



Date Filed:

BOARD OF APPEALS

AUG 07 2014

APPEAL # 14-141

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

PRELIMINARY STATEMENT OF APPEAL

I / We, **Michiko Yamada**, hereby appeal the following departmental action: **ISSUANCE of Noise Variance** by the **Department of Public Health** which was issued or became effective on: **July 23, 2014**, to: **Roostertail Restaurant**, for the property located at: **1963 Sutter 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: **September 18, 2014, (no later than three (3) Thursdays prior to the hearing date)**, up to 12 pages in length, double-spaced, with unlimited exhibits, with an original and 10 copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day.

Respondent's and Other Parties' Briefs are due on or before: **October 02, 2014, (no later than one (1) Thursday prior to hearing date)**, up to 12 pages in length, doubled-spaced, with unlimited exhibits, with an original and 10 copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day.

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

Hearing Date: **Wednesday, October 08, 2014, 5:00 p.m., City Hall, Room 416, One Dr. Carlton B. Goodlett Place.**

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 submit an original and 10 copies of all documents of support/opposition no later than one (1) Thursday prior to hearing date by 4:30 p.m. 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 at the Board's office. You 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.

If you have any questions please call the Board of Appeals at 415-575-6880

The reasons for this appeal are as follows:

See attachment to the Preliminary Statement of Appeal.

Appellant or Agent (Circle One):

Signature: Michiko Yamada

Print Name: Michiko Yamada

August 7, 2014

I am appealing the Noise Variance granted to Roostertail Restaurant (1963 Sutter Street), on July 23, 2014, by the Department of Public Health. I live next door to Roostertail and their fan equipment is affecting my health and living conditions. The fan is installed between our light wells and is a source of continuous noise from 8:30 am to 10:30 pm. The equipment consists of multiple ducts. Only one duct was required by DPH to be wrapped with lagging material. There was no change in the noise levels. On July 31, 2014, measurements taken by an acoustical professional from Charles Salter confirmed the equipment is still exceeding the Noise Ordinance.

Reasons for the Appeal

1. My health and lifestyle is being affected. Since December, 2011, when Roostertail installed their fan, I cannot open my hallway window for ventilation due to the noise. My walls, cabinets vibrate; my home, particularly my kitchen area, is filled with a tonal noise like an airplane engine.
2. At the May 22, 2013, Board of Appeals hearing, Roostertail Restaurant vs. DPH (Case # 13-035), the Board voted unanimously 5-0 to deny Roostertail Restaurant's appeal for a Noise Variance.
3. The Noise Variance granted by Director Richard Lee contradicts Dr. Rajiv Bhatia, the former Director's decision denying the Noise Variance on March 14, 2013.
4. A Permit to Operate should never have been issued to Roostertail. As a condition of permit approval, in July, 2011, Inspector Channing Wong stipulated compliance to the Noise Ordinance and wrote "equipment must be less than 53 dBA." Roostertail has never been in compliance since they opened in December, 2011. DPH is aware of this and yet granted a Noise Variance.

Resolution/Remedy

1. Deny the Noise Variance and ensure compliance to the Noise Ordinance as soon as possible.
2. Ensure noise emissions are less than 53 dBA and meet the conditions in The Application for Building Permit stipulated by Inspector Wong. ("All newly installed compressors and exhaust systems shall comply with the S.F. Noise Ordinance. Provide vibration isolators for rooftop mechanical equipment. Blowers are to comply with the Noise Ordinance").
3. Ensure DPH upholds and enforces the Noise Ordinance as soon as possible.

BOARD OF APPEALS

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Thank you.



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH

Edwin M. Lee, Mayor
 Barbara A. Garcia, MPA, Director of Health

Richard J. Lee, MPH, CIH, REHS
 Acting Environmental Health Director

July 23, 2014

Gerard Darian, Owner
 Roostertail
 1963 Sutter Street
 San Francisco, CA 94115

RE: 1963 Sutter Street – Noise Violation Abatement Work

BOARD OF APPEALS

AUG 07 2014

APPEAL # 14-141

Dear Mr. Darian:

At the Abatement Conference Hearing on July 8, 2014, it was determined that the work necessary to abate the violation of the San Francisco Noise Ordinance (Police Code, Article 29) was not complete. In accordance with staff recommendations, I granted an extension of 15 business days resulting in the deadline for completion of July 28, 2014.

On July 18, 2014, Inspector Piakis confirmed that the abatement work, consistent with the third-party acoustical consultant's recommendations, had been completed (see figures below). Therefore, the violation is abated and the mechanical exhaust system in use at 1963 Sutter Street (Roostertail Restaurant) is considered to be in compliance with City noise limits. No further action is required at this time.



Abatement work consisting of the installation of acoustical duct lagging along the entirety of the mechanical exhaust system's external ductwork.

Our letter dated April 26, 2014 explained that if the remainder of the external ductwork was wrapped to decrease the noise closest to the residential receptor, a variance would be considered for the rooftop fan noise. Environmental Health has reviewed the noise variance application filed on July 18, 2014 and supporting materials detailing abatement costs of approximately \$8000. We have found that your request has sufficient merit and therefore grant Roostertail Restaurant (1963 Sutter Street) a noise variance under the conditions set forth below. Failure to implement the following conditions may result in revocation of this variance and the institution of enforcement penalties:

AIR, NOISE AND RADIATION PROGRAM

1390 Market Street, Suite 210 San Francisco, CA 94102

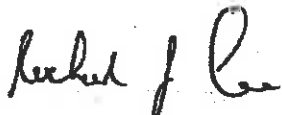
Phone 415-252-3800, Fax 415-252-3894



- Continue to perform routine, regular maintenance of the mechanical equipment in accordance with the manufacturer's recommendations
- Inform Environmental Health staff prior to the addition, relocation, substitution, or any other alteration of rooftop mechanical equipment.

This variance applies only to the mechanical exhaust system and equipment configuration as of July 23, 2014. The variance will be effective upon receipt of a signed copy of this letter and subject to any appeals filed in the 15 days following. At our discretion, Environmental Health may rescind this variance if it is determined that Roostertail Restaurant has violated the above terms. Please direct any questions or concerns to Jonathan Piakis (Jonathan.Piakis@sfdph.org).

Sincerely,



Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director

Roostertail Restaurant understands and agrees to comply with the terms of this variance.

GERARD DARIAN

Print

Signature

7/24/2014

Date

I. EXECUTIVE SUMMARY:

My name is Michiko Yamada. I reside at 1959 Sutter Street and am the appellant in Case # 14-141, *Yamada vs. Department of Public Health*. I am seeking the support of the Board of Appeals and requesting (1) to reverse the Noise Variance issued on July 23, 2014, to Roostertail Restaurant (Roostertail), located next door at 1963 Sutter Street, and (2) to direct Roostertail to comply with the Department of Public Health (DPH) 2012-2013 orders, unanimously upheld by this Board on June 4 last year, that required Roostertail to abate and remedy its violations of the City's Noise Ordinance (SF Police Code Article 29).

During this long process, the City has affirmed that enforcement of noise violations is critical to our quality of life. In violation of the City's Noise Ordinance, I have been subjected to excessive noise on a daily basis ever since Roostertail opened in December 2011, when they installed their exhaust fan ducts in between our light well. The 2-1/2 year history of this case shows DPH's uneven application and reversal of positions in enforcing the Noise Ordinance. Allowing Roostertail to avoid abating its ongoing noise violations, and contravening the Board of Appeals June 4, 2013, decision denying a Noise Variance, makes no sense and should be reversed.

II. SUMMARY OF THE CASE:**A. BACKGROUND**

My family has owned the property at 1959 Sutter Street, adjacent to Roostertail, for 28 years, and my parents ran a small Japanese confectionery store for 36 years. They were immigrants; English was not their first language, but through dedicated hard work and sacrifice, they were able to purchase this building. I grew up in the Fillmore/Japantown/Western Addition and consider this neighborhood to be my home. I have lived here for the past 8 years.

Over the years, we developed long-standing relationships with our neighbors based on honesty, trust, decency and mutual respect. My family and I have a demonstrated history of

contribution and involvement in our community, and of being good neighbors. We do not like to complain and be in conflict. This is the first time we have had a serious dispute with a neighbor.

We have tried to work with Mr. Darian and Ms. Green, Roostertail's owners, but have been unsuccessful. So far, they have not acknowledged they are a source of noise pollution. We have tried to contact Gerard Dowd, one of the property owners, but have received no response.

These 2+ years of trying to resolve the noise issue have been stressful and challenging. It is stressful having to live with excessive noise on a daily basis. It is stressful dealing with a hostile neighbor who makes derogatory remarks when we meet. And it is stressful having to deal with a City agency that should be stewards and guardians of the Noise Ordinance but have chosen not to enforce it through its recent inconsistent and arbitrary decisions. All I want is to live in our home in peace and quiet, the way I used to before Roostertail took over their space. I am not asking DPH or Roostertail to break the law; I am asking them to uphold it.

B. STATEMENT OF FACTS

December 2011: Before Roostertail, Café Kati was at the 1963 Sutter location for 20 years, but its exhaust fans, also installed in the light well between the properties, never presented noise problems. Upon opening, however, Roostertail installed three commercial-grade exhaust fan ducts in same the light well. (Exhibit A: Permit to Operate (Dec. 2011); Final Inspection Report (Arthur Duque 12-5-2011); Photos of the Fan). Since then, we have been subjected to excessive noise and vibrations on a daily basis from about 8:30 in the morning to 10:30 at night.

On December 14, 2011, residents living above Roostertail complained to DPH that the fan noise was "loud and vibrates the building" but nothing was done to mitigate the situation at that time. (Exhibit B: Complaint Data Sheet).

June 2012: In June 2012, we informed Mr. Darian, Roostertail's co-owner, that as good neighbors we had installed four double-pane windows in our residence to reduce the noise from

their fan. Despite this effort, our walls and cabinets continued to vibrate. My rooms were filled with a pervasive tonal humming noise similar to an airplane engine. I cannot open my hallway window for ventilation due to the noise while Roostertail's fans are in operation. We asked Mr. Darian if he could help by seeking a remedy to the noise problem. Mr. Darian's response was an emphatic "No. We're in compliance. There is no problem." He made no effort to investigate or even acknowledge the possibility that the restaurant fans may be a source of noise pollution. As shown below, Roostertail was, and still is, in violation of the Noise Ordinance.

September 2012: After we filed a noise complaint, DPH inspectors took interior noise readings but failed to take exterior readings required by DPH's Guidance for Implementing the Noise Control Ordinance. (Exhibit C: Zachary Parsons' Declaration in Support of DPH's Reply Brief; Guidance for Implementing the Noise Control Ordinance (11-10-2011); Procedures for Evaluation and Management of Noise in Regulated Food Facilities (5-25-2011).)

October 2012: We hired acoustical expert Charles M. Salter Associates (Salter) to take exterior noise readings. Results showed that the noise level in the light well and on the roof significantly exceeded the Noise Ordinance limits. (Exhibit D: Charles Salter Associates Noise Measurement Report (10-18-2012).)

December 2012: On December 5, 2012, DPH took exterior readings and confirmed that Roostertail was not in compliance with the Noise Ordinance. (Exhibit E: DPH Notice of Violation to Roostertail (12-5-2012).) DPH issued a Notice of Violation giving Roostertail 30 days to produce a noise reduction plan. Instead, Roostertail applied for a Noise Variance.

March 2013: DPH denied Roostertail's application for a Variance and required compliance with the Noise Ordinance. (Exhibit F: Variance Denial Letter (3-14-2013).)

May 2013: Roostertail appealed to this Board DPH's denial of its application. *On May 16, 2013, the City Attorney's Office filed a brief arguing that DPH's decision denying the variance must*

be upheld in order to comply with applicable law and to protect the public health. (Exhibit G: City Attorney's Brief (5-16-2013).) On May 22, 2013, this Board held a hearing in *Roostertail Restaurant vs. Department of Public Health*, Case # 13-035.

June 2013: On June 4, 2013, this Board unanimously upheld DPH's denial of a Variance, directing Roostertail to comply with the Noise Ordinance within six months. (Exhibit H: Board of Appeals Decision, Roostertail vs. DPH, Case # 13-035 (5-22-2013).)

August 2013: DPH notified Roostertail that it had to submit a compliance plan no later than September 13, 2013, stating it would suspend Roostertail's operation permit if it failed to do so. (Exhibit I: DPH's Letter to Roostertail re: compliance plan (8-12-2013).) Roostertail has never produced the required plan. DPH took no further enforcement action until April, 2014.

April 2014: DPH held an Abatement Conference on April 22, 2014. Shortly afterwards, DPH denied Roostertail's Variance request but promised a Variance if Roostertail complied with either Option A (reduce noise levels to comply with the Noise Ordinance) or Option B (extend the "acoustical duct wrapping to the full length of the ductwork (up to the fan)"). DPH advised Roostertail that a noise inspection would take place under Option A *but not if it elected Option B*. (Exhibit J: DPH Letter to Roostertail re: Variance request (4-26-2014).)

June 2014: Roostertail elected to proceed with Option B. Although a full year had passed since this Board's June 2013 decision, Roostertail has still not complied with the Noise Ordinance. DPH directed Roostertail to "install additional acoustical duct wrapping around the *full length of the ductwork*" no later than July 1, 2014. (Exhibit K: DPH Letter to Roostertail directing additional acoustical duct wrapping (6-4-2014).)

July 2014: DPH determined at an Abatement Conference on July 8, 2014, that Roostertail had still not performed the abatement work necessary to comply with the Noise Ordinance, but allowed Roostertail additional time. On July 18, 2014, the DPH inspector stated that Roostertail

had performed \$8,000 in noise abatement work. But in fact, Roostertail had wrapped *only a part of one of the three ducts*, all mandated by DPH for noise mitigation wrapping work. Nonetheless, without taking any noise readings, internal or external, DPH deemed Roostertail "in compliance with City noise limits" and granted the Variance. (Exhibit L: DPH Letter to Roostertail granting Noise Variance (7-23-2014).)

On July 31, 2014, at our request, an acoustical professional from Salter took exterior noise readings, which showed that noise levels in the light well and on the roof still exceeded the Noise Ordinance limits. "The noise levels remain relatively unchanged after wrapping only one of the three ducts." (Exhibit M: Charles Salter Associates Noise Measurement Report (8-23-2014).)

August 2014: We appealed DPH's decision granting Roostertail a Noise Variance.

III. ARGUMENT:

a) **Roostertail Has Never Been In Compliance With the City Noise Ordinance.** Repeated noise readings taken from September 2012 to July 2014 by Salter and DPH Noise Control staff confirm that the fan equipment exceeds the Noise Ordinance and has not met either the allowable daytime or nighttime levels since December 2011. The validity of the noise readings are not in dispute. (Exhibit N: Charles Salter Associates Noise Measurement Report with DPH (5-2-2014).)

During these 2-1/2 years, Mr. Darian and Ms. Green have never submitted acoustical documentation to validate their claim that their equipment is in compliance. Since 2013, DPH has sent multiple letters notifying them that they are in violation of the Noise Ordinance, each time granting them an extension to comply. However, despite DPH's repeated warnings of, "Failure to comply shall result in the suspension of your Health Permit to Operate as a Food Facility," they have not complied nor has DPH enforced this language.

Mr. Darian and Ms. Green have repeatedly cited financial hardship as a reason for not fixing their equipment. However, Roostertail had a 1-year warranty in effect at the time of our complaint,

but failed to take advantage of this option to remedy the noise problem with minimal expense. (Exhibit O: Roostertail 1-Year Warranty).

Because of this case, we have incurred expenses of approximately \$10,000 to date, and we anticipate this figure will continue to rise if this noise problem remains unresolved.

b) DPH records show many inconsistencies and discrepancies in its handling of this case.

First, DPH should never have issued a Permit to Operate to Roostertail in December 2011, since they were not in compliance with the Noise Ordinance. On the Building Permit Application, Inspector Channing Wong wrote on July 5, 2011, and again on October 12, 2011:

“All newly installed compressors and exhaust systems shall comply with the S.F. Noise Ordinance. Must be less than 53 dBA or submit acoustical report for review. Blowers are to comply with Noise Ordinance. Rooftop equipment may be required to be on vibration isolators.” (Exhibit P: Application for Building Permit Additions, Alterations or Repairs).

Furthermore, during the Board of Appeals hearing on May 22, 2013, Case # 13-035, Mr. Darian and Ms. Green testified under oath that:

“Inspector Channing Wong did the final inspection and we have complied with everything we’re supposed to do and passed...complied all the way through with the City at every point.” (Review Board of Appeals Hearing, May 22, 2013, Case # 13-035).

If this were the case, the fan equipment should reflect readings of 53 dBA or below but they do not, and never have, as measured by both Salter AND the DPH. The most recent readings taken on July 31, 2014, indicate 60/59 dBA and 75/71 dBC levels, as much as 41% higher than the maximum allowed by the code. (Exhibit M: Charles Salter Associates Noise Measurement Report 8-23-2014.)

Inspector Duque’s final Food Inspection Report of December 5, 2011, shows no evidence of noise readings taken verifying Roostertail’s equipment was at 53 dBA or less, nor was an acoustical

report submitted for review. (Exhibit A: Exhibit A: Permit to Operate (Dec. 2011); Final Inspection Report (Arthur Duque 12-5-2011); Photos of the Fan).

In addition, neither DPH nor DBI fully investigated the noise and vibration complaint by the resident living above the restaurant when Roostertail opened in December 2011. The DBI Complaint Data Sheet, # 201176714, shows Inspector Patrick McManus conducted an inspection. (Exhibit B: Complaint Data Sheet). However, no noise readings were taken; we were never contacted about this inspection, even though the fan equipment is located in our shared light wells; and neither DPH nor DBI followed-up or took any action on this complaint.

The majority of the residents currently living above Roostertail are short-term month-to-month tenants with heavy turnover, who lack an investment in the quality of the neighborhood. Mr. Darian, Ms. Green, and the 1963 Sutter property owners do not reside in this building and are not affected by the fan noise. For us, this neighborhood is our home, not a temporary living arrangement. As property owners and residents who live in this neighborhood long-term, we are greatly affected by the excessive noise.

c) DPH Inspectors investigating my noise complaint only took interior (not exterior) noise readings. On September 19, 2012, when Inspectors Parsons and Freschet conducted a noise inspection, indoor readings were taken in my home. However, Inspectors Parsons and Freschet did not take the required readings for the outdoor noise or evaluate the outdoor noise standard for commercial use. According to the DPH procedures and guidelines for investigating noise complaints, Inspectors Parsons and Freschet should have investigated the outdoor noise standard for commercial use. (Exhibit C: Zachary Parsons' Declaration in Support of DPH's Reply Brief; Guidance for Implementing the Noise Control Ordinance (11-10-2011); Procedures for Evaluation and Management of Noise in Regulated Food Facilities (5-25-2011).)

d) **Inconsistent DPH interpretation of measuring noise.** On October 15, 2012, an acoustical professional from Salter took noise readings both in the light well and on the roof. These readings documented that Roostertail's equipment was not in compliance. (Exhibit D: Charles Salter Associates Noise Measurement Report (10-18-2012).)

On December 5, 2012, DPH Inspector Michael Harris took noise readings in the light well but took no readings on the roof, even though I requested that he do so in order to duplicate the procedure taken by our acoustical professional. Inspector Harris' readings taken in the light well confirmed that Roostertail's equipment exceeded the Noise Ordinance and, based on these readings, issued a Notice of Violation.

During the May 22, 2013, Board of Appeals hearing, the DPH's Director of Environmental Health (DEH) explained that he decided to have:

“staff take measurements in the light well because it was the closest place to the property boundary. DPH has guidelines for taking measurements and staff followed those appropriate guidelines.” (Review Board of Appeals Hearing, May 22, 2013, Case # 13-035).

The current Noise Control Officer, DPH Inspector Jonathan Piakis, in his letter to Roostertail dated March 18, 2014, chose not to cite readings taken in the light well but only used readings taken on the roof. (Exhibit Q: DPH Letter and Notice of Violation (3-18-2014).)

Inspector Piakis' decision to deem readings taken in the light well as unenforceable contradicts the DEH's earlier testimony. It also contradicts the readings taken by DPH Inspector Harris, the former Noise Control Officer, and the readings taken by Salter's acoustical professional. DPH guidelines, section 2.3 states: “Outdoor measures to evaluate Sections 2909 (a) (1) and 2909 (b) should be taken at the property plane.” (Exhibit C: Zachary Parsons' Declaration in Support of DPH's Reply Brief; Guidance for Implementing the Noise Control Ordinance (11-10-2011);

Procedures for Evaluation and Management of Noise in Regulated Food Facilities (5-25-2011).) If DPH were to take this position, in order to be consistent, they must effectively rule out **all** readings taken in light wells in San Francisco as being unacceptable.

e) The Noise Variance granted to Roostertail Restaurant contradicts the City Attorney's position that DPH correctly denied Roostertail's request for a Noise Variance. (Exhibit G: City Attorney's Brief (5-16-2013).) which states:

"Granting a variance in this case would undermine the policy purpose of the City's noise law and the effectiveness of the standard. The Department has a long history of enforcing the same noise standard in the same way for dozens of similar businesses, and wants to remain consistent with the principle of maintaining a level playing field for businesses. The Department has not granted any variances for commercial noise in residential or mixed residential commercial areas."

f) The Noise Variance granted to Roostertail Restaurant contradicts the DEH's earlier testimony before the Board of Appeals. (Review Board of Appeals Hearing, May 22, 2013, Case # 13-035). During the May 22, 2013, Board of Appeals hearing, the DEH emphasized several facts:

1. In his 15 years with the Department, he never granted a Noise Variance in a mixed use area with residences and where there are feasible preventative measures.
2. In the case of a restaurant in a residential area, he would not support a variance.
3. The Noise Ordinance was revised in 2008 to deal with mixed use zoning. The standards are clear, unambiguous and objectively quantifiable, and the purpose is to a) keep ambient noise down since San Francisco is a noisy city and b) protect neighbors and neighborhoods.

The DEH's e-mail to DPH staff further illustrates his argument and reasoning. (Exhibit R: DEH Letter and DPH Staff E-Mail Chain).

In contrast, since being appointed Acting Director of Environmental Health (AD) in January 2014, the AD has granted 2 Noise Variances in mixed use areas, thereby creating a discrepancy and inconsistency in the enforcement of the Noise Ordinance. The DEH earlier determined that the noise standards derived from World Health Organization (WHO) guidelines should be maintained; the integrity of these standards should not be compromised since that would erode the efficacy and usefulness of the Ordinance. However, the AD has taken a different approach. His granting of Noise Variances implies that the Noise Ordinance standards are flexible and can be manipulated.

The population of San Francisco is growing. Noise levels will continue to increase due to dense living conditions. DPH's mission statement is to protect and promote the health of all San Franciscans. The AD, by his actions, appears to have chosen to waive the mission of his own department and to ignore the intent of the Noise Ordinance which is to "prohibit unwanted, excessive and avoidable noise." (Exhibit S: SF Police Code Article 29: Regulation of Noise, Section 2900(c), Declaration of Policy).

g) The Noise Variance granted to Roostertail Restaurant contradicts last year's Board of Appeals Notice of Decision and Order, dated June 4, 2013. At the May 22, 2013 Board of the Appeals hearing, the Board voted unanimously 5-0 to uphold the DPH's denial of Roostertail's request for a variance. (Exhibit H: Board of Appeals Decision, Roostertail vs. DPH, Case # 13-035 (5-22-2013)). This decision was not upheld or enforced by DPH and Roostertail continues to remain in violation.

h) The Noise Variance granted by the DPH Acting Director (AD) is flawed; its terms and conditions are illogical and arbitrary. Roostertail's fan equipment consists of three ducts. All three ducts operate in concert as a part of the fan equipment. In his letter dated April 26, 2014, the AD "denied" a Variance but gave Roostertail two options to get a Variance:

“Option A: Reduce the noise level such that the operating sound level is within 8 dBA of both the daytime and nighttime ambient sound level as measured from the roof of the adjacent property.

Option B: Perform additional abatement work in the light well by extending the acoustical duct wrapping to the full length of the ductwork (up to the fan).

If you choose Option A, we will schedule a re-inspection of the property for May 28, 2014, to verify if the sound level at the roof is within 8 dBA of the daytime ambient. If you choose Option B, we will schedule a re-inspection of the property for May 28, 2014, to verify installation of the duct wrapping to the full length of the ductwork.” (Exhibit J: DPH Letter to Roostertail (4-26-2014).)

Roostertail chose Option B. Since the AD’s letter said “ductwork,” we assumed that all three ducts were to be wrapped with acoustical material. However, DPH required only **one** duct to be wrapped, and the AD has now agreed to grant a Noise Variance without requiring readings to confirm whether the excessive noise had been eliminated.

The focus of this case has been about noise abatement. Under the terms outlined in the paragraph above, the fan equipment could (and still does, as it always has) generate noise levels higher than the code allows. The AD’s ruling, however, essentially says that this violation is acceptable as long as one duct is partially wrapped. This makes no sense.

Noise readings taken by a Salter acoustical professional on July 31, 2014, show that the excessive noise levels have not been abated and that the situation remains unchanged since December 2011. One of the Noise Variance Process criteria looks to “whether or not reasonable efforts have been made to mitigate the source of noise.” (Exhibit T: DPH Noise Variance Process). We believe that an ineffective approach does not provide a real solution.

i) **If allowed to stand, this Noise Variance will set a precedent.** This level of noise will become the accepted standard and we (and other San Franciscans) will have no further recourse. As the adjacent property owner, we can only mitigate the noise to a certain degree since we are not the source generating it. (Exhibit U: Letters of Support from JCCCNC and Lori Matoba).

IV. REMEDY:

a) The Board of Appeals should instruct the DPH to require Roostertail to comply with the Noise Ordinance forthwith by reducing their fan equipment noise emissions to 53 dBA or less, as intended by the original Permit to Operate. I understand that Roostertail may have contacted Salter asking them to prepare a noise abatement plan. Such a plan must be implemented and overseen by Salter expeditiously. Should this timeline not be met, the Board of Appeals should direct the suspension or revocation of Roostertail's Permit to Operate until the noise abatement project is completed and readings reflect compliance.

b) The Board of Appeals should see that DPH timely enforces the Noise Ordinance against Roostertail. Further extensions for Roostertail's compliance should not be granted since this case has been ongoing for 2-1/2+ years and Roostertail has been shown to be uncooperative. We would like to see Dr. Tomas Aragon, Health Officer, or DPH Director Barbara Garcia involved to ensure Roostertail's compliance.

V. CONCLUSION:

Reverse DPH's decision granting a Noise Variance to Roostertail and direct DPH to require Roostertail to comply with the Noise Ordinance effective October 8, 2014.

TABLE OF EXHIBITS

Exhibit A: Permit to Operate (Dec. 2011); Final Inspection Report (Arthur Duque 12-5-2011);Photos of the Fan	Exhibit A
Complaint Data Sheet.....	Exhibit B
Zachary Parsons' Declaration in Support of DPH's Reply Brief;Guidance for Implementing the Noise Control Ordinance (11-10-2011); and Procedures for Evaluation;and Management of Noise in Regulated Food Facilities (5-25-2011).....	Exhibit C
Charles Salter Associates Noise Measurement Report (10-18-2012).....	Exhibit D
DPH Notice of Violation to Roostertail (12-5-2012).....	Exhibit E
Variance Denial Letter (3-14-2013).....	Exhibit F
City Attorney's Brief (5-16-2013).....	Exhibit G
Board of Appeals Decision, Roostertail vs. DPH, Case # 13-035 (5-22-2013).....	Exhibit H
DPH's Letter to Roostertail re: compliance plan (8-12-2013).....	Exhibit I
DPH Letter to Roostertail re: Variance request (4-26-2014).....	Exhibit J
DPH Letter to Roostertail directing additional acoustical duct wrapping (6-4-2014).....	Exhibit K
DPH Letter to Roostertail granting Noise Variance (7-23-2014).....	Exhibit L
Charles Salter Associates Noise Measurement Report (8-23-2014).....	Exhibit M
Charles Salter Associates Noise Measurement Report with DPH (5-2-2014).....	Exhibit N
Roostertail 1-Year Warranty.....	Exhibit O
Application for Building Permit Additions, Alterations or Repairs.....	Exhibit P
DPH Letter and Notice of Violation (3-18-2014).....	Exhibit Q
DEH Letter and DPH Staff E-Mail Chain.....	Exhibit R
S.F. Police Code Article 29: Regulation of Noise, Section 2900(c), Declaration of Policy.....	Exhibit S
DPH Noise Variance Process.....	Exhibit T
Letters of Support from JCCCNC and Lori Matoba.....	Exhibit U

EXHIBIT A



PERMIT TO OPERATE

A 67657

AND CERTIFICATE OF SANITARY INSPECTION

Issued according to provisions of the San Francisco Health Code

AUTHORIZING conduct of the following class of

ISSUED: 12/5/2011

FOOD PREPARATION AND SERVICE ESTABLISHMENT

Type of Operation: Restaurant 1000 to 2000 sq ft

RE-ISSUED ON 9/10/2013 UNDER CORRECT OWNERSHIP

Tax Code: H25

Health Code: 1003

CERT No. 461497

Name and Address Below:

Owner: HENHOUSE PRODUCTIONS LLC
 DBA: Rooster Tail
 Street Address: 1963 SUTTER ST
 San Francisco, CA 94115

DEPARTMENT OF PUBLIC HEALTH

Bureau of Environmental Health
City and County of San Francisco

Valid only when accompanied by a receipt from the Tax Collector showing payment of current license fee. THIS PERMIT TO OPERATE MAY BE REVOKED OR SUSPENDED FOR CAUSE AND IS NOT TRANSFERABLE. CHANGE OF OWNERSHIP must be reported immediately.

Inspector _____

Director of Environmental Health

Stefano V. G. Cushing
Principal Inspector

B. Santh
Director of Public Health

A PERMIT

ORI SENT 12/19/13

Orig sent 2/11



FOOD PREP

Type of Oper

H25 - Cooking All

Name and Addr

Owner:
 DBA:
 Street Add

Valid only when
of current licen
SUSPENDED
OWNERSHIP

Inspector
 Principal Inst



Health Permit Application Zoning Referral

FOR HEALTH DEPARTMENT USE ONLY

Date Application Filed: 10/19/11	HC: 1 2 3 4 5 6 CO
Date to Zoning:	Inspector: Z - PARSONS
Date from Zoning:	(FPS) FPM OTHER



TO BE COMPLETED BY APPLICANT

Applicant must complete both pages of this referral as indicated. Accurate information is required, False or misleading information may result in denial of the application.

1. NAME OF BUSINESS: ROOSTERTAIL

2. BUSINESS STREET ADDRESS: 1963 BUTTER STREET SF CA 94115
 What floor(s) will the business occupy? Check appropriate floor(s) below.

Basement Level Street Level 1st Floor 2nd Floor 3rd Floor Other Floor(s)

3. IS THE BUSINESS A RETAIL CHAIN? Does the establishment have eleven or more locations throughout the U.S. per Planning Code Section 703.3 & 703.4?

YES NO

MB# 1101838

Existing Use of This Space: RESTAURANT

Special Note: If any other room or building is to be used in connection with this application: OR, if any part of the proposed operation is not located within or connected to address above, please attach an explanation sheet.

now

Applicant's Name: GERARD DARIAN + TRACY GREEN
 Mailing Address: 723 12TH AVENUE
 City: SAN FRANCISCO Zip Code: 94118
 Applicant's Daytime phone: (415) 939-5906 OR (415) 876-2885 HOME
 Floor Plans and Explanation Sheet attached? Yes No

FOR DEPARTMENT OF CITY PLANNING USE ONLY

ZONING: <u>NC-3</u>	BLK/LOT: <u>06841042</u>
Limitations or Conditions (if any): <u>Full-service restaurant permitted in the NC-3 Zoning District per Planning Code section 712.44. Continuation of existing use.</u>	
APPROVED: <u>[Signature]</u>	CONTACT NO: <u>575-9085</u> DATE: <u>11.28.11</u>
(Planner's Signature)	
DISAPPROVED:	CONTACT NO: DATE:
(Planner's Signature)	

APPLICANT: THIS IS PAGE 1 OF 2A or 2B -COMPLETE PAGE 2A ONLY IF THE BUSINESS IS A FOOD / BEVERAGE OR OTHER ESTABLISHMENT. COMPLETE PAGE 2B ONLY IF THE BUSINESS IS A MASSAGE, ACUPRESSURE, OR REFLEXOLOGY ESTABLISHMENT AND/OR SHOULD THE BUSINESS OFFER MASSAGE, ACUPRESSURE, OR REFLEXOLOGY AS AN ACCESSORY COMPONENT TO A BUSINESS.



FOOD INSPECTION REPORT
SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH SECTION
 1390 Market Street, Suite 210, San Francisco, CA 94102
 www.sfdph.org/eh (415) 252-3800

Date:	12-5-2011
Time In:	10:00AM
Time Out:	11:00 AM

Location Address: <u>1963 SUTTER ST.</u>	Inspection Type: <u>FINAL</u>
Facility Name: <u>ROOSTER TAIL</u>	Re-Inspection Date: _____
Owner Name: <u>TRACY GREEN + GERARD DARIAN</u> Phone: <u>776-6783</u>	Location I.D.: <u>67567</u>

<input type="checkbox"/> Permit Posted <input type="checkbox"/> Inspection Report Posted	License Certificate Class No.: <u>Pending</u> Exp. Date: _____
Person in Charge: <u>GERARD DARIAN</u>	Cert. Food Handler: <u>GERARD DARIAN</u> Exp. Date: <u>9/14/14</u>

SECTION 1: High Risk Violations (HRV) 7 Pts Each
 HRV disqualifies Symbol of Excellence **OR* COS***
 The marked violations are California Food Code violations and must be corrected as follows:

- EMPLOYEE HEALTH / HYGIENE**
- 1 Communicable disease - reporting, restrictions & exclusions
- PREVENT CONTAMINATION BY HANDS**
- 2 Hands not clean / improperly washed / gloves improperly used
- TIME & TEMPERATURE RELATIONSHIPS**
- 3 Improper hot / cold holding temperatures
- 4 Time as a public health control - Procedures and/or records needed
- 5 Improper cooling methods
- 6 Improper cooking time / temperatures
- 7 Improper Reheating
- PROTECTION FROM CONTAMINATION**
- 8 Food in poor condition - unsafe / adulterated
- 9 Food contact surfaces not cleaned/ sanitized
- FOOD FROM APPROVED SOURCES**
- 10 Food obtained from an unapproved source
- HIGHLY SUSCEPTIBLE POPULATIONS**
- 11 Licensed health care facilities / public & private schools / prohibited foods offered
- WATER / HOT WATER**
- 12 No Hot Water / No Water
- LIQUID WASTE DISPOSAL**
- 13 Sewage / Wastewater Disposal Inoperative
- VERMIN**
- 14 Rodents / Roaches / Flies / Other Animals
- 15 OTHER (Specified in report)

SECTION 2: Moderate Risk Violations
4 Pts Each

- DEMONSTRATION OF KNOWLEDGE**
- 16 Lack of food safety knowledge / no food safety certification
- EMPLOYEE HEALTH / HYGIENE**
- 17 Discharge from eyes / nose / mouth
- 18 Employee Practices: tobacco/ eating/ other
- PREVENT CONTAMINATION BY HANDS**
- 19 Inadequate / inaccessible handwashing facilities & supplies
- TIME & TEMPERATURE RELATIONSHIPS**
- 20 Improper hot / cold holding temperatures
- 21 Time as a public health control - Procedures / records needed
- PROTECTION FROM CONTAMINATION**
- 22 Returned / re-service of food
- 23 Food in poor condition/ unsafe/ adulterated
- 24 Food contact surfaces not clean / sanitized
- FOOD FROM APPROVED SOURCES**
- 25 Non-Compliance with shell stock tags/ condition / display
- 26 Non-Compliance w/ Gulf Coast Oyster Regs

FINAL

ZONING DEPT. REFERRAL APPROVED FOR A "FULL SERVICE RESTAURANT" ON 11/28/2011.

FIRE DEPT. CLEARANCE GRANTED ON 11/28/2011.

YOUR APPLICATION FOR A NEW HEALTH PERMIT TO OPERATE AS A FOOD PREPARATION & SERVICE FACILITY HAS BEEN APPROVED WITH THE FOLLOWING CONDITIONS "COOKING ALLOWED"

PAY ANNUAL LICENSE FEE TO THE S.F. TAX COLLECTORS OFFICE UPON NOTIFICATION..

OFFICIAL HEALTH PERMIT TO OPERATE WILL BE MAILED TO YOU AFTER LICENSE FEES ARE PAID & PROCESSED.

POST OFFICIAL HEALTH PERMIT IN A CONSPICUOUS LOCATION WITH CURRENT S.F. TAX COLLECTOR LICENSE CERTIFICATE

Reinspection Fee Applicable For Violations No. 1 Thru 15
 All Food Preparation & Service Facilities Must Post This Inspection Report. Failure to Comply May Result in A Citation And / Or Fines.

REHS (Print): ARTHUR DUYE Signature: Arthur Dye

Phone: 252-39166 Received by: [Signature]

*HR - Observed COS - Corrected On Site

SECTION 2: (Continued)

OB COS

1390 Market Street, Suite 210, San Francisco CA 94102 (415)252-3800

CONFORMANCE TO APPROVED PROCEDURES	
27	Non-Compliance with variance / HACCP Plan / Specialized Process
CONSUMER ADVISORY	
28	Consumer advisory not provided for raw or undercooked foods
WATER / HOT WATER	
29	No Hot Water / No Water
LIQUID WASTE DISPOSAL / VERMIN	
30	Sewage / Wastewater Disposal Inoperative
31	Rodents / Roaches / Flies / Other Animals
GENERAL FOOD SAFETY REQUIREMENTS	
32	Unapproved thawing methods used
33	Foods not separated nor protected
34	OTHER (Specified in report)

SECTION 3: Low Risk Violations 2 Pts Each

SUPERVISION	
35	No Person In Charge to perform duties
PERSONAL CLEANLINESS	
36	Hair Restraints/ Outer Garments/ Nails/ Rings
GENERAL FOOD SAFETY REQUIREMENTS	
37	Not washing fruits & vegetables
38	Improper storage / identification / use of toxic substances
FOOD STORAGE / DISPLAY / SERVICE	
39	Improper food storage / Improper Container ID
40	Consumer Self Service
41	Foods improperly labeled or misrepresented
EQUIPMENT / UTENSILS / LINENS	
42	Nonfood contact surfaces unclean
43	Inadequate Warewashing Facilities/ Equipment
44	Unapproved/ Disrepaired Equipment/ Utensils
45	Improper storage: Equipment, Utensils, Linens
46	Vending Machine Non-compliance
47	Inadequate / Improper Ventilation / Lighting
48	Thermometers Required or Inaccurate
49	Wiping Cloths not clean/ Inadequate sanitizer turbid / not properly stored
PHYSICAL FACILITIES	
50	Improper or Defective plumbing / No backflow devices / Improper connections
51	No Garbage Service / No Containers / Area or containers not maintained clean
52	Toilet facilities in disrepair/ Not cleaned / Need supplies / Improperly constructed
53	Inadequate dressing area / Personal Items
PERMANENT FOOD FACILITIES	
54	Floors, Walls, Ceilings Improperly constructed, in disrepair, not clean
55	Unapproved private homes/ living quarters/ sleeping quarters
SIGNS & OTHER REQUIREMENTS	
56	Permit / Inspection Not Posted
57	Food Safety Certificate Not Available / Posted
58	No Permit (New Application Required)
59	Safety Hazards
60	HACCP Plan Items Required (logsheets, etc.)
61	VERMIN-Rodents, Roaches, Flies, Other
62	OTHER: (Specify in report)

63	Impoundment / VCD
64	Closure / Permit Suspension
65	Plan Review Required
66	Styrofoam Utensils In Use
67	Complaint Visit
68	New Application / Change of Ownership Visit
69	Labor Law Requirement

Location Address: 1463 SUTTER	Inspection Date: 12/15/2011
Business Name: ROOSTER TAIL	Re-Inspection Date:

The marked violations are California Food Code violations and must be corrected as follows:

UPON RECEIPT.

THIS DOCUMENT WILL SERVE AS YOUR INTERIM PERMIT TO OPERATE.

OBSERVATIONS

- HOT WATER MEASURED AT 120°F
- SOAP & PAPER TOWELS ARE AVAILABLE AT ALL HAND SINKS.
- REFRIGERATION UNITS MEASURED BELOW 41°F.

DEDUCTIONS:	
High Risk:	
Mod Risk:	
Low Risk:	
FINAL SCORE	

All Food Preparation & Service Facilities Must Post This Report. Failure To Comply May Result In A Citation and / or Fines.

REHS: ARTHUR DUQUE
 Received By: *[Signature]*





EXHIBIT B

Permits, Complaints and Boiler PTO Inquiry

COMPLAINT DATA SHEET

Complaint Number: 201176714
Owner/Agent: OWNER DATA
 SUPPRESSED
Owner's Phone: --
Contact Name: --
Contact Phone: --
Complainant: COMPLAINANT
 DATA
 SUPPRESSED
Complainant's Phone: --
Complaint Source: TELEPHONE
Assigned to Division: HIS
Description: ✓ Industrial fan installed for restaurant @ 1963 Sutter St. affecting tenants, fan is loud and vibrates the building.

Date Filed: 12/14/2011
Location: 1961 SUTTER ST
Block: 0684
Lot: 042
Site: 1961 Sutter St.
Rating: --
Occupancy Code: R-2
Received By: May Pasion
Division: HIS

Instructions:

INSPECTOR INFORMATION

DIVISION	INSPECTOR	ID	DISTRICT	PRIORITY
HIS	MCMANUS	6244	5	

REFERRAL INFORMATION

COMPLAINT STATUS AND COMMENTS

DATE	TYPE	DIV	INSPECTOR	STATUS	COMMENT
12/14/11	CASE OPENED	HIS	McManus	CASE RECEIVED	
12/16/11	GENERAL MAINTENANCE	HIS	McManus	INSPECTION OF PREMISES MADE	Unable to enter building
12/20/11	GENERAL MAINTENANCE	HIS	McManus	INSPECTION OF PREMISES MADE	Inspector Patrick McManus investigated the complaint at the common area of the subject property and observed no violations of the San Francisco Housing Code. Pertinent observations are as follows: Work related to restaurant, including equipment, extractors, flues, etc., in common area, completed under plumbing permits pm20111020891, pw20110812035, pp20110810167.
01/04/12	GENERAL MAINTENANCE	HIS	McManus	CASE ABATED	

EXHIBIT C

BOARD OF APPEALS

MAY 16 2013

APPEAL # 13-035

1 DENNIS J. HERRERA, State Bar #139669
 City Attorney
 2 ALEETA M. VAN RUNKLE, State Bar #124563
 Lead Attorney, Health and Human Services Team
 3 VIRGINIA DARIO ELIZONDO, State Bar #134771
 Deputy City Attorney
 4 1390 Market Street, 5th Floor
 San Francisco, California 94102-5408
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 6 E-Mail: virginia.dario.elizondo@sfgov.org

7 Attorneys for Respondent
 8 SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH

10 BOARD OF APPEALS
 11 CITY AND COUNTY OF SAN FRANCISCO

13 ROOSTERTAIL RESTAURANT,
 14 Appellant,
 15 vs.
 16 DEPARTMENT OF PUBLIC HEALTH,
 17 Respondent.

Case No. 13-035

DECLARATION OF ZACK PARSONS IN SUPPORT OF DEPARTMENT OF PUBLIC HEALTH'S REPLY BRIEF

Hearing Date: May 22, 2013
 Time: 5:00 p.m.
 Place: City Hall, Room 416

20 I, Zachary Parsons, declare as follows:

21 1. I am an Environmental Health Inspector with the San Francisco Department of Public
 22 Health (SFDPH). I have been a Registered Environmental Health Specialist since 2006, and started
 23 my employment with SFDPH in 2009. I have personal knowledge of the facts set forth herein. If
 24 called upon to testify, I could and would testify competently to these facts.

25 2. Prior to operation of the business, Roostertail restaurant, the Department conducted an
 26 inspection on October 12, 2011, which included rooftop measures of noise. At that time the noise

1 measures were compliant with the noise standards as set forth in S.F. Police Code Article 29. (*See,*
2 Attachment 1.)

3 3. The Department conducted an indoor noise inspection inside a neighbor's property on
4 September 19, 2012, in response to a complaint from this neighbor. The investigation concluded that
5 noise in the interior sleeping and living of the neighbor's dwelling was in compliance with the indoor
6 noise standard described in S.F. Police Code §2909(d). However, the Department's investigation on
7 September 19, 2012, did not measure outdoor noise or evaluate the outdoor noise standard for a
8 commercial use. (*See,* Attachment 2.)

9 4. On December 5, 2012, the Department, following a noise measurement provided by an
10 acoustical professional that showed lack of compliance with the outdoor noise standard (*see,*
11 Attachment 3), the Department conducted additional outdoor noise measures and found the business to
12 be in violation of SFPC §2909(b) which is the standard applicable to mechanical noise source from a
13 commercial use (*see,* Attachment 4). The measures were conducted in conformance with S.F. Police
14 Code Article 2900, and the Guidelines for Noise Control Ordinance Monitoring and Enforcement,
15 November 10, 2011 (*see,* Attachment 5) . Appellant had 30 days or correct the problem or apply for a
16 variance.

17 5. On February 1, 2013, the Department issued a citation to an Abatement Conference to
18 allow Appellant to show how he was going to mitigate the noise violation, or to complete a request
19 for a variance. (*See,* Attachment 6.)
20

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct and that this document was executed on the 16th day of May 2013 in San Francisco,
23 California.

24
25 
26 ZACHARY PARSONS



Guidance for Implementing the Noise Control Ordinance
San Francisco Department of Public Health—Environmental Health
November 10, 2011

1. Noise Measures

- 1.1. The Decibel is a unit of relative sound pressure levels. The decibel level is computed from the ratio of the measured sound pressure level to a reference level
 - 1.1.1. Sound level (dB) = $20 \log_{10}(p_{\text{measured}} / p_{\text{ref}})$ ref= 20 micropascals.
- 1.2. For the purpose of evaluating compliance, the noise level is the maximum continuous sound level or repetitive peak sound level, produced by a source or group of sources as measured with a sound level meter
- 1.3. "Noise level" means the maximum continuous sound level or repetitive peak sound level, produced by a source or group of sources as measured with a sound level meter (SLM).
 - 1.3.1. Survey and screening measurements may be taken with a type 2 SLM. However, a type 1 meter must be used when accuracy greater than + or – 0.5 dB is required for enforcement of violations.
- 1.4. The settings on the SLM should be slow response for continuous noise sources and fast response for noises with rapid onset and decline.
- 1.5. For most circumstances, compliance with noise standards is assessed only based the A-weighted relative sound pressure level
- 1.6. Only for places of entertainment, compliance is assessed using both the A-weighted and the C-weighted relative sound pressure levels. Relative to A-weighted levels, C-weighted levels include more lower-frequency sounds.
- 1.7. Sound levels attributed to a particular noise source may be estimated for multiple distances from a single measurements
 - 1.7.1. Damping with distance formula: $L_2 = L_1 - 20 \log_{10}(r_2/r_1)$ where, L_1 is the noise level at reference distance r_1 and L_2 is the level at another distance r_2 . A helpful website to understand and implement this calculation is <http://www.sengpielaudio.com/calculator-distance.htm>

2. Measurement Location

- 2.1. Indoor noise measurements to evaluate Section 2909 (a)(2) should be taken in the dwelling unit of the sensitive receptor at 3 feet from the wall ceiling or floor adjacent to the noise source.
- 2.2. Indoor noise measurements to evaluate Section 2909 (d) should be taken in all sleeping and living areas of the dwelling of the sensitive receptor with windows open except where building ventilation is achieved through mechanical systems that allow windows to remain closed. Windows should be opened to at least 25% of their maximum opening.
- 2.3. Outdoor measures to evaluate Sections 2909 (a)(1) and 2909(b) should be taken at the property plane.

- 2.3.1. Measures taken beyond the threshold distance for a particular standard (e.g. the property plane) can serve to demonstrate non-compliance with the standards if greater than the allowable noise tolerance.
 - 2.3.2. Measures beyond the threshold distance for a particular standard less than the allowable noise tolerance do not demonstrate compliance.
 - 2.3.3. Measures taken within the threshold distance for a particular standard property plane and in the free field can serve to demonstrate compliance if less than the allowable noise tolerance
 - 2.3.4. Measurement of an elevated source should be taken at a level that intercepts the line of sight from the source to an existing sensitive human receptor.
 - 2.4. Outdoor measures to evaluate Sections 2909(c) should be taken 25 feet or more from the source(s).
 - 2.5. Measurements should always be taken at a location safe for the inspector
 - 2.5.1. Telescoping pole extensions of the microphone and preamp can be used when direct access to the property plane is hazardous.
 - 2.6. Measures either closer or further away from a property plane and in the free field can be used to compute the noise level at the property plane using the damping with distance formula (see above).
3. **Measurement Time**
- 3.1. In most scenarios, evaluation of mechanical noise sources relative noise standards can be adequately conducted with measurements taken during usual working hours.
 - 3.2. Staff are not required to conduct measures at the exact time of a noise complaint
4. **Application of Standards** There are five distinct standards under 2909 applying to a particular noise sources and protecting different ambient conditions. (See Table Below)
- 4.1. **Section 2909(a)(1), Residential Property Noise Limits** This section applies to noise generated from a source(s) located on a residential property or within a residential use in a mixed use property. The standard in Section 2909(a)(1), five dBA above the ambient at any point outside of the property plane, is the maximum allowable cumulative level of exterior noise produced from any combination of mechanical device(s) and implied sound systems(s) originating from an exclusively residential property or from a residential use in a mixed use property.
 - 4.2. **Section 2909(a)(2), Residential Property Noise Limits** This section applies to the transmission of noise between dwelling units in the same building. The standard in Section 2909(a)(2), five dBA above the local ambient three feet from any wall, floor, or ceiling, is the maximum allowable cumulative noise produced by any combination of mechanical device(s) and amplified sound systems(s) that can be transmitted between any two residential dwelling units in a multi-unit residential property.
 - 4.3. **Section 2909(b) Commercial and Industrial Property Noise Limits.** This section applies to noise generated from a source located on a commercial or industrial property or within a commercial use in a mixed use property. The standard in Section 2909(b), eight dBA above the ambient at any point outside of the property plane, is the maximum allowable cumulative level of exterior noise, produced from any combination of mechanical device(s) and implied sound systems(s) originating from an exclusively commercial or industrial property or from a commercial use located within a mixed use property. For place of entertainment, this standard applies to both A-weighted and C-weighted measures.
 - 4.4. **Section 2909(c) Public Property Noise Limits.** This section applies to noise generated from a source located on public property, such as a park or public plaza. The standard in Section 2909(c), ten dBA

above the ambient at a distance greater than 25 feet [from the noise source], is the maximum allowable cumulative level of noise, produced from any combination of mechanical device(s) and implied sound systems(s) originating on a public property. Motor vehicles on local roads, construction equipment, refuse collection equipment, and other noise sources under the control of the City or serving to maintain public property are exempt from the standard.

- 4.5. Section 2909 (d) Fixed Residential Interior Noise Limits.** This section sets the maximum allowable interior noise within a dwelling unit. The standards in Section 2909(d), 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. and 55 dBA between the hours of 7:00 a.m. to 10:00p.m., are the absolute maximum allowable level of interior noise, produced from any combination of mechanical device(s) and audio systems(s) originating from outside the dwelling unit.

5. Determination of Ambient

- 5.1. "Ambient" means the lowest sound level repeating itself during a minimum ten-minute period
- 5.2. The minimum sound level shall be determined with the noise source at issue silent, and in the same location as the measurement of the noise level of the source or sources at issue. Generally, inspectors should not need to compute mathematical averages of sound levels to assess the ambient level; however, if there is no single lowest repeating measure, then the ambient should be recorded as the average of the 2 lowest measures.
- 5.3. Under most conditions, the L90 (the level exceeded by 90% of measurements) is an adequate representation of the ambient
- 5.4. Thirty-five dBA is minimum ambient level for use in evaluation of interior residential noise under Section 2909 (a)(2)
- 5.5. Forty-five dBA is minimum ambient level for use in evaluation of exterior noise under Sections 2909 (a)(1), 2909(b) and 2909(c)
- 5.6. Measurement of ambient should be made with all mechanical noise sources physically within and in the control of the operator of the use silent.
- 5.7. The measurement of the ambient does not require all potential noise sources located at adjacent or nearby uses or properties to be non-operational.

Summary of Standards and Enforcement Implementation

Regulatory Purpose	Control of noise transmission among one or more dwelling units in the same residential property	Control of noise sources affecting sleeping or living areas in a residential dwelling unit.	Control of noise sources emanating from residential uses	Control of noise sources emanating from commercial uses (e.g. industrial equipment)	Control of noise sources on public property
Applicable Standard	2909(a)(2)	2909 (d)	2909(a)(1)	2909(b)	2909(c)
Location of noise source(s)	Any dwelling unit in the same multi-unit property	Any use or property outside the affected dwelling unit	Any residential use on a residential or mixed use property	Any industrial or commercial use within a commercial or mixed-use property	Any non-traffic source on public property
Measurement Location for evaluation of standards	Three feet from any wall, floor or ceiling	Interior living or Sleeping Area	Outdoors, at the exterior property plane of the origin of noise source	Outdoors, at the exterior property plane of the origin of noise source	Outdoors, 25 feet or more from the noise source
Type of noise source(s)	Sound from mechanical or electro-mechanical equipment (e.g., fans, pumps)	Sound from mechanical or electro-mechanical equipment	Sound from mechanical or electro-mechanical equipment	Sound from mechanical or electro-mechanical equipment	Sound from mechanical or electro-mechanical equipment
Threshold	5dBA over the ambient	Maximum 55dBA day evening; 45 dBA night	5dBA over the ambient	8dBA over the ambient	10dBA over the ambient
Minimum Ambient	35 dBA 45 dBC	N/A	45 dBA 55 dBC	45 dBA 55 dBC	45 dBA 55 dBC
Other Considerations	Noise caused by activities subject to permits from the City are exempt. The Police Department regulates noise from electronic audiovisual sources under this standard.		The Police Department regulates noise from electronic audiovisual sources under this standard.	The Entertainment Commission or the Police Department regulates noise from electronic audiovisual sources under this standard.	Machinery serving public space are exempt.



Procedures for Evaluation and Management of Noise in Regulated Food Facilities

Effective Date: May 25, 2011

I BACKGROUND AND PURPOSE

Noise pollution can be a significant problem in dense urban environments like San Francisco. Excessive noise interferes with work and leisure activities, disturbs sleep, and at higher levels may increase the risk of heart problem and high blood pressures.

Conflicts related to noise in mixed use environments occur when sensitive uses such as residences are located near noise sources such as restaurants, markets, and laundries. These conflicts can be limited through selection of best available noise reduction technology, acoustical insulation of both sensitive uses and noise generators, and limits on the production of exterior noise. The San Francisco Department of Public Health plays a role in preventing impacts of noise by implementing the **San Francisco Noise Control Ordinance (Article 29 of the San Francisco Police Code)** which sets allowable limits for noise from various sources.

Restaurants permitted by the Department of Public Health are frequently cited as a source of urban noise. The following procedures provide guidance to staff involved in the permitting of restaurants and evaluating noise complaints associated with restaurants. The procedures include steps to take during the oversight of restaurant construction or remodeling to pro-actively ensure compliance with the noise limits set by city laws at all hours of operations. The procedures include expectations for restaurants regarding managing waste and recycling and outdoor cleaning activities. Staff may at times need to modify these procedures based on experience and field circumstances.

II REGULATORY AUTHORITY

San Francisco Police Code

SEC. 2909. NOISE LIMITS.

(b) Commercial And Industrial Property Noise Limits.

No person shall produce or allow to be produced by any machine or device, music or entertainment or any combination of same, on commercial or industrial property over which the person has ownership or control, a noise level more than eight dBA above the local ambient at any point outside of the property plane. With respect to noise generated from a licensed Place of Entertainment, in addition to the above dBA criteria a secondary low frequency dBC criteria shall apply to the definition above. No noise or music associated with a licensed Place of Entertainment shall exceed the low frequency ambient noise level defined in Section 2901(f) by more than 8 dBC.

(d) Fixed Residential Interior Noise Limits.

In order to prevent sleep disturbance, protect public health and prevent the acoustical environment from progressive deterioration due to the increasing use and influence of mechanical equipment, no fixed noise source may cause the noise level measured inside any sleeping or living room in any dwelling unit located on residential property to exceed 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. or 55 dBA between the hours of 7:00 a.m. to 10:00p.m. with windows open except where building ventilation is achieved through mechanical systems that allow windows to remain closed.

SEC. 2920. AUTHORITY TO ADOPT RULES AND REGULATIONS.

The Director of Public Health may issue and amend rules, regulations, standards, guidelines, or conditions to implement and enforce this Article.
(Added by Ord. 278-08, File No. 081119, App. 11/25/2008)

IV PROCEDURES FOR FOOD FACILITY PLAN CHECK FOR NEW OR REMODELED FACILITIES

In the course of plan check and physical inspections of new or remodeled facilities, staff shall verify the following:

1. All newly installed mechanical ventilation and refrigeration systems shall be designed and installed to generate less than 53 dBA at the nearest property plane and no more than 45 dBA in the interior of any residential dwelling.

OR

The applicant shall submit an acoustical report prepared by a person with experience in acoustical consulting which determines that the installation complies with Article 29, Regulation of Noise, San Francisco Police Code. The report shall include both an estimation of the noise levels from the use of the proposed mechanical equipment at the nearest property plane and a 24 hour measurement of ambient noise levels at the same plane.

2. All newly installed mechanical equipment must be equipped with vibration isolation capable of preventing the transmission of vibration into residential dwelling that results in noise levels greater than those described in Section 2909 (d), SF Police Code.

3. The installation of any walkin refrigeration box, food storage room, self contained refrigeration, mop sinks, food processing equipment, or laundry equipment on the exterior of any restaurant or market may not take place without the specific written permission of the Director of Environmental Health for Regulatory Affairs and include restrictions with respect to time and manner of use.

V GENERAL OPERATIONAL REQUIREMENTS FOR FOOD FACILITIES

The operator of the food facility to abide by the following requirements and restrictions.

1. All mechanical equipment must be installed, operated, and maintained so that it will not generate noise greater than 8dB over ambient levels at the closest neighboring property plane for which there is a clearly identifiable sensitive receiver having line of site to the source. (Section 2909, SF Police Code)
2. All newly installed mechanical equipment must be equipped with vibration isolation capable of preventing the transmission of vibration into

residential dwelling that results in noise levels greater than those described in Section 2909 (d), SF Police Code.

3. Recycling and management of glass bottles, cans, compostables may not take place between the hours of 10 pm and 6 am unless the operation is completely enclosed within the facility. (Sec. 2904, SF Police Code)
4. The consolidation and dumping of garbage into exterior containers may not take place between the hours of 10 pm and 6 am. In all cases the dumping must take place in a manner to produce the least amount of noise. (Sec. 2904, SF Police Code)
5. The mechanical pressurized steam cleaning of restaurant ventilation equipment, floors, sidewalks, and carpets may not take place between the hours of 10 pm and 7 am. Unless the mechanical system is completely enclosed within the building structure. (Section 2909, SF Police Code)
6. The use of any existing exterior refrigeration, mop sinks, processing sinks, and other food processing and storage related equipment may not take place between the hours of 10 pm and 6 am without the specific written permission of the Department of Public Health. (Section 2909, SF Police Code)

VI PROCEDURES FOR INVESTIGATIONS AND ENFORCEMENT

1. Staff will respond to complaints of noise related to any fixed mechanical equipment as well as noise complaints related to waste recycling and disposal and facility cleaning.
2. Staff shall notify the owner or his designee of the alleged violation including type of noise, duration, and time of activity within two business days, providing general guidance on actions needed to evaluate and mitigate noise. This notification may take place by telephone or electronic mail and does not require a specific visit to the site.
3. Noise complaints directly related to conditional use including; exterior dining, background music, and times of operation shall be referred to the Planning Department complaint division.

4. Complaints associated with human speech shall be referred to either the Planning Department when they are permitted by conditional use or to the Police Department for investigation as a public nuisance.
5. Noise complaints related to improper installation of mechanical equipment shall be referred to the Department of Building Inspection.
6. When complaints related to fixed mechanical equipment waste management or facility cleaning recur after notification of the business owner, staff shall conduct physical site inspections and provide a written notification of applicable noise laws, required operating procedures, and recommendations for noise mitigation.
7. For complaints related to fixed mechanical equipment, staff should take noise measurements during an inspection and evaluate the existence of noise violation pursuant to the San Francisco Noise Ordinance.
8. When needed to manage either routine or complex complaints, staff should seek advice and technical assistance from the DPH Manager of Air Pollution, Noise and Radiation Programs
9. Where violations of the noise code are documented to be repeated and persistent, staff may refer the unresolved complaint to a Hearing of the Director of Public Health and may consider sanctions including suspension or revocation of food facility permit.

VII RECORDKEEPING

1. All noise measurements taken by staff in the course of investigations shall be recorded and included in facility files
2. Reports with noise measurements taken by licensed acoustical consultants shall be maintained in facility files
3. Requirements of conditional use permits issued by the Department of City Planning related to noise provided shall be maintained in all permitted facility files.

EXHIBIT D

18 October 2012

Acoustics
Audiovisual
Telecommunications
Security

Michiko Yamada
Via e-mail: michiko_yamada@sbcglobal.net

Subject: 1959 Sutter: Roostertail Exhaust Fan Noise Evaluation
CSA Project No. 12-0478

Dear Michiko:

At your request, we have prepared this report comparing ambient noise at your property with and without rooftop equipment from the adjacent restaurant, Roostertail (1963 Sutter Street), in operation. The purpose of the acoustical measurements was to evaluate compliance with the San Francisco Noise Ordinance. This letter summarizes our findings.

SUMMARY

Acoustical measurements taken in the light well and on the rooftop of 1959 Sutter Street indicate that rooftop equipment from 1963 Sutter Street is not currently in compliance with the noise limits of the San Francisco Noise Ordinance.

ACOUSTICAL CRITERIA

Section 2909 of the San Francisco Police Code addresses noise relevant to the project as follows:

- Part (b): No person shall produce or allow to be produced by any machine or device, music or entertainment on commercial property over which the person has ownership or control, a noise level more than eight dBA¹ above the local ambient at any point outside the property plane.
- "Ambient" is defined in Section 2901.a as the lowest sound level repeating itself during a minimum ten-minute period in the same location as the measurement of the noise level of the source at issue. ² It shall be measured with a sound level meter using slow response and "A" weighting. In addition, for the purposes of the Ordinance, it states that the exterior ambient shall not be considered to be less than 45 dBA.
- "Noise level" is defined as the maximum continuous sound level or repetitive peak sound level, produced by a source or group of sources as measured with a sound level meter.
- "Fixed source" means a machine or device capable of creating a noise level at the property upon which it is regularly located, including but not limited to: industrial and commercial process machinery and equipment, pumps, fans, air-conditioning apparatus or refrigeration machines.

¹ dBA — A-weighted sound pressure level (or noise level) represents the noisiness or loudness of a sound by weighting the amplitudes of various acoustical frequencies to correspond more closely with human hearing sensitivity. A 10-dB (decibel) increase in noise level is generally perceived to be twice as loud. A-weighting is specified by the ISO, U.S. EPA, OSHA and others for use in noise measurements.

² The San Francisco Department of Public Health has determined that the L₉₀ noise level, which is the sound level (in dBA) equaled or exceeded ninety percent of the time, is to be considered the ambient noise level.

Charles M. Salter, PE
David B. Schwingel, FRES
Robert F. Alessandrini
Eric L. Broadhurst, PE
Philip W. Saito, LEED AP
Anthony P. Nash, PE
Thomas A. Schindler, PE
Christina L. Meyer
Jason S. Dady, PE
Devon R. Bogault, PEG, FAES
Jody G. Cappolo
Thomas J. Carlson, CTS
Eric A. Yee
Joshua M. Roper, PE, LEED AP
Peter K. Hahn, PE, LEED AP
Christopher A. Poller, PE
Elton C. Suter, PE, LEED AP
Thomas D. Keller, CDT
Craig L. Giljen, RCDD
Lloyd B. Rongie
Alexander K. Selter, PE
Jeremy S. Ducker, PE
Rob Henderson, PSP, NICEE III
Michael S. Choo
Dylan B. Rife, CTS
David H. Kish, CTS-D
Paul R. Billings
Erika A. Frederick
Travis R. Lawrence
Benjamin D. Piper
Elizabeth S. Kitten
Ian M. Stueb
Noel J. Sauer
Joshua J. Harrison
Brian E. Williams
Valerie C. Smith
Sharon M. Sullivan
Aminda G. Hughes
Brian J. Qued
Heather A. Salter
Dee E. Garcia
Catherine E. Spinlock
Marco De Nair, Mordzee
Elizabeth F. Tricker
Jennifer G. Pedlar
Kathleen P. Gregorio
Susan E. Esmergency
Heather D. Naise
Courtney H. Vinaja
Erin D. Garton

SETTING

1959 Sutter Street is a residence located adjacent to the Roostertail restaurant. The exhaust fans serving the restaurant are located on the roof of 1963 Sutter Street, adjacent to 1959 Sutter Street.

ACOUSTICAL MEASUREMENTS

In order to evaluate compliance with the San Francisco Noise Ordinance, we conducted acoustical measurements at exterior spaces located in the 1959 Sutter Street property plane: at the top floor of the lightwell and at the roof. Acoustical measurements were conducted with the exhaust fans in operation (at approximately 10:15pm on 15 October 2012) and with exhaust fans off (at approximately 11:00pm on 15 October 2012). The table below summarizes the measured noise levels.

Table 1: Measured Noise Levels (dBA) at 1959 Sutter Street

Location	Ambient (Fans Off)	Allowable Noise Level Per SF Noise Ordinance	Measured Noise Level with Fans On	Exceedance of SF Noise Ordinance Limits
Roof	46	54	60	6
Lightwell	45 ³	53	59	6

Based on the collected acoustical data, the acoustical criteria for exterior noise levels at the property plane was established to be 54dBA and 53dBA (ambient + 8dBA allowable above the ambient).

PRELIMINARY RECOMMENDATIONS

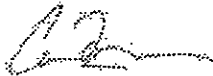
The exhaust fans serving the Roostertail restaurant are located on the roof of 1963 Sutter Street. In order to reduce noise at the property plane by 6dBA and achieve compliance with the San Francisco Noise Ordinance, an acoustical screen should be engineered and installed around the exhaust fans to reduce equipment noise.

* * *

Please contact us if you have any questions about our report.

Sincerely,

CHARLES M. SALTER ASSOCIATES, INC.



Cristina L. Miyar
Vice President

2012Oct17 1959 Sutter Street Noise Ordinance Compliance Analysis

³ Measured noise levels in the lightwell were below 45dBA. In accordance with the San Francisco Noise Ordinance, we have assumed 45dBA to be the minimum ambient noise for the purposes of this analysis.

Acoustics
Audiovisual
Telecommunications
Security

130 Sutter Street
Floor 5
San Francisco, CA
94104
T. 415.397.0442
F. 415.397.0454
www.cmsa.com

EXHIBIT E



F. D INSPECTION REPORT
SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH SECTION
 1390 Market Street, Suite 210, San Francisco, CA 94102
 www.sfdph.org/eh (415) 252-3800

Date:	12/5/12
Time In:	7:00
Time Out:	7:00

Location Address: 1963 Sutter St	Inspection Type: Noise Complaint
Facility Name: Rooster tail	Re-Inspection Date: 1/5/13
Owner Name: Edward Tracy Darian Phone:	Location I.D.: 67657

<input type="checkbox"/> Permit Posted <input type="checkbox"/> Inspection Report Posted	License Certificate Class No.:	Exp. Date:
Person In Charge: Edward	Cert. Food Handler:	Exp. Date:

SECTION 1: High Risk Violations (HRV) 7 Pts Each
 HRV disqualifies Symbol of Excellence OB* COS*

- EMPLOYEE HEALTH / HYGIENE**
- 1 Communicable disease -- reporting, restrictions & exclusions
- PREVENT CONTAMINATION BY HANDS**
- 2 Hands not clean / improperly washed / gloves improperly used
- TIME & TEMPERATURE RELATIONSHIPS**
- 3 Improper hot / cold holding temperatures
- 4 Time as a public health control -- Procedures and/or records needed
- 5 Improper cooling methods
- 6 Improper cooking time / temperatures
- 7 Improper Reheating
- PROTECTION FROM CONTAMINATION**
- 8 Food in poor condition -- unsafe / adulterated
- 9 Food contact surfaces not cleaned/ sanitized
- FOOD FROM APPROVED SOURCES**
- 10 Food obtained from an unapproved source
- HIGHLY SUSCEPTIBLE POPULATIONS**
- 11 Licensed health care facilities / public & private schools / prohibited foods offered
- WATER / HOT WATER**
- 12 No Hot Water / No Water
- LIQUID WASTE DISPOSAL**
- 13 Sewage / Wastewater Disposal Inoperative
- VERMIN**
- 14 Rodents / Roaches / Flies / Other Animals
- 15 OTHER (Specified in report)

The marked violations are California Food Code violations and must be corrected as follows:
 Noise Complaint

Joint noise complaint inspection w/ inspector M. Harris. Outdoor measurements of noise were taken in lightwell, located in between facility and complainant. Outdoor noise levels while fan was on were measured at 56 dBA. Ambient noise level in same location is 45 dBA. San Francisco Police Code, A-Article 29 states that no piece of equipment can generate a noise more than 5 dBA at any point beyond the property line. Noise source was measured at 11 dBA over ambient. Facility is required to reduce noise source to 53 dBA or less. Facility has 30 days to produce plan to reduce noise.

SECTION 2: Moderate Risk Violations
 4 Pts Each

- DEMONSTRATION OF KNOWLEDGE**
- 16 Lack of food safety knowledge / no food safety certification
- EMPLOYEE HEALTH / HYGIENE**
- 17 Discharge from eyes / nose / mouth
- 18 Employee Practices: tobacco/ eating/ other
- PREVENT CONTAMINATION BY HANDS**
- 19 Inadequate / Inaccessible handwashing facilities & supplies
- TIME & TEMPERATURE RELATIONSHIPS**
- 20 Improper hot / cold holding temperatures
- 21 Time as a public health control -- Procedures / records needed
- PROTECTION FROM CONTAMINATION**
- 22 Returned / reservice of food
- 23 Food in poor condition/ unsafe/ adulterated
- 24 Food contact surfaces not clean / sanitized
- FOOD FROM APPROVED SOURCES**
- 25 Non-Compliance with shell stock tags/ condition / display

Reinspection Fee Applicable For Violations No. 1 Thru 15
All Food Preparation & Service Facilities Must Post This Inspection Report. Failure to Comply May Result In A Citation And / Or Fines.

REHS (Print): [Signature] Signature: [Signature]
 Phone: (415) 252-3800 Received by: [Signature]

EXHIBIT F

Edwin M. Lee
Mayor

March 14, 2013

Barbara Garcia MPA
Director of Health

Gerard Darien
Roostertail Restaurant
1963 Sutter Street
San Francisco, CA

Rajiv Bhatia MD, MPH
Director of Environmental Health

Re: Application for Noise Limit Variance

Dear Mr. Darien:

I reviewed Roostertail Restaurant's Variance Application dated December 26, 2012.

As you know, the San Francisco Police Code (Article 29) limits the noise levels generated by equipment at a commercial use to no more than 8 dBA above the ambient noise levels measured at any point outside of the property plane. For this location the ambient level is 45 dBA. Our measurements which were taken on January 5, 2013 outdoors at 1959 Sutter Street documented equipment noise levels of 56 dBA. Other measurements taken at this location by a licensed acoustical professional have been similar. This measurement is 11 dB above the ambient noise level and is an unambiguous violation of the city's noise standard.

Many parts of San Francisco have outdoor noise levels that exceed optimal levels for community health. The outdoor standard is intended to both prevent noise impacts on neighbors as well as reduce contributions to cumulative noise levels. The Department generally has not granted variances for noise in residential or mixed-residential commercial areas where available alternative equipment or equipment installation would avoid a noise violation. Your variance application noted the fact of a significant recent renovation of your business that included the new equipment that contributes to the noise at issue. San Francisco's current noise standard has been in place since 2008. It is unclear why professionals guiding this renovation did not select and install the equipment to be compliance with the current applicable laws.

For these reasons, I must reject your request for a variance. Please direct questions about the timeline for compliance to your district inspector. Under San Francisco Police Code Section 2910, you may appeal this decision to the Board of Appeals; appeals must be filed within 15 calendar days from the date of issuance of this decision.



Sincerely,

A handwritten signature in black ink, appearing to read "Rajiv Bhatia".

Rajiv Bhatia, MD, MPH
Director, Environmental Health

1390 Market Street
Suite 822
San Francisco, CA 94102
Phone 415.252.3931
Fax 415.252.3818

www.sfenvironmentalhealth.org

EXHIBIT G

FILE

BOARD OF APPEALS

MAY 16 2013

APPEAL # 13-035

1 DENNIS J. HERRERA, State Bar #139669
 City Attorney
 2 ALEETA M. VAN RUNKLE, State Bar #124563
 Lead Attorney, Health and Human Services Team
 3 VIRGINIA DARIO ELIZONDO, State Bar #134771
 Deputy City Attorney
 4 1390 Market Street, 5th Floor
 San Francisco, California 94102-5408
 5 Telephone: (415) 554-3808
 Facsimile: (415) 557-6747
 6 E-Mail: virginia.dario.elizondo@sfgov.org

7
 8 Attorneys for Respondent
 SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH

9
 10 BOARD OF APPEALS
 11 CITY AND COUNTY OF SAN FRANCISCO

<p>12 ROOSTERTAIL RESTAURANT, 13 Appellant, 14 vs. 15 DEPARTMENT OF PUBLIC HEALTH, 16 Respondent.</p>	<p>Case No. 13-035</p> <p>RESPONDENT SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH'S BRIEF</p> <p>Hearing Date: May 22, 2013 Time: 5:00 p.m. Place: City Hall, Room 416</p>
---	--

19 INTRODUCTION

20 Appellant Gerard Darian dba ROOSTERTAIL RESTAURANT appeals the denial of noise
 21 limit variance by the San Francisco Department of Public Health ("Department"). Appellant
 22 acknowledges in his May 2, 2013, letter to the Board of Appeals, that he needs a noise limit variance
 23 between the hours of 8:30 a.m. and 10:30 p.m. in order to comply with the applicable noise standard
 24 set forth in S.F. Police Code §2909(b). Citing financial hardship, he requested this variance on
 25 December 26, 2012 (see, Exhibit A.) On March 14, 2013, the Department denied a noise limit
 26 variance (see, Exhibit B).

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FACTS

Prior to operation of the business, a restaurant, the Department conducted an inspection on October 12, 2011, which included rooftop measures of noise. At that time, the inspector concluded that the noise measures were compliant with the noise standards as set forth in S.F. Police Code Article 29. (*See*, Decl. of Zack Parsons, Attachment 1.) However, these noise measures were taken during the daytime. Noise compliance from a onetime measurement does not confer compliance for all future times. Technically and legally, the permissible noise standard is relative to the ambient (or contextual) level of noise which can vary substantially by time of day. The noise level of the source may also vary due to the power level and other factors. Thus, equipment noise that may be in compliance at one time may not be in compliance during other times.

The Department conducted an indoor noise inspection inside a neighbor's property on September 19, 2012, in response to a complaint from this neighbor. The investigation concluded that noise in the interior sleeping and living of the neighbor's dwelling was in compliance with the indoor noise standard described in S.F. Police Code §2909(d). However, the Department's investigation on September 19, 2012, did not measure outdoor noise or evaluate the outdoor noise standard for a commercial use. (*See*, Decl. of Zack Parsons, Attachment 2.)

On December 5, 2012, the Department, following a noise measurement provided by an acoustical professional that demonstrated lack of compliance with the outdoor noise standard (*see*, Decl. of Zack Parsons, Attachment 3), the Department conducted additional outdoor noise measures and found the business to be in violation of SFPC §2909(b) which is the standard applicable to mechanical noise source from a commercial use (*see*, Decl. of Zack Parsons, Attachment 4). The measures were conducted in conformance with S.F. Police Code Article 2900, and the Guidelines for Noise Control Ordinance Monitoring and Enforcement, November 10, 2011 (*see*, Decl. of Zack Parsons, Attachment 5). Appellant had 30 days or correct the problem or apply for a variance.

On February 1, 2013, the Department issued a citation to an Abatement Conference to allow Appellant to show how he was going to mitigate the noise violation, (*See*, Decl. of Zack Parsons, Attachment 6.)

1 The Abatement Conference was held on February 12, 2013, during which Appellant was once
2 again advised of the noise violation. The Department noted that it expected a proposal to mitigate the
3 noise, but received a letter stating that it would be too costly to do so. The Department requested more
4 information regarding the need for a variance. (See, Letter from Richard Lee to Gerard Darian, dated
5 February 12, 2013, attached as Exhibit C.) Appellant completed his application for a variance on
6 December 26, 2012 (see, Exhibit A.), which was denied on March 14, 2013 (see, Exhibit B).

7 LEGAL STANDARD

8 S.F. Police Code §2909(b) provides:

9 **Commercial And Industrial Property Noise Limits.** No person shall produce
10 or allow to be produced by any machine or device, music or entertainment or
11 any combination of same, on commercial or industrial property over which the
12 person has ownership or control, a noise level more than eight dBA above the
13 local ambient at any point outside of the property plane. With respect to noise
14 generated from a licensed Place of Entertainment or licensed Limited Live
Performance Locale, in addition to the above dBA criteria a secondary low
frequency dBC criteria shall apply to the definition above. No noise or music
associated with a licensed Place of Entertainment or licensed Limited Live
Performance Locale shall exceed the low frequency ambient noise level defined
in Section 2901(f) by more than 8 dBC.

15 "Ambient" is defined in Section 2901(a) as:

16 the lowest sound level repeating itself during a minimum ten-minute period as
17 measured with a type 1, precision sound level meter, using slow response and
18 "A" weighting. The minimum sound level shall be determined with the noise
19 source at issue silent, and in the same location as the measurement of the noise
20 level of the source or sources at issue. However, for purposes of this chapter, in
21 no case shall the ambient be considered or determined to be less than: (1)
22 Thirty-five dBA for interior residential noise, and (2) Forty-five dBA in all
other locations. If a significant portion of the ambient is produced by one or
more individual identifiable sources of noise that contribute cumulatively to the
sound level and may be operating continuously during the minimum ten-minute
measurement period, determination of the ambient shall be accomplished with
these separate identifiable noise sources silent or otherwise removed or
subtracted from the measured ambient sound level.

23 S.F. Police Code §2910 states the Director of Public Health may grant variances to the noise
24 regulations set forth in Section 2909, and that the grant or denial of such variance is appealable to the
25 Board of Appeals.
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1 **ARGUMENT**

2 S. F. Police Code Article 29 limits the noise levels generated by equipment at a commercial
3 use to no more than 8 dBA above the ambient noise levels measured at any point outside of the
4 property plane. The outdoor standard is intended to both prevent noise impacts on neighbors as well
5 as reduce contributions to cumulative noise levels in the City neighborhoods.

6 For this location, the ambient noise level is 45 dBA. The Department’s measurements taken on
7 December 5, 2012, outdoors at 1959 Sutter Street documented equipment noise levels of 56 dBA.
8 This measurement is 11 dBA above the ambient noise level and is an unambiguous violation of the
9 City’s noise standard.

10 Many parts of San Francisco have outdoor noise levels that exceed the levels determined to be
11 protective of health as enumerated in the World Health Organization community noise guidelines.
12 These levels are high enough to seriously harm health and the quality of life, challenge hearing,
13 speech, and sleep, and potentially cause physiological and psychological stress, heart disease, and
14 high blood pressure. In order to protect public health, San Francisco enacted S.F. Police Code Article
15 29 “... to prohibit unwanted, excessive, and avoidable noise.” Further, it is the policy of San
16 Francisco “... to maintain noise levels in areas with existing healthful and acceptable levels of noise
17 and to reduce noise levels, through all practicable means, in those areas of San Francisco where noise
18 levels are above acceptable levels as defined by the World Health Organization's Guidelines on
19 Community Noise.” (S.F. Police C. §2900(c).) A map of background noise levels in San Francisco is
20 attached as Exhibit C.

21 The Department found Appellant’s business in violation of permissible noise levels based on
22 an objective measurement and a quantitative environmental standard. The objective standard exists
23 so inspectors do not use their discretion in determining whether the measured level is in violation of
24 the quantitative standard.

25 Appellant argues his request for a variance is justified because the business recently
26 completed a significant renovation which included the equipment that is now the source of the noise
27
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1 at issue. Professionals guiding this renovation could have selected and installed equipment to be
2 compliance with the current applicable noise laws.

3 Granting a variance in this case would undermine the policy purpose of the City's noise law
4 and the effectiveness of the standard. The Department has a long history of enforcing the same
5 noise standard in the same way for dozens of similar businesses, and wants to remain consistent with
6 the principle of maintaining a level playing field for businesses. The Department has not granted any
7 variances for commercial noise in residential or mixed-residential commercial areas.

8 The Appellant provided a viable proposal to mitigate the noise violation which we encourage him to
9 implement. The Department has been flexible in working with Appellant, and in the letter of March 14,
10 2013, denying the variance, asked Appellant to contact his district inspector to set a timeline for compliance
11 (*see*, Exhibit B). While the Appellant claims financial hardship with regards to the cost of compliance
12 with the law, the Department does not consider financial hardship as a factor justifying exemptions
13 to laws designed to protect the public health.

14 CONCLUSION

15 The Department of Public Health respectfully requests that the Board deny Appellant's appeal
16 and uphold the denial of Appellant's request for a variance from the commercial noise limits
17 established to protect the public health.

18 Dated: May 16, 2013

Respectfully submitted,

19
20 DENNIS J. HERRERA
City Attorney

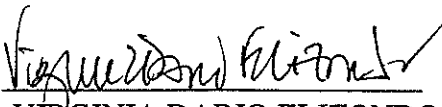
21
22 By: 
23 VIRGINIA DARIO ELIZONDO
Deputy City Attorney
24 Attorneys for Respondent
25 DEPARTMENT OF PUBLIC HEALTH OF THE
26 CITY AND COUNTY OF SAN FRANCISCO
27
28

EXHIBIT H

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
GERARD DARIAN dba "ROOSTERTAIL RESTAURANT",)
Appellant(s))
vs.)
DEPARTMENT OF PUBLIC HEALTH,)
Respondent)

Appeal No. 13-035

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on March 28, 2013 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 March 14, 2013, of Noise Limit Variance at 1963 Sutter Street.

FOR HEARING ON May 22, 2013

Address & Tel. of Appellant(s):

Address & Tel. of Other Parties:

Gerard Darian
dba "Roostertail Restaurant", Appellant
1963 Sutter Street
San Francisco, CA 94115

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 May 22, 2013.

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 variance by the Department of Public Health (DPH) is **UPHELD** on the basis of the findings in the DPH Order.


BOARD OF APPEALS
CITY & COUNTY OF SAN FRANCISCO

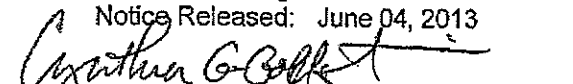
Last Day to Request Rehearing: June 03, 2013

Request for Rehearing: None

Rehearing: None

Notice Released: June 04, 2013


Chris Hwang, 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.



AFFIDAVIT OF SERVICE

Gerard Darian
dba "Roostertail Restaurant", Appellant
1963 Sutter Street
San Francisco, CA 94115

I, Victor F. Pacheco, Legal Assistant for the Board of Appeals, hereby certify that on this 4th day of **June, 2013**, I served the attached Notice(s) of Decision & Order for Appeal No(s). 13-035, "Roostertail Restaurant" vs. DPH, subject property at 1963 Sutter Street, on the appellant(s) by mailing a copy via U.S. mail, first class, to the address above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Francisco, California.

6/04/2013
Date

[Signature]
Victor F. Pacheco

cc: Dept. of Public Health – Occupational / Environmental Health Section

OTHER PARTIES
OR CONCERNED CITIZENS:

Dept. of Public Health, Respondent
c/o Aleeta Van Runkle, Attorney for Respondent
1390 Market Street, 7th Floor
San Francisco, CA 94102

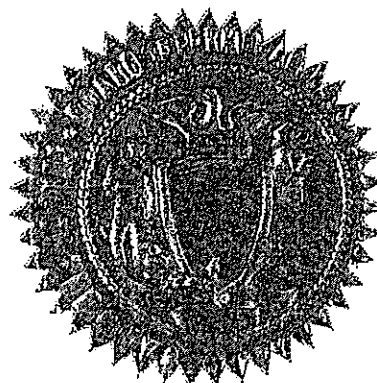


EXHIBIT I



San Francisco City and County
Department of Public Health

Environmental Health Section
Consumer Protection Program

FILE

Jwin M. Lee, Mayor
Barbara A. Garcia, MPA,
Director of Health

Rajiv Bhatia, M.D., M.P.H.
Director of Environmental Health

August 12, 2013

Tracy Green and Gerard Darian
Rooster Tail
1963 Sutter Street
San Francisco, CA 94115

Subject: Noise Complaint
Rooster Tail
1963 Sutter Street, San Francisco

Dear Ms. Green and Mr. Darian:

The San Francisco Board of Appeals "Affidavit of Service", dated June 4, 2013, denies your appeal regarding a variance from the San Francisco Police Code, Article 29, Regulation of Noise. Ambient noise measurements taken at the property plane were found to be 45 dBA. Equipment noise levels from your facility were found to be 56 dBA, 11 dbA above the allowable 8 dBA. Other measurements taken at 1959 Sutter Street by an acoustical professional were similar.

Based on the above information, within 30 days you must submit a plan to address noise emanating from exhaust and heating and ventilation systems. Upon approval by the San Francisco Department of Public Health, Environmental Health Protection, Equity and Sustainability, you will have 30 days to implement your plan to decrease noise.

No later than September 13, 2013, a plan that addresses the excess noise shall be submitted. Failure to comply shall result in the suspension of your Health Permit to Operate as a Food Facility.

Should you have any questions, please contact Inspector Zachary Parsons, at (415) 252-3848.

Sincerely,

Richard J. Lee, MPH, CIH, REHS
Director of Env. Health Regulatory Programs

Barbara Garcia, MPH
Director of San Francisco Department of Public Health



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH

Gavin Newsom, Mayor
Mitchell H. Katz, M.D., Director of Health

Rajiv Bhatia, M.D., M.P.H.,
Director of Environmental Health

CITATION TO APPEAR AT HEARING ON: 2/12/13

Premises address: 1963 Sutter St **DBA:** Rooster Tail
Gerrard & Tracy Darian
Owner/Operator:

Chronology of events leading to issuance of citation:

Date	Code Section	Current Violation(s)	Action Taken
9/19/12		Noise complaint joint inspection w Inspector Freschet (Indoor).	None. In compliance
12/5/12	Article 29	Noise complaint (outdoor) joint inspection w Inspector Harris. Facility found to be 3dB over allowable limit.	Facility given 30 days to correct problem or apply for variance.
12/26/12		Facility submits incomplete variance	Facility asked to submit further information
2/1/13		No other information submitted by facility. Joint site visit w Inspector Harris	Citation for abatement conference issued

Inspector: Z Parsons
APPROVED: *[Signature]* Principal Inspector, HC# 3
3 dB over ambient, request
Recommended Action:

This form to be submitted to Central Office along with a copy of each citation

EXHIBIT J



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH

Edwin M. Lee, Mayor
Barbara A. Garcia, MPA, Director of Health
Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director

April 25, 2014

Gerard Darien, Owner
Roostertail Restaurant
1963 Sutter Street
San Francisco, CA 94115

Re: Exhaust Fan/Ductwork Noise Complaints at 1963 Sutter Street

Dear Mr. Darien:

The Department of Public Health reviewed the Roostertail Restaurant's Variance Application received on March 28, 2014 and discussed at the April 22, 2014 Environmental Health Branch Abatement Conference. San Francisco Police Code Article 29 governs the noise standards in San Francisco. Article 29, Section 2909 (b) (Commercial and Industrial Property Noise Limits) sets the noise standard for mixed residential and industrial uses at 8 dBA over ambient: "No person shall produce or allow to be produced by any machine or device, music or entertainment or any combination of same, on commercial or industrial property over which the person has ownership or control, a noise level more than eight dBA above the local ambient at any point outside of the property plane." Article 29, Section 2901 (a) defines the applicable ambient standards; for this location the minimum ambient level is 45 dBA.

I understand that in response to earlier violation, abatement work was completed in mid-January, 2014 and consisted of wrapping the exhaust system duct in the adjacent lightwell with acoustical duct lagging. As we wrote in our February 13, 2014 letter to you, our followup investigation determined that the abatement work had reduced the sound to 57.7 dBA in the lightwell and to 59.1 dBA at the roof. As we wrote in that letter, and as we discussed at the Abatement Conference, the lightwell is not an enforceable location for sound level measurements because it does not meet the standard set in Article 29, Section 2902. In addition, while there remains a violation on the roof, there is no receptor at this location and hence no public health hazard; as the distance from the sound source increases, the sound level resulting from the source decreases and would be insignificant upon reaching any human receptor.

Based on the facts presented at the Abatement Conference, the variance is denied and you are required to bring the rooftop noise to compliance with Article 29, as described in Option A below. While this variance is denied, in the event of future complaints a variance for compliance on the roof will be granted if you perform additional abatement work in the lightwell as described in Option B below.

Option A – Reduce the noise level such that the operating sound level is within 8 dBA of both the daytime and nighttime ambient sound level as measured from the roof of the adjacent property.

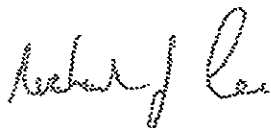
Option B – Perform additional abatement work in the lightwell by extending the acoustical duct wrapping to the full length of the ductwork (up to the fan).

If you choose Option A, we will schedule a re-inspection of the property for **May 28 2014** to verify if the sound level at the roof is within 8 dBA of the daytime ambient; we will also schedule an inspection for the evening to verify if the sound level at the roof is within 8 dBA of the nighttime ambient. If you choose Option B, we will schedule a re-inspection of the property for **May 28 2014** to verify installation of the duct wrapping to the full length of the ductwork.

Failure to comply with this order will be subject to penalties as described in Article 29, Section 2917 of the San Francisco Police Code.

Under San Francisco Police Code Section 2910, you may appeal this decision within 15 days to the Board of Appeals.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard J. Lee".

Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director

EXHIBIT K



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH

Edwin M. Lee, Mayor
Barbara A. Garcia, MPA, Director of Health
Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director

June 4, 2014

Gerard Darien, Owner
Roostertail Restaurant
1963 Sutter Street
San Francisco, CA 94115

Re: Exhaust Fan/Ductwork Noise Complaints at 1963 Sutter Street

Dear Mr. Darien:

Shortly after an abatement conference on April 22, 2014, your application for variance from the San Francisco Noise Ordinance (Article 29, Section 2909) was denied. In a letter dated April 26, 2014, Environmental Health illustrated specific options for compliance. The option you pursued is as follows:

Option B- Perform additional abatement work in the lightwell by extending the acoustical duct wrapping to the full length of the ductwork (up to the fan).

The date for compliance set by Environmental Health was March 28, 2014. It is our understanding that, currently, the requirements in the option above have not been met due to complications with material manufacturing and availability. Because of this, you are now subject to the following absolute deadline and requirements:

No later than Tuesday, July 1, 2014, you must install additional acoustical duct wrapping around the full length of the ductwork. Failure to comply by this date shall result in the suspension of your permit to operate until the abatement work is completed and verified by Environmental Health staff.

Should you have any questions, please contact Industrial Hygienist Jonathan Piakis at (415) 252-3911.

Sincerely,

Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director



EXHIBIT L



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH

Edwin M. Lee, Mayor
 Barbara A. Garcia, MPA, Director of Health

Richard J. Lee, MPH, CIH, REHS
 Acting Environmental Health Director

July 23, 2014

Gerard Darian, Owner
 Roostertail
 1963 Sutter Street
 San Francisco, CA 94115

RE: 1963 Sutter Street – Noise Violation Abatement Work

Dear Mr. Darian:

At the Abatement Conference Hearing on July 8, 2014, it was determined that the work necessary to abate the violation of the San Francisco Noise Ordinance (Police Code, Article 29) was not complete. In accordance with staff recommendations, I granted an extension of 15 business days resulting in the deadline for completion of July 28, 2014.

On July 18, 2014, Inspector Piakis confirmed that the abatement work, consistent with the third-party acoustical consultant's recommendations, had been completed (see figures below). Therefore, the violation is abated and the mechanical exhaust system in use at 1963 Sutter Street (Roostertail Restaurant) is considered to be in compliance with City noise limits. No further action is required at this time.



Abatement work consisting of the installation of acoustical duct lagging along the entirety of the mechanical exhaust system's external ductwork.

Our letter dated April 26, 2014 explained that if the remainder of the external ductwork was wrapped to decrease the noise closest to the residential receptor, a variance would be considered for the rooftop fan noise. Environmental Health has reviewed the noise variance application filed on July 18, 2014 and supporting materials detailing abatement costs of approximately \$8000. We have found that your request has sufficient merit and therefore grant Roostertail Restaurant (1963 Sutter Street) a noise variance under the conditions set forth below. Failure to implement the following conditions may result in revocation of this variance and the institution of enforcement penalties:

AIR, NOISE AND RADIATION PROGRAM

1390 Market Street, Suite 210 San Francisco, CA 94102

Phone 415-252-3800, Fax 415-252-3894





- Continue to perform routine, regular maintenance of the mechanical equipment in accordance with the manufacturer's recommendations
- Inform Environmental Health staff prior to the addition, relocation, substitution, or any other alteration of rooftop mechanical equipment.

This variance applies only to the mechanical exhaust system and equipment configuration as of July 23, 2014. The variance will be effective upon receipt of a signed copy of this letter and subject to any appeals filed in the 15 days following. At our discretion, Environmental Health may rescind this variance if it is determined that Roostertail Restaurant has violated the above terms. Please direct any questions or concerns to Jonathan Piakis (Jonathan.Piakis@sfdph.org).

Sincerely,

Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director

Roostertail Restaurant understands and agrees to comply with the terms of this variance.

GERARD DARIAN

Print

Signature

Date

7/24/2014

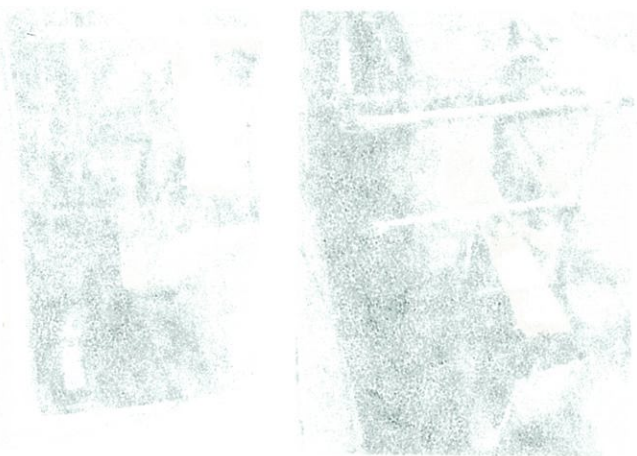


EXHIBIT M

Acoustics
Audiovisual
Telecommunications
Security

23 August 2014

Michiko Yamada
1959 Sutter Street
San Francisco, CA

Subject: **1959 Sutter Street Noise Ordinance Compliance, San Francisco
Restaurant Fan Noise Measurements**
CSA Project: 12-0478

Dear Michiko:

On 31 July 2014, we visited your home to measure the noise from Roostertail Restaurant rooftop exhaust fan. Previously all three ducts were exposed sheet metal and running vertically in the common light well between your unit and the restaurant. The City required that Roostertail implement noise reducing measures. As a response to the City's direction, Roostertail wrapped one of the three ducts in the light well. This letter summarizes the results of our measurements.

MEASUREMENTS

Using a type I sound level meter, Larson Davis model 824, set to a "slow response", we measured the noise from the fan exhaust fans in the light well and on the roof. These locations are consistent with the City health officer measurements. Table 1 below lists the results of our most recent measurements. We provided both A-weighting and C-weighting, as requested.

Table 1 – Measurement Summary

Location	Noise Level	
	dBA	dBC
Inside the Light Well	60 dBA	75 dBC
On the Roof	59 dBA	71 dBC

ANALYSIS

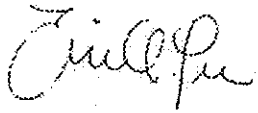
The noise levels remain relatively unchanged after wrapping only one of the three ducts. The noise at these locations is the sum of all three fans and their ductwork. It is possible that the wrapped ductwork was not the loudest duct. Further study would be required to determine which duct(s) controls the noise at these locations. Without a detailed analysis, all ducts must be wrapped with the mass-loaded vinyl material. In addition, we also recommend that the restaurant verify that the proper vibration isolation was installed correctly. Improperly isolated fans could impart structural vibration, which reradiates as noise.

Charles M. Salter, PE
David R. Schwand, EAES
Eric L. Brassburn, PE
Philip N. Sanders, LEED AP
Thomas A. Schenker, PE
Anthony P. Masi, PE
Cristina L. Myer
Jason R. Dury, PE
Darned R. Bogard, PhD, EAES
Joseph G. D'Angelo
Thomas J. Corbett, CTS
Eric A. Yeo
Joshua M. Rippe, PE, LEED AP
Peter K. Maly, PE, LEED AP
Christopher A. Parker, PE
Elissa C. Salter, PE, LEED AP
Thomas D. Keller, CDT
Craig L. Gilman, RCDD
David B. Ransia
Alexander K. Salter, PE
Jeremy L. Decker, PE
Rafel Hernandez, PSP, NICET III
Michael S. Chao
Dylan B. Mills, CTS
David H. Keith, CTS-D
Paul R. Billings
Erika A. Frodenick
Benjamin D. Piper
Elizabeth S. Kolson
Noel J. Stanton
Joshua J. Harrison
Brian C. Weirans
Valerie C. Smith
Shanna M. Sullivan
Amanda G. Haysie
Ryan G. Raskop, LEED AP
Diego Hernandez
Ryan A. Schafeld
Brian J. Good
Heather A. Salter
Dew J. Garcia
Cristina S. Sporkack
Marva De Vaez - Noordzee
Elizabeth F. Tracker
Jennifer G. Palmer
Jadessa G. Cortez
Susan E. Sotergan
Courtney H. Vineys
Eric D. Clifton
Angan C. Sadas

This concludes our current comments on the subject project. Please contact us if you have any questions.

Sincerely,

CHARLES M. SALTER ASSOCIATES, INC.



Eric A. Yee
Principal Consultant

2014-08-22 1959 Sutter Street Fan Noise Measurements

Acoustics
Audiovisual
Telecommunications
Security

.....
130 Sutter Street
Floor 5
San Francisco, CA
94104
T 415.397.0442
F 415.397.0454
www.cmsalter.com

EXHIBIT N

Acoustics
Audiovisual
Telecommunications
Security

2 May 2014

Michiko Yamada
Email: michiko_yamada@sbcglobal.net

Subject: **1959 Sutter: Roostertail Exhaust Fan Noise Evaluation**
CSA Project: 12-0478

Dear Michiko:

At your request, we visited your home at 1959 Sutter on 30 April 2014 to meet with the San Francisco Department of Health inspectors. We have prepared this report comparing ambient noise on the roof your property with and without rooftop equipment from the adjacent restaurant, Roostertail (1963 Sutter Street), in operation. The purpose of the acoustical measurements was to evaluate compliance with the San Francisco Noise Ordinance. This letter summarizes our findings.

SUMMARY

Acoustical measurements taken on the rooftop of 1959 Sutter Street indicate that rooftop equipment from 1963 Sutter Street is not currently in compliance with the noise limits of the San Francisco Noise Ordinance.

ACOUSTICAL CRITERIA

Section 2909 of the San Francisco Police Code addresses noise relevant to the project as follows:

- Part (b): No person shall produce or allow to be produced by any machine or device, music or entertainment on commercial property over which the person has ownership or control, a noise level more than eight dBA¹ above the local ambient at any point outside the property plane.
- "Ambient" is defined in Section 2901.a as the lowest sound level repeating itself during a minimum ten-minute period in the same location as the measurement of the noise level of the source at issue.² It shall be measured with a sound level meter using slow response and "A" weighting. In addition, for the purposes of the Ordinance, it states that the exterior ambient shall not be considered to be less than 45 dBA.
- "Noise level" is defined as the maximum continuous sound level or repetitive peak sound level, produced by a source or group of sources as measured with a sound level meter.
- "Fixed source" means a machine or device capable of creating a noise level at the property upon which it is regularly located, including but not limited to: industrial and commercial process machinery and equipment, pumps, fans, air-conditioning apparatus or refrigeration machines.

¹ dBA — A-weighted sound pressure level (or noise level) represents the noisiness or loudness of a sound by weighting the amplitudes of various acoustical frequencies to correspond more closely with human hearing sensitivity. A 10-dB (decibel) increase in noise level is generally perceived to be twice as loud. A-weighting is specified by the ISO, U.S. EPA, OSHA and others for use in noise measurements.

² The San Francisco Department of Public Health has determined that the L₉₀ noise level, which is the sound level (in dBA) equaled or exceeded ninety percent of the time, is to be considered the ambient noise level.

Charles M. Salter, PE
David R. Schwies, FAES
Eric L. Broadbent, PE
Philip N. Sanders, LEED AP
Thomas A. Schindler, PE
Anthony P. Nisch, PE
Cristina L. Meyer
Jason P. Dwyer, PE
Dorand R. Boggs, PhD, FAES
Joseph G. D'Angelo
Thomas J. Corbett, CTS
Eric A. Yee
Joshua M. Rogat, PE, LEED AP
Peter K. Halot, PE, LEED AP
Ethan C. Salter, PE, LEED AP
Thomas D. Keller, CDT
Craig L. Chinn, RCDD
Lloyd B. Ranola
Alexander K. Salter, PE
Jeremy L. Decker, PE
Rob Hammond, PSP, NICEET®
Nicholas S. Chinn
Andrew J. McKee
Paul R. Blings
Valerie C. Smith
Erika A. Friedman
Benjamin G. Piper
Elizabeth S. Keston
Justin I. Harrison
Brian C. Warren
Suzanne M. Sullivan
Amanda G. Higgins
Ryan G. Backop, LEED AP
Diego Hernandez
Ryan A. Schofield
Jamaal Kinon
Brian J. Good
Heather A. Salter
Dee E. Garcia
Catherine F. Savelle
Marci De Vries - Macintosh
Elizabeth F. Tricker
Jennifer G. Palmer
Jocelyn G. Cortez
Susan E. Lomeran
Courtney H. Vineys
Erin D. Gatten
Morgan C. Smetes

SETTING

1959 Sutter Street is a residence located adjacent to the Roostertail restaurant. The exhaust fans serving the restaurant are located on the roof of 1963 Sutter Street, adjacent to 1959 Sutter Street.

ACOUSTICAL MEASUREMENTS

In order to evaluate compliance with the San Francisco Noise Ordinance, we conducted the simultaneous acoustical measurements as the Department of Health inspectors at approximately 9:15pm on 30 April 2014. Comparison acoustical measurements were taken with the fan off (ambient noise) and the fan on, near the center of the roof. You have expressed concern that the owner has adjusted the speed during noise inspections, but based on conversations during our site visit, we understand that the fan is not variable speed. The table below summarizes the measured noise levels.

Table 1: Measured Noise Levels (dBA) at 1959 Sutter Street

Location	Ambient (Fans Off)	Allowable Noise Level Per SF Noise Ordinance	Measured Noise Level with Fans On	Exceedance of SF Noise Ordinance Limits
Roof	47	55	57	2
	*	*	*	

Please contact us if you have any questions about our report.

Sincerely,

CHARLES M. SALTER ASSOCIATES, INC.



Amanda Higbie
Consultant

May 02 1959 Sutter Street Noise Ordinance Compliance Analysis

Acoustics
Audiovisual
Telecommunications
Security

130 Sutter Street
Floor 5
San Francisco, CA
94104
T 415.397.0442
F 415.397.0454
www.cmsalter.com

EXHIBIT O



CONSTRUCTION SUBCONTRACT

R3 Builders, Inc.
503 Stone Road
Benicia, CA 94510
(707) 748-2255
(707) 748-2250 Fax

To: Air Maze Services, Inc.
933 Kifer Road, Suite A
Sunnyvale CA 94086-5208
408 738-0333 408 245-0484 Fax

Date: 09/01/2011

Subcontract #: 110043-1369

Job: 110043 RoosterTail Restaurant Remodel
1963 Sutter Street
San Francisco CA 94115

Cost Code: 15510.000 New HVAC Units \$ 28,695.00
Cost Code: 15510.000 New HVAC Units \$
Cost Code: 15500.000 HVAC Distribution \$
Cost Code: 15500.000 HVAC Distribution \$
Cost Code: 15500.000 HVAC Distribution \$

ITEM 1. SCOPE.

Subcontractor agrees to furnish all labor, materials, equipment, Permits + Fees (if applicable), other facilities required per plans and specifications listed on Exhibit "A", "B", Clarifications and current City and State Codes, including but not limited to, the following:

1. Furnish and install one (1) RUUD 95AFUE forced air furnace. Model #RGTC09EZAJS which includes flue venting, plenums, hanging material, low voltage control wiring and thermostat.
2. Furnish and install a complete ductwork system above T-bar with necessary volume dampers, access doors, hangers, supports, smoke detectors, diffusers, registers and grills.
3. Furnish and install grease duct from existing duct at ceiling line to new proposes Type I Hood. (H-1)
4. Furnish and install one (1) new Type II exhaust fan on roof. (EF-2)
5. Furnish and install all ducting from Kitchen Supplier installed TypeII Hood. (H-2) All ducting will start at Type II hood outlet and then travel out and up the existing light well and connect to new exhaust fan (EF-2). Secure all ductwork on outside light well wall.
6. Furnish and install one (1) outdoor make-up unit (MUA-1) on roof which includes the following: Furnish and install one (1) roof curb on customer provided platform. All framing, platform, roofing and structural by others. All ducting will start at Type I hood Perforated Supply Plenums (3) and then travel out and up the existing light well. Ducting will terminate at new make-up air unit on roof. Secure all ductwork on outside light well wall.
7. Furnish and install one (1) ceiling mount exhaust fan for unisex bathroom and all ducting.
8. Furnish one (1) neutralizer kit and installed by plumber.
9. Furnish crane and all rigging to place make-up air unit and exhaust fan on roof.
10. Air balance for make-up air, Type I and Type II hood with full written report.
11. One (1) year warranty. ✓

CHANGE ORDER \$ 21,675
 " " \$ 2511
 " " \$ 1263

Total \$ 54,144

SECTION 2. PRICE. \$ 28,695.00

(If contract is for time and material - See Note A)

EXHIBIT P

San Francisco Department of Public Health - Environmental Health Section

District Number: _____

Food Inspection Report

General In.r.o. # 252-3800

Address: _____

Inspector Number: _____

Telephone Number: _____

Facility Address 1963 SUTTER ST.					Facility Number		Inspection Date 11/29/11						
Business Name ROOSTERIE POTISSEME					Phone Number		Re-Inspection Date						
Owner Name DALIAN					Program Element		Health Program ID						
Facility: <input type="checkbox"/> Add to Inventory			<input type="checkbox"/> Remove from Inventory			<input type="checkbox"/> Update Program							
Violations (Mark each one that applies)					Service Code		Action Code		Results Code				
Structural					Operational		301 Routine Initial Insp.		01 Close Until Abated		00 Not Applicable		
Min	Max	Structure	Min	Max	302 Re-Inspection		02 To Be Re-inspected		04 Meets Standard		05 Failed to Meet Standards		
101	102	Floors	103	104	303 Complaint Inspection		03 No Violation		05 Failed to Meet Standards				
105	106	Walls	107	108	304 Complaint Re-Inspection		04 Abated		License		Posted Not Posted		
109	110	Ceilings	111	112	305 Construction		05 Impound		Valid		Not Valid		
113	114	Ventilation	115	116	306 Consultation		06 Citation Issued		Permit		Posted Not Posted		
117	118	Plumbing	119	120	307 Epidemiological								
121	122	Toilet	123	124	308 Product Recall								
125	126	Hand Washing	127	128	402 Survey								
129	130	Change Room	131	132	The Following Items Represent Health Code Violations and Must Be Corrected							Date	
133	134	Waste Disposal	135	136	By The Indicated Dates:								
137	138	Lighting	139	140	BUILDING PERMIT # 2011 OF 28 9/15								
141	142	Janitorial Facility	143	144	AS PER BUILDING PERMIT, WORK HAS BEEN COMPLETED								
Sanitation													
201	202	Storeroom	203	204									
205	206	Display	207	208									
209	210	Temperature-Cooking	211	212									
213	214	Temperature-Holding	215	216									
217	218	Refrigeration	219	220									
221	222	Storage Methods	223	224									
225	226	Thermometers	227	228									
229	230	Prep/Service	231	232									
233	234	Cross Contamination	235	236									
237	238	Transportation	239	240									
241	242	Adulteration	243	244									
Dishware/Equipment													
301	302	Storage	303	304									
305	306	Utensils	307	308									
309	310	Equipment	311	312									
313	314	Utensils-Wash	315	316									
317	318	Utensils-Sanitation	319	320									
Methods													
321	322	Temperature	323	324									
325	326	Chemical	327	328									
Vermin													
401	402	Rodents	403	404									
405	406	Insects	407	408									
409	410	Other Animals	411	412									
Employees													
		Smoking	501	502									
		Outer Garments	503	504									
		Hair Confined	505	506									
		Diseases	507	508									
		Certified Food Handler	509	510									
Other													
		Smoking	601	602									
		Signs	603	604									
605	606	Hazardous Materials	607	608									
609	610	Noise	611	612									
613	614	Sewage	615	616									

Time In: _____ Time Out: _____ Total Time: _____

Inspector

Received By

Additional Health Code Violations and Corrective Actions Described on Attached Page(s)

Page _____ of _____

jeb5/98

APPLICATION NUMBER

OSHA APPROVAL NO.

APPROVED FOR ISSUANCE

HS DAD
201072406, 200344229

APPLICATION FOR BUILDING PERMIT ADDITIONS, ALTERATIONS OR REPAIRS

CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF BUILDING INSPECTION

FORM 3 OTHER AGENCIES REVIEW REQUIRED

FORM 8 OVER-THE COUNTER ISSUANCE

2 NUMBER OF PLAN SETS

APPLICATION IS HEREBY MADE TO THE DEPARTMENT OF BUILDING INSPECTION OF SAN FRANCISCO FOR PERMISSION TO BUILD IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS SUBMITTED HERewith AND ACCORDING TO THE DESCRIPTION AND FOR THE PURPOSE HEREINAFTER SET FORTH

DO NOT WRITE ABOVE THIS LINE

DATE FILED 6-28-11	PLUMB PER RECEIPT NO.	(1) STREET ADDRESS OF JOB 1417 GATEWAY	BLOCK & LOT 2011-11
PERMIT NO.	ISSUED	(2A) ESTIMATED COST OF JOB 18,750	(2B) REVISED COST: BY: 4/19/11 DATE: 6/28/11

INFORMATION TO BE FURNISHED BY ALL APPLICANTS

LEGAL DESCRIPTION OF EXISTING BUILDING					
(4A) TYPE OF CONSTR. VE	(5A) NO. OF STORIES OF OCCUPANCY 3	(6A) NO. OF BASEMENTS AND CELLARS 0	(7A) PRESENT USE RESTAURANT	(8A) OCCUP. CLASS F-102	(9A) NO. OF DWELLING UNITS 8
DESCRIPTION OF BUILDING AFTER PROPOSED ALTERATION					
(4) TYPE OF CONSTR. RIL	(5) NO. OF STORIES OF OCCUPANCY 3	(6) NO. OF BASEMENTS AND CELLARS 0	(7) PROPOSED USE (LEGAL USE) RESTAURANT	(8) OCCUP. CLASS L-102	(9) NO. OF DWELLING UNITS 8
(10) IS AUTO FEEDWAY TO BE CONSTRUCTED OR ALTERED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(11) WILL STREET SPACE BE USED DURING CONSTRUCTION? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	(12) ELECTRICAL WORK TO BE PERFORMED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	(13) PLUMBING WORK TO BE PERFORMED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
(14) GENERAL CONTRACTOR P. MILLER	ADDRESS 500 BAYVIEW BLVD	ZIP 94133	PHONE 415-774-1111	CALIF. LIC. NO. 15100	EXPIRATION DATE
(15) OWNER + LESSEE (CHOOSE ONE) RELATIONSHIP	ADDRESS 1417 GATEWAY	ZIP 94133	PHONE FOR CONTACT BY DEPT.		
(16) WRITE IN DESCRIPTION OF ALL WORK TO BE PERFORMED UNDER THIS APPLICATION (REFERENCE TO PLANS IS NOT SUFFICIENT) REMOVE EXISTING PART OF PLUMB. AND ELECTRICAL WORK, REST. ETC. UNLESS NOTED OTHER WORK (E.G. INTERIOR PARTITIONS) TO BE DONE BY PERM. TO REPAIR MEP UNDER SEPARATE PERMIT					
ADDITIONAL INFORMATION					
(17) DOES THIS ALTERATION CREATE ADDITIONAL HEIGHT OR STORY TO BUILDING? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(18) IF (17) IS YES, STATE NEW HEIGHT AT CENTER LINE OF FRONT FT.	(19) DOES THIS ALTERATION CREATE DECK OR PORCH, EXTENSION TO BUILDING? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(20) IF (19) IS YES, STATE NEW GROUND FLOOR AREA SQ. FT.		
(21) WILL SIDEWALK COVER SUB-GENERALLY SPACE BE REQUIRED OR ALTERED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(22) WILL BUILDING EXTEND BEYOND PROPERTY LINE? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(23) ANY OTHER EXISTING BLDG. OR LOT? (IF YES, SHOW ON PLAN) YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(24) DOES THIS ALTERATION CONSTITUTE A CHANGE OF OCCUPANCY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
(25) ARCHITECT OR ENGINEER (DESIGN) <input type="checkbox"/> CONSTRUCTION <input checked="" type="checkbox"/> JAMES P. ...	ADDRESS 3000 ...	CALIF. CERTIFICATE NO. ...			
(26) CONSTRUCTION LEADER (ENTER NAME AND BRANCH DESIGNATION IF ANY, IF THERE IS NO KNOWN CONSTRUCTION LEADER, ENTER "UNKNOWN") JA					

IMPORTANT NOTICES

No change shall be made in the character of the occupancy or use without first obtaining a Building Permit authorizing such change. See San Francisco Building Code and San Francisco Housing Code.

No portion of building or structure or scaffolding used during construction, to be closer than 6'0" to any wire containing more than 750 volts. See Sec 385, California Penal Code.

Pursuant to San Francisco Building Code, the building permit shall be posted on the job. The owner is responsible for approved plans and application being kept at building site.

Check these as shown on actual grade lines and send file together with as submitted to this department

ANY STIPULATION REC

BUILDING NOT TO BE ON THE BUILDING OR

APPROVAL OF THIS AP

WITHIN OR PLUMBING

MUST BE OBTAINED. &

ABOVE QUESTIONS (10

THIS IS NOT A BUILDING

ISSUED.

In drawings all including

electrical wires or equip

CHECK APPROPRIATE:

OWNER

LESSEE

CONTRACTOR

I HEREBY CERTIFY AND

DESIGNED BY THE APPLICANT

AND ORDINANCES THIS

8003-03 (REV. 1/02)

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 or County of San Francisco against all such claims, demands or actions.

In conformity with the provisions of Section 2800 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 worker's compensation, as provided by Section 3700 of the Labor Code, for the performance of the work for which the 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 the 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.

(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 therewith with the provisions of Section 2800 of the Labor Code, that the permit herein applied for shall be deemed voided.

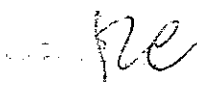

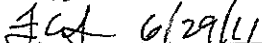

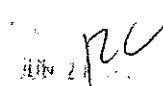
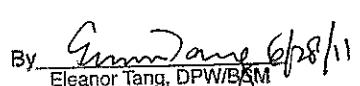
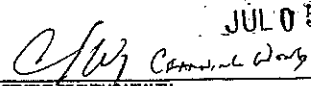
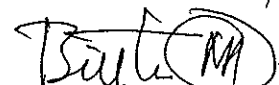
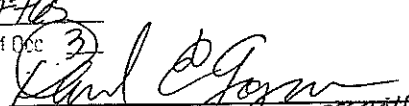
(V) I certify as the owner (or the agent for the owner) that in the performance of the work for which this permit is issued, I will employ a contractor who complies with the workers' compensation laws of California and who, prior to the commencement of any work, will file a completed copy of this form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

Signature of Applicant or Agent _____

Date _____

3 COPY

CONDITIONS AND STIPULATIONS

REFER TO:	APPROVED:  BUILDING INSPECTOR, DEPT. OF BLDG. INSP.	DATE: 6/29/11 REASON: OK To Process L.F.
<input type="checkbox"/>	APPROVED: TI - full sewer system change of owners - not formula retail. No change of use. Release rear door. No outside ready prepared under this point.  DEPARTMENT OF CITY PLANNING	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input checked="" type="checkbox"/>	APPROVED: OCCUPANT LOADS IS LESS THAN 50 THEREFORE, OCCUPANCY OF RESTAURANT IS A B OCCUPANCY N/A  BUREAU OF FIRE PREVENTION & PUBLIC SAFETY	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input checked="" type="checkbox"/>	APPROVED:  TONY LIANG, DBI JUN 28 2011 MECHANICAL ENGINEER, DEPT OF BLDG. INSPECTION	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED:  CIVIL ENGINEER, DEPT. OF BLDG INSPECTION	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input checked="" type="checkbox"/>	APPROVED: As noted on plans. By:  Eleanor Tang, DPW/B&M BUREAU OF ENGINEERING	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED: As Noted on Approved Plans ✓ JUL 05 2011  DEPARTMENT OF PUBLIC HEALTH	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input type="checkbox"/>	APPROVED:  Bill Yee 6/29/11 REDEVELOPMENT AGENCY	DATE: _____ REASON: _____ NOTIFIED MR. _____
<input checked="" type="checkbox"/>	APPROVED: Legal use per CFC# 467765 No. of units 8 Flrs of Occ 3  HOUSING INSPECTION DIVISION	DATE: _____ REASON: _____ NOTIFIED MR. _____

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

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

OWNERS AUTHORIZED AGENT

PROJECT & SITE DATA

SITE INFORMATION:

PROJECT ADDRESS: 1963 SUTTER STREET
 BLOCK/LOT: 0684/042
 ZONING CLASSIFICATION: NC-3
 LOT AREA: 4,342 S.F.

BUILDING INFORMATION:

HISTORICAL INFORMATION: CALIFORNIA REGISTER
 1976 SAN FRANCISCO PLANNING DEPARTMENT
 SURVEY LISTED AS AN ARCHITECTURALLY
 SIGNIFICANT BUILDING

EXISTING OCCUPANCY: MIXED USE, COMMERCIAL & RESIDENTIAL
B RESTAURANT @ 1ST FLOOR EAST (PROJECT AREA)
B BUSINESS @ 1ST FLOOR WEST (NO WORK)
R-2 (8) RES. UNITS @ 2ND & 3RD FLOORS (NO WORK)

PROPOSED OCCUPANCY: NO CHANGE FROM EXISTING

CONSTRUCTION TYPE: VB

SPRINKLER SYSTEM: NONE REQUIRED PER 2010 CBC SEC. 508.4

EXISTING STORIES (BUILDING): 3
 PROPOSED STORIES (BUILDING): 3

EXISTING STORIES (PROJECT): 1
 PROPOSED STORIES (PROJECT): 1

EXISTING FLOOR AREA: 1,379 S.F.
 PROPOSED FLOOR AREA: 1,379 S.F.

APPLICABLE CODES:

2010 California Building Code
 (Based on the 2010 International Building Code)
 2010 California Plumbing Code
 2010 California Electrical Code
 2010 California Mechanical Code
 2010 California Energy Code
 San Francisco Building & Planning Codes

By Eleanor Tang 6/28/11
 Eleanor Tang, DPW/BSM

SEPARATE BUILDING MEP (HVAC, and/or LIGHTING PERMIT(S))
 REQUIRED FOR [] Entire Building
 [] Part of building:
 Unless such permit(s) approved by DBI Mechanical Plan Check Division,
NO SUCH CONSTRUCTION IS ALLOWED. Before construction,
 call District Building Inspector (415) 558-6096

PROJECT DESCRIPTION:

THIS APPLICATION IS BEING SUBMITTED TO THE PLANNING & BUILDING DEPARTMENTS OF THE CITY OF SAN FRANCISCO FOR PLAN CHECK REVIEW.

THIS APPLICATION IS LIMITED TO A PROPOSED REMODEL OF AN EXISTING RESTAURANT.

THE SCOPE OF DEMOLITION WORK INCLUDES REMOVAL OF EXISTING INTERIOR PARTITION WALLS (NON-STRUCTURAL), INTERIOR FINISHES & FIXTURES, REAR EXTERIOR WINDOWS, AND PATIO TREES & FENCE.

THE SCOPE OF PROPOSED WORK INCLUDES CONSTRUCTION OF NEW INTERIOR PARTITION WALLS (NON-STRUCTURAL), NEW KITCHEN, NEW BATHROOMS, NEW INTERIOR FINISHES & FIXTURES, (N) WINDOWS AT REAR, (N) EXTERIOR DOORS, AND (N) CONC. SLAB, FENCE & PLANTERS AT PATIO.

NO CHANGES ARE PROPOSED TO THE FRONT FACADE OF THE BUILDING.

PROJECT DIRECTORY

TENANT / RESTAURANT OWNERS:
 GERARD & TRACY DARIAN
 723 12TH AVENUE
 SAN FRANCISCO, CA 94118
 T: 415.938.5906
 E: jebtriley@yahoo.com

BUILDING OWNER:
 GERALD K. DOWD
 P.O. BOX 117057-057
 BURLINGAME, CA 94011
 T: 650.796.3024

GENERAL CONTRACTOR:

R3 BUILDERS
 503 STONE ROAD
 BENECIA, CA 94510
 BARRY NASH
 O: 707.748.2255
 C: 707.301.7259
 E: bnash@r3builders.com

ARCHITECT:

ARCHITECTS II
 3444 BRODERICK STREET
 SAN FRANCISCO, CA 94123

JENNIFER BUTLER
 T: 415.505.0763
 E: jbutlerdesign@gmail.com

STACY JED
 T: 650.224.8680
 E: stacyjed@yahoo.com

TONY LIANG, DBI

JUN 28 2011

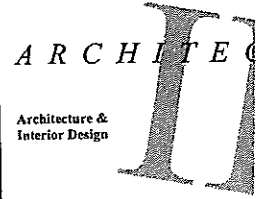
ROBERT

JUN 28 2011

ROOSTER
 ROTISSEI

SHEET INDEX:

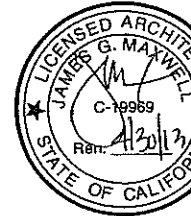
- A0.1 Project Information & Site Plan
- A0.2 General Notes & Information
- A0.3 Occupancy & Exiting Information
- A0.4 Accessibility Information
- A2.0 Demolition & Construction Plans, Wall Types
- A2.1 Furniture & Equipment Plans



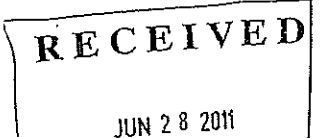
Architecture &
 Interior Design

ARCHITECTS II 415.441.0848
 3444 Broderick Street, San Francisco, Cal

Drawings and Specifications as instrument are and shall remain the property of ARCHITECTS II whether the project for which they are executed or not. No such document is to another project, in whole or in part, or as drawings by others, except by written agreement of ARCHITECTS II.

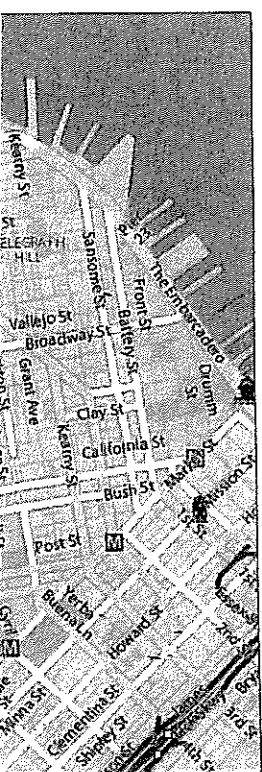
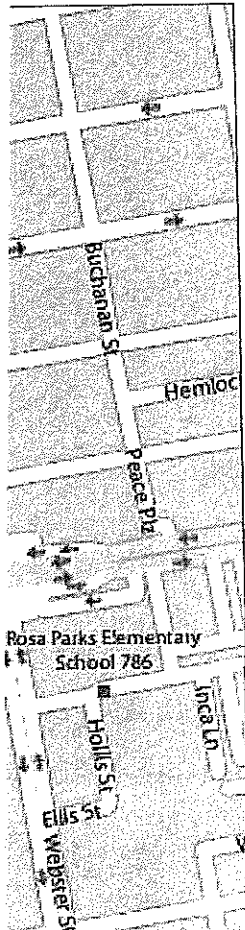


SEE PAGE A:
 FOR HEALTH DEPT
 COMMENTS
 CPW/SPHENC
 252-38167



1963 Sutter St
 San Francisco, Ca

PROJECT



(E) SIDEWALK

EXTERIOR SIGNAG
SIDEWALK SEATING
UNDER SEPARATE

(E) STA
(TO UPS)
NO WOR

EXIT P.
SEE AT
DISTAI

CLOS.
STOR-1

ACCESSIBLE SEAT
30" X 48" CLEAR

DINING

KITCHEN

CASHIER

FOOD
STORAGE

WALK
SERVICE
BAR/
TO-GO
PICKUP

SCULLERY

STOR-2

ACCESSIBLE
SEAT 20" X
48" CLEAR

ACCESSIBLE
ENTRY

TELECOM / ELECT.

(E) BREEZEWAY
(NO WORK)

(E) STOR.
(NO WORK)

LOCAL
RANK
CHAS
PROV
DUCT
HOOI
VERT

Section

1/4 inches
areas,
walk in boxes. - RUBBER BASE IS NOT APPROVED
smooth,
service areas,
boxes. - REQUIRE SEMI-COMM LIGHT COLUMN FINISH
filling for review IN FOOD SERVICE AREAS

locate indirectly

re necessary to
S.

SECURITY

comply
of SUBMIT RECONSTRUCTION REPORT FOR REVIEW

and

for

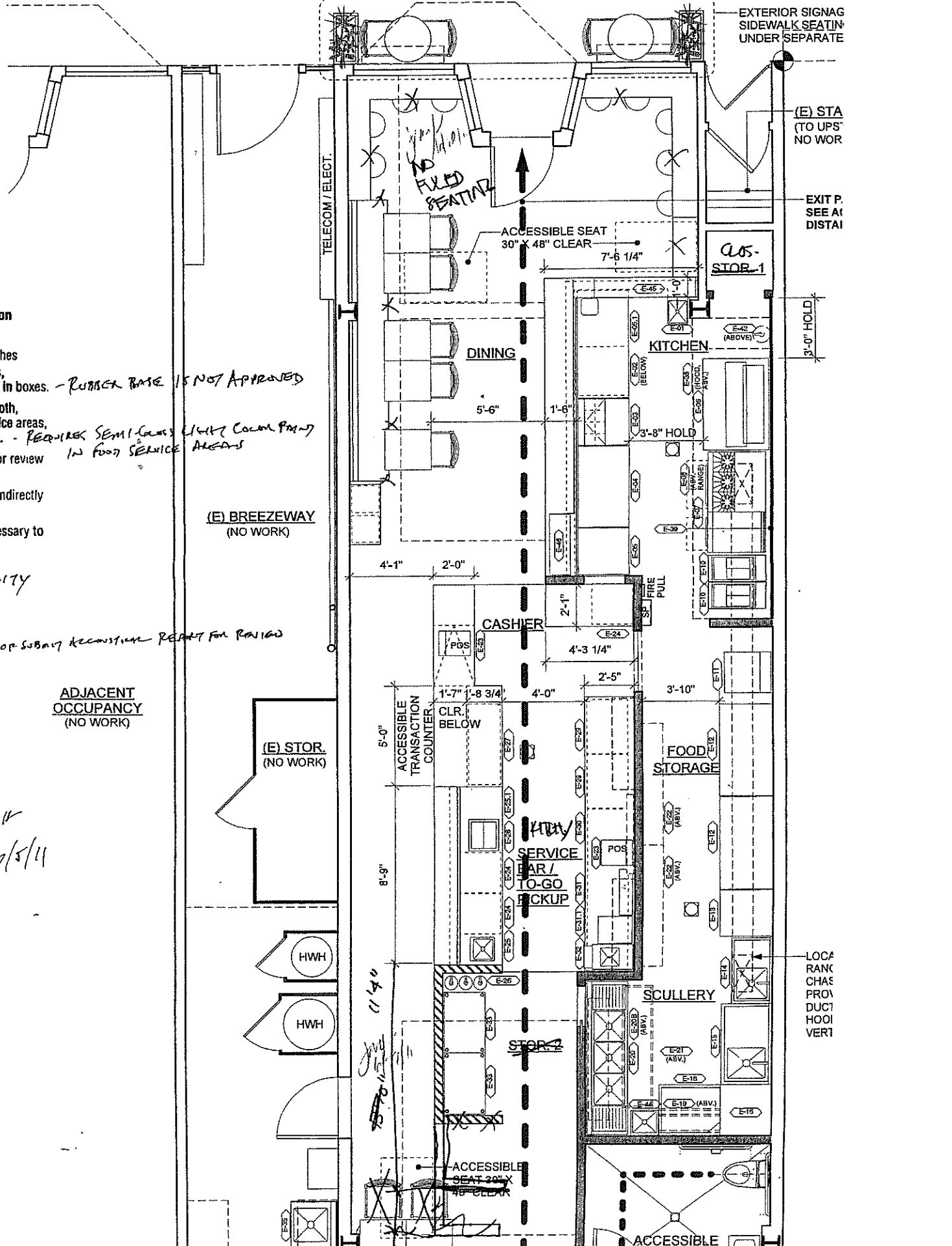
ADJACENT
OCCUPANCY
(NO WORK)

and

7/5/11

7/5/11

11'40"
15'0" / 15'0"



RUBBER BASE IS NOT APPROVED

REQ SEMI-GLOSS LIGHT COLOR FINISH
IN FOOD SERVICE AREAS

1. RECONSTRUCTION REPORT FOR REVIEW

ADJACENT
OCCUPANCY
(NO WORK)

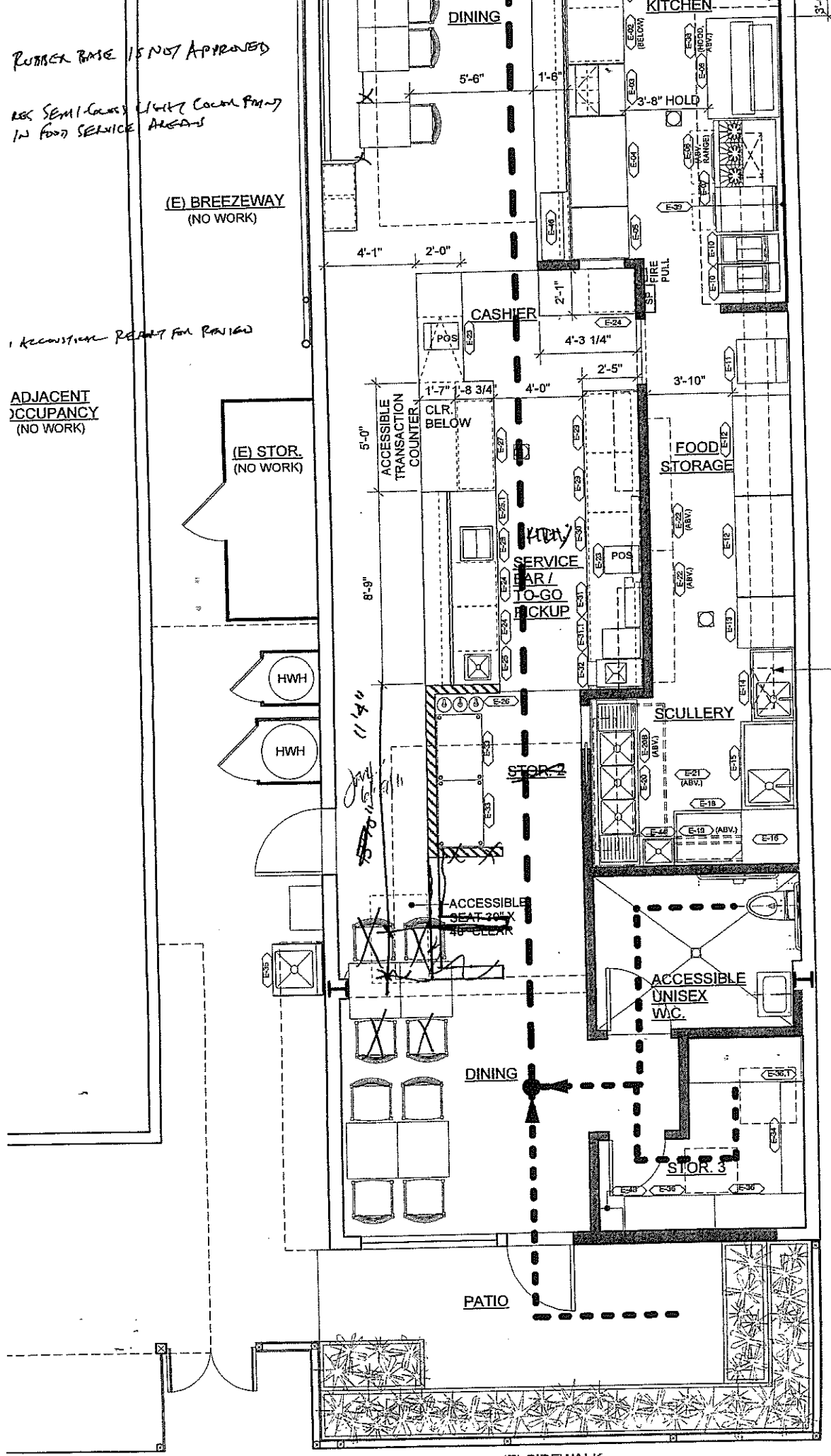
(E) BREEZEWAY
(NO WORK)

(E) STOR.
(NO WORK)

ACCESSIBLE
SEAT 20" X
48" CLEAR

ACCESSIBLE
UNISEX
W.C.

LOCATION OF
RANGE HOOD
CHASE TO R/
PROVIDE (N)
DUCT RUN FROM
HOOD EXHAUST
VERTICAL DUCT



EXTERIOR SIDEWALK

APPROVED FOR ISSUANCE

APPLICATION NUMBER
061110066819

ORCA APPROVAL RECORD
APPROVAL NUMBER:

APPLICATION FOR BUILDING PERMIT
ADDITIONS, ALTERATIONS OR REPAIRS

FORM 3 OTHER AGENCIES REVIEW REQUIRED

FORM 8 OVER-THE COUNTER ISSUANCE

NUMBER OF PLAN SETS

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF BUILDING INSPECTION

APPLICATION IS HEREBY MADE TO THE DEPARTMENT OF BUILDING INSPECTION OF SAN FRANCISCO FOR PERMISSION TO BUILD IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS SUBMITTED HERewith AND ACCORDING TO THE DESCRIPTION AND FOR THE PURPOSE HEREINAFTER SET FORTH.

DO NOT WRITE ABOVE THIS LINE AKA 1961-1969 SUTTER ST.

DATE FILED 10/6/2011	PLUMBING RECEIPT NO.	(1) STREET ADDRESS OF JOB 1963 SUTTER STREET	BLOCK & LOT 0684/042
PERMIT NO.	ISSUED	(2A) ESTIMATED COST OF JOB \$20,000	(2B) REVISED COST: BY: DATE: 10/11/11

INFORMATION TO BE FURNISHED BY ALL APPLICANTS

LEGAL DESCRIPTION OF EXISTING BUILDING							
(4A) TYPE OF CONSTR. V	(5A) NO. OF STORIES OF OCCUPANCY 3	(6A) NO. OF BASEMENTS AND CELLARS 0	(7A) PRESENT USE MIXED USE (APTS/RESTAURANT)	(8A) OCCUP. CLASS A-3	(9A) NO. OF DWELLING UNITS 8		
DESCRIPTION OF BUILDING AFTER PROPOSED ALTERATION							
(4) TYPE OF CONSTR. V	(5) NO. OF STORIES OF OCCUPANCY 3	(6) NO. OF BASEMENTS AND CELLARS 0	(7) PROPOSED USE (LEGAL USE) MIXED USE (APTS/RESTAURANT)	(8) OCCUP. CLASS A-3	(9) NO. OF DWELLING UNITS 8		
(10) IS AUTO PARKWAY TO BE CONSTRUCTED OR ALTERED?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(11) WILL STREET SPACE BE USED DURING CONSTRUCTION?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(12) ELECTRICAL WORK TO BE PERFORMED?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(13) PLUMBING WORK TO BE PERFORMED?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
(14) GENERAL CONTRACTOR AIRMAZE SERVICES 483 KIRKLAND AVE 94066 (415) 730-2333 932927 5/2013	ADDRESS	PHONE	CALIF. LIC. NO.	EXPIRATION DATE			
(15) OWNER - LESSEE (CROSS OUT ONE) GERALD DOWD P.O. Box 117057-057 BURLINGAME 94011 (650) 796-3024	ADDRESS	PHONE	STREET	PHONE FOR CONTACT BY DEPT.			
(16) WRITE IN DESCRIPTION OF ALL WORK TO BE PERFORMED UNDER THIS APPLICATION (REFERENCE TO PLANS IS NOT SUFFICIENT) INSTALL ONE (1) CLASS 1 H.O.D. DUCTING & FAN INSTALL ONE (1) CLASS 2 H.O.D. DUCTING & FAN INSTALL ONE (1) MAKE-UP AIR FAN & DUCTING INSTALL ONE (1) GAS FIRED FURNACE & DUCTING PA # 2011-06-25-9105 FOR REFERENCE.							
ADDITIONAL INFORMATION							
(17) DOES THIS ALTERATION CREATE ADDITIONAL HEIGHT ON STORY TO BUILDING?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(18) IF (17) IS YES, STATE NEW HEIGHT AT CENTER LINE OF FRONT	FT.	(19) DOES THIS ALTERATION CREATE DECK OR PORCH EXTENSION TO BUILDING?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(20) IF (19) IS YES, STATE NEW SQUARE FLOOR AREA	SQ. FT.
(21) WILL SIDEWALK DRIVE SLIP-SIDEWALK SPACE BE REPAIRED OR ALTERED?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(22) WILL BUILDING EXTEND BEYOND PROPERTY LINE?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(23) ANY OTHER EXISTING BLDG. ON LOT? (IF YES, SHOW ON PLOT PLAN)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	(24) DOES THIS ALTERATION CONSTITUTE A CHANGE OF OCCUPANCY?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
(25) ARCHITECT OR ENGINEER (CHECK ONE) RANDY WILMB	CONSTRUCTION <input checked="" type="checkbox"/>	ADDRESS 208 WILKIN STREET #410, SAN FRANCISCO 94133	CALIF. CERTIFICATE NO.				
(26) CONSTRUCTION LEADER (ENTER NAME AND BRANCH DESIGNATION IF ANY, IF THERE IS NO KNOWN CONSTRUCTION LEADER, ENTER "UNKNOWN")							

IMPORTANT NOTICES

No change shall be made in the character of the occupancy or use without first obtaining a Building Permit authorizing such change. See San Francisco Building Code and San Francisco Housing Code.

No portion of building or structure or scaffolding used during construction, to be closer than 10' to any wire containing more than 750 volts. See Sec. 395, California Penal Code.

Pursuant to San Francisco Building Code, the building permit shall be posted on the job. The owner is responsible for approved plans and application being kept at building site.

Grade lines as shown on drawings accompanying this application are assumed to be correct. If actual grade lines are not the same as shown on drawings showing correct grade lines, cuts and fills together with sensitive details of retaining walls and wall footings required must be submitted to the department for approval.

ANY STIPULATION REQUIRED HEREIN OR BY CODE MAY BE APPEALED.

BUILDING NOT TO BE OCCUPIED UNTIL CERTIFICATE OF FINAL COMPLETION IS POSTED ON THE BUILDING OR PERMIT OF OCCUPANCY GRANTED, WHEN REQUIRED.

APPROVAL OF THIS APPLICATION DOES NOT CONSTITUTE AN APPROVAL FOR THE ELECTRICAL WIRING OR PLUMBING INSTALLATIONS. A SEPARATE PERMIT FOR THE WIRING AND PLUMBING MUST BE OBTAINED. SEPARATE PERMITS ARE REQUIRED IF ANSWER IS "YES" TO ANY OF ABOVE QUESTIONS (10) (11) (12) (13) (22) OR (24).

THIS IS NOT A BUILDING PERMIT. NO WORK SHALL BE STARTED UNTIL A BUILDING PERMIT IS ISSUED.

In dwellings all heating materials must have a clearance of not less than two inches from all electrical wires or equipment.

CHECK APPROPRIATE BOX
 OWNER ARCHITECT
 LESSEE AGENT
 CONTRACTOR ENGINEER

APPLICANT'S CERTIFICATION

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

8003-03 (REV. 1/02)

NOTICE TO APPLICANT

HOLD HARMLESS CLAUSE. The permittee(s) by acceptance of this 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 or 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 (II), 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 worker's 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: INDIAN
Policy Number: 07 513 3721400371211
- (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 therewith 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.

Signature of Applicant or Agent: [Signature] Date: 10/6/2011

OFFICE COPY

EQUIPMENT SCHEDULE

NO.	QTY.	DESCRIPTION	DIMS.	MFR.	MODEL	MT
E-01	1	HAND SINK	12"W X 16 1/4"D			S
E-02	1	WARMING OVEN	25 7/16"W X 33 13/16"D X 33 9/16"H			S
E-03	1	SALAD STATION	27 1/2"W X 32"D X 35 3/4"H			S
E-04	1	UNDERCOUNTER REFRIGERATOR	48 1/2"W X 32"D X 36"H			S
E-05	1	DOUBLE REFRIGERATOR DRAWER	27 9/16"W X 31 1/16"D X 36"H			S
E-05.1	1	WORK TABLE	64"W X 36"H			S
E-06	1	ROTISSERIE	54"W X 40"D			S
E-07	1	6-BURNER GAS RANGE W/ GRIDDLE & (2) OVENS	59"W X 34 1/2"D			S
E-08	1	SALAMANDER BROILER	36"W X 18"D X 21 5/8"H			S
E-09	-	NOT USED				
E-10	2	FRYER	15 1/2"W X 30 1/2"D X 45 3/4"H			S
E-11	1	ICE MAKER	TBD			S
E-12	2	REACH-IN REFRIGERATOR	54 1/2"W X 31"D X 83"H			S
E-13	1	REACH-IN FREEZER	27 1/2"W X 31"D X 83"H			S
E-14	1	1-COMPARTMENT SINK	39"W X 24"D X 44 1/2"H			S
E-15	1	STRAIGHT-DIRTY DISH TABLE	48"W X 30"D X 44"H			S
E-16	1	LOW-TEMP. CORNER UNIT DISHWASHER	30"W X 30"D			S
E-17	-	NOT USED				
E-18	1	CLEAN DISH TABLE	36"W X 30"D			S
E-19	1	WALL-MNTD. DISH SORTING SHELF	42"W X 16"D X 8"H			S
E-20	1	3-COMP. SINK W/ (2) SIDE WASHBOARDS	90"W X 24"D X 44 1/2"H			S
E-20B	2	WALL-MNTD. STORAGE RACK	12"D X 72"W			S
E-21	1	HANGING POT RACK	72"W X 24"D			S
E-22	2	WALL-MNTD. STORAGE RACK	12"D X 72"W			S
E-23	1	POINT-OF-SALE SYSTEM				S
E-24	2	UNDERCOUNTER BEVERAGE REFRIGERATOR	24"W X 24"D X 34"H			S
E-25	1	DROP-IN BAR SINK	15"W X 15"D			S
E-25.1	1	COUNTERTOP	8'-9 3/4"W X 26"D			S
E-26	1	SODA CO2 CANISTERS	TBD			
E-27	1	4-PRODUCT SODA DISPENSING & REF. SYSTEM	TBD			S
E-28	1	DROP-IN ICE BIN	20"W X 19"D X 12"H			S
E-29	2	WINE TAP & COOLER	32"W X 24 3/4"D X 34 1/2"H			S
E-30	1	BEER / ROOT BEER REFRIGERATOR & TAPS	96" X 24 3/4"D X 34 1/2"H			S
E-31	1	4-CUP COFFEE DRIP STATION (INDIVIDUAL CUP BREW)	27-38"W X 8"D X 12-14"H			S
E-31.1	1	HOT WATER DISPENSER	TBD			S
E-32	1	SOFT-SERVE ICE CREAM MAKER	15"W X 28 3/4"D X 35 3/4"H			S
E-33	2	WIRE FOOD STORAGE SHELVES	36"W X 24"D			C
E-34	1	WIRE FOOD STORAGE SHELVES	60"W X 12"D			C
E-35	1	MOP SINK W/ SS WALLS & FLR.	TBD			S
E-36	2	WIRE FOOD STORAGE SHELVES	48"W X 18"D			C
E-36.1	1	WIRE FOOD STORAGE SHELVES	60"W X 24"D			C
E-37	1	HI-EFFICIENCY FORCED AIR FURNACE				
E-38	1	EXHAUST HOOD				S1
E-39	1	WALL LINING				S1
E-40	1	EXHAUST DUCT & BLOWER				
E-41	1	MAKE-UP AIR DUCT & FAN				
E-42	1	FIRE SUPPRESSION SYSTEM				
E-43	1	LOCKER				
E-44	1	HAND SINK				S1
E-45	1	OPEN STORAGE RACK (COUNTERTOP)	60"W X 12"D			S1
E-46	1	OPEN STORAGE RACK (COUNTERTOP)	36"W X 12"D			

CONDITIONS AND STIPULATIONS

REFER TO:	APPROVED: <u>N/A</u> BUILDING INSPECTOR, DEPT. OF BLDG. INSP.	DATE: _____ REASON: _____
<input type="checkbox"/>	APPROVED: <u>N/A</u> DEPARTMENT OF CITY PLANNING	DATE: _____ REASON: _____
<input checked="" type="checkbox"/>	APPROVED: <u>N/A</u> BUREAU OF FIRE PREVENTION & PUBLIC SAFETY	DATE: _____ REASON: _____
<input checked="" type="checkbox"/>	APPROVED: <i>of</i> <i>"Acceptance Test" Pools</i> JEFF LAI, DBI OCT 11 2011 By <u>[Signature]</u> MECHANICAL ENGINEER, DEPT OF BLDG. INSPECTION	DATE: _____ REASON: _____
<input type="checkbox"/>	APPROVED: <u>N/A</u> CIVIL ENGINEER, DEPT. OF BLDG INSPECTION	DATE: _____ REASON: _____
<input type="checkbox"/>	APPROVED: <u>N/A</u> BUREAU OF ENGINEERING	DATE: _____ REASON: _____
<input checked="" type="checkbox"/>	APPROVED: <i>AS NOTED and APPROVED PERMS ✓</i> <u>[Signature]</u> CHANNING WONG OCT 12 2011 DEPARTMENT OF PUBLIC HEALTH	DATE: _____ REASON: _____
<input type="checkbox"/>	APPROVED: <u>N/A</u> REDEVELOPMENT AGENCY	DATE: _____ REASON: _____
<input checked="" type="checkbox"/>	APPROVED: <i>462265</i> <i>8</i> <i>3</i> <i>[Signature]</i> <i>Melvin 10/6/11</i> HOUSING INSPECTION DIVISION	DATE: _____ REASON: _____

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

I agree to comply with all conditions or stipulations of the various bureaus or department noted on this application, and attached statements of conditions or stipulations, which are hereby made a part of this application.

Number of attachments

OWNER'S AUTHORIZED AGENT _____

FAN SCHEDULE

GENERAL DATA				DESIGN				
TAG	MANUFACTURER	MODEL NO.	AREA SERVED	LOCATION	TYPE	CFM	E.S.P. (IN)	FAN RPM
HEF 1	CAPTNAIRE	RBUS-U2200CA	KITCHEN	ROOF	UTILITY SET EXHAUST FAN	4200	1.0	1476
HEF 1	CAPTNAIRE	NSAU2-G15	KITCHEN	ROOF	FORWARD CURVED CENTRIFUGAL	3900	1.0	732
HEF 2	CAPTNAIRE	RBUS-U2120CA	SULLERY	ROOF	UTILITY SET EXHAUST FAN	600	1.0	1606
HEF 1	PANASONIC	-	BATHROOM	BATHROOM	-	50	-	-

KITCHEN NOTES

- ALL DUCTS EXHAUSTING MOIST AIR WITH THE POTENTIAL FOR WATER CONDENSING OUT OF THE AIR STREAM SUCH AS DISHWASHER EXHAUST DUCTS SHALL BE CONSTRUCTED OF A MINIMUM 18 GAUGE WELDED SEAM 316 STAINLESS STEEL. SLOPE DUCT A MINIMUM OF 1/4" PER FOOT BACK TO THE HOOD.
- ALL GREASE DUCTS (TYPE 1) SHALL BE CONSTRUCTED OF A MINIMUM OF 16 GAUGE LIQUID-TIGHT CONTINUOUSLY WELDED SEAM 316 STAINLESS STEEL. SLOPE EXHAUST DUCT AT A MINIMUM OF 1" PER FOOT BACK TO THE GREASE HOOD. LOCATE DUCT CLEAN OUTS EVERY 10 FEET AND AT EACH CHANGE IN DIRECTION.
- WRAP ALL GREASE DUCTS WITH 2 LAYERS OF UL-LISTED AND APPROVED "FIREMASTER" DUCT WRAP (3M OR THERMAL CERAMICS) ACCORDING TO MANUFACTURERS RECOMMENDATIONS. EXTEND DUCT WRAP DOWN THROUGH CEILING TO HOOD. USE IN COMBINATION WITH 3M FIRE BARRIER 2000+ SILICONE SEALANT PER MANUFACTURER RATED ASSEMBLY INSTRUCTIONS.
- MINIMUM GREASE DUCT VELOCITY SHALL NOT BE LESS THAN 1500 FEET PER MINUTE, AND THE MAXIMUM DUCT VELOCITY SHALL NOT EXCEED 2500 FPM.
- PROVIDE AN EMERGENCY SHUT OFF OF EACH KITCHEN HOOD SYSTEM, AN INTERLOCK OF EACH GREASE EXHAUST FAN WITH ITS ASSOCIATED MAKE-UP AIR FAN FOR EACH KITCHEN HOOD SYSTEM SHALL BE PROVIDED.
- PROVIDE 18" CLEARANCE FROM UNPROTECTED COMBUSTIBLE CONSTRUCTION.
- PROVIDE SMOKE DETECTOR ON ALL MAKE-UP AIR HANDLING SYSTEMS OVER 2000 CFM HARD WIRED TO THE MOTOR TO AUTOMATICALLY SHUT DOWN THE SUPPLY FAN UPON DETECTION OF SMOKE.

PROVIDE A P NOZZLE AGES DETECTION AT JURISDICTION. FURNISH ELEM THE AUTOMAT AND A MAXIM MINIMUM OF 40 FORCE OF 40

FIELD VERIFY

RECEIVED
OCT 06 2011
DEPT OF BUILDING INSPECTION
THIS PLAN BEING THE BASIS
FOR THE STANDARD FOR INSURING
ACCEPTED

Revisions Are To Conform With 2015 Code
Using The S3DB or Less or Permitted Revisions
Report for Review
- Roof Top Exhaust Fan May Be Revisited To Be
By 1/8" or 1/4" Slope
- New Exhaust / Kitchen Hood
- New Exhaust / Kitchen Hood

252-3814
10/12/11

Hood + Duct Fire Protection
Separate Permit
FIELD VERIFY

Energy Acceptance Requirements. See Sheet(s)
M.A.O

HOOD WORKSHEET

MODEL# TYPE I NSF 144" X 64" QUANTITY 1 EA WEIGHT _____

HOOD TYPE I NSF GREASE EXTRACTOR

- HOOD WIDE ENOUGH TO ALLOW MINIMUM OF 6" FRONT AND BACK OF EQUIPMENT? YES NO N/A
- HOOD LONG ENOUGH TO ALLOW MINIMUM OF 6" ON SIDES OF EQUIPMENT? YES NO N/A
- CASTERS & QUICK-DISCONNECTS STRONGLY RECOMMENDED. SPECIFIED? YES NO N/A
- CANOPY LP GREATER THAN OR EQUAL TO 6'-6" ABOVE THE FLOOR? YES NO N/A
- CANOPY LP BETWEEN 42" AND 48" ABOVE THE COOKING SURFACE? YES NO N/A
- CANOPY FREE OF HORIZONTAL ELECTRICAL/INSUL. LINES? YES NO N/A

CFM

- AIR FLOW RATE AT _____ 250 _____ CFM/FT. OF CAPTURE LENGTH
- HOOD OPENING(INSIDE DIMENSIONS) 144" (WIDTH) x 64" (LENGTH) + 144 _____ SQ. FT. x _____ 9 FACTOR FROM DMC _____ = _____ SQ. FT.
- OTHER FORMULA: $Q = 100 P D \sqrt{160 + L^2 \times 3.5}$ _____ 4200 _____ CFM

OTHER FORMULA IS FOR WHAT KIND OF HOOD? _____ CUSTOM

FILTERS

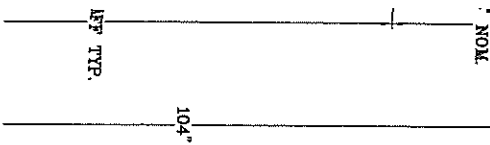
- FILTER MFG: _____ ALUMINUM _____ MODEL: _____ TYPE III _____
- FILTER TYPE: _____ ALUMINUM _____
- MFG'S RATING _____ FPM TO _____ FPM OR _____ 600 _____ CFM TO _____ 600 _____ CFM
- FILTER SIZE _____ 20" (HEIGHT) x _____ 20" (LENGTH) _____
- FUNCTIONAL FILTER SIZE _____ 18.0" (HEIGHT) x _____ 18.0" (LENGTH) _____
- NO. OF FILTERS _____ 6 _____ x _____ 258 (USABLE SQ. FT. PER FILTER) _____ = _____ 1548 _____ SQ. FT. PER FILTER
- 4200 _____ CFM + _____ 13.6 _____ SQ. FT. (TOTAL FILTER SQ. FT.) _____ = _____ 311 _____ FPM
- BAFFLE FILTER FPM SHOULD = 300. MUST BE 200 - 600 FPM. IS IT? YES NO
- HORIZONTAL SLOT FILTER FPM SHOULD = 1000. MUST = 800 - 1200. IS IT? YES NO
- IF THIS IS A "LISTED" HOOD, FPM CAN BE < OR > ABOVE. IS IT? YES NO

DUCT

- DUCT DIMENSIONS: _____ 14" (INCHES) x _____ 24" (INCHES) = _____ 336 _____ +144 _____ SQ. FT. (DUCT AREA)
- HOOD GREATER THAN 12 FT. LONG SHOWS > 1 EXHAUST OUTLET TO MAIN DUCT? YES NO N/A
- _____ 4200 _____ CFM _____ 2.3 _____ SQ. FT. (TOTAL DUCT SQ. FT.) _____ = _____ 1828 _____ FPM
- DUCT FPM SHOULD = 1800. MUST BE 1500 - 2500. IS IT? YES NO

NOT LIGHT FIXTURE-HIGH TRAP INCLUDES CLEAN THERMAL AND STANT GLOBE (J65 FIXTURE)

NG PLATES
1 RISER WITH
1 DRAINER
5% OPEN STAINLESS
ECL. PERFORATED PANEL



REVISION

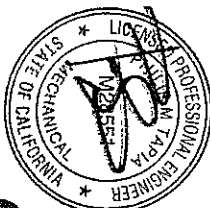
#	REVISION BY

2306 WEST STREET
OAKLAND, CA 94612
PHONE: 510-832-6433
FAX: 510-832-5099
www.comcosheetmetal.net

HEET METAL

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San Francisco, California 94103

(415) 512-9771
Fax (415) 512-8940

EXHIBIT Q



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH

Edwin M. Lee, Mayor
Barbara A. Garcia, MPA, Director of Health
Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director

March 18, 2014

Gerard Darien, Owner
Roostertail Restaurant
1963 Sutter Street
San Francisco, CA 94115

Re: Exhaust Fan/Ductwork Noise Complaints at 1963 Sutter Street

Dear Mr. Darien:

The San Francisco Board of Appeals "Affidavit of Service", dated June 4, 2013, denied your appeal for a variance of the San Francisco Municipal Police Code, Article 29, Regulation of Noise. Article 29, Section 2909(b), Commercial and Industrial Property Noise Limits states that:

"No person shall produce or allow to be produced by any machine, or device, music or entertainment or any combination of same, on commercial or industrial property over which the person has ownership or control, a noise level more than eight dBA above the local ambient at any point outside of the property plane..."

In addition, Article 29, Section 2909(d) states that...

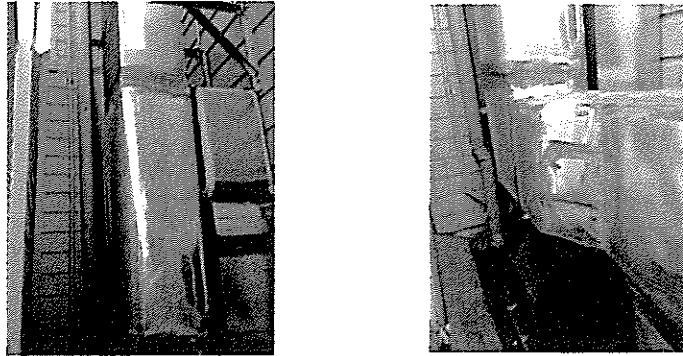
"In order to prevent sleep disturbance, protect public health and prevent the acoustical environment from progressive deterioration due to the increasing use and influence of mechanical equipment, no fixed noise source may cause the noise level measured inside any sleeping or living room in any dwelling unit located on residential property to exceed 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. or 55 dBA between the hours of 7:00 a.m. to 10:00p.m. with windows open except where building ventilation is achieved through mechanical systems that allow windows to remain closed."

Previous sound level measurements of the equipment in question taken outside the property plane were found to be 56 dBA; this level is 11 dBA above the ambient sound level of 45 dBA. Measurements taken by an acoustical professional were similar and also resulted in a violation of Article 29.

Abatement work was completed in mid-January, 2014 and consisted of wrapping the exhaust system duct in the adjacent lightwell with acoustical duct lagging (see Figures 1a and 1b). Together with Inspectors Zach Parsons and Janine Young, I took sound level measurements at various locations on January 22 and January 30, 2014 to determine compliance with Article 29. The results of the noise investigation can be seen below in Table 1.



AIR, NOISE AND RADIATION PROGRAM
1390 Market Street, Suite 210 San Francisco, CA 94102
Phone 415-252-3800, Fax 415-252-3875



Figures 1a and 1b – Exhaust system ductwork lined with acoustical lagging material.

Date	Measurement Location	Applicable Regulation	Ambient Sound Level (Fan Off)	Operating Sound Level	Violation
January 22, 2014	Lightwell ¹	2909(b)	45.9 dBA	57.7 dBA	No ²
January 22, 2014	Complainant Bedroom	2909(d)	-	40.6 dBA	No (<55 dBA daytime and <45 nighttime)
January 22, 2014	Complainant Living Room	2909(d)	-	38.8 dBA	No (<55 dBA daytime and <45 nighttime)
January 30, 2014	Complainant Roof ³	2909(b)	50.6 dBA	59.1 dBA	Yes (> 8dBA operating over ambient)

¹The lightwell is not an enforceable location for sound level measurements because it does not meet the standard set in Article 29, Section 2902 that, "A person measuring the outside noise level shall take measurements with the microphone not less than four feet above the ground, at least four and one-half feet distant from walls or similar large reflecting surfaces, and protected from the effects of wind noises and other extraneous sounds by the use of appropriate windscreens..."

²Because this is not an enforceable measurement location, there is no violation shown for the measurements.

³Measurements were taken in the middle of the adjacent roof, 7.5 feet from the lightwell and approximately 20 feet from the noise source.

Based on the data above, the exhaust system belonging to 1963 Sutter Street is still not in compliance with the San Francisco Municipal Police Code Article 29. In order to guide your efforts going forward, the Department of Public Health offers two options through which you may achieve compliance with Article 29:

Option 1 – Reduce the noise level such that the operating sound level is within 8 dBA of the ambient sound level as measured from the roof of the adjacent property. Based on the ambient level measured on January 30 2014 at this location, we will consider the equipment in compliance if the sound level measurement at this location is 58.6 dBA. Please be aware that this is a daytime standard, and any changes to the sound level would also need to ensure that the equipment does not violate the nighttime standard for this location.

Option 2 – Reduce the noise level such that the operating sound level in the lightwell is less than 53 dBA. This represents an alternate abatement option that we believe will provide adequate protection to the public health of nearby receptors. We will consider the equipment in compliance with all relevant portions of Article 29 if we measure sound level in the lightwell at any time of the day or night and find it to be 53dBA or lower.

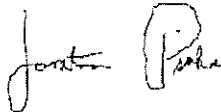
In order to ensure that noise abatement efforts are adequate to meet the compliance requirements listed above and in Article 29, the Department of Public Health recommends enlisting the services of an acoustical consultant.

The Department of Public Health requires that you develop a plan of correction which includes the following:

- Selection of compliance option
- Specific work to be performed and materials used
- Name of the contractor/consultant performing the work
- Estimated date of completion

Please submit to our office the **detailed plan of correction** by the close of business by **Wednesday, April 2, 2014**. If you have any questions or concerns, please feel free to contact me directly.

Sincerely,



Jonathan Piakis, MPH-IH
SFDPH Industrial Hygienist and Noise Control Officer
(415) 252-3911
Jonathan.Piakis@sfdph.org

cc: Complainant
EH Inspectors
Manager of Air, Water, Noise, Radiation and Smoking Programs
Director of Environmental Health

Location Address: 1863 Sutter St	Inspection Date: 3/18/14
Business Name: Reester-tail Restaurant	Re-Inspection Date: 4/3/14
The marked violations are California Retail Food Code violations and must be corrected. (Failure To Comply May Result in a Citation and/or Fines)	
<p>This facility has been shown to be in violation of SFMPC, Article 29 for regulation of noise. This form and the letter attached from SFDPH noise control officer Jonathan Piekis, serves as a 'Notice of Violation'.</p> <p>Facility must comply w/ items detailed in letter / submit plan of correction by close of business on Wednesday, April 2, 2014, or face further actions.</p> <p>Please contact Jonathan Piekis 415-252-3911 with any questions</p>	
REHS: Zack Parsons	
Received By: Tomas Almos	

EXHIBIT R

Re: Roostertail Variance Application

June Weintraub to: Rajiv Bhatia

03/11/2013 12:33 PM

Hi Rajiv,
I've finally drafted this.

I didn't include all the detail in your five points below, but I think I included the appropriate points. Let me know if you want me to add more detail or include your other arguments.

I think we should definitely have Zack review this, as I would like to make sure that I've properly represented the January 5 inspection (he wrote in the report that the measurement was taken "in the lightwell located between the facility and the complainant". From looking at the property on Google Earth, it looks the complainant is 1959 Sutter, the Roostertail is 1963 Sutter, and there is one building (1961) in between which shares a wall with both 1959 and 1963. But we'd need to make sure this is correct and that I wrote it correctly.

Thanks,
June



1963 Sutter variance decision.doc

Rajiv Bhatia

Richard: Thank you for bringing this to my atten...

02/16/2013 09:22:36 AM

From: Rajiv Bhatia/DPH/SFGOV
To: Richard Lee/DPH/SFGOV@SFGOV
Cc: Stephanie Cushing/DPH/SFGOV@SFGOV, Zack Parsons/DPH/SFGOV@SFGOV, June Weintraub/DPH/SFGOV@SFGOV, Virginia Dario Elizondo/CTYATT@CTYATT, Patrick Fosdahl/DPH/SFGOV@SFGOV
Date: 02/16/2013 09:22 AM
Subject: Roostertail Variance Application

Richard:

Thank you for bringing this to my attention. I understand why this is a difficult case and I appreciate your opinions. I am copying June, Patrick and Virginia as they will be involved in the discussion. I would like us to be consistent in our rationales behind variance approval.

I will review and respond. If you would like we can meet together with Stephanie and Zack to review. We can give him more time to comply but here are my current arguments against granting a variance in this case:

1. Our rationale in the lone prior variance was: 1) industrial (non-residential) land area 2) noise due to pre-existing uses and operations 3) limited jurisdiction over motor vehicel sources 4) no alternative means of operating the facility without noise sources.

✓ 2. The appropriate selection and installation of equipment at the front end would have avoided this problem. This is a recent remodel constructed 3 years after the city's update of noise laws. The owner admits spending 40K on equipment and engineering that was not constructed in compliance with noise laws. I understand his frustration but consultants, plan reviewers, and building inspectors should have given him some better advice.

✓ 3. Using a financial criteria would be perilous in this case as it would with any health and safety regulation. The business can certainly plead financial hardship in their request but this has historically not been a factor in our prior consideration of variances. I would also avoid statements that may be perceived as advocacy for the economic interests of the regulated party. We have never had a financial criteria for the enforcement of any public health and safety regulation that we enforce. As you all know, the cost of regulatory compliance for some businesses can be prohibitive and arguably out of proportion to their responsibility. To set a financial threshold ourselves would be highly discretionary. Are we going to look at the business profits?

✓ 4. The indoor and outdoor standard have equal standing in this case. I understand that the indoor standard is met. This is more than a technical violation. As I've mentioned before, the outdoor standard also is intended to reduce a source's contribution to cumulative noise in the area. Nothing in our law states that enforcement of the standard is dependent on the existence of "affected people." We have no objective / consistent way of evaluating "harm" and making this part of our calculus.

5. Final point, discretionary government actions that affect the environment (like this variance) are subject to CEQA. We would need legal and administrative review of the variance by the planning department. We may need to hold a hearing. The businesses would pay the cost of that review. The cost of that review could likely trump the cost of the improvements.

Rajiv

Richard Lee

Rajiv Roostertail Restaurant has applied for a va...

02/15/2013 02:13:27 PM



Roostertail Noise Case

Rajiv Bhatia to: Richard Lee, June Weintraub, Virginia Dario
Elizondo

05/23/2013 04:53 PM

<: Zack Parsons, Kenny Wong, tomas.aragon.sfdph

The Board of Appeals upheld the department's reasoning and decision 5-0 yesterday.

I felt very bad for the restaurant owner because multiple city agencies had inspected his new equipment and no one had given him the correct advice about the various indoor and outdoor standards. He also stated (unconfirmed) that DPH staff had urged him to fight the violation and request the variance. I think the appeal added unneeded time and expense to his life.

Our staff should generally not "clear" equipment during pre-operational inspections if the noise level at the property boundary is greater than 53.

We had a reasonable conversation afterwards. I suggested he take 40-45 days to investigate alternative options for noise mitigation and come back to us.

Rajiv

Rajiv Bhatia, MD | Director | Environmental Health | [SFDPH](#) | 4152523931



Re: Fw: Roostertail Noise Case

Rajiv Bhatia to: Kenny Wong

05/24/2013 01:02 PM

Lisa O'Malley, Mary Freschet, Richard Lee, Stephanie Cushing, Patrick Fosdahl, Janine Young, June Weintraub

thanks for the question

we can meet about this kenny, if needed, so we are all on the same page, i am copying other noise assessors as well here

my primary intent was informing plan check protocols but the recommendation has broader application for the outdoor standard

if a business is operating in the evening and night, one could assume that the ambient during operating hours will be the minimum ambient (45) and the max allowable measure is 53 at the property boundry. If you want to use a daytime measure as a surrogate for night-time compliance, using 53 is a safe bet.

If the investigator (or plan checker or owner) has evidence that the minimum ambient during all operating hours is higher than 45 then the higher ambient would apply. For example, taking an ambient measure at the closing time of the business operating in the evening would offer a reasonable minimum 24 hour applicable ambient.

Make sense??

Rajiv Bhatia, MD | Director | Environmental Health | [SFDPH](#) | 4152523931

Kenny Wong

Rajiv, To clearly understand your guidance below...

05/24/2013 08:39:18 AM

From: Kenny Wong/DPH/SFGOV
 To: Rajiv Bhatia/DPH/SFGOV@SFGOV
 Cc: Richard Lee/DPH/SFGOV@SFGOV, Lisa O'Malley/DPH/SFGOV@SFGOV, Stephanie Cushing/DPH/SFGOV@SFGOV, Mary Freschet/DPH/SFGOV@SFGOV
 Date: 05/24/2013 08:39 AM
 Subject: Fw: Roostertail Noise Case

Rajiv,

To clearly understand your guidance below that "Our staff should generally not "clear" equipment during pre-operational inspections if the noise level at the property boundry is greater than 53." What would be the exceptions to the generality so that we are all on the same page? Do you want 53 to apply to existing facilities when there is a noise complaint?

Kenny

----- Forwarded by Kenny Wong/DPH/SFGOV on 05/24/2013 08:09 AM -----



Rajiv Bhatia/DPH/SFGOV



Re: Fw: Roostertail Noise Case

Rajiv Bhatia to: Kenny Wong

05/30/2013 11:37 AM

cc: Janine Young, June Weintraub, Lisa O'Malley, Mary Freschet, Patrick Fosdahl, Richard Lee, Stephanie Cushing

kenny

All standards under 2909 always will apply independently ... there may be differences in responsible parties based on the standard and which program needs to be in the lead.

The outdoor noise standard (e.g. 8 db over ambient) applies to the generator of the noise source (in your case the restaurant and its vent system). For the food program, you just need to rule out the restaurant source. If the source of concern is the neighbor's equipment, I would start with the ambient standard then go next to the indoor standard only if there is no ambient violation.

If there is a violation of the short term noise indoor standard, the culprit may vary. It may be a neighboring source or it may be poor construction or it may be a source within the building. If there is an indoor violation without an ambient violation (probably rare), there may also be a need to evaluate the construction quality of the complainants building. Also, separate from 2909 there is a 24 hour indoor noise standard that DBI is responsible for enforcing.

Overall, if there is no ambient violation and a neighbor's complaint persists, I might just turn over the complaint to the noise program.

June has volunteered to work on a flow chart for us.

Please look at some of the new public information on noise on our website.

Does this provide the clarity you need?

Rajiv

Kenny Wong

Hi Rajiv, Yes, thanks for allowing this process.

05/29/2013 03:34:30 PM

From: Kenny Wong/DPH/SFGOV
To: Rajiv Bhatia/DPH/SFGOV@SFGOV
Cc: Janine Young/DPH/SFGOV@SFGOV, June Weintraub/DPH/SFGOV@SFGOV, Lisa O'Malley/DPH/SFGOV@SFGOV, Mary Freschet/DPH/SFGOV@SFGOV, Patrick Fosdahl/DPH/SFGOV@SFGOV, Richard Lee/DPH/SFGOV@SFGOV, Stephanie Cushing/DPH/SFGOV@SFGOV

EXHIBIT S

ARTICLE 29: REGULATION OF NOISE

SEC. 2900. DECLARATION OF POLICY.

(a) Building on decades of scientific research, the World Health Organization and the U.S. Environmental Protection Agency have determined that persistent exposure to elevated levels of community noise is responsible for public health problems including, but not limited to: compromised speech, persistent annoyance, sleep disturbance, physiological and psychological stress, heart disease, high blood pressure, colitis, ulcers, depression, and feelings of helplessness.

(b) The General Plan for San Francisco identifies noise as a serious environmental pollutant that must be managed and mitigated through the planning and development process. But given our dense urban environment, San Francisco has a significant challenge in protecting public health from the adverse effects of community noise arising from diverse sources such as transportation, construction, mechanical equipment, entertainment, and human and animal behavior.

(c) In order to protect public health, it is hereby declared to be the policy of San Francisco to prohibit unwanted, excessive, and avoidable noise. It shall be the policy of San Francisco to maintain noise levels in areas with existing healthful and acceptable levels of noise and to reduce noise levels, through all practicable means, in those areas of San Francisco where noise levels are above acceptable levels as defined by the World Health Organization's Guidelines on Community Noise.

(d) It shall be the goal of the noise task force described in this Article to determine if there are additional adverse and avoidable noise sources not covered in this statute that warrant regulation and to report to the Board of Supervisors and recommend amendments to this Article over the next three years. In addition, the noise task force shall develop interdepartmental mechanisms for the efficient disposition and any enforcement required in response to noise complaints.

(Added by Ord. 274-72, App. 9/20/72; Ord. 278-08, File No. 081119, App. 11/25/2008)

SEC. 2901. DEFINITIONS.

(a) "Ambient" means the lowest sound level repeating itself during a minimum ten-minute period as measured with a type 1, precision sound level meter, using slow response and "A" weighting. The minimum sound level shall be determined with the noise source at issue silent, and in the same location as the measurement of the noise level of the source or sources at issue. However, for purposes of this chapter, in no case shall the ambient be considered or determined to be less than: (1) Thirty-five dBA for interior residential noise, and (2) Forty-five dBA in all other locations. If a significant portion of the ambient is produced by one or more individual identifiable sources of noise that contribute cumulatively to the sound level and may be operating continuously during the minimum ten-minute measurement period, determination of the ambient shall be accomplished with these separate identifiable noise sources silent or otherwise removed or subtracted from the measured ambient sound level.

(b) "Director" means the Director or department head of any City department having administrative or enforcement responsibilities under this Article or any other provision of the Municipal Code regarding noise control, as well as his or her designee.

EXHIBIT T

Noise Variance Process

THE PROCESS:

1. The application will be reviewed by the Noise Officer at the San Francisco Department of Public Health. The application will be reviewed for completeness and an initial determination will be made as to which department has regulatory authority.
2. The application is then reviewed by the department with regulatory authority and an initial determination is made regarding disposition of the variance. This review will generally take ten (10) business days or less. Following the review a preliminary decision will be made to approve, deny or approve the variance with conditions. All preliminary decisions may be appealed by requesting an administrative hearing.
3. Once the preliminary decision has been made then the applicant must notify all complainants of record regarding the disposition of the variance. This notification includes the opportunity for any affected residence to request an administrative hearing. A hearing will be scheduled and held within thirty (30) days of receiving a request. A list of the complainants and description of the notification process will be provided to the applicant along with the preliminary decision.
4. If a hearing is requested the administrative hearing officer will take testimony from both the variance applicant and any complainants. Following the hearing, the administrative officer will issue a written statement regarding the disposition of the variance.
5. Any decision made by the administrative hearing officer may be appealed by filing an appeal with the San Francisco Board of Appeals

CRITERIA OF REVIEW:

All applications will be reviewed considering the following criteria:

- 1) whether or not reasonable efforts have been made to mitigate the source of noise, 2) times and durations of the sound, 3) physical characteristics and the geography, 4) zone and population density of the affected area, 5) whether the public health, safety and welfare is affected, 6) whether the sound source predates the receiver(s) and 7) whether compliance with the standard or provision from which the variance is sought would result in a hardship or cost without equal or greater benefit to the public.

EXHIBIT U



Japanese Cultural and Community Center of Northern California

1840 Sutter Street, San Francisco, CA 94115 • Tel: 415-567-5505 • Fax: 415-567-4222 • www.jcccnc.org

September 9, 2014

Board of Appeals
City Hall
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Appeal #14-141

To Whom It May Concern:

This letter is in support of the property owner at 1959 Sutter Street, who has requested that noise levels from the adjacent restaurant, Roostertail Restaurant, at 1963 Sutter Street meet and comply within the limits of the S.F. Noise Ordinance, of which the maximum required ambient level is 45 dBA.

The owner of the Roostertail Restaurant was advised by the Department of Public Health/Environmental Health letter dated April 26, 2014, that the noise level exceeds the standards, but the department subsequently granted the restaurant a noise variance if they completed "the remainder of wrapping the external ductwork." The adjacent 1959 Sutter Street property owner has appealed the variance from the code requirement, stating that the restaurant has not completed its mitigation work and the noise level has not decreased. Therefore, Roostertail's request for variance should be denied.

We at the JCCCNC are not only looking at the current situation but also the future. If such variances and leniencies are allowed without evidence of a hardship on the part of the recipient, then the overall trend would be for others to apply for and receive the same without cause. Once that happens, there is really no way to bring the standards back to their current levels which have a basis in industry and municipal conventions.

For the above reasons, we are requesting that you support the appeal of the 1959 Sutter Street property owner and deny the request for Roostertail Restaurant to go beyond the current code mandated noise levels.

I appreciate your time. Thank you!

Sincerely,



Paul Osaki
Executive Director

August 18, 2014

Board of Appeals
City Hall
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Appeal #14-141

To whom it may concern:

I am writing this second letter in support of the property owner at 1959 Sutter Street who has sent multiple requests to different agencies that noise levels from the adjacent restaurant, Roostertail Restaurant, at 1963 Sutter Street abide by and stay within limits of the required ambient level of 45dBA.

Although I do not know too much about the technical aspects of noise levels, permits, etc., I do understand a person's right to have appropriate surroundings in their living quarters and that the city Planning Department, Department of Public Health/Environmental Health, and other departments of the City and County of San Francisco have set requirements for businesses to stay within standards they set, so surrounding neighbors can maintain a healthy atmosphere for their quality of life.

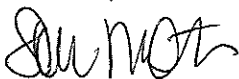
Since they opened in 2011, letters and notices to the owner of Roostertail Restaurant show that the noise level continues to exceed the standard and clearly shows that their original permit should have been denied. I am asking that you support this appeal, because the noise level remains an issue and I believe the owner at 1959 Sutter Street is not only looking at the current situation but also the future. If such variances and leniencies are allowed, then the trend would be for others to do the same. Once that happens, there is really no way to bring the standards back down, or to their current levels.

And for these reasons, I request that you support the neighbors in the surrounding area and assure them that the issues stated are finally resolved by the owners of the Roostertail by supporting this appeal so everyone can live healthily and happily.

I appreciate your time.

Thank you!

Sincerely,



Lori Matoba

Resident of 1839 Steiner Street, San Francisco, CA 94115
Born and raised in the Japantown community



1 DENNIS J. HERRERA, State Bar #139669
 City Attorney
 2 JULIE VAN NOSTERN, State Bar #
 Chief Attorney, Health and Human Services
 3 SHERRI SOKELAND KAISER, State Bar #197986
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7 Attorneys for Respondent
 DEPARTMENT OF PUBLIC HEALTH
 8

9 SAN FRANCISCO

10 BOARD OF APPEALS

11 1650 Mission Street, Room 304
 San Francisco, CA 94103
 12

13 MICHIKO YAMADA,

14 Appellant,

15 vs.

16 DEPARTMENT OF PUBLIC HEALTH,

17 Respondent.
 18
 19

Appeal No. 14-141

BRIEF OF RESPONDENT
 DEPARTMENT OF PUBLIC HEALTH

20
 21 **INTRODUCTION**

22 Michiko Yamada appeals the decision of the Acting Director of Environmental Health to grant
 23 a noise variance to her neighbor, Roostertail Restaurant, for a noise violation on her rooftop that
 24 neither she nor any other human receptor can even hear. Sensibly, she does not take the position that
 25 this inaudible violation must be mitigated and brought into conformance with the Police Code Article
 26 27 (the "Noise Ordinance"). Rather, she ignores the rooftop violation altogether and rests her
 27 opposition to the variance on her objection to noise in a lightwell outside her hallway window. For the
 28

1 reasons that follow, this Board should uphold the variance granted by the Department of Public Health
2 and end Appellant's attempts to hold her neighbor Roostertail Restaurant hostage to complaints that
3 have no basis in the public health interests the Noise Ordinance is designed to serve.

4 **BACKGROUND**

5 Paragraphs 3 through 17 of the Declaration of Jonathan Piakis provide the factual background
6 for this Appeal and are hereby incorporated herein as though set forth in full.

7 **ARGUMENT**

8 **I. DIRECTOR LEE PROPERLY EXERCISED HIS DISCRETION TO GRANT 9 ROOSTERTAIL RESTAURANT A NOISE VARIANCE.**

10 As reflected in its Declaration of Policy, the sole and explicit purpose of the Noise Ordinance
11 is to "protect public health." Police Code § 2900(c). Section 2912(d) vests unique responsibility in
12 the Director of the Department of Public Health to act as "the sole determiner of what constitutes a
13 human health impact with regard to noise." Further, although Section 2909 prescribes standard noise
14 limits in regard to commercial and residential properties, Section 2910 explicitly authorizes DPH to
15 grant variances to those limits as it deems appropriate.

16 In the circumstances present here, myriad considerations support Director Lee's exercise of
17 discretion to grant Roostertail's request for a variance. Among them:

18 First, the only violation of the standards in the Noise Ordinance occurs on Appellant's rooftop,
19 which is above the roof levels of nearby buildings. That noise dissipates before reaching human
20 receptors, including Appellant, and has no effect on anyone other than the rare person visiting
21 Appellant's roof. This noise violation is not the type of public health concern that the Noise
22 Ordinance is meant to address.

23 Second, the noise that Appellant complains of emanates from a kitchen exhaust duct that runs
24 up a narrow lightwell adjacent to her hallway. But this lightwell noise does not violate the Noise
25 Ordinance because it cannot be measured in a way that satisfies the noise level measurement
26 requirements in Section 2902.¹ That provision requires that outdoor noise be measured "at least four

27 ¹ Appellant argues that DPH should ignore the limitation in Section 2902 because other DPH
28 noise inspectors have taken measurements in the lightwell and treated them as valid. To the extent
that is the case, those inspectors were mistaken. But such mistakes did not invalidate the law, which
DPH remains obligated to follow as written.

1 and one-half feet distant from walls or similar large reflecting surfaces.” The lightwell is too small to
2 permit measurement at that distance.

3 Third, the low noise levels measured in Appellant’s living room and bedroom in the middle of
4 the day, with the window to the lightwell open and Roostertail’s kitchen exhaust system in full
5 operation, demonstrate that the noise in the lightwell, while clearly of ongoing subjective concern to
6 Appellant, cannot objectively be considered a public health risk.

7 Fourth, despite the fact that the only enforceable noise violation is on the rooftop (and largely
8 if not completely inaudible to Appellant), Roostertail has – at a cost of about \$8000 – now wrapped
9 the entirety of the kitchen exhaust duct in acoustical lagging to address Appellant’s concerns about the
10 lightwell. This is the exact mitigation measure that Appellant’s third-party acoustical consultant
11 recommended at the April 22 Abatement Conference and that Director Lee imposed as a result.² Now
12 that Roostertail has done what Appellant’s consultant recommended, it would be unjust to hold
13 Appellant’s dissatisfaction with the result of her consultant’s recommendation against Roostertail. At
14 this point, it is unclear whether there is any reasonable mitigation action that Roostertail could take to
15 satisfy Appellant short of shutting down one or more of the intake and exhaust systems it needs to
16 operate as a restaurant. Having received the mitigation measures she asked of Roostertail to address
17 unwanted sound – measures that DPH required of Roostertail even though the unwanted sound neither
18 violates the Noise Ordinance nor poses a risk to public health – DPH does not see Appellant’s

21 ² Appellant remains dissatisfied despite the expense and effort required of Roostertail to
22 implement Appellant’s own recommended solution. And now, for the very first time, Appellant and
23 Salter consultant Eric Lee (the same consultant who recommended extending the acoustical insulation
24 along the full length of the kitchen exhaust duct to mitigate the lightwell noise) posit that *perhaps* an
25 air supply duct and *maybe* a dishwasher exhaust duct, both of which also run through the lightwell and
26 have been there all along, are the real source of the unwanted noise. Whether this new hypothesis is
27 correct or not, Appellant goes too far when she further asserts that all three ducts were at issue during
28 the April 22 Abatement Conference, DPH actually directed Roostertail to wrap all three ducts to
qualify for a variance, and DPH has failed to enforce its own directive. This is disingenuous. Until
now, Appellant has always focused her complaints on the kitchen exhaust system. That was the only
duct with acoustical wrapping as of the April 22 Abatement Conference, and that is the only duct Mr.
Lee could plausibly have meant when he recommended wrapping the remaining portion of the duct to
mitigate the lightwell noise. And in any event, DPH did not condition Roostertail’s variance on
wrapping all three ducts. Roostertail has completed the full extent of the mitigation work that DPH
required.

1 continuing complaints as a justifiable reason to continue to deny Roostertail a very sensible noise
2 variance for a rooftop fan that produces excess noise that no one can hear.³

3 **CONCLUSION**

4 For all of these reasons, the Board should deny this appeal and uphold the Noise Variance as
5 granted by the Director.

6
7 Dated: October 2, 2014

8 DENNIS J. HERRERA
9 City Attorney
10 JULIE VAN NOSTERN
11 Chief Attorney
12 SHERRI SOKELAND KAISER
13 Deputy City Attorney

14 By: 
15 SHERRI SOKELAND KAISER

16 Attorneys for Respondent
17 DEPARTMENT OF PUBLIC HEALTH
18
19
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23
24 ³ Appellant's remaining arguments are all founded on the idea that DPH is bound by the 2013
25 decision of a prior Director to deny Roostertail a noise variance and cannot now grant a variance
26 without "contradicting itself." This contention does not bear scrutiny. The decision to grant or deny a
27 noise variance can only be made in relation to the facts before the decisionmaker. Where the facts
28 have changed, it follows that the decision may also change, even if the noise variance request is made
by the same party. Moreover, in this case, it appears that the prior decision may rely, at least in part,
on the failure to recognize that noise in the lightwell cannot be measured in compliance with § 2902,
and therefore cannot be a basis for a noise violation. The failure to enforce a law does not estop the
government from subsequently enforcing it. See, e.g., *Feduniak v. California Coastal Com'n*, 148 Cal.
App. 4th 1346, 1369 (6th Dist. 2007).

PROOF OF SERVICE

I, Lily Kang, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On October 2, 2014, I served the following document(s):

- 1) Respondent's Brief;
- 2) Decl. of Jonathan Piakis in Support Thereof;
- 3) Decl. of June M Weintraub in Support Thereof; and
- 4) Decl. of Richard J. Lee in Support Thereof

on the following persons at the locations specified:

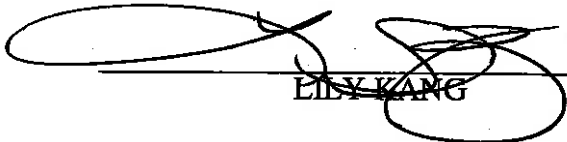
Michiko Yamada (Appellant)
(Michiko personally picked up above-stated pleadings at following location:
Board of Appeals
1650 Mission Street – Lobby
San Francisco, CA 94103

in the manner indicated below:

BY PERSONAL SERVICE: I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed October 2, 2014, at San Francisco, California.



LILY KANG

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 JULIE VAN NOSTERN, State Bar #103579
Lead Attorney, Health & Human Services
3 SHERRI SOKELAND KAISER, State Bar #197986
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7 Attorneys for Respondent,
DEPARTMENT OF PUBLIC HEALTH
8

9 SAN FRANCISCO

10 BOARD OF APPEALS

11 1650 Mission Street, Room 304
San Francisco, California 94103
12

13 MICHIKO YAMADA,

14 Appellant,

15 vs.

16 DEPARTMENT OF PUBLIC HEALTH,

17 Respondent.
18
19
20

Appeal No. 14-141

DECLARATION OF RICHARD J. LEE
IN SUPPORT OF RESPONDENT SAN
FRANCISCO DEPARTMENT OF PUBLIC
HEALTH

21 I, RICHARD J. LEE, declare as follows:

22 1. I have personal knowledge of the facts set forth herein, except for those facts set forth
23 on information and belief, which I also believe to be true. If called upon to testify, I could and would
24 testify competently to the matters set forth below.

25 2. I am the Acting Director of Environmental Health for the San Francisco Department of
26 Public Health ("DPH"). I have a Bachelor of Arts degree in Bacteriology and a Masters in Public
27 Health, with a specialty in Environmental Health, both from the University of California at Berkeley.
28

1 I have been a Certified Industrial Hygienist for the past 29 years, a Certified Safety Professional for 20
2 years, and a Registered Environmental Health Specialist for the last seven years.

3 3. I have evaluated numerous noise complaints throughout the 27 years I have been
4 working as an Industrial Hygienist in various capacities at DPH. I held the position of Senior
5 Industrial Hygienist for the first 20 years of my tenure. In 2007, I became the Director of
6 Environmental Health Regulatory Programs, including the Noise Program. In 2013, I became the
7 Acting Director of Environmental Health. For the seven years I have spent in these capacities, I have
8 supervised the DPH inspectors who monitor compliance with the San Francisco Noise Ordinance,
9 codified as Article 29 of the San Francisco Police Code.

10 4. In my current role as Director of Environmental Health, I serve as the Hearing Officer
11 designated by the Director of Public Health to hear and decide cases of non-compliance with the Noise
12 Ordinance. I am also charged with the discretionary authority to decide whether to grant a variance.

13 5. On March 14, 2013, my predecessor, Dr. Rajiv Bhatia, denied a request from Gerard
14 Darien, the owner of Roostertail Restaurant, for a variance from outdoor noise limits for commercial
15 sources. See Yamada Exhibit F. Dr. Bhatia denied the variance on the ground that Roostertail had
16 failed to install adequate noise dampening equipment sufficient to ensure compliance with the Noise
17 Ordinance during a recent renovation, noting that the noise standards in the Ordinance predated the
18 renovation by several years and should have been taken into account. Mr. Darien appealed the denial
19 to this Board, which reviewed and upheld the denial. See Yamada Exhibit H.

20 6. After his March 2013 request for a variance was denied, an enforcement process began
21 during which Mr. Darien undertook two rounds of mitigation projects, DPH took further noise
22 measurements and engaged in additional deliberations, and the parties continued to confer. These
23 events are recited in detail in paragraphs 3-18 of the declaration of DPH Noise Officer Jonathan
24 Piakis, filed concurrently with this declaration. For the sake of brevity, I refer the reader to those
25 paragraphs, which I believe to be a true and correct recitation of events.

26 7. On July 23, 2014, I granted a renewed application by Mr. Darien for a variance based
27 on the considerations set forth in the procedure governing the DPH Noise Variance Process. See
28 Yamada Exhibit T.

1 8. I concluded that Mr. Darien had made reasonable efforts to mitigate the source of the
2 complained-of noise in the lightwell outside Ms. Yamada's hallway window. After Mr. Darien was
3 originally denied a variance because no mitigation work was proposed, DPH ordered him to either
4 address the noise at the property plane or address the noise by insulating the ductwork in the lightwell.
5 At first, Mr. Darien only partially insulated the main ductwork. We then required that all of the main
6 ductwork be insulated. That work was completed.

7 9. I also considered the physical characteristics and geography of the noise violation, and
8 concluded that this factor also weighed in favor of a variance. The rooftop fan responsible for the
9 enforceable noise violation is above the roof levels of nearby buildings, dissipates before reaching
10 human receptors, and therefore has little effect if any on neighbors. Further, the physical
11 characteristics of the lightwell preclude it from being the site of a violation, because the sound level in
12 the small, reflective space cannot be measured in a manner that complies with the measurement
13 requirements in Section 2902 of the Noise Ordinance.

14 10. I also considered whether the public health, safety and welfare is affected by the noise
15 violation, and concluded that it is not. The primary public health consideration in this case is the
16 residential interior noise levels in Ms. Yamada's living and sleeping space. Those noise levels remain
17 below 45 dBA when measured in the middle of the day, with the kitchen exhaust operating and the
18 window to the lightwell open. These measurements indicate that there is no public health issue in Ms.
19 Yamada's living space, as they remain well below the residential noise limit in Section 2909(d) of 55
20 dBA from 7:00 am -10:00 pm (when the fan may be operating) and 45dBA from 10:00 pm to 7:00 am
21 (when the fan is not operating).

22 11. I also considered whether compliance with the provision from which the variance is
23 sought would result in hardship or cost to the owner without equal or greater benefit to the public. I
24 concluded that this factor also weighed strongly in favor of granting the variance. As the only actual
25 violation of the Noise Ordinance occurred on the rooftop, and the excess noise at that location did not
26 reach individual receptors, it made no sense to require Mr. Darien to go to substantial expense to
27 mitigate the rooftop noise. Instead, Mr. Darien complied with our condition for a variance that he
28 install acoustical insulation around the full length of the exhaust duct in the lightwell, despite the fact

1 that the noise in the lightwell did not violate the Noise Ordinance. Mr. Darien submitted
2 documentation demonstrating that he spent approximately \$8000 on that project. In my opinion,
3 requiring further investment in mitigating the sound at a location other than the site of the violation
4 would be unduly burdensome. Moreover, as demonstrated by the low interior noise measurements in
5 Ms. Yamada's residence, I concluded that further investment in mitigation measures was not needed to
6 address public health concerns. In sum, requiring additional investment in mitigation would create a
7 financial burden on the owner without providing any further benefit to the public, much less a benefit
8 of corresponding value.

9 12. For all of these reasons, and with the concurrence of the Manager of the Noise Program
10 and the Noise Officer handling the case, I granted the requested variance. I did not and do not
11 consider myself bound by my predecessor's decision to deny a variance in March 2013 based on
12 different facts and circumstances.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing is
14 true and correct and that this document was executed on the 2nd of October 2014 in San Francisco,
15 California.

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RICHARD J. LEE

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 JULIE VAN NOSTERN, State Bar #103579
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7 Attorneys for Respondent,
DEPARTMENT OF PUBLIC HEALTH
8

9 SAN FRANCISCO
10 BOARD OF APPEALS

11 1650 Mission Street, Room 304
12 San Francisco, California 94103

13 MICHIKO YAMADA,
14 Appellant,
15 vs.
16 DEPARTMENT OF PUBLIC HEALTH,
17 Respondent.
18
19
20

Appeal No. 14-141
**DECLARATION OF JUNE M. WEINTRAUB
IN SUPPORT OF RESPONDENT SAN
FRANCISCO DEPARTMENT OF PUBLIC
HEALTH**

21 I, JUNE M. WEINTRAUB, declare as follows:

22 1. I have personal knowledge of the facts set forth herein, except for those facts set forth
23 on information and belief, which I also believe to be true. If called upon to testify, I could and would
24 testify competently to the matters set forth below.

25 2. I am Acting Manager of Regulatory Programs for Air, Noise, Smoking, Water, and
26 Radiation in the Environmental Health Branch of the San Francisco Department of Public Health
27 ("DPH"). I received a Bachelor of Science in Civil Engineering and Environmental Studies from
28 Tufts University College of Engineering, graduating cum laude in 1986. My Master of Science in

1 Environmental Health was earned from Tufts University in 1995, and my Doctor of Science in
2 Epidemiology, with minors in Environmental Health and Biostatistics, was earned from the Harvard
3 University School of Public Health in 2000.

4 3. Including my 13 years in the Environmental Health Branch at DPH, I have more than
5 20 years of professional and academic experience in environmental health from various perspectives,
6 including research, engineering, and policy. My expertise is in environmental epidemiology, and I
7 have significant experience in the development, interpretation and application of laws, policies and
8 regulations relevant to environmental exposures.

9 4. Since mid-2013, when I assumed management responsibilities for the noise regulatory
10 program, I have worked with Acting Director of Environmental Health Richard Lee, DPH health
11 inspectors, and Noise Control Officer Jonathan Piakis to resolve the ongoing dispute about noise levels
12 at 1963 Sutter Street.

13 5. With its diverse and active population, proximity of homes to businesses, urban traffic,
14 and construction, San Francisco can be a loud place. This is an inherent characteristic of a dense and
15 vibrant urban environment, and those who wish to live in and enjoy the benefits of that environment
16 will inevitably hear more sound from nearby neighbors, businesses, and passers-by than those who
17 live in environments where there is more distance between noise sources. Proximity between noise
18 sources is a key factor in experiencing sound, because sound is measured by pressure, and the sound
19 emitting from any location is not perceived beyond a given distance away because the pressure
20 dissipates.

21 6. Noise can have health consequences. Hearing damage may result from prolonged
22 exposure to very loud sounds. For most San Franciscans, the levels of sound in their environment are
23 neither high enough nor persistent enough to damage hearing, but other kinds of sound may also cause
24 health effects. Transient sounds may interrupt sleep, and unwanted sound may be so annoying that it
25 causes a physical stress response or difficulty concentrating, leading to adverse effects on physical
26 health and quality of life. Research shows that physiological effects such as increased blood pressure
27 are mediated by the release of the stress hormone cortisol when certain individuals are exposed to
28 certain sounds. The extent of the health problems that result from exposure to sounds depend on many

1 factors besides simply loudness—the source, setting, time, place, frequency and subjective qualities or
2 content of the noise all influence how it is perceived by individuals, and underlying health issues may
3 also impact the subjective and objective response to sound.

4 7. Individual sensitivities and preferences also play a role in how individuals respond to
5 sound. Sound that persistently irritates one person, such as the drone of traffic from a nearby freeway,
6 may fade into the background for another or go entirely unnoticed by the next.

7 8. Regulating noise in an urban environment requires striking a compromise between
8 different interests. There is no way to eliminate all unwanted sound, and the city would quickly lose
9 some of its most desirable attributes if it tried. The Noise Ordinance balances competing interests by
10 drawing lines at various absolute or relative sound levels, depending on the source of the noise, the
11 time of day, and the potential impact on nearby individuals, or as we call them, “noise receptors.”

12 9. From the public health perspective, the most important limit on noise in the Noise
13 Ordinance is the protection it extends to residential living and sleeping areas. Because of every
14 individual’s need for repose and the potential health impact of excessive noise in these sensitive
15 locations, sound levels may not exceed 55 decibels during typical waking hours, or 45 decibels for the
16 hours between 11 pm and 7 am, regardless of the source. In fact, unlike the other noise limits in the
17 Ordinance, Section 2909(d) affirmatively declares that fixed residential interior noise limits “prevent
18 sleep disturbance, protect public health and prevent the acoustical environment from progressive
19 deterioration due to the increasing use and influence of mechanical equipment.” S.F. Police Code
20 § 2909(d).

21 10. In my view, this case is an example of a long-time resident concerned about unwanted
22 noise from a neighboring commercial use that has changed over time from a comparatively quiet tea
23 shop to a noisier rotisserie business. But as explained in the accompanying declaration of DPH Noise
24 Officer Jonathan Piakis, the noise from the kitchen exhaust duct that runs through the lightwell
25 adjacent to Ms. Yamada’s residence does not adversely affect the noise levels in her living room or
26 bedroom, where the sound levels remain well below the lower nighttime noise limit, even when
27 measured in the middle of the day with the window to the lightwell open and the kitchen exhaust
28


1 system in operation. This means that the complained-of noise in the lightwell is not a public health
2 concern, despite Ms. Yamada's sensitivity to it.

3 11. Unlike in the interior residential rooms, there is a measurable violation of the Noise
4 Ordinance on the rooftop, because differential between the operating noise level and the ambient
5 sound level on the rooftop exceeded the limit of 8 dBA for a commercial source of noise. Although
6 the rooftop noise is a violation of Section 2909(b) of the Noise Ordinance, it too has no adverse effect
7 on public health. Because of its location on the rooftop, this sound does not travel to Ms. Yamada's
8 residence, nor indeed to any human receptor. For the same reason, it does not increase the overall
9 noise level in the neighborhood.

10 12. Despite the lack of an interior noise violation caused by noise in the lightwell, and
11 solely on the basis of a rooftop noise violation that no one hears, in our April 26 enforcement letter, we
12 indicated that we would only excuse Darian from mitigating the noise on the rooftop if he undertook
13 additional efforts to mitigate the sound in the lightwell.

14 13. I am satisfied that Mr. Darian has acted in good faith to mitigate the noise that Ms.
15 Yamada is exposed to in her hallway when the window to the lightwell is open. I am also satisfied that
16 there is no threat to public health posed by any noise emanating from Roostertail's kitchen exhaust
17 duct or its rooftop ventilation equipment at 1963 Sutter.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct and that this document was executed on the 2nd of October 2014 in San Francisco,
20 California.

21
22 
23 _____
24 JUNE M. WEINTRAUB
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1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 JULIE VAN NOSTERN, State Bar #103579
Lead Attorney, Health & Human Services
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4 1390 Market Street, Suite 700
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5 Telephone: (415) 554-3886
E-Mail: sherri.kaiser@sfgov.org
6



7 Attorneys for Respondent
DEPARTMENT OF PUBLIC HEALTH
8

9 SAN FRANCISCO
10 BOARD OF APPEALS

11 1650 Mission Street, Room 304
San Francisco, California 94103
12

13 MICHIKO YAMADA,
14 Appellant,
15 vs.
16 DEPARTMENT OF PUBLIC HEALTH,
17 Respondent.
18
19
20

Appeal No. 14-141

**DECLARATION OF JONATHAN PIAKIS
IN SUPPORT OF RESPONDENT SAN
FRANCISCO DEPARTMENT OF PUBLIC
HEALTH**

21 I, JONATHAN PIAKIS, declare as follows:

22 1. I have personal knowledge of the facts set forth herein, except for those facts set forth
23 on information and belief, which I also believe to be true. If called upon to testify, I could and would
24 testify competently to the matters set forth below.

25 2. I am the Noise Control Officer for the San Francisco Department of Public Health
26 ("DPH"). I hold a Bachelor of Science degree in Biology (Chemistry Minor) and a Masters of Public
27 Health, Industrial Hygiene Emphasis, both from the University of Arizona. I served as Health/Safety
28 Specialist for the Steward Observatory Mirror Laboratory at the University of Arizona from 2011 to

1 2013. I was a National Hearing Conservation Association (NHCA) Research Award Recipient in
2 2012-2013 and conducted a year-long, noise-specific research project at multiple mining operations. I
3 have clocked over 375 hours of sound level measurements and dosimetry.

4 3. I have been an Industrial Hygienist and Noise Control Officer at DPH for
5 approximately one year. During that time, I have handled more than 125 noise cases and complaints.
6 I assumed responsibility for the Roostertail Restaurant matter in January 2014. At that time, I
7 understood from colleagues and my review of the file that Roostertail had been determined to be out of
8 compliance with the commercial noise limits in San Francisco Police Code Article 29 (the "Noise
9 Ordinance"); that the owner had applied for a noise variance in 2013 and the Board of Appeals had
10 upheld the decision of the Director of Environmental Health to deny it; and that Roostertail was
11 required to undertake abatement work to come into compliance.

12 4. I also understood that Mr. Darian had recently installed acoustical lagging around the
13 kitchen exhaust ductwork that runs up one wall of the shared lightwell between Ms. Yamada's
14 building and Roostertail's building as an abatement measure. On January 22, 2014, I measured sound
15 levels in Ms. Yamada's living room and bedroom, as well as in the lightwell outside her hallway
16 window, to determine whether the abatement work had been sufficient to bring Roostertail into
17 compliance. Section 2909(d) of the Noise Ordinance provides that a fixed noise source, like the
18 Roostertail kitchen exhaust assembly, must not cause sound levels in residential living and sleeping
19 areas to exceed 55 decibels, A-weighted (dBA) during the day or 45 dBA at night (10 pm to 7 am),
20 when measured with the windows open. I made sure the window to the lightwell was open before
21 measuring the sound levels in the living room and bedroom. The sound level in living room was 38.8,
22 and in the bedroom it was 40.6 dBA. Both of these levels were well below the daytime limits of 55
23 dBA, and even though it was the middle of the day, the levels were also significantly below the
24 nighttime limits. A true and correct copy of the Noise Inspection Form documenting the
25 measurements I took on January 22, 2014, is attached hereto as **Exhibit A**.

26 5. Although I agreed to measure the sound level in the lightwell, which Ms. Yamada
27 identified as the source of the unwanted noise, I first explained to Ms. Yamada that sound levels in the
28 lightwell could not be measured reliably because the structure was too narrow. Section 2902 of the

1 Noise Ordinance requires outdoor sound measurements to be taken at least 4-1/2 feet away from any
2 walls or reflective surfaces. Given the size of the lightwell, I could not take a measurement that would
3 be a valid basis for finding Roostertail in violation of the Noise Ordinance.

4 6. With this understanding, I measured the sound level in the lightwell as 57.7 dBA, and
5 the ambient sound level as 45.9 dBA. See Exhibit A. Section 2909(b) of the Noise Ordinance
6 requires that noise from commercial properties that travels outside the property plane remain within 8
7 dBA of the ambient noise level, or the sound level that remains when the commercial noise source is
8 turned off. The difference between my measurements in the lightwell was 11.8 dBA, which would
9 have been a violation of 2909(b) if measurements in that location were permissible under the
10 Ordinance. But since measurements in the lightwell are invalid under Section 2902, they could not
11 serve as the basis for a finding of violation. Accordingly, my inspection and sound level
12 measurements on January 22, 2014, did not result in a finding that Roostertail Restaurant was in
13 violation of the Noise Ordinance.

14 7. On January 30, 2014, at Ms. Yamada's invitation, I returned to measure the sound level
15 on the rooftop to see whether noise at that location exceeded the 8 dBA limit in Section 2909(b). I
16 measured the sound level on the rooftop as 59.1 dBA, with an ambient sound level of 50.6 dBA. (See
17 Exhibit A at p. 2.) These measurements demonstrated that the rooftop noise level exceeded the
18 allowable 8 decibel difference between readings by .5 decibels.

19 8. On March 18, 2014, I sent a letter to Gerard Darian, the owner of Roostertail, informing
20 him that Roostertail remained out of compliance with Section 2909(b) and further abatement measures
21 were required. Attached as **Exhibit B** is a true and correct copy of the March 18 letter.

22 9. On the second page of the letter, Table 1 summarized the measurement results in the
23 various locations and identified the only violation as the rooftop. Note 1 to the table explained that,
24 despite the 11.8 dBA difference between the operating sound level and the ambient sound level in the
25 lightwell, the lightwell was not an enforceable location for sound level measurement under Article 29
26 because it was not possible to satisfy the 4-1/2 foot measurement standard in Section 2902.

27 10. The March 18 letter also offered Mr. Darian two options he could pursue that DPH
28 would consider sufficient to bring Roostertail into compliance. He could reduce the noise level on the

1 rooftop to within 8 dBA of the ambient sound level as measured from the roof of the adjacent
2 property, or he could take measures to reduce the operating sound measured in the lightwell to less
3 than 53 dBA. See Exhibit B at p. 2. We offered the latter approach as a means of compliance despite
4 the fact that the lightwell was not the source of the violation because it was the primary source of Ms.
5 Yamada's concerns and because it was the source closest to a receptor. Noise dissipates as it travels,
6 and the noise on the rooftop, while in violation of Section 2909(b), was too distant to be received by
7 anyone, including Ms. Yamada, before becoming insignificant. Mr. Darian was given a deadline of
8 April 2 to submit a detailed plan of correction to DPH.

9 11. Mr. Darian failed to submit a plan of correction by the deadline and instead applied for
10 a variance. I issued a notice to appear at an abatement conference on April 22, where his request for a
11 variance would be heard. A true and correct copy of the Notice to Attend the Abatement Conference
12 is attached as **Exhibit C**.

13 12. Richard Lee, Acting Director of Environmental Health, was the Hearing Officer at the
14 April 22 Abatement Conference. I appeared on behalf of DPH along with June Weintraub, the acting
15 manager of the Noise Program. Mr. Darian appeared for Roostertail. As the Complainant, Ms.
16 Yamada was also invited to appear at the Abatement Conference, and she brought Eric Lee, a private
17 acoustical consultant at Charles M. Salter Associates, to help represent her interests.

18 13. At the April 22 Abatement Conference, I gave a brief overview of the case up to the
19 point of the variance application under consideration. Mr. Darian explained the abatement work and
20 stated that he had wrapped the portion of the exhaust duct nearest the kitchen with acoustical lagging
21 to dampen the sound. Ms. Yamada spoke next, indicating her belief that the noise in the lightwell was
22 unchanged and the work had not been properly performed. Eric Lee explained that the entire duct
23 needs to be wrapped to be effective in reducing the noise. He illustrated his point by analogizing the
24 duct to a long light source, where the whole thing would need to be wrapped to block the light.
25 Director Lee asked Mr. Lee whether, in his professional opinion, performing the additional work
26 needed to wrap the rest of ductwork would substantially reduce the noise, and Mr. Lee responded that
27 he believed it would. Throughout the conference, Mr. Lee and Ms. Yamada spoke only of the single,
28

1 kitchen exhaust ductwork and at no time mentioned any other equipment or ductwork in or adjacent to
2 the lightwell.

3 14. After the parties had presented their views, June Weintraub recommended on behalf of
4 the Noise Program that Director Lee grant the requested variance. Among other things, she noted our
5 shared view that the primary threat to public health is excessive noise in residential living and sleeping
6 spaces. Given the low level of sound I measured in Ms. Yamada's living room and bedroom with the
7 window to the lightwell open and Roostertail's exhaust fan in operation, there was no public health
8 concern in this case. Further, the only enforceable violation was on the rooftop, but that violation had
9 no health impact because the sound dissipated before it reached a noise receptor. She also stated our
10 shared opinion that Mr. Darian had made a good-faith effort at remediation.

11 15. Director Lee did not rule at the Abatement Conference, stating that he wanted the
12 opportunity to think the matter over. Based on consultant Eric Lee's recommendation and contrary to
13 the recommendation of the Noise Program, Director Lee issued a decision denying the variance
14 application and requiring Mr. Darian to abate the noise violation at the rooftop. But the decision also
15 indicated that a variance for the rooftop noise would be granted in the future if Mr. Darian extended
16 the acoustical duct wrapping in the lightwell the full length of the duct to where it meets the rooftop
17 fan. Attached hereto as **Exhibit D** is a true and correct copy of the decision issued by Richard Lee on
18 April 26, 2014.

19 16. By July 18, Mr. Darian had completed the additional duct wrapping, and he again
20 applied for a variance. Attached hereto as **Exhibit E** is a true and correct copy of the noise variance
21 application and supporting documents indicating total expenditures of approximately \$8000 for labor
22 and materials to wrap the entire length of the duct in acoustical lagging.

23 17. On July 23, 2014, based on this additional abatement work in the lightwell as
24 recommended by Eric Lee, the third-party acoustical consultant retained by Ms. Yamada, Director Lee
25 granted a variance for the sole enforceable noise violation on the rooftop. Attached hereto as
26 **Exhibit F** is a true and correct copy of the variance.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct and that this document was executed on the 2nd of October 2014 in San Francisco,
3 California.

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5 JONATHAN PIAKIS
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Roostertail 1st

Noise Inspection Form

22

Site Address: 1963 Sutter St.	Business Name: Roostertail	Date: 01/21/2014
Owner/Manager Name: Gerard Darien	Phone Number: (415) 776-6783	Time:
Sound Level Meter Manufacturer/Model: Larson Davis LxT1	Serial Number: 0001272	Location ID: 67657
Callibrator Manufacturer/Model: Larson Davis CAL	Serial Number: 6377	Calibration Date: 4/22/13

Pre-calibration Reading: 114.6 dBA

Post-calibration reading: 114.4 dBA

Noise Source(s)	Source Location	Measurement Location	Measurement Time	Sound Level (Source Operating)	Sound Level (Source Not Operating)
Rooftop Exhaust Fans	Rooftop Fan/Side	Lightwell	3 min	57.7	—
Ambient	—	"	10 min	45.9	—
Closest BR	—	→		40.6	—
Living Room	—	→		37.3	—

31
11.8
32
33
34

Violation	No Violation	Applicable Standard
<input type="checkbox"/>	<input type="checkbox"/>	Residential Property Noise Limits. (1) No person shall produce or allow to be produced by any machine, or device, music or entertainment or any combination of same, on residential property over which the person has ownership or control, a noise level more than five dBA above the ambient at any point outside of the property plane. (2) No person shall produce or allow to be produced by any machine, or device, music or entertainment or any combination of same, on multi-unit residential property over which the person has ownership or control, a noise level more than five dBA above the local ambient three feet from any wall, floor, or ceiling inside any dwelling unit on the same property, when the windows and doors of the dwelling unit are closed, except within the dwelling unit in which the noise source or sources may be located.
<input type="checkbox"/>	<input type="checkbox"/>	Commercial And Industrial Property Noise Limits. No person shall produce or allow to be produced by any machine or device, music or entertainment or any combination of same, on commercial or industrial property over which the person has ownership or control, a noise level more than eight dBA above the local ambient at any point outside of the property plane.
<input type="checkbox"/>	<input type="checkbox"/>	Public Property Noise Limits. No person shall produce or allow to be produced by any machine or device, or any combination of same, on public property, a noise level more than ten dBA above the local ambient at a distance of twenty-five feet or more, unless the machine or device is being operated to serve or maintain the property or as otherwise provided in this Article.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Fixed Residential Interior Noise Limits. In order to prevent sleep disturbance, protect public health and prevent the acoustical environment from progressive deterioration due to the increasing use and influence of mechanical equipment, no fixed noise source may cause the noise level measured inside any sleeping or living room in any dwelling unit located on residential property to exceed 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. or 55 dBA between the hours of 7:00 a.m. to 10:00 p.m. with windows open except where building ventilation is achieved through mechanical systems that allow windows to remain closed.

Inspector Signature

01/21/2014
Date

Exhibit A

Noise Inspection Form

Site Address: 1961/1963 Sutter St.	Business Name: Roostertail	Date: 01/30/2014
Owner/Manager Name: Gerard Darien	Phone Number: (415) 776-6783	Time: 2:15 pm
Sound Level Meter Manufacturer/Model: Larson Davis LxT1	Serial Number: 0001272	Location ID: 67657
Calibrator Manufacturer/Model: Larson Davis CAL	Serial Number: 6377	Calibration Date: 4/22/13

Pre-calibration Reading: 114.1 dBA

Post-calibration reading: _____ dBA

Noise Source(s)	Source Location	Measurement Location	Measurement Time	Sound Level (Source Operating)	Sound Level (Source Not Operating)
Rooftop Exhaust Fans	Rooftop	See diagram	3 min	59.1	—
Ambient	—	See diagram	10 min	—	50.6

Violation	No Violation	Applicable Standard
<input type="checkbox"/>	<input type="checkbox"/>	Residential Property Noise Limits. (1) No person shall produce or allow to be produced by any machine, or device, music or entertainment or any combination of same, on residential property over which the person has ownership or control, a noise level more than five dBA above the ambient at any point outside of the property plane. (2) No person shall produce or allow to be produced by any machine, or device, music or entertainment or any combination of same, on multi-unit residential property over which the person has ownership or control, a noise level more than five dBA above the local ambient three feet from any wall, floor, or ceiling inside any dwelling unit on the same property, when the windows and doors of the dwelling unit are closed, except within the dwelling unit in which the noise source or sources may be located.
<input type="checkbox"/>	<input type="checkbox"/>	Commercial And Industrial Property Noise Limits. No person shall produce or allow to be produced by any machine or device, music or entertainment or any combination of same, on commercial or industrial property over which the person has ownership or control, a noise level more than eight dBA above the local ambient at any point outside of the property plane.
<input type="checkbox"/>	<input type="checkbox"/>	Public Property Noise Limits. No person shall produce or allow to be produced by any machine or device, or any combination of same, on public property, a noise level more than ten dBA above the local ambient at a distance of twenty-five feet or more, unless the machine or device is being operated to serve or maintain the property or as otherwise provided in this Article.
<input type="checkbox"/>	<input type="checkbox"/>	Fixed Residential Interior Noise Limits. In order to prevent sleep disturbance, protect public health and prevent the acoustical environment from progressive deterioration due to the increasing use and influence of mechanical equipment, no fixed noise source may cause the noise level measured inside any sleeping or living room in any dwelling unit located on residential property to exceed 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. or 55 dBA between the hours of 7:00 a.m. to 10:00 p.m. with windows open except where building ventilation is achieved through mechanical systems that allow windows to remain closed.

Inspector Signature _____

01/30/2014

Date _____



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH

Edwin M. Lee, Mayor
Barbara A. Garcia, MPA, Director of Health

Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director

March 18, 2014

Gerard Darien, Owner
Robstertail Restaurant
1963 Sutter Street
San Francisco, CA 94115

Re: Exhaust Fan/Ductwork Noise Complaints at 1963 Sutter Street

Dear Mr. Darien:

The San Francisco Board of Appeals "Affidavit of Service", dated June 4, 2013, denied your appeal for a variance of the San Francisco Municipal Police Code, Article 29, Regulation of Noise. Article 29, Section 2909(b), Commercial and Industrial Property Noise Limits states that:

"No person shall produce or allow to be produced by any machine, or device, music or entertainment or any combination of same, on commercial or industrial property over which the person has ownership or control, a noise level more than eight dBA above the local ambient at any point outside of the property plane..."

In addition, Article 29, Section 2909(d) states that...

"In order to prevent sleep disturbance, protect public health and prevent the acoustical environment from progressive deterioration due to the increasing use and influence of mechanical equipment, no fixed noise source may cause the noise level measured inside any sleeping or living room in any dwelling unit located on residential property to exceed 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. or 55 dBA between the hours of 7:00 a.m. to 10:00p.m. with windows open except where building ventilation is achieved through mechanical systems that allow windows to remain closed."

Previous sound level measurements of the equipment in question taken outside the property plane were found to be 56 dBA; this level is 11 dBA above the ambient sound level of 45 dBA. Measurements taken by an acoustical professional were similar and also resulted in a violation of Article 29.

Abatement work was completed in mid-January, 2014 and consisted of wrapping the exhaust system duct in the adjacent lightwell with acoustical duct lagging (see Figures 1a and 1b). Together with Inspectors Zach Parsons and Janine Young, I took sound level measurements at various locations on January 22 and January 30, 2014 to determine compliance with Article 29. The results of the noise investigation can be seen below in Table 1.



AIR, NOISE AND RADIATION PROGRAM

1390 Market Street, Suite 210 San Francisco, CA 94102

Phone 415-252-3800, Fax 415-252-3875

Exhibit B

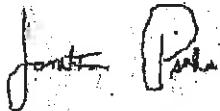
In order to ensure that noise abatement efforts are adequate to meet the compliance requirements listed above and in Article 29, the Department of Public Health recommends enlisting the services of an acoustical consultant.

The Department of Public Health requires that you develop a plan of correction which includes the following:

- Selection of compliance option
- Specific work to be performed and materials used
- Name of the contractor/consultant performing the work
- Estimated date of completion

Please submit to our office the detailed plan of correction by the close of business by **Wednesday, April 2, 2014**. If you have any questions or concerns, please feel free to contact me directly.

Sincerely,



Jonathan Piakis, MPH-IH
SFDPH Industrial Hygienist and Noise Control Officer
(415) 252-3911
Jonathan.Piakis@sfdph.org

cc: Complainant
EH Inspectors
Manager of Air, Water, Noise, Radiation and Smoking Programs
Director of Environmental Health



San Francisco City and County
Department of Public Health
Environmental Health

Edwin M. Lee, Mayor
 Barbara A. Garcia, MPA,
 Director of Health

Richard Lee, MPH, CIH, REHS
 Acting Director Environmental
 Health

**NOTICE TO ATTEND AN ABATEMENT
 CONFERENCE ON: April 22, 2014**

Premises address: 1963 Sutter Street **DBA: Roostertail**
Owner/Operator: Gerard Darian

Chronology of events leading to issuance of citation:

Date	Code Section	Current Violation(s)	Action Taken
12/5/12 – 1/1/14	Art. 29 (2909b)	Violations of Commercial/Industrial Noise Limits	Multiple Actions: - Replace equipment - Noise/vibration controls (platforms, isolators, etc.) - Acoustical wrap/lagging on duct
1/22/14 – 3/18/14	Art. 29 (2909b)	Violations of Commercial/Industrial Noise Limits: Rooftop noise level 8.5 dBA over ambient during day	Applied for Variance

INSPECTOR: Jonathan Piakis

APPROVED:

Recommended Action:

This form to be submitted to Central Office along with a copy of each cit:

Exhibit C



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH

Edwin M. Lee, Mayor
Barbara A. Garcia, MPA, Director of Health

Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director

April 26, 2014

Gerard Darien, Owner
Roostertail Restaurant
1963 Sutter Street
San Francisco, CA 94115

Re: Exhaust Fan/Ductwork Noise Complaints at 1963 Sutter Street

Dear Mr. Darien:

The Department of Public Health reviewed the Roostertail Restaurant's Variance Application received on March 28, 2014 and discussed at the April 22, 2014 Environmental Health Branch Abatement Conference. San Francisco Police Code Article 29 governs the noise standards in San Francisco. Article 29, Section 2909 (b) (Commercial and Industrial Property Noise Limits) sets the noise standard for mixed residential and industrial uses at 8 dBA over ambient: "No person shall produce or allow to be produced by any machine or device, music or entertainment or any combination of same, on commercial or industrial property over which the person has ownership or control, a noise level more than eight dBA above the local ambient at any point outside of the property plane." Article 29, Section 2901 (a) defines the applicable ambient standards; for this location the minimum ambient level is 45 dBA.

I understand that in response to earlier violation, abatement work was completed in mid-January, 2014 and consisted of wrapping the exhaust system duct in the adjacent lightwell with acoustical duct lagging. As we wrote in our February 13, 2014 letter to you, our followup investigation determined that the abatement work had reduced the sound to 57.7 dBA in the lightwell and to 59.1 dBA at the roof. As we wrote in that letter, and as we discussed at the Abatement Conference, the lightwell is not an enforceable location for sound level measurements because it does not meet the standard set in Article 29, Section 2902. In addition, while there remains a violation on the roof, there is no receptor at this location and hence no public health hazard; as the distance from the sound source increases, the sound level resulting from the source decreases and would be insignificant upon reaching any human receptor.

Based on the facts presented at the Abatement Conference, the variance is denied and you are required to bring the rooftop noise to compliance with Article 29, as described in Option A below. While this variance is denied, in the event of future complaints a variance for compliance on the roof will be granted if you perform additional abatement work in the lightwell as described in Option B below.

Option A – Reduce the noise level such that the operating sound level is within 8 dBA of both the daytime and nighttime ambient sound level as measured from the roof of the adjacent property.

Exhibit D

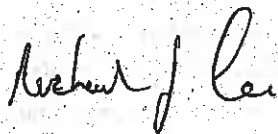
Option B – Perform additional abatement work in the lightwell by extending the acoustical duct wrapping to the full length of the ductwork (up to the fan).

If you choose Option A, we will schedule a re-inspection of the property for **May 28 2014** to verify if the sound level at the roof is within 8 dBA of the daytime ambient; we will also schedule an inspection for the evening to verify if the sound level at the roof is within 8 dBA of the nighttime ambient. If you choose Option B, we will schedule a re-inspection of the property for **May 28 2014** to verify installation of the duct wrapping to the full length of the ductwork.

Failure to comply with this order will be subject to penalties as described in Article 29, Section 2917 of the San Francisco Police Code.

Under San Francisco Police Code Section 2910, you may appeal this decision within 15 days to the Board of Appeals.

Sincerely,



Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director



NOISE VARIANCE APPLICATION

This is an application for variance from the San Francisco Noise Ordinance (Article 29). You should apply for it if your activity will make more noise than the City Code allows. Please read both sides and fill it out carefully, your application will not be considered unless all information and required site plan is provided and legible. Use separate pages if necessary. The request may be approved, denied or approved with conditions. Most applications will be reviewed within ten (10) working days; some may require more time. If you need help, you may call the Environmental Health office at 415-252-3800.

Applicant Name: Henhouse Productions, LLC dba Roostertail
Contact Phone: 415-776-6783 Cellular: 415-939-5906
Mailing Address: 1963 Sutter st
City: San Francisco State: CA Zip Code: 94115
Name of organization or business: Roostertail

Name the person who will be on site and has the authority to make changes, if required.
GERARDO DARIAN

The Directors of Public Health, Public Works, Building Inspection, Entertainment Commission or the Chief of Police may grant variances to the noise regulations over which they have jurisdiction. Please indicate all types of activities that apply:

- Waste Disposal Services
- Residential Property Noise
- Commercial Property Noise
- Construction Private Property
- Construction Public Property
- Licensed Entertainment

Provide a description of the activity: RoofTop Exhaust hood Fans

Date(s) of activity: Seven days per week Requested hours, from 8:30 am/pm to 11:00 am/pm

List all sources of noise: RoofTop Kitchen Exhaust Fan

Have noise measurements been taken? If Yes, specify noise level reading at the property line _____ dB
If No, specify anticipated noise level at the property line. _____ dB

Provide a detailed description of why a variance from the Noise Ordinance is necessary for this source of noise. This description should include any actions taken to mitigate the source of noise or its impact on people or residences located in the area.

Attach a sketch of the site plan or map that identifies streets and gives distances to neighbors or residences.

Revised: 12/12/2012

7/18/2014

Air, Noise and Radiation Program

GERARDO DARIAN

1390 Market St., Suite 210
San Francisco, CA 94102

Noise Suppression, LLC
 3154 Walkerview Dr.
 Hilliard, OH 43026
 USA

Voice: 614-570-2755
 Fax: 614-529-6757

Invoice
 Invoice Number: 1294

Invoice Date:
 Jun 16, 2014

Page: 1

Sold To:
 Rooster Tail

Ship to:
 Rooster Tail
 c/o Jimmy Fetch
 240 James Ct
 Vacaville, CA 95687

Customer ID		Customer PO		Payment Terms	
R0900081		Verbal		Net Due	
Sales Rep ID		Shipping Method		Ship Date	Due Date
		Worldwide		6/16/14	7/16/14
Quantity	Item	Description	Unit Price	Extension	
2.00		Rolls Lag-10 freight allowed	935.00	1,870.00	
<p><i>PAID IN FULL</i> <i>AD 1401</i> <i>6/23/14</i> <i>D/B</i></p>					

Check/Credit Memo No:

Subtotal	1,870.00
Sales Tax	
Total Invoice Amount	1,870.00
Payment/Credit Applied	
TOTAL	1,870.00

INVOICE

All Trades & Design, Inc.
240 James Ct.
Vacaville, CA 95687
phone: (707) 372-8748 / fax: (707) 446-8825
CA license # 918670

SOLD TO:	SHIPPED TO:
Roostertail / Gerard	
ADDRESS:	ADDRESS
1963 Sutter St. @ Filmore	
CITY, STATE, ZIP	CITY, STATE, ZIP:
San Francisco, Ca. 94115	

CUSTOMER ORDER	SALESPERSON	TERMS	DATE
			17-Jul-14

-	All Lag 10 sound wrap supplied by owner.
-	Provide all fasteners, tape, and sealer for application of material.
-	Provide labor to install sound supression material.
-	Installation off of scaffold provided by others.
Total	

\$1,000

PACIFIC SCAFFOLD CO. INC.

1540 DAVIDSON AVE. SAN FRANCISCO, CA. 94124
PHONE: (415)333-0224 (650)876-0225 FAX: (415)641-0204
EMAIL: PACIFICSCAFFOLD@YAHOO.COM
CALIC. # 292509

Proposal: 1 of 1

Date: 7/11/14

Company: Girard

Contact: Girard

Phone: _____

Address: _____

City: _____

Fax/Email: _____

A. Scaffold erection and removal- Proposal and Contract

Job address: 1963 Sutter

City: San Francisco, Ca

- 1) Work scope: Scaffold erection, removal, and 45 day rental.
Area to be scaffold: Tower in light well for access to flu

- 2) Additional products to be installed by Pacific Scaffold Co. Inc. _____

Proposal honored for 60 days from date submitted to customer- Price \$ 2,200.00

- B. Additional fees after initial 45 days of rental. A prorated amount of 25% per 45 days will occur.
\$ 12.22 Per day.

- C. Signed return of contract, issue of work order, written request, or verbal request, for delivery and commencement of work, indicates customers' acceptance of Pacific Scaffold Co. Inc. Proposal / Contract in whole.

- D. 1) Scaffold will be erected and dismantled one time only, during daytime hours unless specified herein.
2) Scaffold will be erected and dismantled in accordance with applicable State and Federal Codes (excluding access ladder, toe boards, and debris netting, unless specified in Additional products to be installed). If not requested at time of proposal, items are available for additional charge.

- 3) Any alterations over and above this bid proposal will be charged at the applicable rates.

- E. Customer/ Owner, and/ or contractor agree to indemnify and hold harmless, Pacific Scaffold Co. Inc. from and against all damage, claim, losses, fines, citations, injuries, or property damage resulting from scaffold alterations not performed by Pacific Scaffold Co. Inc. Enclosure products not installed by Pacific Scaffold Co. Inc., fines, citations, or any responsibility stated herein is the responsibility of customer, owner, and/ or contractor.

- F. Agreement of responsibility by Customer, owner and/ or Contractor.

- 1) Responsible for maintenance, control, and safe use of scaffold.
- 2) Obtaining any permits that may be required.
- 3) Obtaining permission for Pacific Scaffold Co. Inc. to erect scaffold from adjoining property if required.
- 4) Responsible for repairing all holes in the existing structure left as a result of anchors necessary to stabilize the scaffold.
- 5) Advising Pacific Scaffold Co. Inc. of any intended use of enclosure products (debris netting, shrink wrap, plastic, plywood, etc.)
- 6) Arranging title authority for all necessary safe guards.
- 7) Responsible for any necessary protection for furniture, machinery, plants, walls, carpeting, floors, tile, brick, decks, and railings.

- G. Payments for services rendered are due in full upon receipt of invoice. Scaffolding rent and/ or labor is a service, and therefore exempt from retention.

Accepted by (sign): _____

Print: _____

Date: _____

(Customers Authorized Representative)

933 Kifer Road Suite A
Sunnyvale CA 94086-5208

(408) 738-0333 ph (408) 245-0484 fx



Invoice

19067

Date: 04/22/2014

Billed To: Rooster Tail Restaraunt
1963 Sutter Street
San Francisco CA 94115

Project: SC 4/9 Exhuast Not Working
1963 Sutter Street
San Francisco CA 94115

Due Date: 05/22/2014

Terms: 30DY

Job # 121821

Est#

PO# Gerard

Description	Amount
Service Call 4.5 hour @ \$ 110.00 per hour	495.00
Vehicle Surcharge	25.00

Notes:

A service charge of 10.00% per annum will be charged on all amounts overdue on regular statement dates.

Thank you for your prompt payment!

FEIN: 26-4559748

Non-Taxable Amount:	520.00
Taxable Amount:	0.00
Sales Tax:	0.00
Amount Due	520.00



**DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH**

Edwin M. Lee, Mayor
Barbara A. Garcia, MPA, Director of Health

Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director

July 23, 2014

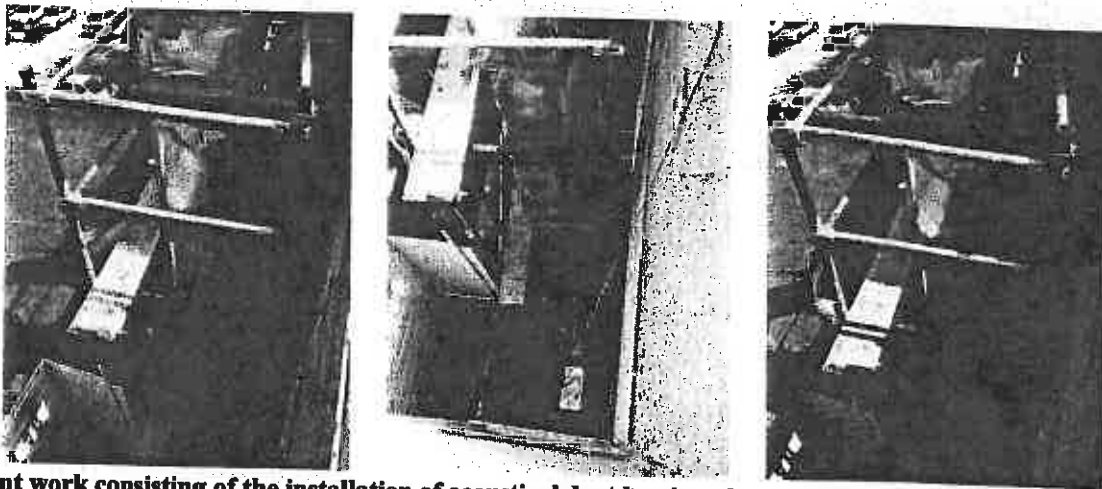
Gerard Darian, Owner
Roostertail
1963 Sutter Street
San Francisco, CA 94115

RE: 1963 Sutter Street – Noise Violation Abatement Work

Dear Mr. Darian:

At the Abatement Conference Hearing on July 8, 2014, it was determined that the work necessary to abate the violation of the San Francisco Noise Ordinance (Police Code, Article 29) was not complete. In accordance with staff recommendations, I granted an extension of 15 business days resulting in the deadline for completion of July 28, 2014.

On July 18, 2014, Inspector Piakis confirmed that the abatement work, consistent with the third-party acoustical consultant's recommendations, had been completed (see figures below). Therefore, the violation is abated and the mechanical exhaust system in use at 1963 Sutter Street (Roostertail Restaurant) is considered to be in compliance with City noise limits. No further action is required at this time.



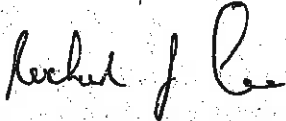
Abatement work consisting of the installation of acoustical duct lagging along the entirety of the mechanical exhaust system's external ductwork.

Our letter dated April 26, 2014 explained that if the remainder of the external ductwork was wrapped to decrease the noise closest to the residential receptor, a variance would be considered for the rooftop fan noise. Environmental Health has reviewed the noise variance application filed on July 18, 2014 and supporting materials detailing abatement costs of approximately \$8000. We have found that your request has sufficient merit and therefore grant Roostertail Restaurant (1963 Sutter Street) a noise variance under the conditions set forth below. Failure to implement the following conditions may result in revocation of this variance and the institution of enforcement penalties:

- Continue to perform routine, regular maintenance of the mechanical equipment in accordance with the manufacturer's recommendations
- Inform Environmental Health staff prior to the addition, relocation, substitution, or any other alteration of rooftop mechanical equipment.

This variance applies only to the mechanical exhaust system and equipment configuration as of July 23, 2014. The variance will be effective upon receipt of a signed copy of this letter and subject to any appeals filed in the 15 days following. At our discretion, Environmental Health may rescind this variance if it is determined that Roostertail Restaurant has violated the above terms. Please direct any questions or concerns to Jonathan Piakis (Jonathan.Piakis@sfdph.org).

Sincerely,

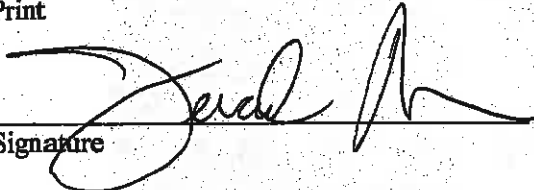


Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director

Roostertail Restaurant understands and agrees to comply with the terms of this variance.

GERARD DARIAN

Print



Signature

7/24/2014

Date

Location Address:

1263 Sutter St

Inspection Date:

3/18/14

Business Name:

Rooster-tail Restaurant

Re-Inspection Date:

4/3/14

The marked violations are California Retail Food Code violations and must be corrected.
(Failure To Comply May Result in a Citation and / or Fines)

This facility has been shown to be in violation of SFMPL, Article 24 for regulation of noise. This form and the letter attached from SFDPH Noise Control Officer Junathon Piekis, serves as a 'Notice of Violation'.

Facility must comply w/ items detailed in letter / submit plan of correction by close of business on Wednesday, April 2, 2014, or face further actions.

Please contact Junathon Piekis 415-252-3911 with any questions

REHS:

Zack Parsons

Received By:

Tamara Thomas

NEW

SUBMITTALS

For Hearing Nov. 19, 2014

1 MICHIKO YAMADA
1959 Sutter Street
2 San Francisco, CA 94115
Tel: (415) 775-0860

3 Complainant and Appellant
4
5
6
7

8 **BOARD OF APPEALS**
9 **CITY AND COUNTY OF SAN FRANCISCO**
10

11
12 MICHIKO YAMADA,
13 Complainant and Appellant
14 v.
15 DEPARTMENT OF PUBLIC HEALTH,
16 Respondent
17

No. 14-141

SUPPLEMENTAL BRIEF IN SUPPORT OF APPEAL
FROM GRANT OF VARIANCE

Date: November 19, 2014
Time: 5:00 p.m.
Place: City Hall Room 416

18
19 Complainant and Appellant MICHIKO YAMADA respectfully submits the following
20 Supplemental Brief in support of her appeal from the variance from the San Francisco Noise
21 Ordinance issued to ROOSTERTAIL RESTAURANT by Respondent DEPARTMENT OF
22 PUBLIC HEALTH.
23
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25
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27
28

Settlement Efforts. At the 10/8/14, Board of Appeals (BOA) hearing, this Board directed the parties to try to settle and resolve the problem. We have made every effort to reach a settlement. Even before that Board hearing, we had initiated a settlement conference with Roostertail and Charles Salter Associates (CSA) professionals Yee and Miyar on 9/23/14. We offered to pay 1/3 of the cost of an acoustical analysis report and mitigation design by CSA, which neither DPH nor Roostertail had done. Also, on 10/6/14, we granted Roostertail access to our home so that they could hear the noise firsthand. We have sent Roostertail 9 e-mails and 2 letters (one sent certified), and made 4 phone calls attempting to resolve this ongoing noise issue. Roostertail rebuffed our overtures, making no attempt to resolve the problem cooperatively. The night of the hearing, we sent Roostertail an e-mail, again inviting them to enter negotiations. Their ultimate reply: "We are not satisfied with any of the 6 points in your original settlement proposal." (Exhibit A: Communications with Roostertail.)

Noise Levels Remain Excessive and Unchanged. Sound readings taken in the light well and on the roof consistently show that Roostertail's fan exceeds the allowable noise limits. The noise is continuously audible throughout the day and evening and pervades our home, causing us to feel agitated, stressed, uneasy and tense in our own home. Public comment and written statements confirm the serious extent and oppressiveness of the noise and vibration problems Roostertail's fan and exhaust system is causing. (Exhibit B: Letters of Support.)

Variance Flawed. The variance is flawed and wrongly issued. 1) No studies or evaluative data support DPH's view that wrapping half or all of 1 of 3 ducts would remedy the noise problem. At the 10/8/14, hearing, the City Attorney materially misstated CSA's position, wrongly asserting it had determined that wrapping one of the ducts would be sufficient. 2) DPH granted the variance without taking any noise measurements to verify whether Roostertail had

become code compliant, thereby shirking its responsibility to enforce the Noise Ordinance.

3) The excessive noise Roostertail's exhaust system is generating is real and oppressive.

Variance Undermines Noise Ordinance Intent. DPH argues that the light well readings must be ignored because §2902 requires "outside noise level measurements" to be taken at least 4-1/2 feet distant from walls. The Board should reject this argument.

The SF Noise Ordinance is clearly intended to protect the public health from the recognized harmful effects of excessive noise. (Exhibit C: Noise Task Force Minutes, and SF Examiner Article and Exhibit F: Charles Salter & Eric Yee Statements.) §2900(c) states: *"In order to protect public health, it is hereby declared to be the policy of San Francisco to prohibit unwanted, excessive and avoidable noise. It shall be the policy of San Francisco to maintain noise levels in areas with existing healthful and acceptable levels of noise and to reduce noise levels, through all practicable means, in those areas of San Francisco where noise levels are above acceptable levels as defined by the WHO Guidelines on Community Noise."*

The 2008 amendments, based on the WHO's noise pollution standards, were intended to update and strengthen the City's ability to address and remedy excessive noise problems. (Exhibit C: SF Examiner Article). WHO has found that noise pollution, including low frequency noise, is an increasingly serious health problem worldwide, with restaurant ventilation systems called out as among the urban noise sources contributing to this problem. (Exhibit D: WHO Community Noise Guidelines Excerpts.)

DPH's January 2014 contention that §2902 nonetheless precludes light well measurements in this case (and most cases involving older buildings) conflicts with DPH's historical practice (Exhibit E: Charles Salter & Eric Yee Statements), and the WHO Community Noise Guideline goals and standards (Exhibit D), and blocks DPH's ability to enforce the SF

Noise Ordinance to serve its goals. As enacted in 1972 and amended in 2008, §2902 contained the same language DPH now argues that despite its past practice, precludes light well measurements to assess and remedy excessive noise. (See Ord. 274-72, 278-08.) DPH's new position constitutes an abrupt, radical, and conceptually absurd, change from its decades-long practice that is prejudicial not only to us in this case, but to the public and the public health that DPH is supposed to serve.

Roostertail Has Never Complied with the Noise Ordinance. To uphold the variance would be to reward Roostertail for flagrant noncompliance from the start with the Noise Ordinance, and the directives of DPH and this Board. Indeed, DPH issued a Permit to Operate without taking any noise readings to confirm whether Roostertail complied with the Noise Ordinance. Furthermore, over the past 15 years, DPH has *never* granted a variance in a mixed use neighborhood where a remedy was available.

Cost. Since the start of this dispute, we have spent over \$10,000 to address the noise problem, including our voluntary installation of 4 double pane windows to deaden the noise and our retention of CSA to provide expert technical assessments of the noise problem stemming from Roostertail's fan and exhaust system. This case has been ongoing for almost 3 years; our expenses continue to mount. (Exhibit F: Expenses.)

Conclusion and Remedy. This Board should reverse DPH's decision to grant Roostertail a variance from its conceded violation of the Noise Ordinance, and require Roostertail to comply immediately with the Noise Ordinance by reducing their fan equipment noise emissions to 53 dBA or less, as intended by the original Permit to Operate.

TABLE OF EXHIBITS

Communications with Roostertail.....Exhibit A

Letters of Support.....Exhibit B

Noise Task Force Minutes (Excerpts) and SF Examiner Article, August 13, 2008.....Exhibit C

World Health Organization Community Noise Guidelines (Excerpts).....Exhibit D

Charles Salter & Eric Yee Statements.....Exhibit E

Expenses.....Exhibit F

EXHIBIT A

BONACKER ASSOCIATES

17 Van Buren Street / San Francisco / CA / 94131
tel: 415.584.4300 / bruce@bonacker.com

October 27, 2014

Tracy and Gerard,

Thank you for your e-mail note responding to the Yamada's proposed re-engagement in the settlement process.

The Yamadas are disappointed in the apparent extent of your approach to a negotiated settlement. Unless we've misunderstood your proposal – an offer to talk with your landlord about providing possible access to the roof for the Salter team – it is unsubstantial and provides nothing useful for the Yamadas to respond to.

It's important to understand that the Board of Appeals indicated that they are not altogether accepting of the DPH's assertion that the only problem is at the roof level and that the light well readings are of no concern. They directed both sides to engage in settlement discussions to resolve the noise problem. As I've indicated before, we feel it would be in everyone's best interest to work out a mutually acceptable compromise that works to cure the actual noise problem so that the dispute can be resolved in a neighborly way.

Please understand that, despite the fact that the Yamadas are not causing the existing noise problems, they have incurred considerable expense to try to solve them, including replacing their windows with new noise resistant double glazed units and for expert consultants to analyze the problem, all of which inures to Roostertail's benefit, but none of which is deductible as a business expense. Nonetheless, they are willing to negotiate a settlement and are open to entertaining something substantive from you on this matter.

Again, I invite you to discuss this problem with us and I hope we can enter into useful negotiations to resolve the issues before us. We are prepared to work around your schedule.

Thank you.

Sincerely,



Bruce Bonacker

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 38.00
Certified Fee	16.00
Return Receipt Fee (Endorsement Required)	16.00
Restricted Delivery Fee (Endorsement Required)	16.00
Total Postage & Fees	\$ 86.00
Postmark Here OCT 27 2014	
Sent To Roostertail Restaurant	
Street, Apt. No., or PO Box No. 1963 Sutter Street	
City, State, ZIP+4 San Francisco, CA 94115	
PS Form 3800, August 2006 See Reverse for Instructions	

7014 0150 0000 5155 0840

BONACKER ASSOCIATES

17 Van Buren Street / San Francisco / CA / 94131
tel: 415.584.4300 / bruce@bonacker.com

16 September, 2014

Mr. Gerard Darien
Ms. Tracy Green
1963 Sutter Street

Regarding: DPH Noise Variance, BOA Case # is 14-141, 1963 Sutter Street

Mr. Darien and Ms. Green

Bonacker Associates is an architectural firm and I am assisting Ms Michiko Yamada and her father in their effort to resolve their concerns about the noise that they are experiencing in the contiguous light wells between your two buildings. As you know, they are of the opinion that the noise is being generated from your restaurant's new exhaust ducts. I believe you're also aware that they have secured acoustical readings from both the San Francisco Department of Public Health and from the acoustical consultant, Charles M. Salter Associates to indicate that the sound is being caused by the new ducts and is in excess of the City Health Code maximums.

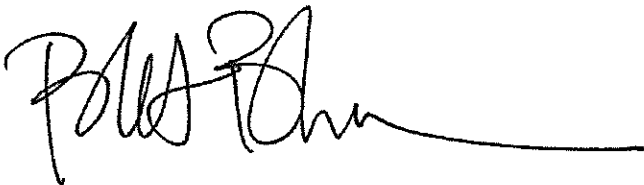
Since the noise concern has not yet been mitigated with the approaches that have been attempted so far, Ms Yamada has felt it was in their interest to request that the Board of Appeals review the current situation and make a determination on how the issue noise problem should be addressed.

I would like to attempt to do what I can to work together with both you and the Yamadas to develop a resolution to the situation before the Board of Appeals hearing. My experience has been that an amicably resolved resolution to disagreements between neighbors is better for all concerned. It maximizes the potential for neighbors to develop their own solutions, it avoids taking the time of the Board of Appeals and avoids the imposition of a decision by an external body. I've found that such mutual decision-making between the concerned parties results in the best long-term relations between neighbors and that's a very valuable factor.

I understand that you have requested a proposal for design services from the Salter firm to address the sound issues and I'd like to get together with them and you to discuss the alternatives by which we can most simply develop a solution to the problem. I expect that the Salter folks would be able to offer facilities for us all to meet. The Yamada's are very interested in this alternative approach but think it would be most productive if I were to represent them at the meeting.

Please let me know as soon as possible if this is an idea that you think is worth pursuing.

Sincerely,



Bruce Bonacker

RE: Roostertail Yamada negotiations

Inbox x

Bruce Bonacker via eigbox.net

3:50 PM

(

to gerard, me

Hi Gerard,

I received your attached message today.

As I have suggested in earlier initiatives and in responses to your replies, we would entertain your thoughts as to how this concern can be addressed and resolved in order to bring it to an end with a mutually satisfactory solution.

Further, I recommend that, as we continue, we meet face-to-face in order to communicate best regarding this effort to reach a negotiated settlement. As I indicated, we would be happy to accommodate your schedule.

Let me know your thoughts.

Bruce Bonacker
Bonacker Associates
17 Van Buren Street
San Francisco, CA 94131
ph: 415.584.4300
cell: 415.722.0167

From: gerard darian [mailto:jebirley@yahoo.com]

Sent: Wednesday, October 29, 2014 1:31 PM

To: bruce@bonacker.com

Subject: Roostertail

Bruce, '

We are not accepting a negotiated settlement of having us pay a minimum of 5K and the Yamada's paying \$ 750.00!

It simply does not make sense for us to have to keep struggling financially when the DPH is telling me there is no violation or harmful noise to the Yamada's. If there is any other ideas of compromise we are gladly here to listen.

Thank you

Gerard Darian

Bruce Bonacker

From: Roostertailsf [roostertailsf@yahoo.com]
Sent: Monday, October 20, 2014 1:40 PM
To: Bruce Bonacker
Subject: Fwd: Board of appeals matter (DPH vs Yamada)

Sent from my iPhone

Begin forwarded message:

From: Gerard Darian <roostertailsf@yahoo.com>
Date: October 14, 2014 at 3:32:38 PM PDT
To: "Tracy K. Green" <tkgreen@sbcglobal.net>
Subject: Fw: Board of appeals matter (DPH vs Yamada)
Reply-To: Gerard Darian <roostertailsf@yahoo.com>

On Tuesday, October 14, 2014 3:31 PM, Gerard Darian <roostertailsf@yahoo.com> wrote:

Bruce, I can tell you that we are not satisfied with any of the 6 points in your original settlement proposal. After hearing and reading testimonies from the last Board of Appeals meeting, the only issue is on the roof. After being forced to spend 8K wrapping the duct. that was a big chunk of good will out of my pocket! We are simply financially not in the position to spend another 5-8K? to look at the possibility of the mitigation of detectable noise in the light well. We are more than happy to talk to the building owner to allow someone from Salter& assoc. to have access to the roof. I also pledge to have the rooftop equipment(motors, fans, current isolators. etc) checked by our current contractor who specializes in such equipment. If you feel we need to have another meeting, Tracy and I are more than happy to make this happen?

Thank you
Gerard Darian

— Original Message —

From: Jeanne Baum

To: roostertails@yahoo.com

Sent: Tuesday, October 14, 2014 9:15 AM

Subject: Michiko Yamada / Roostertail appeal from Bruce Bonacker

Hello Tracy and Gerard,

I haven't heard from you since my e-mail of Wednesday evening last week and thought I try to reconnect. The Yamadas are very interested in finding a settlement solution to the noise concern and we would like to hear your thoughts on that possibility. Would you like to respond to our settlement offer with a version of your own?

Please get in touch with me in any case to let us know your approach. If you're interested in pursuing a settlement, we should probably allow ourselves some time after a 2 way conversation begins to work out the details, etc.

Thanks,

Bruce Bonacker



This email is free from viruses and malware because avast! Antivirus protection is active.

Bruce Bonacker

From: Bruce Bonacker [bruce@bonacker.com]
Sent: Wednesday, October 08, 2014 8:09 PM
To: 'Roostertailsf'
Cc: 'Michiko Yamada'; 'Eric A. Yee'
Subject: RE: Board of Appeals case # 14-141
Attachments: Re: Board of Appeals case # 14-141

Hello Tracy and Gerard,

Well, it looks like we have more work ahead of us. Please give the suggestions of the BoA some thought and let us know if our proposal is satisfactory.

I'll be able to receive e-mails while I'm away. I plan to return late on Friday evening, 10/17.

Bruce Bonacker
Bonacker Associates
17 Van Buren Street
San Francisco, CA 94131
ph: 415.584.4300
cell: 415.722.0167

Bruce Bonacker

From: Roostertailsf [roostertailsf@yahoo.com]
Sent: Friday, October 03, 2014 9:48 AM
To: Bruce Bonacker
Subject: Re: Board of Appeals case # 14-141

Bruce , I do appreciate the phone conversation this morning. Tracy and I feel like we will wait the outcome of the hearing before we sign a settlement proposal

Regards
Gerard Darian

Sent from my iPhone

On Sep 30, 2014, at 5:24 PM, "Bruce Bonacker" <bruce@bonacker.com> wrote:

Tracy and Gerard,

I'm sending this message to let you know that the Yamadas are willing grant you access to visit the inside of their residence.

As I'm sure you're aware, the Yamadas personal privacy is important to them and this is a major concession on their parts. It's done in the interest of working toward resolving this problem in the best and most expeditious way possible. Out of respect for their privacy, no photos or videos are to be taken during your visit.

In recognition of this concession, we feel it's in everyone's best interest to first establish the terms of the settlement and agree to them in draft form beforehand in writing. This will provide a basis and justification for the Yamadas to open their home to you and establish a set of criteria for what is accomplished in the visit.

We presented our proposed approach to resolving the Yamadas concerns about the noise at our meeting at the office of Charles M. Salter Associates last week. To review, they are as follows:

A formal written agreement [effectively, a contract between parties] will be completed stipulating:

- Roostertail will hire the Salter firm to design and oversee construction of full mitigation of detectable noise above the maximum code level allowed.
- Roostertail will vigorously pursue and accomplishes mitigation of detectable noise, above the maximum code level allowed.
- Roostertail will allow the Salter firm access and the Salter firm will take readings immediately after the work is completed, 1 year later and 3 years after completion of mitigation to confirm compliance and maintenance. Salter may take readings in the light well at Yamada expense at other times as noise concerns arise. Remediation will be accomplished by Roostertail if readings are found to be in violation by the Salter firm.
- Yamada will pay 1/3 of the Salter firm's consulting fee to Roostertail up to \$2500 maximum from Yamada.
- Yamada will immediately receive copies to all documentation of noise mitigation designs and readings.

Bruce Bonacker

From: Roostertailsf [roostertailsf@yahoo.com]
Sent: Wednesday, October 01, 2014 3:55 PM
To: Bruce Bonacker
Subject: Re: Board of Appeals case # 14-141

Bruce , we simply want to hear what the Yamadas are hearing before we agree to any contract or stipulations . We do, and will respect their home and privacy and will not take any pictures, etc.

thank you

Gerard Darian

Sent from my iPhone

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- Yamada will pay 1/3 of the Salter firm's consulting fee to Roostertail up to \$2500 maximum from Yamada.
- Yamada will immediately receive copies to all documentation of noise mitigation designs and readings.

- Yamada will agree to allow 4 months for Roostertail's mitigation to be accomplished.

You sent me an e-mail message indicating that you're inclined to pursue such an agreement and we're all encouraged by that statement. We would be willing to add the provision for a visit to the Yamadas' home for you both if that is necessary to complete and have both parties sign the settlement in this endeavor. We do need to remember that the Board of Appeals will be dealing with the issue of the exterior noise levels but they translate to the problems that are experienced within the Yamada home.

Please let me know by 10:00 AM this coming Friday, 10/3/2004 how you wish to proceed. As we discussed at our settlement meeting, the Board of Appeals needs some advance warning if a request for an extension is to be entertained. We'll need to coordinate that among us and the DPH and that all has to be done by the EOB on 9/3. If I don't hear from you by 10:00 AM on this coming Friday, I'll assume that you have chosen not to proceed with the possibility of a settlement.

Bruce Bonacker
Bonacker Associates
17 Van Buren Street
San Francisco, CA 94131
ph: 415.584.4300
cell: 415.722.0167

<mime-attachment>

Bruce Bonacker

From: Bruce Bonacker [bruce@bonacker.com]
Sent: Tuesday, September 30, 2014 5:25 PM
To: 'Roostertails'
Subject: RE: Board of Appeals case # 14-141
Attachments: Re: Board of Appeals case # 14-141

Tracy and Gerard,

I'm sending this message to let you know that the Yamadas are willing grant you access to visit the inside of their *residence*.

As I'm sure you're aware, the Yamadas personal privacy is important to them and this is a major concession on their parts. It's done in the interest of working toward resolving this problem in the best and most expeditious way possible. Out of respect for their privacy, no photos or videos are to be taken during your visit.

In recognition of this concession, we feel it's in everyone's best interest to first establish the terms of the settlement and agree to them in draft form beforehand in writing. This will provide a basis and justification for the Yamadas to open their home to you and establish a set of criteria for what is accomplished in the visit.

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- Yamada will immediately receive copies to all documentation of noise mitigation designs and readings.
- Yamada will agree to allow 4 months for Roostertail's mitigation to be accomplished.

You sent me an e-mail message indicating that you're inclined to pursue such an agreement and we're all encouraged by that statement. We would be willing to add the provision for a visit to the Yamadas' home for you both if that is necessary to complete and have both parties sign the settlement in this endeavor. We do need to remember that the Board of Appeals will be dealing with the issue of the exterior noise levels but they translate to the problems that are experienced within the Yamada home.

Please let me know by 10:00 AM this coming Friday, 10/3/2004 how you wish to proceed. As we discussed at our settlement meeting, the Board of Appeals needs some advance warning if a request for an extension is to be entertained. We'll need to coordinate that among us and the DPH and that all has to be done by the EOB on 9/3. If I don't hear from you by 10:00 AM on this coming Friday, I'll assume that you have chosen not to proceed with the possibility of a settlement.

Bruce Bonacker
Bonacker Associates
17 Van Buren Street
San Francisco, CA 94131
ph: 415.584.4300
cell: 415.722.0167

Bruce Bonacker

From: Roostertailsf [roostertailsf@yahoo.com]
Sent: Thursday, September 25, 2014 1:10 PM
To: Bruce Bonacker
Subject: Re: Board of Appeals case # 14-141

Bruce, Good afternoon. Tracy and I are not totally against some of your points in a settlement proposal. I think the next step for us is to be able to have access inside the Yamada residence to totally understand the issue of what they are hearing? You spoke earlier with Tracy about this and understand you need to confirm with the Yamadas about this. Thank you for your time in this matter

Sincerely
Gerard Darian

Sent from my iPhone

On Sep 24, 2014, at 10:34 AM, "Bruce Bonacker" <bruce@bonacker.com> wrote:

Hello Gerard and Tracy,

Did I misunderstand?

I thought I was going to hear from you @ 9:00 on the telephone.

Perhaps we can catch up another time.

Bruce Bonacker
Bonacker Associates
17 Van Buren Street
San Francisco, CA 94131
ph: 415.584.4300
cell: 415.722.0167

<mime-attachment>

Bruce Bonacker

From: Roostertailsf [roostertailsf@yahoo.com]
Sent: Tuesday, September 23, 2014 6:10 PM
To: Bruce Bonacker
Subject: Re: Board of Appeals case # 14-141

Bruce, I had some more questions I need answers to.

My wife Tracy would like to call you in the morning. 9am.

Also, I'm still having a hard time imaging the noise she hears. If the window is closed? What is heard. If you move to another part of the house, what's is heard. I can't believe she stands next to that window all day long and hears our fans.

Thank you

Gerard

Sent from my iPhone

On Sep 18, 2014, at 3:57 PM, "Bruce Bonacker" <bruce@bonacker.com> wrote:

Gerard,

Here you go:

Tuesday at 3:00 at the offices of Charles M. Salter,
130 Sutter Street, Floor 5, San Francisco, CA,
415.397.0442.

Eric or Cristina, please reserve the room as indicated.

If it's a problem, let me know.

Bruce Bonacker
Bonacker Associates
17 Van Buren Street
San Francisco, CA 94131
ph: 415.584.4300
cell: 415.722.0167

<mime-attachment>

Bruce Bonacker

From: Bruce Bonacker [bruce@bonacker.com]
Sent: Tuesday, September 16, 2014 12:35 PM
To: 'roostertailsf@yahoo.com'
Cc: 'cristina.miyar@cmsalter.com'; 'Eric A. Yee'
Subject: Board of Appeals case # 14-141
Attachments: scan - letter to Roostertail.9.16.14.JPG

Mr. Darien and Ms Green,

I'm sending this message as a representative of Michiko Yamada.

Attached is a letter from me about the possibility of a discussion about the current acoustical concerns in your light well.

Please let me know if you'd like to pursue my suggestion.

Thanks

Bruce Bonacker
Bonacker Associates
17 Van Buren Street
San Francisco, CA 94131
ph: 415.584.4300
cell: 415.722.0167

EXHIBIT B

October 28, 2014

Board of Appeals
1650 Mission Street, Suite 304
San Francisco, CA 94103

RE: Case # 14-141 Yamada vs. Department of Public Health

Dear Commissioners:

I am writing on behalf of Ms. Michiko Yamada. I have visited her home (more than once) and have heard the fan noise inside Ms. Yamada's apartment. It is clearly audible. It sounds like a humming vibration engine noise and it fills her entire apartment. The fan is on continuously every day, 7 days a week!

Please support Ms. Yamada's endeavors to have her next-door neighbor remedy the fan noise as soon as possible since this problem has been ongoing for close to 3 years.

Thank you,

Sincerely,

A handwritten signature in cursive script that reads "Lelani Chuck". The signature is written in black ink and is positioned below the word "Sincerely,".

Lelani Chuck
lelani_chuck@yahoo.com

October 27, 2014

Don Plansky
1670 Clayton Rd # 16
Concord, CA 94520

Board of Appeals
1650 Mission Street
Suite 304
San Francisco, CA 94103

RE: Case No. 14-141 Yamada v. Department of Public Health

Dear Commissioners:

I am writing on behalf of Ms. Michiko Yamada.

I recently visited Ms. Yamada at her home.

I noticed a persistent humming sound that was audible throughout her apartment. When Ms. Yamada opened a window to let in fresh air, the noise was quite noticeable.

I hope you will support her efforts to reduce the fan noise from the Roostertail Restaurant so that she can live comfortably and quietly in her home.

Sincerely,



Don Plansky

October 28, 2014

Board of Appeals
1650 Mission St., Suite 304
San Francisco, CA 94103

Re: Case # 14-141 Yamada vs. Department of Public Health

Dear Commissioners:

I am writing regarding Ms. Yamada's ongoing fan noise problem. I am aware that this persistent noise has distressed Michiko for several years. I recently visited her in the apartment and heard for myself the humming vibration that intrudes on an otherwise very serene living space.

Please encourage the next door restaurant to eliminate this fan noise as soon as possible.

Thank you,



Thelma Tucker
2205 Sacramento St., 101
San Francisco, CA 94115

2309 California Street
San Francisco, CA 94115

28 October 2014

Ms. Michiko Yamada
1963 Sutter Street
San Francisco, CA 94115

SUBJECT: Noise in your apartment

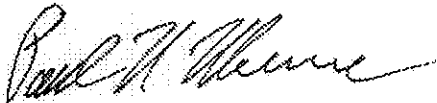
Dear Michiko,

I fully support your appeal of the DPH noise variance granted to Roostertail Restaurant.

I have visited your apartment. The background noise is both persistent and annoying. Closing the windows reduces the noise, but not enough to remove the annoyance.

This background noise is stressful and distracting. When I travel, I use noise cancelling earphones precisely to deal with this type of noise. That is clearly not a solution to the problem caused by the Roostertail's air handling systems.

Warmest regards,

A handwritten signature in black ink, appearing to read "Paul H. Wermer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul H Wermer

EXHIBIT C

MINUTES BOARD OF SUPERVISOR'S NOISE TASK FORCE

Thursday, April 7, 2011
10-Noon, Room 910, Fox Plaza

Task Force Members Present:

City Attorney, Cecilia Mangoba
DBI, Laurence Kornfield
DPH, Thomas Rivard
DPH, Patrick Fosdahl
DPH, Michael Harris
DPH, Mary Freschet

DPW, Nancy George
Entertainment Com., Vajra Granelli
Planning, Jessica Range
Planning, Michael Jacinto
Police, Jim O'Meara
311, Scott Oswald

Broadband Back-Up Alarms:

Michael Harris reported that OSHA had recently approved broadband back-up alarms for non-construction site uses. Nancy George indicated that the PUC would be considered a "construction site use" and so the broadband back-up alarms could not be used on their sites. Michael further stated that Recology is looking at piloting the broadband alarms on garbage pick-up routes which have received the most noise complaints. It was suggested that Muni may want to explore using this type of alarm but may be reluctant to make any changes given the number of recent accidents.

Noise Guidelines For Restaurants:

Tom Rivard distributed copies of the draft Restaurant and Food Market Guidelines. Tom mentioned that the guidelines essentially require new restaurants to meet a 53 dBA at the property plane requirement unless the owner can prove that the local ambient noise level exceeds the 53 dBA standard. Laurence Kornfield suggested talking to Charlie Salter (acoustical engineer) regarding possibly having a pre-approved low noise equipment list for restaurants. Laurence also mentioned that while the intent was to capture new restaurants and new equipment during the plan check process we may be missing some of the new equipment installations. He went on to explain that some of the new equipment is installed to replace similar equipment and may not go through the plan check process. Laurence will review this item and get back to the group. Tom finished the discussion by stating that this was just a draft document and as such he was looking for comments. He encouraged the group to review the guidance and give him feedback.

Article 29 Ordinance Amendments:

Tom Rivard began the discussion by stating that while former Supervisor Maxwell and Supervisor Chui had taken an interest in the ordinance the amendments do not currently have a Board of Supervisor sponsor. Tom then walked the group through the ordinance and highlighted the areas we have agreed to amend.

SEC. 2901 Definitions:

- (a) Ambient – the main change here is that the ambient will now be based on a measured L90.
- (b) Commercial – this was changed to more clearly define the difference between commercial and residential property. Vajra asked how this section would apply to noise complaints involving commercial on the first floor and residential on the second floor. Tom responded that Sec. 2909 (b) addressed this mix use situation. The intent was to use the 8 dBA above ambient standard for mixed use and only apply the 5 dBA standard if the building was exclusively residential. Vajra stated that he will review this section with the Entertainment Commission and send some comments if necessary.

Michael Harris asked how the 45 dBA and 55 dBA standard would apply and which standard would hold preeminence. Michael indicated that it was easier to use the 8 dBA and 5 dBA property plane standard and that he would prefer to use it over the 45 dBA and 55 dBA standard. Tom suggested that Cecilia take a look at the language and see if changes needed to be made.

Scott Oswald suggested that Cecilia make the language regarding commercial and mixed use consistent throughout the ordinance.

- (g) Industrial Noise – Jessica Range suggested that we not incorporate zoning codes to this section. Michael Jacinto and Jessica agreed to review alternatives with the Planning Department and report back to the group.
- (i) Noise Level – Jessica Range suggested that this section include the definition of a repetitive peak.
- (j) Person – Tom mentioned that the definition had been redefined to exclude the City and County of San Francisco.
- (m) Property Maintenance – added to include loud landscaping equipment.
- (n) Property Plane – Laurence Kornfield suggested that this definition be reworded so the property plane does not extend indefinitely in the vertical direction but would end around the height of the receptor.

SEC. 2906 Electrical Generator Testing

Laurence Kornfield suggested that the idea of “Best Available Technology” for noise reduction be explored for this section. He felt Charlie Salter may be able to make some suggestions or help with generating a list.

SEC 2908 Construction Noise Times; Night Noise Permits; Property Maintenance

Laurence Kornfield told the group that the issue of changing construction times had been brought before the Board of Supervisors before and it was not approved. The reason it was not approved was because the Board did not want to do anything that impacted on new building construction and home owners wanted to be able to do construction after they arrived home from work in the evening. Jim O’Meara suggested that we leave the evening time alone but consider moving the morning start time back an hour. The group then discussed the problem and tried to evaluate the size and scope of the complaints

regarding construction noise. Tom suggested having the Scott Oswald's group (311) check their records for complaints and also contact the Neighborhood Services to see how big of a problem construction noise is in the early morning and evening. We agreed to revisit this issue once we had the requested information regarding noise complaints.

SEC 2909 Noise Limits

(c) Industrial Noise Limits - Jessica Range felt the 75 dBA standard was too high and we should consider a 10 dBA over ambient standard.

(e) Fixed Residential Interior Noise – Vajra suggested that we add a dBC standard. Tom agreed to come up with some draft language but suggested that the Entertainment Commission test the standard before adopting this section.

SEC 2912 (f) – Laurence Kornfield asked for the creation of a special inspector to ensure proper acoustical construction. He noted that it was essential to not only design buildings properly but to also ensure that the actual construction was done in accordance with acoustical standards. Laurence recommended that he and Tom set up a time to speak to the Code Advisory Committee in May to discuss this issue.

Other:

Cecilia Mangoba reminded the group that the Noise Task Force will sunset in November unless the group decides to continue. Tom asked the group think about whether or not they want to continue meeting and we would make a decision at our next meeting.

The meeting adjourned at 12:00 Noon.

MINUTES BOARD OF SUPERVISOR'S NOISE TASK FORCE

Thursday, July 15, 2010

10-11:30 AM, Room 278, City Hall

Task Force Members Present:

311, Tom Schedler
DBI, Laurence Kornfield
DPH, Thomas Rivard
DPH, Mohammed Malhi
DPH, Michael Harris
DPH, Jen McLaughlin
DPW, Nancy George
Entertainment Com., Jocelyn Kane
Planning, Jessica Range
Police, Jim O'Meara

Guests:

Rosen, Goldberg, Der and Lewitz, Alan Rosen

Noise Model Validation:

Tom Rivard discussed the work done to validate the citywide noise model. He said that SFDPH was satisfied with the model as it generally predicts the actual noise level within two decibels. Jessica Range added that Planning intends to move forward with the noise map approval process.

Jessica Range asked if SFDPH planned to run a projected noise model for the predicted future traffic noise. Tom Rivard responded that a future model could be run, but it could be inaccurate because it is unknown how much the adoption of electric vehicles will affect future traffic noise.

Jessica Range suggested further mitigation for housing in zones projected to be >75 dBA areas including: noise monitoring, more intense planning review and the consideration of the high ambient noise level in the design of the building.

Jocelyn Kane expressed concern that some places only get noisy at night (due to entertainment related noise) and that such areas would not be captured on the noise map.

Broadband Back-Up Alarms

Michael Harris discussed the Cal/OSHA Advisory Committee Meeting on Back-Up Alarms. The committee rejected the proposed amendments to the Construction Safety Orders that pertain to warning devices on construction vehicles. Because there was some ambiguity on whether or not garbage trucks are considered construction vehicles, Michael Harris is waiting on an official rule interpretation from Cal/OSHA. Jocelyn Kane asked what the next step would be if garbage truck were to be held to the same standard as construction vehicles. Nancy George responded that seeking a variance from Cal/OSHA would likely be easier than making an amendment to the regulations. Michael Harris said he would pursue a variance in the event that the rule interpretation states that garbage trucks are to be regulated in the same way as construction vehicles.

Siren Noise:

Tom Rivard explained that the siren noise project was completed and shared some of the results. At one of the sample sites, there were 60 events over 75 dBA recorded in a single night. Thirty of the events were sirens.

Noise Ordinance Revisions:

Tom Rivard discussed the need to change the noise ordinance to make it easier to use and possibly more protective. He and Michael Harris were seeking input from the group on some of the proposed changes.

Alan Rosen expressed the need for more specific metrics when it comes to taking noise measurements as the measurement methodology is not well defined in the current ordinance. He went on to say that excluding developments covered under Title 24 from the Article 29 noise levels, may not be protective enough, particularly if a new noise source goes in after a project is completed. Michael Harris told the group that the proposed change was made in response to new residential buildings going in next to existing noise sources, then asking that the owner of the existing noise source pay to mitigate the noise. Alan Rosen suggested that some of the onus be put on Planning to account for preexisting fixed noise sources prior to building construction.

Alan Rosen agreed with the proposed change of having the “property plane” boundaries determined by what was within the line of site of potential noise receptors.

Jocelyn Kane asked if there was a way to enforce the noise levels outlined in the ordinance without the use of a sound meter. Tom Rivard responded that if a noise is audible at 50 feet after 10 PM, it would be a violation. However, in order to enforce the sections based on specific decibel levels, sound level measurements are required.

Michael Harris brought up the introduction of a standard for groundskeeping equipment. The levels used for this standard would be the same as those for construction equipment. However, both Nancy George and Lawrence Cornfeld suggested that groundskeeping equipment have its own section, separate from construction equipment to avoid confusion.

With regards to the construction equipment standards, Nancy George asked if we should start enforcing muffler use for concrete cutting/breaking equipment. She suggested that DPH work with DPW to do some before and after studies to determine the effectiveness of mufflers.

Michael Harris brought up the addition of a section that would limit the hours that sporting event venues could operate. Nancy George said that noise from Giants games routinely lasted beyond the proposed 10 PM limit. Michael Harris responded that the proposal was aimed more at venues like school soccer fields which are often in close proximity to residences. Jocelyn Kane added that special cases such as AT&T Park could be handled by issuing variances.



News » Government & Politics

August 13, 2008

Supe seeks to heighten the hush

By Joshua Sabatini

The rattling roar of a car without a muffler, the booming bass from a nightclub or construction workers who begin too early are all sounds residents in The City may know — and hate.

The City, however, is looking to bring relief to residents' eardrums by cracking down on noise polluters.

Proposed legislation would make it easier for The City to penalize those who exceed the noise limits and impose stricter noise controls. Under the proposal, The City could charge someone with an infraction of \$100 for a first offense and up to \$300 for three or more offenses in a year.

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The noise-control ordinance was introduced Tuesday by Supervisor Tom Ammiano, who said the legislation grew out of the “many, many constituents’ calls” complaining about loud noises bothering them or waking them up from sleep. Not since 1973 has The City updated its noise standards, and advancements in technology make sound level measuring much simpler, Ammiano said.

Ammiano said that residents of Bernal Heights have called in to complain about the noise from stadium rock concerts, while others have complained about construction noise and

“certain motor vehicles without the mufflers that are really loud. It’s really annoying.”

Dr. Rajiv Bhatia, director of occupational and environmental health with the Department of Public Health, said excessive noise can result in a number of health problems, including an increase in the risk of high blood pressure and heart disease.

Bhatia said the department receives “a lot of calls” from residents complaining about the noise of exhaust fans used by restaurants or other businesses. Bhatia said that a properly maintained exhaust fan would emit an allowable noise level.

The law also specifically addresses the complaints of residents who live near nightclubs and say the noise disturbs their sleep. The law would create a new frequency measurement for bass and drum sounds.

Enforcement would remain divided among various departments depending on the type of noise. For example, the Entertainment Commission would enforce noise controls when it comes to nightclubs. But the Public Health Department would have oversight control of all noise enforcement and report annually to the Board of Supervisors about The City’s noise problems. The department would also designate an employee to act as a noise prevention and control officer.

The law would establish a task force that would regularly meet and ultimately recommend amendments to the noise-control ordinance. The task force will also recommend to the Planning Department how to better locate development based on The City's acoustic levels.

jsabatini@sfexaminer.com

Common noise complaints

- Construction
- Restaurant exhaust vents
- Bass and drums at nightclubs
- Motor vehicles without mufflers
- Stadium rock concerts

Source: Department of Public Health, Supervisor Tom Ammiano's office

EXHIBIT D

EXHIBIT D

EXCERPTS FROM THE WORLD HEALTH ORGANIZATION (WHO)

COMMUNITY NOISE GUIDELINES

<http://www.who.int/iris/handle/10665/66217>

The San Francisco Noise Task Force and the Board of Supervisors in creating and passing legislation which created and modified the existing noise code were using the following points from the WHO:

- “Effects of noise are widespread and there are long term consequences for health. Adverse health effects of noise include but are not limited to: hearing impairment; interference with speech communication; disturbance of rest and sleep; psychological, mental-health and performance effects; effects on residential behavior and annoyance; and interference with intended activities.”
- “Low-frequency noise from ventilation systems can disturb rest and sleep even at low sound pressure levels.”
- “Noise from fixed installations such as... heat pumps and ventilation systems on roofs, typically affect nearby communities. Reductions may be achieved by encouraging quieter equipment... Requirements for passive (sound insulating enclosures) and active noise control, or restriction of operation time, may also be effective.”
- “Typical neighborhood noise comes from premises and installations related to the catering trade (restaurant, cafeterias...etc.)”
- “Practical application to limit and control the exposure of environmental noise are essential.”

EXHIBIT E

Acoustics
Audiovisual
Telecommunications
Security

27 October 2014

Bruce Bonacker
Bonacker Associates
17 Van Buren Street
San Francisco, CA 94131
Email: bruce@bonacker.com
michikoyamada5@gmail.com

130 Sutter Street
Floor 5
San Francisco, CA
94104
T 415.397.0442
F 415.397.0454
www.cmsalter.com

Subject: **Yamada Case**
CSA Project No. 12-0478

Dear Mr. Bonacker and Ms. Yamada:

You have asked me to review and comment on the briefs prepared by officials in the City of San Francisco regarding this matter.

As an acoustical engineer, I have been dealing with the San Francisco Noise Ordinance for over 40 years. The intent of this noise ordinance is to protect people from excessive noise generated by their neighbors.

Section 2902 of the Ordinance specifies a 4½ foot distance between a measurement microphone and sound reflecting wall surface. City officials argue in their beliefs that they are prohibited from measuring sound levels in a light well because it is not large enough to achieve the minimum 4½ foot distance.

As an acoustical engineer I object to this argument. This light well provides ventilation to unair-conditioned residence. In my view, it is more important to measure disturbing noise in a light well than be limited by the 4½ foot distance specified in the ordinance.

The State of California Model Noise Ordinance states that measurements should not be made closer than 3 feet from a reflective wall surface. I am not aware of any ordinance (other than San Francisco's) that uses a 4 ½ foot measurement distance.

Noise ordinances require measurements at property lines. Having guidelines to measure a minimum distance from reflecting surfaces is a good idea. However, not allowing acoustical measurements in light wells (because the 4 ½ foot distance criteria is not achieved) is a bad idea in my opinion. This measurement rule does not provide for adequate protection for health and welfare.

In addition to the noise ordinance consideration, there is the structure borne energy transfer problem caused by the restaurant's kitchen exhaust fan and other equipment. This problem can only be solved by the restaurant.

This completes my comments on the subject matter. I would be glad to answer any questions or provide any additional commentary as needed.

Sincerely,

CHARLES M. SALTER ASSOCIATES, INC.



Charles M. Salter, PE
President

Charles M. Salter, PE
David R. Schwind, FAES
Eric L. Broadhurst, PE
Philip N. Sanders, LEED AP
Thomas A. Schindler, PE
Anthony P. Nash, PE
Cristina L. Miyar
Jason R. Duty, PE
Durand R. Begault, PhD, FAES
Joseph G. D'Angelo
Thomas J. Corbett, CTS
Eric A. Yee
Joshua M. Roper, PE, LEED AP
Ethan C. Salter, PE, LEED AP
Thomas D. Keller, CDT
Craig L. Gillan, RCDD
Lloyd B. Ranola
Alexander K. Salter, PE
Jeremy L. Decker, PE
Rob Hammond, PSP, NICET III
Andrew J. McKee
Paul R. Billings
Valerie C. Smith
Steven A. Woods
Benjamin D. Piper
Elisabeth S. Nelson
Joshua J. Harrison
Brian C. Wourms
Shanna M. Sullivan
Amanda G. Higbie
Ryan G. Raskop, LEED AP
Diego Hernandez
Ryan A. Schofield
Jamal Kinan
McLean H. Pierce
Alex T. Schiefer
Abner E. Morales
Brian J. Good
Heather A. Salter
Dee E. Garcia
Catherine F. Spurlock
Marva De Year - Noordzee
Elizabeth F. Trocker
Jennifer G. Palmer
Jodessa G. Cortez
Susan E. Lonergan
Courtney H. Vineys
Erin D. Gorton
Megan C. Santos
Tish Patel

28 October 2014

Bruce Bonacker
Bonacker Associates
17 Van Buren Street
San Francisco, CA 94131
Email: bruce@bonacker.com
michikoyamada5@gmail.com

Subject: **Yamada Case**
CSA Project: 12-0478

Dear Mr. Bonacker and Ms. Yamada:

You have asked me to review and comment on the briefs prepared by the officials in the City of San Francisco regarding this matter.

As an acoustical consultant, I have over 15 years of experience dealing with the San Francisco Noise Ordinance. The overarching policy of the SF Noise Ordinance is to protect public health from unwanted, excessive, and avoidable noise. The DPH's reinterpretation of the SF Noise Ordinance to preclude light well measurements is inconsistent with our previous project experience. In the past, I have seen health inspectors measure within 4-1/2 feet of reflective surfaces because that location is where the homeowner was affected by the noise.

In my professional opinion, the noise in the Yamada light well is as excessive as the rooftop location. The light well is acoustically shielded from other noise sources providing light and fresh air while minimizing Ms. Yamada's exposure to noise. Roostertail's equipment dominates the noise in the light well which significantly increases Ms. Yamada's exposure to noise.

Our measurements at Ms. Yamada's home indicate the problem stems from the restaurant's inadequately isolated mechanical equipment and/or ductwork rigidly connected to the fan and the building.

During the appeals hearing on 22 April 2014, I was shown a picture of the exhaust duct that had been wrapped one third up the duct. In response, I said that in order for the wrap to effectively reduce noise from the exhaust duct, the entire duct needed to be wrapped.

We have not yet been granted access to Roostertail's roof and equipment to properly analyze the noise and vibration issue. We have not reviewed the equipment nor duct mounting details to see if they comport with industry design standards.

In the past, I have successfully solved similar noise situations in San Francisco, Campbell, and Mountain View. I am confident that with adequate study, a solution can be reached to reduce the noise and vibration of Roostertail's mechanical equipment in Ms. Yamada's home.

This completes my comments on the subject matter. I would be glad to answer any questions or provide additional commentary as needed.

Acoustics

Audiovisual

Telecommunications

Security

Charles M. Salter, PE
David R. Schwind, FAES
Eric L. Broadhurst, PE
Philip N. Sanders, LEED AP
Thomas A. Schindler, PE
Anthony P. Nash, PE
Ken Graven, PE, RCDD, CTS-D
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Marva De Year - Noordzee
Elizabeth F. Trocker
Jennifer G. Palmer
Jodessa G. Cortez
Susan E. Lonergan
Courtney H. Vineys
Erin D. Gorton
Megan C. Santos
Tish Patel

Sincerely,

CHARLES M. SALTER ASSOCIATES, INC.



Eric A. Yee
Principal Consultant

2014-10-24 1959 Sutter Street EAY response to DPH brief

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EXHIBIT F

EXPENSES AS OF OCTOBER 30, 2014

Noise Problem Mitigation

Charles Salter Associates \$7,874.69

Healthy Building Science \$600.00

4 Windows Replaced to Double-Pane Windows \$1,294.00

Noise Problem Appeal

Board of Appeals Application Fee \$300.00

Photocopying/Scanning \$476.27

Kings Courier Services \$40.00

Stationery Materials \$109.57

TOTAL \$10,694.53

NOV 13 2014

APPEAL # 14-141

November 13, 2014

By Messenger

President Ann Lazarus and Commissioners
San Francisco Board of Appeals
1650 Mission Street, Room 304
San Francisco, CA 94103

Re: Opposition to Appeal No. 14-141

Dear President Lazarus and Commissioners:

On behalf of Gerard Darien, the owner of Roostertail Restaurant ("Variance Holder"), located at 1963 Sutter Street ("Property"), we are writing to oppose the appeal filed by Michiko Yamada ("Appellant") against the San Francisco Department of Public Health ("DPH") relative to a Noise Variance issued to Mr. Darien by DPH.

A. GERARD DARIEN'S JOINDER WITH CITY'S BRIEF

Gerard Darien hereby joins with and incorporates herein by reference the brief of Respondent San Francisco Department of Public Health in opposition to the appeal and the three Declarations filed on October 2, 2014 by City Attorney Dennis Herrera and Deputy City Attorney Sherri Sokeland Kaiser.

B. ABSENT A CLEAR ABUSE OF DISCRETION, DPH'S DETERMINATION SHOULD BE UPHELD.

Absent a clear abuse of discretion by an agency, courts will avoid interfering with an administrative agency's exercise of discretion [*Spanner v. Rancho Santiago Community College Dist.*, 119 Cal. App. 4th 584 (4th Dist. 2004)]. The general rule is that a court will compel an agency to exercise its discretion [*Common Cause v. Board of Supervisors*, 49 Cal. 3d 432 (1989)], but will not control it [*Robbins v. Superior Court*, 38 Cal. 3d 199 (1985)],

James A. Reuben | Andrew J. Junius | Kevin H. Rose | Daniel A. Frattin
Sheryl Reuben¹ | David Silverman | Thomas Tunny | Jay F. Drake | John Kevin
Lindsay M. Petrone | Melinda A. Sarjapur | Kenda H. McIntosh | Jared Eigerman^{2,3} | John McInerney III²

1. Also admitted in New York 2. Of Counsel 3. Also admitted in Massachusetts

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unless the law clearly establishes the petitioner's right to such action [*Miller Family Home, Inc. v. Department of Social Services*, 57 Cal. App. 4th 488 (3d Dist. 1997)], or the agency clearly abused that discretion. [*Los Angeles City etc. Employees Union v. Los Angeles City Bd. of Education*, 12 Cal. 3d 851 (1974)]

Rarely, if ever, will an administrative agency determination be disturbed on review unless the petitioner is able to show a jurisdictional excess, a serious error of law, or an abuse of discretion on the facts. [*Mason v. Office of Administrative Hearings*, 89 Cal. App. 4th 1119 (4th Dist. 2001)] Trial courts must uphold an agency action unless it is arbitrary, capricious, lacking in evidentiary support, or was made without due regard for the petitioner's rights. [*Environmental Charter High School v. Centinela Valley Union High School Dist.*, 122 Cal. App. 4th 139, (2d Dist. 2004), as modified on denial of reh'g, (Sept. 10, 2004)].

Where no such issues exist, administrative determinations of fact are conclusive on the courts [*McDonough v. Goodcell*, 13 Cal. 2d 741 (1939)], as are determinations made in the proper exercise of discretionary administrative, legislative, executive, or adjudicative functions. [*Ferrante v. Fish & Game Commission of Cal.*, 29 Cal. 2d 365 (1946)]

C. CONCLUSION

Mr. Darien has spent more than \$8,000 to dampen noise from the exhaust fan by wrapping it with Model LAG 10 Acoustical Pipe Duct Lagging (noise baffling material), as specifically recommended by the Department of Public Health. *See* Exhibit A, Noise Suppression Technologies, Inc. data sheets for Model LAG 10 Acoustical Pipe Duct

Lagging. Mr. Darien has taken all reasonable and appropriate steps both to comply with the law and to address the concerns expressed by Ms. Yamada. No one has claimed that there is a better material to use than Model LAG 10 Acoustical Pipe Duct Lagging, which meets and exceeds all industry standards, or that a better material even exists. While many people prefer to live within a silent space when possible, a busy urban environment does not provide such a luxury.

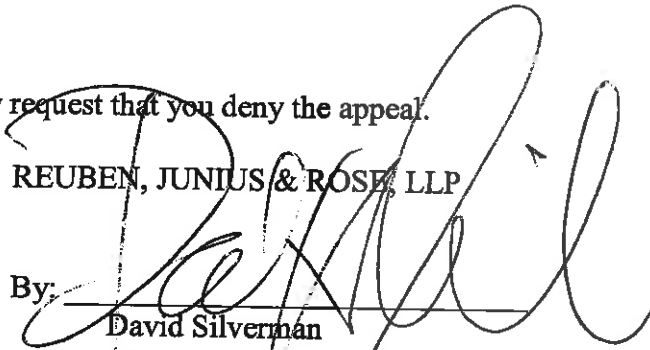
While as a general rule it is preferable to resolve a dispute about noise levels between or among neighbors by way of voluntary mediation, in this instance the serial demands of the Appellant for additional mitigation measures above that and beyond those already installed, and which Appellant has failed to show even exist, in order to remedy what the City experts have conclusively determined to be a non-problem (as evidenced by three expert Declarations entered into the administrative record), cannot be justified. *See* Declaration of Department of Public Health Acting Director Richard H. Lee. dated Oct. 2, 2014 (attached as Exhibit B).

Accordingly, we respectfully request that you deny the appeal.

REUBEN, JUNIUS & ROSE, LLP

Dated: November 13, 2014

By:


David Silverman
Attorneys for the Permit Holder
Gerard Darien and Roostertail Restaurant

cc: Michiko Yamada, Appellant
Deputy City Attorney Sherri Sokeland Kaiser, on behalf of the
San Francisco Department of Public Health

EXHIBIT A

EXHIBIT A

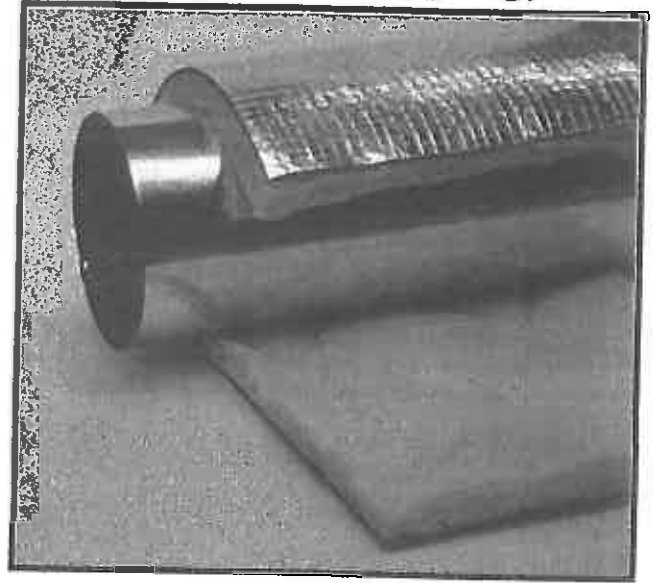


Model LAG 10 (Acoustical Pipe/Duct Lagging)

Model LAG 10 Acoustical Pipe/Duct Lagging, as manufactured by NSTI, combines a loaded vinyl with a reinforced aluminum foil facing on one side.

The vinyl provides mass and flexibility while the aluminum foil adds increased mechanical strength, weatherability, an attractive appearance and improved fire retardancy.

Lag 10 is available with a nominal 1" thick quilted fiberglass decoupler which allows the vinyl barrier to float independently of the noise source thus maximizing performance.



Benefits:

- ◆ **STC** - Up to 27.
- ◆ **Wide Temperature Ranges** - From -40° to 220°F. Optional high temperature facing up to 550°F is available.
- ◆ **Environment Safe** - Lead and asbestos free.
- ◆ **No Down Time** - Can be installed during normal equipment operation. No shut down required.
- ◆ **Durable** - Tear and puncture resistance. Offers oil and chemical resistance. Will not rot, shrink, or cause metal corrosion.
- ◆ **Fire Safe** - Meets Class 1 when properly installed. Low smoke and flame spread.
- ◆ **Easy Installation** - Using bands, matching lag tape or mechanical fasteners.
- ◆ **Cleanable** - Steam cleanable.
- ◆ **Moisture Resistant**

Applications:

- ◆ **Process Piping**
- ◆ **Duct Work**
- ◆ **Heat Exchangers**
- ◆ **Valves**
- ◆ **Mixing Boxes**
- ◆ **Material Transfer Lines**
- ◆ **Petro-Chemical and Wastewater Treatment Plants**
- ◆ **Gas Utility Pressure-Reducing Stations**



NSTI designs custom noise control solutions for your specific applications.

Noise Suppression Technologies, Inc.
Model LAG 10 (Acoustical Pipe/Duct Lagging)
Performance Data

Model LAG 10 has an operating temperature of -40° to 220°F. The barrier component is available in 54" x 60' rolls. The composite is available in 54" x 30' rolls. The composite incorporates a 1" quilted fiberglass decoupler which allows for a one step installation process. This significantly reduces installation labor and enhances noise reduction properties. Simply cut to length and secure in place using FSK tape, duct tape, bands or mechanical fasteners.

Product Properties:

Sound Transmission Loss

Frequency, Hz.	TL, dB
125	15
250	19
500	21
1000	28
2000	33
4000	37
STC	27

Service Temperature: -40° to 220°F

Flammability Per Fed. Test Std. No. 191-5903

Flame Out: 0 Seconds
 Afterglow: 0 Seconds
 Char Length: 0.2 Inch

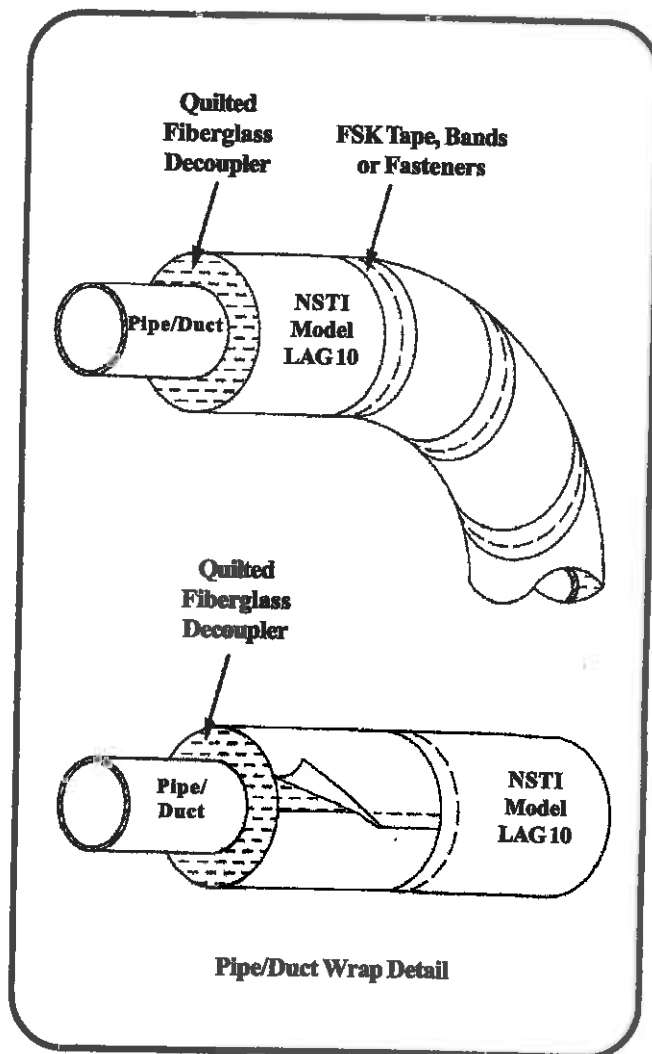
Corrosion Resistance: Excellent for most oils, grease, acids, and mild alkalis.

Material Thickness: 0.10" Barrier, 1.0" Composite

Material Roll Size: 54" x 30' Composite
 54" x 60' Barrier Only

Surface Burning Characteristics per ASTM E84

Flame Spread Index: 10
 Smoke Developed Index: 40



Pipe/Duct Wrap Detail

NSTI believes the information contained herein to be accurate as of the publication date. Actual product performance may vary based on specific application conditions.

©1996 Noise Suppression Technologies, Inc.

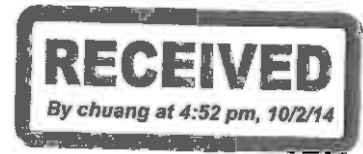
LAG 10
 Rev 9/99

Noise Suppression Technologies, Inc. □ 4182 Fisher Rd. □ Columbus, OH 43228 □ NSTI@noisesuppression.com
 Voice: (614) 258-4455 □ Fax: (614) 258-4452 □ www.noisesuppression.com

EXHIBIT B

EXHIBIT B

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7 Attorneys for Respondent,
DEPARTMENT OF PUBLIC HEALTH
8

9 SAN FRANCISCO

10 BOARD OF APPEALS

11 1650 Mission Street, Room 304
12 San Francisco, California 94103

13 MICHIKO YAMADA,

14 Appellant,

15 vs.

16 DEPARTMENT OF PUBLIC HEALTH,

17 Respondent.
18
19
20

Appeal No. 14-141

DECLARATION OF RICHARD J. LEE
IN SUPPORT OF RESPONDENT SAN
FRANCISCO DEPARTMENT OF PUBLIC
HEALTH

21 I, RICHARD J. LEE, declare as follows:

22 1. I have personal knowledge of the facts set forth herein, except for those facts set forth
23 on information and belief, which I also believe to be true. If called upon to testify, I could and would
24 testify competently to the matters set forth below.

25 2. I am the Acting Director of Environmental Health for the San Francisco Department of
26 Public Health ("DPH"). I have a Bachelor of Arts degree in Bacteriology and a Masters in Public
27 Health, with a specialty in Environmental Health, both from the University of California at Berkeley.
28

1 I have been a Certified Industrial Hygienist for the past 29 years, a Certified Safety Professional for 20
2 years, and a Registered Environmental Health Specialist for the last seven years.

3 3. I have evaluated numerous noise complaints throughout the 27 years I have been
4 working as an Industrial Hygienist in various capacities at DPH. I held the position of Senior
5 Industrial Hygienist for the first 20 years of my tenure. In 2007, I became the Director of
6 Environmental Health Regulatory Programs, including the Noise Program. In 2013, I became the
7 Acting Director of Environmental Health. For the seven years I have spent in these capacities, I have
8 supervised the DPH inspectors who monitor compliance with the San Francisco Noise Ordinance,
9 codified as Article 29 of the San Francisco Police Code.

10 4. In my current role as Director of Environmental Health, I serve as the Hearing Officer
11 designated by the Director of Public Health to hear and decide cases of non-compliance with the Noise
12 Ordinance. I am also charged with the discretionary authority to decide whether to grant a variance.

13 5. On March 14, 2013, my predecessor, Dr. Rajiv Bhatia, denied a request from Gerard
14 Darien, the owner of Roostertail Restaurant, for a variance from outdoor noise limits for commercial
15 sources. See Yamada Exhibit F. Dr. Bhatia denied the variance on the ground that Roostertail had
16 failed to install adequate noise dampening equipment sufficient to ensure compliance with the Noise
17 Ordinance during a recent renovation, noting that the noise standards in the Ordinance predated the
18 renovation by several years and should have been taken into account. Mr. Darien appealed the denial
19 to this Board, which reviewed and upheld the denial. See Yamada Exhibit H.

20 6. After his March 2013 request for a variance was denied, an enforcement process began
21 during which Mr. Darien undertook two rounds of mitigation projects, DPH took further noise
22 measurements and engaged in additional deliberations, and the parties continued to confer. These
23 events are recited in detail in paragraphs 3-18 of the declaration of DPH Noise Officer Jonathan
24 Piakis, filed concurrently with this declaration. For the sake of brevity, I refer the reader to those
25 paragraphs, which I believe to be a true and correct recitation of events.

26 7. On July 23, 2014, I granted a renewed application by Mr. Darien for a variance based
27 on the considerations set forth in the procedure governing the DPH Noise Variance Process. See
28 Yamada Exhibit T.

1 8. I concluded that Mr. Darien had made reasonable efforts to mitigate the source of the
2 complained-of noise in the lightwell outside Ms. Yamada's hallway window. After Mr. Darien was
3 originally denied a variance because no mitigation work was proposed, DPH ordered him to either
4 address the noise at the property plane or address the noise by insulating the ductwork in the lightwell.
5 At first, Mr. Darien only partially insulated the main ductwork. We then required that all of the main
6 ductwork be insulated. That work was completed.

7 9. I also considered the physical characteristics and geography of the noise violation, and
8 concluded that this factor also weighed in favor of a variance. The rooftop fan responsible for the
9 enforceable noise violation is above the roof levels of nearby buildings, dissipates before reaching
10 human receptors, and therefore has little effect if any on neighbors. Further, the physical
11 characteristics of the lightwell preclude it from being the site of a violation, because the sound level in
12 the small, reflective space cannot be measured in a manner that complies with the measurement
13 requirements in Section 2902 of the Noise Ordinance.

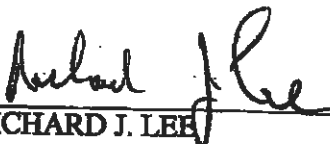
14 10. I also considered whether the public health, safety and welfare is affected by the noise
15 violation, and concluded that it is not. The primary public health consideration in this case is the
16 residential interior noise levels in Ms. Yamada's living and sleeping space. Those noise levels remain
17 below 45 dBA when measured in the middle of the day, with the kitchen exhaust operating and the
18 window to the lightwell open. These measurements indicate that there is no public health issue in Ms.
19 Yamada's living space, as they remain well below the residential noise limit in Section 2909(d) of 55
20 dBA from 7:00 am -10:00 pm (when the fan may be operating) and 45dBA from 10:00 pm to 7:00 am
21 (when the fan is not operating).

22 11. I also considered whether compliance with the provision from which the variance is
23 sought would result in hardship or cost to the owner without equal or greater benefit to the public. I
24 concluded that this factor also weighed strongly in favor of granting the variance. As the only actual
25 violation of the Noise Ordinance occurred on the rooftop, and the excess noise at that location did not
26 reach individual receptors, it made no sense to require Mr. Darien to go to substantial expense to
27 mitigate the rooftop noise. Instead, Mr. Darien complied with our condition for a variance that he
28 install acoustical insulation around the full length of the exhaust duct in the lightwell, despite the fact

1 that the noise in the lightwell did not violate the Noise Ordinance. Mr. Darien submitted
2 documentation demonstrating that he spent approximately \$8000 on that project. In my opinion,
3 requiring further investment in mitigating the sound at a location other than the site of the violation
4 would be unduly burdensome. Moreover, as demonstrated by the low interior noise measurements in
5 Ms. Yamada's residence, I concluded that further investment in mitigation measures was not needed to
6 address public health concerns. In sum, requiring additional investment in mitigation would create a
7 financial burden on the owner without providing any further benefit to the public, much less a benefit
8 of corresponding value.

9 12. For all of these reasons, and with the concurrence of the Manager of the Noise Program
10 and the Noise Officer handling the case, I granted the requested variance. I did not and do not
11 consider myself bound by my predecessor's decision to deny a variance in March 2013 based on
12 different facts and circumstances.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing is
14 true and correct and that this document was executed on the 2nd of October 2014 in San Francisco,
15 California.

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17 
18 RICHARD J. LEE
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1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 JULIE VAN NOSTERN, State Bar #103579
Chief Attorney, Health and Human Services
3 SHERRI SOKELAND KAISER, State Bar #197986
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7 Attorneys for Respondent
DEPARTMENT OF PUBLIC HEALTH
8

9 SAN FRANCISCO

10 BOARD OF APPEALS

11 1650 Mission Street, Room 304
San Francisco, CA 94103
12

13 MICHIKO YAMADA,
14 Appellant,
15 vs.
16 DEPARTMENT OF PUBLIC HEALTH,
17 Respondent.
18
19
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Appeal No. 14-141

SUPPLEMENTAL BRIEF OF RESPONDENT
DEPARTMENT OF PUBLIC HEALTH

Date: November 19, 2014
Time: 5:00 p.m.
Location: City Hall Room 416

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INTRODUCTION

Nothing in Appellant Yamada's supplemental filing alters the two most basic considerations before this Board. First, the Department of Public Health has fully and correctly exercised its duties under Police Code Article 29 (the Noise Ordinance) and has no further role to play in the ongoing dispute between Appellant and her neighbor. And perhaps even more important, overturning the noise variance would do nothing to resolve that dispute. This Board should uphold the noise variance and allow DPH to step out of what is now a dispute between private parties.

ARGUMENT

I. APPELLANT MISAPPREHENDS THE FUNCTION OF THE NOISE VARIANCE AND THE CONSEQUENCES OF OVERTURNING IT.

In section 2910 of the Noise Ordinance, the Board of Supervisors expressly granted DPH the power and discretion to grant variances to noise requirements under its jurisdiction. This provision assumes that there may be circumstances in which it serves no public purpose to impose the requirement. This is just such a case: the noise violation at issue consists of an extra .5 dBA emanating from a rooftop exhaust fan, and no one residing in the nearby buildings can even hear the fan, much less the extra half-decibel, in the first place. It would be non-sensical to require Roostertail's owners to take mitigation measures to muffle that half-decibel. The variance process gives DPH the means to excuse strict compliance with the Noise Ordinance when it would otherwise impose meaningless and oppressive requirements, particularly where, as here, the excess noise has no potential to adversely impact public health.¹ Once a variance has been granted, DPH retains the power to monitor the circumstances for material changes, but otherwise it has no further role to play.

Moreover, the only effect of overturning Roostertail's variance will be to require DPH to enforce the noise limits that apply to the rooftop fan against Roostertail, which in turn would require Roostertail to invest in mitigating a fraction of a decibel that absolutely no one can hear. In no way

¹ Appellant describes Roostertail's variance as a "reward for flagrant non-compliance from the start with the Noise Ordinance" (App. Suppl. Br. at 3), but that it an obvious mischaracterization. Roostertail was not granted a variance for outlasting the compliance process; rather, as it explained at length in its opening papers, DPH concluded that requiring mitigation of the rooftop noise violation would serve no meaningful public purpose. Appellant's further assertion that DPH should not have issued the variance without first taking measurements to confirm compliance (*id.* at 1-2) does not even make sense. A variance excuses compliance; compliance is not a prerequisite to a variance.

1 will reduce Appellant's exposure to noise, nor will it address any of her concerns about the lightwell.
2 To the contrary, to the extent that Roostertail is willing to invest further resources in mitigating noise,
3 those resources will necessary go to the rooftop rather than the lightwell. Further, Roostertails rooftop
4 variance is conditioned on its continued maintenance of the current configuration of the ventilation
5 equipment. See Declaration of Jonathan Piakis, Ex. F. Absent that obligation, Roostertail will be free
6 to reconfigure its system, both on the rooftop and in the lightwell. It might even choose to remove the
7 acoustic insulation it has applied to lightwell duct and reuse it to mitigate the noise on the rooftop.

8 The variance serves an important and legitimate public purpose. Overturning it would serve no
9 purpose.

10 **II. DPH HAS FULLY AND CORRECTLY PERFORMED ITS DUTIES IN THIS**
11 **MATTER.**

12 Appellant creates a red herring when she argues about the merits of § 2902 and claims –
13 entirely counterfactually – that DPH has been ignoring its distance requirements for decades and
14 should be required to continue to do so now so that it will find an actionable noise violation in the
15 lightwell. This is plainly wrong: DPH is required to follow the law, regardless of whether Ms.
16 Yamada considers it to be “conceptually absurd” (Supp. Br. at 3) or whether her consultant thinks the
17 law is a “bad idea” (Supp. Ex. E, letter of Charles M. Salter). Those arguments are better addressed to
18 the Board of Supervisors, the body with the power to change the law.

19 Ms. Yamada also claims that DPH should disregard the requirements of § 2902 because
20 following it would be an “abrupt” and “radical” change from its “decades-long practice” of conducting
21 “light well measurements to assess and remedy excessive noise.” Ms. Yamada provides no support for
22 her expansive claim, and, in fact, her claim is not only unsupported – it is fundamentally false. June
23 Weintraub, Acting Manager of the Noise Program, investigated this claim of past practices after Ms.
24 Yamada's representatives first made it at the last hearing. As detailed in ¶¶ 4-5 in her accompanying
25 Supplemental Declaration, Ms. Weintraub determined that at least as far back as 2007, it has been
26 DPH's uniform practice to follow the requirements of § 2902, with only one known exception: the
27 early proceedings in this case. See *id.* at ¶ 5. But even if Ms. Yamada were right that DPH has
28 consistently been wrong, DPH still would not be at liberty to diverge from the requirements of § 2902

1 in this matter. Even decades-long wrongs do not make a right when it comes to government's
2 obligations to abide by the law.

3 Appellant also criticizes DPH for failing to conduct studies or gather evaluative data to support
4 "DPH's view" that wrapping the kitchen exhaust duct would "be sufficient." (Appellant's Supp. Br. at
5 2). Ms. Yamada does not say what it would "be sufficient" for, but presumably she means sufficient
6 to mitigate her current concerns, which, as her representatives identified for the first time at the last
7 hearing, largely consist of low-spectrum noise and structure-borne vibration. These supposed
8 omissions by DPH rest on a flawed assumption that DPH has duties under the Noise Ordinance that
9 simply do not exist. Section 2916 of the Noise Ordinance charges DPH to enforce the sound limits in
10 §§ 2904 and 2909. These sound limits are all stated in dBA, a sound measure that captures sound
11 pressure from all frequencies as weighted to account for the characteristics of human hearing; DPH
12 has no responsibility to measure or otherwise address low-spectrum sound, measured in units denoted
13 as dBC. See §§ 2901(f), (n), 2904, 2909. Nor does the Noise Ordinance address structural vibration
14 in any way. Moreover, DPH's duty is to determine compliance by measuring sound levels in
15 conformance with the requirements of the ordinance and comparing those sound levels to the
16 permissible standards. DPH has no duty to conduct studies or gather additional evaluative data, nor is
17 it charged with designing or approving mitigations. Appellant is wrong to complain that DPH has
18 failed in duties it does not have.

19 **CONCLUSION**

20 For all of these reasons, the Board should deny this appeal and uphold the Noise Variance as
21 granted by the Director.

22 Dated: November 13, 2014

DENNIS J. HERRERA
City Attorney
JULIE VAN NOSTERN
Chief Attorney
SHERRI SOKELAND KAISER
Deputy City Attorney

23
24
25
26 By: /s/ Sherri Kaiser
SHERRI SOKELAND KAISER
Attorneys for Respondent
DEPARTMENT OF PUBLIC HEALTH

1 **PROOF OF SERVICE**

2 I, Lily Kang, declare as follows:

3 I am a citizen of the United States, over the age of eighteen years and not a party to the
4 above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza
Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

5 On November 13, 2014, I served the following document(s):

- 6 **1) Supplemental Respondent's Brief; and**
7 **2) Supplemental Decl. of June M Weintraub in Support Thereof**

8 on the following persons at the locations specified:

9 **Michiko Yamada (Appellant)**
10 (Michiko personally picked up above-stated
11 pleadings at the following location:
12 Board of Appeals
13 1650 Mission Street – Lobby Level
14 San Francisco, CA 94103

15 in the manner indicated below:

16 **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed
17 envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional
18 messenger service.

19 I declare under penalty of perjury pursuant to the laws of the State of California that the
20 foregoing is true and correct.

21 Executed November 13, 2014, at San Francisco, California.

22 
23 _____
24 LILY KANG
25
26
27
28

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 JULIE VAN NOSTERN, State Bar #103579
Lead Attorney, Health & Human Services
3 SHERRI SOKELAND KAISER, State Bar #197986
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7 Attorneys for Respondent,
DEPARTMENT OF PUBLIC HEALTH
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9 SAN FRANCISCO
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13 MICHIKO YAMADA,
14 Appellant,
15 vs.
16 DEPARTMENT OF PUBLIC HEALTH,
17 Respondent.
18
19
20

Appeal No. 14-141

SUPPLEMENTAL DECLARATION OF
JUNE M. WEINTRAUB IN SUPPORT OF
RESPONDENT SAN FRANCISCO
DEPARTMENT OF PUBLIC HEALTH

21 I, JUNE M. WEINTRAUB, declare as follows:

22 1. I have personal knowledge of the facts set forth herein, except for those facts set forth
23 on information and belief, which I also believe to be true. If called upon to testify, I could and would
24 testify competently to the matters set forth below.

25 2. I am Acting Manager of Regulatory Programs for Air, Noise, Smoking, Water, and
26 Radiation in the Environmental Health Branch of the San Francisco Department of Public Health
27 ("DPH"). Since mid-2013, when I assumed management responsibilities for the noise regulatory
28 program, I have worked with Acting Director of Environmental Health Richard Lee, DPH health

1 inspectors, and Noise Control Officer Jonathan Piakis to resolve the ongoing dispute about noise levels
2 at 1963 Sutter Street.

3 3. In my review of Ms. Yamada's supplemental brief and its exhibits, I have identified a
4 number of material misrepresentations regarding DPH's past practices in regard to the distance
5 requirement in Police Code section 2902; DPH's history of granting noise variances in mixed-use
6 neighborhoods; and the World Health Organization Community Noise Guidelines. I explain each of
7 these concerns below.

8 4. Ms. Yamada wrongly asserts in her supplemental brief that it has been DPH's
9 longstanding, historical practice to disregard the requirement in Police Code section 2902 that outside
10 sound measurements must be taken at least 4-1/2 feet away from walls when determining a noise
11 violation. This is factually false. Since the October 8 hearing in this matter, when Ms. Yamada's
12 representatives first made this claim, I have reviewed noise inspection reports from 2008 to 2011 and
13 interviewed current and former noise inspectors with experience dating back to 2007 about this
14 assertion. I did not find any noise inspection reports that involved a lightwell or measurements made
15 contrary to the distance requirements specified in Section 2902. And all of the inspectors uniformly
16 reported that they were aware of and consistently applied the 4-1/2 foot distance requirement for
17 outdoor sound measurements. In fact, this matter is the sole instance that any of the inspectors could
18 identify in which DPH has considered an outdoor measurement taken less than 4-1/2 feet from a wall
19 as a violation.

20 5. Michael Harris, CIH, served as Noise Control Officer at DPH from 2007 until early
21 2013. He is the inspector who took the measurement in the lightwell outside Ms. Yamada's hallway
22 window. When I interviewed him about DPH's past measurement practices, he reported that during
23 his entire tenure, he had not been involved in any other investigations where noise measurements were
24 taken in a lightwell or where a measurement that did not comply with the distance requirement was
25 considered a violation. Mr. Harris indicated that he departed from that consistent practice in this case
26 and took measurements in a small lightwell because the former Director of Environmental Health
27 directed him to do so, despite Mr. Harris' stated concern that the measurement would not satisfy the
28 distance requirement. At the site, Mr. Harris tried to make the measurements compliant with the

1 requirements of the law by opening the window to Ms. Yamada's residence and holding the sound
2 level meter in a spot where it was furthest from all reflective surfaces, but the configuration of the
3 lightwell made it impossible for him to take a valid measurement where the sound level meter
4 microphone was far enough away from the reflective surfaces of the lightwell walls and windows.

5 6. Ms. Yamada also asserts that following the Section 2902 distance requirement in her
6 case disserves the purpose of Article 29 to protect public health. This is also untrue. Ms. Yamada's
7 contact with the sound in the lightwell is from inside her residence, a location that receives the greatest
8 protection under the noise ordinance because interrupted sleep at night and excessive noise in the
9 living area during the day are likely to lead to adverse public health consequences. Accordingly,
10 Section 2909(d) provides that "to prevent sleep disturbance [and] protect public health," noise levels in
11 a living room or bedroom must not exceed 55 dBA between 7:00 a.m. and 10:00 p.m., and 45 dBA
12 during typical sleeping hours between 10:00 p.m. and 7:00 a.m. In this case, the sound level
13 measurements taken midday on January 14, 2014, with the hallway window open and Roostertail's
14 kitchen and ventilation system in full operation, indicated noise levels of 38.8 dBA in Ms. Yamada's
15 living room and 40.6 dBA in her bedroom, well below the 55 dBA daytime limit in place to protect
16 public health, and even below the 45 dBA nighttime limit. Given that Roostertail closes at 10 p.m., it
17 is reasonable to assume that nighttime sound levels in Ms. Yamada's residence drop even further
18 below the 45 dBA nighttime limit. Thus, regardless of whether the sound level in the lightwell would
19 violate the outdoor noise limit in the absence of the distance requirement in Section 2902, the sound in
20 the lightwell clearly does not raise any public health concern inside Ms. Yamada's residence, the place
21 where she hears it. Obeying the law in Section 2902 does not frustrate DPH's ability to safeguard
22 public health, particularly here, where there are no public health concerns to begin with.

23 7. Ms. Yamada's brief also contains the false assertion that "over the past 15 years, DPH
24 has *never* granted a variance in a mixed use neighborhood where a remedy was available." She does
25 not provide support for her assertion. In fact, however, DPH has granted a noise variance in a
26 situation that is nearly identical to the situation with Roostertail – and it did so at the explicit urging of
27 Ethan Salter of Charles M. Salter Associates, Ms. Yamada's own consulting firm.

1 8. On June 24, 2014, DPH granted a noise variance to Momo's restaurant, located at 760
2 2nd Street, for its rooftop exhaust fans. Momo's location is zoned as "Mixed Use-Office." As the SF
3 Property Information website explains for Momo's address:

4 The Mixed Use-Office (MUO) runs predominantly along the 2nd Street corridor
5 in the South of Market area. The MUO is designed to encourage office uses and
6 housing, as well as small-scale light industrial and arts activities. Nighttime
7 entertainment and small tourist hotels are permitted as a conditional use. Large
8 tourist hotels are permitted as a conditional use in certain height districts.
9 Dwelling units and group housing are permitted, while demolition or conversion
10 of existing dwelling units or group housing requires conditional use
11 authorization. Family-sized housing is encouraged. Office, general commercial,
12 most retail, production, distribution, and repair uses are also principal permitted
13 uses. Adult entertainment and heavy industrial uses are not permitted.
14 ([http://ec2-50-17-237-182.compute-
15 1.amazonaws.com/PIM/#BookmarkOtherInformation](http://ec2-50-17-237-182.compute-1.amazonaws.com/PIM/#BookmarkOtherInformation))

16 9. Attached hereto as Exhibit A is a true and correct copy of the June 24, 2014 letter from
17 Acting Director of Environmental Health Richard Lee granting the noise variance to Momo's
18 Restaurant. The letter indicates that Director Lee granted the variance based on his review of Momo's
19 application and a supporting memorandum prepared by consultant Ethan Salter, PE, LEEP AP, of
20 Charles M. Salter Associates and dated May 27, 2014. A true and correct copy of the May 27 Salter
21 Memorandum is attached hereto as Exhibit B.

22 10. In his Memorandum, Mr. Salter provides support for a variance for the rooftop fans on
23 the ground that noise from Momo's fans is directed away from residential receptors and will have no
24 foreseeable adverse impact on public health. He explains that Momo's has located its fans along the
25 roofline that is farthest away from residential noise receptors, and it has also pointed the fan outlets,
26 which create the most noise, away from the nearby residential uses. Based on these facts, Mr. Salter
27 concludes that there is little potential that the rooftop fans will have an impact on public health, which
28 is the controlling consideration in the Noise Ordinance. In reliance on the Memorandum, Director Lee
concluded that Momo's request had "sufficient merit" to support a noise variance. See Exhibit A.

 11. DPH granted a noise variance to Roostertail for its rooftop fan on July 23, almost
exactly one month later. As it had for Momo's, DPH concluded that Roostertail's rooftop fan had no
potential adverse public health impact because its location made it inaudible to residential receptors.
But in contrast to the situation for Momo's, DPH had *also* required Roostertail's owner to spend

1 nearly \$8,000 to wrap a duct with acoustic insulation to mitigate noise that was *not* in violation of
2 Article 29.

3 12. I find it difficult to credit the current opinion of Charles M. Salter Associates that DPH
4 should have imposed additional conditions on Roostertail rather than grant a rooftop noise variance,
5 given that it had taken the position just one month earlier that a rooftop noise variance was warranted
6 when the noise from the fan would have no human receptor and, consequently, no public health effect.

7 13. Exhibit D to Ms. Yamada's brief contains selected quotations from the World Health
8 Organization (WHO) Community Noise Guidelines, assembled in an undisclosed manner by an
9 unidentified person and presented as direct source materials used by the San Francisco Noise Task
10 Force and the Board of Supervisors when amending Article 29 in 2008. After my own review of the
11 WHO report, I have concluded that these quotations are being presented in a selective and misleading
12 fashion.

13 14. I could not find the first offered quotation in the document at all. And even if it does
14 exist in the report, it merely stands for the unremarkable proposition that there can be a wide range of
15 adverse public health effects from excessive noise. The quotation has very little relevance to this
16 matter because, in my professional opinion, the statement refers only to the potential impacts of noise
17 at the individual level which, depending on numerous variables, may or may not rise to the level of a
18 public health concern.

19 15. While the second quotation offered in Exhibit D -- "*Low-frequency noise from*
20 *ventilation systems can disturb rest and sleep even at low sound pressure levels*" -- actually appears in
21 the report, it seems particularly unlikely to have served as a basis for the Board of Supervisors'
22 deliberation of Article 29, as Exhibit D represents. Article 29 does not regulate low-frequency noise
23 (measured as dBC). Rather, it regulates sound pressure levels, or dBA. Indeed, regulating low-
24 frequency noise would be very difficult for a number of physical and logistical reasons.

25 16. The third quotation -- "*Noise from fixed installations such as ... heat pumps and*
26 *ventilation systems on roofs, typically affect nearby communities. Reductions may be achieved by*
27 *encouraging quieter equipment ... Requirements for passive (sound insulating enclosures) and active*
28 *noise control, or restriction of operation time, may also be effective*" -- is an outright

1 misrepresentation to the extent that it is presented as having any relevance to this case. The use of
2 ellipses disguises the fact that the excerpt appears in the section on “Industrial Noise,” which
3 addresses the intense noise that can be generated by industrial machines, not the much milder noise
4 generated by restaurant ventilation systems. The second paragraph of the following excerpt is the
5 source of the quotation, with the omitted text highlighted in bold:

6 2.2.1. Industrial noise. Mechanized industry creates serious noise problems. It
7 is responsible for intense noise indoors as well as outdoors. This noise is due to
8 machinery of all kinds and often increases with the power of the machines.
9 Sound generation mechanisms of machinery are reasonably well understood.
10 The noise may contain predominantly low or high frequencies, tonal
11 components, be impulsive or have unpleasant and disruptive temporal sound
12 patterns. Rotating and reciprocating machines generate sound that includes tonal
13 components; and air-moving equipment tends also to generate noise with a wide
14 frequency range. The high sound pressure levels are caused by components or
15 gas flows that move at high speed (for example, fans, steam pressure relief
16 valves), or by operations involving mechanical impacts (for example, stamping,
17 riveting, road breaking). Machinery should preferably be silenced at the source.

18 Noise from fixed installations, **such as factories or construction sites**, heat
19 pumps and ventilation systems on roofs, typically affect nearby communities.
20 Reductions may be achieved by encouraging quieter equipment **or by zoning of**
21 **land into industrial and residential areas**. Requirements for passive (sound
22 insulating enclosures) and active noise control, or restriction of operation time,
23 may also be effective.

24 17. The fourth quotation offered in Exhibit D -- “*Typical neighbourhood noise comes from*
25 *premises and installations related to the catering trade (restaurant, cafeterias, discotheques, etc.)*” –
26 suggests that WHO has singled out restaurants as sources of unwanted noise in residential
27 neighborhoods. This is misleading. In fact, the quotation is selectively drawn from a passage in the
28 report that seeks to create a comprehensive list of the many typical sources of community noise,
without highlighting any one of them. In context, the reference to restaurants conveys a very different
impression:

Community noise (also called environmental noise, residential noise or
domestic noise) is defined as noise emitted from all sources, except noise at the
industrial workplace. Main sources of community noise include road, rail and
air traffic, industries, construction and public work, and the neighbourhood.
Typical neighbourhood noise comes from premises and installations related
to the catering trade (restaurant, cafeterias, discotheques, etc.); from live or
recorded music; from sporting events including motor sports; from playgrounds
and car parks; and from domestic animals such as barking dogs. The main
indoor sources are ventilation systems, office machines, home appliances and
neighbours.

1 18. The final quotation offered in Exhibit D -- "*Practical application [sic] to limit and*
2 *control the exposure of [sic] environmental noise are essential*" – seems to have been included to
3 impart a sense of urgency to controlling environmental noise, including, presumably, in the situation
4 now before this Board. But again the quotation is taken out of context, and taken on its own terms, it
5 does not rightly apply to Article 29. Rather, it appears in a passage making the case that taking action
6 to control and limit noise is as important in developing countries as in developed ones:

7 In comparison to other pollutants, the control of environmental noise has been
8 hampered by insufficient knowledge of its effects on humans and of dose-
9 response relationships as well as a lack of defined criteria. While it has been
10 suggested that noise pollution is primarily a "luxury" problem for developed
11 countries, one cannot ignore that the exposure is often higher in developing
12 countries, due to bad planning and poor construction of buildings. The effects of
13 the noise are just as widespread and the long term consequences for health are
14 the same. **In this perspective, practical action to limit and control the**
15 **exposure to environmental noise are essential.** Such action must be based
16 upon proper scientific evaluation of available data on effects, and particularly
17 dose-response relationships. The basis for this is the process of risk assessment
18 and risk management.

19 Of course, I do not disagree with the basic proposition that noise control regulation is important in
20 every country. Nonetheless, I take issue with the pervasive misrepresentations of the actual content of
21 the WHO report, of which this is also one.

22 19. Finally, there is no indication that either the Noise Task Force or the Board of
23 Supervisors relied on the quotations assembled as Exhibit D, as its introduction asserts. The
24 quotations are not referenced in the Noise Task Force minutes that Ms. Yamada submits as Exhibit C.
25 And while Section 2900, the declaration of policy with which Article 29 begins, does generally
26 reference the WHO, it is only with two general statements: first, that the WHO has determined, along
27 with the EPA, that "persistent exposure to elevated levels of community noise is responsible for public
28 health problems" (§ 2900(a)); and second, that it is City policy to reduce noise levels in areas where
the noise levels exceed the standards set in the WHO Guidelines on Community Noise (§ 2900(c)).
This does not indicate that the Task Force or the Board or anyone else relied on Ms. Yamada's list of
selective quotations.

1 20. Finally, I note that the pervasiveness of unsupported, misleading, and outright false
2 statements in Ms. Yamada's written materials counsels great caution when evaluating the reliability of
3 any new assertions she may make at the upcoming hearing.

4 I declare under penalty of perjury under the laws of the State of California that the foregoing is
5 true and correct and that this document was executed on the 13th of November 2014 in San Francisco,
6 California.



JUNE M. WEINTRAUB

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City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH
ENVIRONMENTAL HEALTH

Edwin M. Lee, Mayor
Barbara A. Garcia, MPA, Director of Health
Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director

June 24, 2014

Aaron Thornton, Senior Associate
Gould Evans Architecture
95 Brady Street
San Francisco, CA 94103

Re: Noise Variance Application – Momo's Restaurant (760 2nd Street)

Dear Mr. Thornton,

The San Francisco Department of Public Health ("SFDPH") has reviewed the variance application and supplemental materials for Momo's Restaurant dated May 27, 2014. We find that your request has sufficient merit and therefore grant Momo's Restaurant a noise variance for the south property line (along King Street) under the conditions set forth below. Failure to implement the following conditions may result in revocation of this variance and the institution of enforcement penalties:

- Perform and document regular maintenance of the rooftop exhaust fans in accordance with the manufacturer's recommendations
- Inform SFDPH prior to the addition, relocation, or substitution of any rooftop equipment

This variance applies only to the equipment configuration on the design plan provided to SFDPH dated May 20, 2014 and only to the south property line. The variance will be effective upon receipt of a signed copy of this letter and subject to any appeals filed in the 15 days following. At our discretion, SFDPH may rescind this variance if it is determined that Momo's Restaurant has violated the above terms. Please direct any questions or concerns to Jonathan Plakis (Jonathan.Plakis@sfdph.org).

Sincerely,

Richard J. Lee, MPH, CIH, REHS
Acting Environmental Health Director

Momo's Restaurant understands and agrees to comply with the terms of this variance.

Signature

06.24.2014
Date



MEMORANDUM

date: 27 May 2014 **pages:** 2

name: Aaron Thornton **company:** Gould Evans **email:** aaron.thornton@gouldevans.com

from: Ethan Salter, PE, LEED AP

subject: **Momo's Rooftop Exhaust Fan Replacement – Noise Ordinance Variance Discussion for South Property Line (King Street)**
CSA project number: 13-0001

After the City of San Francisco's Department of Public Health (DPH) measured noise from the new kitchen exhaust fans on 8 May 2014 and in their final inspection found them to be in compliance with the Noise Ordinance, we understand the owners have elected to apply for a Variance to the City Noise Ordinance for the south property line on King Street. This memo provides further acoustical information in support of this application.

VARIANCE DISCUSSION

Provide a detailed description of why a variance from the Noise Ordinance is necessary for this source of noise. The description should include any actions taken to mitigate the source of noise or its impact on people or residences located in this area.

The replacement kitchen exhaust fan systems for the subject restaurant have been designed and installed to significantly reduce noise transmission to the closest residential and commercial properties surrounding the project rooftop. A summary of the system features is as follows:

1. **Evaluation of Site:** The site is bordered on the south by King Street, a large thoroughfare with six lanes of car and truck traffic. MUNI light rail trains in the median of King Street also produce significant noise. Across King Street to the south is AT&T Park, which is intermittently occupied, non-residential, and also can be a significant neighborhood noise source during much of the year (e.g., baseball, concerts, events, etc.) Ambient noise levels (as defined by the City Noise Ordinance) are higher in the vicinity than in many other parts of the City.
2. **Noise Ordinance Policies:**
 - A. Section 2916 of the San Francisco Police Code (Noise Ordinance) states that "The Director of Public Health may enforce the provisions of Section 2904, 2909, and 2912 of this Article". Section 2909 is the Section responsible for establishing property line noise limits, which are based on a site's ambient noise level plus an allowable increase in noise (up to 5 dBA¹ for residential property lines and 8 dBA for commercial property lines). Section 2900, Declaration

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¹ dBA – A-Weighted sound pressure level (or noise level) represents the noisiness or loudness of a sound by weighting the amplitudes of various acoustical frequencies to correspond more closely with human hearing. A 10-dB (decibel) increase in noise level is perceived to be a doubling of loudness. A-Weighting is specified by the U.S. EPA, OSHA, Caltrans, and others for use in noise measurements.

of Policy, states "In order to protect public health, it is hereby declared to be the policy of San Francisco to prohibit unwanted, excessive, and avoidable noise."

- B. Section 2912.d of the Ordinance states, "The Department of Public Health may investigate and take enforcement action on any noise complaint resulting in human health impacts."
- 3. **Placement of the fans:** The units were located on the roof as close to the King Street façade as was feasible. The goal was to reduce potential impacts on nearby residential neighbors consistent with the Noise Ordinance policy language: 88 King Street to the east and 750 2nd Street to the north. However, the new fans were also situated such that passers-by on King Street's sidewalks, as well as patrons on the Momo's patios, were protected from fan noise emissions by the parapet of the building acting as an acoustical barrier.
- 4. **Type of fans:** Axial-flow fans were selected based on their noise levels and also how they produced noise. These fans are directional; this means that a majority of their noise emissions are produced by the outlet of the fan. By orienting the fan outlet towards the least-sensitive property line, potential impacts from the project were further reduced.
- 5. **Fan operational adjustments:** After initial installation, it was determined that the loudest fan had a malfunctioning bearing which needed replacement. Additionally, this fan was balanced and adjusted by the mechanical contractor after confirming that the fan speed could be reduced with no impacts to the cooking operations in the kitchen. After these adjustments, fan noise emissions were significantly reduced and met the Noise Ordinance requirements at the King Street façade/south property line.
- 6. **Conclusion:** The Noise Ordinance is meant to protect public health. The project systems were designed with this in mind, as stated above. The loudest parts of the fans (i.e., the outlets) were oriented towards the property line that was the least sensitive (south towards King Street).

In our experience, the City Noise Ordinance considers future growth and changes to neighborhoods (e.g., higher-density, taller buildings) by enforcing a "property plane" ordinance. In many parts of the City, this approach can be beneficial because what exists today can change in the future, and potentially could expose future residents to excessive noise impacts from existing sources. However, in the case of Momo's kitchen exhaust fans there is little likelihood of significant changes to King Street or AT&T Park. Ambient noise levels on the south property line are also the highest of any at the project. As such, potential noise impacts to human health are minimized by the project.

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This concludes our current comments on the subject project. Please call with any questions.

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ES/es
2014_05_27 760 2nd Street Momo's (13-0001) Noise Ord Variance Application Acoustics Language Input Memo



NOV 19 2014

APPEAL # 14-141

STATEMENT

I live at 1961 Sutter Street above Roostertail Restaurant. I am able to hear the fan noise and/or vibration from the light well and roof within my apartment.

We hope the issue is resolved and the noise and vibration will be reduced.

KARENIA TORRES
Name

[Signature]
Signature

11-13-14
Date

Sean O'Brien
Name

[Signature]
Signature

11-13-14
Date

Name

Signature

Date

Name

Signature

Date

Name

Signature

Date

STATEMENT

I live at 1961 Sutter Street above Roostertail Restaurant. I am able to hear the fan noise and/or vibration from the light well and roof within my apartment.

We hope the issue is resolved and the noise and vibration will be reduced.

Matthew Bar to

Name

Matthew A Bar to

Signature

11/17/14

Date

Megan Synnestvedt

Name

Megan Synnestvedt

Signature

11/17/2014

Date

Name

Signature

Date

Name

Signature

Date

Name

Signature

Date

Here's Erick's statement

"I hated that place when it first opened. Our walls rumbled for months after it opened. It's not as bad now, but still much worse than before they opened. The worst part about it was how rude and arrogant they behaved when we first noticed it and went down to talk to them about it. They completely ignored us and would just stare as if nothing registered we said was registering. In fact nothing improved in the slightest until the landlady repeatedly pushed on them to make changes."

This is my official statement if you want to use it ;-)

Cheers,
Erick Castro
POSSESSED BY SPIRITS

Proposed compromise ruling for the Yamada appeal

BOARD OF APPEALS

NOV 19 2014

APPEAL # 14-141

A reasonable resolution to the complaint and the appeal would be that Board of Appeals approves an amended noise variance requiring as conditions:

- a) Roostertail upgrades the existing restaurant's ventilation system to include best practice acoustic isolation and dampening (including ducting, not just the rooftop components), based on analysis and design by Charles Salter Associates.
- b) This requirement is conditional on the Yamadas paying a substantial portion of the assessment, design, construction and performance confirmation costs.
- c) The Board of Appeals sets a date certain for completion of the work of 3(?) months from the date the Board of Appeals Ruling is finalized. Should Roostertail fail to complete the work by that time, DPH is directed by the Board of Appeals to revoke their permit to operate until the acoustical upgrade work is completed.

The basis for the proposal:

- 1) Unfortunately, neither DPH nor DBI verified that Roostertail's ventilation system as installed complied with the permit requirements before signing off on the new construction and granting a permit to operate.
- 2) The noise from the ventilation system dates to Roostertail's start-up, and is audible and disruptive whenever the fan is operating. This was not the case with the Café Kati exhaust system, and there are other restaurants in the area that do not have a noise problem.
- 3) Granting a variance for the rooftop violation ignores the fact that the rooftop violation is symptomatic of a problem that is disturbing the residents in 2 buildings, with disruptive noise present for more than 10 hours a day.
- 4) Roostertail, apparently following direction from the Dept of Public Health, implemented a proposed solution without the benefit of an analysis of the causes of the problem or the suitability of the proposed solution. It is regrettable that they spent money on an attempted solution that did not work, but that is not the Yamadas' fault.
- 5) Granting a variance for a rooftop-only violation of the noise ordinance is appropriate if and only if the rooftop noise is not indicative of a problem in areas where DPH believes they may not take measurements.
- 6) Given that most restaurants do not have this problem, there is good reason to believe that there is a technical solution to the noise problem – one that was not implemented. That solution should be identified and implemented.