File No. 110590 Committee Item No. 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development **Date** October 3, 2011

Board of Supervisors Meeting **Date** _____

Cmte	Board	
☐	☐	**Motion**
☐	☐	**Resolution**
☒	☐	**Ordinance**
☐	☐	**Legislative Digest**
☐	☐	**Budget Analyst Report**
☐	☐	**Legislative Analyst Report**
☐	☐	**Youth Commission Report**
☐	☐	**Introduction Form (for hearings)**
☐	☐	**Department/Agency Cover Letter and/or Report**
☐	☐	**MOU**
☐	☐	**Grant Information Form**
☐	☐	**Grant Budget**
☐	☐	**Subcontract Budget**
☐	☐	**Contract/Agreement**
☐	☐	**Form 126 – Ethics Commission**
☐	☐	**Award Letter**
☐	☐	**Application**
☐	☐	**Public Correspondence**

OTHER **(Use back side if additional space is needed)**

☒	☐	Environmental Review Determination, dtd 7/7/11
☒	☐	Planning Commission Resolution No. 18447
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☐	☐	
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Completed by: Alisa Miller **Date** September 30, 2011
Completed by: _____ **Date** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Planning Code - Reconstruction of Buildings Damaged or Destroyed by Fire or Acts of God]

Ordinance amending the San Francisco Planning Code Section 181(d) to: 1) provide a process for the reconstruction of buildings damaged or destroyed by fire or acts of God; 2) provide a retroactive operative date of August 1, 2009; and 3) adopt findings, including environmental findings and Planning Code Section 302 findings.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 110590 and is incorporated herein by reference.

(b) Pursuant to Planning Code Section 302, this Board finds that these Planning Code amendments will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 18447 and the Board incorporates such reasons herein by reference. A copy of Planning Commission Resolution No. 18447 is on file with the Clerk of the Board of Supervisors in File No. 110590.

Section 2. The San Francisco Planning Code is hereby amended by amending Section 181(d), to read as follows:

SEC. 181. NONCONFORMING USES: ENLARGEMENTS, ALTERATIONS AND RECONSTRUCTION.

(d) Notwithstanding the foregoing provisions of this Section 181, a structure occupied by a nonconforming use that is damaged or destroyed by fire, or other calamity, or by Act of God, or by the public enemy, may be restored to its former condition and use; provided that such restoration is permitted by the Building Code, and is started within one year and diligently prosecuted to completion. The age of such a structure for the purposes of Sections 184 and 185 shall nevertheless be computed from the date of the original construction of the structure. Except as provided in Subsection (e) below, no structure occupied by a nonconforming use that is voluntarily razed or required by law to be razed by the owner thereof may thereafter be restored except in full conformity with the use limitations of this Code.

For purposes of this Subsection (d), "started within one year" shall mean that within one year of the fire or other calamity or Act of God the building's owner or agent shall have either (1) filed an application for a building permit for alteration, repair, or replacement of the damaged or destroyed building, or (2) submitted to the Planning Department evidence of a resolution with the insurance company accompanied by a reasonable schedule of payments to the owner and a commitment by the insurance company to pay, or (3) submitted to the Planning Department prepared design plans and evidence of efforts by the owner or agent to conduct a pre-application review with the Department of Building Inspection or the Planning Department.

Section 3. Effective Date. This ordinance shall become effective 30 days from the date of passage.

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

By: Judith A. Boyajian
JUDITH A. BOYAJIAN
Deputy City Attorney

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

June 27, 2011

File No. 110590

Not subject to CEQA per Guidelines Section 15060(c)(2): Activity will not result in a physical change in the environment.

Brett Bollinger 07/07/11

Approved Planning Dept. Brett Bollinger

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On June 14, 2011, Supervisor Cohen introduced the following proposed legislation:

File No. 110590

Ordinance amending the San Francisco Planning Code Section 181(d) to: 1) provide a process for the reconstruction of buildings damaged or destroyed by fire or acts of God; 2) provide a retroactive operative date of August 1, 2009; and 3) adopt findings, including environmental findings and Planning Code Section 302 findings.

The legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

Alisa Somera

By: Alisa Somera, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

2011.0707E

SAN FRANCISCO
PLANNING DEPARTMENT

September 27, 2011

1650 Mission St.
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San Francisco,
CA 94103-2479

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Ms. Angela Calvillo, Clerk
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 Case Number 2011.0707T to the Board of Supervisors File No. Board File No. 11-0590**
Reconstruction of Buildings Damaged by Fire or Acts of God

Recommendation: **RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS THAT WOULD AMEND PLANNING CODE SECTIONS SECTION 181 TO CLARIFY THE DEFINITION OF "WITHIN ONE YEAR".**

Dear Ms. Calvillo,

On September 22, 2011 the San Francisco Planning Commission (hereinafter "PC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance. The proposed ordinance would amend Planning Code provisions for reconstruction of buildings damaged by fire or acts of god.

At the July 14th, hearing, the PC voted 7-0 to recommend that the Board of Supervisors (herinafter "The Board") adopt the Ordinance *with modifications*.

Specifically, the PC recommended the following modifications:

The proposed Ordinance should be modified in two ways. First, it should allow a reasonable degree of flexibility for those who have experienced a calamity but not to be overly permissive in allowing rebuild of nonconforming uses. Second, the Ordinance should be modified to include the retroactive date of retroactive operative date of August 1, 2009. The Commission recommends that these changes be articulated as drafted below. Shaded text shows the Commission recommendations:

SEC. 181. NONCONFORMING USES: ENLARGEMENTS, ALTERATIONS AND RECONSTRUCTION.

(d) Notwithstanding the foregoing provisions of this Section 181, a structure occupied by a nonconforming use that is damaged or destroyed by fire, or other calamity, or by Act of God, or by the public enemy, may be restored to its former condition and use; provided that such restoration is permitted by the Building Code, and is started within ~~one year~~

eighteen months and diligently prosecuted to completion. The age of such a structure for the purposes of Sections 184 and 185 shall nevertheless be computed from the date of the original construction of the structure. Except as provided in Subsection (e) below, no structure occupied by a nonconforming use that is voluntarily razed or required by law to be razed by the owner thereof may thereafter be restored except in full conformity with the use limitations of this Code.

For purposes of this Subsection (d), "started within eighteen months" shall mean that within eighteen months of the fire or other calamity or Act of God, the structure's owner shall have filed a building permit application to restore the structure to its former condition and use.

Section 3. This Section shall be uncodified.

If the fire or other calamity or Act of God occurred between July 1, 2009 and June 14, 2011, "started within eighteen months" shall mean that within eighteen months of the effective date of this Ordinance the structure's owner shall have filed a building permit application to restore the structure to its former condition and use.

Since the PC hearing, staff has recognized that the recommendation should have been applied not only to Section 181 Non-Conforming Uses but also mirroring changes should have been recommended to Section 188 Non-Conforming Structures. Both Sections have the exact same problematic and vague existing language:

> "a structure occupied by a nonconforming use that is damaged or destroyed by fire, or other calamity, or by Act of God, or by the public enemy, may be restored to its former condition and use; provided that such restoration is permitted by the Building Code, and is started within one year and diligently prosecuted to completion."

Therefore, the Department would like to alert the Board to this issue and suggest that Commission's recommended changes to Section 181 also be applied to Section 188.

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

Sincerely,

AnMarie Rodgers
Manager of Legislative Affairs

Cc: Supervisor Cohen
City Attorneys: Kate Stacy and Cheryl Adams

Attachments (one copy of the following):
Planning Commission Resolution No. 18447
Planning Department Executive Summary

SAN FRANCISCO
PLANNING DEPARTMENT

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San Francisco,
CA 94103-2479

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Planning Commission Resolution No. 18447

Planning Code Text Change

HEARING DATE: SEPTEMBER 22, 2011

Project Name:	**Reconstruction of Buildings Damaged by Fire or Acts of God**
Case Number:	2011.0707T [Board File No. 11-0590]
Initiated by:	Supervisor Cohen: Introduced June 14, 2011
Staff Contact:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation:	**Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS THAT WOULD AMEND PLANNING CODE SECTIONS SECTION 181 TO CLARIFY THE DEFINITION OF "WITHIN ONE YEAR", ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

WHEREAS, on June 14, 2011, Supervisor Cohen introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 11-0590 which would amend Planning Code Section 181 to clarify the definition of "within one year." Under the proposed Ordinance, "started within one year" would mean that within one year of the fire or other calamity or Act of God the building's owner or agent shall have either (1) filed an application for a building permit for alteration, repair, or replacement of the damaged or destroyed building, or (2) submitted to the Planning Department evidence of a resolution with the insurance company accompanied by a reasonable schedule of payments to the owner and a commitment by the insurance company to pay, or (3) submitted to the Planning Department prepared design plans and evidence of efforts by the owner or agent to conduct a pre-application review with the Department of Building Inspection or the Planning Department.

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 22, 2011; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); 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 with modifications** the proposed ordinance. Specifically, the proposed Ordinance should be modified in two ways. First, it should allow a reasonable degree of flexibility for those who have experienced a calamity but not to be overly permissive in allowing rebuild of nonconforming uses. Second, the Ordinance should be modified to include the retroactive date of retroactive operative date of August 1, 2009. The Commission recommends that these changes be articulated as drafted below. Shaded text shows the Commission recommendations:

SEC. 181. NONCONFORMING USES: ENLARGEMENTS, ALTERATIONS AND RECONSTRUCTION.

(d) Notwithstanding the foregoing provisions of this Section 181, a structure occupied by a nonconforming use that is damaged or destroyed by fire, or other calamity, or by Act of God, or by the public enemy, may be restored to its former condition and use; provided that such restoration is permitted by the Building Code, and is started within ~~*one year*~~ *eighteen months* and diligently prosecuted to completion. The age of such a structure for the purposes of Sections 184 and 185 shall nevertheless be computed from the date of the original construction of the structure. Except as provided in Subsection (e) below, no structure occupied by a nonconforming use that is voluntarily razed or required by law to be razed by the owner thereof may thereafter be restored except in full conformity with the use limitations of this Code.

For purposes of this Subsection (d), "started within eighteen months" shall mean that within eighteen months of the fire or other calamity or Act of God, the structure's owner shall have filed a building permit application to restore the structure to its former condition and use.

Section 3. This Section shall be uncodified.

If the fire or other calamity or Act of God occurred between July 1, 2009 and June 14, 2011, "started within eighteen months" shall mean that within eighteen months of the effective date of this Ordinance the structure's owner shall have filed a building permit application to restore the structure to its former condition and use.

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. **Extension of Window to File a Valid Permit:** Extending the length of time to file a building permit from one year to 18 months would assist those who have suffered a calamity by providing more time to settle matters with the insurance company and file appropriate permits with the City. The building permit process would not need to be completed during this time, it would merely have to be started with a valid building permit.

2. **Retroactive date.** While the retroactive operative date of August 1, 2009 was discussed in the legislative title, it is not included in the actual Ordinance. The Commission therefore, recommends adding an uncodified portion of the Ordinance to indicate this retroactive date. This uncodified part of the Ordinance would allow a grace period for those who have recently suffered a calamity to have an addition 18 months to file a permit after the effective date of the Ordinance.
3. The Commission believes these modifications present a more graceful legislative solution for the future and for those who may have suffered a recent calamity.

4. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

I. COMMERCE & INDUSTRY ELEMENT
THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES, AND SUPPPORT SYSTEMS THAT CONSTITUE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

GOALS
THE THREE GOALS OF THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN RELATE TO CONTINUED ECONOMIC VITALITY, SOCIAL EQUITY, AND ENVIRONMENTAL QUALITY.

OBJECTIVE 1
MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT

OBJECTIVE 6
MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

POLICY 6.10
Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

II. HOUSING ELEMENT
OBJECTIVE 2
RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.

POLICY 2.1
Discourage the demolition of sound existing housing, unless the demolition results in a net increase in affordable housing.
Commission Finding: The Ordinance and the modifications recommended by the Commission will strengthen the vitality of existing uses that were destroyed by calamity

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 amendments will encourage the replacement of neighborhood-serving retail uses unintentionally destroyed by calamity.

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 amendments will encourage replacement of existing housing unintentionally destroyed by calamity.

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

The proposed amendments may provide the opportunity to rebuild housing lost through calamity. The City's supply of existing housing is often the most affordable housing.

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

The proposed amendments will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking as it will merely allow the rebuild of a use unintentionally destroyed through calamity.

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 amendments would not cause displacement of the industrial or service sectors due to office development, in fact it will allow these existing uses to be rebuilt if unintentionally destroyed by calamity.

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

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments. Any new construction associated with a use destroyed by calamity would be executed in compliance with all applicable construction and safety measures.

7. That the landmarks and historic buildings be preserved;

Landmarks and historic buildings would be unaffected by the proposed amendments. Should a use that was destroyed by calamity be located within a historic district or context, such site would be evaluated under Planning Code provisions and comprehensive Department policies.

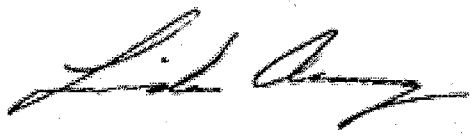
8. That our parks and open space and their access to sunlight and vistas be protected from development;

   The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments.

8. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance with modifications as described in this Resolution and in the proposed Ordinance with the modification outlined above.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 22, 2011.



Linda D. Avery
Commission Secretary

AYES: Olague, Miguel, Antonini, Borden Fong, Moore, and Sugaya

NOES:

ABSENT:

ADOPTED: September 22, 2011

SAN FRANCISCO
PLANNING DEPARTMENT

Executive Summary
Planning Code Text Change
HEARING DATE: SEPTEMBER 22, 2011

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Project Name:	**Reconstruction of Buildings Damaged by Fire or Acts of God**
Case Number:	2011.0707T [Board File No. 11-0590]
Initiated by:	Supervisor Cohen: Introduced June 14, 2011
Staff Contact:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation:	**Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend San Francisco Planning Code Section 181(d) to provide

1) a process for the reconstruction of nonconforming uses or buildings damaged or destroyed by fire or acts of God and
2) a retroactive operative date of August 1, 2009.

The Way It Is Now:

Section 181 of the Planning Code currently addresses enlargement, alteration, and reconstruction of nonconforming uses.[1] With certain exceptions, generally, these nonconforming uses cannot be enlarged, intensified or relocated under the controls of Section 181. That said, subsection 181(d) does provide that a nonconforming use may be restored to its former condition and use in the event that the use is damaged or destroyed by fire, or other calamity, or by Act of God, or by the public enemy. The restoration may occur "provided that such restoration is permitted by the Building Code, and is started *within one year* [emphasis added] and diligently prosecuted to completion".

The Way It Would Be:

Currently, restoration of nonconforming uses that are damaged or destroyed by fire, calamity, Act of God, or public enemy may currently occur if permitted by the Building Code and is "started within one year". The proposed Ordinance would amend Section 181 to clarify the definition of "within one year."

Under the proposed Ordinance, "started within one year" shall mean that within one year of the fire or other calamity or Act of God the building's owner or agent shall have either

(1) filed an application for a building permit for alteration, repair, or replacement of the damaged or destroyed building, or

[1] Section 180 defines a "nonconforming use" to generally be "a use which existed lawfully at the effective date of this Code, or of amendments thereto. . . *and* which fails to conform to one or more of the use limitations under Articles 2, 6, 7 and 8 of this Code that then became applicable for the district in which the property is located".

(2) submitted to the Planning Department evidence of a resolution with the insurance company accompanied by a reasonable schedule of payments to the owner and a commitment by the insurance company to pay, or

(3) submitted to the Planning Department prepared design plans and evidence of efforts by the owner or agent to conduct a pre-application review with the Department of Building Inspection or the Planning Department.

REQUIRED COMMISSION ACTION

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

RECOMMENDATION

The Department recommends that the Commission recommend ***approval with modifications*** of the proposed Ordinance. Specifically, the proposed Ordinance should be modified in two ways. First, it should allow a reasonable degree of flexibility for those who have experienced a calamity but not to be overly permissive in allowing rebuild of nonconforming uses. Second, the Ordinance should be modified to include the retroactive date of retroactive operative date of August 1, 2009. The Department recommends that these changes be articulated as drafted below. Shaded text shows the Department recommendations:

SEC. 181. NONCONFORMING USES: ENLARGEMENTS, ALTERATIONS AND RECONSTRUCTION.

(d) Notwithstanding the foregoing provisions of this Section 181, a structure occupied by a nonconforming use that is damaged or destroyed by fire, or other calamity, or by Act of God, or by the public enemy, may be restored to its former condition and use; provided that such restoration is permitted by the Building Code, and is started within ~~*one year*~~ *eighteen months* and diligently prosecuted to completion. The age of such a structure for the purposes of Sections 184 and 185 shall nevertheless be computed from the date of the original construction of the structure. Except as provided in Subsection (e) below, no structure occupied by a nonconforming use that is voluntarily razed or required by law to be razed by the owner thereof may thereafter be restored except in full conformity with the use limitations of this Code.

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Section 3. This Section shall be uncodified.

If the fire or other calamity or Act of God occurred between July 1, 2009 and June 14, 2011, "started within eighteen months" shall mean that within eighteen months of the effective date of this Ordinance the structure's owner shall have filed a building permit application to restore the structure to its former condition and use.

BASIS FOR RECOMMENDATION

Extension of Window to File a Valid Permit: Under the Department's recommendation, the length of time to file a building permit would be extended from one year to 18 months. The building permit process would not need to be completed during this time, it would merely have to be started with a valid building permit.

Retroactive date. While the retroactive operative date of August 1, 2009 was discussed in the legislative title, it is not included in the actual Ordinance. The Department, therefore, recommends adding an uncodified portion of the Ordinance to indicate this retroactive date. Further, this uncodified part of the Ordinance would allow a grace period for those who have recently suffered a calamity to have an addition 18 months to file a permit after the effective date of the Ordinance. This would allow any party who recently encountered difficulty in proceeding under the existing rules to have an additional opportunity to rebuild.

The Department believes these modifications present a more graceful legislative solution for the future and for those who may have suffered a recent calamity.

ENVIRONMENTAL REVIEW

The proposed amendments to the Planning Code are exempt from environmental review under a CEQA Guidelines Section 15060(c)(2).

PUBLIC COMMENT

As of the date of this report, the Department received two signed declarations from past Zoning Administrators for the Department.

RECOMMENDATION:	Recommendation of Approval with Modifications