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BY BJ

March 19, 2019

President Norman Yee
c/o Angela Calvillo, Clerk of the Board
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

VIA HAND DELIVERY AND EMAIL

Re: CEQA Review of Ordinances Regarding Temporary Homeless Shelter Provisions and Streamlining Siting of Shelters (File Nos. 190045 and 190047.)

Dear President Yee and Honorable Members of the Board of Supervisors:

We are writing to you on behalf of Safe Embarcadero For All, an unincorporated association of residents who live near Seawall Lot 330. Our members have serious concerns regarding two Ordinances under consideration by the Board of Supervisors:

- Ordinance 190045, amending the Building Code to adopt standards for constructing homeless shelters, and to create an alternative approval procedure for homeless shelters, during a shelter crisis, pursuant to California Government Code, Section 8698.4; amending the Business and Tax Regulations Code to provide for an expedited permit appeals process for homeless shelters during a shelter crisis; affirming the Planning Department's determination under the California Environmental Quality Act; and directing the Clerk of the Board of Supervisors to forward this Ordinance to the California Building Standards Commission and the California Department of Housing and Community Development upon final passage.
- Ordinance 190047, amending the Administrative Code and Planning Code to streamline contracting for homeless shelters, and siting of homeless shelters by, among other things, authorizing the Department of Homelessness and Supportive Housing (HSH) to enter into and amend contracts without requiring competitive bidding for professional and other services relating to sites and programs for people experiencing homelessness (Projects Addressing Homelessness); authorizing Public Works to enter into and amend contracts without adhering to the Environment Code or to provisions relating to competitive bidding, equal benefits, local business enterprise utilization, and other requirements, for construction work and professional and other services relating to Projects Addressing Homelessness; permitting Homeless Shelters in PDR (Production Distribution Repair)

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and SALI (Service/Arts/Light Industrial) Districts; authorizing HSH to operate Navigation Centers for more than two years; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

(Collectively, the "Ordinances".)

No environmental review of the Ordinances has been carried out, despite the likely significant environmental impacts that will result from them.

The California Environmental Quality Act ("CEQA") requires public agencies to "inform their decisions with environmental considerations." (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380.) CEQA applies to any project undertaken by a public agency that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub. Res. Code 21065; CEQA Guidelines, § 15378.) Under CEQA, if there is a possibility that a project may have a significant effect on the environment, the lead agency must undertake environmental review of the project.

Here, the Planning Department has asserted that the Ordinances are exempt from environmental review because they are "not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because [they] would not result in a direct or indirect physical change in the environment." In relation to Ordinance 190045, the CEQA determination goes on to assert that it is "adopting standards and procedures. Physical projects will require environmental review." These findings are legally and factually inaccurate.

CEQA provides a broad definition of "project" to include any activities directly undertaken by a public agency which has the potential to ultimately culminate in a physical change to the environment. (Pub. Res. Code s 21065(a); *City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 537.) The CEQA Guidelines establish that the "enactment and amendment of zoning ordinances" can be a project. (14 Cal. Code Regs., s 15378(a)(1).)

Importantly, the question of whether the ordinance will cause a physical change in the environment is a threshold inquiry – that is, the mere fact that an agency action *may*, directly or indirectly, cause a physical change in the environment makes it a CEQA "project." Changes to zoning ordinances have consistently and categorically been deemed to be a "project," whether or

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not they will actually have environmental effects. (*Muzzy Ranch, supra*, 41 Cal.4th 382; *Union of Medical Marijuana Patients Inc. v. City of San Diego* (2016) 4 Cal.App.5th 103, 120.)

Zoning ordinances implicate CEQA because their key feature is to regulate the physical use of land and the structures that may be built. (*Morehart v. County of Santa Barbara* (1994) 7.Cal.4th 725, 750.) Here, the Ordinances necessarily regulate the use of land by streamlining the approval and construction of new large structures, with less thorough review. Among other things, Ordinance 190045 suspends the standard building permitting process for building homeless shelters, and Ordinance 190047 allows homeless shelters to be operated for more than two years, and makes them a permitted (rather than conditional) use in certain zoning districts. The accelerated construction of new homeless shelters will undoubtedly result in a physical change to the environment. Indeed, this is the very purpose of the Ordinances.

Moreover, the impacts caused by homeless shelters, which will concentrate hundreds of homeless individuals on single lots, are “physical impacts” under CEQA. These impacts potentially include an increase in trash, abandoned shopping carts, discarded syringes, and crime in the surrounding neighborhood. Such impacts are all elements of “urban decay,” which the Court of Appeal has recognized as a physical impact for the purposes of CEQA (*Placerville Historic Preservation League v. Judicial Council of California* (2017) 16 Cal.App.5th 187.) These impacts have not been identified or analyzed at any point.

Even if individual project applications would be subject to review at a later date, the truncated review process created by the Ordinances will have a cumulative impact on the environment. The Ordinances trigger a requirement for further environmental review based on these cumulative impacts. (Cal. Code Regs. § 15300.2(b).)

In the complete absence of CEQA review of the Ordinances, it is impossible to assess the extent of their individual and cumulative impacts. The City must assess these Ordinances as “projects” for the purposes of CEQA, and undertake proper environmental review, prior to passing the Ordinances.

The City Did Not Provide Adequate Notice of the Ordinances

The City failed to give the “notice required by law” of the Ordinances (Pub. Res. Code § 21177(e)). The members of Safe Embarcadero for All live near Seawall Lot 330 – a site that has already been earmarked for a navigation center, and to which the Ordinances are apparently intended to apply. As such, they should have been notified of the Ordinances (Planning Code §§ 302(b); 333.) They received no notice of either Ordinance, and were deprived of their opportunity to submit comments to the Planning Commission, Building Inspection Commission, or the Land Use and Transportation Committee.

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Moreover, the public notices for the Land Use and Transportation Committee’s hearings of the Ordinances did not provide “a meaningful description of each item of business to be transacted or discussed at the meeting.” (Brown Act; San Francisco Administrative Code, §67.7.) The notice for each Ordinance simply mentioned: “affirming the Planning Department’s determination under the California Environmental Quality Act.” This generic description did not provide any details about the substance of the Planning Department’s determinations: that CEQA does not apply because the Ordinances are not a “Project.” Accordingly, the content of the public notices was legally inadequate.

The City must comply with its CEQA obligations. We respectfully request that a complete environmental analysis be completed prior to final approval of the Ordinances.

Very truly yours,

/s/

Safe Embarcadero for All