



# SAN FRANCISCO PLANNING DEPARTMENT

## Certificate of Determination Exclusion/Exemption from Environmental Review

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Case No.: 2014.0156E  
Project Title: Reasonable Modification Ordinance  
Zoning: Multiple Use Districts  
Multiple Height and Bulk Districts  
Block/Lot: Multiple  
Project Sponsor: San Francisco Planning Department – (415) 558-6378  
Staff Contact: Sandy Ngan – (415) 575-9102  
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### PROJECT DESCRIPTION:

The proposed ordinance, introduced to the San Francisco Planning Commission on October 16, 2014 by the San Francisco Planning Department, would amend Section 305 of the San Francisco

*(continued on next page)*

### EXEMPT STATUS:

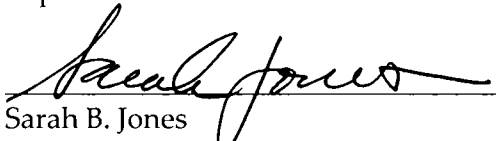
General Rule Exclusion (California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3))

### REMARKS:

Please see next page.

### DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and local requirements.

  
Sarah B. Jones

Environmental Review Officer

November 6, 2014  
Date

cc: Menaka Mohan, Citywide Planner  
Shelley Caltagirone, Preservation Planner  
Board of Supervisors

Distribution List  
Historic Preservation Distribution List  
Virna Byrd, M.D.F.

**PROJECT DESCRIPTION (continued):**

Planning Code by adding Section 305.1 to establish a process for persons with disabilities to make and act upon requests for reasonable modification of Planning Code policies, practices, and procedures in compliance with federal and state fair housing laws.

The proposed ordinance would adopt findings, including environmental findings, Section 302 findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code Section 101.1.

For the purposes of this ordinance, a reasonable modification is defined as a request to modify land use, zoning, and building regulations in the San Francisco Planning Code that does not impose an undue financial or administrative burden on the City and County of San Francisco or constitute a fundamental alteration to its zoning and planning program. A reasonable modification includes change(s) to a residential property that enable a resident with a disability to access his property. The modification being requested must serve the resident's disability and be necessary to provide him equal opportunity to live at the residential property.<sup>1</sup> This ordinance was developed in coordination with the Mayor's Office of Disability.

The proposed ordinance would amend Section 305 of the Planning Code to add Section 305.1 to establish a process for persons with disabilities to request for reasonable modifications to their residential properties. The main revisions being proposed are as follows:

- The proposed ordinance would allow requests for reasonable modifications to be made for residential properties in any zoning district in the City and County of San Francisco.
- The proposed ordinance would allow persons with disabilities to seek reasonable modifications that are available under other sections of the Planning Code. In such cases, modifications under Section 305 of the Planning Code would take the place of any approval, permit, or entitlement that would otherwise be required. Applicants may also seek modifications that are not available under any other provision of the Planning Code.
- Persons with disabilities who request for reasonable modifications to residential properties are eligible for an administrative reasonable accommodation under certain conditions. These conditions include:
  - Parking, where no physical structure is proposed. The parking space must be necessary to achieve the modification requested. If the property already includes a parking space, requests for additional parking spaces cannot be granted administratively through the administrative reasonable accommodation

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<sup>1</sup> The definition of a reasonable accommodation, per this ordinance, is consistent with the definition used by the United States Department of Housing and Urban Development and the United States Department of Justice as outlined in *Joint Statement of the Department of Housing and Urban Development and the Department of Justice – Reasonable Modifications under the Fair Housing Act*. March 5, 2008.

procedure. Exceptions may be considered for rear yard and the front setback requirements to accommodate the parking space within reason. In reviewing an administrative reasonable modification for parking, the Zoning Administrator has the authority to allow the parking space for five years. After five years, applicants may renew the temporary use for additional five-year periods.

- Access Ramps. Access Ramps, defined in Building Code Section 1114A, would be considered for an administrative reasonable modification provided that the access ramp(s) are designed and constructed to meet the accessibility provisions in the California Building Code or the California Historic Building Code. Additionally, the ramp(s) should be easily removable when the ramp(s) are no longer needed for the requested modification.
- Elevators. Elevators, defined in Building Code Section 1124A, would be considered for an administrative reasonable modification provided that the elevator structure would not be visible from the public right-of-way and is set back 10 feet from the property line. The elevators must be necessary for the persons with a disability to access residential uses of the building and must be necessary to achieve the modification requested.
- Additional Habitable Space. Additional habitable space would be considered for an administrative reasonable modification provided that the additional space does not result in the addition of a new dwelling unit or require expansion beyond the permitted buildable envelope.
- Requests for reasonable modifications that are consistent with the criteria for an administrative reasonable accommodation would not require public notice.
- Requests for reasonable modifications in residential uses that do not meet the criteria described above for an administrative reasonable modification would continue to be reviewed through the existing variance (standard variance) procedure as described in Section 305 of the Planning Code.
- Requests for reasonable modifications involving a residential property that is listed in or eligible for listing in a local, state, or federal historic resource register would be reviewed to by the Planning Department's Historic Preservation Technical Specialists to ensure conformance with the Secretary of the Interior Standards for Rehabilitation of Historic Properties. This review would occur as part of the administrative reasonable accommodation and standard variance procedure.
- Future reasonable modification projects located in zoning districts that require residential design review would continue to be subject to the Planning Department's Residential Design Guidelines review process to ensure conformity with the subject property's surrounding neighborhood character.

**PROJECT APPROVALS:**

On November 20, 2014, the Planning Department will present the legislation to the Planning Commission. The Planning Commission will make a recommendation to the Board of Supervisors. The Land Use Committee of the Board will then hear the legislation, followed by a hearing before the full Board. The Board of Supervisors' approval of the proposed ordinance would constitute the Approval Action pursuant to Chapter 31 of the Administrative Code. The Approval Action date establishes the start of the 30-day appeal period for this CEQA exemption determination pursuant to Section 31.04(h) of the San Francisco Administrative Code.

**REMARKS:****Background**

As discussed in the San Francisco Housing Element, despite the cost of housing, San Francisco remains attractive to seniors and persons with disabilities because of the City's transportation, health services, and other resources. However, persons with disabilities often have difficulty finding housing constructed to meet their physical accessibility needs.<sup>2</sup> A physical disability is defined as a condition that substantially limits one or more basic physical activities such as walking, climbing stairs, reaching, lifting or carrying.<sup>3</sup>

In 2010, there were an approximately 49,000 non-institutionalized individuals with physical disabilities within the City and County of San Francisco.<sup>4</sup> Approximately 19,600 of that total are between 18 and 64 years of age and approximately 29,000 of the total are over 65 years of age. Many of these individuals may need reasonable modifications to their residential properties.

Per federal and state requirements, the City and County of San Francisco is required to enact a legislative ordinance to enable persons with disabilities to implement reasonable modifications for their homes. The Federal Housing Act (FHA) and the California Fair Employment and Housing Act (FEHA) require local governments to make reasonable modifications in zoning and land use laws and regulations when such modifications "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy dwelling."<sup>5</sup> Local jurisdictions' zoning and land use regulations are subject to both FHA and FEHA.

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<sup>2</sup> San Francisco General Plan, Housing Element. The Housing Element is available online at [http://www.sf-planning.org/ftp/general\\_plan/II\\_Housing.html](http://www.sf-planning.org/ftp/general_plan/II_Housing.html).

<sup>3</sup> Disability Statistics, Frequently Asked Questions. Available online at <http://www.disabilitystatistics.org/faq.cfm>.

<sup>4</sup> 2010 American Community Survey 1-Year Estimates. S1810 Disability Characteristics in the United States, California, San Francisco (accessed October 14, 2014).

<sup>5</sup> 42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927(c)(1), 12955(1).

In the City and County of San Francisco's 2009 Housing Element, enactment of a legislative ordinance was specifically called for in Implementation Measure 39. Implementation Measure 39 states that the Planning Department would "develop a legislative ordinance that will enable persons with disabilities who require reasonable accommodation as exceptions to the City's Planning Code to bypass the currently required variance process, and to access a streamlined procedure permitting special structures or appurtenances such as access ramps or lifts and other non-physical accommodations."<sup>6</sup>

Currently, if a person with a disability requests a reasonable modification in the City and County of San Francisco, the applicant is subject to the standard variance procedure detailed in Section 305 of the Planning Code. The Planning Code does not currently specify what options are available to persons with disabilities if they are seeking modifications permitted under both federal and state laws. The purpose of this ordinance is to provide a path for persons with disabilities to request modifications necessary to access housing.

#### **POTENTIAL ENVIRONMENTAL EFFECTS:**

California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) establishes the general rule that CEQA applies only to projects that have the potential to cause a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This section discusses the potential for the proposed ordinance to result in significant environmental effects and demonstrates that there is no reasonably foreseeable possibility of significant effects.

**Historic Resources.** Projects taking advantage of the proposed ordinance could result in reasonable accommodations that could differ in scale, design, or materials from nearby historic resources, potentially altering their historic context. However, the proposed ordinance is not expected to incentivize development of projects in a way that would result in a material impairment to a known/potential historic district and/or known/potential historic resources.

Planning Department preservation staff have reviewed the proposed ordinance and determined that all reasonable modifications to existing structures, such as those outlined for consideration as part of the administrative reasonable modification procedure, would be minor in nature and would not have significant adverse impacts to historic resources or affect their eligibility for inclusion in the California Register<sup>7</sup>, which is the threshold for significant impact to a resource.

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<sup>6</sup> San Francisco General Plan, Housing Element, Part II: Implementation Programs. This section of the Housing Element is available online at [http://www.sf-planning.org/ftp/general\\_plan/II\\_Housing.html](http://www.sf-planning.org/ftp/general_plan/II_Housing.html).

<sup>7</sup> Email from Shelley Caltagirone to Sandy Ngan, September 23, 2014, "RE: Requests for Reasonable Accommodation – Residential Uses."

Projects that would involve a building that is listed or eligible for listing in a local, state, or federal historic resource register would be subject to a historic review by the Planning Department's Historic Preservation Technical Specialists. The historic review would address conformance with the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties and provide the applicant the opportunity to improve the accommodation design such that it is more sensitive to the character of the resource.<sup>8</sup> This review would also provide further input and information for the Zoning Administrator to use in his determination for modifications that do not fall within an administrative reasonable accommodation.

Based on the above, the proposed ordinance would not have the potential to result in foreseeable significant impacts to historic districts, potential historic districts, potential historic resources, and/or known historic resources.

#### **NEIGHBORHOOD CONCERNS:**

A "Notification of Project Receiving Environmental Review" was mailed on October 17, 2014 to potentially interested parties. No comments from the public were received.

#### **CONCLUSION:**

As discussed in more detail above, the proposed ordinance is not anticipated to facilitate or result in development of specific projects, but rather enable persons with disabilities to make and act upon requests for reasonable modifications to housing. For these reasons, and the reasons cited above, it is determined with certainty that the proposed legislation would result in no significant environmental impacts.

CEQA Guidelines Section 15061(b)(3) provides an exemption from environmental review where it can be seen with certainty that the proposed project would not have a significant impact on the environment. As noted above, there are no unusual circumstances surrounding the current proposal that would suggest a reasonable possibility of a significant effect. Since the proposed project would have no significant environmental impacts, it is appropriately exempt from environmental review under the General Rule Exclusion (CEQA Guidelines Section 15061(b)(3))

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Email from Tina Tam to Sandy Ngan, October 17, 2014, "RE: Reasonable Modifications Ordinance – HR Review – Email for Files."

<sup>8</sup> Email from Shelley Caltagirone to Sandy Ngan, September 23, 2014, "RE: Requests for Reasonable Accommodation – Residential Uses."