



SAN FRANCISCO PLANNING DEPARTMENT

July 11, 2014

Ms. Angela Calvillo, Clerk
Honorable Supervisor Campos
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**Re: Transmittal of Planning Department Case Number 2014.0434T:
Amend the Administrative Code to Require Planning Department to Collect
Information from Project Sponsors Regarding their Anti-Discriminatory
Housing Policies
Board File No. 140235
Planning Commission Recommendation: Approval**

Dear Ms. Calvillo and Supervisor Campos,

On July 10, 2014, the San Francisco Planning Commission conducted a duly noticed public hearing at regularly scheduled meetings to consider the proposed Ordinance to amend the Administrative Code to require the Planning Department to collect information from Project Sponsors regarding their anti-discriminatory housing policies. At the hearing the Planning Commission recommended approval.

The proposed amendments to the Planning Code have been reviewed and found exempt from CEQA per Sections 15060(c) and 15378.

Please find attached documents relating to the action of the Planning Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Starr".

Aaron Starr
Acting Manager of Legislative Affairs

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cc:

Carolyn Goosen, Aide to Supervisor Campos
John Malamut, Deputy City Attorney
Andrea Ausberry, Office of the Clerk of the Board

Attachments (two hard copies of the following):

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 19186

HEARING DATE JULY 10, 2014

Project Name: Anti-Discriminatory Housing Policies
Case Number: 2014.0434T [Board File No.140235]
Initiated by: Supervisor Campos / Introduced March 11, 2014
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org (415) 575-9082
Reviewed by: Aaron Starr, Acting Manager Legislative Affairs
aaron.starr@sfgov.org (415) 558-6362

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD 1) REQUIRE THE PLANNING DEPARTMENT TO REQUEST INFORMATION ABOUT PROJECT SPONSORS BUSINESS INTERESTS AND WHETHER THE BUSINESS HAS A NATIONAL POLICY PROHIBITING DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN THE SALE, LEASE OR FINANCING OF ANY DWELLING UNIT FOR PROJECTS OF TEN DWELLING UNITS OR MORE; 2) REQUIRE THE PLANNING DEPARTMENT TO TRANSMIT SAID INFORMATION TO THE HUMAN RIGHTS COMMISSION WHO WILL PREPARE AND PRESENT A WRITTEN REPORT ON THE DATA TO THE BOARD OF SUPERVISORS; AND 3)AFFIRM THE PLANNING DEPARTMENT'S CEQA DETERMINATION

WHEREAS, on March 11, 2014, Supervisor Campos introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 140235, which would 1) require the Planning Department to request information about the project sponsor's business interests and whether the business has a national policy prohibiting discrimination based on sexual orientation and gender identity in the sale, lease or financing of any dwelling unit for projects of ten dwelling units or more; 2) require the Planning Department to transmit said information to the Human Rights Commission who will prepare and present a written report on the data to the Board of Supervisors; and 3) affirm the Planning Department's CEQA determination;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on July 10, 2014; and

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15060(c) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors *approve* the proposed ordinance and adopts the Resolution to that effect.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. Housing discrimination on the basis of sexual orientation and gender identity can occur during the interaction between entities that sell, lease or finance residential real estate and those seeking to buy or rent dwelling units.
2. The collection of accurate and meaningful data can raise awareness about the prevalence of housing discrimination on the basis of sexual orientation and gender identity in the sale, lease and financing of dwelling units and can inform policy decisions aimed at its prohibition.
3. The collection of this data at an early stage in the development process can help inform the best practices of entities involved in the sale, lease or financing of dwelling units.
4. The proposed Ordinance results in a minor change in the Planning Department's application intake procedures; these minor changes are not expected to increase application processing times or prove burdensome for involved parties.
5. The proposed Ordinance only requires the Planning Department to collect the application and prohibits the application responses from informing decisions on land use entitlement and permit applications. This ensures that only matters in the Planning Code, General Plan and other applicable design guidelines are considered in the review of a land use entitlement or permit application.
6. The proposed Ordinance directs the Human Rights Commission, the body with jurisdiction over housing discrimination matters, to analyze the applications and report its findings to the Board of Supervisors. This ensures that the Planning Department does not consider the responses on the application for any Planning Department purpose.
7. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 5:

ENSURE THAT ALL RESIDENTS HAVE EQUAL ACCESS TO AVAILABLE UNITS.

Policy 5.1:

Ensure all residents of San Francisco have equal access to subsidized housing units.

Policy 5.3:

Prevent housing discrimination, particularly against immigrants and households with children.

The proposed Ordinance will collect information about entities' policies on discrimination in the housing market both inside and outside of California and will assist in the task of ensuring that protected classes within the State of California, including members of the LGBT Community, are afforded equal opportunity in accessing housing.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY

Policy 2.3:

Maintain a favorable social and cultural climate in order to enhance its attractiveness as a firm location

The proposed Ordinance contributes to a social and cultural climate of acceptance and equality and will attract those firms that value and seek such an environment.

8. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative impact on neighborhood serving retail uses and will not impact opportunities for resident employment in and ownership of neighborhood-serving retail as the proposed Ordinance is concerned with collecting information about entities' policies on discrimination in the housing market.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing and neighborhood character as it is concerned with collecting information about entities' policies on discrimination in the housing market and would not alter California laws which provide such protection.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance will not have an adverse effect on the City's supply of affordable housing because it is concerned with collecting information about entities' policies on discrimination in the housing market.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking as the proposed Ordinance concerns itself with collecting information about entities' policies on discrimination in the housing market.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired as the proposed Ordinance is concerned with collecting information on entities' policies on housing discrimination.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an impact on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an impact on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an impact on the City's parks and open space and their access to sunlight and vistas.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on July 10, 2014.

Jonas P. Ionin
Commission Secretary

AYES: Antonini, Borden, Moore, Sugaya, Wu

NOES:

ABSENT:

ADOPTED: July 10, 2014



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Department Procedural Changes

HEARING DATE: JULY 10, 2014

Project Name: LGBT Anti-Discriminatory Housing Policies
Case Number: 2014.0434T [Board File No.140235]
Initiated by: Supervisor Campos / Introduced March 11, 2014
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org (415) 575-9082
Reviewed by: Aaron Starr, Acting Manager Legislative Affairs
aaron.starr@sfgov.org (415) 558-6362
Recommendation: **Approval**

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PROPOSED PLANNING DEPARTMENT PROCEDURAL AMENDMENTS

The proposed Ordinance would 1) require the Planning Department to request information about the project sponsor's business interests and whether the business has a national policy prohibiting discrimination based on sexual orientation and gender identity in the sale, lease or financing of any dwelling unit for projects of ten dwelling units or more; 2) require the Planning Department to transmit said information to the Human Rights Commission who will prepare and present a written report on the data to the Board of Supervisors; and 3) affirm the Planning Department's CEQA determination.

The Way It Is Now

The Planning Department currently does not request information about the project sponsor's policies on discrimination of any type.

The Way It Would Be

The proposed Ordinance would require the Planning Department to request the following information:

1. Whether the applicant or sponsor, including the applicant or sponsor's parent company, subsidiary or any other business or entity with an ownership share of at least 30% of the applicant's company engage in the business of developing real estate, owning properties, or leasing or selling individual units in states or jurisdictions outside of California;
2. If so, in which states or jurisdictions;
3. If so, whether the applicant or sponsor, as previously defined, has a national policy prohibiting discrimination based on sexual orientation and gender identity in the sale, lease or financing of any dwelling units in every property where the applicant or sponsor has an ownership or management interest in the US; and

4. If a policy exists, the Department is to request that the project sponsor provide a copy of that policy.

The proposed Ordinance would prohibit the Planning Department from considering a development application as complete unless the sponsor provides answers to the questions above. It also explicitly prohibits the Planning Department from considering the sponsor's responses to these questions when evaluating the applicant's development application.

The proposed Ordinance would also require the Planning Department to transmit to the Human Rights Commission all responses to the questions above on an annual basis. The Human Rights Commission would present the information from the applications to the Board of Supervisors for its consideration on an annual basis.

ISSUES AND CONSIDERATIONS

- **National Fair Housing laws and the Lesbian, Gay, Bisexual, and Transgender (hereinafter "LGBT") Community.** Current national fair housing laws prohibit discrimination based on multiple classes including race, religion, sex and disability. However, sexual orientation and gender identity are not protected classes for federal fair housing law.
- **State-level protection against housing discrimination.** Only 21 states in the United States prohibit housing discrimination based on sexual orientation and only 16 states prohibit housing discrimination based on gender identity. The maps in Exhibits A and B indicate those states where such discrimination is prohibited. California is a state that prohibits discrimination in both instances. According to Equality California, most sections of California law prohibit discrimination based on a long list of protected classes, including sexual orientation, gender and gender identity¹. LGBT Californians are protected from discrimination in securing employment and housing, accessing government services and participating in state-funded activities. California Assembly Bill 2800 ensures that LGBT Californians receive protections from discrimination in housing.
- **Housing discrimination and the LGBT Community.** A June 2013 study by the US Department of Housing and Urban Development found that same-sex couples experience discrimination in the online rental housing market, relative to heterosexual couples, and that adverse treatment of same-sex couples is present in all metropolitan areas studied.² Even in states that have laws providing

¹ Equality California is a California-based LGBT advocacy organization. Retrieved on July 1, 2014 from: <http://www.eqca.org/site/pp.asp?c=kuLRJ9MRKrH&b=4026611>

² The US Department of Housing and Urban Development study, *An Estimate of Housing Discrimination against Same Sex Couples*, found that in e-mail inquiries about electronically advertised rental housing heterosexual couples were favored over gay male couples in 15.9 percent of tests and over lesbian couples in 15.6 percent of tests in all metropolitan areas studied. (M Davis and Company, Inc., Samantha Friedman, Angela Reynolds, Susan Scovill, Florence R Brassier, Ron Campbell, McKenzie Ballou. "An Estimate of Housing Discrimination against Same Sex Couples." The US Department of Housing and Urban Development. June 2013).

protection from discrimination for LGBT people, discrimination may continue. A New York Times article from June 2014 quoted a realtor who asked to discriminate for property owners. “Despite state and city anti-discrimination laws, outright discrimination, she [the broker] added, “is alive and well [today]”³.”

- **Change in Procedure.** The proposed Ordinance does not amend the Planning Code but rather changes the Planning Department’s application intake procedures.
- **General Plan Policies.** Objective Five of the Housing Element states, “Ensure that all residents have equal access to available units.” Policy 5.3 of the Housing Element states, “Prevent housing discrimination, particularly against immigrants and households with children.”
- **Planning Commission and Planning Department Jurisdiction.** Among the responsibilities of the Planning Commission and Planning Department include the review of land use entitlement applications and other permits for compliance with the San Francisco Planning Code, the San Francisco General Plan and relevant design guidelines. Review of the information provided by the applicant about housing antidiscrimination policies outside of San Francisco would not fall under the regulatory powers of either the Planning Commission or Planning Department. Discrimination within California would be a breach of state law and could be remedied by the courts. The City has also established anti-discrimination policies in the General Plan; however, these policies are geared towards protecting San Francisco residents. Information that an applicant complies with California law but may discriminate (legally) in other states could not be used to inform any decision on land use entitlement applications or permits.
- **Substitute Legislation.** Planning Department Staff has been made aware that Supervisor Campos’ office will introduce substitute legislation for the following purposes:
 - To codify the proposed Ordinance within the Administrative Code;
 - To clarify that if a project sponsor or applicant has an individual state(s)/jurisdictional policy that it should be submitted in addition to a national policy, should one exist;
 - To clarify that the Planning Department will begin implementing the proposed Ordinance upon operation and implementation of the forthcoming Project and Permit Tracking System;
 - To add a requirement that, in the instances of project ownership change prior to first certificate of occupancy, the new project owner submit a new application to the Planning Department for the purposes maintaining accurate info; and
 - To clarify and eliminate redundant language within the proposed Ordinance.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Planning Commission so that it may it may recommend adoption, rejection or adoption with modifications to the Board of Supervisors.

³ New York Times. “A Guide Who Knows the Turf: A Broker for Lesbian, Gay, Bisexual and Transgender Clients”, Natalie Kitroeff. June 20, 2014. Retrieved on July 1, 2014 from <http://www.nytimes.com/2014/06/22/realestate/a-broker-for-lesbian-gay-bisexual-and-transgender-clients.html? r=0>

RECOMMENDATION

The Planning Department recommends approval of the proposed Ordinance.

BASIS FOR RECOMMENDATION

The Planning Department supports the proposed Ordinance in its current form and finds it an appropriate and minor adjustment to current application intake practices.

Minor Procedural Change

The process of collecting an application and transmitting it to a sister agency is currently being done with the First Source Hiring program⁴. The proposed Ordinance would expand this established practice to include the subject application. This results in a minor procedural change that will not add significant application processing time or be overly burdensome for any involved parties.

Jurisdiction

The application would not be reviewed as part of a requested land use entitlement or other land use permit because it is not a land use matter. While the responses to an application could be made public the Planning Commission and/or Planning Department will continue to base review of an entitlement or permit exclusively on its compliance with the General Plan, Planning Code, and relevant design guidelines.⁵

Information Collection

Collecting the application at intake stage will help the Human Rights Commission identify those property owners and/or developers having a policy of prohibiting housing discrimination on the basis of sexual orientation and gender identity. This information may help inform best practices on the issue of housing discrimination for which the Human Rights Commission has purview.⁶

Alternatives to Collecting Information at Entitlement

⁴ The First Source Hiring program, found under Chapter 83 of the Administrative Code, requires participation on the part of developers of certain commercial and residential projects. The goal of the First Source Hiring program is to foster construction and permanent employment opportunities for qualified economically disadvantaged individuals.

⁵ One example is of wireless telecommunications facilities seeking Conditional Use authorization and public concern with allowed RF (radio frequency emission) levels. Allowed RF levels are the domain of the Federal Communications Commission and the Planning Commission consistently exercises its discretion over such entitlement cases without legal concern.

⁶ The Human Rights Commission's Discrimination Complaints Investigation and Mediation Division is tasked with investigating complaints of discrimination and non-compliance in housing, as prescribed by San Francisco City policy and jurisdiction, and recognizes sexual orientation and gender identity as protected classes. ([http://sf-hrc.org/how-file-discrimination-complaint-employment-housing-or-public-accommodation#Housing Discrimination](http://sf-hrc.org/how-file-discrimination-complaint-employment-housing-or-public-accommodation#Housing%20Discrimination)).

Staff considered multiple alternatives to collecting an application at entitlement, including the following:

- First Certificate of Occupancy
- Periodic Inspections from the Department of Building Inspection
- Planning Code Enforcement or Department of Building Inspection Notice of Violation
- Required Business Registration

An explanation of each alternative follows:

1. First Certificate of Occupancy.
Prior to allowing the legal occupancy of a residential building, the Department of Building Inspection must issue a First Certificate of Occupancy, as defined in Planning Code Section 401.
2. Periodic Inspections from the Department of Building Inspection.
The Department of Building Inspection, Housing Inspections Services conducts inspections of residential properties with three or more units approximately once every five years. The aim of the inspection is to assure health and safety conditions exist in common and public areas of the subject property. As part of the inspection, Housing Inspection Services staff provides the building contact with informational notices and affidavits that must be completed and returned to the Department of Building Inspection.
3. Planning Code Enforcement or Department of Building Inspection Notice of Violation.
Concerns from members of the public regarding violations of the Planning and/or Building Code are often filed with the Planning Department and/or Department of Building Inspection. Enforcement staff from the corresponding agency will open an enforcement case in response to the complaint. If a violation is verified the corresponding enforcement staff will pursue abatement. In the case of a residential property, it is common that these violations occur when the building is in operation and dwelling units are being leased by a property manager.
4. Required Business Registration.
All entities engaged in business activities in San Francisco, including those involved in the sale and/or leasing of dwelling units, must register with the Tax Collector and pay annual registration fees for each year that it is in operation. Initial registration often occurs in person and requires the submission of documents to the Tax Collector. Registration renewal often occurs over the internet, and allows for the inclusion of documents in pdf format.

These Alternatives were reviewed in light of the intentions of the proposed Ordinance and were found to have certain shortcomings that made them poor choices in comparison to application collection at entitlement. In particular:

- Alternatives numbers 1 - 3 would collect the information years after the applicant or project sponsor has submitted the initial entitlement application. The Supervisor's stated intention of the proposed Ordinance is to collect data as early as possible so that entities seeking to develop in San Francisco review and update such policies accordingly. Such delays in application collection make these Alternatives inadequate.

- Alternatives numbers 2 and 3 do not provide for reliable application collection. Under Alternatives numbers 2 and 3 applications are collected at irregular intervals. Under Alternative no. 3 application collection is not driven by City initiative but rather by public complaint, should one occur.
- Alternative number 4 likely creates a barrier to registration given that the Tax Collector would require business registrants to provide additional information over what is currently requested. This produces a disincentive to registration and has adverse consequences for tax collection.
- All alternatives require changes to current procedures in their respective agencies. All consulted sister agencies expressed concern about procedural changes to accommodate application collection and about whether their agency is the appropriate agency to lead this effort. For example, one sister agency expressed concern regarding application collection in light of the professional expertise and duties of their staff.

In light of the analysis above, Staff believes that application collection at entitlement is the preferred alternative given the intentions of the proposed Ordinance.

ENVIRONMENTAL REVIEW

The proposed amendments to the Planning Code have been reviewed and found exempt from the California Environmental Quality Act (“CEQA”) per Sections 15060(c) and 15378.

PUBLIC COMMENT

As of the date of this report, Planning Department staff received seven public letters of support for the proposed Ordinance.

RECOMMENDATION: Approval
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Attachments:

- Exhibit A: Map of Sexual Orientation and Housing Discrimination
- Exhibit B: Map of Gender Identity and Housing Discrimination
- Public Letters of Support
- Draft Planning Commission Resolution
- Draft Board of Supervisors Ordinance [Board File No. 140235]