



December 09, 2014

Yerba Buena  
Community Benefit District, Permit Holder  
5 - 3rd Street #914  
San Francisco, CA 94103

**Appeal No.: 14-202**  
**Appeal Title: Hearst Corporation vs. DPW-BSM**  
**Subject Property: Annie St. between Mission and Ambrose Bierce**  
**Permit Type: Temporary Occupancy**  
**Permit No.: 183139**

Dear Yerba Buena Community Benefit District:

This is to notify you that an appeal has been filed with this office protesting the **ISSUANCE** of the above referenced **Temporary Occupancy Permit**. Pursuant to Article I, §8 of the San Francisco Business & Tax Regulations Code, the subject permit is hereby **SUSPENDED** until the Board of Appeals decides this matter and releases a notice of decision and order.

We are enclosing a copy of the **Preliminary Statement of Appeal** for your information.

The hearing regarding this matter has been scheduled for **February 11, 2015, at 5:00 p.m., City Hall, Room 416**, One Dr. Carlton B. Goodlett Place.

If you have any further questions, you may call this office at (415) 575-6880.

Sincerely,

BOARD STAFF

cc: DPW BSM

Hearst Corporation, Appellant  
c/o Caroline Guibert, Attorney for Appellant  
One Ferry Building, Suite 200  
San Francisco, CA 94111



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Date Filed:

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CITY & COUNTY OF SAN FRANCISCO  
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## PRELIMINARY STATEMENT OF APPEAL

I / We, **Hearst Corporation**, hereby appeal the following departmental action: **ISSUANCE** of **Temporary Occupancy Permit (DPW Order No.183139)** by the **Department of Public Works Bureau of Street Use and Mapping** which was issued or became effective on: **November 24, 2014**, for the property located on **Annie Street between Mission Street and Ambrose Bierce Street.**

to Yerba Buena Community Benefit District,

### 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: **January 22, 2015, (no later than three (3) Thursdays prior to the hearing date)**, up to 12 pages in length, double-spaced, with unlimited exhibits, with eleven (11) copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day. CAJ

DPW Respondent's and Permit Holder ~~Other Parties~~ Briefs are due on or before: **February 5, 2015, (no later than one (1) Thursday prior to hearing date)**, up to 12 pages in length, doubled-spaced, with unlimited exhibits, with eleven (11) 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, February 11, 2015, 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 eleven (11) 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 Preliminary Statement of Appeal.

**Appellant or Agent (Circle One):**

Signature:

Print Name: CAROLINE A. GUIBERT  
FOR COBLENZ PATCH DUFFY & BASS LLP

Preliminary Statement of Appeal

On behalf of our client, the Hearst Corporation, we hereby appeal DPW Order No. 183139 issued on November 24, 2014 regarding the "temporary" closure of Annie Street (the "Permit") for the following reasons, among others, provided in summary form:

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(1) The approval process under Section 792 of the Public Works Code ("Code"), which specifically pertains to Street Plazas, was not followed for the creation of Annie Street Plaza.<sup>1</sup> Among other things, Section 792, an expanded process for street closures, requires the applicant to obtain a Major Encroachment Permit, for which public notice and approval by the Board of Supervisors is required. The record indicates that public process did not occur here.

(2) The Permit, which was instead issued under Code Section 724, is not consistent with several Code requirements, including but not limited to maximum term (six months), renewal process (at least fifteen days prior to expiration)<sup>2</sup> and street occupancy fees.

(3) The Nelson Nygaard traffic report for the closure of Annie Street significantly underestimates the actual traffic impact, in part because traffic counts were conducted leading up to and during Memorial Day weekend 2013. Now that Annie Street is no longer available as an "escape valve", vehicles routinely line up bumper-to-bumper on Jessie Street, which has significantly affected the operation of the 800-vehicle Hearst parking garage along with surrounding businesses and residences during the PM peak period. The traffic report also does not account for changes proposed under the Safer Market Street program, including a proposal to prohibit right turns onto Market Street from Third Street, which would exacerbate the problem. The Hearst Corporation is committed to working with the Yerba Buena Community Benefit District, neighboring businesses and the City regarding this problem.

<sup>1</sup> Section 792 became effective in July 2014 and permits were not issued for Annie Street Plaza until August 2014.  
<sup>2</sup> Notably, the prior permit (DPW Order No. 182886) expired about ten days before it was renewed, during which time Annie Street was unlawfully occupied and the opening event was held. It appears that the plaza improvements, including seemingly permanent concrete walls and seating, may have also been installed during that time.

City and County of San Francisco



Edwin M. Lee, Mayor  
Mohammed Nuru, Director

San Francisco Department of Public Works  
Office of the Deputy Director & City Engineer, Fuad Sweiss  
Bureau of Street-Use & Mapping  
1155 Market Street, 3rd Floor  
San Francisco Ca 94103  
(415) 554-5810 [www.sfdpw.org](http://www.sfdpw.org)

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Jerry Sanguinetti, Bureau Manager

DPW Order No: 183139

REVOCABLE PERMISSION IS GRANTED TO THE YERBA BUENA COMMUNITY BENEFIT DISTRICT (YBCBD) TO CONTINUE OCCUPANCY OF A PORTION OF THE PUBLIC RIGHT-OF-WAY WITH STREETSCAPE IMPROVEMENTS, TO IMPLEMENT AND MAINTAIN A TEMPORARY PAVEMENT TO PARKS PLAZA ON ANNIE STREET BETWEEN MISSION AND AMBROSE BIERCE STREETS.

As requested in a letter dated November 14, 2014 from the Yerba Buena Community Benefit District, and pursuant to Article 15 of the Public Works Code, permission revocable at the will of the Director of Public Works is granted to Yerba Buena Community Benefit District (YBCBD), 5 Third Street, Suite 914, San Francisco, CA, Attention: Cathy Maupin, Executive Director, the Permittee, to continue occupancy of a portion of the public right of way with streetscape improvements, to implement, and maintain a Temporary Pavement to Parks Plaza on Annie Street between Mission and Ambrose Bierce Streets.

The Permittee shall install and maintain a temporary moveable barrier at the northerly end of the proposed closed area, to be aligned with the southerly curb line of Ambrose Bierce; and a fixed barrier at the southerly end of the temporary closure, at Mission Street. Through pedestrian access on Ambrose Bierce between New Montgomery and Annie Street shall remain unobstructed and open for public use.

The Permittee shall install reversible fixed seating elements, landscaping, pedestrian lighting and shall be responsible for the maintenance of the new fixtures; including but not limited to daily sweeping and debris removal, emptying trash receptacles, and graffiti abatement. The Permittee shall steam clean the street, sidewalks, and fixtures within the closed portion of the Annie Street right of way at least twice a month per *Cleaning and Maintenance Calendar*, as approved by the Interdepartmental Staff Committee on Traffic and Transportation (ISCOTT) on August 14, 2014.

The Permittee shall install moveable tables and chairs within the Plaza, to be set out daily and stored indoors overnight; and shall provide an activation program, including approximately three (3) events a week, to be managed by the Permittee.



San Francisco Department of Public Works  
Making San Francisco a beautiful, livable, vibrant, and sustainable city.

Activities within Annie Street/Plaza shall take place and be held as permitted by *Programming Calendar and Event Types*, approved by ISCOTT on August 14, 2014.

The above mentioned improvements shall be installed and maintained as per the approved plans, prepared by CMG Landscape Architects and titled "Annie Street Plaza", Sheets L0.00, L0.20 and L1.10, dated August 27, 2014, and Sheets L0.10, L3.20, L3.21, L3.22, L3.23 and L3.24, dated August 8, 2014.

This revocable permission is granted for a nine (9) month period, retroactive to November 14, 2014, and shall expire on August 15, 2015. Prior to expiration of this Order, and upon evaluation of the permitted occupancy, the Permittee may submit a request for an annual renewal of this Order.

The Permittee shall notify DPW Inspection Services, telephone: (415) 554-7149, at least ten (10) days prior to installation of the approved improvements at the subject location(s); shall obtain from SFMTA Temporary Sign Program, and post tow-away notices at the approved locations at least 72 hours prior to occupying the space.

The Permittee shall submit to the Bureau of Street-Use and Mapping (BSM) non-refundable fees of \$200.00 to cover the cost of processing this permit and a \$6.27 Board of Appeals surcharge.

All elements of the above mentioned/permitted occupancy shall be installed to conform to the applicable provisions, rules, regulations and guidelines of San Francisco Building Code (SFBC), The Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Accessibility Guidelines (ADAAG), including but not limited to providing and maintaining a minimum 6' clearance between the above mentioned/permitted improvements, landscaping, seating, and any existing street furniture (utility poles, parking meters, mail boxes, etc.).

The Permittee shall verify the locations of any City or public service utility company facilities that may be affected by the work authorized by this permit and shall assume all responsibility for any damage to such facilities due to the work. The Permittee shall make satisfactory arrangements and payments for any necessary temporary relocation of City or public utility company facilities.

The permission granted by this Order is merely a revocable license. The Director of Public Works may revoke said permission at will, and upon the revocation thereof, the undersigned Permittee, its successors or assigns in interest, by acceptance of this permit, shall remove or cause to be removed the encroachments permitted herein and all the materials used in connection with their construction and restore the areas to a condition satisfactory to the Director of Public Works, without expense to the City and County of San Francisco.

In consideration of this Permit being issued for the work described herein, the Permittee on its behalf and that of any successor or assign, and on behalf of any lessee, promises and agrees to perform all the terms of this Permit and to comply with all applicable laws, ordinances and regulations.



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The Permittee agrees on its behalf and that of any successor or assign to hold harmless, defend, and indemnify the City and County of San Francisco, including, without limitation, each of its commissions, departments, officers, agents and employees (hereinafter collectively referred to as the "City") from and against any and all losses, liabilities, expenses, claims, demands, injuries, damages, fines, penalties, costs or judgments including without limitation, attorneys' fees and costs (collectively "claims") of any kind allegedly arising directly or indirectly from (I) any act by, omission by or negligence of, Permittee or its subcontractors, or the officers, agents, or employees of either while engaged in the performance of the work authorized by this Permit, or while in or about the property subject to this Permit for any reason connected in any way whatsoever with the performance of the work authorized by this Permit, or allegedly resulting directly or indirectly from the maintenance or installation of any equipment, facilities, or structures authorized under this Permit, (ii) any accident or injury to any contractor or subcontractor, or any officer, agent, or employee of either of them, while engaged in the performance of the work authorized by this Permit, or while in or about the property, for any reason connected with the performance of the work authorized by this Permit, or arising from liens or claims for services rendered or labor or materials furnished in or for the performance of the work authorized by this Permit, (iii) injuries or damages to real or personal property, goodwill, and persons in, upon or in any way allegedly connected with the work authorized by this Permit from any cause or claims arising at any time, and (iv) any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by Permittee in, under, on or about the property subject to this Permit or into the environment. As used herein, "hazardous material" means any substance, waste or material which, because of its quantity, concentration of physical or chemical characteristics is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety to the environment.

The Permittee must hold harmless, indemnify and defend the City regardless of the alleged negligence of the City or any other party, except only for claims resulting directly from the sole negligence or willful misconduct of the City. The Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Permittee by the City and continues at all times thereafter. The Permittee agrees that the indemnification obligations assumed under this Permit shall survive expiration of the Permit or completion of work.

The Permittee shall obtain and maintain through the terms of this Permit general liability, automobile liability or workers' compensation insurance as the City deems necessary to protect the City against claims for damages for personal injury, accidental death and property damage allegedly arising from any work done under this Permit. Such insurance shall in no way limit Permittee's indemnity hereunder. Certificates of insurance, in form and with insurers satisfactory to the City, evidencing all coverages above shall be furnished to the City before commencing any operations under this Permit, with complete copies of policies furnished promptly upon City request.

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11/21/2014

X *Jerry Sanguinetti*

Sanguinetti, Jerry  
Bureau Manager

11/24/2014

X Mohammed Nuru

Nuru, Mohammed  
Director, DPW

11/22/2014

X *Fuad Sweiss*

Sweiss, Fuad  
Deputy Director and City Engineer

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# CONTACT INFORMATION FOR PARTIES



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Appeal No(s): \_\_\_\_\_

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### APPELLANT(S)

Name: HEARST CORPORATION

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
Street City State Zip

Names of Other Appellants: \_\_\_\_\_

### Agent for Appellant

Name: COBLENTZ, PATCH, DUFFY & BASS LLP (CONTACT: CAROLINE GUIBERT)

Phone Number: (415) 472-5793 Fax Number: \_\_\_\_\_

Email Address: cag@cpdb.com

Mailing Address: ONE FERRY BUILDING SUITE 200 SAN FRANCISCO  
Street City State Zip  
CA 94111

### OTHER PARTY (PERMIT HOLDER, VARIANCE HOLDER, ETC.)

Name: YERBA BUENA COMMUNITY BENEFIT DISTRICT *DPW*

Phone Number: (415) 472-0728 Fax Number: \_\_\_\_\_

Email Address: info@ybcdb.org

Mailing Address: 5 Third St., Ste. 914 San Francisco, CA 94103  
Street City State Zip

Names of Other Parties: \_\_\_\_\_

### Agent for Other Party

Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
Street City State Zip