

1 [Planning Commission – Alternative Approval Review Process.]

2 **Emergency ordinance amending the San Francisco Planning Code by amending**
 3 **Section 306, and amending the San Francisco Administrative Code by amending**
 4 **Sections 2A.53 and 31.04, to provide for an alternative process to Planning**
 5 **Commission approval review where the Planning Commission is unable to meet**
 6 **because a majority of its members has not been appointed; adopting declaration of**
 7 **emergency under Charter Section 2.107; and setting forth period of time within which**
 8 **this emergency ordinance shall be operative.**

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

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

13 Section 1. Declaration of Emergency under Section 2.107 of the San Francisco
 14 Charter.

15 Section 2.107 of the San Francisco Charter authorizes the passage of an emergency
 16 ordinance suspending specific sections of the Charter in order to provide for the uninterrupted
 17 operation of any City or County department or office required to comply with the time
 18 limitations established by law. The Board of Supervisors hereby suspends those provisions of
 19 Charter Section 4.105 that require action by the Planning Commission and suspends those
 20 provisions of Charter Section 2.114 that limit the power of the Board of Supervisors to deal
 21 with administrative matters, and makes the following declaration setting forth a clear and
 22 concise description of the emergency requiring passage of this emergency ordinance.

23 The ability of the Planning Department to comply with time limitations established by
 24 State law is in jeopardy due to the following facts:

1 1. As required by Section 4.105 of the Charter, the terms of office of all then-
2 existing members of the Planning Commission expired on July 1, 2002. Under Section 4.105,
3 on June 24, 2002, the Mayor submitted four nominations for the Planning Commission and on
4 June 24, 2002, the President of the Board of Supervisors submitted three nominations for the
5 Planning Commission. On July 15, 2002, after the Board of Supervisors' Rules and Audits
6 Committee submitted a report to the full Board regarding all the nominees, the Board
7 approved the three nominees of the President of the Board. Before the Board was scheduled
8 to act on the Mayor's nominations, on July 15, 2002, the Mayor withdrew his four nominees
9 from consideration. The Mayor has not made any further nominations.

10 2. Section 4.104 of the Charter requires a majority of any multi-member body
11 created by the Charter to be present before the body may meet. As of the date of this
12 emergency ordinance, the Board of Supervisors has approved the nominations of only three
13 members of the seven-member Planning Commission and there are no pending Planning
14 Commission nominations that the Mayor has submitted to the Board. Therefore, there is no
15 quorum of the Planning Commission and it has been unable to meet since July 1, 2002.

16 3. The Planning Commission is empowered by Charter Section 4.105 to approve
17 before issuance "[a]ll permits and licenses dependent on, or affected by, the City Planning
18 Code administered by the Planning Department," as well as conditional use authorizations
19 and proposed Planning Code amendments. Due to the lack of a majority of appointed
20 members of the Planning Commission, hearings to approve or disapprove permits and
21 licenses, as required by the Planning Code, cannot be held.

22 4. Section 2.114 of the Charter prohibits the Board of Supervisors from dealing
23 with administrative matters only in the manner provided by the Charter. Acting in a quasi-
24 adjudicatory capacity is considered under the law as dealing with an administrative matter.
25

1 4. 5. The State law known as the Permit Streamlining Act (California Government
2 Code Section 65950 et seq.) requires that all permits for development projects be approved or
3 disapproved within a set period of time. The City must approve or disapprove a completed
4 application for a development permit within 180 days from the date of certification of an
5 Environmental Impact Report (“EIR”), within 90 days from the date of certification of an EIR for
6 a low-income housing development for which financial assistance has been sought from a
7 public or federal agency, within 60 days from the adoption of a negative declaration, or within
8 60 days from the date a development project is determined to be exempt from the California
9 Environmental Quality Act.

10 6. The California Environmental Quality Act (Public Resources Code Section
11 21000, et seq.) requires the City to complete and adopt a negative declaration within 180 days
12 and to certify an Environmental Impact Report within one year.

13 5.7. If the Planning Commission is unable to hold the various hearings required by
14 the Planning Code and Administrative Code, the Planning Department cannot comply with the
15 time limitations established by the State Permit Streamlining Act and the California
16 Environmental Quality Act, because it cannot act to approve environmental documents or to
17 approve or disapprove any permit requiring a hearing by the Commission.

18 6.8. There are approximately 40 applications for conditional uses, permits and other
19 authorizations that have been scheduled for a public hearing before the Planning Commission
20 but either a final decision has not been made or the hearing date has been continued. An
21 increasing number of other matters are ready to be calendared for a Commission hearing but
22 have not been scheduled because there is no Commission to hear them.

23 7.9. City officials have received numerous inquiries from members of the public
24 asking about the State Permit Streamlining Act and seeking to invoke its provisions in order to
25 obtain permit approval by operation of law. The City must take immediate action to comply

1 with the mandates of State law and balance the public's right to a statutorily-required public
2 hearing against the permit applicant's right to a decision on the application.

3 8.10. The State Planning and Zoning Law (Government Code Section 65000 et seq.)
4 imposes certain time requirements upon the City and County of San Francisco with respect to
5 updating the City's General Plan. The City may be unable to meet these timelines if there
6 continues to be no functioning Planning Commission.

7 11. Allowing an interested person to file a request for review by the Board of
8 Supervisors of the Planning Director's recommendation on a discretionary review request will
9 afford both the permit applicant and members of the public the opportunity for the public
10 hearing required by the Planning Code.

11 Because this emergency ordinance provides an alternative ~~approval~~ review procedure
12 when there is no quorum of the Planning Commission due to the lack of a sufficient number of
13 appointed commissioners, it addresses the City's current inability to comply with the time
14 limitations established by the State Permit Streamlining Act, the California Environmental
15 Quality Act, and applicable sections of the State Planning and Zoning Law.

16 Section 2. The San Francisco Planning Code is hereby amended by amending Section
17 306, to read as follows:

18 SEC. 306. APPLICATIONS AND HEARINGS.

19 (a) General. In case of an amendment to the Planning Code or General Plan, interim
20 control, conditional use or variance action described in Sections 302 through 305, 306.7 and
21 340 of this Code, the procedures for applications and hearings shall be as described in
22 Sections 306 through 306.7. In addition, the Zoning Administrator and the Planning
23 Commission may from time to time establish policies, rules and regulations which further
24 define these procedures.

1 **(b) Alternative Approval Review Process.** The following alternative approval review
2 process shall apply in the event that the Planning Commission is unable to meet because a majority of
3 its members has not been nominated, approved, and sworn in to office under the provisions of Section
4 4.105 of the San Francisco Charter. This alternative approval review process shall go into effect
5 immediately under the provisions of Charter Section 2.107. It shall apply notwithstanding any other
6 provision of this Code, including, but not limited to, the provisions of Article 2, Article 3, Article 10,
7 and Article 11; provided, however, the alternative approval review process shall not apply to those
8 matters that require a hearing before the Planning Commission under a voter-enacted ordinance. All
9 public notice required by this Code for hearings before the Planning Commission shall be given, and
10 the alternative approval review process established by this ordinance shall be described in such
11 notice.

12 **(i) Planning Code Amendments.** Notwithstanding the requirements of Section 4.105 of the
13 San Francisco Charter and Sections 302 and Sections 306.1 et seq. of the Planning Code, a hearing
14 and determination by the Planning Commission shall not be required for amendments to the Planning
15 Code proposed under Planning Code Section 302(b) by the Board of Supervisors or by application of
16 one or more interested property owners, residents or commercial lessees or their authorized agents. A
17 recommendation on the proposed Planning Code amendment shall be made instead by the Planning
18 Director, who shall make the findings required by Planning Code Section 302(c), and whose decision
19 shall be presented to the Board of Supervisors by the Director or appealed to the Board by the
20 applicant therefor as provided by Planning Code Sections 302(c) and 308.1.

21 In the case of proposed amendments to the Planning Code initiated by the Board of Supervisors
22 under Section 302(b), the Director's recommendation shall be rendered within 30 days from the date of
23 the Board's referral of the proposed amendment to the Department. Failure of the Director to act
24 within the prescribed time shall be deemed to constitute disapproval, except that the Board may, by
25 resolution, extend the prescribed time within which the Director may make his decision. If, after

1 receiving the Director's recommendation, or the time for the Director to act has expired, the Board
2 adopts a motion proposing to materially modify the amendment, such amendment and the motion
3 proposing modification shall be referred back to the Director for consideration and the proposed
4 modification shall be reviewed under the requirements then applying to review of Planning Code
5 amendments.

6 (ii) Discretionary Review. Planning Commission policies that mandate a discretionary
7 review hearing not otherwise required by this Code are hereby suspended during the time this
8 emergency ordinance is operative. If a request for a Planning Commission discretionary review
9 hearing under Section 311, Section 312, or other section of this Code or the San Francisco Municipal
10 Code has been made, a ~~decision~~ recommendation on the request shall be made by the Planning
11 Director, who shall hold a public hearing to take testimony on the matter and also take into
12 consideration any written comments provided by the discretionary review requestor(s), the permit
13 applicant, and members of the public.

14 The Director's ~~decision~~ recommendation shall be issued in writing no later than 10 working
15 days after the expiration of the Code-required waiting period, if any, and if there is no Code-required
16 waiting period, the ~~decision~~ recommendation shall be issued within 30 days after receiving the
17 request for discretionary review. If such 30-day period has already expired when this
18 emergency ordinance becomes operative, the Director shall issue his recommendation within
19 10 working days of the effective date of this emergency ordinance, or as soon thereafter as is
20 feasible taking into account this ordinance's requirement for a public hearing.

21 Any person may request a hearing by the Board of Supervisors to review the Director's
22 discretionary review recommendation. Such request for review shall be filed within 15 days of
23 the date the Director's recommendation was issued. The Board may uphold, modify, or
24 overrule the Director's recommendation by a vote of six members. If no request for review by
25 the Board is made within the 15-day period, or if the Board does not act on the matter within

1 45 days from the filing of the request for hearing, the Director's recommendation shall become
2 the final decision. The Director shall mail notice of the ~~decision~~ written recommendation upon
3 issuance to the permit applicant, the discretionary review requestor(s), and any party who has made a
4 prior written request for notice of the decision, before the Department takes action on the permit,
5 and the Department shall not take action on the permit until the 15-day period for filing a
6 request for review by the Board of Supervisors has expired.

7 (iii) Conditional Use Authorization. By providing written notice to the Director, an
8 applicant for a new conditional use authorization or modification to an existing conditional use under
9 Section 303 of this Code may elect to waive a Planning Commission hearing and accept the Director's
10 decision on the application. The Director shall cause notice of the applicant's election to waive a
11 public hearing to be given to all persons entitled to receive notice of a public hearing on the
12 application; such notice shall be provided in the manner required by this Code for notice of the
13 hearing.

14 In making a decision, the Director shall make the findings required by Section 303. The
15 Director shall hold a public hearing to take testimony on the matter and shall also take into
16 consideration any written comments provided by the applicant for the conditional use and by members
17 of the public. The Director's decision shall be issued in writing no sooner than 30 days after notice of
18 the waiver of a public hearing has been sent and no later than 10 working days after expiration of such
19 30-day period. The Director shall mail notice of the decision to the applicant, persons entitled to
20 notice of a public hearing on the conditional use application, and any party who has made a prior
21 written request for notice of the decision.

22 In the event that the applicant elects to accept the Director's decision, either the applicant or a
23 member of the public has the right to appeal the decision to the Board of Supervisors under Planning
24 Code Section 308.1 ~~notwithstanding the signature requirements of Section 308.1.~~
25

1 (iv) Exceptions to Code. During the time this emergency ordinance is operative, an
2 application for exceptions to the Planning Code requiring a hearing by the Planning Commission
3 under Article 2, Article 3, or any other provision of this Code shall be heard and decided by the Zoning
4 Administrator under the notice and hearing requirements of Planning Code Section 305. For this
5 purpose, the Zoning Administrator shall be deemed to be acting in lieu of the Planning Commission
6 and the Zoning Administrator's decision shall be appealable in accordance with the appeal provisions
7 set forth in this Code for such matter.

8 (v) Institutional Master Plans; General Plan Amendments. The existing provisions of
9 Planning Code Sections 304.5 and 340 shall continue to apply during the time this emergency
10 ordinance is operative; provided, however, in the event an update to the City's General Plan is
11 mandated to be completed by State law during the period of time this emergency ordinance is
12 operative, the Department shall forward the proposed General Plan amendments to the Board under
13 the provisions of Section 340, without a hearing by the Planning Commission.

14 (vi) Historic Preservation. Determinations to be made by the Planning Commission under
15 Articles 10 and 11 of Planning Code shall be made by the Planning Director and either transmitted to
16 the Board by the Director or appealed to the Board by interested parties, as provided by Articles 10
17 and 11. The Director shall give the public notice required by the Code for a hearing by the Planning
18 Commission, and the alternative procedure established by this emergency ordinance shall be described
19 in such notice.

20 Section 3. The San Francisco Administrative Code is hereby amended by amending
21 Sections 2A.53 and 31.04, to read as follows:

22 SEC. 2A.53. GENERAL PLAN REFERRALS.

23 (a) General. The Charter requires that the Planning Department prepare written
24 reports regarding the conformity with the General Plan for the use of the Board of Supervisors
25 prior to its action on the acquisition, vacation, sale, change in use or title of public property,

1 subdivision of land, construction or improvement of public buildings or structures, plans for
2 public housing or public-assisted private housing, or redevelopment project plans, within the
3 City and County.

4 (b) Purpose. The General Plan is a compendium of policies on all aspects of the
5 City and County's physical development, formulated with extensive public participation,
6 adopted by the Planning Commission, and approved by the Board of Supervisors. In order to
7 implement the public policy contained in the General Plan, the following procedures will be
8 used in determining consistency with the General Plan and reporting the findings to the Board
9 of Supervisors in a timely manner prior to action on the proposal. Early involvement of the
10 Planning Department in the planning of a project or plan is advisable to avoid delays. The
11 Planning Department is available to provide policy analysis reports on issues concerning the
12 physical development of the city as a proactive information tool for decisionmaking and
13 analysis of applicable public policy as contained in the General Plan.

14 (c) Applicability. The following actions by the Board of Supervisors require a written
15 report from the Planning Department on the consistency of the proposed action with the
16 General Plan:

17 (1) Proposed ordinances and resolutions concerning the acquisition, extension,
18 widening, narrowing, removal, relocation, vacation, abandonment, sale or change in the use
19 of any public way, transportation route, ground, open space, building, or structure owned by
20 the City and County;

21 (2) Subdivisions of land within the City and County;

22 (3) Projects for the construction or improvement of public buildings or structures
23 within the City and County, the annual capital expenditure plan, six-year capital improvement
24 program, a capital improvement project or a long-term financing proposal such as, but not
25 limited to, general obligation or revenue bonds or nonprofit corporation proposals;

1 (4) Project plans for public housing, or publicly assisted private housing in the City
2 and County;

3 (5) Redevelopment project plans within the City and County;

4 (6) Programs and schedules which link the General Plan to the allocation of local,
5 State and federal resources; and

6 (7) Any substantial change to any of the above actions.

7 (d) Application. Property owners, public agencies and their respective agents shall
8 initiate General Plan referrals by filing a completed application containing all required
9 information with the Planning Department and paying an initial fee set forth in the Planning
10 Code. The remainder of the fee, based on time and materials, shall be paid prior to the
11 transmittal of the General Plan referral report to the applicant or Board of Supervisors. The
12 Planning Department shall determine whether the application is complete and shall notify the
13 applicant and, in the case of an incomplete application, request the necessary information.

14 (e) Determination. For most General Plan referral applications, a written General
15 Plan referral report stating that a proposed action is consistent with the General Plan, shall be
16 transmitted to the applicant for submittal with the proposal to the Board of Supervisors in 45
17 days after accepting a complete application. If the response requires more than 45 days
18 because of environmental review procedures, the complexity of the proposed action, public
19 controversy generated by the proposal, or a public hearing before the Planning Commission,
20 the Department shall notify the applicant and Board of Supervisors.

21 Proposals which are inconsistent with the General Plan, complex or have generated
22 public controversy, shall require a public hearing and determination by the Planning
23 Commission; provided, however, if the Planning Commission is unable to meet because a majority of
24 its members has not been nominated, approved, and sworn in to office under Section 4.105 of the San
25 Francisco Charter, such General Plan referral report shall be made by the Department. The

1 Planning Commission resolution finding a proposal in conformity with the General Plan shall
2 be submitted to the Board of Supervisors and the applicant within five business days after
3 receipt of payment.

4 (f) Board of Supervisor Action. Resolutions or motions for actions listed under
5 Subsection (c) of this Section shall include a finding of consistency with the General Plan. The
6 Planning Commission *or Department's* disapproval of a proposed action may be overruled by a
7 vote of not less than two-thirds of the members of the Board of Supervisors.

8 SEC. 31.04. RESPONSIBILITY.

9 (a) The City and all its officials, boards, commissions, departments, bureaus and
10 offices shall constitute a single "local agency," "public agency" or "lead agency" as those
11 terms are used in CEQA; except that the San Francisco Redevelopment Agency shall be a
12 separate "local agency" or "public agency" as specified in CEQA. With regard to
13 establishment of any redevelopment area, the City shall be the "lead agency."

14 (b) The administrative actions required by CEQA with respect to the preparation of
15 environmental documents, giving of notice and other activities, as specified in this Chapter,
16 shall be performed by the San Francisco Planning Department as provided herein, acting for
17 the City.

18 (c) Where adoption of administrative regulations by resolution of the Planning
19 Commission after public hearing is specified herein, there shall be notice by publication in a
20 newspaper of general circulation in the City at least twenty (20) days prior to the hearing and
21 by posting in the offices of the Planning Department, with copies of the proposed regulations
22 sent to the Board of Supervisors and any other affected boards, commissions and
23 departments of the City and to all organizations and individuals who have previously
24 requested such notice in writing. The decision of the Commission in adopting administrative
25 regulations shall be final.

1 (d) The City shall be responsible for conducting environmental review for projects
2 undertaken by the City within the City's territorial limits and for projects undertaken by the City
3 outside the territorial limits of the City.

4 (e) Notwithstanding anything to the contrary contained in this Chapter 31, in the event the
5 Planning Commission is unable to meet because a majority of its members has not been nominated,
6 approved, and sworn in to office under Section 4.105 of the San Francisco Charter, any appeal of a
7 negative declaration or certification of an environmental impact report shall be heard by the Board of
8 Supervisors instead of the Planning Commission.

9 Section 4. Operative Dates. Under Section 2.107 of the San Francisco Charter, this
10 emergency ordinance shall go into effect immediately upon passage, and shall automatically
11 terminate on the 61st day following passage unless reenacted upon the same terms and
12 conditions applicable to its initial enactment. If a majority of the members of the Planning
13 Commission is appointed and sworn in to office during the time this emergency ordinance is
14 operative, the provisions of this emergency ordinance shall cease to apply to any matter that
15 has not already been decided under this emergency ordinance's alternative procedures.

16 Section 5. Severability.

17 (a) If any article, section, subsection, paragraph, sentence, clause or phrase of this
18 emergency ordinance, or any part thereof, is for any reason held to be unconstitutional or
19 invalid or ineffective by any court of competent jurisdiction, or other competent agency, such
20 decision shall not affect the validity or effectiveness of the remaining portions of this
21 emergency ordinance or any part thereof. The Board of Supervisors hereby declares that it
22 would have passed each article, section, subsection, paragraph, sentence, clause or phrase
23 thereof, irrespective of the fact that any one or more articles, sections, subsections,
24 paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or
25 ineffective.

1 (b) If the application of any provision or provisions of this emergency ordinance to
2 any person, property or circumstances is found to be unconstitutional or invalid or ineffective
3 in whole or in part by any court of competent jurisdiction, or other competent agency, the
4 effect of such decision shall be limited to the person, property or circumstances immediately
5 involved in the controversy, and the application of any such provision to other persons,
6 properties and circumstances shall not be affected.

7 (c) This Section shall apply to this ordinance as it now exists and as it may exist in
8 the future, including all modifications thereof and additions and amendments thereto.

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

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13 By: _____
14 JUDITH A. BOYAJIAN
15 Deputy City Attorney

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