

FILE NO. 040146

ORDINANCE NO.

1 [Determination of Fiscal Feasibility of Proposed Project.]

2 **Ordinance amending the San Francisco Administrative Code by adding a new Chapter**
3 **28 to require Board of Supervisors review of a proposed project meeting certain criteria**
4 **and a determination that the proposed project is fiscally responsible and feasible**
5 **before undertaking environmental review of the proposed project.**

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

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

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

13 CHAPTER 28 FINDINGS OF FISCAL RESPONSIBILITY AND FEASIBILITY

14 Sec. 28.1. Applicability of this Chapter 28.

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

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

23 (2) A portion of the predevelopment, planning or construction costs of the project in excess
24 of \$1,000,000.00, but excluding the costs of City personnel working on such project, will be paid from
25 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 cost of the project will be
14 financed with proceeds from a bond measure that the Board of Supervisors has submitted for approval
15 to the voters and which has been approved by the voters; or

16 (2) Any project where more than seventy-five percent (75%) of the cost of the project will be
17 financed with funds allocated or granted by the San Francisco County Transportation Authority
18 ("SFCTA"), provided that the SFCTA has reviewed and approved the plans or projects to be financed
19 with funds from the SFCTA; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (b) In the event the Board of Supervisors determines that the proposed project is not fiscally
25 feasible, the Project Sponsor shall not undertake environmental review of the proposed project and the

1 Planning Department shall not commence environmental review of the proposed project, including the
2 necessary scoping, technical studies, and preparation of environmental documents.

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

7 **Sec. 28.6. Resubmittal of Project.**

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

12 **Sec. 28.7. Applicability of this Chapter.**

13 This Chapter 28 shall apply to any proposed project that has not completed environmental
14 review pursuant to the California Environmental Quality Act as of January 27, 2004. In the event
15 environmental review has commenced for a proposed project, the Planning Department shall suspend
16 its environmental review of the project until the Board of Supervisors has determined that the proposed
17 project is fiscally feasible as set forth in this Chapter 28, provided that the Planning Department shall
18 not suspend its environmental review of the project if such suspension would lead to a violation of the
19 time frames for environmental review set forth in CEQA or if such suspension would substantially or
20 impermissibly impair existing contractual obligations of the City or any of its departments; and
21 provided further that for projects for which the Planning Department has not completed environmental
22 review prior to January 27, 2004 based on an environmental evaluation application filed by a person
23 or entity other than a city department, the planning department shall not suspend its environmental
24 review for up to ninety (90) days following the effective date of this ordinance or unless and until the
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1 Board determines that the project is fiscally infeasible as set forth in this Chapter 28, whichever occurs
2 earlier.

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

6 By: _____
7 Kate H. Stacy
8 Deputy City Attorney

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