

1 [Planning – Conditional Use Requirement for Steam or Fossil Fuel Power Plants in M-1 and  
2 M-2 Zoning Districts.]

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4 **Ordinance amending Planning Code Section 226 to require that steam or fossil-fuel**  
5 **power plants in M-1 and M-2 zoning districts obtain conditional use authorization,**  
6 **adding Section 226.1 requiring additional findings; amending the Administrative Code**  
7 **to add Chapter 29A to require the Board of Supervisors consider the criteria of**  
8 **Planning Code Section 226.1(c) prior to taking City fossil fuel power plant approval**  
9 **actions; making environmental findings, and making findings of consistency with the**  
10 **General Plan and priority policies of Planning Code Section 101.1.**

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

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

15 Section 1. General Findings. The Board of Supervisors of the City and County of  
16 San Francisco hereby finds and declares as follows:

17 1. Fossil-fuel power generation is associated with pollutants that damage public  
18 health, heated water discharges into the San Francisco Bay that damage the Bay’s ecology,  
19 and emissions of greenhouse gases that contribute towards global warming.

20 2. The City has maintained a policy of seeking to close existing power plants as  
21 soon as possible and has been working to develop a plan to replace the need for existing  
22 power plants and to ensure reliable electric service to San Francisco.

23 3. Ordinance 124-01 directed City departments to develop plans to implement all  
24 practical transmission, conservation, efficiency, and renewable alternatives to fossil fuel  
25 generation in the City and County of San Francisco.

1           4.       In December 2002, the Board of Supervisors unanimously adopted Resolution  
2 827-02, endorsing the Electricity Resource Plan which identifies eight goals that were  
3 developed through public comment and used to guide the plan: maximize energy efficiency,  
4 develop renewable power, assure reliable power, support affordable electric bills, improve air  
5 quality and prevent other environmental impacts, support environmental justice, promote  
6 opportunities for economic development, and increase local control over energy resources.

7           5.       The City has repeatedly stated its preference for energy efficiency, renewable  
8 energy, and transmission over fossil-fueled resources and, consistent with the State's energy  
9 policies, has stated that any fossil-fueled resources that are required should be clean,  
10 efficient, and flexible in order to promote environmental justice, reduce emissions, and  
11 complement increasing reliance on renewable resources.

12          6.       Additional zoning controls will promote the pursuit and exploration of non fossil-  
13 fueled energy resources by requiring certain findings regarding the availability of renewable  
14 alternatives prior to authorizing steam or fossil-fuel power plants.

15          7.       Additional zoning controls will encourage cessation of nonconforming uses and  
16 prevent expansion, intensification, and extension of such uses.

17          8.       If the Planning Commission lacks jurisdiction over a new power plant that is City-  
18 funded or otherwise subject to Board of Supervisors approval, the goals of this legislation  
19 shall be achieved through Board of Supervisors consideration of the zoning control criteria as  
20 part of the Board of Supervisors approval process.

21           Section 2. Environmental Findings, General Plan Findings, and Other Required  
22 Findings.

23           (a) The Planning Department has determined that the actions contemplated in this  
24 Ordinance are in compliance with the California Environmental Quality Act (California Public  
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1 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the  
 2 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by  
 3 reference.

4 (b) On \_\_\_\_\_, 2008, the Planning Commission, in Resolution No.  
 5 \_\_\_\_\_ approved and recommended for adoption by the Board this legislation and  
 6 adopted findings that it is consistent, on balance, with the City's General Plan and eight  
 7 priority policies of Planning Code Section 101.1 The Board adopts these findings as its own.  
 8 A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.  
 9 \_\_\_\_\_, and is incorporated by reference herein.

10 (c) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this  
 11 legislation will serve the public necessity, convenience, and welfare for the reasons set forth in  
 12 Planning Commission Resolution No. \_\_\_\_\_, and incorporates such reasons by  
 13 reference herein.

14 Section 3. The San Francisco Planning Code is hereby amended by amending Section  
 15 226 to read as follows:

16 SEC. 226 MANUFACTURING AND PROCESSING

17	C-	C-	C-	C-	C-	C-	C-	M-1	M-2	
18	1	2	3-	3-	3-	3-	M			
19			O	R	G	S				
20										SEC. 226. MANUFACTURING AND PROCESSING.
21			P	P	P	P	P	NA	NA	(a) Light manufacturing uses, involving only the assembly, packaging, repairing or processing of previously prepared materials, which are conducted within a building but do not occupy the ground story of any building; provided:
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									(1) That no part of a building so occupied shall have any opening, other than fixed windows and exits required by law, within 50 feet of any R District;
									(2) That the mechanical equipment required for such uses, together with related floor space used primarily by the operators of such equipment, shall not in the aggregate occupy more than 1/4 of the gross floor area of the building in which the uses are located; and
									(3) That no machine shall be used that has more than five horsepower capacity.
					P	P	NA	NA	(b) Light manufacturing which occupies not more than 1/2 the ground story of the building and involves or requires no machine that has more than five horsepower capacity, if conducted entirely within an enclosed building; provided, that no part of a building so occupied shall have any opening, other than fixed windows and exits required by law, within 20 feet of any R District.
					P	P	NA	NA	(c) Light food-processing for delicatessen, catering or restaurant supply, if conducted entirely within an enclosed building; provided, that no part of a building so occupied shall have any opening, other than fixed windows or exits required by law, within 20 feet of any R District.
							P	P	(d) Light manufacturing, not including any use first specifically listed below.

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		P	P	P	P	P	P	P	(e) Industrial or chemical research or testing laboratory, not involving any danger of explosions.
					C	C	P	P	(f) Experimental laboratory.
						P	P	P	(g) Battery manufacture, if conducted on premises not less than 200 feet from any R District.
							P	P	(h) Any of the following uses, when conducted within a completely enclosed building; provided, that no part of a building so occupied shall have any opening, other than fixed windows or exits required by law, within 50 feet of any R District:
									(1) Automobile assembling.
									(2) Bottling plant, brewery, dairy products plant, malt manufacturing or processing or malt products plant;
									(3) Ice manufacturing plant;
									(4) Concrete mixing, concrete products manufacture;
									(5) Electric foundry or foundry for nonferrous metals;
									(6) Metal working or blacksmith shop; excluding presses of over 20 tons' capacity and machine-operated drophammers.
									(7) Enameling, lacquering, wholesale paint mixing from previously prepared pigments and vehicles;

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										(8) Woodworking mill, manufacture of wood-fibre, sawdust or excelsior products not involving chemical processing.	
									P	(i) Manufacture of cereals, distilled liquors, felt or shoddy, hair or hair products, pickles, sauerkraut, vinegar, yeast, soda or soda compounds, structural clay products, meat products, not including any use first specifically listed below.	
									P	(j) Flour mill.	
									P	(k) Sugar refinery.	
									P	(l) Wool pulling or scouring.	
									C	(m) Blast furnace, rolling mill, smelter.	
									C	(n) Manufacture of corrosive acid or alkali, cement, gypsum, lime, plaster of paris, explosive, fertilizer, glue or gelatine from fish or animal refuse.	
									C	(o) Production or refining of petroleum products.	
									<u>PC*</u>	<u>PC*</u>	(p) Steam <i>or fossil-fuel</i> power plant, <i>if permitted consistent with Planning Code Section 226.1. A " power plant" shall mean each power generation unit capable of independent operation, but shall not include on-site power generation units less than five megawatts in size.</i>
									P	(q) Shipyard.	
						P	P		NA	(r) Live storage, killing or dressing of poultry or rabbits for	

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										retail sale on the premises, if conducted on premises not less than 200 feet from any R District.
									P	(s) Live storage, killing or dressing of poultry or rabbits, if conducted on premises not less than 200 feet from any R District, without limitation as to nature of sale.
									C	(t) Stockyard, livestock feed yard, abattoir.
							C	C		(u) Rendering or reduction of fat, bones or other animal material, where adequate provision is made for the control of odors through the use of surface condensers and direct-flame afterburners or equivalent equipment.
									C	(v) Incineration of garbage, refuse, dead animals or parts thereof.
									P	(w) The following uses, when located not less than 500 feet from any R District:
										(1) Manufacture, refining, distillation or treatment of any of the following: abrasives, acid (noncorrosive), alcohol, ammonia, asbestos, asphalt, bleaching powder, candles (from tallow), celluloid, chlorine, coal, coke, creosote, dextrine, disinfectant, dye, enamel, gas carbon or lampblack, gas (acetylene or other inflammable), glucose, insecticide, lacquer, linoleum, matches, oilcloth, oil paint, paper (or pulp), perfume, plastics, poison, potash, printing ink, refuse mash or refuse grain, rubber (including balata or gutta percha or crude or scrap rubber), shellac, shoe or

1									stove polish, soap, starch, tar, turpentine, varnish;
2									(2) Curing, smoking or drying fish, manufacture of fish oil;
3									(3) Tanning or curing of raw hides or skins;
4									(4) Foundry, structural iron or pipe works, boilermaking
5									where riveting is involved, locomotive works, roundhouse
6									or railroad shop.
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Section 4. The San Francisco Planning Code is hereby amended by adding Section 226.1 to read as follows:

SEC. 226.1. CONDITIONAL USE CRITERIA FOR STEAM OR FOSSIL-FUEL POWER PLANTS.

(a) Applicability. These controls shall apply to all steam or fossil-fuel power plants in M-1 and M-2 Zones.

(b) Prior Nonconforming Uses. Consistent with Article 1.7 of the Planning Code, nonconforming steam or fossil-fuel power plant uses shall require conditional use authorization in order to enlarge, intensify, or extend the use if such changes would expand a steam or fossil-fuel power plant use, make it more permanent, or substantially change the use. An intensification of use shall include the following changes, without limitation and in addition to the criteria set forth in Article 1.7 of the Planning Code:

(1) An increase in output capability by more than 10% (either an increase in capacity or increase in planned or permitted output per year);

(2) A change in type of fuel;



1 (3) A substantial increase in the monthly discharge of waste water into the sewer or into the  
2 San Francisco Bay, or an increase in the temperature of existing waste water discharges into the San  
3 Francisco Bay;

4 (4) Any increase in the emission rate or the total annual tons of emission for particulate  
5 precursors, ozone precursors or greenhouse gases;

6 (5) A substantial increase in the volume of regulated substances used on-site on a monthly  
7 basis, or in the volume of regulated substances stored on-site or in the volume of regulated substances  
8 transported to the site on a monthly basis; or

9 (6) Improvements to any power generation unit costing more than 25 percent of the  
10 assessed value of the same unit prior to improvement.

11 (c) Criteria. In acting on any application for conditional use authorization for a steam or  
12 fossil-fuel power plant under Section 226(p), the Commission shall consider the conditional use  
13 authorization requirements set forth in Article 3 of the Planning Code and, in addition, shall only  
14 approve an application for a conditional use authorization if facts are presented to establish:

15 (1) The additional power generated by the proposed steam or fossil-fuel power plant cannot  
16 be obtained through less environmentally detrimental means considering emissions of criteria air  
17 pollutants, greenhouse gas emissions, stormwater and wastewater discharges, remediation and  
18 migration of contaminated soils, and the potential for renewable energy generation alternatives in the  
19 foreseeable future; and

20 (2) As applied to a prior nonconforming use, an extension of the power plant use or an  
21 increase in intensity of the use would not result in increased environmental or land use impacts,  
22 including but not limited to consideration of impacts resulting from the changes in use listed in Section  
23 226.1, subsection (b); and

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1           (3) Granting conditional use authorization would not reasonably be expected to interfere  
2 with timely and full remediation of contaminated properties by, for example, (a) enabling a remedial  
3 action plan based on future site use that permits lesser remedial action for a site than might be  
4 expected for other foreseeable uses of the property; (b) resulting in a deed restrictions limiting future  
5 commercial uses for the site; or (c) delaying remedial action and leaving potentially hazardous  
6 contamination in place longer than if the conditional use authorization were denied.

7           (d) Written Findings. The Planning Commission shall make detailed written findings  
8 explaining the basis for its decision under this Section.

9           (e) Severability. In the event that a court or agency of competent jurisdiction holds that  
10 federal or state law, rule or regulation invalidates any clause, sentence, paragraph of this Section or  
11 the application thereof to any person or circumstances, it is intended that the court or agency sever  
12 such clause, sentence, paragraph or section so that the remainder of this Section shall remain in effect.

13           (f) The Planning Commission, with the approval by ordinance of the Board of Supervisors,  
14 may modify the requirements of this ordinance if the Commission and the Board find that such  
15 modification is in the public interest.

16 Section 5. The San Francisco Administrative Code is hereby amended by adding Chapter 29A  
17 to read as follows:

18 SEC. 29A.1

19           The Board of Supervisors shall not approve any fossil-fuel power plant (as defined in Planning  
20 Code Section 226), including approval of project funding and contract approvals, unless it finds that  
21 the power plant is consistent with the criteria set forth in Planning Code Section 226.1(c).

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23 APPROVED AS TO FORM:

24 DENNIS J. HERRERA, City Attorney

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By: \_\_\_\_\_  
Andrew W. Garth  
Deputy City Attorney