

REVISED LEGISLATIVE DIGEST

[Discretionary Review Reform for a Two-Year Trial Period – Planning Department Fees]

Ordinance amending the San Francisco Planning Code by amending Section 311 and 312 to provide that for a two-year trial period a request for discretionary review will be heard by the Planning Commission only if the application demonstrates exceptional and extraordinary circumstances, as defined, or a policy or emerging planning issue that the Planning Code and design standards do not address, or an inconsistency with the General Plan and the Priority Policies of Planning Code Section 101.1, to replace the term Residential Design Guidelines with the term Residential Design Standards; and to repeal the ability of a project sponsor to request discretionary review; amending Sections 352 and 355 to allow for collection and refund of fees associated with Planning Department Reconsideration; adopting environmental and Section 302 findings.

Existing Law

Planning Code Section 311 establishes procedures for reviewing certain building permit applications in Residential zoning districts in order to determine compatibility of the proposal with the neighborhood, and for providing notice to property owners and residents neighboring the site and to interested neighborhood organizations so that concerns about a project may be identified and resolved during the review of the permit. Section 312 establishes similar review procedures and notice provisions for certain building permit applications in Neighborhood Commercial zoning districts.

Sections 311 and 312 give neighborhood residents, interested neighborhood organizations, or others 30 days to request the Planning Commission to exercise discretionary review (DR) over the project. If a request for DR is received within the 30-day period, the Commission must hold a public hearing to hear the matter. The project sponsor also has the right to request DR by the Planning Commission to resolve conflicts between the Planning Director and the sponsor concerning the project.

Amendments to Current Law

The proposed legislation amends Planning Code Sections 311 and 312 to eliminate the mandatory scheduling of a DR hearing before the Planning Commission upon receipt of a request for DR and instead allows some DR requests to be reviewed and heard administratively. It also eliminates the right of a project sponsor to request DR. Staff-initiated DRs and mandatory DRs required by the Commission will not be affected.

In order to have a Commission hearing, a request by the public for DR must demonstrate "exceptional and extraordinary circumstances," which is defined as occurring "where the

standard application of adopted design standards to a project does not enhance or conserve neighborhood character, or balance the right to develop the property with impacts on nearby properties or occupants." These circumstances may arise "due to complex topography, irregular lot configuration, unusual context, or other conditions not addressed in the design standards." Discretionary review by the Planning Commission may also be warranted if there is a policy or emerging planning issue involved. An application for DR filed within the filing deadline by a neighborhood organization meeting certain criteria will also be heard by the Planning Commission.

Planning Code Section 352 is amended to provide that the existing \$3,223 DR fee will be assessed only for Planning Commission or Planning Department staff-initiated DRs. Section 355 is amended to add a \$300 fee for requests for reconsideration by the Department. This fee will be waived if the reconsideration request is filed by a neighborhood organization that "(1) has been in existence for 24 months prior to the filing date of the requests, (2) is on the Planning Department's neighborhood organization notification list, and (3) can demonstrate to the Planning Director or his/her designee that the organization is affected by the proposed project." The \$300 fee, if paid, will be refunded to the individual or entity that requested reconsideration in the event that the Department determines the Planning Code and/or adopted design standards were not appropriately applied to the project.

The modified DR process set forth in this legislation will be in place for a two-year trial period and will automatically expire thereafter unless the Board of Supervisors extends or re-enacts it. The legislation provides that throughout the two-year trial period, the Commission and the Department shall work with the community to improve the Residential Design Standards and will support the adoption of neighborhood-specific design standards where the Citywide standards are not adequate and/or can be augmented; the Commission shall adopt rules to encourage community activism related to land use and planning, and encourage active and full participation in the development review process. The legislation also requires that the Planning Department present a report to the Board of Supervisors within 24 months of the operative date of the ordinance about the results of this DR reform legislation. This report will summarize the hearing before the Planning Commission on the same topic, that will be held prior to presenting the report to the Board.

Background Information

On July 17, 2008, the Planning Commission endorsed the Planning Department's Action Plan, which includes reforming the DR process. The reform proposal, which the Commission will implement during a two-year trial period, was initiated by the Commission on April 2, 2009 and approved by the Commission at a public hearing held on June 18, 2009. This legislation is part of the reform package.

The DR authority is codified in Section 26 of the San Francisco Business & Tax Regulations Code, which authorizes the agency granting or revoking any permit to take into consideration the effect of the proposal upon surrounding property and residents and to "exercise its sound

discretion as to whether said permit should be granted, transferred, denied or revoked." The Commission currently exercises this authority by holding a public hearing to consider requests by the public for DR of a particular project prior to action by the Planning Department and the Department of Building Inspection on the building permit. Several independent audits and reports have suggested that the current DR process does not produce consistent or fair results, creates conflict in neighborhoods, has created unrealistic expectations on the part of filers and project sponsors, makes the development process more lengthy and costly for all involved, and takes time away from the Commission to address larger planning issues.

In developing the proposal to improve the DR process, Planning Department staff had extensive public outreach, researched the processes of other jurisdictions, reviewed case trends, and used professional experience. Staff also reviewed the Board of Supervisor's Budget Analyst audit dated June 2002, the Matrix Consulting report dated February 2008, and the SPUR/AIA report dated September 2007. The reform proposal adopted by the Commission includes many aspects which do not require Code changes to implement, such as strengthening pre-application meeting requirements, improving the Department's internal design review process, improving public information and access, adopting timelines, and ensuring that the Commission hear matters that are identified as representative of a broader policy issue or are otherwise exceptional. As one part of a phased implementation of reforms to the DR process, the proposed legislation will allow the Commission to control its time, improve the process, and better utilize Department staff while continuing to engage the public in land use development issues.