 1998 and was set to renew for a like term unless terminated by written notice given at least sixty days before the end of the existing term which was February 2001.

Nevertheless a year before the lease was to expire, BSA wrote Clear Channel in February 2000 purporting to terminate the lease and to convert Clear Channel's occupancy to a month-to-month tenancy. BSA's letter could not legally terminate the lease in this fashion and the notice was disregarded by Clear Channel which did not

vacate the site. Despite Clear Channel's continued possession, BSA began negotiating with other outdoor advertising companies including ADS, a partnership comprised of defendants Mark Kevin Hicks and Raymond Reudy. BSA proceeded to sign a lease with ADS on September 26, 2000, which was to commence upon the expiration of the existing signage rental agreement on the subject property location and Clear Channel's surrender of possession. At the time of entering into this lease, BSA informed ADS that Clear Channel was a month-to-month tenant but did not provide ADS with a copy of Clear Channel's lease.

BSA did nothing to interfere with Clear Channel's tenancy until ADS received approval of the government permits it needed to erect a new billboard sign. Two weeks after ADS's permit was approved on July 13, 2001, BSA informed Clear Channel that it had 30 days to vacate the property. When BSA informed Clear Channel at the end of August 2001 that ADS was the new leaseholder of the subject property, Clear Channel correctly advised BSA that its termination letter of February 2000 had not effectively terminated its lease and the lease remained operative.

Nevertheless, ADS began dismantling Clear Channel's sign on September 4, 2001. Upon learning that its sign was being torn down, Clear Channel filed an action for forcible detainer, breach of contract, interference with economic relations, and related wrongs. Clear Channel successfully obtained a temporary restraining order against BSA and ADS ordering them to cease any further removal of the sign or structure and not to perform any further work except as necessary for safety reasons pending a hearing which was scheduled for September 19, 2001.

On the date of the hearing, ADS wrote Clear Channel saying it was restoring Clear Channel's right to possession of the subject property pending judicial resolution, and offered to mitigate damages by completing the partially constructed billboard sign and posting Clear Channel's advertisement on the new sign. ADS also offered to provide Clear Channel with an exclusive license to use the sign so as long as Clear Channel had

the legal right to possession of the subject property. Clear Channel rejected this offer and instead counter proposed that ADS unconditionally reconstruct Clear Channel's sign. ADS declined to do so.

In October 2001, BSA initiated an unlawful detainer action against Clear Channel seeking to evict it from the subject property. Clear Channel prevailed in that action and retained legal possession of the property until its lease expired in March 2004. In the meantime, Clear Channel sought a permit from the City to rebuild its sign. However, after BSA advised Clear Channel that its lease would terminate upon expiration of its current term on March 1, 2004, Clear Channel decided not to rebuild the sign. The permit expired after six months by operation of law since Clear Channel failed to renew it.

On January 13, 2003 trial commenced on Clear Channel's claims against defendants. The court bifurcated the trial into equitable and legal phases. The first phase bench trial determined that Clear Channel's lease had not been terminated and that ADS did not have a right to possession of the 6th Street property until the lease expired. The court permanently enjoined all defendants from interfering with Clear Channel's lease. The jury returned a special verdict in Clear Channel's favor against all defendants and awarded compensatory and punitive damages. The Court of Appeal affirmed the judgment in favor of Clear Channel but reduced the amount of compensatory and punitive damages awarded by the jury.

At issue in this present trial is whether Clear Channel or ADS has a valid permit to construct an outdoor advertising sign on the 6th Street property owned by BSA. Also at issue is whether the ADS lease should be nullified since it lacks a lawful purpose.

II. DISCUSSION

1. Clear Channel's Permit Expired

Clear Channel's June 2002 permit to rebuild its partially demolished sign expired in December 2002 by operation of law. Pursuant to Building Code § 106.4.4 "Every

permit issued by the Director under the provisions of this code, unless an extension of time has been specifically approved by the Director, shall expire by limitation and become null and void when the time allowed...is reached..." The permit provides on its face that it expires "six months after it is issued" and the date of expiration of the permit on the job card is noted as "December 21, 2002." (Exhibit 12, p. 3 and p. 5.) Clear Channel did not seek to extend its permit nor start construction to rebuild its sign under this permit. Consequently, although Clear Channel had legal possession of the 6th Street property until the expiration of its lease in March 2004, its permit lapsed after six months because it failed to rebuild its structure or apply for an extension of its permit. Under Building Code § 106.4.4, Clear Channel's permit was null and void as of December 21, 2002.

Clear Channel argues that the Court of Appeals finding that it had acted reasonably when it did not rebuild its sign under the June 2002 permit is binding on the parties in this action by virtues of the doctrines of res judicata and collateral estoppel. Clear Channel's position is not well taken.

The doctrine of res judicata gives certain conclusive effect to a former judgment in subsequent litigation involving the same controversy. It seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration. (CCP § 1908, 1908.5, 1911; *California Coastal Comm. v. Superior Court* (1989) 210 Cal.App.3d 1488, 1498-1499.) Collateral estoppel is narrower than res judicata because it bars a party from relitigating only those issues of ultimate fact that a court already has adjudicated. It deals with the finality of judgment on factual matters that were fully considered and decided. (*Jackson v. County Of Los Angeles* (1997) 60 Cal.App.4th 171.)

In this case, however, neither the validity of Clear Channel's permit nor its date of expiration was ever considered by the Court of Appeals. The issue before the Court of Appeals was whether Clear Channel was precluded from any recovery whatsoever

because it failed to mitigate its damages when it refused ADS's September 2001 offer to complete construction of the ADS sign and license its use to Clear Channel. The Court of Appeal affirmed the jury's finding that Clear Channel had acted reasonably to mitigate its damages. The Court of Appeals did not determine whether Clear Channel's 2002 permit was valid nor its date of expiration. Accordingly, Clear Channel's argument that the doctrines of res judicata and collateral estoppel apply is not correct and is rejected.

2. ADS Does Not Possess a Valid Permit

Two letters of determination issued by the Zoning Administrator, Lawrence Badiner, in April 2002 and re-issued with a modification in May 2003 collectively conclude that Clear Channel could rebuild the sign demolished by ADS under the original 1982 permit because the demolition was determined to be illicit by the Superior Court. Badiner concluded that under Planning Code § 188(b), the sign could be restored to its former condition since it was not completely demolished except for that portion of the sign that had been constructed without proper authorization (which Badiner presumed was an eight foot vertical extension not authorized by the original 1982 permit). This court finds these Letters of Determination admissible as official acts under Evidence Code § 1280.

After the first Letter of Determination issued in April 2002, Clear Channel obtained the June 2002 permit to reconstruct its sign but, as noted above, let it lapse apparently concluding that it did not make economic sense to rebuild the sign without an extension of its lease, which the property owner was refusing to grant. Nonetheless, Clear Channel contends that it did not need to obtain the June 2002 permit because the Zoning Administrator's Letters of Determination authorized Clear Channel to rebuild its sign under the 1982 permit in order to restore the sign to its former legal condition.

As additional support for its position that it possess the only valid permit, Clear Channel cites to a November 2003 Letter of Determination issued by acting Zoning

Administrator, Jim Nixon, who concluded that the ADS 2001 permit was invalidly issued since the original Clear Channel sign was a legally existing sign that had been unlawfully demolished by ADS. ADS did not appeal this decision to the Board of Permit Appeals. Consequently, Clear Channel contends that the Zoning Administrator's determination has become final. (*Patrick Media Group v. California Coastal Commission* (1992) 9 Cal.App. 4th 592.) Clear Channel argues ADS wrongfully contends that the Zoning Administrator did not have the authority under the Building Code to invalidate ADS's permit. In fact, the ADS permit had been invalidated under the Planning Code, not the Building Code. Neither the Zoning Administrator nor anyone else had declared the ADS permit invalid under the Building Code; consequently, its provisions are not implicated.

This court agrees with Clear Channel that the Zoning Administrator's decision is valid and has become final since it was not appealed. Accordingly, the ADS 2001 building permit is deemed invalid from the date it was issued. This renders moot any argument that ADS's permit is tolled because of the intervening litigation for the simple reason that there was no valid permit which could be tolled pending final resolution of the instant case.

3. The Property Owner Controls and Owns the Permit

A permit to use the property runs with the land. (*Anza Parking Corp. v. City of Burlingame* (1987) 195 Cal.App.3d 855, 858-860.) In apparent recognition of this legal principle, the Planning Department and the Board of Building Inspection consider the property owner and not Clear Channel as the owner the right to display general advertising signs at a specified location on the owner's property. (San Francisco Board of Permit Appeals, Appeal # 03-036, Finding #4.) According to the Department of Building Inspection, when a permit is issued to an entity other than the property owner, the permit is issued to that entity only as an agent of the property owner. (Id., Finding #12.) Also, the San Francisco Department of Building Inspection Board of Appeals has held that

"Permission to use property for display of general advertising is a matter of land use. Under the City's Planning and Building Codes, the permit authorizing such land use is an entitlement that runs with the land, belongs to the property owner and which the property owner may transfer to subsequent owners of the property. The right to such land use does not belong to the sign company." (Appeal No. 03-036, AR 000011, #4.) This court finds these rulings to be consistent with the holding in *Anza Parking*.

Thus, assuming Clear Channel has a right to rebuild a partially destroyed sign under the original 1982 permit without obtaining a new permit to do so, Clear Channel should be able to do so. However, that right to rebuild under an original permit cannot be understood to exist in perpetuity, but must be subject to a reasonable time limitation. Otherwise, a holder of a permit could indefinitely tie up the use of an owner's property long after the permit holder had any right to be in possession of the owner's property. This court concludes that once a lease has expired without rebuilding a damaged sign, any continued right to rebuild must necessarily end with expiration of the lease because a permit is deemed to run with the land. At that point, if there is any right to rebuild after a lease expires that right must necessarily belong to the property owner, not to a lessee in Clear Channel's position whose lease has expired.[1] Accordingly, upon expiration of its lease, Clear Channel lost any right to rebuild its sign that might have existed under the original 1982 permit.

[1] In their respective responses to the Court's Tentative Statement of Decision, the parties dispute BSA, the property owner's, ability to rebuild the sign under the 1982 Clear Channel permit or the 2001 ADS permit. This issue was not before the Court. The Court was not requested to adjudicate whether the property owner had any right to rebuild under either permit. Consequently, this Court did not determine whether BSA, unlike the lessee Clear Channel, has a right in perpetuity to rebuild the sign under the permit initially issued to its lessee. Nor did the Court consider whether and to what extent the property owner would be required to comply with regulatory requirements under either the 1982 or 2001 permits. The Court declines to do so in this Statement of Decision.

IV. CONCLUSION

In summary, after hearing all the evidence, both oral and documentary, this court concludes that neither ADS nor Clear Channel has a valid, enforceable permit to rebuild a sign. The ADS permit is invalid because it was not legally issued. The December 2002 permit obtained by Clear Channel expired after six months because it was not renewed and Clear Channel's right to rebuild its sign under the original 1982 permit ended with the expiration of its lease. In addition this court finds that, consistent with the rulings made by the Board of Appeals, the right to display general advertising signs at the specified location belongs to the property owner. However, the Court does not express any opinion regarding any right the property owner may have to build or rebuild a sign under the 1982 or 2001 permits.

Consequently, BSA's request for declaratory relief is DENIED. This court does find that BSA and ADS entered into a valid lease for possession of the sign location which was to take effect once Clear Channel's lease expired and possession was restored to BSA.

Clear Channel's request for (1) a declaratory judgment that Clear Channel's sign permit remains valid and in full force and effect; and (2) a declaratory judgment that ADS's sign permit is void and without force or effect, and (3) an injunction against ADS to prevent them from building a sign on the subject property, and (4) an injunction against both ADS and BSA to prevent them from constructing a sign are DENIED.

Clear Channel, BSA and ADS failed to recover on their respective cross-claims. Under CCP § 1032 the prevailing party is the defendant in the original action when neither plaintiff or defendant obtains any relief, even if defendant has filed a cross-complaint in response to plaintiff's original complaint. (*McLarland, Vasquez & Partners, Inc. v. Downey Savings & Loan Assn.* (1991) 213 Cal.App.3d 1450.) Accordingly, BSA and ADS are deemed to be the prevailing parties entitled to costs

under CCP § 1032. ADS is directed to prepare a judgment in conformity with this Statement of Decision which is approved as to form by Clear Channel and BSA.

IT IS SO ORDERED.

Dated: August 30, 2005

Alex Saldamando
Judge of the Superior Court

EXHIBIT F

Outdoor Commercial Advertising

G

PROPOSITION G

Shall the City prohibit new outdoor commercial advertising signs and regulate relocation of existing outdoor commercial advertising signs?

YES
NO

Digest

by Ballot Simplification Committee

THE WAY IT IS NOW: The City regulates the display of outdoor commercial signs. Signs that advertise goods or services sold somewhere other than where the sign is displayed, called "general advertising signs," are permitted in some locations in the City. These signs are commonly called billboards.

THE PROPOSAL: Proposition G is a City ordinance that would prohibit additional general advertising signs. This ordinance would allow existing general advertising signs to be moved to a new location, if current law permitted these signs at the new location. A public hearing would be required before a sign could be moved.

A "YES" VOTE MEANS: If you vote yes, you want to prohibit additional general advertising signs and regulate relocation of existing general advertising signs.

A "NO" VOTE MEANS: If you vote no, you do not want to prohibit additional general advertising signs and regulate relocation of existing general advertising signs.

Controller's Statement on "G"

City Controller Edward Harrington has issued the following statement on the fiscal impact of Proposition G:

Should the proposed initiative ordinance be approved by the voters, in my opinion, there would be no significant increase in the cost of government.

How "G" Got on the Ballot

On December 4, 2001 the Department of Elections received a proposed ordinance signed by Supervisors Ammiano, Gonzalez, Leno, McGoldrick, and Peskin.

The City Elections Code allows four or more Supervisors to place an ordinance on the ballot in this manner.

THIS MEASURE REQUIRES **50%+1** AFFIRMATIVE VOTES TO PASS.

ARGUMENTS FOR AND AGAINST THIS MEASURE IMMEDIATELY FOLLOW THIS PAGE. THE FULL TEXT BEGINS ON PAGE **102**
SOME OF THE WORDS USED IN THE BALLOT DIGEST ARE EXPLAINED ON PAGE **36**

G Outdoor Commercial Advertising

PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION G

YES ON PROP G: KEEP SAN FRANCISCO BEAUTIFUL BY LIMITING NEW BILLBOARDS

San Francisco is one of the most unique and beautiful cities in the world, but it is losing its character as more billboards pollute our streets and neighborhoods every day.

In the last decade, hundreds of billboards, technically called general advertising signs, have been slapped up across the City's neighborhoods: on the side of buildings, plastered next to shop windows, and stacked one-after-another on major streets. Due to new technology, billboard companies can erect signs anywhere quickly, easily and cheaply. Today, about 1,500 billboards blanket our city, and there is no limit on how many there will be tomorrow.

That's why we need Proposition G. It would prohibit the construction of additional billboards in the City. It also would allow existing billboards to be moved to other locations through a public hearing process, which would mean less abandoned billboards.

San Francisco is behind the times in limiting billboards. More than 600 US cities – including San Jose, San Diego, Denver and Seattle – and six States have protected their environment by prohibiting new billboards.

Prop G protects our diverse neighborhoods and beautiful parks. It halts the invasion of billboards that bombard residents' daily lives, block views, and cover historic buildings.

Prop G limits over-commercialization of our public space. It protects our public streets, plazas, and parks from being overrun by blatant commercial messages.

San Francisco finally has an opportunity to do what other great US cities did years ago: protect our landscape from more visual blight. Please join Senator Dianne Feinstein, Assemblymembers Carole Migden and Kevin Shelley, San Francisco Beautiful, the League of Conservation Voters, and the Coalition for San Francisco Neighborhoods in supporting Prop. G to limit new billboards.

Supervisor Aaron Peskin
Supervisor Tom Ammiano
Supervisor Jake McGoldrick
Supervisor Mark Leno
Supervisor Matt Gonzalez

REBUTTAL TO PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION G

BAY AREA LINCOLN LEAGUE ("BALL") CENTRAL COMMITTEE NOMINEES OPPOSE PROPOSITION G.

BALL is **AGAINST PROPOSITION G**

(unnecessary banning of billboards).

Also read **REBUTTAL OF PROPOSITION B OPPONENT** (above).

Vote **AGAINST PROPOSITION G.**

-Dr. Terence Faulkner
Past State Secretary
California Republican County Chairmen's Association

-Gail Neira
Republican State Assembly Candidate

-Republican Committee Candidates:

12th District:
Olive Fox
Denis Norrington (Incumbent)
Les Payne (Incumbent)

13th District:
Shirley Bates
Wayne Chan
Eve Del Castello
Joe Giuliani

-Dr. Ronald Konopaski
Republican Volunteer

Arguments printed on this page are the opinion of the authors and have not been checked for accuracy by any official agency.

Outdoor Commercial Advertising

G

OPPONENT'S ARGUMENT AGAINST PROPOSITION G

SAN FRANCISCO REPUBLICAN COUNTY CENTRAL COMMITTEE OPPOSES UNFAIR PROPOSITION G:

Backed by many of the City's existing billboard firms, Proposition G has a goal of halting new outdoor advertising signs.

Frankly, the existing ad companies want to restrict the San Francisco billboard market. The want to keep new advertising agencies out of the City.

On December 13, 2001, the San Francisco Republican County Central Committee passed a resolution against Proposition G

Proposition G has little or nothing to do with the environment. Market control and owners' property rights are the key issues connected with Proposition G.

Vote **"NO"** on Proposition G.

Proposition G is about restraint of trade and the Sherman Anti-Trust Act.

-Citizens Against Tax Waste.

-Dr. Terence Faulkner, J.D.
Former California Republican Party Executive Committee

REBUTTAL TO OPPONENT'S ARGUMENT AGAINST PROPOSITION G

Local leaders, neighborhood groups and environmental organizations agree:
Vote YES on Prop G.

Proposition G, which would limit additional billboards in San Francisco, is championed by community groups that are dedicated to protecting San Francisco's beauty and unique character. This effort to protect the city's character has been *opposed* by the billboard industry, which has profited from the sharp increase in billboards over the last decade. In the last year, a broad range of community groups and elected officials came together to put Prop. G on the ballot to halt this alarming increase in billboards.

The Republican Party, the only known group opposing the measure to date, brings up strange arguments against Prop. G such as the "Sherman Anti-Trust Act" and "market controls." The Republicans are trying to confuse a very simple issue: whether San Franciscans want to limit more billboards and thereby protect the beauty and uniqueness of our city.

Proposition G will make our city a better place to live: It will halt visual blight, protect the integrity of our neighborhoods, and limit the over-commercialization of our public space.

That's why the League of Conservation Voters, the San Francisco Planning and Urban Research Association (SPUR), the Coalition for San Francisco Neighborhoods, the Neighborhood Parks Council and San Francisco Tomorrow agree vote YES on Prop. G!

Dee Dee Workman
Executive Director, San Francisco Beautiful

G Outdoor Commercial Advertising

PAID ARGUMENTS IN FAVOR OF PROPOSITION G

No New Billboards

Now is the time to take a stand against visual blight. San Francisco's historic buildings, scenic views and distinctive neighborhoods are being overrun by huge new billboards. These intrusive advertisements hang over parks and homes and block our views. This measure will ban the construction of new billboards and allow for neighborhoods to request the relocation of existing ones. More than 600 cities have passed similar laws to protect the unique character of their neighborhoods. San Francisco deserves no less. Vote yes on Proposition G.
www.spur.org

SPUR (San Francisco Planning and Urban Research Association)

The true source of funds used for the printing fee of this argument is the SPUR Urban Issues Committee.

The three largest contributors to the true source recipient committee are: 1. Jim Chappell 2. Frankie Lee 3. John Weeden.

Keep San Francisco Beautiful - No New Billboards!

San Francisco Beautiful is dedicated to protecting the unique beauty and livability of San Francisco. We feel so strongly about our mission that we worked to put Proposition G on the ballot.

Over the last few years there has been a dramatic increase in general advertising billboards, particularly the massive wallscapes that cover entire sides of buildings. Billboards are urban blight. They command our attention without our consent, robbing us of the right to see the beautiful city we live in. They impede our views, encroach on our parks and playgrounds and destroy the distinctive qualities that make our city and its individual neighborhoods unique.

ENOUGH IS ENOUGH! Proposition G will protect the visual beauty of San Francisco, protect our quality of life and limit further over-commercialization of our public space.

More than 600 US cities have made the commitment to protect the character of their communities by prohibiting new billboards. Isn't it time San Francisco did the same? Vote yes on Proposition G!

San Francisco Beautiful
Dee Dee Workman, Executive Director

The true source of funds used for the printing fee of this argument is San Francisco Beautiful.

The Neighborhood Parks Council supports a ban on new billboards in San Francisco. This is a quality of life issue for citizens as advertising impedes our enjoyment of parks and open spaces. San Francisco is world renowned for its beautiful vistas - let's keep it that way!

The Neighborhood Parks Council

The true source of funds used for the printing fee of this argument is the Neighborhood Parks Council.

No New Billboards!

The Planning Association for the Richmond (PAR) supports a ban on the construction of new billboards in San Francisco. PAR, the largest neighborhood association in San Francisco, represents Richmond District residents who value the district's unique character.

The explosion of billboards in our community and others is a direct threat to our quality of life. San Francisco is a city that values its natural beauty. Now is the time to protect our City's visual heritage by saying no to additional billboards in our City. Vote yes on Proposition G!

Planning Association for the Richmond (PAR)
Ron Miguel

The true source of funds used for the printing fee of this argument is the Planning Association for the Richmond (PAR).

This modest proposal will freeze the number of general advertising signs in the City.

Joel Ventresca
Sunset District 4 Supervisor Candidate (November 2002)
City and County of San Francisco Environmental Commissioner (1994-97)

The true source of funds for the printing fee of this argument is Ventresca for Supervisor.

The largest contributor to the true source recipient committee is Joel Ventresca.

Outdoor Commercial Advertising

G

PAID ARGUMENTS IN FAVOR OF PROPOSITION G

San Francisco Tomorrow supports Proposition G. It will improve our urban environment by stemming the visual pollution caused by the proliferation of billboards.

VOTE YES ON G!

San Francisco Tomorrow

The true source of funds used for the printing fee of this argument is San Francisco Tomorrow.

The San Francisco Democratic Party supports Proposition G.

Wade Crowfoot
Secretary, SF Democratic Central Committee

The true source of funds used for the printing fee of this argument is Wade Crowfoot.

Billboards do not enhance San Francisco's neighborhoods. They are visual pollution.

VOTE YES ON G and protect our communities from new billboards!

Rosabella Safont
Board President
Mission Economic Development Association (MEDA)

The true source of funds used for the printing fee of this argument is San Francisco Beautiful – No New Billboards Committee.

The three largest contributors to the true source recipient committee are: 1. San Francisco Beautiful 2. Bud Friese 3. Marilyn Duffey.

Telegraph Hill Dwellers Says Yes on Proposition G!

As a neighborhood organization with a long history of protecting the character of one of San Francisco's most picturesque neighborhoods, we strongly support Proposition G. Vote yes on Proposition G!

Telegraph Hill Dwellers

The true source of funds used for the printing fee of this argument is the Telegraph Hill Dwellers.

Preserve Our Neighborhoods - No New Billboards

San Francisco's distinct neighborhoods are under attack from advertisers eager to take advantage of our remaining individuality. Now is the time to take a stand against this kind of visual blight. Proposition G will ban the construction of new billboards and allow for neighborhoods to be involved in the process of relocating existing ones. More than 600 cities have passed similar laws to protect the unique character of their neighborhoods. San Francisco deserves no less. As an organization representing the voices of more than 33 neighborhood groups, we unanimously support a Yes vote on Proposition G.

Coalition for San Francisco Neighborhoods

The true source of funds used for the printing fee of this argument is the Coalition for San Francisco Neighborhoods.

North Beach Neighbors Supports Proposition G!

North Beach Neighbors urges San Franciscans to vote Yes on Proposition G. San Francisco's historic buildings and distinctive neighborhoods are being overrun by huge billboards that are out of scale and character with the surrounding area. Proposition G will prohibit the construction of new billboards and allow for neighborhoods to be involved in the process of relocating existing ones. We urge voters to help San Francisco join the ranks of the more than 600 cities that have already passed similar laws to protect the unique character of their neighborhoods. Vote yes on Proposition G!

North Beach Neighbors

The true source of funds used for the printing fee of this argument is San Francisco Beautiful – No New Billboards Committee.

The three largest contributors to the true source recipient committee are: 1. San Francisco Beautiful 2. Bob Friese 3. Marilyn Duffey.

This initiative would limit commercial advertising without infringing on political speech and would protect San Francisco from the visual pollution of huge advertisements that detract from the city's awesome beauty.

San Francisco Green Party

The true source of funds used for the printing fee of this argument is the San Francisco Green Party.

The three largest contributors to the true source recipient committee are: 1. Dave Heller 2. John-Marc Chandonia 3. Barry Hermanson.

G Outdoor Commercial Advertising

PAID ARGUMENTS IN FAVOR OF PROPOSITION G

It's time to prohibit construction of new billboards in San Francisco! Our marvelous skylines and scenic vistas are cluttered with billboards. SPEAK deplores over-commercialization of our public space. VOTE "Yes" on G.

SPEAK Sunset-Parkside Education and Action Committee

The true source of funds used for the printing fee of this argument is SPEAK (Sunset-Parkside Education and Action Committee).

Preserve the beauty of San Francisco. Stop the growing billboard eyesore. Vote YES on G.

Jane Morrison
Vice Chair, San Francisco Democratic Party

The true source of funds used for the printing fee of this argument is Jane Morrison.

Billboards belong in little cities with nothing to say.

Let our skyline be our statement that San Francisco is no longer for sale to the highest bidder.

Vote Yes on Proposition G.

Michael R. Farrah Jr.
Candidate, 12th Assembly District Democratic County Central Committee

The true source of funds used for the printing fee of this argument is Michael R. Farrah, Jr.

San Francisco doesn't belong on a sign. Proposition G will preserve the beauty of our neighborhoods.

Jeff Adachi
Candidate for Public Defender

The true source of funds used for the printing fee of this argument is Adachi for Public Defender.

The three largest contributors to the true source recipient committee are: 1. Peter Keane 2. Esther Marks 3. John Woo.

PAID ARGUMENTS AGAINST PROPOSITION G

VOTE NO ON PROPOSITION G.

The San Francisco Republican Party opposes visual pollution. We also oppose monopolies.

Proposition G would unfairly restrict the outdoor advertising market to a select few companies. Better application of existing laws will solve the problem of unwanted billboards.

San Francisco Republican Party
Donald A. Casper, Chairman
Cynthia Amelon
Elsa Cheung, Vice-Chair
Mike DeNunzio, Vice-Chair
Howard Epstein, Assembly Candidate
Terence Faulkner
Sue Woods

The true source of funds for the printing fee of this argument are the San Francisco Republican County Central Committee and the above signers.

The three largest contributors to the true source recipient committee are: 1. San Francisco Coalition for Affordable Public Services 2. Alfreda Cullinan 3. Sally L. Saunders.

TEXT OF PROPOSED INITIATIVE ORDINANCE
PROPOSITION G

Initiative Ordinance adding Section 611 to the Planning Code and amending Section 602.7 of the Planning Code to prohibit all new general advertising signs, and to provide for appropriate general advertising sign relocation agreements.

Note: Additions are *single-underline italics Times Roman*

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

Section 1. **Findings**

Preserving the City's Unique Character

(a) General advertising is currently in, adjacent to, and visible from public and historically significant civic spaces including parks, public plazas, historic buildings and the waterfront.

(b) City officials have received complaints from the public about the proliferation of general advertising signs in the City, about the commercialization of the City's public space, the increased size of vinyl signs which cover entire sides of buildings, as well as about general advertising signs placed on architecturally and historically significant buildings, all of which affect the quality of life in San Francisco, adding blight and clutter.

(c) The City currently contains an ample supply of legally permitted general advertising signs.

(d) The number of general advertising signs is increasing all over the City. Many areas of the City are saturated with general advertising signs. In these areas the general advertising signs are obtrusive, out of scale, and contribute to visual pollution and blight. As population, traffic and building trends grow and shift within the City, it is difficult to assess which areas of the City will be inundated with general advertising signs next.

(e) Tourism, San Francisco's largest revenue generating industry, benefits from the preservation of the City's unique character, architecture and vistas. As general advertising signs become more and more a part of the City's landscape, its distinctive appearance is hidden and the character that tourists visit the City to experience is lost.

Safety

(f) City officials and the public have expressed concern over the impact of the increasing volume of general advertising signs on traffic and pedestrian safety.

(g) Signs identifying local services and businesses are often blocked or obscured by general advertising signs, a practice that confuses and distracts the public from finding those services and businesses.

(h) Planning Code Section 601 identifies the need to reduce hazards such as signs which can distract motorists and pedestrians traveling on the public right of way and increase the potential for accidents, especially in congested parts of the City.

Existing Law

(i) Planning Code Section 601 cites as among the special purposes for adopting sign regulation: safeguarding and enhancing of property values in residential, commercial and industrial areas, protecting the public investment in and the character and dignity of public buildings, open spaces and thoroughfares, and protecting the distinctive appearance of San Francisco produced by its unique geography, topography, street patterns, skyline and architectural features.

(j) Furthermore, the controls on general advertising signs in Planning Code Article 6 are more than thirty-five years old and no longer adequately reflect the City's concerns regarding both visual clutter and traffic safety.

(k) Objective 4, Policy 14, of the Urban Design Element of the City's General Plan recognizes that signs are a leading cause of street clutter and that the signs often are unrelated to the physical qualities of the buildings on which they are placed.

(l) Objective 4, Policy 14, further states that where signs are large, garish and clashing, they lose their value as identification or advertising signs and merely offend the viewer and that while signs have an important place in an urban environment, they should be controlled in their size and location.

(m) This ordinance does not require the removal of any lawfully erected general advertising signs. The City may also enter into agreements providing for the comparable relocation of existing lawfully erected general advertising signs to other locations where those signs could have been erected pursuant to the zoning laws in effect before the effective date of this ordinance.

(n) The City recognizes the value of non-commercial signs as a means of providing the public with information and also acknowledges the need for appropriate recognition for organizations which support non-commercial signs. This ordinance is not intended to regulate non-commercial signs.

Section 2. The San Francisco Planning Code is hereby amended by adding Section 611, to read as follows:

Sec. 611 General Advertising Signs Prohibited

(a) No new general advertising signs shall be permitted at any location within the City as of March 5, 2002, except as provided in subsection (b) of this ordinance.

(b) Nothing in this ordinance shall be construed to prohibit the placement of signs on motor vehicles or in the public right of way as permitted by local law.

(c) Relocation Agreements

(1) Nothing in this ordinance shall preclude the Board of Supervisors, upon recommendation from a department designated by the Board, from entering into agreements with general advertising sign companies to provide for the relocation of existing legally permitted general advertising signs. Any such agreements shall provide that the selection of a new location for an existing legally permitted general advertising sign be subject to the conditional use procedures provided for in Article 3 of the Planning Code .

(2) Locations where general advertising signs could have been lawfully erected pursuant to the zoning laws in effect prior to the effective date of this ordinance may be considered as relocation sites. Future zoning laws may additionally restrict the locations available for the relocation of existing legally permitted general advertising signs.

(d) Pursuant to subsection (c)(1) of this ordinance, the selection of a relocation site for an existing legally permitted general advertising sign shall be governed by the conditional use procedures of section 303 of the Planning Code.

(e) Nothing in this ordinance shall preclude the Board of Supervisors from otherwise amending Article 6 of the Planning Code.

(f) A prohibition on all new general advertising signs is necessary because:

(1) The increased size and number of general advertising signs in the City can distract motorists and pedestrians traveling on the public right of way creating a public safety hazard.

2) General advertising signs contribute to blight and visual clutter as well as the commercialization of public spaces within the City.

3) There is a proliferation of general advertising signs visible from, on, and near historically significant buildings and districts, public buildings and open spaces all over the City.

4) San Francisco must protect the character and dignity of the City's distinctive appearance, topography, street patterns, open spaces, thoroughfares, skyline and architectural features for both residents and visitors.

5) There is currently an ample supply of general advertising signs within the City.

(Continued on next page)

Section 3. The San Francisco Planning Code is hereby amended by amending Section 602.7, to read as follows:

602.7 **General Advertising Sign**

A sign, *legally erected prior to the effective date of Section 611 of this Code,* which directs attention to a business, commodity, industry or other activity which is sold, offered or conducted elsewhere than on the premises upon which sign is located, or to which it is affixed, and which is sold, offered or conducted on such premises only incidentally if at all.

Section 4. **Severability**

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications or this ordinance which can be given effect without the invalid or unconstitutional provision or application. To this end, the provisions of this ordinance shall be deemed severable.

EXHIBIT G

San Francisco's City Attorney Dennis J. Herrera in his February 17, 2009, *Memorandum of Points and Authorities in Support of Respondent's Demurrer,* in *Clear Channel Outdoor* v. *Board of Appeals (Tony Lee),* San Francisco Superior Court Case No. CPF-08-508443,

> **[i]f Clear Channel were to prevail, then whenever a property owner refused to accept Clear Channel's lease terms for a sign, Clear Channel could simply remove the sign altogether, extinguishing the property owner's right to maintain any sign at all. In this way, Clear Channel hopes to force property owners to accept highly unfavorable lease terms and, if the property owner refuses to accept those terms, to remove the sign so it cannot be leased to a competing company.**

EXHIBIT H

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
KEVIN STRAIN, Appellant(s)

vs.

DEPT. OF BUILDING INSPECTION,
PLANNING DEPT. APPROVAL Respondent

Appeal No. 09-151

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT the above named appellant(s) appeals to 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 Dec. 3, 2009, to CBS Outdoor, Permit to Alter a Building (comply with DBI NOV; replace or repair bottom left area of billboard #2695 to ensure sign is free of any pest infestation) at 1633-1649 Haight Street.

APPLICATION NO. 2009/10/19/9233

Address & Tel. of Appellant(s):	Address & Tel. of Permit Holder(s):
Kevin Strain, Appellant c/o Brett Gladstone, Attorney for Appellants 177 Post Street, Penthouse SF, CA 94108	CBS Outdoor, Permit Holder c/o Tony Leones, Attorney for Permit Holder 1331 North California Blvd. Walnut Creek, CA 94596

I, Patrick Buscovich declare under penalty of perjury that the foregoing is true and correct.

Entered on Dec. 18, 2009 at San Francisco, California.

FOR HEARING ON Feb. 24, 2010.

Appellant or Agent

NOTICE OF DECISION & ORDER

The aforementioned matter came on regularly for hearing before the Board of Appeals of the City & County of San Francisco on February 03, 2010.

PURSUANT TO § 4.106 of the Charter of the City & County of San Francisco and Article 1, § 14 of the Business & Tax Regulations Code of the said City & County, and the action above stated, the Board of Appeals hereby **GRANTS THE APPEAL AND ORDERS**

that the issuance of the subject permit is **OVERRULED**, and the Department of Building Inspection is hereby ordered and directed to **REVOKE** the subject permit, with the following **FINDING**: a) the Board finds that there was no authority for this permit as required by Building Code § 106A.3.1.6 (see attached).

BOARD OF APPEALS
CITY & COUNTY OF SAN FRANCISCO

Last Day to Request Rehearing: Feb. 16, 2010
Request for Rehearing: None
Rehearing: None
Notice Released: Feb. 23, 2010

Tanya Peterson, President

Cynthia G. Goldstein, Executive Director

If this decision is subject to review under Code of Civil Procedure § 1094.5, then the time within which judicial review must be sought is governed by California Code of Civil Procedure § 1094.6.

CITY AND COUNTY OF SAN FRANCISCO
BUILDING, ELECTRICAL, HOUSING, MECHANICAL
AND PLUMBING CODES

106A.3.1 Application. To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the code enforcement agency for that purpose. Every such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.

2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.

3. For new buildings or structures, indicate the use or occupancy of all parts of the building or structure for which the proposed work is intended. For alteration work, indicate the proposed use or occupancy and the most current legal use or occupancy of all portions of the building or structure affected by or relevant to the proposed work.

4. Be accompanied by plans, diagrams, computations and specifications and other data as required in Section 106A.3.2.

5. State the valuation of any new building or structure or any addition, remodeling or alteration to an existing building.

6. Be signed by the owner, or the owner's authorized agent, who may be required to submit evidence to indicate such authority. Such agent shall be responsible for advising the owner of all conditions attached to the application by the various approving agencies.

7. Give such other data and information as may be required by the building official.

8. Include, when available, the name, address and telephone number of the owner, architect, engineer and contractor. When applicable, State and City license numbers shall be indicated.

9. Contain an agreement by the owner of the premises to hold harmless the City and County of San Francisco and its officials and employees from all costs, liability and damages resulting, whether directly or indirectly, from use or occupancy of the sidewalk, street or subsidewalk space, or from anything in connection with the work included in the permit. The agreement shall run with the land and be binding on all of the owner's successors in title.

Applications are transferable without payment of additional fees when the new owner or owner's agent submits a letter to the Department agreeing to all conditions of approval, stipulations and agreements contained on the application.

SAN FRANCISCO
PLANNING DEPARTMENT

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December 14, 2010

Kevin Strain
Front Properties LLC
P.O. Box 504
Belvedere, CA 94920

Re: 1633 Haight Street (Address of Permit Work)
1246/023 (Block/Lot)
2010.10.28.3932 (Building Permit Application No.)

Dear Mr. Strain:

The Planning Department has **disapproved the above-referenced building permit application to replace a general advertising sign because it violates Section 604(h) of the Planning Code:**

"A sign which is voluntarily destroyed or removed by its owner or which is required by law to be removed may be restored only in full conformity with the provisions of this Code, except as authorized in Subsection (i) below. A general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location, and the erection, construction, and/or installation of a general advertising sign at that location to replace the previously existing sign shall be deemed to be a new sign in violation of Section 611(a) of this Code."

Recent permit history at the site provides a clear record of your efforts to remove the sign and to prevent its repair. You were notified on August 10, 2010 via US Mail that an application to remove the sign at this site, which was represented to have been filed with your authorization, had been filed. At that time you took no action to indicate that the application was made in error or without your authorization. The Planning Code clearly states that a "general advertising sign that has been removed shall not be reinstalled."

Please contact me at (415) 558-6354 or via email at jonathan.purvis@sfgov.org if you would like to discuss this further.

Sincerely,

Jonathan Purvis
General Advertising Sign Program

cc: Scott Sanchez, Zoning Administrator
Tito Torres, Zanghi Torres Arshawsky LLP

EXHIBIT I

BOARD OF APPEALS ANNUAL REPORT

FY 2015

permit. In some cases, the Board will reduce a penalty where it finds that the property was purchased after the unpermitted work was performed or based on other extenuating circumstances.

The Board denied 35% (7) of these appeals and granted 50% (10), imposing conditions in six of the appeals granted. The remaining 15% (three cases) were continued by the Board to allow time for Notices of Violation to be resolved or for permits to be canceled.

Zoning Administrator

The eighteen appeals of Zoning Administrator (ZA) determinations comprised 14% of the appeals heard by the Board:

- Seven appeals protested variances granted by the ZA.
- Five appeals protested Letters of Determination (LOD)
    - LODs are written interpretations of how certain sections of the Planning Code should be applied to specific factual situations at a specific piece of property. For example, an LOD may address whether alcohol may be sold by a store in a particular zoning district, whether a previously granted entitlement has expired, or what the legal dwelling unit count is for a particular parcel.
- Three appeals protested the ZA's request to release a suspension that had been placed on a permit, two appeals protested Requests for Revocation, and one objected to a Request for Suspension.

The Board denied 84% (15) of the appeals of Zoning Administrator determinations, and granted 11% (2), imposing conditions in one case. The remaining case (5%) was sent by the Board to its Call of the Chair calendar to give a project sponsor time to seek a needed conditional use authorization.

Department of Public Works

Thirty-one of the appeals heard (25%) relate to determinations made by the Department of Public Works (DPW):

- Fifteen appeals were of tree removal permits. Eight of these protested the denial of a permit to remove trees and seven protested the issuance of such permits.
- Eight were of utility excavation permits sought by AT&T. Two of these were filed by AT&T challenging DPW's denial of a permit and six were protest appeals filed by residents objecting to the granting of a permit to AT&T.
- Three appeals were of temporary occupancy permits taken out by a tree removal company seeking permission to use the public right-of-way to stage equipment.
- Two appeals protested the issuance of mobile food facility permits.
- One appeal each was filed in association with a minor side encroachment permit, night noise permit and parklet.

The Board denied 45% (14) of the DPW-related appeals and granted 55% (17), imposing conditions in eleven of the appeals granted.

Department of Public Health

Nine appeals (7%) were filed on determinations made by the Department of Public Health (DPH). Seven appeals were of suspensions or denials of tobacco sales permits. There was also one appeal of the issuance of a medical cannabis dispensary permit and one of a noise variance. The Board denied six of the appeals and granted three, imposing conditions in two of the granted matters.

Planning Commission

There were two appeals of Planning Commission decisions heard by the Board during the year. One protesting exceptions granted under Planning Code Section 309 for a development in the Civic Center area and the other protesting the allocation of office space for a downtown project. The Board denied the office allocation appeal but granted the appeal filed under Section 309 in order to modify the project as requested by the project sponsor.

Municipal Transportation Agency – Division of Taxis and Accessible Services

The Board heard two appeals stemming from SFMTA actions, both taxi-related revocations. One was associated with a part time driving permit and the other a dispatch permit. Both were denied.

APPENDIX C – LITIGATION DETAIL

Set out below is a description of the lawsuits in which the Board is named as a party, that were filed, pending or resolved during the year.

AIDS Healthcare Foundation, Inc. (AHF) v. City & County of San Francisco, et al.

NEW. A federal lawsuit was filed challenging (1) the City's implementation of interim zoning controls applying formula retail restrictions to the commercial district where AHF seeks to open a pharmacy; and (2) the Board's August 21, 2014 dismissal of an appeal protesting the release of a suspension on AHF's building permit. The Board dismissed the appeal as moot based on a finding that the interim controls require AHF to obtain a conditional use authorization from the Planning Commission before the permit suspension may be lifted. In January 2015, the District Court granted the City's motion to dismiss AHF's petition, with leave to amend. After AHF amended its petition, the City filed another motion to dismiss, at which time AHF asked for a stay of the litigation while AHF applies for a conditional use authorization for its pharmacy. The City agreed. The conditional use application is still pending before the Planning Commission.

Clear Channel Outdoor, Inc. v. Board of Appeals of the City & County of San Francisco

DECIDED. A challenge was filed to the issuance of a permit to reconstruct a sign located at 2283-2297 Market Street. Clear Channel filed a permit application to remove a billboard. The permit was issued, and the property owner appealed. On October 28, 2008, the Board granted the appeal, revoked Clear Channel's permit and authorized a revision of the building permit to allow the property owner to reinstall a billboard. The City won this case on demurrer at the trial court. On February 25, 2011, the Court of Appeal reversed the trial court, in part, concluding that Clear Channel had standing to challenge the Board's decision to overturn its permit, but not its decision to grant the property owners the right to reinstall and maintain a sign on their property. The time

EXHIBIT J

Quotations from Anza Parking Corp. v. City of Burlingame, 195 Cal. App. 3d 855, 859–60, 241 Cal. Rptr. 175, 177–78 (Ct. App. 1987):

"…we hold that a conditional use permit may not lawfully (and perhaps may not constitutionally—see *Vlahos v. Little Boar's Head District, supra, 146 A.2d 257, 260*) be conditioned upon the permittee having no right to transfer it with the land. Such a condition, if imposed, is beyond the power of the zoning authority, and void."

Anza Parking Corp. v. City of Burlingame, 195 Cal. App. 3d 855, 860, 241 Cal. Rptr. 175, 178 (Ct. App. 1987):

"Government Code section 65909 provides: "No local governmental body, or any agency thereof, may condition the issuance of any ... use permit ... for any purpose not reasonably related to the use of the property for which the ... use permit is requested." Contrary local law or rulings "are deemed inoperative (§ 65909)." (Our; *Wiltshire v. Superior Court* (1985) 172 Cal.App.3d 296, 305, 218 Cal.Rptr. 199.)

County of Imperial v. McDougal (1977) 19 Cal.3d 505, 510, 138 Cal.Rptr. 472, 564 P.2d 14: "Such permits run with the land...."

Anza Parking Corp. v. City of Burlingame, 195 Cal. App. 3d 855, 858–59, 241 Cal. Rptr. 175, 177 (Ct. App. 1987):

"Cohn v. County Board of Supervisors (1955) 135 Cal.App.2d 180, 185, 286 P.2d 836: " 'A variance for the use of property in a particular manner is not personal to the owner at the time of the grant but is available to any subsequent owner....' "

The same rule prevails throughout the nation."

BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)

49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103
628.652.7600
www.sfplanning.org

Board of Appeals Brief

Date:	**March 18, 2021**
Hearing Date:	**March 24, 2021**
Appeal No.:	**21-009**
Address:	**530 Howard Street**
Block/Lot:	**3721 / 014**
Zoning/Height:	**C-3-O(SD) – Downtown - Office (Special Development)** **450-S Height and Bulk District**
Staff Contact:	**Scott Sanchez, (628) 652-7320 or scott.sanchez@sfgov.org**

INTRODUCTION

On February 2, 2021, Brett Gladstone on behalf of Becker Boards, LLC (Appellant), an outdoor advertising company, filed Appeal No. 21-009 on the Planning Department's denial of Building Permit Application (BPA) No. 202010196882 (Permit) for 530 Howard Street (Property). The Permit sought to "remove (e) 25' x 40' billboard and replace with new 25' x 40' billboard at the same location on building" and was denied because the proposed scope of work constitutes the removal and replacement of a General Advertising (GA) Sign in violation of Planning Code Section 604(h) (Exhibit A). Becker Boards' argument fails for several reasons. First, replacement of the existing sign with would violate Planning Code Section 604(h), which prohibits replacement of a sign that has been voluntarily removed by its owner. Second, contrary to the Appellant's assertion, the Appellant's own permit application seeks approval to remove the existing sign, underscoring the fact that removal of the sign would be voluntary under Section 604(h). Third, none of the past Board of Appeals decisions that the Appellant cites apply to this case. Last, the Appellant ignores the Board's most relevant decisions, relating to 1633-1649 Haight Street (*Front Properties*), which confirm that denial of this permit application was proper.

PROPERTY INFORMATION

The Property is located at 530 Howard Street within the C-3-O(SD) (Downtown – Office (Special Development)) Zoning District, Transit Center C-3-O(SD) Commercial Special Use District (SUD), Transbay C-3 SUD, Transit Center Special Sign District (SSD) and 450-S Height and Bulk District. The subject building was constructed in 1908 and contains 25,955 sf of office use on 4 stories (per Assessor's records). To the east of the subject property is 524 Howard Street, which is currently used as a parking lot. In 2016, the Planning Commission approved a project to build a 48-story building with up to 334 dwelling units and ground floor commercial space.

BACKGROUND

On August 20, 1998, BPA No. 9815573 was issued to install one GA Sign on the east facing wall (along the side property line) of the Property (Exhibit B) that is visible from Howard Street and from City Park (aka Salesforce Park). The permit indicates that the sign was constructed as a sign structure and not as a painted or other non-structural sign. The sign is 25' wide and 40' tall and the applicant was listed as Foster Media. The sign was subsequently operated by CBS Outdoor which has since been rebranded as Outfront Media. The subject sign would most likely need to be removed if/when the project on the adjacent property at 524 Howard Street is constructed.

On March 5, 2002, the voters passed Prop. G to prohibit new outdoor commercial advertising signs and regulate relocation of existing outdoor commercial advertising signs through the addition of Planning Code Section 611. Prop. G rendered all existing GA Signs as non-conforming uses and/or non-complying structures. Per Planning Code Section 180(g), "signs which are themselves classified as nonconforming uses and noncomplying structures under this Code shall be governed by Section 604 and other provisions of Article 6 of this Code."

On June 26, 2006, the Board of Supervisors approved Ordinance No. 140-06 to amend the Planning Code provisions related to GA Signs (Exhibit C). As described in the summary of the ordinance, this legislation amended "Planning Code Section 604 to prohibit general advertising signs that have been removed from being replaced on the same site." Section 604 was amended to state: "A general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location and the erection, construction and/or installation of a general advertising sign at that location to replace the previously existing sign shall be deemed to be a new sign in violation of Section 611(a)."

On February 6, 2013, BPA No. 201302069565 was filed by CBS for "voluntary removal of 40' x 25' non-structural advertising sign." On February 19, 2013, the Planning Department issued a Notice to Property Owner (Exhibit D) to inform the property owner of the permit and that under Section 604(h) "once a general advertising sign is voluntarily removed by its owner it cannot be replaced." On February 20, 2013, the Planning Department received a letter from CBS requesting cancellation of this permit.

On November 10, 2016, the Board of Supervisors approved Ordinance No. 217-16 to amend various Planning Code provisions related to signage. This ordinance amended Planning Code Section 607(a) to prohibit GA Signs in any C, M, or PDR District.

On December 8, 2017, the Board of Supervisors approved Ordinance No. 234-17 to create the Transit Center Special Sign District (SSD). The subject property is located within the Transit Center SSD and within 200 feet of City Park which imposes additional restrictions on signs (even business signs) and illumination with the goal of reducing negative impacts on the aesthetics of the park and the "enjoyment of its users by, among other things, interfering with the natural scenery and landscape afforded by the park or POPOS, as well as creating unwanted illumination and glare."

On October 19, 2020, the Appellant (with the authorization of the property owner based upon Appellant's brief) filed BPA No. 202010196882 (Permit) to "remove (e) 25' x 40' billboard and replace with new 25' x 40' billboard at the same location on building" (Exhibit E).

On November 12, 2020, the Planning Department disapproved the Permit because the scope of work was not approvable under Section 604(h) and on January 28, 2021 the Department of Building Inspection (DBI) issued a cancellation letter for the Permit.

On February 2, 2021, Brett Gladstone on behalf of Becker Boards, LLC (Appellant), an outdoor advertising company, filed Appeal No. 21-009 on the disapproval of the Permit.

ISSUES ON APPEAL

The Appellant argues the denial of the permit should be overruled. However, the Appellant fails to provide any evidence that the Planning Department's denial of the Permit was in error.

The Replacement GA Sign is a New Sign in Violation of Planning Code Section 604(h)

The Appellant argues that "a replacement billboard is not a 'new' billboard" prohibited under Prop. G. (Section 611); however, this conflicts with the plain and unambiguous language of Section 604(h) which states: "A sign which is voluntarily destroyed or removed by its owner or which is required by law to be removed may be restored only in full conformity with the provisions of this Code…A general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location and the erection, construction and/or installation of a general advertising sign at that location to replace the previously existing sign shall be deemed to be a new sign in violation of Section 611(a)."

In this case the Appellant seeks the Permit to voluntarily remove the GA Sign and replace it with a new GA Sign in the same location. Such removal and replacement is considered to be a "new sign in violation of Section 611(a)."

Appellant Misstates Scope of Work on Permit

Appellant boldly claims that "our permit application is not to take the CBS sign down, but merely for Becker and the property owner to put a new billboard there"; however, this is contradicted by the plain language of its application is to "remove (e) 25' x 40' billboard and replace with new 25' x 40' billboard at the same location on building." The Appellant continues that "the property owner will authorize CBS to take out a permit to remove its billboard later, or the owner will get his own permit to do that and return CBS' vinyl sign to CBS." These statements (both on the Permit and in the Appellant's brief) indicate that the removal is being sought with the knowledge and consent of the property owner. The property owner's consent to the removal renders it a "voluntary" removal per Section 604(h). Such removal and replacement, whether done in one permit (as proposed on the Permit) or multiple permits, is prohibited under Section 604(h).

Past Board of Appeals Decisions Do Not Support Appellant's Arguments

The Appellant repeatedly cites the Board's decision on Appeal Nos. 03-036 for 3251-3253 Steiner Street (*Pocoroba*), as well as its decisions in Appeal Nos. 06-039 for 504 6th Street (*Suckle*) and 07-075 for 2283-2297 Market Street (*Lee*); however, those decisions do not apply to this case, as their facts are fundamentally different from those in the present case. Additionally, the Appellant fails to correctly cite the Board's more recent and relevant decisions on Appeal Nos. 09-138 and 11-021 for 1633-1649 Haight Street (*Front Properties*), both of which are denials of permits pursuant to Section 604(h).

Pocoroba

The Appellant cites the Board's October 2003 determination in *Pocoroba* (Exhibit C of Appellant's Brief) to argue that that the right to a GA Sign runs with the land, and that while a sign company could remove a structure, it could not terminate the associated land use right. However, the Appellant fails to acknowledge that the factual circumstances of *Pocoroba* are very different from those of the present case. In *Pocoroba*, the Board found that the sign company "notified the City by letter to the Planning Department, copied to the

Department of Building Inspection, that it intended to abandon its permits…and requested that the City immediately cancel the permits" prior to removing its signs. Accordingly, the attempted relinquishment of permits in *Pocoroba* was both (1) unilaterally performed by the sign company without property owner authorization and (2) done improperly via a letter written to the City rather than through the building permit which was required to authorize and execute the work. In its *Lee* decision, discussed below, the Board confirmed that the lack of property owner consent in *Pocoroba* was central to that earlier decision. The Board stated in *Lee*, "In *Pocoroba*, this Board concluded that the right to display general advertising signs on a property belongs to the property owner, that removal of a legal non-complying general advertising sign structure *without the consent of the property owner* does not constitute removal or destruction of the non-conforming use, and that restoration of a general advertising sign structure removed without the consent of a property owner would not constitute a new general advertising sign under Proposition G (Planning Code Section 611(a))." (Emphasis added.) Thus, *Pocoroba* does not preserve the right to display a sign where, as in this case, a property owner voluntarily seeks to remove the sign.

Furthermore, the provision of Section 604(h) that requires Planning to deny the Appellant's permit application had not yet been enacted when *Pocoroba* was decided. The City adopted the relevant provision of Section 604(h) in June 2006, through Ordinance 140-06, which, among other things, amended Section 604(h) to state unequivocally that "a general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location, and the erection, construction, and/or installation of a general advertising sign at that location to replace the previously existing sign shall be deemed to be a new sign in violation of Section 611(a) of this Code." As such, Section 604(h) clarifies the situations in which the replacement of general advertising signs is not permitted. This specificity did not exist at the time of the *Pocoroba* decision. In the present case, Section 604(h) requires the Planning Department to disapprove the permit to remove and replace the GA Sign.

Suckle

In *Suckle*, the Board, referencing the unpublished Superior Court decision in *Clear Channel Outdoor Inc. v. Suckle, et al* (Exhibit E of Appellant's brief) noted that "the Court concluded that the right to display general advertising signs at the Property belongs to the property owner, but expressly declined to rule on whether the Property Owners had a right to rebuild a sign on the Property." The Board's decision further cited the "unique facts" of the case, including the importance of relevant actions having taken place prior to Prop. G, which enacted Planning Code Section 611, and Ordinance No. 140-06, which amended Planning Code Section 604(h) to prohibit the replacement of general advertising signs that are voluntarily removed. These "unique facts" are not present in this case. Thus, the Board's *Suckle* decision does not support the Appellant's contention that the Appellant has the right to remove and replace the sign at issue.

Lee

In *Lee*, the Board found the following: "Because Clear Channel acted under a building permit during the 15-day appeal period that Appellants [the property owners] did not authorize, Appellants did not 'voluntarily' remove the general advertising from their property. Instead, the removal is akin to a 'calamity' under Planning Code Section 188(b), which does not forfeit the property owner's Proposition G recognized rights to continue the non-conforming use and maintain the non-complying structure. Restoration of a general advertising sign at the Property after a calamity does not constitute a 'new general advertising sign' under Proposition G, does not conflict with the limitations for nonconforming uses set forth in Planning Code Section 181, and does not conflict with the provisions of Planning Code Section 604(h)." *Lee* does not preserve the right to display a sign in cases like the present one, where a property owner voluntarily seeks to remove and replace a GA Sign in violation of Section 604(h).

As a result of *Lee*, the Planning Department instituted a policy to provide 10 days' notification to the property owner and sign company before approving a permit to remove or modify a GA Sign. As an alternative

to waiting for the 10-day notification period to run, the parties may submit a letter to Planning acknowledging and approving the proposed work. Planning gave both the property owner and sign company operating the sign the required 10-day notice in this case, by way of the Notice to Property Owner (Exhibit D).

Front Properties

While citing irrelevant prior Board decisions, Appellant fails to address this Board's decision in the 1633-1649 Haight Street case, Appeal No. 09-138, which directly applies. This decision upheld the Planning Department's disapproval of a permit to "deconstruct and replace billboard consistent with area and height of existing legal billboard per termite report" at 1633-1649 Haight Street (Exhibit F). This decision demonstrates that Planning's denial of Appellant's permit in the present case was proper. In the 1633-1649 Haight Street case, the property owner sought a permit pursuant to Planning Commission Resolution No. 17258, which allows the replacement of GA Sign only if "safety improvements are required by [DBI] and such work necessitates complete deconstruction." DBI performed a site visit to the sign and determined that while some areas of the sign were damaged, removal or replacement of the entire sign was not required. As such, the permit did not comply with Resolution No. 17258. On October 13, 2009, the Planning Department issued a Second Notice of Requirements (Exhibit G) finding that the proposal to deconstruct and replace the sign was prohibited under Section 604(h). At the property owner's request, the permit was disapproved and appealed to the Board, which denied the appeal and upheld the Planning Department's determination on April 28, 2010. On September 8, 2010, DBI issued a permit to remove the GA Sign at 1633-1649 Haight Street pursuant to a Court Order.

On September 15, 2011, the Board released a Notice of Decision and Order for Appeal No. 11-021, which also involved the 1633-1649 Haight Street sign, upholding the Planning Department's disapproval of a permit to "replace billboard involuntarily removed without owner authorization; billboard to be replaced exactly in-kind" at 1633-1649 Haight Street (Exhibit H). Unfortunately, the Appellant's brief provides

misleading information regarding the Board's ruling in this appeal. The Appellant argues that the Board's decision "did not rule that the removal of the sign structure caused any right to a billboard on the property to be extinguished for good" and purports to provide the Board's decision as their Exhibit H to prove this point; however, their Exhibit H is actually the Board's decision in a different case at this address (Appeal No. 09-151) and their summary does not comport with the facts in this case. The Board's *actual* decision is attached to this brief as Exhibit F, and a review of the findings provides a different understanding. In this decision, the Board upheld the denial of the permit "with a FINDING that the billboard does not comply with Planning Code § 604(h) and is a non-complying structure, as referenced in the Planning Department's denial letter dated 12/14/10 and in its respondent brief dated 8/11/11.[1]" Contrary to the Appellant's contention, in denying the permit to replace the sign, the Board necessarily determined that there was no continuing right to operate a sign at the property; otherwise the permit would have been approved. The Board relied on Section 604(h), which provides,

> Such sign may not, however, be replaced, altered, reconstructed, relocated, intensified or expanded in area or in any dimension except in conformity with the provisions of this Code, including Subsection (i) below. Ordinary maintenance and minor repairs shall be permitted, but such maintenance and repairs shall not include replacement, alteration, reconstruction, relocation, intensification or expansion of the sign; provided, however, that alterations of a structural nature required to reinforce a part or parts of a lawfully existing sign to meet the standards of seismic loads and forces of the Building Code, to replace a damaged or weathered signboard, to ensure safe use and maintenance of that sign, to remediate hazardous materials, or any combination of the above alterations shall be considered ordinary maintenance and shall be allowed. A sign which is damaged or destroyed by fire or other calamity shall be governed by the provisions of Sections 181(d) and 188(b) of this Code.

(Planning Code Sec. 604(h).) Thus, the Board's finding that the sign did not comply with Section 604(h) indicated that the proposed work did not constitute "ordinary maintenance and minor repairs" and was not

[1] The Board's minutes from this hearing state the Board voted "to deny the appeal and uphold the denial of the permit based on a finding that the permit does not comply with Planning Code Section 604(h) and that the proposed billboard would be a non-complying structure, as stated in the Planning Department's letter dated December 14, 2010 and in its brief."

"damaged or destroyed by fire or other calamity" and therefore could not be removed and replaced. If, as the Appellant claims, permits can be sought by a property owner to remove and replace GA Signs at will, then the Board would have granted the appeal and allowed the sign to be replaced. In reality, the Board agreed with the arguments made by the Planning Department, including those related to the interpretation and application of Section 604(h), and rejected arguments similar to those made by the Appellant in this case regarding the relevance of past decisions such as *Lee* and *Pocoroba*. The Planning Department's brief from this appeal (dated August 11, 2011), which includes a detailed analysis of many of the legal arguments raised Appellant's brief, is attached (Exhibit I).

CONCLUSION

In light of the foregoing, the Planning Department respectfully requests that the Board of Appeals deny the appeal and uphold the Planning Department's denial of Building Permit Application No. 202010196882 by finding that the Permit violates Planning Code Section 604(h).

Attachments:
Exhibit A: Section 604(h)
Exhibit B: Building Permit Application No. 9815573 Permit
Exhibit C: Ordinance 140-06
Exhibit D: Notice to Property Owner (February 19, 2013)
Exhibit E: Building Permit Application No. 202010196882 Permit and Plans
Exhibit F: Notice of Decision and Order (Appeal No. 09-138)
Exhibit G: Second Notice of Requirements (October 13, 2009)
Exhibit H: Notice of Decision and Order (Appeal No. 11-021)
Exhibit I: Planning Department Brief for Appeal No. 11-021 (August 11, 2011)

Cc: Brett Gladstone of G3MH LLP – Attorney for Appellant (by email)

Exhibit A

Planning Code Section 604(h):

Nonconforming Signs; Replacement, Alteration, Reconstruction, Relocation, Intensification, or Expansion. Unless otherwise provided in this Code or in other Codes or regulations, a lawfully existing sign which fails to conform to the provisions of this Article 6 shall be brought into conformity when the activity for which the sign has been posted ceases operation or moves to another location, when a new building is constructed, or at the end of the sign's normal life. Such sign may not, however, be replaced, altered, reconstructed, relocated, intensified or expanded in area or in any dimension except in conformity with the provisions of this Code, including Subsection (i) below. Ordinary maintenance and minor repairs shall be permitted, but such maintenance and repairs shall not include replacement, alteration, reconstruction, relocation, intensification or expansion of the sign; provided, however, that alterations of a structural nature required to reinforce a part or parts of a lawfully existing sign to meet the standards of seismic loads and forces of the Building Code, to replace a damaged or weathered signboard, to ensure safe use and maintenance of that sign, to remediate hazardous materials, or any combination of the above alterations shall be considered ordinary maintenance and shall be allowed. A sign which is damaged or destroyed by fire or other calamity shall be governed by the provisions of Sections 181(d) and 188(b) of this Code.

A sign which is voluntarily destroyed or removed by its owner or which is required by law to be removed may be restored only in full conformity with the provisions of this Code, except as authorized in Subsection (i) below. A general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location, and the erection, construction, and/or installation of a general advertising sign at that location to replace the previously existing sign shall be deemed to be a new sign in violation of Section 611(a) of this Code; provided, however, that such reinstallation, replacement, or reconstruction pursuant to a permit duly issued prior to the effective date of this requirement shall not be deemed a violation of Section 611(a) and shall be considered a lawfully existing nonconforming general advertising sign; and further provided that this prohibition shall not prevent a general advertising sign from being relocated to that location pursuant to a Relocation Agreement and conditional use authorization under Sections 611 and 303(k) of this Code and Section 2.21 of the San Francisco Administrative Code.

Exhibit B

CENTRAL PERMIT BUREAU
1660 Mission Street
San Francisco, California 94103

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF BUILDING INSPECTION
(415) 558-6070

NO 857881

PERMIT IS GRANTED TO:

[ ] ERECT [ ] ALTER BUILDING [X] ERECT SIGN
[ ] DEMOLISH BUILDING [ ] GRADE
[ ] LOWER CURB [ ] OCCUPY STREET SPACE
[ ] EXCAVATE STREET OR SIDEWALK
[ ] POST NOTICE
[ ] HOUSE NUMBER CERTIFICATE
[ ] REPAIR OR CONSTRUCT SIDEWALK

DATE OF ISSUE: 08/20/98
APPLICATION NO: 9815573
FILING FEE RECEIPT #: 298824

THIS PERMIT IS GRANTED IN ACCORDANCE WITH PROVISIONS OF THE CHARTER AND ORDINANCES OF THE CITY AND COUNTY OF SAN FRANCISCO AND/OR THE CURRENT STANDARD SPECIFICATIONS OF THE DEPARTMENT OF BUILDING INSPECTION

* ADDITIONAL INFORMATION REGARDING SPECIFIC PERMITS IS GIVEN ON THE BACK OF THIS FORM.

SUPPLEMENTAL FEE PAID:

[ ] FINAL PLAN CHECK [ ] EXPEDITER FEE [ ] PENALTY [ ]
[ ] STRUCTURAL LTR [X] DCP FEE [ ] [ ]

DBI P/C PAID AT FILING $34.75

OWNER: FOSTER MEDIA INC. (415)623-5700

LOCATION OF JOB: **HOUSE NUMBER:** EXISTING: [ ] ASSIGNED [ ]

STREET ADDRESS			BLOCK/LOT
530	HOWARD	ST 0000	3721 /014
532	HOWARD	ST 0000	

METES AND BOUNDS
SIDE OF
FEET FROM

FRONTAGE FT. 4 # STORIES 3-N TYPE — LEGAL OCCUPANCIES

BUILDING USE OFFICE ESTIMATED COST $ 20,000

SIDEWALK SQ. FTGE ____ ST. SPACE LINEAR FT. ____ 9 FT. CURB SECT. TO BE LOWERED ____

WORK MUST COMMENCE ON BUILDING WITHIN 90 DAYS OF DATE OF ISSUANCE OF THIS PERMIT, UNLESS EXTENSION AUTHORIZED. IF UNDER ENFORCEMENT ORDERS SPECIAL TIME PERIODS WHERE SPECIFIED WILL APPLY.

TIME FOR COMPLETION OF WORK UNDER THIS BUILDING PERMIT EXPIRES 6 MONTHS AFTER DATE OF ISSUANCE. IF UNDER ENFORCEMENT ORDERS SPECIAL TIME PERIODS WHERE SPECIFIED WILL APPLY. (NOTE: STREET SPACE PERMIT EXPIRES ON COMPLETION OF WORK OR WHEN REVOKED BY DIRECTOR OF PUBLIC WORKS. SEE BACK OF FORM FOR OTHER TIME LIMITS.)

FOSTER MEDIA INC (415)623-5700 PERMIT # 857881
FEE PAYOR

353 SACRAMENTO STR #1760 APPEAL #
ADDRESS

SAN FRANCISCO, CA 94111 CENTRAL PERMIT BUREAU-D.B.I. TAR
CITY

►SEPARATE PERMITS MUST BE OBTAINED FOR ELECTRICAL, PLUMBING OR OTHER RELATED WORK◄

9003-18 (Rev.10/95)

AUDITED FOR REFUND		FEE
[redacted]	7081 DCP PLAN CHECK	[redacted]
[redacted]	7212 STRUCTURAL	[redacted]
	7217 DEMOLITION	
[redacted]	7223 BUILDING	47.0
	7223 GRADING	
[redacted]	7224 POSTING	[redacted]
	7226 PLAN CHECK	
[redacted]	7227 CURB	[redacted]
	7231 ST/SW EXCAV.	
[redacted]	7235 HOUSE #	[redacted]
	7237 ST. SPACE	
[redacted]	7842 SIDEWALK	[redacted]
	7899 EXPEDITER	
[redacted]		[redacted]
[redacted]		[redacted]
	SURCHARGE	2.1
	SUBTOTAL FEES	$ 49.1
[redacted]	EXCAV. DEP.	[redacted]
	* 029082 ST. SPACE	
[redacted]	029538 SMP FEE	[redacted]
	SUBTOTAL	$ 0.0
	TOTAL	$ 49.1

Exhibit B

APPROVED FOR ISSUANCE:

FOR DEPARTMENTAL USE ONLY

APPROVED
Dept of Building Insp.
AUG 20 1998 8p 0.1.8

DIRECTOR
DEPT OF BUILDING INSPECTION

WC 1-1-99

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF BUILDING INSPECTION
APPLICATION FOR PERMIT TO ERECT SIGN

BLDG. FORM 4/7

APPLICATION NUMBER: 9815572

OSHA APPROVAL REQ'D
APPROVAL NUMBER: ☐

PERMIT CONTROL	ACTIVE COMPLAINTS* ☐ NONE ☐ HID ☐ CED / PCD ☐ BID ☐ DCP ☐ OTHER:													
STATION	HID	CED	PCD	BID	DCP	BBL PC-CHECK ONE					FIRE	BSM	HEALTH	REDEV	CPB
						CNT-PC	PAD-PC	PAD-MAJ	SSS	PARAPET					
SEQ					(1)		(2)								
ACCEPTED															
APPROVED*															
DATE					8/10										

CHECK APPLICABLE: ☐ PARALLEL ☐ SITE PENALTY ☐ 9X ☐ 2X ☐ TITLE 24 - HC ☐ TIDF ☐ EXPEDITOR ☐ SFUSD ☐ BLDG ENLARGEMENT (STAMP APPL) ☐ HAZARDOUS MATERIAL

BBI KEY: RESID. = CNT-PC; NON-RESID. = PAD-PC; NEW / MAJOR = PAD-MAJ; UMB = SSS

COMMENT: *SIGN APPL.

APPLICATION IS HEREBY MADE FOR PERMISSION TO ERECT, PAINT, ETC. IN ACCORDANCE WITH PLANS AND SPECIFICATIONS SUBMITTED HEREWITH AND FOR THE PURPOSE SET FORTH HEREIN:

4 [X] ERECT SIGN (BUILDING INSPECTION AND PLANNING DEPARTMENT APPROVAL REQUIRED.)

7 [ ] PAINTED OR OTHER NON-STRUCTURAL SIGN (ONLY PLANNING DEPARTMENT APPROVAL REQUIRED.)

DATE FILED	FILING FEE RECEIPT NO.
8/10/98	298824

PERMIT NO.	ISSUED	6. STREET ADDRESS OF JOB	BLOCK / LOT
857881	8-20-98	530-532 HOWARD ST.	3721-014

DO NOT WRITE ABOVE THIS LINE

DESCRIPTION OF EXISTING BUILDING

(1) TYPE OF CONSTR.	(2) NO. OF STORIES	(3) PRESENT USE:	(4) BLDG HT. AT CENTER LINE OF FRONT OF BUILDING:	(5) ESTIMATED COST OF JOB:
Concrete	4	Commercial	4 FT.	$ 20,000.00

DESCRIPTION OF PROPOSED SIGN

(7) TYPE OF SIGN (MORE THAN 1 BLOCK MAY BE CHECKED IF APPLICABLE)

☐ GROUND ☐ ELECTRIC ☒ NON-ELECTRIC ☐ ROOF ☒ WALL ☐ PROJECTING ☒ SINGLE FACED ☐ DOUBLE FACED ☐ PAINTED WALL ☐ DOOR/WINDOW
☐ BULLETIN BOARD ☐ EXISTING AWNING/MARQUEE/CANOPY ☐ PROFESSIONAL OCCUPATION

SIZE OF SIGN:	THICKNESS:	WEIGHT:	TOTAL SURFACE AREA:	TOTAL AREA OF ALL ADVERTISING SPACE	STANDARDIZED APPROVAL NO:
25' x 40' FT.			1000 SQ. FT.	1000 SQ. FT.	

ILLUMINATION: ☐ DIRECT ☒ INDIRECT ☐ NON ILLUMINATED ☐ FLASHING | WILL STREET SPACE BE USED DURING CONSTRUCTION? ☐ YES ☐ NO

PURPOSE: ☒ NEW SIGN ☐ REPLACEMENT ☐ RECONSTRUCTION ☐ RELOCATION ☐ EXPANSION ☐ CHANGE COPY ☐ OTHER

(8) CONTRACTOR	ADDRESS	PHONE	CONT. LIC.	EXP. DATE
YOUNG ELECTRIC SIGN CO.	4105-C SOUTH MARKET CT.	(916) 925-5185	250739	11-30-98

(9) ARCHITECT OR ENGINEER (DESIGN ☐ ; CONSTRUCTION ☐)	ADDRESS	PHONE	CALIF. CERTIFICATE NO.

(10) CONSTRUCTION LENDER (LENDER NAME AND BRANCH DESIGNATION IF ANY IF THERE IS NO KNOWN CONSTRUCTION LENDER, ENTER "UNKNOWN").	ADDRESS

(11) OWNER - LESSEE (CROSS OUT ONE)	ADDRESS	PHONE (FOR CONTACT BY DEPT.)
FOSTER MEDIA, INC.	353 SACRAMENTO ST. STE 1760	(415) 623-5700 x106

(12) PLOT PLAN AND ELEVATION: INDICATE ON SCALED DRAWINGS THE EXACT LOCATION OF THE SIGN HORIZONTALLY AND VERTICALLY ON THE BUILDING AND ON THE LOT. SHOW SIDEWALK WIDTH AND SIGN CONSTRUCTION. IF ERECTING SIGN, ILLUMINATION FOR SIGN, MARQUEE, ETC., SHOW METHOD OF ATTACHMENT AND THE CONSTRUCTION OF THE SIGN HEREON OR ON SEPARATE DRAWINGS IN DUPLICATE. PROVIDE HEIGHT OF SIGN ABOVE GROUND AND THE PROJECTION IN FEET FROM THE BUILDING. IF WALL SIGN, PROVIDE SIGN COPY.

9/2/98 Per Ok

IMPORTANT NOTICES

Where top guy wire is required, anchor with 1/2" dia. through-bolt (minimum), to the structural frame of the building below the parapet wall. No portion of building or structure, or scaffolding used during construction, to be closer than 6'0" to any wire operating at more than 750 volts. See Sec. 385 Calif. Penal Code. Encroachments authorized on public Property are revocable when ordered by Board of Supervisors (S.F. Building Code). Any stipulation required herein or by Code may be appealed.

APPROVAL OF THIS APPLICATION DOES NOT CONSTITUTE APPROVAL FOR THE ELECTRICAL WIRING, A SEPARATE PERMIT FOR THE WIRING MUST BE OBTAINED. THIS IS NOT A PERMIT TO ERECT A SIGN. NO WORK SHALL BE STARTED UNTIL A PERMIT TO ERECT A SIGN IS ISSUED.

CHECK APPROPRIATE BOX

☐ OWNER ☐ ARCHITECT ☐ ENGINEER
☒ LESSEE ☐ AGENT WITH POWER OF ATTORNEY
☐ CONTRACTOR ☐ ATTORNEY IN FACT

APPLICANT'S CERTIFICATION

I HEREBY CERTIFY AND AGREE THAT IF A PERMIT IS ISSUED FOR THE CONSTRUCTION DESCRIBED IN THIS APPLICATION, ALL THE PROVISIONS OF THE PERMIT AND ALL LAWS AND ORDINANCES THERETO WILL BE COMPLIED WITH.

9003-10 (REV. 2/95)

NOTICE TO APPLICANT

HOLD HARMLESS CLAUSE: The permittee(s) by acceptance of the permit, agree(s) to indemnify and hold harmless the City and County of San Francisco from and against any and all claims, demands and actions for damages resulting from operations under this permit, regardless of negligence of the City and County of San Francisco, and to assume the defense of the City and County of San Francisco against all such claims, demands or actions.

In conformity with the provisions of Section 3800 of the Labor Code of the State of California, the applicant shall have coverage under (I), or (II) designated below or shall indicate item (III), or (IV), or (V), whichever is applicable. If however item (V) is checked item (IV) must be checked as well. Mark the appropriate method of compliance below:

I hereby affirm under penalty of perjury one of the following declarations:

( ) I. I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

(X) II. I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier: FIREMANS FUND, INS.

Policy Number: DWP80769277

( ) III. The cost of the work to be done is $100 or less.

( ) IV. I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California. I further acknowledge that I understand that in the event that I should become subject to the workers' compensation provisions of the Labor Code of California and fail to comply forthwith with the provisions of Section 3800 of the Labor Code, that the permit herein applied for shall be deemed revoked.

( ) V. I certify as the owner (or the agent for the owner) that in the performance of the work for which this permit is issued, I will employ a contractor who complies with the workers' compensation laws of California and who, prior to the commencement of any work, will file a completed copy of this form with the Central Permit Bureau.

C. DelliPatti — 8-10-98

Signature of Applicant or Agent — Date

Exhibit B

CONDITIONS AND STIPULATIONS

REFER TO:

APPROVED:

Zone C-3-O

CPC Setback 0'

DEPARTMENT OF CITY PLANNING 8/10/98

DATE:

REASON:

NOTIFIED MR.

APPROVED:

CIVIL ENGINEER, DEPT. OF BLDG. INSPECTION 8/19/98

DATE:

REASON:

NOTIFIED MR.

APPROVED:

NA

BUREAU OF ENGINEERING

DATE:

REASON:

NOTIFIED MR.

APPROVED:

REDEVELOPMENT AGENCY

DATE:

REASON:

NOTIFIED MR.

APPROVED:

DATE:

REASON:

NOTIFIED MR.

DATE:

REASON:

NOTIFIED MR.

DATE:

REASON:

NOTIFIED MR.

DATE:

REASON:

NOTIFIED MR.

DATE:

REASON:

NOTIFIED MR.

HOLD SECTION — NOTE DATES AND NAMES OF ALL PERSONS NOTIFIED DURING PROCESSING

CONTACT DISTRICT INSPECTOR NAMED ON FACE OF APPLICATION AT START OF WORK (TELEPHONE NO. 861-5820). THIS APPLICATION IS APPROVED WITHOUT FIELD INSPECTION AND DOES NOT CONSTITUTE AN APPROVAL OF THE BUILDING. WORK AUTHORIZED MUST BE DONE IN STRICT ACCORDANCE WITH ALL APPLICABLE CODE.

I AGREE TO COMPLY WITH ALL CONDITIONS OR STIPULATIONS OF THE VARIOUS BUREAUS OR DEPARTMENTS NOTED ON THIS APPLICATION, AND ATTACHED STATEMENTS OF CONDITIONS OR STIPULATIONS, WHICH ARE HEREBY MADE A PART OF THIS APPLICATION.
NUMBER OF ATTACHMENTS ☐

SIGNATURE OF OWNER, LESSEE OR AUTHORIZED AGENT FOR OWNER OR LESSEE

Exhibit C
Amendment of the Whole
June 7, 2006.

FILE NO. 052021 ORDINANCE NO. 140-06

[General Advertising Signs – Relocation Agreements, Sign Inventories~~, and Associated Fees~~.]

Ordinance amending the San Francisco Administrative Code by adding Section 2.21 to establish a General Advertising Sign Relocation Procedure; amending the San Francisco Planning Code by amending Section 303 to add criteria for the Planning Commission's approval of a general advertising sign relocation site, ~~adding Section 358 to establish fees for the Planning Department's review of General Advertising Sign Inventories and proposed Relocation Agreements,~~ amending Planning Code Section 604 to prohibit general advertising signs that have been removed from being replaced on the same site, adding Section 604.2 to require general advertising sign companies to maintain and submit to the City current inventories of their signs, and amending Sections 1005 and 1111.7 to prohibit the relocation of new general advertising signs to Historic Districts or Conservation Districts or on an historic property regulated by Articles 10 and 11 of the Planning Code; and adopting findings including environmental findings and findings of consistency with the Priority Policies of Planning Code Section 101.1 and the General Plan.

Note: Additions are *single-underline italics Times New Roman*; deletions are ~~*strikethrough italics Times New Roman*~~. Board amendment additions are double underlined. Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. Findings.

(a) In March 2002, the voters approved Proposition G, which amended the San Francisco Planning Code by adding Section 611 to prohibit the approval of new general advertising signs within the City as of March 5, 2002.

(b) Proposition G authorized the Board of Supervisors, upon recommendation from a department designated by the Board, to enter into agreements with general advertising sign companies to provide for the relocation of existing legally permitted general advertising signs. (Planning Code Section 611(c)(1).) New location sites for existing legally permitted general advertising signs must comply with the zoning in effect prior to adoption of Proposition G, or as further restricted by the Board in future legislation, and must be approved through the conditional use procedure. (Planning Code Section 611(c)(2).)

(c) Through this ordinance, the Board of Supervisors intends to exercise its authority under Proposition G to provide for the relocation of existing legally permitted general advertising signs in the City through Relocation Agreements entered into with general advertising sign companies and to further restrict the areas in which such signs may be relocated.

(d) The Board also intends through this ordinance to further Proposition G's overall objectives of enhancing the City's livability and quality of life by reducing the proliferation of general advertising signs in the City and the resulting clutter, blight, and other problems described in Proposition G. These objectives will be accomplished by prohibiting the replacement of signs on the same site after they have been removed, which will reduce over time the total number of general advertising signs in the City. In addition, general advertising sign companies will be required to submit to the City and to keep updated current and accurate inventories of all their signs located in the City. An accurate inventory of general advertising signs will facilitate the removal of existing illegal signs that have contributed to the blight, clutter, and other problems described in Proposition G.

(e) The Board of Supervisors finds that this ordinance will serve the public convenience and welfare in that it provides for a mechanism to implement the intent of the

voters in enacting Proposition G and for the additional reasons set forth in Planning Commission Resolution No. _____ recommending approval of this Planning Code amendment, which reasons are incorporated herein by this reference. A copy of said resolution is on file with the Clerk of the Board of Supervisors in Board File No. _____.

(f) Pursuant to Planning Code Section 101.1, this Board of Supervisors finds that this ordinance is consistent with the Priority Policies of Planning Code Section 101.1(b) and with the General Plan and hereby adopts and incorporates herein by reference the findings of the Planning Commission, as set forth in Commission Resolution No. _____.

(g) The Planning Department has concluded environmental review of this ordinance pursuant to the California Environmental Quality Act. Documentation of that review is on file with the Clerk of the Board of Supervisors in Board File No. _____.

Section 2. The San Francisco Administrative Code is hereby amended by adding Section 2.21, to read as follows:

SEC. 2.21. PROCEDURE FOR APPROVAL BY THE BOARD OF SUPERVISORS OF GENERAL ADVERTISING SIGN COMPANY RELOCATION AGREEMENTS.

The Board of Supervisors hereby establishes the following procedure for its approval of the relocation of existing legally permitted general advertising signs pursuant to Section 611(c) of the Planning Code.

(a) Designation of the Planning Department. The Board hereby designates the Planning Department as the department to review and recommend to the Board approval or disapproval of a Relocation Agreement pursuant to Planning Code Section 611(c). The Board shall not approve or consider any such Agreement without first receiving a recommendation from the Department.

(b) Definitions. For purposes of this Section 2.21, the following definitions shall apply:

(1) "Board" shall mean the Board of Supervisors of the City and County of San Francisco.

(2) "Department" shall mean the Planning Department of the City and County of San Francisco.

(3) "General advertising sign company" or "sign company" shall mean an entity that owns a general advertising sign structure, as distinguished from the person or entity that owns the property on which the sign is located.

(4) "Legally permitted" or "lawfully existing" shall mean a sign that was lawfully erected prior to the effective date of Section 611 of the Planning Code pursuant to a permit duly issued by the City and County of San Francisco, or that has an in-lieu identifying number granted by the Director of Planning pursuant to Section 604.1(c) of the Planning Code, and is in compliance with all conditions of approval.

(5) "Relocation Agreement" or "Agreement" shall mean an agreement with a general advertising sign company to relocate existing legally permitted general advertising signs of a sign company, as permitted by Planning Code Section 611(b).

(6) "Sign" shall mean a legally permitted general advertising ~~sign~~structure or wall sign *as defined in Planning Code Section 602.7.*

(c) Application for Relocation Agreement. Any general advertising sign company desiring to relocate an existing legally permitted sign shall first file an application with the Department on a form provided by the Department and pay the application fee set forth in Section 358 of the Planning Code.

(d) Information Required to be Submitted with the Application. The applicant for a Relocation Agreement shall submit the following information with the application, in addition to such other information as the Department may require:

(1) a list of signs proposed for relocation;

(2) a site map showing the locations of all signs proposed for relocation by address and by block and lot;

(3) a copy of any permit or permits authorizing the sign, if available; if a copy of the permit or permits are not available, a copy of the Director of Planning's approval of an in-lieu identifying number or numbers;

(4) evidence that a sign proposed to be relocated has not been removed and still exists at the authorized location, and that the sign company is the owner of the sign structure;

(5) a proposed form of Relocation Agreement specifying the sign or signs to be relocated, which Agreement shall be in the format of and contain the provisions of a model agreement developed by the City Attorney or which shall be otherwise acceptable to the City Attorney; and

(6) the written consent to the relocation of each sign from the owner of the property upon which the existing sign structure is erected.

(e) Submission to the Board. The Department shall submit to the Board the Department's recommendation to approve or disapprove the proposed Relocation Agreement after the Department has completed its review of the application and supporting documents.

Prior to submitting its recommendation to the Board, the Department shall have (i) reviewed the sign company's initial and any updated sign inventory submitted pursuant to Section 604.2 of the Planning Code and verified that each sign proposed for relocation has been determined to be lawfully existing and lawfully permitted and (ii) verified that there are no ~~outstanding code enforcement actions~~ *pending* Notices of Violation *against the sign company for violation of Article 6 of the Planning Code or any other applicable law governing general advertising signs.*

(f) Conditional Use Approval by the Planning Commission. Upon approval by the Board of Supervisors of the proposed Relocation Agreement, the sign company may apply to the Planning Commission for a conditional use authorization pursuant to the Agreement.

(g) Modification or Termination of a Relocation Agreement.

(1) Modification or amendment of any of the terms or provisions of a Relocation Agreement shall require a recommendation for approval or disapproval from the Department and approval of the Board.

(2) Any Relocation Agreement shall provide that evidence of a pattern of willful misrepresentation of information provided to the City by the sign company in any inventory or site maps it has submitted to the City shall be grounds for termination of the Relocation Agreement by the City.

Section 3. The San Francisco Planning Code is hereby amended by amending Section 303, to read as follows:

SEC. 303. CONDITIONAL USES.

(a) General. The City Planning Commission shall hear and make determinations regarding applications for the authorization of conditional uses in the specific situations in which such authorization is provided for elsewhere in this Code. The procedures for conditional uses shall be as specified in this Section and in Sections 306 through 306.6, except that Planned Unit Developments shall in addition be subject to Section 304, medical institutions and post-secondary educational institutions shall in addition be subject to the institutional master plan requirements of Section 304.5, and conditional use and Planned Unit Development applications filed pursuant to Article 7, or otherwise required by this Code for uses or features in Neighborhood Commercial Districts, and conditional use applications within South of Market Districts, shall be subject to the provisions set forth in Sections 316 through 316.8 of this Code, in lieu of those provided for in Sections 306.2 and 306.3 of this Code, with respect to scheduling and notice of hearings, and in addition to those provided for

in Sections 306.4 and 306.5 of this Code, with respect to conduct of hearings and reconsideration.

(b) Initiation. A conditional use action may be initiated by application of the owner, or authorized agent for the owner, of the property for which the conditional use is sought. *For a conditional use application to relocate a general advertising sign under subsection (l) below, application shall be made by a general advertising sign company* ~~with a~~ that has filed a *Relocation Agreement* application and all required information with the Planning Department ~~approved by the Board of Supervisors~~ *pursuant to Section 2.21 of the San Francisco Administrative Code.*

(c) Determination. After its hearing on the application, or upon the recommendation of the Director of Planning if the application is filed pursuant to Sections 316 through 316.8 of this Code and no hearing is required, the City Planning Commission shall approve the application and authorize a conditional use if the facts presented are such to establish:

(1) That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community

(A) In Neighborhood Commercial Districts, if the proposed use is to be located at a location in which the square footage exceeds the limitations found in Planning Code § 121.2(a) or 121.2(b), 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-servicing uses in the area; and

(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

(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

(2) That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:

(A) The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

(B) The accessibility and traffic patterns for per-sons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

(C) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

(D) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs; and

(3) That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the Master Plan; and

(4) With respect to applications filed pursuant to Article 7 of this Code, that such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable Neighborhood Commercial District, as set forth in zoning control category .1 of Sections 710 through 729 of this Code; and

(5)(A) With respect to applications filed pursuant to Article 7, Section 703.2(a), zoning categories .46, .47, and .48, in addition to the criteria set forth above in Section 303(c)(1—4), that such use or feature will:

(i) Not be located within 1,000 feet of another such use, if the proposed use or feature is included in zoning category .47, as defined by Section 790.36 of this Code; and/or

(ii) Not be open between two a.m. and six a.m.; and

(iii) Not use electronic amplification between midnight and six a.m.; and

(iv) 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.

(B) Notwithstanding the above, the City Planning Commission may authorize a conditional use which does not satisfy the criteria set forth in (5)(A)(ii) and/or (5)(A)(iii) above, if facts presented are such to establish that the use will be operated in such a way as to minimize disruption to residences in and around the district with respect to noise and crowd control.

(C) The action of the Planning Commission approving a conditional use does not take effect until the appeal period is over or while the approval is under appeal.

(6) With respect to applications for live/work units in RH and RM Districts filed pursuant to Section 209.9(f) or 209.9(h) of this Code, that:

(A) Each live/work unit is within a building envelope in existence on the effective date of Ordinance No. 412-88 (effective October 10, 1988) and also within a portion of the building which lawfully contains at the time of application a nonconforming, nonresidential use;

(B) There shall be no more than one live/work unit for each 1,000 gross square feet of floor area devoted to live/work units within the subject structure; and

(C) The project sponsor will provide any off-street parking, in addition to that otherwise required by this Code, needed to satisfy the reasonably anticipated auto usage by residents of and visitors to the project.

Such action of the City Planning Commission, in either approving or disapproving the application, shall be final except upon the filing of a valid appeal to the Board of Supervisors as provided in Section 308.1.

(d) Conditions. When considering an application for a conditional use as provided herein with respect to applications for development of "dwellings" as defined in Chapter 87 of the San Francisco Administrative Code, the Commission shall comply with that Chapter which requires, among other things, that the Commission not base any decision regarding the development of "dwellings" in which "protected class" members are likely to reside on information which may be discriminatory to any member of a "protected class" (as all such terms are defined in Chapter 87 of the San Francisco Administrative Code). In addition, when authorizing a conditional use as provided herein, the City Planning Commission, or the Board of Supervisors on appeal, shall prescribe such additional conditions, beyond those specified in this Code, as are in its opinion necessary to secure the objectives of the Code. Once any portion of the conditional use authorization is utilized, all such conditions pertaining to such authorization shall become immediately operative. The violation of any condition so imposed shall constitute a violation of this Code and may constitute grounds for revocation of the conditional use authorization. Such conditions may include time limits for exercise of the conditional use authorization; otherwise, any exercise of such authorization must commence within a reasonable time.

(e) Modification of Conditions. Authorization of a change in any condition previously imposed in the authorization of a conditional use shall be subject to the same procedures as a

new conditional use. Such procedures shall also apply to applications for modification or waiver of conditions set forth in prior stipulations and covenants relative thereto continued in effect by the provisions of Section 174 of this Code.

(f) Conditional Use Abatement. The Planning Commission may consider the possible revocation of a conditional use or the possible modification of or placement of additional conditions on a conditional use when the Planning Commission determines, based upon substantial evidence, that the applicant for the conditional use had submitted false or misleading information in the application process that could have reasonably had a substantial effect upon the decision of the Commission or the conditional use is not in compliance with a condition of approval, is in violation of law if the violation is within the subject matter jurisdiction of the Planning Commission or operates in such a manner as to create hazardous, noxious or offensive conditions enumerated in Section 202(c) if the violation is within the subject matter jurisdiction of the Planning Commission and these circumstances have not been abated through administrative action of the Director, the Zoning Administrator or other City authority. Such consideration shall be the subject of a public hearing before the Planning Commission but no fee shall be required of the applicant or the subject conditional use operator.

(1) The Director of Planning or the Planning Commission may seek a public hearing on conditional use abatement when the Director or Commission has substantial evidence submitted within one year of the effective date of the Conditional Use authorization that the applicant for the conditional use had submitted false or misleading information in the application process that could have reasonably had a substantial effect upon the decision of the Commission or substantial evidence of a violation of conditions of approval, a violation of

law, or operation which creates hazardous, noxious or offensive conditions enumerated in Section 202(c).

(2) The notice for the public hearing on a conditional use abatement shall be subject to the notification procedure as described in Sections 306.3 and 306.8 except that notice to the property owner and the operator of the subject establishment or use shall be mailed by regular and certified mail.

(3) In considering a conditional use revocation, the Commission shall consider whether and how the false or misleading information submitted by the applicant could have reasonably had a substantial effect upon the decision of the Commission, or the Board of Supervisors on appeal, to authorize the conditional use, substantial evidence of how any required condition has been violated or not implemented or how the conditional use is in violation of the law if the violation is within the subject matter jurisdiction of the Planning Commission or operates in such a manner as to create hazardous, noxious or offensive conditions enumerated in Section 202(c) if the violation is within the subject matter jurisdiction of the Planning Commission. As an alternative to revocation, the Commission may consider how the use can be required to meet the law or the conditions of approval, how the hazardous, noxious or offensive conditions can be abated, or how the criteria of Section 303(c) can be met by modifying existing conditions or by adding new conditions which could remedy a violation.

(4) Appeals. A decision by the Planning Commission to revoke a conditional use, to modify conditions or to place additional conditions on a conditional use or a decision by the Planning Commission refusing to revoke or amend a conditional use, may be appealed to the Board of Supervisors within 30 days after the date of action by the Planning Commission pursuant to the provisions of Section 308.1(b) The Board of Supervisors may disapprove the

action of the Planning Commission in an abatement matter by the same vote necessary to overturn the Commission's approval or denial of a conditional use. The Planning Commission's action on a conditional use abatement issue shall take effect when the appeal period is over or, upon appeal, when there is final action on the appeal.

(5) Reconsideration. The decision by the Planning Commission with regards to a conditional use abatement issue or by the Board of Supervisors on appeal shall be final and not subject to reconsideration within a period of one year from the effective date of final action upon the earlier abatement proceeding, unless the Director of Planning determines that:

(A) There is substantial new evidence of a new conditional use abatement issue that is significantly different than the issue previously considered by the Planning Commission; or

(B) There is substantial new evidence about the same conditional use abatement issue considered in the earlier abatement proceeding, this new evidence was not or could not be reasonably available at the time of the earlier abatement proceeding, and that new evidence indicates that the Commission's decision in the earlier proceeding ha not been implemented within a reasonable time or raises significant new issues not previously considered by the Planning Commission. The decision of the Director of Planning regarding the sufficiency and adequacy of evidence to allow the reconsideration of a conditional use abatement issue within a period of one year from the effective date of final action on the earlier abatement proceeding shall be final.

(g) Hotels and Motels.

(1) With respect to applications for development of tourist hotels and motels, the Planning Commission shall consider, in addition to the criteria set forth in Subsections (c) and (d) above:

(A) The impact of the employees of the hotel or motel on the demand in the City for housing, public transit, childcare, and other social services. To the extent relevant, the Commission shall also consider the seasonal and part-time nature of employment in the hotel or motel;

(B) The measures that will be taken by the project sponsor to employ residents of San Francisco in order to minimize increased demand for regional transportation; and

(C) The market demand for a hotel or motel of the type proposed.

(2) Notwithstanding the provisions of Sub-sections (f)(1) above, the Planning Commission shall not consider the impact of the employees of a proposed hotel or motel project on the demand in the City for housing where:

(A) The proposed project would be located on property under the jurisdiction of the San Francisco Port Commission; and

(B) The sponsor of the proposed project has been granted exclusive rights to propose the project by the San Francisco Port Commission prior to June 1, 1991.

(3) Notwithstanding the provisions of Subsection (f)(1) above, with respect to the conversion of residential units to tourist hotel or motel use pursuant to an application filed on or before June 1, 1990 under the provisions of Chapter 41 of the San Francisco Administrative Code, the Planning Commission shall not consider the criteria contained in Subsection (f)(1) above; provided, however, that the Planning Commission shall consider the criteria contained in Subsection (f)(1)(B) at a separate public hearing if the applicant applies for a permit for new construction or alteration where the cost of such construction or alteration exceeds $100,000. Furthermore, no change in classification from principal permitted use to conditional use in Section 216(b)(i) of this Code shall apply to hotels or motels that have filed

applications on or before June 1, 1990 to convert residential units to tourist units pursuant to Chapter 41 of the San Francisco Administrative Code.

(h) Internet Services Exchange.

(1) With respect to application for development of Internet Services Exchange as defined in Section 209.6(c), the Planning Commission shall, in addition to the criteria set forth in Subsection (c) above, find that:

(A) The intensity of the use at this location and in the surrounding neighborhood is not such that allowing the use will likely foreclose the location of other needed neighborhood-serving uses in the area;

(B) The building in which the use is located is designed in discrete elements, which respect the scale of development in adjacent blocks, particularly any existing residential uses;

(C) Rooftop equipment on the building in which the use is located is screened appropriately.

(D) The back-up power system for the proposed use will comply with all applicable federal state, regional and local air pollution controls.

(E) Fixed-source equipment noise does not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

(F) The building is designed to minimize energy consumption, such as through the use of energy-efficient technology, including without limitation, heating, ventilating and air conditioning systems, lighting controls, natural ventilation and recapturing waste heat, and as such commercially available technology evolves;

(G) The project sponsor has examined the feasibility of supplying and, to the extent feasible, will supply all or a portion of the building's power needs through on-site power generation, such as through the use of fuel cells or co-generation;

(H) The project sponsor shall have submitted design capacity and projected power use of the building as part of the conditional use application; and

(2) As a condition of approval, and so long as the use remains an Internet Services Exchange, the project sponsor shall submit to the Planning Department on an annual basis power use statements for the previous twelve-month period as provided by all suppliers of utilities and shall submit a written annual report to the Department of Environment and the Planning Department which shall state: (a) the annual energy consumption and fuel consumption of all tenants and occupants of the Internet Services Exchange; (b) the number of all diesel generators located at the site and the hours of usage, including usage for testing purposes; (c) evidence that diesel generators at the site are in compliance with all applicable local, regional, state and federal permits, regulations and laws; and (d) such other information as the Planning Commission may require.

(3) The Planning Department shall have the following responsibilities regarding Internet Services Exchanges:

(A) Upon the effective date of the requirement of a conditional use permit for an Internet Services Exchange, the Planning Department shall notify property owners of all existing Internet Services Exchanges that the use has been reclassified as a conditional use;

(B) Upon the effective date of the requirement of a conditional use permit for an Internet Services Exchange, the Planning Department shall submit to the Board of Supervisors and to the Director of the Department of Building Inspection a written report covering all existing Internet Services Exchanges and those Internet Services Exchanges seeking to obtain a conditional use permit, which report shall state the address, assessor's block and lot, zoning classification, square footage of the Internet Services Exchange constructed or to be constructed, a list of permits previously issued by the Planning and/or

Building Inspection Departments concerning the Internet Services Exchange, the date of issuance of such permits, and the status of any outstanding requests for permits from the Planning and/or Building Inspection Departments concerning Internet Services Exchange; and

(C) Within three years from the effective date of the requirement of a conditional use permit for an Internet Services Exchange, the Planning Department, in consultation with the Department of Environment, shall submit to the Board of Supervisors a written report, which report shall contain the Planning Commission's evaluation of the effectiveness of the conditions imposed on Internet Services Exchanges, and whether it recommends additional or modified conditions to reduce energy and fuel consumption, limit air pollutant emissions, and enhance the compatibility of industrial uses, such as Internet Services Exchanges, located near or in residential or commercial districts.

(i) Formula Retail Uses.

(1) With respect to an application for a formula retail use as defined in Section 703.3, whenever a conditional use permit is required per Section 703.3(f), the Planning Commission shall consider, in addition to the criteria set forth in Subsection (c) above:

(A) The existing concentrations of formula retail uses within the neighborhood commercial district.

(B) The availability of other similar retail uses within the neighborhood commercial district.

(C) The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the neighborhood commercial district.

(D) The existing retail vacancy rates within the neighborhood commercial district.

(E) The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the neighborhood commercial district.

(j) Large-Scale Retail Uses. With respect to applications for the establishment of large-scale retail uses under Section 121.6, in addition to the criteria set forth in Subsections (c) and (d) above, the Commission shall consider the following:

(A) The extent to which the retail use's parking is planned in a manner that creates or maintains active street frontage patterns;

(B) The extent to which the retail use is a component of a mixed-use project or is designed in a manner that encourages mixed-use building opportunities;

(C) The shift in traffic patterns that may result from drawing traffic to the location of the proposed use; and

(D) The impact that the employees at the proposed use will have on the demand in the City for housing, public transit, childcare, and other social services.

(k) Movie Theater Uses.

(1) With respect to a change in use or demolition of a movie theater use as set forth in Sections 221.1, 703.2(b)(1)(B)(ii), 803.2(b)(2)(B)(iii) or 803.3(b)(1)(B)(ii), in addition to the criteria set forth in Subsections (c) and (d) above, the Commission shall make the following findings:

(A) Preservation of a movie theater use is no longer economically viable and cannot effect a reasonable economic return to the property owner;

(i) For purposes of defining "reasonable economic return," the Planning Commission shall be guided by the criteria for "fair return on investment" as set forth in Section 228.4(a).

(B) The change in use or demolition of the movie theater use will not undermine the economic diversity and vitality of the surrounding neighborhood commercial district; and

(C) The resulting project will preserve the architectural integrity of important historic features of the movie theater use affected.

(l) Relocation of Existing General Advertising Signs pursuant to a General Advertising Sign Company Relocation Agreement.

(1) Before the Planning Commission may consider an application for a conditional use to relocate an existing lawfully permitted general advertising sign as authorized by Section 611 of this Code, the applicant sign company must have:

(A) obtained a current Relocation Agreement approved by the Board of Supervisors under Section 2.21 of the San Francisco Administrative Code that covers the sign or signs proposed to be relocated; and

(B) submitted to the Department a current sign inventory, site map, and the other information required under Section 604.2 of this Code; and

(C) obtained the written consent to the relocation of the sign from the owner of the property upon which the existing sign structure is erected.

(D) obtained a permit to demolish the sign structure at the existing location.

(2) The Department, in its discretion, may review in a single conditional use application all signs proposed for relocation by a general advertising company or may require that one or more of the signs proposed for relocation be considered in a separate application or applications. Prior to the Commission's public hearing on the application, the Department shall have verified the completeness and accuracy of the general advertising sign company's sign inventory.

(3) Only one sign may be erected in a new location, which shall be the same square footage or less than the existing sign proposed to be relocated. In no event may the square footage of several existing signs be aggregated in order to erect a new sign with greater square footage.

(4) In addition to applicable criteria set forth in subsection (c) above, the Planning Commission shall consider the size and visibility of the signs proposed to be located as well as the following factors in determining whether to approve or disapprove a proposed relocation:

(A) The factors set forth in this subsection (A) shall weigh in favor of the Commission's approval of the proposed relocation site:

(i) The sign or signs proposed for relocation are lawfully existing but are not in conformity with the sign regulations that existed prior to the adoption of Proposition G on March 5, 2002.

(ii) The sign or signs proposed for relocation are on a City list, if any, of priorities for sign removal or signs preferred for relocation.

(iii) The sign or signs proposed for relocation are within, adjacent to, or visible from property under the jurisdiction of the San Francisco Port Commission, the San Francisco Unified School District, or the San Francisco Recreation and Park Commission.

(iv) The sign or signs proposed for relocation are within, adjacent to, or visible from an Historic District or conservation district designated in Article 10 or Article 11 of the Planning Code.

(v) The sign or signs proposed for relocation are within, adjacent to, or visible from a zoning district where general advertising signs are prohibited.

(vi) The sign or signs proposed for relocation are within, adjacent to, or visible from a designated view corridor.

(B) The factors set forth in this Subsection (B) shall weigh against the Commission's approval of the proposed relocation:

(i) The sign or signs proposed for relocation are or will be obstructed, partially obstructed, or removed from public view by another structure or by landscaping.

(ii) The proposed relocation site is adjacent to or visible from property under the jurisdiction of the San Francisco Port Commission, the San Francisco Unified School District, or the San Francisco Recreation and Park Commission.

(iii) The proposed relocation site is adjacent to or visible from an Historic District or conservation district designated in Article 10 or Article 11 of the Planning Code.

(iv) The proposed relocation site is within, adjacent to, or visible from a zoning district where general advertising signs are prohibited.

(v) The proposed relocation site is within, adjacent to, or visible from a designated view corridor.

(vi) There is significant neighborhood opposition to the proposed relocation site.

(5) In no event may the Commission approve a relocation where:

(A) The sign or signs proposed for relocation have been erected, placed, replaced, reconstructed, or relocated on the property, or intensified in illumination or other aspect, or expanded in area or in any dimension in violation of Article 6 of this Code or without a permit having been duly issued therefor; or

(B) The proposed relocation site is not a lawful location under Planning Code Section 611(c)(2); or

(C) The sign in its new location would exceed the size, height or dimensions, or increase the illumination or other intensity of the sign at its former location; or

(D) The sign in its new location would not comply with the Code requirements for that location as set forth in Article 6 of this Code; or

(E) The sign has been removed from its former location; or

(F) The owner of the property upon which the existing sign structure is erected has not consented in writing to the relocation of the sign.

(6) The Planning Commission may adopt additional criteria for relocation of general advertising signs that do not conflict with this Section 303(l) or Section 611 of this Code.

Section 4. ~~The San Francisco Planning Code is hereby amended by adding Section 358, to read as follows:~~

~~SEC. 358. GENERAL ADVERTISING SIGNS~~

~~(a) Application for Relocation Agreement~~

~~Section 611 and Administrative Code Section 2.21: $1,000 per individual relocation agreement application~~

~~(b) Initial Inventory Processing fee (Section 604.2) $5,000, plus $75.00 per sign structure.~~

~~Section 5.~~ The San Francisco Planning Code is hereby amended by amending Section 604, to read as follows:

SEC. 604. PERMITS AND CONFORMITY REQUIRED.

(a) An application for a permit for a sign that conforms to the provisions of this Code shall be approved by the Department of Planning without modification or disapproval by the Department of Planning or the Planning Commission, pursuant to the authority vested in them by Section 26, Part III, of the San Francisco Municipal Code or any other provision of said Municipal Code; provided, however, that applications pertaining to signs subject to the regulations set forth in Article 10 of the Planning Code, Preservation of Historical, Architectural and Aesthetic Landmarks, Article 11, Preservation of Buildings and Districts of Architectural, Historical and Aesthetic Importance in the C-3 Districts and Section 608.14 may be disapproved pursuant to the relevant provisions thereof. No sign, other than those signs exempted by Section 603 of this Code, shall be erected, placed, replaced, reconstructed or relocated on any property, intensified in illumination or other aspect, or expanded in area or in

any dimension except in conformity with *Article 6* of this Code. No such erection, placement, replacement, reconstruction, relocation, intensification, or expansion shall be undertaken without a permit having been duly issued therefor, except as specifically provided otherwise in this Section 604.

(b) The provisions of this Section 604 shall apply to work of the above types on all signs unless specifically exempted by this Code, whether or not a permit for such sign is required under the San Francisco Building Code. In cases in which permits are not required under the Building Code, applications for permits shall be filed with the Central Permit Bureau of the Department of Building Inspection on forms prescribed by the Department of Planning, together with a permit fee of $5 for each sign, and the permit number shall appear on the completed sign in the same manner as required by the Building Code.

(c) No permit shall be required under this Code for a sign painted or repainted directly on a door or window in an NC, C or M District. Permits shall be required for all other painted signs in NC, C and M Districts, and for all painted signs in P and R Districts. Repainting of any painted sign shall be deemed to be a replacement of the sign, except as provided in Subsection (f) below.

(d) Except as provided in Subsection (c) above, no permit shall be required under this Code for ordinary maintenance and minor repairs which do not involve replacement, alteration, reconstruction, relocation, intensification or expansion of the sign.

(e) No permit shall be required under this Code for temporary sale or lease signs, temporary signs of persons and firms connected with work on buildings under actual construction or alteration, and temporary business signs, to the extent that such signs are permitted by this Code.

(f) A mere change of copy on a sign the customary use of which involves frequent and periodic changes of copy shall not be subject to the provisions of this Section 604, except that a change from general advertising to nongeneral advertising sign copy or from nongeneral advertising to general advertising sign copy or an increase in area including, but not limited to, any extensions in the form of writing, representation, emblem or any figure of similar character shall in itself constitute a new sign subject to the provisions of this Section 604. In the case of signs the customary use of which does not involve frequent and periodic changes of copy, a change of copy shall in itself constitute a new sign subject to the provisions of this Section 604 if the new copy concerns a different person, firm, group, organization, place, commodity, product, service, business, profession, enterprise or industry.

(g) Each application for a permit for a sign shall be accompanied by a scaled drawing of the sign, including the location of the sign on the building or other structure or on the lot, and including (except in the case of a sign the customary use of which involves frequent and periodic changes of copy) such designation of the copy as is needed to determine that the location, area and other provisions of this Code are met.

(h) Unless otherwise provided in this Code or in other Codes or regulations, a lawfully existing sign which fails to conform to the provisions of this Article 6 may remain until the end of its normal life. Such sign may not, however, be replaced, altered, reconstructed, relocated, intensified or expanded in area or in any dimension except in conformity with the provisions of this Code, including Subsection (i) below. Ordinary maintenance and minor repairs shall be permitted, but such maintenance and repairs shall not include replacement, alteration, reconstruction, relocation, intensification or expansion of the sign*; provided, however, that alterations of a structural nature required to reinforce a part or parts of a lawfully existing sign to meet the standards of seismic loads and forces of the Building Code,* to replace a

damaged or weathered signboard, ~~or~~ *to ensure safe use and maintenance of that sign,* ~~or~~ *to remediate hazardous materials*, or any combination of the above alterations *shall be considered ordinary maintenance and shall be allowed*. A sign which is damaged or destroyed by fire or other calamity shall be governed by the provisions of Sections 181(d) and 188(b) of this Code.

A sign which is voluntarily destroyed or removed by its owner or which is required by law to be removed may be restored only in full conformity with the provisions of this Code, except as authorized in Subsection (i) below. *A general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location, and the erection, construction, and/or installation of a general advertising sign at that location to replace the previously existing sign shall be deemed to be a new sign in violation of Section 611(a) of this Code; provided, however, that such reinstallation, replacement, or reconstruction pursuant to a permit duly issued prior to the effective date of this requirement shall not be deemed a violation of Section 611(a) and shall be considered a lawfully existing nonconforming general advertising sign; and further provided that this prohibition shall not prevent a general advertising sign from being relocated to that location pursuant to a Relocation Agreement and conditional use authorization under Sections 611 and 303(l) of this Code and Section 2.21 of the San Francisco Administrative Code.*

(i) A lawfully existing business that is relocating to a new location within 300 feet of its existing location within the North Beach Neighborhood Commercial District described in Sections 702.1 and 722.1 of this Code may move to the new location within said North Beach Neighborhood Commercial District one existing business sign together with its associated sign structure, whether or not the sign is nonconforming in its new location; provided, however, that the sign is not intensified or expanded in area or in any dimension except in conformity with the provisions of this Code. With the approval of the Zoning Administrator, however, the sign structure may be modified to the extent mandated by the Building Code. In no event may a

painted sign or a sign with flashing, blinking, fluctuating or other animated light be relocated unless in conformity with current code requirements applicable to its new location. In addition, the provisions of Articles 10 and 11 of this Code shall apply to the relocation of any sign to a location regulated by the provisions of said Articles.

(j) Nothing in this Article 6 shall be deemed to permit any use of property that is otherwise prohibited by this Code, or to permit any sign that is prohibited by the regulations of any special sign district or the standards or procedures of any Redevelopment Plan or any other Code or legal restriction.

Section ~~6~~5. The San Francisco Planning Code is hereby amended by adding Section 604.2, to read as follows:

SEC. 604.2 GENERAL ADVERTISING SIGN INVENTORIES.

(a) Submission of Initial Sign Inventory. Within 60 days of the effective date of this Section, any general advertising sign company that owns a general advertising sign located in the City shall submit to the Department a current, accurate, and complete inventory of its general advertising signs together with the inventory processing fee required by subsection (f) below. Any general advertising company that commences ownership of one or more general advertising signs located in the City after the effective date of this Section shall submit an inventory together with the inventory processing fee within 60 days after its commences such ownership whether or not the signs on the inventory have previously been reviewed by the Department in its review of the inventory of a previous owner.

(b) All Signs to be Included in the Inventory; Inclusion Not Evidence of Legality. The inventory shall identify all general advertising signs located within the City that the general advertising company owns and/or operates under a lease, license or other agreement whether or not those signs can be proved to be lawfully existing. Inclusion of a sign on the inventory shall not be considered evidence that a sign is lawfully existing.

For purposes of this Section, a "general advertising sign company" shall mean an entity that owns a general advertising sign structure, as distinguished from the person or entity that owns the property on which the sign is located.

(c) The initial sign inventory required by subsection (a) above shall include a site map that shows the location of all signs identified in the inventory, and shall provide the following information for each sign:

(1) the location of the sign by street address, ~~and~~ *by block and lot,* and by nearest intersection;

(2) a photograph of the sign in its existing location on the lot, specifically identifying the sign;

(3) the date of original erection or installation of the sign, if known;

(4) the permit number or in-lieu identifying number issued by the Department pursuant to Section 604.1(c) of this Code;

(5) the approved and existing area, dimensions, height, and any other special features of the sign such as illumination or movement;

(6) the type of sign, as defined in Section 602 of this Code;

(7) evidence that the sign has not been removed and still exists at the authorized location, and that the sign company is the owner of the sign structure;

(8) permit number and, in the case of subsequent modifications of the sign, including, but not limited to, illumination, permit application number or permit number;

(9) evidence that the sign still is in use for general advertising; and

(10) information, if known, whether the sign had a prior use as a non-general advertising sign, including, but not limited to, a business sign or exempt sign, and the duration of such prior use.

(d) Affidavit. The general advertising sign company shall submit with the inventory an affidavit signed under penalty of perjury by a duly authorized officer or owner of the sign company stating that:

(1) the sign inventory and site map are current, accurate, and complete to the best of his or her knowledge;

(2) the officer or owner believes, after the exercise of reasonable and prudent inquiry, that all signs on the inventory have been erected or installed with an appropriate City permit or have an in-lieu identifying number granted by the Director of Planning;

(3) the general advertising sign company is the owner of all sign structures listed on the inventory.

(e) Inventory Update. Any general advertising sign company that has submitted an initial sign inventory pursuant to subsection (a) above shall be responsible for keeping its inventory updated by reporting in writing to the Department the sale or removal of any general advertising sign identified in the inventory, the purchase of a sign from another sign company or owner, or the relocation of a sign pursuant to a Relocation Agreement and conditional use authorization. Such reporting to the Department shall be made within 30 days of the actual sale, removal, purchase, or relocation of the sign. The fee charged to a sign company for an update to its initial sign inventory shall be the fee per sign structure set forth in Section 358 of this Code.

(f) Inventory Processing Fee. With the submission of the initial sign inventory required by subsection (a) above, the general advertising sign company shall pay the inventory processing fee set forth in Section 358 of this Code. The Department shall use this fee solely for the following purposes:

(1) to compensate the Department for its costs in verifying that the signs identified in the corresponding inventory are lawfully existing;

(2) to obtain removal, through abatement actions or other code enforcement activities, of any signs included on the inventory that the Department determines to be existing illegally.

(g) Departmental Notification of Failure to Submit Complete Inventories. The Department shall notify in writing those sign companies that have not submitted or have submitted incomplete sign inventories, or have not timely submitted an inventory update.

(1) Within 30 days of the date of notification provided under subsection (g), the sign company shall submit a complete inventory with the inventory processing fee and a penalty of $580 per sign for those signs that were not identified or those improperly identified.

(2) If the sign company fails to submit the complete inventory with the processing fee and full penalty amount provided in subsection (g)(1), then, within 60 days of the date of notification provided under subsection (g), the penalty will increase to $1,160 per sign for those signs that were not identified or those improperly identified.

(3) Any penalties assessed pursuant to subsections (g)(1) and (2) above, are appealable to the Board of Appeals.

(4) The Board of Appeals, in reviewing the appeal of the penalty assessed may reduce the amount of the penalty if the Board of Appeals finds that the sign owner: (i) was not properly notified or (ii) had previously submitted a sign inventory that included the signs for which the penalty was assessed. The Board of Appeals also may reduce the amount of the penalty if it finds that any action on the part of the Department resulted an improper assessment of the penalty charge.

(5) If the sign company fails to submit the full penalty amount assessed pursuant to subsections (g)(1) and (2) or as modified by the Board of Appeals pursuant to subsections (g)(3) and (4), the Planning Department shall request the City's Treasurer/Tax Collector to

pursue the outstanding penalties after 90 days of the date of notification provided under subsection (g).

(6) All penalty revenues received shall be deposited in the Code Enforcement Fund.

(h) The Department shall submit to the Commission and the Board of Supervisors an annual report that includes: (i) annual revenues from the inventory processing fee, annual inventory maintenance fee, in-lieu application fee, and the relocation agreement application fee, (ii) annual expenditures for the sign inventory program, and (iii) a progress report on the number of general advertising signs verified in the sign inventory; in-lieu requests; and code enforcement actions for general advertising signs processing, backlog, and abatement actions.

Section ~~7~~6. The San Francisco Planning Code is hereby amended by amending Section 1005, to read as follows:

SEC. 1005. CONFORMITY AND PERMITS.

(a) No person shall carry out or cause to be carried out on a designated landmark site or in a designated historic district any construction, alteration, removal or demolition of a structure or any work involving a sign, awning, marquee, canopy, mural or other appendage, for which a City permit is required, except in conformity with the provisions of this Article 10. In addition, no such work shall take place unless all other applicable laws and regulations have been complied with, and any required permit has been issued for said work.

(b) *(1) Installation of a new general advertising sign is prohibited in any Historic District or on any historic property regulated by this Article 10.*

(2) The Central Permit Bureau shall not issue, and no other City department or agency shall issue, any permit for construction, alteration, removal or demolition of a structure or any permit for work involving a sign, awning, marquee, canopy, mural or other appendage

on a landmark site or in a historic district, except in conformity with the provisions of this Article 10. In addition, no such permit shall be issued unless all other applicable laws and regulations have been complied with.

(c)(1) Where so provided in the designating ordinance for a historic district, any or all exterior changes visible from a public street or other public place shall require approval in accordance with the provisions of this Article 10, regardless of whether or not a City permit is required for such exterior changes. Such exterior changes may include, but shall not be limited to, painting and repainting; landscaping; fencing; and installation of lighting fixtures and other building appendages.

(2) The addition of a mural to any landmark or contributory structure in a historic district shall require compliance with the provisions of this Article 10, regardless of whether or not a City permit is required for the mural.

(3) Alterations to City-owned parks, squares, plazas or gardens on a landmark site, where the designating ordinance identifies such alterations, shall require approval in accordance with the provisions of this Article 10, regardless of whether or not a City permit is required.

(d) The Department shall maintain with the Central Permit Bureau a current record of designated landmarks and historic districts. Upon receipt of any application for a permit to carry out any construction, alteration, removal or demolition of a structure or any work involving a sign, awning, marquee, canopy, mural or other appendage, on a landmark site or in a historic district, the Central Permit Bureau shall, unless the structure or feature concerned has been declared unsafe or dangerous pursuant to Section 1007 of this Article 10, promptly forward such permit application to the Department.

(e) After receiving a permit application from the Central Permit Bureau in accordance with the preceding subsection, the Department shall ascertain whether Section 1006 requires a Certificate of Appropriateness for the work proposed in such permit application. If such Certificate is required and has been issued, and if the permit application conforms to such Certificate, the permit application shall be processed without further reference to this Article 10. If such Certificate is required and has not been issued, or if in the sole judgment of the Department the permit application does not so conform, the permit application shall be disapproved or held by the Department until such time as conformity does exist; the decision and action of the Department shall be final. Notwithstanding the foregoing, in the following cases the Department shall process the permit application without further reference to this Article 10:

(1) When the application is for a permit to construct on a landmark site where the landmark has been lawfully demolished and the site is not within a designated historic district;

(2) When the application is for a permit to make interior alterations only on a privately owned structure, or on a publicly owned structure unless the designating ordinance requires review of such alterations pursuant to Section 1004(c) hereof;

(3) When the application is for a permit to do ordinary maintenance and repairs only. For the purpose of this Article 10, "ordinary maintenance and repairs" shall mean any work, the sole purpose and effect of which is to correct deterioration, decay or damage, including repair of damage caused by fire or other disaster;

(4) When the application is for a permit to comply with the UMB Seismic Retrofit Ordinances and the Zoning Administrator determines that the proposed work complies with the UMB Retrofit Architectural Design Guidelines, which guidelines shall be adopted by the Planning Commission.

(f) For purposes of this Article 10, demolition shall be defined as any one of the following:

(1) Removal of more than 25 percent of the surface of all external walls facing a public street(s); or

(2) Removal of more than 50 percent of all external walls from their function as all external walls; or

(3) Removal of more than 25 percent of external walls from function as either external or internal walls; or

(4) Removal of more than 75 percent of the building's existing internal structural framework or floor plates unless the City determines that such removal is the only feasible means to meet the standards for seismic load and forces of the latest adopted version of the San Francisco Building Code and the State Historical Building Code.

(g) The following procedures shall govern review of the addition of murals to any landmark or contributory structure in a historic district:

(1) Where the mural is proposed to be added to a landmark or contributory structure in a historic district, located on property owned by the City, no Certificate of Appropriateness shall be required. On such structures, the Art Commission shall not approve the mural until the Advisory Board has provided advice to the Art Commission on the impact of the mural on the historical structure. The Advisory Board shall provide advice to the Art Commission within 50 days of receipt of a written request for advice and information regarding the placement, size and location of the proposed mural;

(2) Where the mural is proposed to be added to a landmark or contributory structure in a historic district, located on property which is not owned by the City, a Certificate of Appropriateness shall be required. The Advisory Board shall not act on the Certificate of

Appropriateness until the Art Com-mission has provided advice to the Advisory Board on the mural. The Art Commission shall provide advice to the Advisory Board within 50 days of receipt of a written request for advice and information regarding the proposed mural.

Section ~~8~~7. The San Francisco Planning Code is hereby amended by amending Section 1111.7, to read as follows:

SEC. 1111.7. PERMITS FOR SIGNS.

(a) Installation of a new general advertising sign is prohibited in any Historic District or Conservation District or on any historic property regulated by this Article 11.

(b) Wherever a permit for a sign is required pursuant to Article 6 of this Code, an application for such permit shall be governed by the provisions of this Section in addition to those of Article 6.

(c) Apart from and in addition to any grounds for approval or disapproval of the application under Article 6, an application involving a permit for a business sign, or general advertising sign, identifying sign, or nameplate to be located on a Significant or Contributory Building or any building in a Conservation District may be disapproved, or approved subject to conditions if the proposed location, materials, means of illumination or method or replacement of attachment would adversely affect the special architectural, historical or aesthetic significance of the building or the Conservation District. No application shall be denied on the basis of the content of the sign.

(d) The Director of Planning shall make the determination required pursuant to Subsection (b). Any permit applicant may appeal the determination of the Director of Planning to the City Planning Commission by filing a notice of appeal with the Secretary of the Commission within 10 days of the determination. The City Planning Commission shall hear the appeal and make its determination within 30 days of the filing of the notice of appeal.

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

By: _____
JUDITH A. BOYAJIAN
Deputy City Attorney

Exhibit C

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

City and County of San Francisco

Tails

Ordinance

File Number: 052021 **Date Passed:**

Ordinance amending the San Francisco Administrative Code by adding Section 2.21 to establish a General Advertising Sign Relocation Procedure; amending the San Francisco Planning Code by amending Section 303 to add criteria for the Planning Commission's approval of a general advertising sign relocation site, amending Planning Code Section 604 to prohibit general advertising signs that have been removed from being replaced on the same site, adding Section 604.2 to require general advertising sign companies to maintain and submit to the City current inventories of their signs, and amending Sections 1005 and 1111.7 to prohibit the relocation of new general advertising signs to Historic Districts or Conservation Districts or on an historic property regulated by Articles 10 and 11 of the Planning Code; and adopting findings including environmental findings and findings of consistency with the Priority Policies of Planning Code Section 101.1 and the General Plan.

June 13, 2006 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
Excused: 1 - Ma

June 20, 2006 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
Excused: 1 - Alioto-Pier

Exhibit C

File No. 052021

I hereby certify that the foregoing Ordinance was FINALLY PASSED on June 20, 2006 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

06-22-2006
Date Approved

Mayor Gavin Newsom

Exhibit D

Notice to Property Owner

General Advertising Sign

Date:	February 19, 2013
BPA No.:	**2013.02.06.9565**
Site Address:	**530 HOWARD STREET**
Sign ID:	ORIG647 (40ft x 25ft northeast-facing wall sign)
Zoning:	C-3-O
Block/Lot:	3721 / 014
Staff Contact:	Jonathan Purvis – (415) 558-6354 jonathan.purvis@sfgov.orgg

Property Owner:
One Timberlake Inc.
DBM Investment Inc.
735 Montgomery Street, #450
San Francisco, CA 94111

Sign Company:
CBS Outdoor
Attn: Collin Smith
1695 Eastshore Highway
Berkeley, CA 94710

The Planning Department recently received a building permit application (BPA), referenced above, requesting the voluntary removal of a general advertising sign from the above-referenced property. Under Section 604(h) of the Planning Code, once a general advertising sign is voluntarily removed by its owner it cannot be replaced.

The BPA identifies CBS Outdoor as a lessee. If this BPA has been filed without authorization from the property owner, you must notify the above-referenced staff person within **ten (10) days** of the date of this notice.

You are not required to take action in response to this notice; it is being sent to you only as a courtesy. However, if you do not respond within ten days, the permit may be issued and the sign permanently removed.

cc: Anthony Leones
Miller, Star & Regalia
1331 North California Blvd., Fifth Floor
Walnut Creek, CA 94596

Exhibit E

FOR DEPARTMENTAL USE ONLY — PRIOR TO ISSUANCE:

NV

DATE FILED: 10/19/2020 | FILING FEE RECEIPT NO.:

PERMIT NO.: | ISSUED:

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF BUILDING INSPECTION
APPLICATION FOR PERMIT TO ERECT SIGN

BLDG. FORM 4/7

APPLICATION NUMBER: 2019-1019-6882

OSHA APPROVAL REQ'D: ☐

PERMIT CONTROL — ACTIVE COMPLAINTS: ☐ NONE ☐ HID ☐ CED / PCD ☐ BID ☐ DCP ☐ OTHER:

STATION	HID	CED PCD	BID	DCP	BBI PC CHECK ONE: CNT-PC	PAD-PC	PAD-MAJ	SSS	PARAPET	FIRE	BSM	HEALTH	REDEV	CLB
SEQ														
ACCEPTED														
APPROVED*														
DATE														

CHECK APPLICABLE: ☐ PARALLEL ☐ SITE PENALTY ☐ 5X ☐ 2X ☐ TITLE 24 - HC ☐ TIDF ☐ EXPEDITOR ☐ SFUSD ☐ BLDG ENLARGEMENT (STAMP APPL) ☐ HAZARDOUS MATERIAL

BBI KEY: RESID. = CNT-PC; NON-RESID. = PAD-PC; NEW / MAJOR = PAD-MAJ; UMB = SSS

COMMENT: *SIGN APPL.

APPLICATION IS HEREBY MADE FOR PERMISSION TO ERECT, PAINT, ETC. IN ACCORDANCE WITH PLANS AND SPECIFICATIONS SUBMITTED HEREWITH AND FOR THE PURPOSE SET FORTH HEREIN:

4 ☒ ERECT SIGN (BUILDING INSPECTION AND PLANNING DEPARTMENT APPROVAL REQUIRED.)

7 ☐ PAINTED OR OTHER NON-STRUCTURAL SIGN (ONLY PLANNING DEPARTMENT APPROVAL REQUIRED.)

6. STREET ADDRESS OF JOB: 530 HOWARD ST. | BLOCK / LOT: 3721/014

DO NOT WRITE ABOVE THIS BUILDING

DESCRIPTION OF EXISTING BUILDING

(1) TYPE OF CONSTR.	(2) NO. OF STORIES	(3) PRESENT USE:	(4) BLDG HT. AT CENTER LINE OF FRONT OF BUILDING:	(5) ESTIMATED COST OF JOB:
I	4	OFFICE BUILDING (10) B	FT.	$4000.00

DESCRIPTION OF PROPOSED SIGN

(7) TYPE OF SIGN (MORE THAN 1 BLOCK MAY BE CHECKED IF APPLICABLE)

☐ GROUND ☐ ELECTRIC ☒ NON-ELECTRIC ☐ ROOF ☒ WALL ☐ PROJECTING ☒ SINGLE FACED ☐ DOUBLE FACED ☐ PAINTED WALL ☐ DOOR/WINDOW ☒ BULLETIN BOARD ☐ EXISTING AWNING/MARQUEE/CANOPY ☐ PROFESSIONAL OCCUPATION

SIZE OF SIGN:	THICKNESS:	WEIGHT:	TOTAL SURFACE AREA:	TOTAL AREA OF ALL ADVERTISING SPACE	STANDARDIZED APPROVAL NO:
25' x 40' FT.	4.00"	475 LBS.	1000.00 SQ. FT.	1000.00 SQ. FT.	

ILLUMINATION: ☐ DIRECT ☐ INDIRECT ☒ NON ILLUMINATED ☐ FLASHING | WILL STREET SPACE BE USED DURING CONSTRUCTION? YES ☐ NO ☒

PURPOSE: ☐ NEW SIGN ☒ REPLACEMENT ☐ RECONSTRUCTION ☐ RELOCATION ☐ EXPANSION ☐ CHANGE COPY ☐ OTHER

(8) CONTRACTOR	ADDRESS	PHONE	CONT. LIC.	EXP. DATE
AGS SIGNS	P.O. BOX 1251 SAN BRUNO, CA 94066	415-840-4337	1032267	10/31/2021

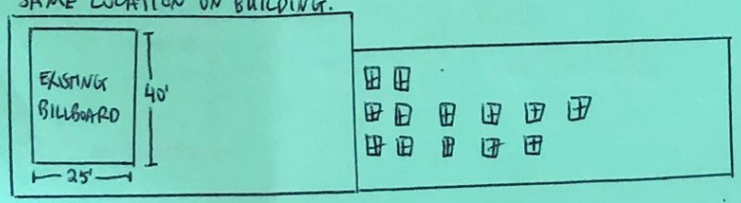
(9) ARCHITECT OR ENGINEER (DESIGN ☐ CONSTRUCTION ☐) — ADDRESS — PHONE — CALIF. CERTIFICATE NO.

(10) CONSTRUCTION LENDER (LENDER NAME AND BRANCH DESIGNATION IF ANY. IF THERE IS NO KNOWN CONSTRUCTION LENDER, ENTER "UNKNOWN"): UNKNOWN — ADDRESS

(11) OWNER ~~LESSEE~~ (CROSS OUT ONE)	ADDRESS	PHONE (FOR CONTACT BY DEPT.)
ONE TIMBERLAKE, INC	575 SUTTER, STE 300 SAN FRANCISCO, CA 94102	CHAD ELKIN 415-596-4029

(12) PLOT PLAN AND ELEVATION: INDICATE ON SCALED DRAWINGS THE EXACT LOCATION OF THE SIGN HORIZONTALLY AND VERTICALLY ON THE BUILDING AND ON THE LOT. SHOW SIDEWALK WIDTH AND SIGN CONSTRUCTION. IF ERECTING SIGN, ILLUMINATION FOR SIGN, MARQUEE, ETC., SHOW METHOD OF ATTACHMENT AND THE CONSTRUCTION OF THE SIGN HEREON OR ON SEPARATE DRAWINGS IN DUPLICATE. PROVIDE HEIGHT OF SIGN ABOVE GROUND AND THE PROJECTION IN FEET FROM THE BUILDING. IF WALL SIGN, PROVIDE SIGN COPY.

REMOVE EXISTING 25'x40' BILLBOARD AND REPLACE WITH NEW 25'x40' BILLBOARD AT THE SAME LOCATION ON BUILDING.



WEST FACING ELEVATION

IMPORTANT NOTICES

Where top guy wire is required, anchor with 1/2" dia. through-bolt (minimum), to the structural frame of the building below the parapet wall. No portion of building or structure, or scaffolding used during construction, to be closer than 60" to any wire operating at more than 750 volts. See Sec. 385 Calif. Penal Code.

Encroachments authorized on public Property are revocable when ordered by Board of Supervisors (S.F. Building Code). Any stipulation required herein or by Code may be appealed.

APPROVAL OF THIS APPLICATION DOES NOT CONSTITUTE APPROVAL FOR THE ELECTRICAL WIRING, A SEPARATE PERMIT FOR THE WIRING MUST BE OBTAINED. THIS IS NOT A PERMIT TO ERECT A SIGN. NO WORK SHALL BE STARTED UNTIL A PERMIT TO ERECT A SIGN IS ISSUED.

CHECK APPROPRIATE BOX

☐ OWNER ☐ ARCHITECT ☐ ENGINEER
☐ LESSEE ☒ AGENT WITH POWER OF ATTORNEY
☐ CONTRACTOR ☐ ATTORNEY IN FACT

APPLICANT'S CERTIFICATION

I HEREBY CERTIFY AND AGREE THAT IF A PERMIT IS ISSUED FOR THE CONSTRUCTION DESCRIBED IN THIS APPLICATION, ALL THE PROVISIONS OF THE PERMIT AND ALL LAWS AND ORDINANCES THERETO WILL BE COMPLIED WITH.

9003-10 (REV. 2/95)

NOTICE TO APPLICANT

HOLD HARMLESS CLAUSE: The permittee(s) by acceptance of the permit, agree(s) to indemnify and hold harmless the City and County of San Francisco from and against any and all claims, demands and actions for damages resulting from operations under this permit, regardless of negligence of the City and County of San Francisco, and to assume the defense of the City and County of San Francisco against all such claims, demands or actions.

In conformity with the provisions of Section 3800 of the Labor Code of the State of California, the applicant shall have coverage under (I), or (II) designated below or shall indicate item (III), or (IV), or (V), whichever is applicable. If however item (V) is checked item (IV) must be checked as well. Mark the appropriate method of compliance below:

I hereby affirm under penalty of perjury one of the following declarations:

( ) I. I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

( ) II. I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

( ) III. The cost of the work to be done is $100 or less.

(X) IV. I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California. I further acknowledge that I understand that in the event that I should become subject to the workers' compensation provisions of the Labor Code of California and fail to comply forthwith with the provisions of Section 3800 of the Labor Code, that the permit herein applied for shall be deemed revoked.

( ) V. I certify as the owner (or the agent for the owner) that in the performance of the work for which this permit is issued, I will employ a contractor who complies with the workers' compensation laws of California and who, prior to the commencement of any work, will file a completed copy of this form with the Central Permit Bureau.

Patrick Perin — Signature of Applicant or Agent

10/15/2020 — Date

Exhibit E

PROJECT ADDRESS:

530 HOWARD STREET
SAN FRANCISCO, CA 94102

SIGN CONTRACTOR:

AGS SIGN

SCOPE OF WORK

REMOVE EXISTING 25'-00" X 40'-00" BILLBOARD

REPLACE WITH NEW 25'-00" X 40'-00" BILLBOARD

AT THE SAME LOCATION ON BUILDING

TABLE OF CONTENTS

RECEIVED
OCT 19 2020
DEPT. OF BUILDING INSPECTION
THIS PLAN MEETS THE QUALITY STANDARD FOR IMAGING
ACCEPTED

General Notes

No.	Revision/Issue	Date

agssign.com
P.O. BOX 1251
SAN BRUNO, CA 94066
Architectural Graphic Systems

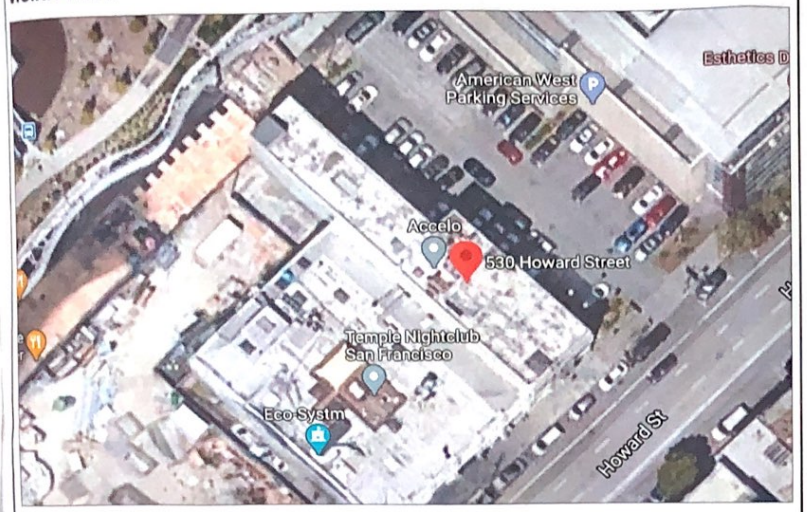
BECKER BOARDS
530 HOWARD STREET
SAN FRANCISCO, CA 94102

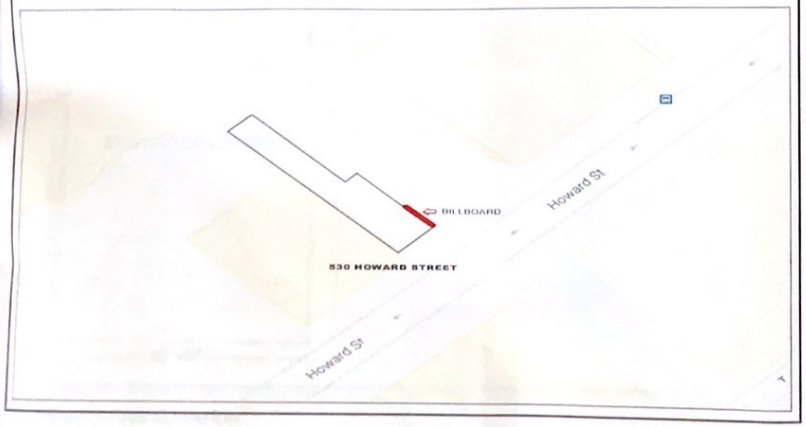
Project	Sheet
Date 9/25/2020	A-1
Scale N/A	

530 Howard St.
2020-1019-6882

Exhibit E

VICINITY MAP





EXISTING 25' X 40' BILLBOARD

N

RECEIVED
OCT 19 2020
DEPT. OF BUILDING INSPECTION
THIS PLAN MEETS THE QUALITY STANDARD FOR IMAGING ACCEPTED

General Notes

No.	Revision/Issue	Date

agssign.com
P.O. BOX 1251
SAN BRUNO, CA 94066
Architectural Graphic Systems

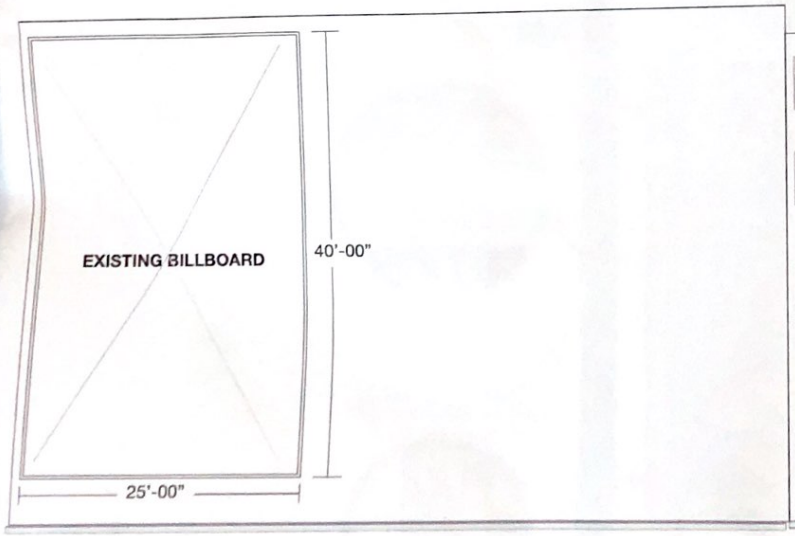
BECKER BOARDS
530 HOWARD STREET
SAN FRANCISCO, CA 94102

Project	Sheet
Date 9/25/2020	A-2
Scale N/A	

Exhibit E

SOUTH FACING ELEVATION

EXISTING 25' X 40' BILLBOARD



WEST FACING ELEVATION

RECEIVED
OCT 19 2020
DEPT. OF BUILDING INSPECTION
THIS PLAN MEETS THE QUALITY STANDARD FOR IMAGING
ACCEPTED

General Notes

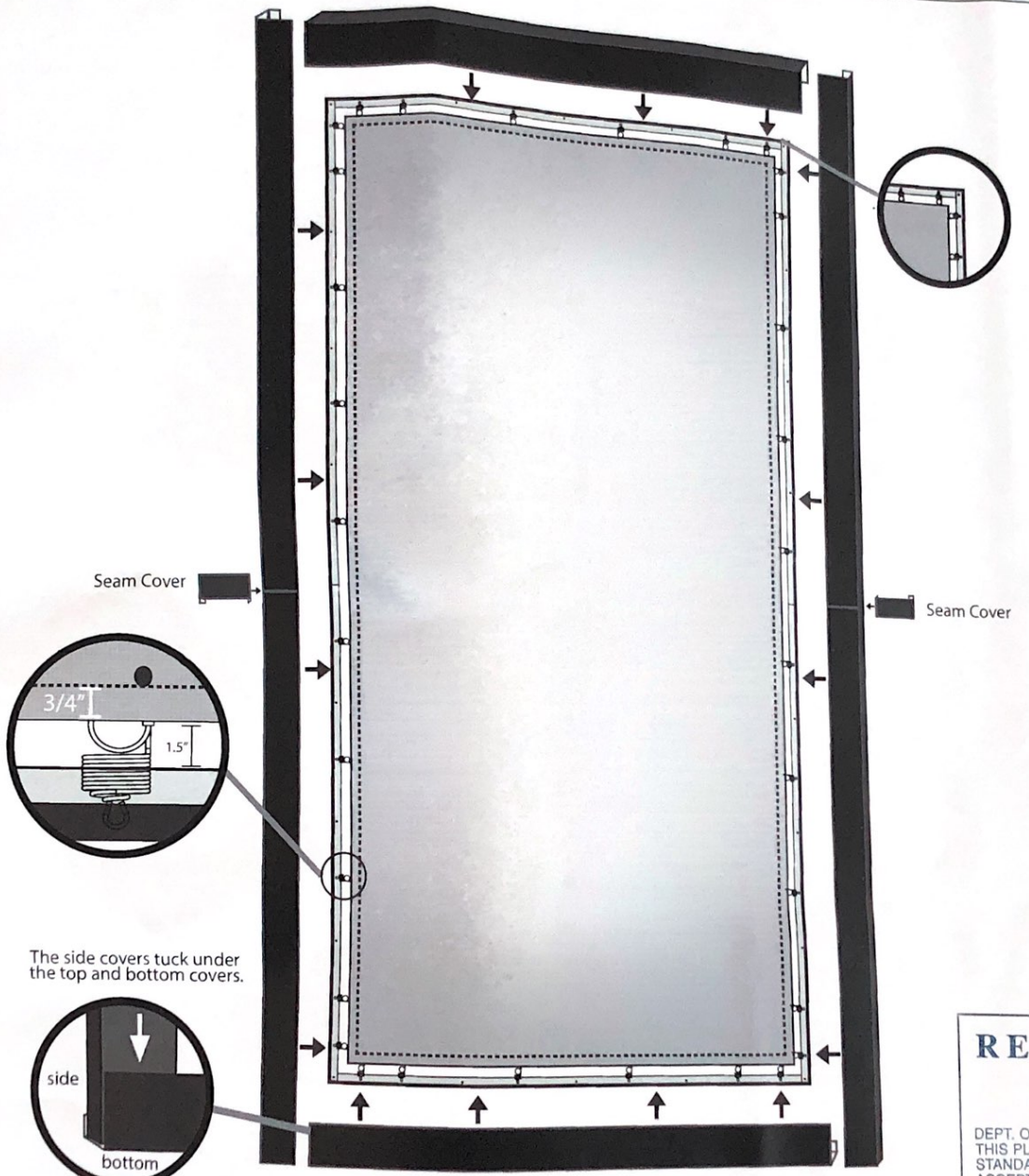
No.	Revision/Issue	Date

P.O. BOX 1251
SAN BRUNO, CA 94066

BECKER BOARDS
530 HOWARD STREET
SAN FRANCISCO, CA 94102

Project	Sheet
Date 9/25/2020	A-3
Scale N/A	

Exhibit E



SIGN CONSTRUCTION DRAWING

RECEIVED
OCT 19 2020
DEPT. OF BUILDING INSPECTION
THIS PLAN MEETS THE QUALITY STANDARD FOR IMAGING
ACCEPTED

General Notes

No.	Revision/Issue	Date

agssign.com
P.O. BOX 1251
SAN BRUNO, CA 94066
Architectural Graphic Systems

BECKER BOARDS
530 HOWARD STREET
SAN FRANCISCO, CA 94102

Project	Sheet
Date 9/25/2020	A-4
Scale N/A	

Exhibit F

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
FRONT PROPERTIES LLC, Appellant(s)

vs.

DEPT. OF BUILDING INSPECTION,
PLANNING DEPARTMENT DISAPPROVAL Respondent

Appeal No. 09-138

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT the above named appellant(s) appeals to 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 denial on Nov. 12, 2009, of Permit to Alter a Building (deconstruct and replace billboard consistent with area and height of existing legal billboard per termite report; wall mount on Belvedere Street elevation) at 1633-1649 Haight Street.

APPLICATION NO. 2009/09/15/6817

Address & Tel. of Appellant(s):	Address of Other Party:
Front Properties LLC, Appellant c/o Brett Gladstone, Attorney for Appellant 177 Post Street, Penthouse SF, CA 94108 415.434.9500 (tel)	N/A

I, Sigrid Williams declare under penalty of perjury that the foregoing is true and correct.

Entered on Nov. 19, 2009 at San Francisco, California.

FOR HEARING ON Feb. 3, 2010.

Appellant or Agent

NOTICE OF DECISION & ORDER

The aforementioned matter came on regularly for hearing before the Board of Appeals of the City & County of San Francisco on April 14, 2010.

PURSUANT TO § 4.106 of the Charter of the City & County of San Francisco and Article 1, § 14 of the Business & Tax Regulations Code of the said City & County, and the action above stated, the Board of Appeals hereby **DENIES THE APPEAL AND ORDERS**

that the denial of the subject permit by the Department of Building Inspection (DBI) is **UPHELD**.

BOARD OF APPEALS
CITY & COUNTY OF SAN FRANCISCO

Last Day to Request Rehearing: April 26, 2010
Request for Rehearing: None
Rehearing: None
Notice Released: April 28, 2010

Tanya Peterson, President

Cynthia G. Goldstein, Executive Director

If this decision is subject to review under Code of Civil Procedure § 1094.5, then the time within which judicial review must be sought is governed by California Code of Civil Procedure § 1094.6.

Exhibit G

SAN FRANCISCO
PLANNING DEPARTMENT

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Second
Notice of Requirements
General Advertising Sign

Date:	October 13, 2009
BPA No.	2009.09.15.6817
Site Address:	**1633-1649 HAIGHT STREET**
Sign ID:	ORIG313 (12x25 west-facing wall sign)
Zoning:	Haight Street NCD
Block/Lot:	1246/023
Staff Contact:	Jonathan Purvis (415) 558-6354 Jonathan.purvis@sfgov.org
Applicant:	Trim Fit Construction 121 Scenic Court San Bruno, CA 94066

On September 30, 2009, the Planning Department issued a Notice of Requirements stating that the above-referenced building permit application to "deconstruct and replace billboard" was on hold pending a determination from the Department of Building Inspection that safety improvements necessitated complete deconstruction of the sign.

On October 13, 2009 we received a copy of a Notice of Violation from DBI confirming damage to the framing members of the sign, but requiring only repair or replacement of damaged or affected areas of the sign. The subject building permit application requesting deconstruction and replacement of the entire sign is beyond the scope of the order from DBI and under Section 604(h) of the Planning Code, it cannot be approved

Per our review process your application remains on hold until the scope of work is revised to be consistent with the corrective action required under the NOV. Failure to act on this Notice within **30 days** from the date of this notice will result in cancellation of the application. Please direct any questions about this notice to the staff contact noted above.

cc: Kevin Strain
P. O. Box 504
Belvedere, CA 94920

Patrick Buscovich
235 Montgomery Street, Suite 823
San Francisco, CA

Anthony Leones
Miller Starr Regalia
1331 N. California Blvd. 5th Floor
Walnut Creek, CA 94596

Exhibit H

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal No. 11-021

Appeal of
FRONT PROPERTIES LLC, Appellant(s)

vs.

DEPT. OF BUILDING INSPECTION, PLANNING DEPARTMENT DISAPPROVAL Respondent

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on Feb. 15, 2011 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 denial on Feb. 03, 2011, of Permit to Alter a Building (replace billboard involuntarily removed without owner authorization; billboard to be replaced exactly in-kind; work is at exterior only; work is not associated with any commercial space) at 1633-1649 Haight Street.

APPLICATION NO. 2010/10/28/3932

FOR HEARING ON April 06, 2011

Address & Tel. of Appellant(s):	Address of Other Party:
Front Properties LLC, Appellant c/o Tito Torres, Attorney for Appellant 703 Market Street #1600 SF, CA 94103	N/A

NOTICE OF DECISION & ORDER

The aforementioned matter came on regularly for hearing before the Board of Appeals of the City & County of San Francisco on August 17, 2011.

PURSUANT TO § 4.106 of the Charter of the City & County of San Francisco and Article 1, § 14 of the Business & Tax Regulations Code of the said City & County, and the action above stated, the Board of Appeals hereby **DENIES THE APPEAL AND ORDERS** that the denial of the subject permit by the Department of Building Inspection and Planning Department is **UPHELD** with a **FINDING** that the billboard does not comply with Planning Code § 604(h) and is a non-complying structure, as referenced in the Planning Department's denial letter dated 12/14/10 and in its respondent brief dated 8/11/11.

BOARD OF APPEALS
CITY & COUNTY OF SAN FRANCISCO

Kendall Goh, President

Last Day to Request Rehearing: Aug. 29, 2011
Request for Rehearing: Sept. 14, 2011 (denied)
Rehearing: None
Notice Released: Sept. 15, 2011

Cynthia G. Goldstein, Executive Director

If this decision is subject to review under Code of Civil Procedure § 1094.5, then the time within which judicial review must be sought is governed by California Code of Civil Procedure § 1094.6.

Exhibit I

SAN FRANCISCO
PLANNING DEPARTMENT

Board of Appeals Brief

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Date:	August 11, 2011
Hearing Date:	August 17, 2011
Appeal Number:	11-021
Project Address:	1633-1649 Haight Street
Block/Lot:	1246 / 023
Zoning:	Haight Street NCD (Neighborhood Commercial District) Haight Street Alcohol RUSD (Restricted Use Subdistrict) 40-X Height and Bulk District
Staff Contact:	Daniel A. Sider – (415) 558-6697 dan.sider@sfgov.org

INTRODUCTION

Front Properties LLC ("Appellant"), the owner of the subject property, mistakenly contends that, despite a Superior Court ruling that the Appellant's predecessor-in-interest (Allan Mooshei, the previous owner of the subject property) contracted away its ownership of and right to remove the general advertising sign at 1633-1649 Haight Street ("Property"), the Department of Building Inspection ("DBI") should have issued a permit to allow the Appellant to install a new general advertising sign after the original sign was removed. Pursuant to the Court's order and Planning Code §604(h), §188(b), and §611, the sign, once removed by its owner (CBS Outdoor ("CBS")), cannot be replaced. Therefore, the Board of Appeals should uphold the denial of Building Permit Application No. 2010.10.28.3932 which would install a new 12' x 25' general advertising structural sign at the same location as the original sign.

PROPERTY INFORMATION

The Property is located on the southeast corner of Haight and Belvedere Streets in the Haight Street NCD (Neighborhood Commercial District), the Haight Street Alcohol RUSD

(Restricted Use Subdistrict) and a 40-X Height and Bulk District. The subject lot is 75 feet wide along Haight Street and 49.76 feet deep along Belvedere Street and contains a three-story mixed-use building built in 1906. The subject building contains 8 dwelling units on upper stories along with ground floor retail space.

BACKGROUND

On November 14, 1951, West Coast Advertising (CBS' predecessor-in-interest) filed an application for a permit to install a 12' by 25', 5½" thick general advertising sign weighing 500 pounds on the west wall of the Property ("Sign"). The application indicated that the Sign would be set back from Haight Street by 25' and "rest on the sidewalk." On December 5, 1951, the Department of Public Works issued Billboard Permit Number 5192 in order to approve the application and authorize the installation of the Sign. (Appellant's Exhibit G)

On May 1, 1999, Allen Mooshei, the Appellant's predecessor-in-interest, executed a 10-year lease renewal agreement with Outdoor Systems, CBS' predecessor-in-interest, which provided for Outdoor Systems' right to remove the Sign. (Appellant's Exhibit L)

On August 15, 2001, The Appellant and its business partners assumed ownership of the Property from Allan Mooshei and his business partners.

On January 7, 2009, the Appellant sent a letter to CBS stating that "the lease at the [Property] expires 4/30/09. You are hereby notified to remove the sign as of this date." (Appellant's Exhibit N)

On March 24, 2009, and again on April 3, 2009, CBS requested that the Appellant authorize its building permit application to remove the Sign. The Appellant did not provide the requested authorization.

Board of Appeals Brief
Appeal No. 11-021
1633-1649 Haight Street
Hearing Date: August 17, 2011

On May 21, 2009, CBS sued the Appellant under Superior Court Case CGC-09-488613 (discussed below) alleging that the Appellant unlawfully refused to authorize the City to issue a permit to CBS to remove the Sign. On July 15, 2010, the Court agreed and ruled that the Appellant could not oppose removal of the Sign.

On September 15, 2009, the Appellant filed a Building Permit Application to remove and replace the Sign. Because the Planning Code prohibits such a replacement, the application was disapproved and was subsequently the subject of Appeal 09-138 (discussed below) in which the Board upheld the City's disapproval.

On October 19, 2009, CBS filed a Building Permit Application to repair a portion of the Sign in response to a Notice of Violation ("NOV") from DBI. The issuance of this permit was the subject of Appeal 09-151 (discussed below) in which the Board overruled said issuance on the grounds that it was done without the necessary authorizations.

On July 27, 2010, CBS filed Building Permit Application Number 2010.07.27.7504 ("Removal Permit") in order to remove the Sign. (Appellant's Exhibit U)

On August 10, 2010, the Planning Department issued a Notice to Property Owner (Appellant's Exhibit E) informing the Appellant that under Planning Code §604(h) no general advertising sign that is voluntarily removed can be replaced and providing an opportunity for the Appellant to object to, or preclude the issuance of, the Removal Permit. The Appellant did not object.

On September 8, 2010, DBI issued the Removal Permit. On September 24, 2010, DBI inspected the work and found it to be complete.

On October 28, 2010, the Appellant submitted Building Permit Application Number 2010.10.28.3932, which proposed to replace the Sign with a new sign of similar characteristics ("Replacement Permit") (Appellant's Exhibit A). Because the Planning Code

prohibits new general advertising signs or the replacement of signs which were voluntarily removed (§604(h), §188(b), §611) the Planning Department disapproved the Replacement Permit on December 14, 2010, and on February 3, 2011 it was cancelled by DBI.

On February 15, 2011, the Appellant filed Appeal Number 11-021 of the Department's disapproval of the Replacement Permit.

RELATED APPEALS AND LEGAL ACTIONS ON THIS SAME MATTER

Appeal 09-138. On September 15, 2009, well before the actual removal of the Sign, the Appellant filed Building Permit Application Number 2009.09.15.6817 in order to "deconstruct and replace billboard consistent with area and height of existing legal billboard per termite report…" The Planning Department requested evidence pursuant to Planning Commission Resolution 17258, which allows the replacement of a general advertising sign only if "safety improvements are required by [DBI] and such work necessitates complete deconstruction." At the Appellant's request, DBI issued a NOV on October 9, 2009 requiring a building permit "to repair or replace all damaged or affected areas of the billboard." The NOV did not require removal or replacement of the entire Sign. At the Appellant's request, on November 12, 2009, the permit was disapproved. This disapproval was subsequently the subject of Appeal 09-138 in which, on April 14, 2010, the Board acted to uphold the permit's disapproval.

Appeal 09-151. On October 19, 2009, CBS filed Building Permit Application Number 2009.10.19.9233 in order to "comply with the DBI NOV to replace and repair bottom left framing area of billboard to ensure sign is free of any pest infestation." This permit was issued on December 3, 2009 and was the subject of Appeal 09-151 which was heard by the

Board on February 3, 2010. The Board overruled the issuance of the permit and ordered that it be revoked on the grounds that the required authority for the permit did not exist.

Superior Court Case CGC-09-488613. On May 21, 2009, CBS sued the Appellant, alleging that the Appellant unlawfully refused to authorize the City to issue a permit to CBS to remove the Sign. On July 15, 2010, the Superior Court of the State of California ruled that the Allan Mooshei and his business partners (the previous owner of the subject property and the Appellant's predecessor-in-interest), through a contract, conveyed ownership of the Sign and the right to remove it to CBS's predecessor, and therefore the Appellant could not oppose removal of the Sign:

> The Lease establishes that CBS, as successor in interest to Outdoor Systems, Inc., owns, and has a right to remove, its Billboard from the Property… CBS has a right to remove its Billboard. Therefore, Defendants… are hereby ordered not to object to, interfere with, or oppose the Department of Building Inspection (DBI) or the City Planning Department's (the 'Planning Department') approval or issuance of the removal permit in any way whatsoever.

ISSUES ON APPEAL

The central issue on appeal is whether or not the Appellant can install a new sign at the same location where it asked CBS to remove the original Sign, and where its predecessor had contracted away ownership of the Sign and the right to remove the Sign. The Planning Code unambiguously prohibits the installation of a new sign. §604(h) states that “a sign which is voluntarily destroyed or removed by its owner or which is required by law to be removed may be restored only in full conformity with the provisions of this Code.” On the basis of the following three uncontested facts, the Replacement Permit must be denied: (1) the Sign was owned by CBS; (2) CBS removed the Sign voluntarily; and (3) current provisions of the Planning Code prohibit any new general advertising sign. These facts, in conjunction with the provisions of §604(h), prohibit the replacement of the Sign.

Exhibit I

Board of Appeals Brief
Appeal No. 11-021
1633-1649 Haight Street
Hearing Date: August 17, 2011

The Board of Appeals should uphold denial of the Replacement Permit for at least five additional reasons:

1. **The Sign did not comply with the Planning or Building Codes.** The Sign, being a general advertising sign resting on the sidewalk, was first made noncomplying five years after its installation and thereafter was made increasingly noncomplying. First, §4711.C of the 1956 Building Code required a minimum 8' clearance above the sidewalk. Second, §4601.F of the 1969 Building Code increased this minimum clearance to 10'. Third, the Sign was additionally made nonconforming under the Planning Code with the onset of Planning Code §719.30, which prohibited general advertising signs in the Haight Street NCD. Fourth, 2002's Proposition G disallowed any new general advertising signs anywhere in the City. Accordingly, installation of a new sign with the same characteristics of the old Sign would be contrary to both Planning Code and Building Code provisions. The latter is especially concerning, given the fundamental intent of the Building Code to ensure life-safety and sound building practices.

2. **The Sign's owner voluntarily removed the Sign.** The Appellant contends that the removal of the Sign was involuntary, apparently on the grounds that it would have objected to the removal of the Sign if the Court had not prohibited it from doing so. In support of this argument, the Appellant cites *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 231, for the proposition that the word "voluntary" means "an act of choice." That case further defines "voluntary" as "deliberate," which in turn is defined as "characterized by or as resulting from unhurried, careful, thorough, and cool calculation and consideration of effects and consequences..."

The Appellant's argument is irrelevant because Code §604(h) prohibits replacement of “a sign which is voluntarily destroyed or removed by its owner.” (Emphasis added). CBS was the undisputed owner of the Sign. Because Code §604(h) explicitly references the owner of the sign - rather than the owner of the real property - the Appellant’s sentiment as to whether it feels the sign was removed voluntarily is inconsequential.

Even assuming that the Appellant’s foregoing argument were relevant, it is nonetheless incorrect. First, the Superior Court ruled that the Appellant legally consented to the removal of the Sign by virtue of the contract between the Appellant's predecessors and CBS's predecessors. The Appellant’s predecessors undertook several "acts of choice," including those to (1) seek and obtain the 1951 permit – through agency - to install the sign, (2) execute a lease agreement with a sign company stating that the Sign was the property of the sign company and could be removed by the sign company, (3) allow that sign company to construct the Sign, and (4) execute lease renewals with that and successor sign companies. These acts of choice are binding on the Appellant, as the Court determined when it ruled that the Appellant could not prevent CBS from removing the Sign (Appellant’s Exhibit S). Thus, the contract constitutes the Appellant's voluntary consent to the removal of the Sign.

Second, it was the Appellant itself that initiated the removal of the Sign through its January 2009 letter to CBS. (Appellant’s Exhibit N). The Appellant has never suggested that its letter was not written voluntarily. The Appellant's request to CBS was a "deliberate" "act of choice" and therefore was voluntary. (See *Moyer, supra*, 10

Cal.3d at p. 231.) Choices have consequences; the removal of the Sign is a consequence and product of the Appellant's own choices.

3. The Pocoroba, Lee and Suckle decisions do not apply to this case. The facts of Pocoroba (Appeal 03-036) (Appellant's Exhibit I), Lee (Appeal 07-075) (Appellant's Exhibit Y), and Suckles (Appeal 06-039) (Appellant's Exhibit K) are fundamentally different from those of the present case.

a. The Appellant cites the Board's determination in Pocoroba that the right to a general advertising sign runs with the land, and that while a sign company could remove a structure, it could not terminate the associated land use right. However, the Appellant fails to acknowledge the Board's associated Findings of Fact. In Pocoroba, the sign company "notified the City by letter to the Planning Department, copied to the Department of Building Inspection, that it intended to abandon its permits… and requested that the City immediately cancel the permits" prior to removing its signs. Accordingly, the attempted relinquishment of permits in Pocoroba was both (1) unilaterally performed by the sign company without property owner authorization and (2) done improperly via a letter written to the City rather than through the building permit which would have been required to authorize and execute the work. Pocoroba does not preserve the right to display a sign where a court has ruled that the property owner contracted away ownership of a sign and the right to remove it, or where a property owner affirmatively requested that the sign company remove the sign.

In this case, unlike in Pocoroba, the following facts are present: (1) a Building Permit was sought and issued, (2) the property owner's consent was established by the Superior Court's order interpreting the contract between the predecessors of both the property owner and the sign company, (3) the property owner was made aware of the Planning Code's restriction on re-installation (Appellant's Exhibit E) and (4) the property owner was afforded the opportunity to object or suggest that the authorization was not valid prior to its granting.

Lastly, subsequent to the Pocoroba decision in October of 2003, the City adopted Ordinance 140-06 in June of 2006, which, among other things, amended Planning Code §604(h) to say unequivocally that "a general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location, and the erection, construction, and/or installation of a general advertising sign at that location to replace the previously existing sign shall be deemed to be a new sign in violation of §611(a) of this Code." As such, §604(h) clarifies the situations in which the replacement of general advertising signs is not permitted. This specificity did not exist at the time of the Pocoroba decision. With respect to the present case, §604(h) required the Planning Department to disapprove the Replacement Permit.

b. The Appellant refers to the City's brief filed in connection with Lee, which stated that the "restoration of a general advertising sign structure removed without the consent of the property owner would not constitute a new general advertising sign under Proposition G." This is true. However, in the Lee case, the City issued a permit without property owner authorization. In contrast, in the present case, as

discussed above, the owner was ordered by the Court to consent to the removal. Furthermore, the Appellant declined to object to the Removal Permit or otherwise suggest that the authorization for the Removal Permit was not valid. It is uncontested that the Removal Permit was properly issued, that no appeal of that permit was filed, and that the work was executed.

c. The Appellant also refers to Suckles as a case in which the Board of Appeals "complied with State case law in finding that the property owner holds the right to maintain the billboard at the Property, not the billboard company." (Appellant's Exhibit K) While the Planning Department concurs with this characterization and the premise that land use rights run with the land, in the present case, unlike in Suckles, the owner of the land (acting through agency pursuant to the Superior Court's order) *relinquished that right*. Additionally, in the Suckles decision, unlike the present case, the Board cited the importance of the relevant actions having taken place prior to the City's ban on new general advertising signs (Planning Code §611) and subsequent clarifications thereof (Planning Code §604(h)).

In Lee, Suckles, and Pocoroba, nowhere is it suggested that, where the courts have ruled that a property owner has conveyed to a sign company the right to remove a sign, the property owner may nonetheless refuse to consent to the sign's removal or may rebuild the sign once removed.

4. The Removal Permit's execution was not a calamity. In arguing that "what happened to the Appellants can only be described as a calamity, under Planning Code §188(b)," the Appellant invokes a Planning Code provision which addresses

structures destroyed by natural disasters or criminal acts perpetrated by the “public enemy.” Had CBS, or any other party, removed the Sign without permit or without appropriate authorization, or had a nefarious third party dismantled the sign in the dark of night, the "public enemy" provisions of §188(b) could arguably have had bearing. In the present case, they have no relevance. On the contrary, CBS was acting as specifically requested by the Appellant in its written request for CBS to remove the Sign.

Also of note is the balance of §188(b), which the Appellant fails to cite. §188(b) states that “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.” The Superior Court ruled that CBS, not the Appellant, is "the owner" of the Sign (Appellant’s Exhibit Q). Even if the Appellant could somehow be considered to be the Sign's owner despite the Court's ruling, §188(b) prohibits the Sign, which the appellant asked CBS to remove, from being replaced. Thus, not only was the Sign removed voluntarily by its owner and by the property owner, as discussed above, but the Superior Court’s order then required, as a matter of law, that the Appellant not interfere with that removal. Consequently, the Sign cannot be restored.

5. Disapproval of the Replacement Permit is consistent with voter mandate. 2002’s Proposition G, which passed with 78 percent of the vote, is codified in Planning Code §611. It states that “[n]o new general advertising signs shall be permitted at any location within the City as of March 5, 2002.” In furtherance of this mandate, the Planning Department has undertaken a substantial Code enforcement effort to

correct outstanding sign-related Planning Code violations and to remove unlawful signs. In order to support and facilitate these efforts, the Planning Code has been amended to provide unambiguous regulations (e.g. §604(h)) and appropriate Department procedures have been developed (e.g. issuance of a Notice to Property Owner upon submittal of a permit to remove a sign). In the course of the City's review of the Removal Permit, all applicable Code provisions and policies were executed precisely as required. Accordingly, the disapproval of the Removal Permit is consistent with the voter mandate set forth in Proposition G and the Appellant's suggestion that a new general advertising sign should be allowed is not.

CONCLUSION

The Superior Court's order compelling the Appellant to not interfere with the Removal Permit is an adjudication of contract rights to which the City must defer. The Court Order establishes that, in a private agreement, the Appellant's predecessor undertook "acts of choice" that constituted voluntary consent to the Sign's removal.

The fundamental question before the Board is whether, in light of the Appellant's instigation of the Sign's removal and knowledge of consequences, and more importantly the unambiguous provisions of §604(h) and satisfaction of those provisions in this case, the Appellant should nonetheless be allowed to install a new general advertising sign in violation of Planning Code provisions, Building Code Provisions, and the voter mandate embodied in Proposition G.

The Planning Department respectfully submits that the answer is 'no' and therefore asks that the Board of Appeals uphold the Department's denial of the Replacement Permit.

Interested Party: Brief submitted by Outfront Media, LLC, the company that owns the sign at the subject property.

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March 18, 2021

VIA E-MAIL AND U.S. MAIL

The Honorable Ann Lazarus
President
The City and County of San Francisco
Board of Appeals
49 South Van Ness Ave. Suite 1475
San Francisco, CA 94103
boardofappeals@sfgov.org

Re: ***Appeal No.: 21-009: Application for General Advertising for 530 Howard Street, San Francisco (the "Appeal')***

Dear Honorable President Lazarus and Members of the Board:

This firm represents Outfront Media LLC ("Outfront"), which owns the general advertising sign (the "Sign") located at 530 Howard Street (the "Property"). We submit this this brief in opposition to the appeal filed by Becker Boards LLC ("Appellants") on the grounds that Appellants fundamentally misinterpret the City's Planning Code and longstanding principles of state law.

The City's Planning Code expressly and unambiguously provides that once the owner of a general advertising sign voluntarily removes its sign, a new general advertising sign *cannot* be constructed in the same location unless the replacement sign fully conforms with the current Planning Code. (Planning Code, § 604(h).) For nearly twenty years, the Planning Code has prohibited the construction new general advertising signs in the City, except when limited exceptions apply. No such

exceptions apply here and the Planning Department correctly denied Appellant's permit application.

To reject the Planning Department's decision and allow Appellants to construct a new sign on the Property would violate the clear and unambiguous language of the Planning Code's nonconforming sign provisions. This language reflects a clear intent by the Board of Supervisors and City voters to prohibit the construction of new general advertising signs like that which Appellants propose. In essence, the Appeal seeks to unlawfully constrain the City's power to regulate structures and uses within its jurisdiction. As recognized repeatedly by the state Supreme Court, a core aspect of the City's zoning authority is to designate and gradually eliminate nonconforming uses. The Sign is a nonconforming use that Appellants cannot replace after Outfront voluntarily removes it. This Board should reject the Appeal in its entirety.

I. Factual Background

In 1998, Outfront's predecessor-in-interest, Foster Media, Inc., entered into a lease agreement with the owners of the Property (the "Property owner") to operate a general advertising sign.[1] On August 20, 1998, Foster obtained a building permit and lawfully constructed the Sign.

For more than 20 years, Outfront and its predecessors operated the Sign and met their obligations under the lease. Appellants acknowledge and it is not disputed that Outfront owns the Sign and the lease expressly authorizes Outfront to

[1] The lease between Outfront and the Property owner contains a confidentiality provision prohibiting the parties from disclosing its specific terms or conditions. Outfront discusses the terms and obligations of the lease generally and only to the extent that these terms and obligations have already been acknowledged by Appellants.

remove it from the Property. The Property owner now intends to terminate the lease with Outfront so that it can enter into a new lease for a new sign with Appellants. Following any termination of the lease Outfront will remove its Sign and will do so voluntarily and with the express authority to do so under the lease.

In 2020, Appellants filed a building permit application to remove the Sign and replace it with a new sign.[2] On December 24, 2020, the Planning Department notified Appellants that their building permit application was "not approvable because the proposed scope of work… constitutes the removal and replacement of a general advertising sign in violation of Planning Code section 604(h)." The Planning Department's denial of the application was consistent with the Planning Code and its repeated practice for nearly two decades of denying similar replacement sign applications.

II. The Planning Code Prohibits The Replacement Of A General Advertising Sign After That Sign Has Been Voluntarily Removed By "Its" Owner

In 2001, City voters approved Proposition G, which made every existing general advertising sign in the City a nonconforming structure and made the maintenance and operation of such signs a legal nonconforming use. One of the purposes of Proposition G was to phase out and eventually end the use of general advertising signs in the City.[3] Planning Code section 611(a) codifies Proposition G,

[2] Without disclosing the terms or conditions of the lease, Outfront disputes that Appellants have authority to remove the Sign. As the owner of the Sign, Outfront is the only party authorized to remove the Sign.

[3] Published arguments in favor of Proposition G lamented that before its passage "hundreds of billboards" had been "slapped up across the City". Proposition G sought to address this by banning new general advertising signs in the City.

stating "[n]o new general advertising signs shall be permitted at any location within the City as of March 5, 2002…"

In 2003, this Board heard the matter which is referred to as *Pocoraba*. *Pocoraba* involved a 1986 application by a property owner for a variance to relocate a sign to a higher position on the side of a building. (*Clear Channel Outdoor v. Dept of Building Inspection* ("*Pocoraba*" (Oct. 8 2003) S.F. Bd. of App. No. 03-036, p.1, ¶ 4.) In 2002, the City brought an enforcement action against the property owner, indicating that it had no permit to operate a sign at the relocated position. To clarify the City's permit records, the property owner applied for a relocation permit prior to voter approval of Proposition G. The City issued the relocation permit after passage of Proposition G. (*Id.* at p. 1-2, ¶¶ 5-7.) The sign company sent a letter to the City stating that it intended to abandon its permits for the sign and then removed it. (*Id.* at p. 2, ¶ 8.) Although the Board of Appeals determined that the sign company was authorized to remove its sign, the Board stated that the property owner still had a vested right to use the property for the display of general advertising signs. (*Id.* at p. 3, ¶¶ 3-5.)

In 2006, the Board of Supervisors enacted Ordinance number 140-06 which clarified the City's sign regulations in the wake of *Pocoraba*. Ordinance 140-06 sought to "reduc[e] the proliferation of general advertising signs in the city" and did so in part by "amending Planning Code section 604 to prohibit general advertising signs that have been removed from being replaced on the same site." The ordinance was intended to "reduce over time the total number of general advertising signs in the City." (S.F. Ord. No. 140-06.)

With the adoption of Ordinance number 140-06, Planning Code section 604(h) now reads:

> A sign which is voluntarily destroyed or removed by its owner or which is required by law to be removed may be restored only in full conformity with the provisions of this Code, except as authorized in Subsection (i) below. A general advertising sign that has been removed shall not be reinstalled, replaced, or reconstructed at the same location, and the erection, construction, and/or installation of a general advertising sign at that location to replace the previously existing sign shall be deemed to be a new sign in violation of Section 611(a) of this Code….

(Planning Code, § 604(h).)
Section 604(h) is consistent with the Planning Code's broader policy of eliminating nonconforming uses "as quickly as the fair interests of the parties will permit." (Planning Code, § 180 (b).) And, once a nonconforming use has "been changed….or brought closer in any other manner to conformity with the use limitations of this Code, the use of the property may not thereafter be returned to its former nonconforming status." (Planning Code, § 182 (f).)

Limited exceptions to the City's nonconforming use provisions exist where a nonconforming use or structure is involuntarily removed or destroyed. For example, a nonconforming structure destroyed by a fire or other calamity "may be restored to its former condition and use" provided such structure complies with the Building Code and reconstruction begins within one year of the damage or destruction. (Planning Code, § 182 (d).) The Planning Code contains no exception for the instant circumstance, where a real property owner wishes to have a sign lawfully removed by the sign's owner, and then reconstruct a new sign in its place.

The requirements of the Section 604(h) and 611 of the Planning Code are clear and unambiguous. A general advertising sign voluntarily removed by *its* [i.e.

the sign's] owner shall not be reinstalled or replaced. In the absence of an involuntary natural disaster or calamity, the Planning Code bars a real property owner from reinstalling or replacing a removed sign.[4]

III. Outfront Is Authorized To Voluntarily Remove Its Sign

Appellants acknowledge, and it is not in dispute that Outfront owns the Sign. Moreover, Outfront's right to remove its Sign after termination of the lease was negotiated and voluntarily agreed to by the Property owner decades ago. Accordingly, Outfront's right to remove its Sign is supported by well settled law. (*See Clark v. Tallmadge* (1937) 23 Cal.App.2d 703, 706-707 [a tenant may remove fixtures it installs if the parties agreed that the tenant would have the right to remove such improvements]; *see* also *Earle v. Kelley* (1913) 21 Cal.App. 480, 483 [same].)

The operation of Section 604(h) is therefore clear. Once Outfront voluntarily removes *its* Sign, Section 604(h) prohibits Appellants' construction of a new sign in its place. This would be true even if Section 604(h) required the Property owner to agree to removal of the Sign to make the Sign's removal voluntary. In Outfront's lease, the Property owner *already voluntarily agreed* that Outfront would have the authority to remove the Sign upon the lease's termination. This authority is acknowledged by Appellants and is not in dispute.

None of Section 604(h)'s exemptions apply. Section 604(h)'s requirement that a sign removal be voluntary - with an accompanying exemption to the ban on

[4] On the other hand, the Planning Code and state law recognize that the owner of a legal nonconforming structure can perform ordinary maintenance and repairs as necessary "to keep the structure in sound condition" and to perform minor alterations, where such work replaces existing materials with similar materials. (Planning Code, § 181(b)(1); *see also* Bus. & Prof. Code, § 5412.)

replacement signs for calamities - is intended to protect a sign owner in instances where sign removal is the result of vandalism, natural disaster, or other involuntary event. Outfront's removal of the Sign would be the opposite. Here, removal of the Sign is the foreseeable and agreed upon result of the termination of the lease that the Property owner agreed to more than twenty years ago. The Planning Code bars the installation of a replacement sign in this instance in order to "reduce over time the number of general advertising signs in the City." (S.F. Ord. No. 140-06.)

If the Board were to accept the Appeal, it would instead create a situation where property owners with existing signs could perpetually replace those signs, while other property owners would be barred from the same opportunity. Neither the voters, nor the Board of Supervisors intended to create this unfettered and perpetual right for owners of property with existing signs. The intent behind Sections 604(h) and 611 was to designate general advertising sign structures legal nonconforming uses that could be continued through the end of their useful lives, at which point new signs could not be constructed. Courts have repeatedly upheld municipalities' efforts to eliminate nonconforming uses in exactly this same manner.

IV. Longstanding Land Use Principles And State Law Support The Planning Department's Rejection Of Appellants' Billboard Application

Longstanding land use principles recognize a City's fundamental police power to gradually eliminate nonconforming uses. As noted by the state Supreme Court in 1933, when a City adopts a nonconforming use provision "the object of such provision is the gradual elimination of the nonconforming use by obsolescence." (See, e.g., *Rehfeld v. City and County of San Francisco* (1933) 218

Cal. 83, 84-85.) The state Supreme Court has also long recognized that "[g]iven the objective of zoning to eliminate nonconforming uses, courts throughout the country generally follow a strict policy against their extension or enlargement." (*County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 686-87.) Appellant's interpretation of Section 604(h) directly contradicts settled principles of land use law and would unlawfully abrogate the City's police power.

V. The Authority Cited By Appellants Does Not Support Appellants' Arguments

This Board's decisions in *Pocoraba* (2003), *Lee v. Department of Building Inspection* ("Lee") (2008) S.F. Bd. of App. No. 07-075, and *Hicks v. Department of Building Inspection* ("*Suckle*") S.F Bd. of App No. 06-039 are distinguishable in key ways. These decisions do not justify this Board's nullification of the clear language of the Planning Code.

First, the Board decided *Pocoraba* in 2002, prior to the Board of Supervisors' adoption of Ordinance number 140-06, which clarified the Planning Code in response to that decision. In *Suckle*, the Board recognized that it was deciding the case "under the unique facts presented" where a general advertising sign was partially destroyed "under color of City permit issued before the effective dates of Planning Code section 611(a) and Ordinance No. 140-06." (*Suckle* at pp 2, ¶¶ 9-12.) In *Lee*, the Board determined that the sign company engaged in certain conduct and violated the terms of its lease with the landlord. The Board noted that it was not in the City's best interest to condone this conduct and found that the billboard company's removal of the sign in violation of the lease was akin to a non-voluntary "calamity" under the Planning Code. (*Lee* at pp. 8-9, ¶¶ 23-27.)

Appellants also reference the unpublished First District Court of Appeals decision in *Clear Channel v. Board of Appeals of the City and County of San Francisco* (2011 Westlaw 675976), which followed from the Board's *Lee* decision. The First District decided this unpublished decision on standing grounds without reaching the parties' arguments related to the Planning Code. As the court stated, "our task in determining standing is not to decide the merits of the parties' arguments…". (*Id.* at 6.)

Unlike *Suckle* and *Lee*, Outfront has not engaged in improper or other conduct in violation of its lease. In fact, Appellants confirm that Outfront would be acting well within its rights by removing the Sign. If the Property owner terminates the lease, Outfront will remove the Sign as it is legally authorized to do.

This case is similar to this Board's 2011 decision in appeal No. 11-021 involving CBS Outdoor and a property owner at 1633-1649 Haight Street ("*Haight*"). In *Haight*, the Board of Appeals upheld the Planning Department's rejection of a property owner's building permit application after the property owner terminated the billboard operator's lease. Like here, the billboard operator complied with its lease obligations and removed its sign after termination of the lease. The Planning Board of Appeals agreed that Planning Code sections 604(h) and 611 prohibited the property owner from installing a new sign.

Finally, although Appellants cite distinguishable decisions, Appellants fail to mention a 2008 United States District Court decision, that involved very similar facts. In *Clear Channel Outdoor v. Erkelens* (2008) N. Cal. U.S. Dist. Court Case No. 07-06138 ("*Erkelens*"), a property owner and Clear Channel Outdoor ("Clear

Channel") entered into a general advertising lease to install a general advertising sign on the side of a building on Turk Street. (*Id*. at 3.) The lease provided that Clear Channel owned the sign, and had a right to remove it. When a new owner purchased the building, it sought to terminate Clear Channel's lease so that they could enter into a lease with another sign operator. (*Id*. at 4.) The building owner initially asked Clear Channel to remove its sign. (*Id.* at 5.) However, when the building owner recognized that Section 604(h) would prevent the owner from installing a new sign, the owner's attorneys ordered Clear Channel to leave its sign in place. (*Id.* at 5-6.) The building owner argued that the parties to the lease never intended for Clear Channel to have the ability to extinguish the building owner's right to construct a new sign. (*Id.* at 12.) The District court rejected the building owner's arguments, finding that Clear Channel had a contractual right to remove its sign even though current City law prohibited the building owner from installing a replacement. (*Id.* at 12-15.) This was merely a result of a change in the law, not a breach of the lease or misconduct by Clear Channel:

> If sections 604(h) and 611(a) of the Planning Code deny [the property owner] a replacement, this result is attributable to the will of the voters of San Francisco and not to the [l]ease or [billboard operator's] conduct.

(*Clear Channel v. Erkelens* (2008) N.Dist of California Case No. C-07-06138SBA, at 12.)

VI. Conclusion

For all of the above reasons, we respectfully request the Board to *deny* the Appeal. If Appellants *take* issue with the City's prohibition of new general advertising signs, the appropriate method to address such grievances is to seek a

change in the City Planning Code. The solution is not to ask the Board to reach a decision that violates the clear language of the Planning Code, as set forth above.

Very truly yours,

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