

[Determination of Fiscal Feasibility of Proposed Project.]

Ordinance amending the San Francisco Administrative Code by adding a new Chapter 28 to require Board of Supervisors review of a proposed project meeting certain criteria and a determination that the proposed project is fiscally responsible and feasible before undertaking environmental review of the proposed project.

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

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

Section 1. The San Francisco Administrative Code is hereby amended by adding new Chapter 28, to read as follows:

CHAPTER 28 FINDINGS OF FISCAL RESPONSIBILITY AND FEASIBILITY

Sec. 28.1. Applicability of this Chapter 28.

(a) This Chapter 28 shall be applicable to any project, as defined by the California Environmental Quality Act, Public Resources Code Sections 21000 and following, as amended; and Guidelines for Implementation of the California Environmental Quality Act, as amended, appearing as Title 14, Division 6, Chapter 3 of the California Code of Regulations (hereinafter referred to collectively as CEQA), that is proposed by an office, board, department, commission or other unit of government of the City and County and meets both of the following criteria:

(1) the cost of implementing and/or constructing the proposed project exceeds twenty-five million dollars (\$25,000,000.00), and

(2) A portion of the predevelopment, planning or construction costs of the project in excess of \$1,000,000.00, but excluding the costs of City personnel working on such project, will be paid from public monies. For purposes of this Chapter 28, "public monies" shall mean (i) funds from the City's

1 General Fund or funds otherwise held by any Department of the City, (ii) the proceeds of any
2 indebtedness of the City, including without limitation revenue bonds, lease revenue bonds or
3 certificates of participation secured by the City's General Fund or funds otherwise held by any City
4 department, or (iii) federal or state grants or loans.

5 (b) Notwithstanding Subsection 28.1(a), no provision of this Chapter 28 shall be interpreted
6 to grant the Board of Supervisors broader powers to set policy for a project proposed by an office,
7 board, department, commission or other unit of government of the City and County than is granted by
8 the City Charter or applicable state or federal law and proposed projects shall not be subject to the
9 determination by the Board of Supervisors provided for by this Chapter 28 where the City Charter or
10 applicable state or federal law precludes such a determination by the Board of Supervisors.

11 (c) Notwithstanding anything to the contrary in this Chapter 28, this Chapter 28 shall not
12 apply to the following projects:

13 (1) Any project where more than seventy-five percent (75%) of the amount of public monies
14 for the project will be financed with proceeds from a bond measure that the Board of Supervisors has
15 submitted for approval to the voters and which has been approved by the voters; or

16 (2) Any project that is the subject of a term sheet (or similar summary of key terms and
17 conditions) or an exclusive negotiating agreement (or similar agreement setting for a schedule and
18 terms for proceedings towards final transactional documents), approved or endorsed by the Board of
19 Supervisors on or after January 1, 2003 but before July 1, 2004, or that has otherwise been approved
20 or endorsed by the Board of Supervisors during such time period, provided however, that if the Board
21 of Supervisors subsequently elects to withdraw such endorsement or approval, this exemption shall not
22 apply and such project shall be subject to the terms of this ordinance to the extent otherwise
23 applicable; or

24 (3) Any project where funds allocated or granted by the San Francisco County
25 Transportation Authority ("SFCTA"), or other funds secured by or requiring contribution of matching

1 or leveraged SFCTA funds, comprise more than seventy-five percent (75%) of the public monies for the
2 project, provided that the SFCTA has reviewed and approved the plans or projects to be financed with
3 such funds from the SFCTA; or

4 (4) Any project that is a utility capital improvement project under the jurisdiction of the San
5 Francisco Public Utilities Commission.

6 **Sec. 28.2. Board of Supervisors Determination.**

7 (a) Prior to submittal to the Planning Department of an environmental evaluation
8 application under San Francisco Administrative Code Chapter 31 and CEQA, the office, board,
9 department, commission or other unit of government of the City and County proposing a project (the
10 “Project Sponsor”) shall seek and procure a Board of Supervisors determination that the plan for
11 undertaking and implementing the project is fiscally feasible and responsible, as set forth in this
12 Chapter 28. The Board shall consider the fiscal feasibility of the project, using the following criteria
13 when it evaluates a project’s fiscal feasibility: (1) direct and indirect financial benefits of the project to
14 the City, including to the extent applicable costs savings or new revenues, including tax revenues,
15 generated by the proposed project; (2) the cost of construction; (3) available funding for the project;
16 (4) the long term operating and maintenance costs of the project; and (5) debt load to be carried by the
17 City department or agency. The Board may consider other criteria that may be useful in evaluating a
18 project’s fiscal feasibility.

19 (b) A determination by the Board that the plan for implementing and undertaking the
20 project is fiscally feasible and responsible shall not include a determination as to whether the Project
21 Sponsor or other unit of the government of the City and County should approve the project and it is the
22 intent of the Board of Supervisors in requiring the determination to decide only whether the proposed
23 project merits further evaluation and environmental review.

24 **Sec. 28.3. Information to be Submitted to the Board of Supervisors.**

25

1 The Project Sponsor shall submit to the Board of Supervisors the following documents and
2 information concerning the proposed project:

3 (1) A proposed resolution for consideration and adoption by the Board of Supervisors
4 finding the plan to undertake and implement the proposed project fiscally feasible. The Mayor,
5 Director of a Project Sponsor department, or an individual Supervisor may introduce the resolution at
6 the Board of Supervisors.

7 (2) The Project Sponsor shall provide information about the proposed project, including but
8 not limited to, a general description of the project, the general purpose of the project, and a fiscal plan
9 describing the estimated cost and all known and potential available funding sources for the project.

10 **Sec. 28.4. Board of Supervisors Procedures for Determination.**

11 (a) The Board of Supervisors, in accordance with its rules of order, shall refer the proposed
12 resolution and information to the Board committee responsible for review of fiscal measures, such as
13 appropriation ordinances, bond issues, taxes, fees and other revenue measures.

14 (b) In evaluating the fiscal feasibility of the proposed project, the Board may request
15 assistance from the Budget Analyst or the Controller. The Project Sponsor may submit additional
16 information to the Board. Based upon the criteria set forth in Section 28.2, the Board shall determine
17 whether the project is fiscally feasible and responsible. The Board shall act by resolution by a majority
18 vote of all its members.

19 (c) The Board shall act as expeditiously as possible, and shall hold a public hearing
20 regarding the fiscal feasibility of a proposed project within ninety (90) days following introduction of
21 the resolution at the Board of Supervisors. The Board may continue its consideration of the proposal
22 in order to receive more information from the Budget Analyst or the Controller or to further consider
23 the proposal. Failure of the Board to hold a public hearing within such 90 day period shall not be
24 deemed to constitute a determination that the project is fiscally feasible and responsible.

25 **Sec. 28.5. Processing of Environmental Review Application.**

1 (a) In the event the Board of Supervisors determines that the proposed project is fiscally
2 feasible and responsible, the Project Sponsor may file an environmental evaluation application with the
3 Planning Department and may undertake environmental review of the proposed project as required by
4 CEQA and Administrative Code Chapter 31.

5 (b) In the event the Board of Supervisors determines that the proposed project is not fiscally
6 feasible, the Project Sponsor shall not undertake environmental review of the proposed project and the
7 Planning Department shall not commence environmental review of the proposed project, including the
8 necessary scoping, technical studies, and preparation of environmental documents.

9 (c) An environmental evaluation application for a project subject to this Chapter 28 shall
10 not be deemed complete, and the Planning Department shall not undertake environmental review of a
11 project, unless a copy of the Board of Supervisors Resolution finding the proposed project fiscally
12 feasible and responsible is submitted to the Planning Department.

13 **Sec. 28.6. Resubmittal of Project.**

14 The Project Sponsor may revise or modify the proposed project and may submit it again to the
15 Board of Supervisors for consideration pursuant to this Chapter 28 no earlier than three (3) months
16 following a determination by this Board that the proposed project is not fiscally feasible and
17 responsible.

18 **Sec. 28.7. Applicability of this Chapter to On-Going Environmental Review.**

19 This Chapter 28 shall apply to any proposed project that has not completed environmental
20 review pursuant to the California Environmental Quality Act as of January 27, 2004. In the event
21 environmental review has commenced for a proposed project, the Planning Department shall suspend
22 its environmental review of the project until the Board of Supervisors has determined that the proposed
23 project is fiscally feasible as set forth in this Chapter 28, provided that the Planning Department shall
24 not suspend its environmental review of the project if such suspension would lead to a violation of the
25 time frames for environmental review set forth in CEQA or if such suspension would substantially or

1 impermissibly impair existing contractual obligations of the City or any of its departments; and
2 provided further that for projects for which the Planning Department has not completed environmental
3 review prior to January 27, 2004 based on an environmental evaluation application filed by a person
4 or entity other than a city department, the planning department shall not suspend its environmental
5 review for up to ninety (90) days following the effective date of this ordinance or unless and until the
6 Board determines that the project is fiscally infeasible as set forth in this Chapter 28, whichever occurs
7 earlier. Notwithstanding any other provision in this subsection 28.7, Chapter 28 shall not apply to any
8 project that includes affordable housing funded in whole or in part through the Mayor's Office of
9 Housing ("MOH"), where the environmental evaluation application for such project was filed prior to
10 January 27, 2004 and where some or all of the MOH funds have been advanced to the project prior to
11 the Effective Date of this Chapter 28.

12 Sec. 28.8. Severability. If any Section, paragraph, sentence, clause or phrase of this Chapter
13 28 is for any reason held to be unconstitutional, invalid or ineffective by any court of competent
14 jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this
15 Chapter 28. The Board of Supervisors declares that it would have passed each section, paragraph,
16 sentence, clause or phrase of this Chapter 28 irrespective of the fact that any portion of this Chapter 28
17 could be declared unconstitutional, invalid or ineffective.

18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By:

22 
23 Kate H. Stacy
24 Deputy City Attorney
25



City and County of San Francisco

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

Tails Ordinance

File Number: 040146

Date Passed:

Ordinance amending the San Francisco Administrative Code by adding a new Chapter 28 to require Board of Supervisors review of a proposed project meeting certain criteria and a determination that the proposed project is fiscally responsible and feasible before undertaking environmental review of the proposed project.

May 18, 2004 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Peskin, Sandoval

May 18, 2004 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Peskin, Sandoval


May 25, 2004 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval

Excused: 1 - Hall

File No. 040146

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on May 25, 2004 by the Board of Supervisors of the City and County of San Francisco.



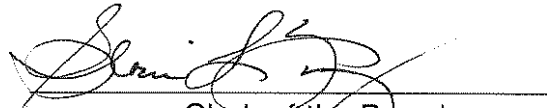
Gloria L. Young
Clerk of the Board

Date Approved

Mayor Gavin Newsom

Date: June 4, 2004

I hereby certify that the foregoing ordinance, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter.



Clerk of the Board

File No.
040146