1	[Zoning – Conditional use authorization for new development in the Bernal South Slope Area		
2			
3	Ordinance amending Planning Code Section 242 to require conditional use		
4	authorization for new development in the Bernal South Slope Area, and making		
5	findings of consistency with the priority policies of Planning Code Section 101.1 and		
6	environmental findings.		
7 8 9	Note: Additions are <u>single-underline italics Times New Roman</u> ; deletions are <u>strikethrough italics Times New Roman</u> . Board amendment additions are <u>double underlined</u> . Board amendment deletions are strikethrough normal .		
10 11 12 13 14 15 16 17 18 19 20 21	Be it ordained by the People of the City and County of San Francisco: Section 1. Findings. The Board of Supervisors of the City and County of San Francisco hereby finds and declares as follows: (1) The Bernal Hill neighborhoods are characterized by small homes built on small lots along narrow streets along the hillside over many years. In 1991, the Planning Commission created the Bernal Heights Special Use District ("BH SUD") which covered much of the developed portions of the Hill and which imposed additional zoning controls in recognition of the need to protect and preserve the unique characteristics of Bernal Hill. (The boundaries of the Bernal Heights Special Use District are shown on Sectional Map Nos. 7SU, 8SU, and 11SU of the Zoning Map, as described in Planning Code Section 242.) (2) At the time the BH SUD was created many of the parcels along the Hill's southern		
22232425	and eastern slopes were vacant. Although portions of the southern and southeastern slopes of Bernal Hill (referred to collectively herein as the "Bernal South Slope" and further defined below) have been subdivided for potential development, they were thought to be		

- undevelopable because of the steep slopes, lack of utilities, an absence of improved roadways, and the difficulty of providing these services in a cost-effective and safe manner.
- (3) Since the 1991 establishment of the BH SUD, the demand for housing has increased such that developers are for the first time willing to bear the increased construction and infrastructure costs of building on the steep grades of the Bernal South Slope. Increasing development pressure has the potential to cause incremental and piecemeal development of these hillside properties.
- (4) On January 27, 2000, the Planning Commission responded to public concerns of unplanned and haphazard on the Bernal South Slope by passing Resolution Number 14973, which established a policy of mandatory discretionary review under Planning Code Section 311 for new construction on the 95 vacant parcels that fronted on, or otherwise required vehicular and/or pedestrian access from, undeveloped streets with in the Bernal South Slope Study Area (as defined in that resolution).
- (5) At that time, the Planning Commission resolution recognized that piece-meal development in the Bernal South Slope Study Area could result in "damage to the hillside and obviate a coherent, efficient and environmentally-sensitive circulation and open space system" and that further individual development proposals did not propose to properly extend or improve the City streets, but rather simply proposed to extend narrow driveways from stubbed out streets (dead end streets) to their property. (See Planning Commission Resolution No. 14973 at paragraph 3.) The Commission further asserted that these incremental hillside developments were out of character with the small, intimate characteristics of the Bernal neighborhood and did not provide necessary pedestrian or vehicular access linking the upslope community with the down-slope community. (*Id.*) Lack of vertical access would further isolate the predominately low-income residents in Alemany Public Housing along Alemany

- Boulevard and Ellsworth Street. (*Id.*) In addition, the Commission noted that proposed development ignored Bernal Hill's characteristic patterns of open space, both private and public. (*Id.*)
 - (6) The Planning Commission enacted the Resolution 14973 policy of mandatory discretionary review as an interim measure for two years to allow the City to complete a study of the street, utility, and open space improvements that should accompany new development in the Bernal South Slope. The Bernal South Slope Area Study was supported by the South Bernal Action Alliance, Bernal Heights Neighborhood Center, the Planning Department, the Planning Commission and the Mayor's Office. It was anticipated that the study would be funded as of July 1, 2000 and to be completed in two years.
 - (7) Although some initial scoping work was done by the Department of Public Works and initial interagency meetings were held with neighbors, the Bernal South Slope Area Study did not receive full funding and was never completed. The Bernal South Slope mandatory discretionary review policy expired in 2002.
 - (8) On November 17, 2000 the California Geologic Survey ("CGS") designated the majority of empty lots in the Bernal South Slope Area as "areas of landslide and liquefaction potential." (See Planning Department Map of Bernal Heights South Slope from April 17, 2007, based upon Seismic Hazard Evaluation of the City and County of San Francisco in 2000.) The CGS map and evaluation report summarize seismic hazard zone findings for potentially liquefiable soils and areas susceptible to landsliding. The analysis also demonstrates the locations of steep slopes and cliffs that are most susceptible to landsliding.
 - (9) The Department of Building Inspection ("DBI") considers geological conditions such as landslide potential as part of their construction permitting process. And while DBI and the Major Environmental Analysis Section of the Planning Department do site-by-site analysis of

- such risks, the Board of Supervisors believes additional, coordinated review of seismic risks would further reduce landslide and liquefaction risks in the Bernal South Slope.
 - (10) According to Planning Department maps from 2007, 17 parcels in the Bernal South Slope are either under construction, currently being reviewed by the Planning Department or at the schematic stage. But no comprehensive study of development on the hillside has been performed as of this Ordinance. The original environmental, safety, and infrastructure concerns identified by the Planning Department in 2000 remain and include: the potential loss of open space, especially the 20-year-old Children's Community Garden on Moultrie Street; a large and sudden influx of vehicles resulting in increased risk to pedestrians; increased congestion on narrow roadways; irregular access schemes that degrade the visual nature of the neighborhood and can reduce emergency response times; decreases in water pressure; and further isolation of residents at Alemany Public Housing from the rest of the neighborhood. The Commission hoped to address these issues in 2000 through the Bernal South Slope Area Study and development of an infrastructure plan, which would have evaluated the development of the entire hillside as one project and one community, but the study was never funded.
 - (11) It is necessary to consider the development of Bernal South Slope in an integrated manner addressing community needs such as street improvements, public parks, recreation facilities and community facilities generally. A coordinated approach to new development would enable the City and developers to plan for necessary public services for new and existing residents. It would also address open space requirements that are essential elements of urban infrastructure, especially in low and mixed-income communities.

 Therefore, the Board encourages the Planning Department to develop a neighborhood area

plan for the Bernal South Slope.

1	(12) In response to a written request from Supervisor Ammiano on July 18, 2008, the
2	Director of the Planning Department decided on August 1, 2008, to reinstitute a policy of
3	initiating discretionary review for new construction within the Bernal South Slope on blocks
4	5810, 5811, 5825, 5826, 5827, and 5828. Issues to be considered during discretionary review
5	hearings before the Planning Commission include: (1) street-orientation and alignment
6	consistent with the City's established pattern; (2) connections with the Alemany Public
7	Housing at the hill base; (3) changes to the de facto open space at Moultrie Street right-of-
8	way; (4) transportation support for new housing; and (5) possible coordination of development
9	of the South Slope with the redesign of the Alemany Public Housing development. The
10	Planning Department initiated this discretionary review policy to "ensure that the larger policy
11	issues [in Bernal South Slope] are thoroughly vetted until the Board considers potential
12	permanent controls." (Letter from John Rahaim, Planning Director, to Supervisor Ammiano,
13	August 1, 2008.)

- (13) In the absence of a comprehensive plan for the South Slope, establishing permanent zoning controls will ensure that development in the Bernal South Slope continues consistently with General Plan policies and with community input. Absent such controls or a comprehensive plan, there is a risk that piecemeal development will degrade the safety, character, and livability Bernal South Slope neighborhood. Pre-construction investigation of neighborhood-specific issues will provide the basis for safe and well-planned development consistent with the character of the South Bernal Neighborhood.
- (14) Pursuant to this Ordinance, Planning Commission approval of conditional use application will require applicants to provide the Planning Department with information pertaining to project impacts on the environmental, health, safety, and general welfare of residents of the Bernal South Slope Neighborhood to ensure that the area will be developed

1	without exacerbating existing neighborhood problems. Applicants bear the burden of			
2	demonstrating that their new construction will not individually or cumulatively have significant			
3	and adverse impacts on the Bernal South Slope.			
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5	Section 2. Environmental Findings, General Plan Findings, and Other Required Findings.			
6	(a) The Planning Department has determined that the actions contemplated in this			
7	Ordinance are in compliance with the California Environmental Quality Act (California Public			
8	Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the			
9	Board of Supervisors in File No and is incorporated herein by			
10	reference.			
11	(b) On, 2008, the Planning Commission, in Resolution No.			
12	approved and recommended for adoption by the Board this legislation and			
13	adopted findings that it is consistent, on balance, with the City's General Plan and eight			
14	priority policies of Planning Code Section 101.1 The Board adopts these findings as its own.			
15	A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.			
16	, and is incorporated by reference herein.			
17	(c) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this			
18	legislation will serve the public necessity, convenience, and welfare for the reasons set forth in			
19	Planning Commission Resolution No, and incorporates such reasons by			
20	reference herein.			
21	Section 3. The San Francisco Planning Code is hereby amended by amending Section			
22	242 to read as follows:			
23	SEC. 242. BERNAL HEIGHTS SPECIAL USE DISTRICT.			
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- (a) General. A Special Use District entitled the Bernal Heights Special Use District, the boundaries of which are shown on Sectional Map. Nos. 7SU, 8SU, and 11SU of the Zoning Map, is hereby established for the purposes set forth below.
- (b) Purposes. In order to reflect the special characteristics and hillside topography of an area of the City that has a collection of older buildings situated on lots generally smaller than the lot patterns in other low-density areas of the City, and to encourage development in context and scale with the established character, there shall be a Bernal Heights Special Use District.
- (c) The provisions of this Section 242 shall not apply to building permit applications or amendments thereto, or to conditional use, variance or environmental evaluation applications filed on or before January 7, 1991. Such applications shall be governed by the ordinances in effect on January 7, 1991, unless the applicant requests in writing that an application be governed by the provisions of this Section 242.
 - (d) Definitions. For purposes of this Section 242, the following definitions apply:
- (1) "Adjacent building" shall mean a building on a lot adjoining the subject lot along a side lot line. Where the lot constituting the subject property is separated from the lot containing the nearest building by an undeveloped lot or lots for a distance of 50 feet or less parallel to the street or alley, such nearest building shall be deemed to be an "adjacent building," but a building on a lot so separated for a greater distance shall not be deemed to be an "adjacent building." A corner lot shall have only one adjacent building located along its side lot line.
- (2) "Usable floor area" is the sum of the gross areas of the several floors of a building, measured from the exterior walls or from the center lines of common walls separating two buildings. "Usable floor area" shall not include that floor area devoted to off-

- street parking or any space or area which is not readily accessible and which has not more than five feet vertical clearance at any point.
 - (e) Controls. All provisions of the Planning Code applicable to an RH-1, RH-1(S), RH-2, and RH-3 District shall apply to applicable portions of the Special Use District except as otherwise provided in this Section.
 - (1) Height Limits. No portion of a dwelling in any portion of this district shall exceed a height of 30 feet except as provided below.
 - (A) The height of a dwelling on a downslope lot shall not exceed 30 feet above grade, subject to averaging or offset by an equal height reduction. Any portion of a dwelling exceeding a height of 30 feet must be offset by at least an equal amount of dwelling having a height of less than 30 feet, provided that the maximum height above grade at any point cannot exceed 40 feet, and the rearmost eight feet of length cannot exceed 32 feet above grade.
 - (B) The height of a dwelling on an upslope lot shall not exceed 30 feet above grade, with no averaging or stepping over the 30 feet limit, and no part of the dwelling, unless otherwise permitted by this Section, may be higher than 38 feet above curb level, except if the rear of the lot is 30 feet or more higher than the front grade, the rear half of the dwelling may go up to 43 feet above curb level.
 - (C) The height of a dwelling in an RH-2 or RH-3 lot may exceed the limits described above based upon the average height of the adjacent buildings.
 - (D) Except for vertical-axis wind-powered electrical generators with a horizontal diameter not exceeding three feet, chimneys, and nonparabolic radio and television antennas, nothing otherwise permitted by Section 260(b) of this Code may extend above the additional height limit established in this Code section by more than 42 inches. Furthermore, all such wind-powered electrical generators must avoid significant impacts to wildlife.

- (2) Rear Yards. The requirements applicable to rear yards are as follows:
- (A) RH-1 and RH-1(S). For lots which have a depth of 70 feet or less, the minimum rear yard depth shall be equal to 35 percent of the total depth of the lot on which the building is located. Buildings on lots which have a depth greater than 70 feet may not be deeper than 45.5 feet measured from the front property line; the remainder of the lot shall be used for rear yard.
- (B) RH-2 and RH-3. The minimum rear yard depth shall be equal to 45 percent of the total depth of the lot in which the building is located.
- (C) All Lots. The following provisions relating to rear yards shall apply to all lots in the Special Use District:
- (i) A building may intrude into the required rear yard up to the extent that an adjacent building intrudes, provided the intrusion is no wider than half of the width of the lot, and 25 percent of the total lot depth is provided as rear yard open space. The intrusion must be placed in a manner that the Zoning Administrator finds will provide optimal light and air to the subject and adjacent properties. The coverage resulting from the intrusion must be offset by otherwise permitted coverage in the rear of the subject property.
- (ii) Any part of a front setback exceeding five feet may be applied to the amount required for satisfying the rear yard requirements.
- (iii) No part of any building may be within 25 percent or 15 feet, whichever is greater, of the rear property line.
- (iv) Those obstructions into rear yards otherwise permitted by Section 136(c)(2), (3), and (25) of this Code shall not be permitted. In addition to the obstructions permitted in Section 136(c), improvements may be constructed underneath a room or deck located in the rear yard area if said room or deck is otherwise permitted pursuant to Section

- 1 136(c) and was constructed pursuant to a building permit issued prior to December 11, 1987.
- 2 In those instances, the Zoning Administrator may place appropriate conditions on the approval
- 3 of the building permit to protect the light, air and view of the adjacent properties.
 - (3) Mass Reduction Requirement for RH-1 and RH-1(S) Buildings. After calculation of the maximum permissible height and lot coverage in an RH-1 or RH-1(S) District, a total of 650 square feet of usable floor area must be deleted from the exterior of the building, causing a reduction in square footage as well as building volume. On lots that exceed 100 feet in depth, the mass reduction shall be a minimum of 400 square feet of usable floor area. Any area to be deleted must have a minimum clearance of three feet from the side property line. The reduction must be taken from the front, the rear, or the top of the building above grade; however, such reduction along the side of the property line will be allowed under this section so that adjacent properties will benefit from the provision of greater light and air or the reduction of shadows. Where an area to be deleted is along the side property line and is in the form of an inner court, the inner court shall have a minimum area of 90 square feet.
 - (4) Parking. The number of off-street parking spaces required for new construction shall be as follows:
- 17 TABLE INSET:

18 Usable Floor Area Pa	rking Spaces
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19 0 to 1300 1

20 1301 to 2250 2

21 2251 to 2850 3

22 2851 to 3850 4

One additional parking space is required for each additional 1,000 square feet.

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If more than one parking space is required, the first off-street parking space must have a
minimum area of 160 square feet; second and subsequent spaces may be a compact car
space and have a minimum area of 127.5 square feet. In the RH-2 and RH-3 District, the
parking requirement is the greater of the number of spaces required by the above table, or
one parking space per dwelling unit.

All alterations resulting in an increase in usable floor area shall be considered cumulatively

All alterations resulting in an increase in usable floor area shall be considered cumulatively from the effective date of this ordinance.

No tandem parking spaces are permitted for the first two required parking spaces for new construction. All other required parking spaces for new construction may be tandem parking spaces.

Tandem parking spaces are permitted for alterations in the RH-1 and RH-1(S) Districts, and are not permitted for alterations in the RH-2 and RH-3 Districts.

- (A) RH-1 or RH-1(S) District Building Alterations. The following parking requirements shall apply to alterations of existing structures in an RH-1 or RH-1(S) District:
- (i) If one or more alterations add 400 square feet or less of usable floor area to an existing building, no additional parking space is required to be added to the existing spaces.
- (ii) If one or more alterations add over 400 square feet of usable floor area but do not cause the total usable floor area of the building to exceed 1,650 square feet, no additional parking space is required to be added to the existing spaces.
- (iii) If one or more alterations add over 400 square feet of usable floor area and the total usable floor area of the building is between 1,651 and 2,250 square feet, a total of two parking spaces is required. One or both of these required spaces may be waived by the Zoning Administrator if the Zoning Administrator finds that (1) the off-street parking space(s)

- would result in a new curb cut, or the proposed driveway would result in the loss of one
 parking space while adding one private space; or (2) the structure has an unaltered historic
 facade as determined by the Department of Planning and the owner has conveyed a facade
 easement to the San Francisco Architectural Heritage foundation.
 - (iv) If one or more alterations add over 400 square feet of usable floor area and the total usable floor area is over 2,250 square feet, a total of three parking spaces or more is required, as provided by the above table. One additional parking space is required for each additional 1,000 square feet.
 - (B) RH-2 and RH-3 Building Alterations. The following parking requirements shall apply to alterations of existing structures in an RH-2 or RH-3 District:
 - (i) If one or more alterations add 200 square feet or less of usable floor area, no additional parking space is required.
 - (ii) If one or more alterations add over 200 square feet of usable floor area, the parking standards for new construction set forth above shall apply to the entire building.
 - (5) Curb Cuts and Garage Door Width. The maximum width of curb cuts allowed for new construction shall be 10 feet; the maximum width of a garage door opening shall be 12 feet.
 - (6) Design. In addition to meeting applicable standards provided in this Section and elsewhere in this Code, residential development subject to this Section shall be subject to the review and notification procedures provided by Subsection 311(c) of this Code. Requests for Planning Commission review shall be governed by Subsection 311(d) of this Code. In addition to applicable guidelines cited by Section 311, the Elsie Street Plan and the East Slope Building Guidelines shall be used as guidelines to determine neighborhood compatibility of new construction and alterations in the respective areas covered by those guidelines.

(7)	Demolition
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- (A) Demolition Generally Prohibited. Other than as specified in this subsection, no demolition permit for structures containing one or more residential units may be approved unless:
- (i) The Superintendent of the Bureau of Building Inspection or the Chief of the Bureau of Fire Prevention and Public Safety determines, after consultation to the extent feasible with the Department of Planning, that an imminent safety hazard exists and the Superintendent determines that demolition of the structure is the only feasible means to secure the public safety; or
- (ii) The structure is under an abatement order and the Superintendent of the Bureau of Building Inspection determines, after consultation with the Department of Planning and the San Francisco Fire Department, that repairs rendering the structure safe and habitable as defined in the San Francisco Housing Code would cost 50 percent or more of the cost to replace the structure pursuant to the standards published periodically by the Superintendent. An owner's deliberate damage, in the opinion of the Superintendent of the Bureau of Building Inspection, to the property or failure to maintain it shall not be included in the calculation of replacement costs; or
- (iii) The Department determines, based on facts presented, that the structure proposed to be demolished retains no substantial remaining value or reasonable use.
- (B) Demolition of Historic or Architecturally Significant Residential Buildings. Unless demolition is approved pursuant to Subsections (A)(i) or (A)(iii) above, no demolition permit may be approved for a residential building (1) which is a designated landmark or contributing building in an historic district; or (2) which the Landmarks Preservation Advisory Board determines is qualified to be designated as a landmark or contributing building in an historic

1	district under the standards of Article 10 of this Code; or (3) is recommended by the		
2	Department of Planning for historic designation under Article 10 of this Code.		
3	(C) Replacement Structure Required. Unless demolition is approved pursuant to		
4	Subsection (A)(i) or (A)(iii) above, no application authorizing the demolition of a residential		
5	building within the scope of this Section shall be approved until the City has finally approved a		
6	building permit for construction of the replacement building which meets the requirements of		
7	this ordinance. A building permit is finally approved if the Board of Permit Appeals has taken		
8	final action on an appeal of the issuance or denial of the permit or if the permit has been		
9	issued and the time for filing an appeal with the Board has lapsed with no appeal filed.		
10	(i) This Section shall not apply to the demolition of a second structure on		
11	a single lot that (1) does not exceed 500 square feet, (2) meets the requirements of		
12	Subsection (A)(ii) above, and (3) is not a historic residential building under Subsection (B)		
13	above.		
14	(f) Additional Controls Applicable to Bernal South Slope.		
15	(1) <u>The "Bernal South Slope" shall mean the undeveloped lots within the south slope area of</u>		
16	the Bernal Heights Special Use District consisting of: Block 5810, lots 016, 017, and 020 to 023; Block		
17	5811, lots 023 to 028; Block 5825, lots 007 to 015; Block 5826, lots 002, 003, 005 to 011, and 013 to		
18	016; Block 5827, lots 007 to 011 and 016 to 022; and Block 5828, lots 004 to 010.		
19	(2) The controls set forth in this subsection (f) shall be in addition to the general		
20	requirements of Section 242.		
21	(3) <u>All new development in the Bernal South Slope shall require a conditional use</u>		
22	authorization pursuant to this subsection and the requirements set forth in Article 3 of the Planning		
23	Code. The Planning Commission shall only approve an application for a conditional use authorization		

if facts are presented to establish that the proposed development would not have a significant adverse

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1	effect on public health, safety, or design and planning consistency of the Bernal South Slope,		
2	considering the	following criteria:	
3	(A)	The applicant has worked with DBI to design the project in accordance with best	
4	practices for con	astruction and development on steep slopes including measures to address liquefaction	
5	and slope stabili	ty issues presented by the steep grades in Bernal South Slope, as applicable;	
6	(B)	The development will not adversely impact the visual integrity of the Bernal South	
7	Slope by signific	antly deviating from the City's established pattern of street-orientation and alignment;	
8	(C)	The design of the development would not interfere with the proposed integration of	
9	Alemany Public	Housing with the South Bernal neighborhood (e.g., through construction of large	
10	retaining walls)	and, to the extent feasible, promotes connections at the hill base that are consistent	
11	with the propose	d redesign of Alemany Public Housing;	
12	(D)	The development and construction-related activities in the Bernal South Slope will	
13	not significantly	impact emergency vehicle access and emergency response times or impact fire	
14	protection capal	pilities in the area (e.g., fire hydrant access or water pressure), as determined through	
15	applicant consul	tation with the San Francisco Fire Department;	
16	(E)	The development will not degrade the health and cleanliness of the neighborhood by,	
17	for example, adv	ersely affecting the City's ability to provide sanitation services such as garbage	
18	collection and st	reet sweeping;	
19	(F)	The development promotes the City's open space policies, and incorporates	
20	community input	regarding public use of unimproved rights-of-way (e.g., by avoiding or offsetting	
21	potential impact	s to existing open space such as the Moultrie Street Children's Community Garden);	
22	(G)	The development will not significantly impact neighborhood parking availability;	
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1	(H) \underline{T}	he development will not significantly contribute to an increase in traffic		
2	congestion in Berna	l South Slope, including at known bottleneck areas along Crescent Street and the		
3	intersection of St. M	Tary's and Mission Street; and		
4	(I) \underline{T}	The development will not adversely impact pedestrian safety or result in dangerous		
5	traffic conditions (e.	g., increasing double parking and reducing turn around zones) that place		
6	residents and pedesi	residents and pedestrians at risk.		
7	(J) \underline{T}	The foregoing criteria shall apply both to a project's individual impacts and its		
8	cumulatively consid	erable impacts. For purposes of this section, the Planning Department shall		
9	evaluate a project's	contribution to cumulative impacts by considering the project's incremental		
10	contribution to pote	ntially significant impacts caused by the current and proposed development of the		
11	Bernal South Slope.			
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13		APPROVED AS TO FORM: DENNIS J. HERRERA, City Attorney		
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15	By: Andrew W.			
16	Deputy City	⁷ Attorney		
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