

1 [Exempting Wind Turbines from Bernal Heights Special Use District Height Limits.]

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3 **Ordinance amending the San Francisco Planning Code by amending Section 242**  
4 **(e)(1)(D) to allow certain wind power generators within the Bernal Heights Special Use**  
5 **District subject to height limitations set forth in Section 260(b)(1)(A), making**  
6 **environmental findings, general plan findings, and other required findings.**

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

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

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

13 (1) The City and County of San Francisco ("City") seeks to promote alternative  
14 electric-generation technologies in order to minimize the adverse environmental impacts  
15 associated with fossil-fuel based electric generation facilities.

16 (2) Section 260(b)(1)(A) provides an general exception allowing wind energy  
17 equipment to extending up to 10 feet above otherwise applicable zoning height requirements  
18 subject to visual screening for any such feature. The wind energy exception does not apply to  
19 Bernal Heights due to the limits imposed by the Bernal Heights Special Use District (Section  
20 242 of the Planning Code). Permitting wind power generator equipment in Bernal Heights  
21 Special Use District will further the City's alternative energy source objectives.

22 (3) Wind-powered electric generation turbines utilize proven technologies to convert  
23 wind energy into electricity and, particularly in windy locations, constitute a "green" alternative  
24 to traditional sources of power generation and/or dependency on power transmission lines.

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1 Small wind turbines in residential areas can provide safe and inexpensive distributed-  
2 generation in an efficient and sustainable manner.

3 (4) Allowing construction of vertical-axis wind-powered electrical generators (with a  
4 horizontal diameter not exceeding 3 feet) on dwelling roofs in Bernal Heights at heights up to  
5 10 feet above the roof will not undermine the purposes of the Bernal Heights Special Use  
6 District. Such turbines are comparable in scale and aesthetic impact to chimneys and TV and  
7 radio antennas, which may extend up to 10 feet above the 30 feet height limit otherwise  
8 applicable in the Bernal Heights Special Use District (pursuant to Planning Code section  
9 260(b)(1)(A)). Furthermore, visual impacts of any such generators may be minimized through  
10 use of visual screening techniques.

11 (5) It is both possible and desirable to design vertical-axis wind-powered electrical  
12 generators to avoid impacts to birds and other wildlife. The City seeks to encourage the  
13 design and use of wind-powered electrical generators that do not significantly impact birds  
14 and other wildlife.

15 Section 2. Environmental Findings, General Plan Findings, and Other Required  
16 Findings.

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

22 (2) On \_\_\_\_\_, 2007, the Planning Commission, in Resolution No.  
23 \_\_\_\_\_ approved and recommended for adoption by the Board this legislation and  
24 adopted findings that it is consistent, on balance, with the City's General Plan and eight  
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1 priority policies of Planning Code Section 101.1 The Board adopts these findings as its own.  
2 A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.  
3 \_\_\_\_\_, and is incorporated by reference herein.

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

8 Section 3. The San Francisco Planning Code is hereby amended by amending  
9 Section 242 to read as follows:

10 **Section 242. BERNAL HEIGHTS SPECIAL USE DISTRICT.**

11 (a) **General.** A Special Use District entitled the Bernal Heights Special Use District,  
12 the boundaries of which are shown on Sectional Map. Nos. 7SU, 8SU and 11SU of the Zoning  
13 Map, is hereby established for the purposes set forth below.

14 (b) **Purposes.** In order to reflect the special characteristics and hillside topography  
15 of an area of the City that has a collection of older buildings situated on lots generally smaller  
16 than the lot patterns in other low-density areas of the City, and to encourage development in  
17 context and scale with the established character, there shall be a Bernal Heights Special Use  
18 District.

19 (c) The provisions of this Section 242 shall not apply to building permit applications  
20 or amendments thereto, or to conditional use, variance or environmental evaluation  
21 applications filed on or before January 7, 1991, unless the applicant requests in writing that an  
22 application be governed by the provisions of this Section 242.

23 (d) **Definitions.** For purposes of this Section 242, the following definitions apply:  
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1           (1) "Adjacent building" shall mean a building on a lot adjoining the subject lot along  
2 a side lot line. Where the lot constituting the subject property is separated from the lot  
3 containing the nearest building by an undeveloped lot or lots for a distance of 50 feet or less  
4 parallel to the street or alley, such nearest building shall be deemed to be an "adjacent  
5 building," but a building on a lot so separated for a greater distance shall not be deemed to be  
6 an "adjacent building." A corner lot shall have only one adjacent building located along its  
7 side lot line.

8           (2) "Usable floor area" is the sum of the gross areas of the several floors of a  
9 building, measured from the exterior walls or from the center lines of common walls  
10 separating two buildings. "Usable floor area" shall not include that floor area devoted to off-  
11 street parking or any space or area which is not readily accessible and which has not more  
12 than five feet vertical clearance at any point.

13           (e) **Controls.** All provisions of the Planning Code applicable to an RH-1, RH-1(S),  
14 RH-2, and RH-3 District shall apply to applicable portions of the Special Use District except as  
15 otherwise provided in this Section.

16           (1) Height Limits. No portion of a dwelling in any portion of this district shall exceed  
17 a height of 30 feet except as provided below.

18           (A) The height of a dwelling on a downslope lot shall not exceed 30 feet above  
19 grade, subject to averaging or offset by an equal height reduction. Any portion of a dwelling  
20 exceeding a height of 30 feet must be offset by at least an equal amount of dwelling having a  
21 height of less than 30 feet, provided that the maximum height above grade at any point cannot  
22 exceed 40 feet, and the rearmost eight feet of length cannot exceed 32 feet above grade.

23           (B) The height of a dwelling on an upslope lot shall not exceed 30 feet above grade,  
24 with no averaging or stepping over the 30 feet limit, and no part of the dwelling, unless  
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1 otherwise permitted by this Section, may be higher than 38 feet above curb level, except if the  
2 rear of the lot is 30 feet or more higher than the front grade, the rear half of the dwelling may  
3 go up to 43 feet above curb level.

4 (C) The height of a dwelling in an RH-2 or RH-3 lot may exceed the limits described  
5 above based upon the average height of the adjacent buildings.

6 (D) Except for vertical-axis wind-powered electrical generators with a horizontal diameter  
7 not exceeding 3 feet, chimneys, and nonparabolic radio and television antennas, ~~excluding~~  
8 ~~parabolic antennas~~, nothing otherwise permitted by Section 260(b) of this Code may extend  
9 above the additional height limit established in this Code section by more than 42 inches.  
10 Furthermore, all such wind-powered electrical generators must avoid significant impacts to wildlife.

11 (2) **Rear Yards.** The requirements applicable to rear yards are as follows:

12 (A) RH-1 and RH-1(S). For lots which have a depth of 70 feet or less, the minimum  
13 rear yard depth shall be equal to 35 percent of the total depth of the lot on which the building  
14 is located. Buildings on lots which have a depth greater than 70 feet may not be deeper than  
15 45.5 feet measured from the front property line; the remainder of the lot shall be used for rear  
16 yard.

17 (B) RH-2 and RH-3. The minimum rear yard depth shall be equal to 45 percent of  
18 the total depth of the lot in which the building is located.

19 (C) All Lots. The following provisions relating to rear yards shall apply to all lots in  
20 the Special Use District:

21 (i) A building may intrude into the required rear yard up to the extent that an  
22 adjacent building intrudes, provided the intrusion is no wider than half of the width of the lot,  
23 and 25 percent of the total lot depth is provided as rear yard open space. The intrusion must  
24 be placed in a manner that the Zoning Administrator finds will provide optimal light and air to  
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1 the subject and adjacent properties. The coverage resulting from the intrusion must be offset  
2 by otherwise permitted coverage in the rear of the subject property.

3 (ii) Any part of a front setback exceeding five feet may be applied to the amount  
4 required for satisfying the rear yard requirements.

5 (iii) No part of any building may be within 25 percent or 15 feet, whichever is  
6 greater, of the rear property line.

7 (iv) Those obstructions into rear yards otherwise permitted by Section 136(c)(2), (3),  
8 and (25) of this Code shall not be permitted. In addition to the obstructions permitted in  
9 Section 136(c), improvements may be constructed underneath a room or deck located in the  
10 rear yard area if said room or deck is otherwise permitted pursuant to a building permit issued  
11 prior to December 11, 1987. In those instances, the Zoning Administrator may place  
12 appropriate conditions on the approval of the building permit to protect the light, air and view  
13 of the adjacent properties.

14 (3) **Mass Reduction Requirements for RH-1 and RH-1(S) Buildings.** After  
15 calculation of the maximum permissible height and lot coverage in an RH-1 or RH-1(S)  
16 District, a total of 650 square feet of usable floor area must be deleted from the exterior of the  
17 building, causing a reduction in square footage as well as building volume. On lots that  
18 exceed 100 feet in depth, the mass reduction shall be a minimum of 400 square feet of usable  
19 floor area. Any area to be deleted must have a minimum clearance of three feet from the side  
20 property line. The reduction must be taken from the front, the rear, or the top of the building  
21 above grade; however, such reduction along the side of the property line will be allowed under  
22 this section so that adjacent properties will benefit from the provision of greater light and air or  
23 the reduction of shadows. Where an area to be deleted is along the side property line and is  
24 in the form of an inner court, the inner court shall have a minimum area of 90 square feet.

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1           (4)    **Parking.** The number of off-street parking spaces required for new construction  
2 shall be as follows:

Usable Floor Area	Parking Spaces
0 to 1300	1
1301 to 2250	2
2251 to 2850	3
2851 to 3850	4

10 One additional parking space is required for each additional 1,000 square feet.

11           If more than one parking space is required, the first off-street parking space must have  
12 a minimum area of 160 square feet; second and subsequent spaces may be a compact car  
13 space and have a minimum area of 127.5 square feet. In the RH-2 and RH-3 District, the  
14 parking requirement is the greater of the number of spaces required by the above table, or  
15 one parking space per dwelling unit.

16           All alterations resulting in an increase in usable floor area shall be considered  
17 cumulatively from the effective date of this ordinance.

18           No tandem parking spaces are permitted for the first two required parking spaces for  
19 new construction. All other required parking spaces for new construction may be tandem  
20 parking spaces.

21           Tandem parking spaces are permitted for alterations in the RH-1 and RH-1(S)  
22 Districts, and are not permitted for alterations in the RH-2 and RH-3 Districts.

23           (A) RH-1 or RH-1(S) District Building Alterations. The following parking  
24 requirements shall apply to alterations of existing structures in an RH-1 or RH-1(S) District:  
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1 (i) If one or more alterations add 400 square feet or less of usable floor area to an  
2 existing building, no additional parking space is required to be added to the existing spaces.

3 (ii) If one or more alterations add over 400 square feet of usable floor area but do  
4 not cause the total usable floor area of the building to exceed 1,650 square feet, no additional  
5 parking space is required to be added to the existing spaces.

6 (iii) If one or more alterations add over 400 square feet of usable floor area and the  
7 total usable floor area of the building is between 1,651 and 2,250 square feet, a total of two  
8 parking spaces is required. One or both of these required spaces may be waived by the  
9 Zoning Administrator if the Zoning Administrator finds that (1) the off-street parking space(s)  
10 would result in a new curb cut, or the proposed driveway would result in the loss of one  
11 parking space while adding one private space; or (2) the structure has an unaltered historic  
12 façade as determined by the Department of Planning and the owner has conveyed a façade  
13 easement to the San Francisco Architectural Heritage foundation.

14 (iv) If one or more alterations add over 400 square feet of usable floor area and the  
15 total usable floor area is over 2,250 square feet, a total of three parking spaces or more is  
16 required, as provided by the above table. One additional parking space is required for each  
17 additional 1,000 square feet.

18 (B) **RH-2 and RH-3 Building Alterations.** The maximum width of curb cuts  
19 allowed for new construction shall be 10 feet; the maximum width of a garage door opening  
20 shall be 12 feet.

21 (6) **Design.** In addition to meeting applicable standards provided in this Section  
22 and elsewhere in this Code, residential development subject to this Section shall be subject to  
23 the review and notification procedures provided by Subsection 311 (c) of this Code. Requests  
24 for Planning Commission review shall be governed by Subsection 311(d) of this Code. In  
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1 addition to applicable guidelines cited by Section 311, the Elsie Street Plan and the East  
2 Slope Building Guidelines shall be used as guidelines to determine neighborhood  
3 compatibility of new construction and alterations in the respective areas covered by those  
4 guidelines.

5 (7) **Demolition.**

6 (A) Demolition Generally Prohibited. Other than as specified in this subsection, no  
7 demolition permit for structures containing one or more residential units may be approved  
8 unless:

9 (i) The Superintendent of the Bureau of Building Inspection or the Chief of the  
10 Bureau of Fire Prevention and Public Safety determines, after consultation to the extent  
11 feasible with the Department of Planning, that an imminent safety hazard exists and the  
12 Superintendent determines that demolition of the structure is the only feasible means to  
13 secure the public safety; or

14 (ii) The structure is under an abatement order and the Superintendent of the  
15 Bureau of Building Inspection determines, after consultation with the Department of Planning  
16 and the San Francisco Fire Department, that repairs rendering the structure safe and  
17 habitable as defined in the San Francisco Housing Code would cost 50 percent or more of the  
18 cost to replace the structure pursuant to the standards published periodically by the  
19 Superintendent. An owner's deliberate damage, in the opinion of the Superintendent of the  
20 Bureau of Building Inspection, to the property or failure to maintain it shall not be included in  
21 the calculation of replacement costs; or

22 (iii) The Department determines, based on facts presented, that the structure  
23 proposed to be demolished retains no substantial remaining value or reasonable use.

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1 (B) Demolition of Historic or Architecturally Significant Residential Buildings. Unless  
2 demolition is approved pursuant to Subsections (A)(i) or (A)(iii) above, no demolition permit  
3 may be approved for a residential building (1) which is a designated landmark or contributing  
4 building in an historic district; or (2) which the Landmarks Preservation Advisory Board  
5 determines is qualified to be designated as a landmark or contributing building in an historic  
6 district under the standards of Article 10 of this Code; or (3) is recommended by the  
7 Department of Planning for historic designation under Article 10 of this Code.

8 (C) Replacement Structure Required. Unless demolition is approved pursuant to  
9 Subsection (A)(i) or (A)(iii) above, no application authorizing the demolition of a residential  
10 building within the scope of this Section shall be approved until the City has finally approved a  
11 building permit for construction of the replacement building which meets the requirements of  
12 this ordinance. A building permit is finally approved if the Board of Permit Appeals has taken  
13 final action on an appeal of the issuance or denial of the permit or if the permit has been  
14 issued and the time for filing an appeal with the Board has lapsed with no appeal filed.

15 (i) This Section shall not apply to the demolition of a second structure on a single  
16 lot that (1) does not exceed 500 square feet, (2) meets the requirements of Subsection (A)(ii)  
17 above, and (3) is not a historic residential building under Subsection (B) above. (Added by  
18 Ord. 32-91, App. 1/25/91; amended by Ord. 145-00, File No. 000796, App. 6/16/2000).

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

21  
22 By: \_\_\_\_\_  
ANDREW W. GARTH  
23 Deputy City Attorney