April 19, 2002

Honorable Tom Ammiano, President
Members, San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Dear President Ammiano and Members:

I am returning with my veto the ordinance prohibiting the construction of new live/work developments in San Francisco (File No. 012127).

I have a fundamental policy disagreement with you on this issue. In the midst of a housing crisis, I simply do not believe it is wise to stop building housing.

Over a year ago, I returned the first of a series of interim moratoria on live/work housing without my signature and challenged the Board to forward to me legislation that contains a reasonable, long-term solution to the issue of live/work housing and its place in San Francisco – legislation that defines live/work as housing and includes an inclusionary affordable housing requirement, full fees and an no-conversion clause that’s backed up with a strong method of enforcement. I have also urged the Board to look at this type of housing comprehensively, and pursue reasonable zoning policies that will take into account where this type of housing may be appropriate, and where it may not be – rather than simply ban it outright.

Supervisor Hall answered this challenge last year with legislation that does just this. Had the Board passed Supervisor Hall’s legislation, the City would have hundreds of more market rate units today, in addition to more funds available for affordable housing and our school system. It is an economic reality that the creation of new market-rate housing, regardless of what type of housing, is a necessary impetus to the creation of new affordable housing. Why don’t we seize that potential – and embrace an inclusionary affordable housing requirement for loft housing – rather than waste it?

The legislation before me now, does not create new housing in San Francisco, nor will it lead to greater affordability in our existing housing stock. It simply prevents new housing from being built. Basic economics dictate that by cutting off the supply of new housing – any kind of housing – we will only drive housing prices up.
I again urge you to reconsider your position on a moratorium on live/work, and focus your efforts on maximizing opportunities for new housing in San Francisco.

Sincerely,

WILLIE L. BROWN, Jr.
Mayor
[Prohibition of New Live/Work Units.]

Ordinance amending the San Francisco Planning Code by amending the definition of "Live/Work Unit" in Section 101.13 to clarify that the residential use and the integrated work space must be in the same unit, and by amending Section 233 to prohibit new Live/Work Units except for accessory uses authorized by Section 204.4.

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

Section 1. The San Francisco Planning Code is hereby amended by amending Section 233, to read as follows:

SEC. 102.13. LIVE/WORK UNIT.

A live/work unit is a structure or portion of a structure combining a residential living space for a group of persons including not more than four adults in the same unit with an integrated work space principally used by one or more of the residents of that unit; provided, however, that no otherwise qualifying portion of a structure which contains a Group A occupancy under the San Francisco Building Code shall be considered a live/work unit.

Section 2. The San Francisco Planning Code is hereby amended by amending Section 233, to read as follows:

SEC. 233. LIVE/WORK UNITS.

(a) After the effective date of this ordinance, no City official, department, board or commission shall issue or approve a building permit or other land use entitlement authorizing a new live/work unit as defined in Section 102.13 of this Code, except as authorized as an accessory use under Section 204.4. Lawfully approved live/work units existing on that date...
shall comply with the Code provisions in effect at the time they were authorized, as set forth below and in other sections of this Code applicable to live/work units, and shall further be subject to the nonconforming use provisions of Section 181 of this Code.

(a) If a live/work unit would occupy any space last used as a dwelling unit or group housing, or whose legal use as shown in the permit records of the City is as a dwelling unit or group housing, the live/work unit shall not be permitted in any RH or RM District, and shall require conditional use approval in any RC, C, M or South of Market District, notwithstanding Sections 209.9 or 227 of this Code.

(b) Live/work units satisfy the conditions of this subsection if:

(1) They are part of a project which will result in issuance of a certificate or certificates of occupancy for 10 or more new or additional live/work units; and

(2) The project is sponsored by one or more organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, each of whose articles of incorporation state as a principal purpose providing living quarters to artists, and each of whose articles of incorporation require that at least 51 percent of the members of the board of directors must be artists engaging in one or more arts activities falling within the definition of Section 102.2 of this Code; and

(3) The qualified sponsoring organization or organizations will, until completion of the project:

(A) Own the project,

(B) Own an interest of 51 percent or more in a joint tenancy or tenancy in common which owns the project,

(C) Have a right to 51 percent or more of the net income and of all distributions, including distributions on liquidation, of a partnership or joint venture which owns the project, or
(D) Be the only general partner or only general partners, or only managing general partner, in a limited partnership which will qualify the project for complete or partial exemption from property tax under California Revenue and Taxation Code Section 214(g) or a successor provision; and

(4) All permits for the project are issued on the application of, and in the name of, a corporation described in Subsection (2) above or a partnership described in Subsection (3)(C) or (3)(D); and

(5) The project will, under federal or state law, or local legal authority other than this Code, be required to rent, lease or sell at least 20 percent of the live/work units in the project at rates or prices affordable to households whose incomes are no greater than 50 percent of the median income for households in San Francisco as determined under California Administrative Code Section 6932, or its successor provision, or, alternatively, be so required to rent, lease or sell a minimum of 40 percent of the live/work units at rates or prices affordable to households whose incomes are no greater than 60 percent of said median income; and

(6) All non-arts activity other than residential in the project is otherwise permitted in the district, or is otherwise conditional in the district and is approved as a conditional use pursuant to this Code; and

(7) The subject live/work units are marketed on a preferential basis for arts activities as defined in Section 102.2 of this Code. For the purpose of this subsection, “preferential marketing” shall consist of:

(A) Advertising the initial leasing of all newly created units in publications which are oriented to audiences engaged in arts activities for a minimum of three months in advance of other advertising and, for subsequent vacancies, advertising in similar publications promptly
after future vacancies are known to the owner or the owner’s representatives, but in no event
less than one month in advance of other advertising, and

(B) Notification of organizations concerned with arts activities a minimum of three
months in advance of initial leasing activities and, for subsequent vacancies, promptly after
future vacancies are known to the owner or owner’s representative, but in no case less than
one month in advance of other advertising.

(e d) The location of each live/work unit in a multi-unit structure in a C or M District
shall be marked by a plaque, diagram or other device visible to emergency personnel from the
exterior building face of the structure containing the unit.

(e e) Each person, other than a person applying as owner of a fee interest, who
applies to erect or alter a live/work unit, or to change use or occupancy in order to authorize a
live/work unit, shall submit on a form approved by the Department of Public Health, a
disclosure signed by a fee owner of the property in question stating what hazardous materials,
if any, are known to exist in the vicinity of the unit. (Added by Ord. 412-88, App. 9/10/88;
amended by Ord. 115-90, App. 4/6/90)

APPROVED AS TO FORM:
LOUISE H. RENNE, City Attorney

By: JUDITH A. BOYAJIAN
Deputy City Attorney

Supervisor Ammiano
BOARD OF SUPERVISORS
City and County of San Francisco

Tails

Ordinance

File Number: 012127

Date Passed: April 29, 2002

Ordinance amending the San Francisco Planning Code by amending the definition of "Live/Work Unit" in Section 101.13 to clarify that the residential use and the integrated work space must be in the same unit, and by amending Section 233 to prohibit new Live/Work Units except for accessory uses authorized by Section 204.4.

March 25, 2002 Board of Supervisors — PASSED ON FIRST READING
Ayes: 9 - Ammiano, Daly, Gonzalez, Leno, Maxwell, McGoldrick, Peskin, Sandoval, Yee
Noes: 1 - Hall
Excused: 1 - Newsom

April 8, 2002 Board of Supervisors — FINALLY PASSED
Ayes: 9 - Ammiano, Daly, Gonzalez, Leno, Maxwell, McGoldrick, Peskin, Sandoval, Yee
Noes: 1 - Hall
Excused: 1 - Newsom

April 19, 2002 Mayor — VETOED

April 29, 2002 Board of Supervisors — ADOPTED OVER THE MAYOR’S VETO
Ayes: 9 - Ammiano, Daly, Gonzalez, Leno, Maxwell, McGoldrick, Peskin, Sandoval, Yee
Noes: 1 - Hall
Excused: 1 - Newsom
File No. 012127

I hereby certify that the foregoing Ordinance was FINALLY PASSED on April 8, 2002 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

APRIL 19, 2002

Date Approved VETOED

Mayor Willie L. Brown Jr.

Ordinance returned Disapproved April 19, 2002

The foregoing Ordinance, having been adopted by the Board of Supervisors at the Meeting of April 8, 2002 was referred to the Mayor, in accordance with the provisions of Section 3.103 of the Charter, and was returned by the Mayor on April 19, 2002, with the Mayor’s disapproval and veto.

On April 29, 2002, this Ordinance was ADOPTED OVER THE MAYOR’S VETO by the Board of Supervisors.

Gloria L. Young
Clerk of the Board