



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

**DATE:** March 7, 2013  
**TO:** Honorable Members of the Planning Commission  
**FROM:** John Rahaim - Director of Planning  
**STAFF CONTACT:** Daniel A. Sider - Planning Department Staff  
**RE:** Update Memo - Proposed Commission Policies on  
Timing of Project Implementation and Performance Conditions

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

On January 24, 2013, the Planning Commission received a memorandum and proposed draft resolution in connection with a planned January 31, 2013 hearing concerning Commission policy on time frames for the implementation of projects requiring Commission approval. The January 31 hearing was continued to March 14, 2013, when the Commission will conduct an informational discussion on this matter in anticipation of possible action on April 4, 2013. This policy, like others, would be adopted through Commission Resolution and could be amended or rescinded by the Commission at any properly noticed public hearing. It does not require approval by the Board of Supervisors or other bodies.

The policy is intended to address projects that were approved by the Commission immediately prior to and during the recent economic downturn. While many of these projects have only recently secured financing, they have not procured permits to construct the projects within the apparent time periods contained in their original authorizations. This, coupled with unclear language regarding such time periods, was suggestive of Commission review and possible action.

**Procedural background.** Conditions of approval for Planning Commission authorizations generally include performance time frames, which are specific time limits within which a building permit to implement the project must be obtained. Based on an interpretation made by the Zoning Administrator in 1983, typical Commission authorizations contain time limits of three years. When a building permit application to implement a Commission authorization is made after this three year period, the Department's practice is to require a Commission hearing to "renew" the authorization.

Additionally, while the clarity of current "boilerplate" performance time frames has improved over the years, they remain ambiguous by suggesting either that a Commission authorization becomes invalid (a) immediately upon expiration of the three-year period *or* (b) only if the Commission determines to revoke the authorization after a public hearing. This ambiguity is exacerbated by the number of projects now seeking to move forward which were approved more than three years ago but for which no revocation hearing has yet occurred.

**Practical background.** The Department has assessed the status of Commission authorizations that have been affected by the recession. Because projects are typically implemented within a three-year window of approval, and because the recession began in December 2007, authorizations granted from 2005 onward – roughly the last eight years - have been examined. 50 projects, or nearly one-quarter of all physical development projects authorized by the Commission in that period, have exceeded the time frames set forth in their authorizations. This figure includes 35 residential projects accounting for 2,600 dwelling units

and 15 significant non-residential projects (e.g. new construction or additions of at least 10,000 square feet). An additional 10 projects – including 300 dwelling units - will exceed the time frames set forth in their authorizations this calendar year if no permit is obtained. It is also useful to note that during the most recent five-year period, roughly 35 extensions of performance periods have been asked of the Commission. Only one – an affordable senior housing project with no demonstrable progress over more than seven years – has been disapproved.

**The January proposal.** Materials transmitted to the Commission in anticipation of the January 31 hearing generally described two major policy changes. The first was to provide guidance to the Zoning Administrator in the interpretation of performance conditions such that a building permit application seeking to implement a Commission authorization after the initial performance period had run could nonetheless be administratively approved so long as no more than six years had passed since the original authorization. The second was to update the conditions of approval for performance time frames for new projects in order to unambiguously establish a performance period of six years.

**The current proposal.** The current proposal continues to address both policy changes but is now set forth in two separate Resolutions in order to reflect these two related but distinct issues. *With respect to boilerplate language*, no change in the typical three-year policy is now proposed. Rather, the proposed language would simply clarify and affirm the Commission’s intent and the Department’s current practice. *With respect to the treatment of previous authorizations that have not yet been implemented*, a more targeted approach would foster only the implementation of projects which were delayed by the recession. The stimulus program would establish a one-time 60-day window during which projects authorized in the past eight years would be provided notice of the program and could choose to ‘opt-in.’ Authorizations for enrolled projects would be considered not to have been revoked on the condition that a site or building permit was issued within 18-months of the commencement of the program. Development projects that did not ‘opt-in’ would be required to seek new authorizations from the Planning Commission in order to move forward.

**Legacy elements in the new proposal.** Like the January proposal, the current proposal would communicate and record longstanding advice from the City Attorney’s Office regarding the “law of the day.” Specifically, regardless of any performance time frame, an implementing building permit application must not only conform to all the terms of the underlying Commission authorization but also must conform to all provisions of the Planning Code in effect at the time of approval of that building permit application, *regardless of whether such provision was in effect at the time of the Commission’s authorization*. For example, a project within the Market and Octavia Plan Area that received Conditional Use authorization prior to that plan’s effective date but that did not obtain a building permit to implement the project until after the plan’s effective date would nonetheless be subject to all new and applicable provisions of that plan – including provisions such as impact fees.

Also, and as with the January proposal, the current proposal would address only Conditional Use Authorizations, Downtown Project Authorizations, and Eastern Neighborhoods Large Project Authorizations under Planning Code Sections 303, 309 and 329, respectively. It would not address large office projects or tower projects in Rincon Hill, which are subject to the specific timing requirements of Planning Code Sections 321(d) and 309.1(e), respectively. Projects that are beyond the Commission’s jurisdiction – such as those within Mission Bay or on Port property – along with some projects approved by the Planning Commission using differently worded conditions of approval, would be similarly unaffected.



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution Number \_\_\_\_\_

HEARING DATE: APRIL 4, 2013

*Date:* March 7, 2013  
*Staff Contact:* Daniel A. Sider – (415) 558-6697  
dan.sider@sfgov.org

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
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Planning  
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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 only where implementation of the project is delayed by an appeal or by a legal challenge and only by the length of time for which such appeal or challenge has caused delay.
5. Conformity with Current Law. Regardless of this Authorization or previous Authorizations or approvals by the Commission or Department and regardless of the provisions of the Planning Code in place at the time of this or other Authorization(s), no application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of the Planning Code 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 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:

NOES:

ABSENT:

ADOPTED: April 4, 2013

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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 \_\_\_\_\_ 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 immediately 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, 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, 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, 2005 and October 4, 2011; and
  - b. are subject to standard Performance Time Frames described above; 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; and
  - g. have not already procured an extension of applicable Performance Time Periods.
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
    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.

Resolution No. \_\_\_\_\_  
April 4, 2013

**Planning Commission Stimulus Policy for  
Recession Recovery & Project Implementation**

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:

NOES:

ABSENT:

ADOPTED: April 4, 2013