



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution Number 18838

HEARING DATE: APRIL 4, 2013

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PLANNING COMMISSION POLICY ESTABLISHING AN 'OPT-IN' STIMULUS PROGRAM TO FOSTER THE IMPLEMENTATION OF PROJECTS THAT HAVE BEEN DELAYED BY THE RECENT ECONOMIC RECESSION.

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, The Commission hereby incorporates the recitals set forth in Commission Resolution Number 18837 as though fully set forth; and

WHEREAS, The Commission recognizes that the global economic crisis from which San Francisco is now beginning to recover has exceeded the depth and breadth of recent economic downturns, resulting in a profound impact on the liquidity and stability of credit markets and the availability of financing for a range of development projects; and

WHEREAS, Many projects that were entitled prior to and during this crisis are now able to secure financing and proceed toward implementation; and

WHEREAS, According to the National Bureau of Economic Research, a private, nonprofit research group, the recent economic recession began in December 2007. Owing to the typical three-year Performance Time Frame, development projects that were granted Authorizations as long ago as 2005 – eight years ago - were therefore impacted by the recession; and

WHEREAS, The roughly two year-period immediately prior to the start of the recession was affected by significant local, state, and national events. In particular, (1) the lingering economic issues associated with the "Dot Com" bust of the late 90's and early '00's, (2) the 2002 change to CEQA that put in place a more exhaustive appeals process that resulted in increased uncertainty in the approval process and (3) San

Francisco's Proposition D, which passed in March of 2002 and resulted first in a hiatus for the Planning Commission followed by the instatement of a newly composed and as-yet unknown Commission. The impact of these events on the development review process suggests that an effect not unlike that of the recent recession was actually felt by development projects as early as 2003; and

WHEREAS, Of the approximately 190 physical development projects that were authorized by the Commission over the past eight years that were not subject to unique Performance Time Frames or Code-required time frames, approximately 85 are either built or are currently under construction, 15 have obtained permits and are able to commence construction, 55 have applied for but have not yet obtained permits, and 35 have not yet applied for permits; and

WHEREAS, Of the approximately 90 projects that were entitled in the past eight years but which have not yet obtained a permit, 10 will exceed the time frames set forth in their Authorizations in less than one year if no permit is obtained, while 50 have already exceeded the time frames set forth in their Authorizations; and

WHEREAS, Of the approximately 50 projects that have exceeded the time frames set forth in their Authorizations, there are 35 residential projects accounting for 2,600 dwelling units and 15 significant non-residential projects (such as those adding at least 10,000 square feet or constructing major new buildings); and

WHEREAS, Of the approximately 10 projects that will exceed the time frames set forth in their Authorizations in less than one year if no permit is obtained, there are 5 residential projects accounting for 300 dwelling units and 5 significant non-residential projects (such as those adding at least 10,000 square feet or constructing major new buildings); and

WHEREAS, In the past five years, roughly 35 extensions of Authorizations have been sought from the Commission. Only one was disapproved. The single disapproval was for an affordable housing project for senior citizens approved seven years prior to the consideration of the extension where the developer had not secured any of the necessary subsidies, arranged for any partnerships, or maintained the subject property in a nuisance-free condition; and

WHEREAS, The Department has expended more than 750 hours of staff time to review these 35 adjudicated cases and present them to the Commission; and

WHEREAS, Over the past eight years - and with respect to un-implemented Authorizations that were not subject to Code-required time frames - roughly one dozen physical development projects have been granted Authorizations that would only extend the Performance Time Frames contained in previous Authorizations. The language used in these Authorizations varies significantly, however some approval Motions contain the same ambiguities as discussed in Planning Commission Resolution Number 18837 and therefore require interpretation by the Zoning Administrator; and

WHEREAS, The Commission acknowledges the ability of the Zoning Administrator to interpret conditions of approval associated with a Commission approval; and

WHEREAS, The Commission acknowledges that, in most cases, until a Building Permit is issued to implement an Authorization, the “law of the day” applies to such permit. Specifically, a permit seeking to implement an Authorization must not only conform to all the terms of that Authorization but also must conform to all provisions of the Planning Code in effect at the time of approval of that permit, regardless of whether such provision was in effect at the time of the approval of the original Authorization.

NOW, THEREFORE BE IT RESOLVED, That the Commission hereby establishes a limited, one-time stimulus program (“Program”) in order to allow approved development projects that have not yet procured permits for construction and may not otherwise be able to procure such permits within their Performance Time Frames, to do so, as follows:

1. **Eligibility.** The Program shall only be available to Authorizations that:
 - a. the Commission approved between April 4, 2003 and October 4, 2011; and
 - b. are subject to standard Performance Time Frames described above or are subject to Performance Time Frames that are similarly ambiguous, as discussed in Planning Commission Resolution Number 18837; and
 - c. are not subject to specific Code provisions that limit time frames for project implementation [e.g. §321(d) for large office projects]; and
 - d. are for projects having an estimated construction cost of no less than \$500,000; and
 - e. do not have an issued, implementing building or site permit as of the date of this Resolution; and
 - f. do not involve any Wireless Telecommunications Facility.

2. **Enrollment.** Only those development projects for which a letter of intent to enroll is received by the Department within a 60-day ‘opt-in’ period commencing on the mailing date of the public notice of the Program (as set forth below) may be enrolled in the Program.

3. **Notification.** The Department shall provide mailed notice of the Program to (a) sponsors of projects to which the Program could apply (as set forth above), and (b) owners of properties on which those projects would be located as shown on the most recent Assessor’s rolls. The Department shall issue such notice as soon as is practical following adoption of this Resolution.

4. **Stimulus.** When presented with a Building or Site Permit Application that would implement an Authorization that (a) exceeds the Performance Time Frame set forth in that Authorization and (b) is enrolled in the Program, the Commission recommends that the Zoning Administrator approve such application in lieu of submitting the Authorization to the Commission for consideration, so long as the Building or Site Permit application:
 1. complies with all other conditions of approval and is consistent with the conditional use permit issued; and
 2. complies with all Planning Code provisions currently in effect, including but not limited to use limitations, building form controls and development impact fees; and
 3. is approved by the Department and issued by DBI no later than October 4, 2014 (18 months from the date of this Resolution). This 18-month period may be extended at the discretion of

the Zoning Administrator only where implementation of the Authorization is delayed by an appeal or by a legal challenge and only by the length of time for which such appeal or challenge had caused delay; and

BE IT FURTHER RESOLVED, That when presented with a Building Permit Application that would implement an Authorization that (1) has not met the Performance Time Frame set forth in that Authorization and is not enrolled in the Program or (2) is enrolled in the Program but has exceeded the 18-month period set forth above, the Commission urges the Zoning Administrator to require the project sponsor to seek a renewal of the Authorization through the filing of a new application for, or amendment to, the Authorization. Should the project sponsor decline to file such an application and decline to withdraw the Building Permit Application, the Commission urges the Zoning Administrator and Planning Director to schedule a public hearing in order for the Commission to consider revocation of the Authorization. Should the Commission not revoke the Authorization following the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization and any other necessary changes to, or conditions on, the proposed development.

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