



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution Number 18837

HEARING DATE: APRIL 4, 2013

Date: March 28, 2013
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PLANNING COMMISSION POLICY ESTABLISHING CLARIFIED PERFORMANCE TIME FRAMES FOR TYPICAL PROJECTS SEEKING APPROVALS FROM THE PLANNING COMMISSION.

WHEREAS, When the Planning Commission (“Commission”) grants a Conditional Use authorization under Planning Code Section 303, a Downtown Project Authorization under Planning Code Section 309, or a Large Project Authorization in the Eastern Neighborhoods under Section 329 (“Authorization” or, collectively, “Authorizations”), these Authorizations typically include a three-year time period (a “Performance Time Frame”) within which the Department of Building Inspection (“DBI”) must issue a Building or Site Permit in order to implement the project, and provide that the Commission may consider revocation of the Authorization if such permit has not been issued; and

WHEREAS, Planning Code Section 303(d) states that the conditions of approval of any Conditional Use authorization “may include time limits for exercise of the conditional use authorization; otherwise, any exercise of such authorization must commence within a reasonable time.” A published interpretation of this Code Section in April of 1983 established three years as a “reasonable time” because “this reflected the abandonment period for nonconforming uses under Section 183.” As such – and in the absence of unusual circumstances – Planning Department (“Department”) practice has been to draft, and Commission practice has been to adopt, Performance Time Frames that reflect this three year period; and

WHEREAS, Performance Time Frames are appropriate, necessary and desirable in that they require a project to move forward toward execution on a reasonable basis and thereby promote the improvement of our neighborhoods and prevent the reservation of land for future purposes when the project sponsor has no good faith intent to diligently commence the proposed project; and

WHEREAS, The precise language used in Performance Time Frames has varied over the years. First in 2004 and then again in 2011, the Department implemented increasingly standardized Performance Time Frames, but the language in these more recent Performance Time Frames has also varied; and

WHEREAS, The Commission recognizes the importance of consistency and fairness in the application of conditions of approval, especially in the absence of the Commission’s clear intent to apply unique conditions; and

WHEREAS, Current language used in most Performance Time Frames typically states that “the authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion... The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or Building Permit has not been obtained within three (3) years of the date of the Motion approving the Project”; and

WHEREAS, The Commission acknowledges the potentially contradictory nature of these two sentences. Specifically, this language suggests both (1) that the Authorization remains valid only for a specific period of time and (2) that the Authorization remains valid beyond that period of time and until the Commission affirmatively revokes it; and

WHEREAS, The Commission has been advised that in order to revoke or rescind an Authorization, it must hold a hearing at which it considers the matter along with testimony from interested parties; and

WHEREAS, The Commission is aware that certain types of projects are subject to specific provisions of the Planning Code that deal with project implementation. For example, Planning Code Section 321(d) provides that most office projects of more than 25,000 square feet commence construction within 18 months of the Commission’s approval; and

WHEREAS, The Commission acknowledges that when presented with an application for a Building Permit that would implement an Authorization that exceeds the time frame set forth in that Authorization, the Department’s practice has been to require the filing of a new application to ‘extend’ the Authorization and then to calendar the matter before the Commission so that it may grant or deny such extension; and

WHEREAS, The Commission acknowledges that, in the case of as-of-right Building Permits which would be issued by DBI more than three years after Planning Department approval, the Department has asked DBI to “re-route” the application to the Planning Department prior to issuance so that projects which are subject to neighborhood notification under Planning Code Sections 311 or 312 can be re-noticed; and

NOW, THEREFORE BE IT RESOLVED, That future Performance Time Frames for typical projects (unless the Commission specifically directs otherwise and excepting those projects affected by specific provisions of the Planning Code dealing with project implementation) be as follows:

1. Validity. The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.
2. Expiration and Renewal. Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of

the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

3. Diligent pursuit. Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.
4. Extension. All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.
5. Conformity with Current Law. No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval; and

BE IT FURTHER RESOLVED, That the Commission requests that the Department monitor the ongoing implementation and interpretation of the typical Performance Time Frames set forth above and inform the Commission of any necessary adjustments to the language provided in this Resolution; and

BE IT FURTHER RESOLVED, That the Commission urges the Zoning Administrator to use the Performance Time Frame language set forth above as a guide when interpreting similar language in an earlier approval that either did not qualify for the "Opt-In Stimulus Program" set forth in Planning Commission Resolution No. 18838, or did not enroll in the Program. Specifically, barring (1) appeals or legal challenges as set forth above and/or (2) any applicability of Commission Resolution Number 18838, a project wishing to move forward outside of the Performance Time Frame set forth in its Authorization should be brought before the Commission so that the project can either be re-authorized or its Authorization can be revoked.

BE IT FURTHER RESOLVED, That the Commission urges the Zoning Administrator to maintain the current practice of only requesting re-routing from DBI and requiring subsequent re-noticing of as-of-right Building Permit Applications that are subject to Planning Code Sections 311 or 312 when three (3) or more years have passed from the Department's or the Commission's original approval; and

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on April 4, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES: Fong, Antonini, Borden, Hillis
NOES: Moore, Sugaya, Wu
ABSENT: None
ADOPTED: April 4, 2013