

[Creating a Landmarks Preservation Board.]

CHARTER AMENDMENT

PROPOSITION ____

Describing and setting forth a proposal to the qualified voters of the City and County of San Francisco to amend the Charter of the City and County of San Francisco by amending Section 4.105 and adding Section 4.135 to establish an independent Landmarks Preservation Board, appointed by the Mayor, subject to the approval of the Board of Supervisors and meeting certain specified qualifications, with authority to: recommend approval, disapproval or modification to the Board of Supervisors of landmark and significant or contributory building designations under the Planning Code and historical property contracts under Chapter 71 of the Administrative Code without referral to the Planning Commission; recommend approval, disapproval or modification to the Board of Supervisors of historic district and conservation district designations under the Planning Code with comment by the Planning Commission; approve, disapprove, or modify certificates of appropriateness to landmarks buildings or historic districts; approve, disapprove, or modify permits for major and minor alterations to significant or contributory buildings or conservation districts; recommend a Preservation Element of the General Plan to the Board of Supervisors; and take such other actions on matters as may be prescribed by ordinance; and establishing appeal provisions for decisions of the Landmarks Preservation Board; and requiring referral of certain matters to the Landmarks Preservation Board.

The Board of Supervisors hereby submits to the qualified voters of the City and County, at an election to be held on November 4, 2008, a proposal to amend the Charter of the City and County by amending Section 4.105 and adding Section 4.135 to read as follows:

Note: Additions are *single-underline italics Times New Roman*.
Deletions are ~~*strikethrough italics Times New Roman*~~.

SEC. 4.105. PLANNING COMMISSION.

GENERAL. The Planning Commission shall consist of seven members nominated and appointed pursuant to this section. Four of the members shall be nominated by the Mayor, and three of the members shall be nominated by the President of the Board of Supervisors. Charter Section 4.101 shall apply to these appointments, with particular emphasis on the geographic diversity of City neighborhoods. Vacancies shall be filled by the appointing officer.

Each nomination of the Mayor and the President of the Board of Supervisors is subject to approval by the Board of Supervisors, and shall be the subject of a public hearing and vote within 60 days. If the Board fails to act on the nomination within 60 days of the date the nomination is transmitted to the Clerk of the Board of Supervisors, the nominee shall be deemed approved. The appointment shall become effective on the date the Board adopts a motion approving the nomination or after 60 days of the date the nomination is transmitted to the Clerk of the Board of Supervisors.

Members may be removed by the appointing officer only pursuant to Section 15.105.

In order to stagger the terms, three members shall initially serve two-year terms, and four members shall initially service four-year terms. The initial two and four-year terms of office shall be instituted as follows:

1. The respective terms of office of members of the Planning Commission who hold office on the first day of July, 2002, shall expire at 12 o'clock noon on that date, and the four members appointed by the Mayor and the three members appointed by the President of the Board of Supervisors shall succeed to said offices at that time.

2. The Clerk of the Board of Supervisors shall determine by lot which two of the four Mayoral appointees shall serve an initial two-year term, and which one of the three appointees of the President of the Board of Supervisors shall serve an initial two-year term. The remaining appointees shall serve four-year terms. All subsequent terms shall be four years.

The Commission shall provide the Mayor with at least three qualified candidates for Director of Planning, selected on the basis of administrative and technical qualifications, with special regard for experience, training and knowledge in the field of City planning.

The Commission may contract with consultants for such services as it may require subject to the fiscal provisions of this Charter.

GENERAL PLAN. The Commission shall periodically recommend to the Board of Supervisors for approval or rejection proposed amendments to the General Plan, with the exception of any Preservation Element to the General Plan, which Element shall be recommended by the Landmarks Preservation Board. If the Board of Supervisors fails to act within 90 days of receipt, the proposed General Plan or amendments shall be deemed approved. The General Plan which will initially consist of the Master Plan in effect immediately prior to the effective date of this Charter shall consist of goals, policies and programs for the future physical development of the City and County that take into consideration social, economic and environmental factors. In developing their recommendations, the Commission shall consult with commissions and elected officials, and shall hold public hearings as part of a comprehensive planning process. The Planning Department, in consultation with other departments and the City Administrator, shall periodically prepare special area, neighborhood and other plans designed to carry out the General Plan, and periodically prepare implementation programs and schedules which link the General Plan to the allocation of local, state and federal resources. The Planning Department may make such other reports and recommendations to the Mayor, Board of Supervisors and other offices and governmental units as it may deem necessary to secure understanding and a systematic effectuation of the General Plan.

In preparing any plans, the Planning Department may include plans for systems and areas within the Bay Region which have a planning relationship with the City and County.

REFERRAL OF CERTAIN MATTERS. The following matters shall, prior to passage by the Board of Supervisors, be submitted for written report by the Planning Department regarding conformity with the General Plan:

1. Proposed ordinances and resolutions concerning the acquisition or vacation of property by, or a change in the use or title of property owned by, the City and County;
2. Subdivisions of land within the City and County;
3. Projects for the construction or improvement of public buildings or structures within the City and County;
4. Project plans for public housing, or publicly assisted private housing in the City and County;
5. Redevelopment project plans within the City and County; and
6. Such other matters as may be prescribed by ordinance.

The Commission shall disapprove any proposed action referred to it upon a finding that such action does not conform to the General Plan. Such a finding may be reversed by a vote of two-thirds of the Board of Supervisors.

All such reports and recommendations shall be issued in a manner and within a time period to be determined by ordinance.

PERMITS AND LICENSES. All permits and licenses dependent on, or affected by, the City Planning Code administered by the Planning Department shall be approved by the Commission prior to issuance. The Commission may delegate this approval function to the Planning Department. Notwithstanding the foregoing, certificates of appropriateness for work to designated landmarks and historic districts and applications for alterations to significant or contributory buildings or properties in designated conservation districts that have been approved, disapproved, or modified by the Landmarks Preservation Board shall not require approval by the Commission prior to issuance.

ENFORCEMENT. The Planning Department shall administer and enforce the City Planning Code.

ZONING AMENDMENTS. The Commission may propose for consideration by the Board of Supervisors ordinances regulating or controlling the height, area, bulk, set-back, location, use or related aspects of any building, structure or land. An ordinance proposed by the Board of Supervisors concerning zoning shall be reviewed by the Commission. Applications for the reclassification of property may be made by interested parties and must be reviewed by the Commission. Notwithstanding the foregoing, designation of a landmark, a significant or contributory building, an historic district, or a conservation district shall be reviewed by the Commission only as provided in Section 4.135.

Notwithstanding the Commission's disapproval of a proposal from the Board of Supervisors or the application of interested parties, the Board of Supervisors may adopt the proposed ordinance; however, in the case of any proposal made by the application of interested parties, any such adoption shall be by a vote of not less than two-thirds of the Board of Supervisors.

No application of interested parties proposing the same or substantially the same ordinance as that disapproved by the Commission or by the Board of Supervisors shall be resubmitted to or reconsidered by the Commission within a period of one year from the effective date of final action upon the earlier application.

ZONING ADMINISTRATOR. The director of planning shall appoint a Zoning Administrator from a list of qualified applicants provided pursuant to the Civil Service provisions of the Charter. The Zoning Administrator shall be responsible for the determination of all zoning variances. The administrator shall have the power to grant only those variances that are consistent with the general purpose and the intent of the zoning ordinance, and in accordance with the general and specific rules of the zoning ordinance, subject to such conditions and safeguards as the Zoning Administrator may impose. The power to grant variances shall be

applied only when the plain and literal interpretation and enforcement of the zoning ordinance would result in practical difficulties, unnecessary hardships or where the results would be inconsistent with the general purpose of the zoning ordinance. Decisions of the Zoning Administrator regarding zoning variances may be appealed to the Board of Appeals.

Before any such variance may be granted, there shall appear, and the Zoning Administrator shall specify in his or her findings, the facts in each case which shall establish:

(a) That there are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use of the property that do not apply generally to the property or class of uses in the same district or zone;

(b) That owing to such exceptional or extraordinary circumstances the literal enforcement of the zoning ordinance would result in practical difficulty or unnecessary hardship not created by or attributable to the applicant or the owner of the property;

(c) That such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, possessed by other property in the same zone and vicinity;

(d) That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such zone or district in which the property is located; and

(e) That the granting of such variance will be in harmony with the general purpose and intent of the zoning ordinance and will not adversely affect the general plan.

The determination of the Zoning Administrator shall be final except that appeals therefrom may be taken, as hereinafter provided, to the Board of Appeals, exclusively and notwithstanding any other provisions of this Charter, by any person aggrieved or by any office, agency, or department of the City and County. An appeal from a determination of the Zoning Administrator shall be filed with the Board of Appeals within ten days from the date of such determination. Upon making a ruling or determination upon any matter under his or her jurisdiction, the Zoning Administrator shall thereupon furnish a copy thereof to the applicant and

to the Director of Planning. No variance granted by the Zoning Administrator shall become effective until ten days thereafter. An appeal shall stay all proceedings in furtherance of the action appealed from.

CONDITIONAL USE. The Commission shall have the power to hear and decide conditional use applications. An appeal may be taken to the Board of Supervisors from a decision of the Commission to grant or deny a conditional use application. The Board of Supervisors may disapprove the decision of the Commission by a vote of not less than two-thirds of the members of the Board.

SEC. 4.135. LANDMARKS PRESERVATION BOARD.

GENERAL. There is hereby created a Landmarks Preservation Board, which shall advise the City on historic preservation matters, participate in processes that involve historic or cultural resources, and take such other actions concerning historic preservation as may be prescribed by ordinance. The Board shall consist of nine members nominated by the Mayor and subject to approval by a majority of the Board of Supervisors.

The term and tenure of all members sitting on the Landmarks Preservation Advisory Board, created under Article 10 of the Planning Code, as of the effective date of this section shall terminate on December 31, 2008. Of the original appointments to this Board, four shall be for a four-year term and five for a two-year term as follows: the odd-numbered seats shall be for two-year terms and the even-numbered seats shall be for four-year terms. After the expiration of the original terms, all appointments shall be for four year terms, provided however, that a member may holdover until a successor has been nominated by the Mayor and approved by the Board of Supervisors. There shall be no limit on the number of terms a member may serve.

The original nominations shall be made no later than 31 days after the date of the election creating this section. If the Mayor fails to nominate an original appointment within said

period, the nomination for the original appointment may be made by the President of the Board of Supervisors, subject to the approval of a majority of the Board of Supervisors.

Within 60 days of the expiration of a term or other vacancy the Mayor shall nominate a qualified person to fill the vacant seat for the term, or the remainder of the term, subject to approval by a majority of the full Board of Supervisors who shall hold a public hearing and vote on the nomination within 60 days of the Mayor's transmittal of the nomination to the Clerk of the Board of Supervisors. If the Mayor fails to make such nomination within 60 days, the nomination may be made by the President of the Board of Supervisors, subject to the approval of a majority of the Board of Supervisors. The appointment shall become effective on the date the Board of Supervisors adopts a motion approving the nomination or after 60 days of the date the Mayor transmits the nomination to the Clerk of the Board of Supervisors if the Board of Supervisors fails to act.

Members may be removed by the appointing officer only pursuant to Section 15.105.

Any local conflict of interest law prohibiting City officers from receiving compensation to communicate with any other employee or officer of the City with the intent to influence a government decision shall not apply to Board members.

QUALIFICATIONS. In addition to the specific requirements set forth below, members of the Board shall be persons specially qualified by reason of interest, competence, knowledge, training and experience in the historic, architectural, aesthetic, and cultural traditions of the City, interested in the preservation of its historic structures, sites and areas, and residents of the City. Six of the members of the Board shall be specifically qualified in the following fields:

1. Seats 1 and 2: licensed architects meeting the Secretary of the Interior's Professional Qualifications Standards for historic architecture;

2. Seat 3: an architectural historian meeting the Secretary of the Interior's Professional Qualifications Standards for architectural history with specialized training and/or demonstrable experience in North American or Bay Area architectural history;

3. Seat 4: a licensed structural engineer with at least four years of experience in seismic and structural engineering principals applied to historic structures;

4. Seat 5: an historian meeting the Secretary of the Interior's Professional Qualifications Standards for history with specialized training and/or demonstrable experience in North American or Bay Area history; and

5. Seat 6: an historic preservation professional or professional in a field such as law, land use, community planning or urban design with specialized training and/or demonstrable experience in historic preservation or historic preservation planning.

Seats 7, 8 and 9 may include:

1. A professional archeologist meeting the Secretary of the Interior's Professional Qualification Standards for Archeology;

2. A real estate professional or contractor who has demonstrated a special interest, competence, experience, and knowledge in historic preservation;

3. A person who is a licensed landscape architect;

4. A person with training and professional experience with materials conservation;

or

5. A person who has demonstrated a special interest in historic preservation as a preservation activist.

LANDMARK AND HISTORIC DISTRICT DESIGNATIONS. The Board shall have the authority to recommend approval, disapproval, or modification of landmark designations under the Planning Code to the Board of Supervisors, without referral or recommendation of the Planning Commission. The Board shall have the authority to recommend approval, disapproval, or modification of historic district designations to the Board of Supervisors, and the Planning Commission shall have 45 days after the Board's recommendation to review and comment on the proposed designation, which comments shall be forwarded to the Board of Supervisors together

with the Board's recommendation. Decisions of the Board to disapprove designation of a landmark or historic district shall be final unless appealed to the Board of Supervisors.

SIGNIFICANT OR CONTRIBUTORY BUILDING AND CONSERVATION DISTRICT DESIGNATIONS. The Board shall have the authority to recommend approval, disapproval, or modification of significant or contributory building designations under the Planning Code to the Board of Supervisors, without referral or recommendation of the Planning Commission. The Board shall have the authority to recommend approval, disapproval, or modification of designation of conservation districts to the Board of Supervisors, and the Planning Commission shall have 45 days after the Board's recommendation to review and comment on the proposed designation, which comments shall be forwarded to the Board of Supervisors together with the Board's recommendation. Decisions of the Board to disapprove designation of a significant or contributory building or conservation district shall be final unless appealed to the Board of Supervisors.

CERTIFICATES OF APPROPRIATENESS. The Board shall approve, disapprove, or modify certificates of appropriateness for work to designated landmarks or historic districts. For minor alterations, the Board may delegate this function to the Planning Department, whose decisions may be appealed to the Board. For projects that require multiple planning approvals, the Board must review and act on any Certificate of Appropriateness before any other planning approval action.

The Board's decision on a Certificate of Appropriateness shall be appealable to the Board of Appeals, which may overturn or modify the Board's decision by a 4/5 vote; provided, however, that if the project requires Board of Supervisors approval or is otherwise appealable to the Board of Supervisors, the Board's decision shall not be appealable to the Board of Appeals, but rather to the Board of Supervisors, which may overturn or modify the Board's decision by a 2/3 vote.

ALTERATION OF SIGNIFICANT OR CONTRIBUTORY BUILDINGS OR BUILDINGS IN CONSERVATION DISTRICTS. *The Board shall have the authority to determine if a proposed alteration is a Major Alteration or a Minor Alteration. The Board shall approve, disapprove, or modify applications for alterations to designated significant or contributory buildings or conservation district properties. For Minor Alterations, the Board may delegate this function to the Planning Department, whose decisions may be appealed to the Board. For projects that require multiple planning approvals, the Board must review and act on any Major Alteration before any other planning approval action.*

The Board's decision on a Major or Minor Alteration shall be appealable to the Board of Appeals, which may overturn or modify the Board's decision by a 4/5 vote; provided, however, that if the project requires Board of Supervisors approval or is otherwise appealable to the Board of Supervisors, the Board's decision shall not be appealable to the Board of Appeals, but rather to the Board of Supervisors, which may overturn or modify the Board's decision by a 2/3 vote.

MILLS ACT CONTRACTS. *The Board shall have the authority to recommend approval, disapproval, or modification of historical property contracts to the Board of Supervisors, without referral or recommendation of the Planning Commission.*

PRESERVATION ELEMENT OF THE GENERAL PLAN. *The Board shall recommend to the Board of Supervisors for approval or rejection a Preservation Element of the General Plan and shall periodically recommend to the Board of Supervisors for approval or rejection proposed amendments to such Preservation Element of the General Plan. Other objectives, policies, and provisions of the General Plan and special area, neighborhood, and other plans designed to carry out the General Plan, and proposed amendments thereto, that are not contained within such Preservation Element but that concern historic preservation shall be referred to the Board by the Planning Commission for the Board's comment prior to referral to the Board of Supervisors.*

REFERRAL OF CERTAIN MATTERS. The following matters shall, prior to passage by the Board of Supervisors, be submitted for written report by the Board regarding effects upon historic or cultural resources: ordinances and resolutions concerning historic preservation issues and historic resources; redevelopment project plans; and such other matters as may be prescribed by ordinance.

OTHER DUTIES. For proposed projects that may have an impact on historic or cultural resources, the Board shall review and comment upon draft environmental impact reports and preliminary negative declarations under the California Environmental Quality Act and may review and comment on behalf of the City upon environmental documents under the National Environmental Policy Act. The Board shall act as the City's local historic preservation review commission for the purposes of the Certified Local Government Program under the National Historic Preservation Act. The Board shall have the authority to direct the Planning Department to undertake surveys of historic resources.

CONFORMING AMENDMENTS. The Board of Supervisors shall have the authority to make amendments to the San Francisco Municipal Code to effectuate the provisions of this section.

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

By: _____
Marlena G. Byrne
Deputy City Attorney