



# SAN FRANCISCO PLANNING DEPARTMENT

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## Memo to the Historic Preservation Commission

HEARING DATE: NOVEMBER 2, 2011

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*Project Name:* **Planning Code Amendments: Articles 10 & 11**  
*Case Number:* 2011.0167I  
*Initiated by:* John Rahaim, Director of Planning  
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This memorandum concerns the Planning Code Amendments to Articles 10 and 11.

The proposed revisions to Planning Code Articles 10 and 11 were drafted by the Historic Preservation Commission (HPC) over the course of a series of hearings held between July and December, 2010. The City Attorney's office has reviewed the amendments to both Articles 10 and 11 as drafted by the HPC and has made suggested revisions on the drafts in order to approve them as-to-form. In addition, on September 7, October 3, October 13, and October 17, 2011 Supervisor Wiener circulated four Memoranda to the Historic Preservation Commission with proposed further amendments to Articles 10 and 11.

Included as attachments in today's packet are:

1. A clean copy of Article 11 that includes the proposed modifications made by the Deputy City Attorney Marlena Byrne as well as additional amendments made by the Historic Preservation Commission over the course of the September 21<sup>st</sup>, October 5<sup>th</sup>, and October 19<sup>th</sup>, 2011 public hearings;
2. Four Memos to the HPC from Supervisor Wiener: dated September 7, 2011, October 3, 2011, October 13, and October 17<sup>th</sup>, 2011;
3. Draft Resolution recommending that the Board of Supervisors adopt with modifications an ordinance that would amend Article 11 of the Planning Code;
4. Information regarding Economic Hardship clauses adopted four California jurisdictions;

### SUMMARY OF THE OCTOBER 19, 2011 HEARING

At the October 19, 2011 HPC hearing, the Commission focused on a review of the proposed changes to Article 11, and passed a second Motion of Intent to adopt a resolution recommending that the Planning Commission recommend approval with modifications to the Board of Supervisors.

In addition, the Commission discussed additional proposed amendments to Articles 10 and 11 made by members of the public including Ms. Shanahan.

At the October 19<sup>h</sup> hearing, the HPC adopted Resolution No. 666 recommending that the Planning Commission adopt with modifications the revised version of Article 10. The HPC also passed a second Motion of Intent to adopt a recommendation regarding Article 11.

## ISSUES FOR CONSIDERATION AT THE NOVEMBER 2 HEARING:

The Planning Commission will hold an informational hearing about the proposed amendments to Articles 10 and 11 on October 27, 2011. An adoption hearing will be held by the Planning Commission on or after November 17, 2011. In order for the Planning Commission to consider a final recommendation from the HPC on the amendments, motions making recommendations need to be finalized at least one week in advance of the adoption hearing.

In considering the proposed amendments to Articles 10 and 11, there are three components that the HPC has considered over the past five public hearings:

- Modifications suggested by Deputy City Attorney Marlena Byrne;
- Amendments recommended by Supervisor Wiener;
- Amendments recommended by Department Staff and members of the public in response to ongoing dialogue with Supervisor Wiener and his staff.

## ISSUES FOR CONSIDERATION: DEPARTMENT RESPONSE TO SUPERVISOR WIENER'S MEMO

The Memos from Supervisor Wiener (Exhibit C) that outline suggested amendments to Articles 10 and 11 of the Planning Code are attached for review. The following specific points in response to the Supervisor Wiener Memos are provided a discussion.

### Article 10:

1. **SECTION 1002: POWERS AND DUTIES OF THE PLANNING DEPARTMENT AND THE HISTORIC PRESERVATION COMMISSION, (September 7, and October 13, 2011 Memos) , subsection (8), edit as follows:**

(8) Shall have the authority to oversee and direct the survey and inventory of historic properties provided that no such survey or inventory shall proceed unless one of the following two occur: (1) a majority of property owners in the proposed survey area agree to the survey's commencement and the Board of Supervisors, by majority vote of all members, approves the survey's commencement; or (2) the Board of Supervisors, by a 2/3 vote of all members, approves the survey's commencement;

The amended language in Supervisor Wiener's memo dated September 7, 2011 would require community or Board of Supervisors approval of the initiation of all historic resource surveys. Because historic resource surveys are generally associated with broader long-range community planning efforts, the amended language would require the Department to obtain property owner and Board of Supervisor approval prior to proposing any zoning changes or evaluating any long-range planning efforts for compliance with the California Environmental Quality Act (CEQA).

This language creates a significant obstacle for all community planning efforts. The Department is committed to developing goals that outline a commitment to public outreach and participation. Many of the City's Elements within the General Plan outline such policies.

The Department's original recommendation was to remove the amended language and propose an interim policy to be adopted by the HPC until the Preservation Element is finalized. The interim policy would provide for comprehensive public outreach for historic resource surveys in order to meet the following goals:

1. To assure adequate public outreach is initiated prior to the commencement of any historic resource survey and that continued public outreach and notice occurs throughout the documentation and adoption process;
2. To provide opportunities for ongoing community input throughout the historic resource survey documentation and adoption process;
3. To increase the public understanding of the role of the historic resource surveys within the larger community planning process;
4. To identify partnerships with the public, Historic Preservation professionals, other City Agencies, and a full range of City stakeholders to ensure that the historic resource survey is completed in an objective and accurate manner according to best practices; and,
5. To develop collaborative working relationships with a broad representation of the public, especially with those underrepresented within the community who may not generally participate in the local planning process.

*Department Recommendation:* Based on the Supervisor's memo, dated October 13, 2011, he is amenable to the development of publically accessible administrative bulletins that address the policies drafted rather than including the amended language outlined in the September 7, 2011 memo. The Department supports this approach.

2. **SEC. 1004.2: DECISION OF THE HISTORIC PRESERVATION COMMISSION (September 7, 2011 Memo)** subsection (c), edit as follows:

(c) Referral of Proposed Designation. If the HPC recommends approval of a landmark designation, it shall send its recommendation to the Board of Supervisors, without referral to the Planning Commission. If the HPC recommends approval of an historic district designation, it shall refer its recommendation to the Planning Commission, which shall have 45 days to review and comment on the proposed designation, which comments, if any, shall be sent by the Department to the Board of Supervisors with the HPC's recommendation. Such comments shall be transmitted to the Board of Supervisors as a resolution and shall (i) address the consistency of the proposed designation with the General Plan and the priority policies of Section 101.1 and (ii) identify any amendments to the General Plan and to the priority policies of Section 101.1 necessary to facilitate adoption of the proposed designation. If the HPC disapproves designation of a landmark or historic district, that decision shall be final and shall not require referral unless appealed as set forth below.

*Department recommendation:* Every action taken by the HPC already requires findings under Section 101 which are attached to all draft decisions before the HPC. No amendment is necessary to this section.

3. **SEC. 1004.4: APPEAL TO THE BOARD OF SUPERVISORS (October 13, 2011 Memo)**, subsection (b), edit as follows:

(b) Decision. The Board of Supervisors may overrule the HPC and approve, modify and approve the designation by a majority vote of all its members. The Board of Supervisors may designate an historic district by a majority vote of all its members if a majority of the property owners in the proposed historic district consent in writing to the designation; in the event a majority of the property owners in the proposed historic district have not consented in writing to the designation, the Board of Supervisors may nonetheless designate the historic district by a 2/3 vote of all its members.

Currently, the Department forwards all public comments in order for comments to be considered prior to any adoption hearing in order to inform the decision-making process. The Department is open to providing a mechanism for public input for potential landmark designations, including individual landmarks and historic districts.

However, the Department has serious concerns about any new requirement to obtain consent by owners prior to designating historic districts. This would set a precedent for requiring a public vote on specific land use changes rather than depending on the judgment of professionals in the Department and on the HPC and the Board of Supervisors. There will always be some members of the public that are not interested or engaged in the community planning process and obtaining their vote, regardless of position, will be nearly impossible. It also appears that a requirement to record a majority of the votes would prohibit the City from taking any action if less than a majority of those members of the public decide not to vote.

*Department Recommendation: The Department recommends that this topic be further discussed with appropriate stakeholders, including commercial tenants and renters, at a future public forum in order to best resolve the concerns of all parties.*

4. **SEC. 1006.1. APPLICATIONS FOR CERTIFICATE OF APPROPRIATENESS (September 7, 2011 Memo)** , subsection (e), edit as follows:

(e) Multiple Planning Approvals: For projects that require multiple planning approvals, the HPC shall review and act on any Certificate of Appropriateness before any other planning approval action. For projects that (1) require a conditional use authorization or permit review under Section 309, et. seq. of the Code, and (2) do not concern an individually landmarked property, the Planning Commission may modify any decision on a Certificate of Appropriateness by a two-thirds vote, provided that the Planning Commission shall apply all applicable historic resources provisions of the Code and take into account all relevant General Plan and Planning Code policies, in addition to all applicable historic resources provisions. For properties located on vacant lots, the Planning Commission may modify any decision on a Certificate of Appropriateness by a two-thirds vote, provided that the Planning Commission shall apply all applicable historic resources provisions of the Planning Code and take into account all relevant General Plan and Planning Code policies, in addition to all applicable historic resources provisions.

*Department recommendation: Every action already requires findings under Section 101 which are attached to all draft decisions before the HPC. No amendment is necessary to this section.*

5. **SEC. 1006.3. SCHEDULING AND NOTICE OF HEARING (October 13, 2011 Memo)** , subsection (a)(4), edit as follows:

(4) For buildings located in historic districts: by mail not less than 20 days prior to the date of the hearing to all owners and occupants of the subject property and owners and occupants of properties within ~~300~~ 150 feet of the subject property.

The Historic Preservation Commission is proposing the following amendments regarding notice of a Certificate of Appropriateness hearing:

- 150-ft to owners and occupants for individual landmarks;

- 300-ft to owners and occupants within the district.

An Administrative Certificate of Appropriateness doesn't require notice. A project that requires a Certificate of Appropriateness within a Residential (R) District will also likely require Section 311 notification for the building permit application if the project includes an addition, new construction, or other alteration that expands the footprint of the existing building. The Zoning Administrator has confirmed that these notices can be combined.

*Department recommendation: To leave noticing requirements as proposed by the Historic Preservation Commission. The revised language of Article 10, Section 1006.3(a)(3) and (4) is as follows:*

*(3) For landmark sites: by mail not less than 20 days prior to the date of the hearing to all owners and occupants of the subject property and owners and occupants of properties within 150 feet of the subject property;*

*(4) For buildings located in historic districts: by mail not less than 20 days prior to the date of the hearing to all owners and occupants of the subject property and owners and occupants of properties within 300 feet of the subject property.*

6. SEC. 1006.6. STANDARDS FOR REVIEW OF APPLICATIONS (September 7, and October 13, 2011 Memos), subsection (b), edit as follows:

*(b) The proposed work's compliance with the Secretary of Interior's Standards for the Treatment of Historic Properties, as interpreted by the Planning Department for specific application in San Francisco, including any Guidelines, Interpretations, Bulletins, or other materials that the Planning Department or HPC has adopted (the "San Francisco Standards"), shall be considered. The San Francisco Standards shall be promulgated by the Planning Department following a public planning process, determination of conformance with the General Plan and Planning Code by the Planning Commission, and adoption by the HPC. The proposed work shall comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties.*

The Standards are a philosophical framework and are meant to be interpreted and to guide proposed work on historic properties based on the significance, the intent of the project, and economic and technical feasibility. For federal tax credit projects the State Office of Historic Preservation (OHP) and the National Park Service (NPS) do apply the Standards conservatively. Aside from tax credit projects, the Standards are widely used and interpreted by local municipalities nationwide. As a Certified Local Government (CLG) San Francisco has the ability to interpret the Standards, within reason, based on the specific conditions and needs of the City.

Regarding the Supervisor's Memo, dated October 13, 2011, the Department recommends using one set of interpretations of the Secretary of the Interior's *Standards* (Standards) for the review of individual Landmark and Landmark districts. The Department believes that these interpretations can address nuances between review of Individual Landmarks and Landmark districts as well as levels of significance that the Supervisor would like to clarify.

*Department recommendation: Replace and reword language under (b) subsection for clarity:*

*"For applications pertaining to landmark sites and historic districts, the development of interpretations and guidelines based on the Secretary of the Interior's Standards, which will be known as the "San Francisco*

*Standards," shall be used for the purpose to be consistent with and appropriate for the implementation of the purposes of Article 10. The Planning Department shall be responsible for the development of the San Francisco Standards and shall commence a public planning process with final adoption of the San Francisco Standards by the HPC.*

*Pending the development of the San Francisco Standards, conformance with the Secretary of Interior's Standards for the Treatment of Historic Properties, including any Guidelines, Interpretations, Bulletins, or other materials based on the Secretary of the Interior's Standards that the Planning Department or the HPC has adopted to be consistent with and appropriate for the implementation of the purposes of Article 10 shall be considered"*

7. **SEC. 1014. APPLICABILITY (September 7, 2011 Memo)**, subsection (a)(2), edit as follows:  
(2) For historic districts: ~~1-year~~ 180 days after the date of initiation. The HPC or the Board of Supervisors may approve by resolution a one-time extension of up to 90 days of either of the above-time periods. The Board of Supervisors may approve by resolution one further extension of up to 90 days of either of the above time periods. If final action on such designation has not been completed before the end of the relevant time period, the permit application may be approved.

*The language was revised by the Deputy City Attorney at the request of the HPC at the October 19, 2011 hearing to reflect the following. The revised language of Article 10, Section 1014(a)(2) reads:*

(1) For proposed landmark sites: for 180 days after a resolution is passed initiating designation or confirming nomination of designation; or

(2) For historic districts: for one year after a resolution is passed initiating designation or confirming nomination of designation.

The HPC or the Board of Supervisors may approve by resolution a one-time extension of up to 180 days of either of the above-time periods. If final action on such designation has not been completed before the end of the relevant time period, the permit application may be approved.

Notwithstanding the above, the Department may approve a permit to construct, alter, or demolish a structure or other feature on a proposed landmark site or in a proposed historic district while proceedings are pending on a proposed designation if the property owner or authorized agent of the property owner applies for and is granted approval of a Certificate of Appropriateness for such work pursuant to the requirements of this Article 10.

**Department recommendation:** *The Department believes that both the HPC amendments and Supervisor Wiener's amendments achieve the same goal through a slightly altered process.*

*The HPC desired a longer period of time for review when a designation is pending for landmark districts. The Department agreed to the HPC's compromise of 180 days for sites and 1 year for districts.*

*The proposed amendment would allow for an HPC hold for 6 months with an additional 3 month extension. If the HPC wanted another 3 months for the total 1 year hold it would require the Department to go to the BOS on behalf of the HPC to ask for an extension.*

8. **FEATURES ONLY VISIBLE FROM A PUBLICLY RIGHT-OF-WAY, PUBLIC SPACE, OR PUBLICLY ACCESSIBLE INTERIOR CAN BE DESIGNATED. (October 13 and October 17, 2011)**  
Supervisor Wiener's October 17<sup>th</sup> Memo recommends the following addition to Article 10:

“Additionally, for districts and private landmarks subject to Article 10, there should be a uniform standard establishing that only exterior character-defining features, or interior character defining architectural features that are or historically have been visible or accessible from the public right of way or public space can be protected by a designating ordinance.”

The Department is concerned about codifying language that addresses the above suggestion. All local designating ordinances are specifically tailored to outline the character-defining features that are essential for an individual Landmark property or properties within a Landmark District to convey its significance. Creating a uniform standard that limits the specific parts of a building or the visible façades of a property than can be designated is out of conformance with standard historic preservation practice, it would promote façadism, and it would undermine the demolition definition and calculations outlined in Section 1005 of the Planning Code.

Including this language would likely jeopardize San Francisco’s Certified Local Government (CLG) Status because this practice is in direct conflict with standard historic preservation practice, which states “Parts of buildings, such as interiors, façades, or wings, are not eligible independent of the rest of the existing building.”<sup>1</sup>

*Department recommendation: Do not amend the Code to include the proposed language. Continue to designate a property according to standard practice. Identify character-defining features and review process regarding Certificates of Appropriateness for work to those features in the respective designating ordinance.*

**Article 11:**

**1. SEC. 1107. PROCEDURES FOR DESIGNATION OF ADDITIONAL CONSERVATION DISTRICTS OR BOUNDARY CHANGE OF CONSERVATION DISTRICTS (October 13, 2001 Memo)** , subsection (e), edit as follows:

(e) Designation by Board of Supervisors. The Board of Supervisors, or a committee thereof, shall hold a public hearing on any proposal so transmitted to it. The Board of Supervisors may approve, modify and approve, or disapprove the designation or boundary change by a majority vote of all its members. *If a majority of the property owners in the proposed Conservation District or within the expanded boundaries consent in writing to the designation; if a majority of the property owners in the proposed Conservation District or within the expanded boundaries have not consented in writing to the designation, the Board of Supervisors may nonetheless designate and expand the boundaries of the Conservation District by a 2/3 vote of all its members.*

**Department recommendation:** *Same recommendations as above with Section 1004.4. The Department recommends that this topic be further discussed with appropriate stakeholders, including commercial tenants and renters, at a future public forum in order to best resolve the concerns of all parties.*

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<sup>1</sup> National Register Bulletin 15: How to Apply National Register Criteria for Evaluation, 4.

2. SEC. 1111. APPLICATIONS FOR PERMITS TO ALTER, PERMITS TO DEMOLISH, AND PERMITS FOR NEW CONSTRUCTION IN CONSERVATION DISTRICTS, subsection (b) (September 7, 2011 Memo) , subsection (b), edit as follows:

(b) In addition to the contents specified for applications in (1) above, any application for a Permit to Demolish a Significant building or a Contributory building from which TDR have been transferred shall also contain the following information:

*Department recommendation:* Leave this section unamended so that the updated historic evaluation still is required.

*The proposed amendment would remove the requirement to provide an updated historic evaluation for an unrated building (Category V) (there are a number of unrated buildings that are significant that the Downtown Plan overlooked or chose not to rate). Owners often apply to have a property reclassified in order to leverage TDR. This section was also intended to provide a mechanism for all properties that may demonstrate that a building previously identified as Significant or Contributory no longer has integrity and should be reclassified.*

3. SEC. 1111. APPLICATIONS FOR PERMITS TO ALTER, PERMITS TO DEMOLISH, AND PERMITS FOR NEW CONSTRUCTION IN CONSERVATION DISTRICTS, subsection (c) (September 7, 2011 Memo) , subsection (c), the requirements (1)-(6) become (16) to (21) rather than a new subsection (c).

*Department recommendation:* The Department has no objection to this proposed amendment provided that the recommendation above for Section 1111(b) is included.

4. SEC. 1111.6. STANDARDS AND REQUIREMENTS FOR REVIEW OF APPLICATIONS FOR ALTERATIONS (September 7, 2011 Memo)

*Department recommendation:* Same recommendations as above with Section 1006.7

5. SEC. 1111.7. STANDARDS AND REQUIREMENTS FOR REVIEW OF APPLICATIONS FOR DEMOLITION, subsection (a), (September 7, 2011 Memo)

*Department recommendation:* The Department has no objection to this proposed amendment.

6. SEC. 1111.7. STANDARDS AND REQUIREMENTS FOR REVIEW OF APPLICATIONS FOR DEMOLITION, subsection (b), (September 7, 2011 Memo)

This amendment adds Category III buildings to this section. The Department is not clear as to why Category III buildings were not included originally. This may have been an oversight.

*Department recommendation:* The Department has no objection to this amendment because Category III buildings were omitted from this section and this includes them with other Contributing buildings (Category IV).



7. SEC. 1111.7. STANDARDS AND REQUIREMENTS FOR REVIEW OF APPLICATIONS FOR DEMOLITION, subsection (c)(A), (September 7, 2011 Memo)

This amendment would mean that the lack of an action by the BOS constitutes a decision not to reclassify a Category V building. From a process perspective this will be challenging for Planning and all review bodies. There is no indication of when the 180-day clock starts. If a new project also requires Section 309 review and CEQA clearance then the decision or lack of an action to reclassify would have to occur much sooner.

*Department recommendation: Insert a cross reference to Sections 1106 and 1107 procedures for reclassification.*

8. SEC. 1111.7. STANDARDS AND REQUIREMENTS FOR REVIEW OF APPLICATIONS FOR DEMOLITION, subsection (d), (September 7, 2011 and October 13, 2011 Memo)

In the October 13, 2011 memo, the Supervisors requested recommendations on another standard to be used in this section. The Department is currently working on this recommendation.

*Department recommendation: The use of CEQA terminology (such as "materially impair") within the Planning Code is strongly discouraged. The small amendment alters the intent of this section, and the added language will be very difficult to convey to the general public, as well as architects and Planning staff. The Supervisor has asked staff to work on language that would convey what constitutes an impact on the integrity of a Conservation District. We will continue to work on this language.*

9. SEC. 1111.7. STANDARDS AND REQUIREMENTS FOR REVIEW OF APPLICATIONS FOR DEMOLITION, subsection (e) (September 7, 2011)

*Department recommendation: Same as above for Sec. 1111.7: add a cross reference to Sections 1106 and 1107 procedures for reclassification.*

## ISSUES FOR CONSIDERATION: ECONOMIC HARDSHIP

At the request of the HPC and Supervisor Wiener, Department Staff has drafted language for consideration regarding Fee Waivers for Economic Hardship. Staff's intention was to draft the language narrowly enough to be useful while avoiding any large "loop holes." The Department recommends the addition of new Planning Code Sections 1006.1(f) and 1006.6(g), as follows:

### SEC. 1006.1. APPLICATIONS FOR CERTIFICATE OF APPROPRIATENESS.

*(f) Permit and Application Fee Waivers. In cases of economic hardship an applicant may be exempt from paying the full fees pursuant to Section 350(e)(2) of the Planning Code.*

### SEC. 1006.6. APPLICATIONS FOR CERTIFICATE OF APPROPRIATENESS

*(g) For applications for residential buildings in RH, RM, and RTO Districts, exemption from the requirements of Section 1006.6 may be considered when compliance with the requirements of this Section would create an extreme economic hardship for the property owner because of conditions peculiar to the particular structure or other feature involved provided that:*

1. The scope of work does not constitute a demolition pursuant to Section 1005(f) of the Planning Code.
2. The Planning Department has determined that the applicant meets the requirement for economic hardship such that the full fees have been waived pursuant to Section 350(e)(2) or the Planning Code.
3. The Zoning Administrator has determined that in all other respects the scope of work associated with the application is in conformance with Planning Code requirements.
4. The Historic Preservation Commission pursuant to Section 1006.4 of the Planning Code and upon confirmation of the above provisions has determined that the requirements of Section 1006.6 may be waived due to economic hardship and that completion of the scope of work will not be detrimental to the integrity of the Landmark or the Landmark district.

Staff continues to work with the Department's Finance team in order to develop appropriate processes and criteria for consideration regarding economic hardship.

## **RECOMMENDATION**

The Department recommends that the Historic Preservation Commission adopt the attached draft motion for Article 11.

The Department also recommends that the Historic Preservation Commission consider further amendments to Articles 10 and 11 based on the Department's response to Supervisor Wiener's memo.



# SAN FRANCISCO PLANNING DEPARTMENT

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## Historic Preservation Commission Draft Resolution

### Planning Code Text Changes: Article 11

HEARING DATE: NOVEMBER 2, 2011

*Project Name:* **Proposed Amendments to Article 11**  
*Case Number:* 2011.0167T  
*Initiated by:* John Rahaim, Director of Planning  
*Initiated:* July 8, 2010  
*Staff Contact:* Sophie Hayward, Legislative Affairs  
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*Reviewed by:* Tim Frye, Preservation Coordinator  
tim.frye@sfgov.org, 415-575-6822

*Recommendation:* **Approve Article 11 Amendments with Modifications**

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**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS AN ORDINANCE INITIATED BY THE PLANNING COMMISSION THAT WOULD AMEND THE PLANNING CODE ARTICLE 11 – PRESERVATION OF BUILDINGS AND DISTRICTS OF ARCHITECTURAL, HISTORIC, AND AESTHETIC IMPORTANCE IN C-3 DISTRICTS PER HPC DRAFT DATED OCTOBER 19, 2011; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS AND PLANNING CODE SECTION 101.1 FINDINGS.**

### PREAMBLE

WHEREAS, on February 3, 2010, the Planning Director requested that amendments be made to the Planning Code under Case Number 2010.0080T; and

WHEREAS, the proposed Planning Code text changes would amend several sections of the Code and in particular, to Articles 10 and 11; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing to consider the initiation of the proposed Ordinance on July 8, 2010; and

WHEREAS the Planning Commission adopted Resolution No. 18133 initiating amendments to the Planning Code on July 8, 2010; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing to consider the proposed Ordinance on August 5, 2010; and

WHEREAS the Planning Commission adopted Resolution No. 18157 recommending approval with modifications of the proposed ordinance to the Board of Supervisors on August 5, 2010; and

WHEREAS, pursuant to Charter Section 4.135, any proposed ordinance concerning historic preservation issues must be submitted to the Historic Preservation Commission (“HPC”) for review and recommendation to the Board of Supervisors; and

WHEREAS, the Historic Preservation Commission conducted a duly noticed public hearings to consider the proposed amendments to Articles 10 & 11 on July 21<sup>st</sup>, August 4<sup>th</sup>, 18<sup>th</sup>, September 1<sup>st</sup>, 15<sup>th</sup>, 29<sup>th</sup>, October 6<sup>th</sup>, 15<sup>th</sup> November 3<sup>rd</sup> and 17<sup>th</sup> and December 1<sup>st</sup> 2010 and August 17, 2011, September 7, 2011, September 21, 2011, October 5, 2011, October 19, 2011, and November 2, 2011; and

WHEREAS, the Historic Preservation Commission will transmit the October 5, 2011 draft Ordinance to the Planning Commission for its re-review; and

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c); and

WHEREAS, the HPC has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the HPC has reviewed the proposed Ordinance; and

**MOVED**, that the HPC hereby recommends that the Board of Supervisors *approve with modifications* the proposed ordinance for Article 11 as detailed in the draft dated November 2, 2011.

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. This Historic Preservation Commission was created in the fall of 2008 when the voters passed amendments to the San Francisco Charter establishing Section 4.135.
2. Article 10 (Preservation of Historical and Architectural and Aesthetic Landmarks) and Article 11 (Preservation of Buildings and Districts of Architectural, Historical, and Aesthetic Importance in the C-3 Districts) are the Planning Code chapters that outline the designation and permit review processes for historic buildings.
3. These Articles have not been updated and do not conform to Charter Section 4.135. The proposed revisions will simply make them consistent with Charter Section 4.135.

4. The additional changes proposed to Articles 10 and 11 will update preservation practices and policies and help streamline the designation and permit review processes.
5. Therefore, the HPC recommends *approval of Article 11 with modifications in the draft dated October 19, 2011 of the proposed Ordinance, which include edits recommended by the City Attorney in order to approve the proposed Ordinance as-to-form.*
6. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

#### **I. COMMERCE & INDUSTRY ELEMENT**

THE COMMERCE & INDUSTRY ELEMENT SETS FORTH OBJECTIVES AND POLICES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES AND SUPPORT SYSTEMS THAT CONSTITUTE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE. THE PLAN SERVES AS A COMPREHENSIVE GUIDE FOR BOTH THE PUBLIC AND PRIVATE SECTORS WHEN MAKING DECISIONS RELATED TO ECONOMIC GROWTH AND CHANGE.

#### **GOALS**

*The objectives and policies are based on the premise that economic development activities in San Francisco must be designed to achieve three overall goals: 1) Economic Vitality - the first goal is to maintain and expand a healthy, vital and diverse economy which will provide jobs essential to personal well-being and revenues to pay for the services essential to the quality of life in the city; 2) Social Equity - the second goal is to assure that all segments of the San Francisco labor force benefit from economic growth. This will require that particular attention be given to reducing the level of unemployment, particularly among the chronically unemployed and those excluded from full participation by race, language or lack of formal occupational training; and 3) Environmental Quality - the third goal is to maintain and enhance the environment. San Francisco's unique and attractive environment is one of the principal reasons San Francisco is a desirable place for residents to live, businesses to locate, and tourists to visit. The pursuit of employment opportunities and economic expansion must not be at the expense of the environment appreciated by all.*

#### **OBJECTIVE 1**

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

#### **POLICY 1.3**

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

#### **OBJECTIVE 6**

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

#### **POLICY 6.1**

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

**POLICY 6.3**

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of existing affordable housing and needed expansion of commercial activity.

**POLICY 6.8**

Preserve historically and/or architecturally important buildings or groups of buildings in neighborhood commercial districts.

**II. URBAN DESIGN ELEMENT**

THE URBAN DESIGN ELEMENT CONCERNS THE PHYSICAL CHARACTER AND ORDER OF THE CITY, AND THE RELATIONSHIP BETWEEN PEOPLE AND THEIR ENVIRONMENT.

**GOALS**

*The Urban Design Element is concerned both with development and with preservation. It is a concerted effort to recognize the positive attributes of the city, to enhance and conserve those attributes, and to improve the living environment where it is less than satisfactory. The Plan is a definition of quality, a definition based upon human needs.*

**OBJECTIVE 1**

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

**POLICY 1.3**

Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

**OBJECTIVE 2**

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

**POLICY 2.4**

Preserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.

**POLICY 2.5**

Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.

**POLICY 2.7**

Recognize and protect outstanding and unique areas that contribute in an extraordinary degree to San Francisco's visual form and character.

**III. DOWNTOWN ELEMENT**

THE DOWNTOWN PLAN GROWS OUT OF AN AWARENESS OF THE PUBLIC CONCERN IN RECENT YEARS OVER THE DEGREE OF CHANGE OCCURRING DOWNTOWN – AND OF THE OFTEN CONFLICTING CIVIC OBJECTIVES BETWEEN FOSTERING A VITAL ECONOMY AND RETAINING THE URBAN PATTERNS AND STRUCTURES WHICH COLLECTIVELY FOR THE PHYSICAL ESSENCE OF SAN FRANCISCO.

**OBJECTIVE 1**

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

**OBJECTIVE 12**

CONSERVE RESOURCES THAT PROVIDE CONTINUITY WITH SAN FRANCISCO'S PAST.

**Policy 12.1**

Preserve notable landmarks and areas of historic, architectural, or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.

*The goal of the proposed Ordinance is to update Articles 10 and 11 to make it conform to Charter Section 4.135.*

7. The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed Ordinance would not significantly impact existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses.*

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

*The proposed Ordinance will not impact existing housing and neighborhood character.*

- C) The City's supply of affordable housing will be preserved and enhanced:

*The proposed Ordinance will not impact the supply of affordable housing.*

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

*The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments.*

- G) That landmark and historic buildings will be preserved:

*The proposed Ordinance will update the Planning Code to reflect Charter Section 4.135 to incorporate the Historic Preservation Commission.*

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

*The proposed Ordinance will not impact the City's parks and open space.*

I hereby certify that the foregoing Resolution was ADOPTED by the San Francisco Historic Preservation Commission on November 2, 2011.

Linda D. Avery  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: November 2, 2011

Exhibit A: Draft Ordinance for with amendments to Article 11



FILE NO.

ORDINANCE NO.

[Planning Code—Article 11]

**Ordinance amending Article 11 of the San Francisco Planning Code in its entirety;  
making environmental findings and findings of consistency with the General Plan and  
Planning Code Section 101.1(b).**

NOTE: Additions are *single-underline italics Times New Roman*;  
deletions are ~~*strike-through italics Times New Roman*~~.  
Board amendment additions are double-underlined;  
Board amendment deletions are ~~strikethrough normal~~.

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 determines that:

(a) General Plan and Planning Code Findings.

(1) On \_\_\_\_\_ at a duly noticed public hearing, the Planning Commission in Resolution No. \_\_\_\_\_ found that the proposed Planning Code amendments contained in this ordinance were consistent with the City's General Plan and with Planning Code Section 101.1(b). In addition, the Planning Commission recommended that the Board of Supervisors adopt the proposed Planning Code amendments. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference. The Board finds that the proposed Planning Code amendments contained in this ordinance are on balance consistent with the City's General Plan and with Planning Code Section 101.1(b) for the reasons set forth in said Resolution.

(2) Pursuant to Planning Code Section 302, the Board finds that the proposed ordinance will serve the public necessity, convenience and welfare for the reasons set forth in Planning Commission Resolution No. \_\_\_\_\_, which reasons are incorporated herein by reference as though fully set forth.

1 (b) Historic Preservation Commission Findings. On \_\_\_\_\_ at a duly  
2 noticed public hearing, the Historic Preservation Commission in Resolution No.  
3 \_\_\_\_\_ recommended that the Board of Supervisors adopt the proposed Planning  
4 Code amendments. A copy of said Resolution is on file with the Clerk of the Board of  
5 Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference.

6 (c) Environmental Findings. The Planning Department has determined that the  
7 actions contemplated in this Ordinance are in compliance with the California Environmental  
8 Quality Act (California Public Resources Code section 21000 et seq.). Said determination is  
9 on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is  
10 incorporated herein by reference.

11 Section 2. The San Francisco Planning Code is hereby amended by amending Article  
12 11, to read as follows:

13 ARTICLE 11: PRESERVATION OF BUILDINGS AND DISTRICTS OF  
14 ARCHITECTURAL, HISTORICAL, AND AESTHETIC IMPORTANCE IN THE C-3 DISTRICTS

15 Sec. 1101. Findings and Purposes.

16 Sec. 1102. Standards for Designation of Buildings.

17 Sec. 1102.1. Designation of Buildings.

18 Sec. 1103. Standards for Designation of Conservation Districts.

19 Sec. 1103.1. Conservation District Designations.

20 Sec. 1104. ~~Notice of Designation.~~ Intentionally Left Blank.

21 Sec. 1105. ~~Reconsideration of Designation.~~ Intentionally Left Blank.

22 Sec. 1106. Procedures for Change of Designation: and Designation of Additional  
23 Significant and Contributory Buildings.  
24  
25

1           Sec. 1107. Procedures for Designation of Additional Conservation Districts or  
Boundary Change of Conservation Districts.

2           Sec. 1108. Notice of Designation.

3           Sec. 1109. Preservation Lots: Eligibility for Transfer of Development Rights.

4           Sec. 1110. Construction, Alteration or Demolition of Significant or Contributory Buildings  
5 or Buildings in Conservation Districts.

6           Sec. 1111. Applications for Permits to Alter, Permits to Demolish, and Permits for New  
7 Construction in Conservation Districts.

8           Sec. 1111.1. Determination of Minor and Major Alterations.

9           Sec. 1111.2. ~~Referral of Applications for Major Alterations to Landmarks Preservation~~  
10 ~~Advisory Board: Review by the Department of City Planning~~ Sign Permits.

11           Sec. 1111.3. ~~Recommendation by the Director of Planning~~ Review by the Planning  
12 Department.

13           Sec. 1111.4. ~~Consideration and Decision by the City Planning Commission~~ Scheduling and  
14 Notice of Historic Preservation Commission Hearings.

15           Sec. 1111.5. Decision by the ~~City Planning~~ Historic Preservation Commission.

16           Sec. 1111.6. Standards and Requirements for Review of Applications for Alterations.

17           Sec. 1111.7. ~~Permits for Signs~~ Standards and Requirements for Review of Applications for  
18 Permits to Demolish.

19           Sec. 1112. ~~Demolition of Significant and Contributory Buildings and Buildings in~~  
20 ~~Conservation Districts~~ Intentionally Left Blank..

21           ~~Sec. 1112.1. Applications for a Permit to Demolish.~~

22           ~~Sec. 1112.2. Disposition of Applications to Demolish Contributory Buildings and Unrated~~  
23 ~~Buildings in Conservation Districts.~~

1           ~~Sec. 1112.3. Applications to Demolish Significant Buildings or Contributory Buildings from~~  
2           ~~which TDR Have Been Transferred; Acceptance and Notice.~~

3           ~~Sec. 1112.4. Referral to the Landmarks Preservation Advisory Board Prior to Hearing; Review~~  
4           ~~by the Director of Planning.~~

5           ~~Sec. 1112.5. Planning Commission Hearing and Decision.~~

6           ~~Sec. 1112.6. Decision of the Planning Commission.~~

7           ~~Sec. 1112.7. Standards and Review of Applications to Demolish.~~

8           Sec. 1113. Standards of Review for New and Replacement Construction in  
9           Conservation.

10           Sec. 1114. Modification of a Decision of the Historic Preservation Commission.

11           Sec. 1115. Appeal.

12           Sec 1116. Unlawful Alteration or Demolition.

13           Sec. ~~1115~~1117. Conformity with Other City Permit Processes.

14           Sec. ~~1116~~1118. Unsafe or Dangerous Conditions.

15           Sec. ~~1117~~1119. Maintenance Requirements and Enforcement Thereof.

16           Sec. ~~1119~~1120. Enforcement and Penalties.

17           Sec. ~~1120~~1121 Relationship to Article 10.

18           Sec. ~~1121~~1122. Notice of Amendment.

19           Sec. ~~1122~~1123. Notice Procedure.

20           Sec. ~~1123~~1124. Time Provisions.

21           Sec. ~~1124~~1125. Severability.

22           Appendix A Category I Buildings.

23           Appendix B Category II Buildings.

24           Appendix C Category III Buildings.

25           Appendix D Category IV Buildings.

1 Appendix E Kearny-Market-Mason-Sutter Conservation District.

2 Appendix F New Montgomery-Second Street Conservation District.

3 Appendix G Commercial-Leidesdorff Conservation District.

4 Appendix H Front-California Conservation District.

5 Appendix I Kearny-Belden Conservation District.

6 Appendix J Pine-Sansome Conservation District.

7 SEC. 1101. FINDINGS AND PURPOSES.

8 (a) It is hereby found that a substantial number of the buildings in the C-3 District  
9 have a special architectural, historical, and aesthetic value. These buildings contribute  
10 substantially to San Francisco's reputation throughout the United States as a City of  
11 outstanding beauty and physical harmony. A substantial number of these special buildings  
12 have been and continue to be unnecessarily destroyed or impaired, despite the feasibility of  
13 preserving and continuing their use, and without adequate consideration for the irreplaceable  
14 loss to the people of the City of their aesthetic, cultural, historic and economic value.

15 (b) It is further found that distinct and definable subareas within the C-3 District  
16 possess concentrations of buildings that together create a unique historic, architectural, and  
17 aesthetic character which contributes to the beauty and attractiveness of the City. The quality  
18 of these geographic areas has been and continues to be degraded by the unnecessary  
19 demolition of buildings of substantial architectural and aesthetic merit, by their replacement  
20 with buildings which conflict with the character and scale of the area, and by alteration of  
21 buildings in a manner which conflicts with the character and scale of the area.

22 (c) It is therefore declared that the protection, enhancement, and perpetuation of  
23 buildings and definable subareas of special architectural, historical, and aesthetic interest is  
24

necessary to promote the health, safety, prosperity and welfare of the people of the City.

Accordingly, the purposes of this Article are:

(1) The protection, enhancement, and perpetuation of structures and subareas of special architectural, historical, and aesthetic character which contribute to the urban environment;

(2) The maintenance and improvement of a healthy economy for the City by enhancing both property values and the City's attractiveness as a place to do business;

(3) The protection and improvement of the City's attractiveness to tourists and other visitors, and the stimulus to business provided thereby;

(4) The enrichment of the educational, cultural, aesthetic and spiritual life of the inhabitants of the City by fostering knowledge of the heritage of the City's past and retaining the quality of the City's urban environment.

(d) It is further found that the use of Transferable Development Rights ("TDR") as provided herein is necessary to promote the urban planning and design goals of the *Master General Plan* by (1) maintaining appropriate overall development capacities in each zoning district within the C-3 area, as defined by applicable floor area, height, bulk and other parameters; (2) encouraging and directing development into the Special Development District in order to maintain a compact downtown financial district; and (3) facilitating the retention of Significant Buildings; and ~~encouraging the retention of~~ Contributory Buildings, and the compatible replacement or alteration of Unrated buildings in Conservation Districts, as defined herein.

## SEC. 1102. STANDARDS FOR DESIGNATION OF BUILDINGS.

The buildings in the C-3 Districts are divided into five categories according to the Building Rating methodology as set forth and explained in the Preservation of the Past section

1 of the Downtown Plan, a component of the ~~Master~~ General Plan. Those categories are as  
2 follows:

3 (a) Significant Buildings - Category I. Buildings ~~which~~ that:

4 (1) Are at least 40 years old; and

5 (2) Are judged to be Buildings of Individual Importance; and

6 (3) Are rated Excellent in Architectural Design or are rated Very Good in both

7 Architectural Design and Relationship to the Environment.

8 (b) Significant Buildings - Category II. Buildings:

9 (1) ~~Which~~ That meet the standards in Section 1102(a) above; and

10 (2) To which, because of their depth and relationship to other structures, it is  
11 feasible to add different and higher replacement structures or additions to height at the rear of  
12 the structure, even if visible when viewing the principal facades, without affecting their  
13 architectural quality or relationship to the environment and without affecting the appearance of  
14 the retained portions as separate structures when viewing the principal facades. The  
15 designation of Category II Buildings shall identify for each building the portion of the building  
16 beyond which such additions may be permitted.

17 (c) Contributory Buildings - Category III. Buildings ~~which~~ that:

18 (1) Are located outside a designated Conservation District; and

19 (2) Are at least 40 years old; and

20 (3) Are judged to be Buildings of Individual Importance; and

21 (4) Are rated either Very Good in Architectural Design or Excellent or Very Good in

22 Relationship to the Environment.

23 (d) Contributory Buildings - Category IV. Buildings ~~which~~ that:

24 (1) Are located in a designated Conservation District; and

25 (2) Are at least 40 years old; and

1 (3) Are judged to be Buildings of Individual Importance, and are rated either Very  
2 Good in Architectural Design or Excellent or Very Good in Relationship to the Environment.

3 (4) Are judged to be Buildings of Contextual Importance and are rated Very Good in  
4 Architectural Design and/or Excellent or Very Good in Relationship to the Environment.

5 (e) Unrated Buildings - Category V. Buildings ~~which~~ that are not designated as  
6 Significant or Contributory.

7 SEC. 1102.1. DESIGNATION OF BUILDINGS.

8 The buildings in the C-3 District are classified as follows:

9 (a) Significant Buildings - Category I. The buildings listed in Appendix A to this  
10 Article 11 are hereby designated as Significant Buildings - Category I.

11 (b) Significant Buildings - Category II. The buildings listed in Appendix B to this  
12 Article 11 are hereby designated as Significant Buildings - Category II.

13 (c) Contributory Buildings - Category III. The buildings listed in Appendix C to this  
14 Article 11 are hereby designated as Contributory Buildings - Category III.

15 (d) Contributory Buildings - Category IV. The buildings listed in Appendix D to this  
16 Article 11 are hereby designated as Contributory Buildings - Category IV.

17 (e) Unrated Buildings - Category V. All buildings in the C-3 District not otherwise  
18 designated in this Section are hereby designated as Unrated - Category V.

19  
20 SEC. 1103. STANDARDS FOR DESIGNATION OF CONSERVATION DISTRICTS.

21 Portions of the C-3 District may be designated as Conservation Districts if they contain  
22 substantial concentrations of buildings that together create subareas of special architectural  
23 and aesthetic importance. Such areas shall contain substantial concentrations of Significant  
24  
25



1 and Contributory Buildings and possess substantial overall architectural, aesthetic or historic  
2 qualities justifying additional controls in order to protect and promote those qualities.

3 SEC. 1103.1. CONSERVATION DISTRICT DESIGNATIONS.

4 The following Conservation Districts are hereby designated for the reasons indicated in  
5 the appropriate Appendix:

6 (a) The Kearny-Market-Mason-Sutter Conservation District is hereby designated as  
7 set forth in Appendix E.

8 (b) The New Montgomery-Second Street Conservation District is hereby designated  
9 as set forth in Appendix F.

10 (c) The Commercial-Leidesdorff Conservation District is hereby designated as set  
11 forth in Appendix G.

12 (d) The Front-California Conservation District is hereby designated as set forth in  
13 Appendix H.

14 (e) The Kearny-Belden Conservation District is hereby designated as set forth in  
15 Appendix I.

16 (f) The Pine-Sansome Conservation District is hereby designated as set forth in  
17 Appendix J.

18  
19 SEC. 1104. INTENTIONALLY LEFT BLANK. NOTICE OF DESIGNATION.

20 (a) ~~The Zoning Administrator shall notify by mail the owners of every building designated~~  
21 ~~by this ordinance as a Significant or Contributory Building and every building within a conservation~~  
22 ~~district as established by this ordinance.~~

23 (b) ~~With respect to buildings designated Significant or Contributory by this ordinance,~~  
24 ~~notice shall also be given by posting each such building in a conspicuous place as well as by~~  
25

1 *publication pursuant to the provisions of California Government Code Section 6064. The notice shall*  
2 *state that the owner of every building so designated has the right to request a change of designation*  
3 *and the time permitted for making such a request.*

4 *(c) — The Zoning Administrator shall cause a copy of this ordinance, or notice thereof, to be*  
5 *recorded in the office of the County Recorder for properties designated as Significant or Contributory,*  
6 *and for properties designated within a conservation district, by this ordinance.*

7  
8 **SEC. 1105. INTENTIONALLY LEFT BLANK. RECONSIDERATION OF DESIGNATION.**

9 *(a) — Request for Reconsideration. Within 45 days of the effective date of this ordinance, a*  
10 *request for reconsideration and change of a designation may be filed by any affected property owner,*  
11 *by any organization or group which has historic preservation stated as one of its goals in its bylaws or*  
12 *articles of incorporation, or the application of at least 50 registered voters of the City, based on the*  
13 *grounds that under the standards contained in Section 1102 the designation set forth in this ordinance*  
14 *is incorrect. Such a request shall be filed with the Department of City Planning on forms provided for*  
15 *that purpose. The Department of City Planning shall not accept or act upon any application filed after*  
16 *45 days have passed. Once a request for reconsideration has been made as to any building, no*  
17 *additional requests shall be accepted as to that building; however, another applicant may seek a*  
18 *change of designation different from that sought in the original reconsideration request. Any property*  
19 *owner who contends that the designation applicable to its property deprives the owner of a*  
20 *constitutionally protected property right, or that, by reason of such application, the property owner is*  
21 *entitled to compensation, shall assert such argument in connection with and in aid of the application*  
22 *filed under this Section and provide all evidence in the property owner's possession in support of such*  
23 *contention.*

24 *(b) — Referral to the Landmarks Preservation Advisory Board; Review by the Department of*  
25 *City Planning. Upon determination by the Zoning Administrator that an application is complete, the*

1 ~~Zoning Administrator shall promptly refer the matter to the Landmarks Preservation Advisory Board~~  
2 ~~for review and recommendation, and the Department of City Planning shall undertake a study of the~~  
3 ~~reconsideration request and prepare a report and recommendation. The Landmarks board shall~~  
4 ~~recommend approval, disapproval, or approval with modifications of the application within 30 days of~~  
5 ~~receiving it; provided, however, that if more than 30 applications are received within any 15-day~~  
6 ~~period at the Department of City Planning, the Zoning Administrator may extend the time for Advisory~~  
7 ~~Board action with respect to those applications for an additional period of time not to exceed 45 days,~~  
8 ~~and if more than 50 applications are received within such time, for an additional period of time deemed~~  
9 ~~necessary to allow sufficient time for Board review. If the Landmarks Board fails to respond within the~~  
10 ~~allowed time the City Planning Commission shall proceed without a recommendation from the~~  
11 ~~Landmarks Board.~~

12 (c) ~~— Submittal to the Planning Commission. Upon completion of the study by the Department~~  
13 ~~of City Planning and recommendation by the Landmarks Advisory Board, the matter shall be scheduled~~  
14 ~~for public hearing before the Planning Commission; provided, however, that in no event shall it be~~  
15 ~~scheduled later than 30 days after the Advisory Board has made its recommendation unless the~~  
16 ~~applicant consents to an extension of this time limit. Notice of the hearing shall be given by mail to the~~  
17 ~~applicant and to any other persons requesting notice.~~

18 (d) ~~— City Planning Commission Decision. The Planning Commission may approve,~~  
19 ~~disapprove, or approve with modifications the reconsideration application. The building shall be~~  
20 ~~deemed to be designated according to the decision of the Planning Commission and the provisions of~~  
21 ~~this Article II applicable to that designation shall apply to the building notwithstanding another~~  
22 ~~designation of the building in Appendices A, B, C or D to this Article.~~

23 SEC. 1106. PROCEDURES FOR CHANGE OF DESIGNATION; AND DESIGNATION  
24 OF ADDITIONAL SIGNIFICANT AND CONTRIBUTORY BUILDINGS.  
25

1 Buildings may be designated as Significant or Contributory or their designation may be  
2 changed through amendment of Appendices A, B, C and D of this Article. Such designation or  
3 change of designation shall be governed by the following provisions in lieu of the provisions of  
4 Section 302:

5 (a) Initiation. The designation or change of designation of a Significant or  
6 Contributory building may be initiated by motion of the Board of Supervisors, by resolution of  
7 the ~~Planning Commission or the Landmarks Preservation Advisory Board~~ Historic Preservation  
8 Commission, by the verified application of the owner or authorized agent of the affected  
9 property, by the application of any organization or group ~~which that~~ that has historic preservation  
10 stated as one of its goals in its bylaws or articles of incorporation, or by the application of at  
11 least 50 registered voters of the City. Except in the case of initiation by governmental bodies,  
12 any such application shall contain historic, architectural, and/or cultural documentation to support  
13 the initiation or change of designation as well as any additional information that may be required by  
14 the application procedures and policies established by the Historic Preservation Commission. ~~be filed~~  
15 ~~with the Department of City Planning upon forms prescribed by the Department of City Planning, and~~  
16 ~~shall be accompanied by all data required by the Department.~~ If initiated by motion of the Board of  
17 Supervisors, the Clerk of the Board of Supervisors shall refer the matter to the Historic Preservation  
18 Commission for its review and recommendation prior to passage by the Board of Supervisors, without  
19 referral to the Planning Commission.

20 (b) Notice; ~~Referral to the Landmarks Preservation Advisory Board;~~ Referral to the  
21 Historic Preservation Commission; Review by the Planning ~~Department of City Planning~~. Upon  
22 determination by the ~~Zoning Administrator~~ Department that a verified application is complete and  
23 contains all necessary information or upon receipt of the motion or resolution of one of the  
24 governmental bodies set forth in Subsection (a) above, the ~~Zoning Administrator~~ Department  
25 shall: (1) promptly schedule a hearing before the Historic Preservation Commission on the proposed

1 ~~designation or change of designation; and (2) send notice of the proposed designation or change of~~  
2 ~~designation hearing by mail no less than 20 days prior to the date of the hearing to the owner(s) of~~  
3 ~~the affected property, unless the application is that of the owner,; the applicant(s), if any, for the~~  
4 ~~designation or change in designation; to the owners of all properties within 150 feet of the affected~~  
5 ~~property; and to any interested parties who so request in writing to the Department. and (2) promptly~~  
6 ~~refer the matter to the Landmarks Preservation Advisory Board for review and the submittal of a~~  
7 ~~recommendation. The Department of City Planning shall also undertake a study of the proposed~~  
8 ~~designation or change of designation.~~

9 (c) Action by the Planning Historic Preservation Commission. ~~Upon completion of the~~  
10 ~~review of the~~The proposed designation or change of designation ~~by the Department of City~~  
11 ~~Planning and the submittal of the report by the Landmarks Board, the matter~~ shall be placed on the  
12 agenda of the Planning Historic Preservation Commission for public hearing. The Planning  
13 Historic Preservation Commission shall determine the appropriate designation or change in  
14 designation of the building. If the Planning Historic Preservation Commission approves or  
15 modifies the proposed designation or change of designation in whole or in part, it shall transmit  
16 ~~the proposal~~ its recommendation, together with a copy of the resolution ~~of approval~~, to the Clerk  
17 of the Board of Supervisors without referral to the Planning Commission.

18 (d) Designation by Board of Supervisors. The Board of Supervisors, or a committee  
19 thereof, shall hold a public hearing on any proposal so transmitted to it. The Board of  
20 Supervisors may approve, modify and approve, or disapprove the designation or change of  
21 designation by a majority vote of all its members.

22 (e) Appeal to Board of Supervisors. If the Planning Historic Preservation Commission  
23 disapproves the proposed designation or change of designation, such action shall be final  
24 except upon the filing of a notice of appeal to the Board of Supervisors within 30 days by the  
25 applicant or any of the persons, organizations or groups listed in Section 1106(a); provided,

1 however, that if the proposal was initiated by the Board of Supervisors, the Clerk of the *said*  
2 Board shall be notified immediately of the disapproval without the necessity for an appeal.

3 (f) Hearing and Decision By the Board of Supervisors. The Board of Supervisors, or a  
4 committee thereof, shall hold a public hearing on any such proposal appealed to it or initiated  
5 by it. The Board of Supervisors may uphold the Planning Historic Preservation Commission,  
6 overrule the Planning Historic Preservation Commission and approve, or modify and approve,  
7 the designation or change of designation by a majority vote of all its members.

8 (g) Notice of Board of Supervisors Proceedings. Notice of the hearing scheduled  
9 before the ~~Planning Commission and~~ Board of Supervisors, and of the availability of applicable  
10 reports, shall be given by mail no less than 20 days prior to the date of the hearing to the initiators  
11 of the designation or change of designation, to the ~~owners~~ owner(s) of any affected building, to  
12 any appellants, and to any other interested person or organization who so requests in writing to  
13 the Department requesting notice.

14 (h) Grounds for Designation or Change of Designation. The designation of a  
15 building may be changed if (1) changes in the area in the vicinity of a building located outside  
16 a Conservation District warrant a change in the rating of the building with respect to its  
17 relationship to the environment and therefore place it in a different category, pursuant to  
18 Section 1102; or (2) changes in Conservation District boundaries make a building of  
19 Contextual Importance fall outside a Conservation District and therefore no longer eligible for  
20 designation as a Contributory building, or, conversely, make a building of Contextual  
21 Importance fall within a Conservation District and therefore eligible for designation as a  
22 Contributory Building; or (3) changes in the physical features of the building due to  
23 circumstances beyond the control of the owner, or otherwise permitted by this Article, warrant  
24 placing the building in a different category pursuant to the standards set forth in Section 1102;  
25 or (4) restoration of the building to its original quality and character warrants placing the

1 building in a different category pursuant to the standards set forth in Section 1102; or (5) by  
2 the passage of time, the building has become at least 40 years old, making it eligible to be  
3 considered for designation as a Significant or Contributory building, pursuant to Section 1102;  
4 or (6) the discovery of new factual information (for example, information about the history of  
5 the building) makes the building eligible for rating as a Building of Individual or Contextual  
6 Importance and, therefore, eligible to be designated as a Significant or Contributory Building.

7  
8 SEC. 1107. PROCEDURES FOR DESIGNATION OF ADDITIONAL CONSERVATION  
9 DISTRICTS OR BOUNDARY CHANGE OF CONSERVATION DISTRICTS.

10 A Conservation District may be designated or its boundary changed through  
11 amendment of Section 1103.1 of this Article 11. The Historic Preservation Commission may  
12 recommend approval, disapproval, or modification of Conservation District designations or boundary  
13 changes to the Board of Supervisors. Such designation or boundary change shall be governed by  
14 the following provisions in lieu of the provisions of Section 302.

15 (a) Initiation of Designation or Boundary Change. The designation of an area of the  
16 C-3 District as a Conservation District or the change of District boundaries may be initiated by  
17 motion of the Board of Supervisors, by resolution of the ~~Planning~~Historic Preservation  
18 ~~Commissioner the Landmarks Preservation Advisory Board~~, upon the verified application of the  
19 owners or other authorized agents of greater than 25 percent of the structures in the area  
20 proposed for designation (or, as to an alteration, 25 percent of the structures of the proposed  
21 new district unless it would be an area smaller than the existing district, in which case it shall  
22 be 25 percent of the structures of the existing district), upon the verified application of any  
23 organization or group ~~which~~that has historic preservation stated as one of its goals in its  
24 bylaws or articles of incorporation, or upon the verified application of at least 150 registered  
25 voters of the City. Except in case of an initiation by governmental bodies, any such application

1 shall contain historic, architectural, and/or cultural documentation to support the designation or  
2 boundary change as well as any additional information that may be required by the application  
3 procedures and policies established by the Historic Preservation Commission ~~be filed with the~~  
4 ~~Department of City Planning upon forms prescribed by the Department of City Planning, and shall be~~  
5 ~~accompanied by all data required by said Department.~~

6 (b) Notice; Referral to the ~~Landmarks Preservation Advisory Board~~ Historic Preservation  
7 Commission; Review by the Planning Department of City Planning. ~~Notice, referral to the~~  
8 ~~Landmarks Board and review by the Department of City Planning shall be as provided in Section~~  
9 ~~1106(b) of this Article. If a proposed Conservation District designation or boundary change is initiated~~  
10 ~~by the Board of Supervisors, the Clerk of the Board shall refer the matter to the Historic Preservation~~  
11 ~~Commission for its review and recommendation. Upon determination by the Planning Department that~~  
12 ~~a verified application is complete and contains all necessary information or upon receipt of a motion or~~  
13 ~~resolution by the Board of Supervisors or the Historic Preservation Commission initiating designation~~  
14 ~~or a change in designation, the Department shall (1) promptly schedule a hearing before the Historic~~  
15 ~~Preservation Commission on the proposed district or boundary change; and (2) send notice of the~~  
16 ~~Historic Preservation Commission hearing by mail no less than 20 days prior to the date of the hearing~~  
17 ~~to the initiators of the designation or boundary change, to the owners of all lots within the proposed~~  
18 ~~new district or the district being modified, and to any interested parties who make a request in writing~~  
19 ~~to the Department.~~

20 (c) ~~Submittal to the Planning Commission. Submittal to and action by the Planning~~  
21 ~~Commission shall be as set forth in Section 1106(e) of this Article. Action by the Historic Preservation~~  
22 ~~Commission. The proposed designation or boundary change shall be placed on the agenda of the~~  
23 ~~Historic Preservation Commission for public hearing. If the Historic Preservation Commission~~  
24 ~~approves or modifies the proposed designation or boundary change in whole or in part, the~~  
25 ~~Department shall transmit the Historic Preservation Commission's recommendation together with a~~



1 copy of the Historic Preservation Commission's resolution and with any comments of the Planning  
2 Commission, as set forth in subsection (d) below, to the Clerk of the Board of Supervisors.

3 (d) Review by the Planning Commission. Following action by the Historic Preservation  
4 Commission, the Department shall promptly refer the Historic Preservation Commission's  
5 recommendation on the proposed Conservation District designation or boundary change to the  
6 Planning Commission, which shall have 45 days to review and comment on the proposed designation  
7 or boundary change. The Planning Commission's comments, if any, shall be forwarded to the Board of  
8 Supervisors together with the Historic Preservation Commission's recommendation. Notice of the  
9 Planning Commission hearing shall be given as provided in Section 1107(b) of this Article.

10 (e) Designation by Board of Supervisors. The Board of Supervisors, or a committee  
11 thereof, shall hold a public hearing on any proposal so transmitted to it. The Board of  
12 Supervisors may approve, modify and approve, or disapprove the designation or boundary  
13 change by a majority vote of all its members.

14 ~~(e)(f)~~ Appeal to Board of Supervisors. If the ~~Planning~~ Historic Preservation Commission  
15 disapproves the proposed designation or boundary change, such action shall be final except  
16 upon the filing of a notice of appeal to the Board of Supervisors within 30 days by the  
17 applicant or any of the persons, organizations, or groups listed in Section 1107(a); provided,  
18 however, that if the proposal was initiated by the Board of Supervisors, the Clerk of the ~~said~~  
19 ~~Board~~ shall be notified immediately of the disapproval without the necessity for an appeal.

20 ~~(f)(g)~~ Hearing and Decision by the Board of Supervisors. The Board of Supervisors, or a  
21 committee thereof, shall hold a public hearing on any such proposal appealed to it or initiated  
22 by it. The Board of Supervisors may uphold the ~~Planning~~ Historic Preservation Commission,  
23 overrule the ~~Planning~~ Historic Preservation Commission and approve, or modify and approve,  
24 the designation or boundary change by a majority vote of all its members.

1            ~~(g)~~(h) Notice of Board of Supervisors Proceedings. Notice of the hearing scheduled  
2 pursuant to this Section before the Planning Commission shall be given by mail no less than 20 days  
3 prior to the date of the hearing to: the initiators of applicants for the designation or alteration, if  
4 any; the owners of all lots within 300 feet of the proposed new district or of that portion of the  
5 district being altered; appellants, if any; as well as and to interested individuals or organizations  
6 who request such notice in writing to the Department.

7            ~~(h)~~(i) Standards Applicable to Designation or Boundary Change. The standards  
8 governing the designation and change of District boundaries are those set forth in Section  
9 1103. Areas may be removed from Conservation Districts if the character of the area has  
10 changed such that the area no longer qualifies under the standards set forth in Section 1103.

11            SEC. 1108. NOTICE OF DESIGNATION.

12            When a building has been designated Significant or Contributory or its designation is  
13 changed pursuant to Section 1106, or when a new Conservation District is established or the  
14 boundary of a Conservation District changed pursuant to Section 1107, the ~~Zoning~~  
15 ~~Administrator~~ Planning Department shall notify each affected property owner by mail and shall  
16 cause a copy of the ordinance, or notice thereof, to be recorded ~~in the office of~~ with the County  
17 Recorder. The Department shall file in its permanent records any new designation or change of  
18 designation of a Significant or Contributory Building or a new Conservation District or change of a  
19 Conservation District boundary and shall notify the Central Permit Bureau pursuant to Section 1117 of  
20 this Article.

21  
22            SEC. 1109. PRESERVATION LOTS: ELIGIBILITY FOR TRANSFER OF  
23 DEVELOPMENT RIGHTS.  
24  
25

1 *For the purpose of transfer of development rights (TDR) as provided in Section 128 of this*  
2 ~~Code, l~~ots on which are located Significant or Contributory Buildings, or Category V Buildings  
3 in those certain Conservation Districts and portions thereof as indicated in Section 8 of the  
4 Appendix relating to that District are eligible preservation lots as provided in Section 128 of this  
5 Code for the purposes of Transferable Development Rights ("TDR"), as provided in this Section:

6 (a) Significant Buildings. Lots on which are located buildings designated as  
7 Significant Buildings - Category I or Category II - are eligible to transfer the difference  
8 between the allowable gross floor area permitted on the lot by Section 124 of this Code and  
9 the gross floor area of the development on the lot, if all the requirements for transfer set forth  
10 in Section 128 are met. Lots on which are located Significant Buildings which have been  
11 altered in conformance with the provisions of this Article retain eligibility for the transfer of  
12 TDR.

13 (b) Contributory Buildings. Lots on which are located buildings designated as  
14 Contributory Buildings - Category III or Category IV - are eligible to transfer the difference  
15 between the allowable gross floor area permitted on the lot by Section 124 of ~~the~~ this Code  
16 and the gross floor area of the development on the lot, if all the requirements for transfer set  
17 forth in Section 128 are met. Alteration or demolition of such a building in violation of Section  
18 1110 ~~or Section 1112~~, or alterations or demolitions made without a permit issued pursuant to  
19 Sections 1111 through 1111.67, eliminates eligibility for the transfer of TDR; provided,  
20 however, that such eligibility may nonetheless be retained or acquired again if, pursuant to  
21 Section ~~1114(b)~~1116(b): the property owner demonstrates as to any alteration that it was ~~not~~  
22 major, or if the property owner restores the demolished or altered building a Minor Alteration as  
23 defined herein and has applied for a Permit for Minor Alteration pursuant to Section 1111.1; or that  
24 the property owner has obtained a Permit to Alter to restore the original distinguishing qualities and  
25 character-defining features that were altered. Once any TDR have been transferred from a

1 Contributory Building, the building is subject to the same restrictions on demolition and  
2 alteration as a Significant Building. These restrictions may not be removed by the transfer of  
3 TDR back to the building.

4 (c) Category V Buildings in Conservation Districts. Where explicitly permitted in  
5 Section 8 of the Appendix establishing a Conservation District, lots located in such a District  
6 on which are located Category V Buildings (designated as neither Significant nor Contributory)  
7 are eligible to transfer the difference between the allowable gross floor area permitted on the  
8 lot under Section 124 of the Code and the gross floor area of the development on the lot, if all  
9 the requirements for transfer set forth in Section 128 are met; provided, however, that a lot is  
10 eligible as a Preservation Lot pursuant to this Section only if: (1) the exterior of the building is  
11 substantially altered so as to make it compatible with the scale and character of the Significant  
12 and Contributory Buildings in the district, including those features described in Sections 6 and  
13 7 of the Appendix to Article 11 describing the relevant district, and has thus been determined  
14 *by the Historic Preservation Commission to be* a Compatible Rehabilitation, and the building  
15 meets or has been reinforced to meet the standards for seismic loads and forces of the 1975  
16 Building Code; or (2) the building on the lot is new, having replaced a Category V Building,  
17 and has received approval *by the Historic Preservation Commission* as a Compatible  
18 Replacement Building, pursuant to Section 1113. ~~The procedures governing these determinations  
19 are set forth in Section 309.~~

20 SEC. 1110. CONSTRUCTION, ALTERATION OR DEMOLITION OF SIGNIFICANT OR  
21 CONTRIBUTORY BUILDINGS OR BUILDINGS IN CONSERVATION DISTRICTS.

22 ~~With respect to a designated Significant or Contributory Building or any Category V Building  
23 in a Conservation District, no person shall carry out or cause to be carried out any alteration to the  
24 exterior of a building for which a permit is required pursuant to the Building Code unless the permit is  
25~~

1 approved pursuant to the provisions of Sections 1111 through 1111.6 of this Article; provided,  
2 however, that this approval is not required with respect to the owner of a Contributory Building of  
3 Category III who has not transferred any TDR and who elects to proceed with a major alteration  
4 without reference to Sections 1111 through 1111.6. Election to proceed without a permit pursuant to  
5 this Section may be made at the time that the Zoning Administrator determines that the proposed  
6 alteration is major pursuant to Section 1111.1. If no election is made at the time of the Zoning  
7 Administrator's determination that an alteration is major, the applicant may make such election at any  
8 time thereafter. Review under Sections 1111 through 1111.6 shall cease after such election has been  
9 made and the permit shall be processed without regard to the requirements of that Section. Election  
10 shall be made in writing on a form provided by the Zoning Administrator. Where an owner elects not to  
11 proceed pursuant to Sections 1111 through 1111.6, the proposed alteration for which the application is  
12 filed shall be deemed not to meet the requirements of Section 1111.6, and if the alteration permit is  
13 issued and work commenced thereunder, the Zoning Administrator shall not issue a Statement of  
14 Eligibility for the lot on which the building is located.

15 (a) No person shall carry out or cause to be carried out any construction, alteration,  
16 removal or demolition of a structure or any work involving a sign, awning, marquee, canopy, mural, or  
17 other appendage, or any new or replacement construction for which a permit is required pursuant to  
18 the Building Code, on any designated Significant or Contributory Building or any building in a  
19 Conservation District unless a permit for such work has been approved pursuant to the provisions of  
20 this Article 11.

21 (b) The Historic Preservation Commission shall approve, disapprove, or modify all  
22 applications for permits to alter or demolish any Significant or Contributory Buildings or buildings  
23 within Conservation Districts, and permits for any new and replacement construction within  
24 Conservation Districts, subject to appeal as provided in Section 1115 of this Article 11. The Historic  
25 Preservation Commission shall review and act on such permits prior to any other Planning approval

1 action(s). Buildings or areas within the C-3 District designated pursuant to the provisions of both  
2 Article 10 and Article 11 shall be regulated pursuant to the procedures of both Articles. In case of  
3 conflict, the more restrictive provisions shall apply.

4 (c) If the proposed work would constitute a demolition as defined in Section 1005(f) of this  
5 Code, such work shall, in addition to any other requirements, be subject to the provisions of this Article  
6 11 governing demolitions and shall require a "Permit to Demolish." All other proposed construction  
7 or alteration of a structure, including any new or replacement construction, or any work involving a  
8 sign, awning, marquee, canopy, mural, or other appendage work, but excepting ordinary maintenance  
9 and repairs, shall require a "Permit to Alter."

10 (d) No person shall demolish or cause to be demolished a Significant or Contributory  
11 Building or any building in a Conservation District without obtaining a Permit to Demolish and, if  
12 located within a Conservation District, a permit for a Compatible Replacement Building.

13 (e) If at any time following the approval of a Permit to Alter, changes are proposed to the  
14 scope of work such that the proposed new scope of work, if approved, would constitute a demolition as  
15 defined herein, the owner shall file a new application for a Permit to Demolish and shall obtain such  
16 approval prior to proceeding with the proposed new scope of work.

17 (f) A building permit application or amendment for any work that exceeds the scope of  
18 work of an approved Permit to Alter or Permit to Demolish shall be referred to the Planning  
19 Department by the Central Permit Bureau for Historic Preservation Commission review and approval  
20 pursuant to this Article 11 before the permit may be approved or issued.

21 (g) Notwithstanding the foregoing, in the following cases the Department may process the  
22 permit application without further reference to this Article 11:

23 (1) When the application is for a permit for ordinary maintenance and repairs only. For  
24 the purpose of this Article 11, "ordinary maintenance and repairs" shall mean any work, the sole  
25

1 purpose and effect of which is to correct deterioration, decay or damage of existing materials,  
2 including repair of damage caused by fire or other disaster.

3 (2) When the application is for a permit to construct any new or replacement structures on a  
4 site where a Significant or Contributory Building has been lawfully demolished pursuant to this Code  
5 and the site is not within a designated Conservation District; or

6 (3) When the application is for a permit to make interior alterations only and does not  
7 constitute a demolition as defined herein, unless the Department has determined that the proposed  
8 interior alterations may result in any visual or material impact to the exterior of the building or when  
9 the designating ordinance or applicable Appendix in this Article requires review of such interior  
10 alterations.

11 SEC. 1111. APPLICATIONS FOR PERMITS TO ALTER, PERMITS TO DEMOLISH,  
12 AND PERMITS FOR NEW CONSTRUCTION IN CONSERVATION DISTRICTS.

13 ~~The Zoning Administrator may define categories of alterations which are deemed to be minor~~  
14 ~~alterations and individual permits falling within those categories shall be reviewed and acted upon~~  
15 ~~without referral to the Zoning Administrator for review pursuant to Sections 1111 through 1111.6. All~~  
16 ~~other applications for permits to undertake any alteration of a building designated Significant or~~  
17 ~~Contributory or a building in any Conservation District shall be referred to the Zoning Administrator~~  
18 ~~by the Central Permit Bureau within five days of receipt. An applicant for a major alteration permit for~~  
19 ~~a Category V Building in any of the Conservation Districts which provides for such eligibility may~~  
20 ~~request on the application a determination that if the proposed alteration is completed as approved, the~~  
21 ~~building will be deemed a Compatible Rehabilitation under Section 1109(c) so that the lot on which the~~  
22 ~~building is located becomes eligible as a Preservation Lot for the transfer of TDR.~~

23 Upon receipt of any application for a building permit, demolition permit, site permit, alteration  
24 permit, or any other permit relating to a Significant or Contributory Building or a building within a  
25

1 Conservation District, the Central Permit Bureau shall forward such application to the Planning  
2 Department for determination as to whether the application is subject to the provisions of this Article  
3 and, if so, for approval under this Article. An application for a Permit to Alter or Permit to Demolish  
4 or for new and replacement construction in any Conservation District shall be filed by the owner or  
5 authorized agent for the owner of the property for which the permit is sought with the Planning  
6 Department. Each application shall be verified by at least one property owner or his or her authorized  
7 agent attesting to the truth and correctness of all facts, statements and information presented.

8 (a) Content of Applications. The content of applications shall be in accordance with the  
9 policies, rules and regulations of the Department and the Historic Preservation Commission. All  
10 applications shall be upon forms prescribed therefore and shall contain or be accompanied by all  
11 information required to assure the presentation of all pertinent facts for proper consideration of the  
12 case and for the permanent record. Applications shall include the following information:

13 (1) Plans, sections and elevations showing all existing and proposed work, including but not  
14 limited to color, texture of materials, architectural design, profile, and detail;

15 (2) All demolition calculations and associated detail drawings showing all interior and  
16 exterior alterations associated with the proposed scope of work, including but not limited to any  
17 changes to the exterior and internal structural framework, floor plates, removal of interior walls, or  
18 changes to the foundation;

19 (3) Specifications describing the means and methods associated with the proposed scope of  
20 work, including any technical specifications for all exterior restoration or cleaning work;

21 (4) Photographs showing the property and the context of its surroundings;

22 (5) Any other information that the Department determines may be necessary for the  
23 particular scope of work proposed; and

24 (6) Information needed for the preparation and mailing of notices as specified in Section  
25 1111.4.



1           (b) In addition to the contents specified for applications in (1) above, any application for a  
2 Permit to Demolish shall also contain the following information:

3           (1) An updated historic resource evaluation and conditions assessment report that includes  
4 any pertinent information on the condition of the building and historical, architectural, and cultural  
5 documentation about the building;

6           (2) The amount paid for the property;

7           (3) The date of purchase, the party from whom purchased, and a description of the business  
8 or family relationship, if any, between the owner and the person from whom the property was  
9 purchased;

10           (4) The cost of any improvements since purchase by the applicant and date the  
11 improvements were made;

12           (5) The assessed value of the land, and improvements thereon, according to the most recent  
13 assessments;

14           (6) Real estate taxes for the previous five years;

15           (7) Annual debt service, if any, for the previous five years;

16           (8) All appraisals obtained within the previous five years by the owner or applicant in  
17 connection with his or her purchase, financing or ownership of the property;

18           (9) Any listing of the property for sale or rent, price asked and offers received, if any;

19           (10) Any consideration by the owner for profitable and adaptive uses for the property,  
20 including renovation studies, plans, and bids, if any;

21           (11) If it is a Preservation Lot eligible to transfer TDR, the amount and value of such  
22 untransferred TDR;

23           (12) Annual gross income from the property for the previous five years;

24           (13) Itemized operating and maintenance expenses for the previous five years;

25           (14) Annual cash flow for the previous four years; and

1                   (15) Building plans, elevations, sections, detail drawings, and any other information required  
2 for the Replacement Building.

3                   (c) For Permits to Demolish buildings from which TDR have been transferred the  
4 application shall contain the following information in addition to that set forth in (a) and (b) above:

5                   (1) The Statement of Eligibility as set forth in Section 128;

6                   (2) An itemized list of the amount of TDR that has been transferred from the property;

7                   (3) A list of the amount of untransferred TDR rights remaining on the property;

8                   (4) The amount received for rights transferred;

9                   (5) The transferee(s); and

10                  (6) A copy of each document effecting a transfer of such rights.

11                  (d) An application for a Permit to Demolish any building located in a Conservation District  
12 or an application for new construction on vacant lots shall include plans, specifications and elevations  
13 showing the proposed exterior appearance, including but not limited to color, texture of materials, and  
14 architectural design and detail, for the replacement construction.

15                  (e) Category V Buildings (Unrated). The owner or owner's representative of a Category V  
16 building located in a Conservation District may apply for one of the following:

17                  (1) Compatible Rehabilitation. An applicant for a Permit to Alter a Category V Building  
18 (Unrated) may request on the application a determination by the Historic Preservation Commission  
19 that if the proposed alteration is completed as approved, the building will be deemed a Compatible  
20 Rehabilitation under Section 1109(c) so that the lot on which the building is located becomes eligible  
21 as a Preservation Lot for the transfer of TDR.

22                  (2) Compatible Replacement Building. An applicant for new construction in a Conservation  
23 District on a lot where a Category V Building (Unrated) has been lawfully demolished may request on  
24 the application a determination by the Historic Preservation Commission that if the proposed new  
25 construction is completed as approved, the new building will be deemed a Compatible Replacement

1 Building under Section 1109(c) so that the lot on which the building is located becomes eligible as a  
2 Preservation Lot for the transfer of TDR.

3 SEC. 1111.1. DETERMINATION OF MINOR AND MAJOR ALTERATIONS.

4 ~~Within 10 days after referral by the Central Permit Bureau, the Zoning Administrator shall~~  
5 ~~determine in writing if the proposed alteration is a Major Alteration or a Minor Alteration.~~

6 (a) ~~An alteration is considered Major if any of the following apply:~~

7 (1) ~~The alteration will substantially change, obscure or destroy exterior character defining~~  
8 ~~spaces, materials, features or finishes; or~~

9 (2) ~~The alteration would affect all or any substantial part of a building's structural~~  
10 ~~elements, exterior walls or exterior ornamentation; or~~

11 (3) ~~The alteration occurs by virtue of construction which results in a substantial addition of~~  
12 ~~height above the height of the building.~~

13 (b) ~~An alteration is considered minor if:~~

14 (1) ~~The criteria set forth in Subsection (a) do not apply; or~~

15 (2) ~~It is an alteration of the ground floor display areas within the architectural frame (piers~~  
16 ~~and lintels) of the building to meet the needs of first-floor commercial uses; or~~

17 (a) The Historic Preservation Commission shall determine if a proposed alteration is a  
18 Major Alteration or a Minor Alterations and may delegate approval of Minor Alteration to Department  
19 staff, whose decisions may be appealed to the Historic Preservation Commission pursuant to  
20 subsection 1111.1(b). All work not determined to be a Minor Alteration shall be a Major Alteration  
21 and subject to Historic Preservation Commission approval. If so delegated to Department staff, the  
22 categories of Minor Alteration shall include but are not limited to the following:

23 (3)(1) The Alterations whose sole purpose and effect of the alteration is to comply with the  
24 UMB Seismic Retrofit Ordinances and the Zoning Administrator determines that the proposed work  
25

1 ~~that comply~~ ~~complies~~ with the UMB Retrofit Architectural Design Guidelines, which guidelines  
2 shall be adopted by the ~~Planning~~ Historic Preservation Commission; ~~or~~

3 (2) Any other work so delegated to the Department by the Historic Preservation  
4 Commission.

5 (b) Minor Alterations delegated to Department staff shall be approved, approved with  
6 modifications, or disapproved as a Permit for Minor Alteration by the Department without a hearing  
7 before the Historic Preservation Commission. The Department shall mail its written decision  
8 approving a Permit for Minor Alteration to the applicant and any individuals or organizations who  
9 have so requested in writing to the Department. The Department's decision may be appealed to the  
10 Historic Preservation Commission within 15 days of the date of the written decision. The Historic  
11 Preservation Commission may also review the decisions of the Department by its own motion if such  
12 motion is made within 20 days of the date of the written decision.

13 (c) All applications for a Permit to Alter that are not Minor Alterations delegated to  
14 Department staff shall be approved, approved with modifications, or disapproved by the Historic  
15 Preservation Commission pursuant to the procedures in Section 1111.4 and 1111.5 below.

16 ~~(e) The Zoning Administrator shall mail to the applicant and any individuals or~~  
17 ~~organizations who so request the written determination as to the category of the proposed alteration.~~  
18 ~~Decisions of the Zoning Administrator may be appealed to the Board of Permit Appeals within 10 days~~  
19 ~~of the written determination in the manner provided in Section 308.2.~~

20 ~~(d) Permits determined to be for minor alterations shall be returned, with that~~  
21 ~~determination noted, to the Central Permit Bureau for further processing; provided, however, that the~~  
22 ~~Zoning Administrator may take any action with respect to the application otherwise authorized.~~

1                   SEC. 1111.2. ~~REFERRAL OF APPLICATIONS FOR MAJOR ALTERATIONS TO~~  
2 ~~LANDMARKS PRESERVATION ADVISORY BOARD: REVIEW BY THE DEPARTMENT OF CITY~~  
3 ~~PLANNING.~~

4                   (a) ~~— Upon determination that the proposed alteration is a major alteration, the Director of~~  
5 ~~Planning shall refer applications for permits to alter Significant and Contributory Buildings to the~~  
6 ~~Landmarks Preservation Advisory Board for its report and recommendation, which shall be rendered~~  
7 ~~within 30 days. Said time limit for the Board to render its report may be extended by the Department of~~  
8 ~~City Planning for an additional 30 days to render its report in the case of complex alterations, multiple~~  
9 ~~hearings, or upon request of the applicant. If the Board fails to submit a report and recommendation~~  
10 ~~within the time allowed, the matter may be considered without reference to such report and~~  
11 ~~recommendation.~~

12                   (b) ~~— Simultaneously with the proceedings before the Landmarks Board, the application shall~~  
13 ~~be reviewed by the Department of City Planning.~~

14                   (c) ~~— Applications for permits to alter any Category V building in a Conservation District~~  
15 ~~which alteration is determined to be major shall be governed by the standards of Section 111.6(e) and~~  
16 ~~the procedures set forth in Section 309. —SIGN PERMITS.~~

17                   (a) New general advertising signs are prohibited in any Conservation District or on any  
18 historic property regulated by this Article 11.

19                   (b) If a permit for a sign is required pursuant to Article 6 of this Code, the requirements of  
20 this Section shall apply to such permit in addition to those of Article 6.

21                   (c) Apart from and in addition to the requirements of Article 6, an application for a  
22 business sign, general advertising sign, identifying sign, or nameplate to be located on a Significant or  
23 Contributory Building or any building in a Conservation District shall be subject to review by the  
24 Historic Preservation Commission pursuant to the provisions of this Article. The Historic Preservation  
25 Commission shall disapprove the application or approve it with modifications if the proposed location,

1 materials, typeset, size of lettering, means of illumination, method of replacement, or the attachment  
2 would adversely affect the special architectural, historical or aesthetic significance of the subject  
3 building or the Conservation District. No application shall be denied on the basis of the content of the  
4 sign.

5 SEC. 1111.3. ~~RECOMMENDATION BY THE DIRECTOR OF PLANNING.~~

6 ~~After considering any report and recommendation submitted by the Landmarks Preservation~~  
7 ~~Advisory Board, the Director of Planning shall make a determination on the application and shall~~  
8 ~~submit a written recommendation containing findings to the Planning Commission. The~~  
9 ~~recommendation may be to approve, to approve with conditions, or disapprove the application for~~  
10 ~~alteration, and, where applicable, the application for a determination that the building is a Compatible~~  
11 ~~Rehabilitation. The Commission, the applicant and any other person who so requests shall be supplied~~  
12 ~~with a copy of reports and recommendations of the Landmarks Preservation Advisory Board and the~~  
13 ~~findings and recommendations of the Director of Planning.~~ REVIEW BY THE PLANNING

14 DEPARTMENT.

15 The Department shall review all applications and shall determine within 30 days after the  
16 application is filed whether the application is complete. Applications for Minor Alterations that have  
17 been delegated to Department staff may be approved by the Department pursuant to Section 1111.1  
18 without a hearing before the Historic Preservation Commission. Upon acceptance as complete of any  
19 other application under this Article or upon appeal to or a request by the Historic Preservation  
20 Commission to exercise its review powers over a Minor Permit to Alter as set forth in 1111.1, the  
21 Historic Preservation Commission shall hold a hearing and approve, approve with modifications, or  
22 disapprove the application in accordance with the procedures set forth in this Section 1111.  
23  
24  
25

SEC. 1111.4. ~~CONSIDERATION AND DECISION BY THE CITY PLANNING~~

~~COMMISSION.~~

~~(a) — The recommendation of the Director of Planning shall be placed on the consent calendar of the City Planning Commission; provided, however, that upon the request of the applicant or of any person prior to the City Planning Commission meeting or by a member of the Commission at the meeting, the matter may be removed from the consent calendar and calendared for a public hearing before the Planning Commission at a later meeting, which shall be the next regular meeting of the Commission unless the applicant otherwise consents.~~

~~(b) — Notice of the time, place and purpose of the hearing before the City Planning Commission shall begin given as follows:~~

~~(1) — By mail to the applicant;~~

~~(2) — When the application is for alteration of a building located in a Conservation District, by mail not less than 10 days prior to the date of the hearing to the owners of all real property within 300 feet of property that is the subject of the application.~~ SCHEDULING AND NOTICE OF HISTORIC

PRESERVATION COMMISSION HEARINGS

If a public hearing before the Historic Preservation Commission is required under this Section 1111, the Department shall set a time and place for the hearing within a reasonable period. Notice of the time, place, and purpose of the hearing shall be given by the Department not less than 20 days prior to the date of the hearing as follows:

(a) By mail to the owner of the subject property;

(b) By mail to the applicant;

(c) By mail to any interested parties who make a request in writing to the Department;

(d) For applications for a building located in a Conservation District, by mail to the owners of all real property within 300 feet of the subject property;

1           (e) For applications for a building not located in a Conservation District, by mail to the  
2 owners of all real property within 150 feet of the subject property;

3           (f) By posting notice on the site; and

4           (g) By any other means as the Department deems appropriate.

5           Notice for Historic Preservation Commission review of Minor Permits to Alter. A hearing for  
6 the Historic Preservation Commission to exercise its review powers over a Minor Permit to Alter shall  
7 be noticed:

8           (a) By mail not less than 10 days prior to the date of the hearing to the applicant, all owners  
9 within 150 feet of the subject property, as well as to any other interested parties who so request in  
10 writing to the Department; and

11           (b) By posted notice on the site not less than 10 days prior to the date of the hearing.

12           SEC. 1111.5. DECISION BY THE ~~CITY PLANNING~~ HISTORIC PRESERVATION  
13 COMMISSION.

14           (a) ~~The Planning~~ Historic Preservation Commission may approve, disapprove, or  
15 approve with conditions an application for ~~an alteration permit~~ a Permit to Alter or a Permit to  
16 Demolish and, where applicable for new or replacement construction, for a determination that the  
17 building is a Compatible Rehabilitation under Section 1113 or a Compatible Replacement Building  
18 under Section 1109(c), and shall make findings in support of its decision. ~~If the Planning~~  
19 ~~Commission approves the recommendation of the Director of Planning, it may adopt or modify the~~  
20 ~~findings of the Director of Planning as appropriate. Where the Planning Commission disapproves the~~  
21 ~~recommendations of the Director of Planning, it shall make findings supporting its decision. If the~~  
22 ~~Commission disapproves the application for a permit to alter, it shall recommend disapproval to the~~  
23 ~~Central Permit Bureau which shall deny the application. The Planning Commission's determination~~  
24 ~~that a building qualifies or fails to qualify as a Compatible Rehabilitation is a final administrative~~  
25



1 ~~decision. Any decision of the Planning Commission rendered pursuant to this Section shall be rendered~~  
2 ~~within 30 days from the date of conclusion of the hearing.~~

3 (b) For applications for a Permit to Demolish, the applicant has the burden of establishing  
4 that the criteria governing the approval of applications set forth in Section 1111.7 have been met.

5 (c) The decisions of the Historic Preservation Commission shall be final except upon  
6 modification by the Planning Commission as provided in Section 1114 or upon the filing of a timely  
7 appeal to the Board of Appeals or Board of Supervisors as provided in Section 1115.

8  
9 SEC. 1111.6. STANDARDS AND REQUIREMENTS FOR REVIEW OF  
10 APPLICATIONS FOR ALTERATIONS.

11 The Historic Preservation Commission, the Board of ~~Permit~~ Appeals, the Board of  
12 Supervisors, the ~~City~~ Planning Commission and the Department, the Director of Planning, and the  
13 Landmarks Board shall be governed by the following standards in the review of applications for  
14 major alteration permits Permits to Alter. In the case of conflict with other requirements, including the  
15 requirements of Article 10, the more restrictive standards shall apply.

16 (a) The proposed alteration shall be consistent with and appropriate for the  
17 effectuation of the purposes of this Article 11.

18 (b) The proposed work shall comply with the Secretary of the Interior's Standards for the  
19 Treatment of Historic Properties, including any guidelines, interpretations, bulletins, or other materials  
20 that the Historic Preservation Commission has adopted.

21 ~~(b)(c)~~ For Significant Buildings - Categories I and II, and for Contributory Buildings -  
22 Categories III and IV, proposed alterations of structural elements and exterior features shall  
23 be consistent with the architectural character of the building, and shall comply with the  
24 following specific requirements:  
25

1 (1) The distinguishing original qualities or character of the building may not be  
2 damaged or destroyed. Any distinctive architectural feature which affects the overall  
3 appearance of the building shall not be removed or altered unless it is the only feasible means  
4 to protect the public safety.

5 (2) The integrity of distinctive stylistic features or examples of skilled craftsmanship  
6 that characterize a building shall be preserved.

7 (3) Distinctive architectural features which are to be retained pursuant to Paragraph  
8 (1) but which are deteriorated shall be repaired rather than replaced, whenever possible. In  
9 the event replacement is necessary, the new material shall match the material being replaced  
10 in composition, design, color, texture and other visual qualities. Repair or replacement of  
11 missing architectural features shall be based on accurate duplication of features,  
12 substantiated by historic, physical or pictorial evidence, if available, rather than on conjectural  
13 designs or the availability of different architectural elements from other buildings or structures.  
14 Replacement of nonvisible structural elements need not match or duplicate the material being  
15 replaced.

16 (4) Contemporary design of alterations is permitted, provided that such alterations  
17 do not destroy significant exterior architectural material and that such design is compatible  
18 with the size, scale, color, material and character of the building and its surroundings.

19 (5) The degree to which distinctive features need be retained may be less when the  
20 alteration is to exterior elements not constituting a part of a principal facade or when it is an  
21 alteration of the ground-floor frontage in order to adapt the space for ground-floor uses.

22 (6) In the case of Significant Buildings - Category I, any additions to height of the  
23 building (including addition of mechanical equipment) shall be limited to one story above the  
24 height of the existing roof, shall be compatible with the scale and character of the building,  
25 and shall in no event cover more than 75 percent of the roof area.

1 (7) In the case of Significant Buildings - Category II, a new structure or addition,  
2 including one of greater height than the existing building, may be permitted on that portion of  
3 the lot not restricted in Appendix B even if such structure or addition will be visible when  
4 viewing the principal facades at ground level, provided that the structure or addition does not  
5 affect the appearance of the retained portion as a separate structure when so viewing the  
6 principal facades and is compatible in form and design with the retained portion. Alteration of  
7 the retained portion of the building is permitted as provided in Paragraphs (1) through (6) of  
8 this Subsection ~~(b)~~(c).

9 ~~(e)~~(d) Within Conservation Districts, all major exterior alterations, of Category V  
10 Buildings, shall be compatible in scale and design with the District as set forth in Sections 6  
11 and 7 of the Appendix which describes the District.

12 ~~(e) If TDR have been transferred from any Contributory Building, the building shall be~~  
13 ~~subject to the same restrictions on alterations as a Significant Building. These restrictions may not be~~  
14 ~~removed by the transfer of TDR back to the building.~~

15 SEC. 1111.7. ~~PERMITS FOR SIGNS.~~

16 ~~(a) — Installation of a new general advertising sign is prohibited in any Historic District or~~  
17 ~~Conservation District or on any historic property regulated by this Article 11.~~

18 ~~(b) — Wherever a permit for a sign is required pursuant to Article 6 of this Code, an~~  
19 ~~application for such permit shall be governed by the provisions of this Section in addition to those of~~  
20 ~~Article 6.~~

21 ~~(c) — Apart from and in addition to any grounds for approval or disapproval of the~~  
22 ~~application under Article 6, an application involving a permit for a business sign, or general~~  
23 ~~advertising sign, identifying sign, or nameplate to be located on a Significant or Contributory Building~~  
24 ~~or any building in a Conservation District may be disapproved, or approved subject to conditions if the~~  
25

1 ~~proposed location, materials, means of illumination or method or replacement of attachment would~~  
2 ~~adversely affect the special architectural, historical or aesthetic significance of the building or the~~  
3 ~~Conservation District. No application shall be denied on the basis of the content of the sign.~~

4 (d) ~~— The Director of Planning shall make the determination required pursuant to Subsection~~  
5 ~~(b). Any permit applicant may appeal the determination of the Director of Planning to the City~~  
6 ~~Planning Commission by filing a notice of appeal with the Secretary of the Commission within 10 days~~  
7 ~~of the determination. The City Planning Commission shall hear the appeal and make its determination~~  
8 ~~within 30 days of the filing of the notice of appeal.~~ STANDARDS AND REQUIREMENTS FOR  
9 REVIEW OF APPLICATIONS FOR DEMOLITION.

10 (a) The Historic Preservation Commission, Planning Commission, Board of Appeals, and  
11 the Board of Supervisors (each referred to as a "Decisionmaker" for the purposes of this Section) shall  
12 apply the following standards in their review of applications for a Permit to Demolish a Significant or  
13 Contributory Building or building within a Conservation District. No demolition permit may be  
14 approved unless:

15 (1) For Significant Buildings (Category I and II); Contributory Buildings (Category III);  
16 and Contributory Buildings in a Conservation District (Category IV) from which TDR have been  
17 transferred:

18 (A) The Decisionmaker determines and makes written findings based on substantial  
19 evidence in the record that the property retains no substantial remaining market value or reasonable  
20 use, taking into account the value of any TDR that have been transferred or which may be available to  
21 transfer from the property and the cost of rehabilitation to meet the requirements of the Building Code  
22 or City, State and federal laws. Costs necessitated by alterations or demolition made in violation of  
23 Article 10 or 11, or by failure to maintain the property in violation of Section 1119, may not be  
24 included in the calculation of rehabilitation costs; or

1           (B) The Director of the Department of Building Inspection or the Chief of the Bureau of Fire  
2 Prevention and Public Safety determines after consultation, to the extent feasible with the Historic  
3 Preservation Commission and the Planning Department, that an imminent safety hazard exists and that  
4 demolition of the structure is the only feasible means to secure the public safety.

5           (2) For Contributory Buildings in a Conservation District (Category IV) from which no  
6 TDR has been transferred:

7           (A) The Decisionmaker determines and makes written findings based on substantial  
8 evidence in the record that the property retains no substantial remaining market value or reasonable  
9 use, taking into account the value of any TDR that may be available to transfer from the property and  
10 costs of rehabilitation to meet the requirements of the Building Code or City, State and federal laws.  
11 Costs necessitated by alterations or demolition made in violation of Article 10 or 11, or by failure to  
12 maintain the property in violation of Section 1119, may not be included in the calculation of  
13 rehabilitation costs;

14           (B) The Director of the Department of Building Inspection or the Chief of the Bureau of Fire  
15 Prevention and Public Safety determines, after consultation to the extent feasible with the Historic  
16 Preservation Commission and the Planning Department, that an imminent safety hazard exists and that  
17 demolition of the structure is the only feasible means to secure the public safety; or

18           (C) The Decisionmaker determines based on substantial evidence in the record that:

19           (i) Because of physical conditions specific to the Contributory Building or site, the  
20 rehabilitation and reuse of the building will not meet most of the goals and objectives of the proposed  
21 replacement project;

22           (ii) The proposed replacement project is compatible with the Conservation District in which  
23 the property is located; and

1                    (iii) Specific economic, social, or other benefits of the proposed replacement project  
2 significantly outweigh the benefit conferred from the historic preservation of the particular structure or  
3 feature.

4                    (3) For Category V Buildings (Not Rated) in Conservation Districts: The Decisionmaker  
5 determines that: (A) the building has not gained additional historical or architectural significance that  
6 may make it eligible for classification as a Category I, II, or IV building; and (B) the proposed  
7 Replacement Building is compatible with the Conservation District in which the property is located. If  
8 the Decisionmaker determines based on new documentation presented that a Category V building has  
9 gained significance such that it is eligible for classification as a Category I, II, or IV building , the  
10 Permit to Demolish shall be reviewed under Subsection (a)(1) or (a)(2) above, and not under this  
11 Subsection (a)(3). Additionally, if the building has completed a Compatible Rehabilitation pursuant to  
12 Section 1109(c), and has transferred development rights from the property, then the building shall be  
13 treated as a Significant Building (Category I or II).

14                    (b) The cumulative effects on the integrity of the Conservation District associated with  
15 demolition of a Contributory Building shall be considered and may be grounds for denial of the Permit  
16 to Demolish.

17                    (c) In addition to the above requirements, no demolition permit shall be issued by the  
18 Department of Building Inspection or any other agency for any building located in a Conservation  
19 District until an application for the new or replacement building has been approved in accordance with  
20 the standards for new construction in a Conservation Districts as provided in this Article, and the  
21 building or site permit conforming to such approval has been lawfully issued.

22                    **SEC. 1112. INTENTIONALLY LEFT BLANK. ~~DEMOLITION OF SIGNIFICANT AND~~**  
23 **~~CONTRIBUTORY BUILDINGS AND BUILDINGS IN CONSERVATION DISTRICTS.~~**

1 *No person shall demolish or cause to be demolished all or any part of a Significant or*  
2 *Contributory Building or any building in a Conservation District without obtaining a demolition or*  
3 *alteration permit pursuant to the provisions of this Article. Applications for permits to demolish*  
4 *Category V Buildings located outside a Conservation District may be processed without reference to*  
5 *this Article.*

6 ***SEC. 1112.1. APPLICATIONS FOR A PERMIT TO DEMOLISH.***

7 *Applications for a permit to demolish any Significant or Contributory Building or any building*  
8 *in a Conservation District shall comply with the provisions of Section 1006.1 of Article 10 of this Code.*

9 *In addition to the contents specified for applications in Section 1006.1 of Article 10, any*  
10 *application for a permit to demolish a Significant Building, or a Contributory Building from which*  
11 *TDR have been transferred, on the grounds stated in Section 1112.7(a)(1), shall contain the following*  
12 *information:*

13 (a) — *For all property:*

14 (1) — *The amount paid for the property;*

15 (2) — *The date of purchase, the party from whom purchased, and a description of the business*  
16 *or family relationship, if any, between the owner and the person from whom the property was*  
17 *purchased;*

18 (3) — *The cost of any improvements since purchase by the applicant and date incurred;*

19 (4) — *The assessed value of the land, and improvements thereon, according to the most recent*  
20 *assessments;*

21 (5) — *Real estate taxes for the previous two years;*

22 (6) — *Annual debt service, if any, for the previous two years;*

23 (7) — *All appraisals obtained within the previous five years by the owner or applicant in*  
24 *connection with his or her purchase, financing or ownership of the property;*  
25

1           (8) — ~~Any listing of the property for sale or rent, price asked and offers received, if any;~~

2           (9) — ~~Any consideration by the owner for profitable and adaptive uses for the property,~~  
3 ~~including renovation studies, plans, and bids, if any; and~~

4           (b) — ~~For income-producing property:~~

5           (1) — ~~Annual gross income from the property for the previous four years;~~

6           (2) — ~~Itemized operating and maintenance expenses for the previous four years;~~

7           (3) — ~~Annual cash flow for the previous four years.~~

8           ~~Applications for the demolition of any Significant or Contributory Building shall also contain a~~  
9 ~~description of any Transferable Development Rights or the right to such rights which have been~~  
10 ~~transferred from the property, a statement of the quantity of such rights and untransferred rights~~  
11 ~~remaining, the amount received for rights transferred, the transferee, and a copy of each document~~  
12 ~~effecting a transfer of such rights.~~

13           ~~SEC. 1112.2. DISPOSITION OF APPLICATIONS TO DEMOLISH CONTRIBUTORY~~  
14 ~~BUILDINGS AND UNRATED BUILDINGS IN CONSERVATION DISTRICTS.~~

15           (a) — ~~The Zoning Administrator shall determine, within five days of acceptance of a complete~~  
16 ~~application, the designation of the building and, with respect to Contributory Buildings, whether any~~  
17 ~~TDR have been transferred from the lots of such buildings.~~

18           (b) — ~~If the Zoning Administrator determines that TDR have been transferred from the lot of a~~  
19 ~~Contributory Building, the application for demolition of that building shall be reviewed and acted upon~~  
20 ~~as if it applied to a Significant Building.~~

21           (c) — ~~The Zoning Administrator shall approve any application for demolition of a~~  
22 ~~Contributory Building in a Conservation District from which no TDR have been transferred, or an~~  
23 ~~Unrated Building located in a Conservation District, if a building or site permit has been lawfully~~  
24 ~~issued for a replacement structure on the site, in compliance with Section 1113. The Zoning~~  
25



1 ~~Administrator shall approve an application for demolition of a Significant Building—Category II if a~~  
2 ~~building or site permit has been lawfully issued for an alteration or replacement structure on the~~  
3 ~~portion of the site which would be affected by the demolition, in compliance with Section 111.6(b)(7).~~

4 ~~The Zoning Administrator shall disapprove any application for a demolition permit where the~~  
5 ~~foregoing requirement has not been met; provided, however, that the Zoning Administrator shall~~  
6 ~~approve any otherwise satisfactory application for such a permit notwithstanding the fact that no~~  
7 ~~permit has been obtained for a replacement structure if the standards of Section 112.7 for allowing~~  
8 ~~demolition of a Significant Building are met.~~

9 ~~(d) — The Zoning Administrator shall approve applications to permit demolition of a~~  
10 ~~Contributory Building—Category III from which no TDR have been transferred only if a building or~~  
11 ~~site permit for a replacement building on the same site has been approved, and it has been found,~~  
12 ~~pursuant to review under the procedural provisions of Section 309, that the proposed replacement will~~  
13 ~~not adversely affect the character, scale or design qualities of the general area in which it is located,~~  
14 ~~either by reason of the quality of the proposed design or by virtue of the relation of the replacement~~  
15 ~~structure or structures to their setting. Notwithstanding the preceding sentence, the Zoning~~  
16 ~~Administrator shall approve any such demolition permit application if the standards of Section 112.7~~  
17 ~~for allowing demolition of a Significant Building are met.~~

18 ~~SEC. 112.3. APPLICATIONS TO DEMOLISH SIGNIFICANT BUILDINGS OR~~  
19 ~~CONTRIBUTORY BUILDINGS FROM WHICH TDR HAVE BEEN TRANSFERRED; ACCEPTANCE~~  
20 ~~AND NOTICE.~~

21 ~~Upon acceptance as complete of applications for a permit to demolish any Significant Building~~  
22 ~~or to demolish any Contributory Building from which TDR have been transferred, the application shall~~  
23 ~~be placed on the agenda of the Planning Commission for hearing.~~

1                    ~~SEC. 1112.4. REFERRAL TO THE LANDMARKS PRESERVATION ADVISORY BOARD~~  
2                    ~~PRIOR TO HEARING; REVIEW BY THE DIRECTOR OF PLANNING.~~

3                    ~~The application for a permit to demolish a building covered by Section 1112.3 shall be referred~~  
4                    ~~to the Landmarks Preservation Advisory Board and considered by said Board pursuant to the~~  
5                    ~~provisions of Section 1006.4 of this Code. The Director of Planning shall prepare a report and~~  
6                    ~~recommendation for the Planning Commission. If the Landmarks Board does not act within 30 days of~~  
7                    ~~referral to it, the Planning Commission may proceed without a report and recommendation from the~~  
8                    ~~Landmarks Board.~~

9                    ~~SEC. 1112.5. PLANNING COMMISSION HEARING AND DECISION.~~

10                   ~~The application shall be heard by the Planning Commission. Notice of the hearing shall be~~  
11                   ~~given in the manner set forth in Section 309(c). In such proceedings, the applicant has the burden of~~  
12                   ~~establishing that the criteria governing the approval of applications set forth in Section 1112.7 have~~  
13                   ~~been met.~~

14                   ~~SEC. 1112.6. DECISION OF THE PLANNING COMMISSION.~~

15                   ~~The Planning Commission may approve, disapprove or approve with conditions, the~~  
16                   ~~application, and shall make findings relating its decision to the standards set forth in Section 1112.7.~~  
17                   ~~The decision of the Planning Commission shall be rendered within 30 days from the date of conclusion~~  
18                   ~~of the hearing.~~

19                   ~~SEC. 1112.7. STANDARDS AND REVIEW OF APPLICATIONS TO DEMOLISH.~~

20                   ~~The Board of Permit Appeals, the City Planning Commission, the Director of Planning, and the~~  
21                   ~~Landmarks Board shall follow the standards in this Section in their review of applications for a permit~~  
22                   ~~to demolish any Significant or Contributory Building from which TDR have been transferred.~~

1 ~~No demolition permit may be approved unless: (1) it is determined that under the designation,~~  
2 ~~taking into account the value of Transferable Development Rights and costs of rehabilitation to meet~~  
3 ~~the requirements of the Building Code or other City, State or federal laws, the property retains no~~  
4 ~~substantial remaining market value or reasonable use; or (2) the Superintendent of the Bureau of~~  
5 ~~Building Inspection or the Chief of the Bureau of Fire Prevention and Public Safety determines, after~~  
6 ~~consultation, to the extent feasible, with the Department of City Planning, that an imminent safety~~  
7 ~~hazard exists and that demolition of the structure is the only feasible means to secure the public safety.~~  
8 ~~Costs of rehabilitation necessitated by alterations made in violation of Section 1110, by demolition in~~  
9 ~~violation of Section 1112, or by failure to maintain the property in violation of Section 1117, may not~~  
10 ~~be included in the calculation of rehabilitation costs under Subsection (1).~~

11 SEC. 1113. STANDARDS OF REVIEW FOR NEW AND REPLACEMENT  
12 CONSTRUCTION IN CONSERVATION DISTRICTS.

13 (a) The Historic Preservation Commission, Planning Commission, Board of Appeals, and  
14 Board of Supervisors shall find in their review of applications for ~~No person shall construct or cause to~~  
15 ~~be constructed~~ any new or replacement structure or for an addition to any existing structure in a  
16 Conservation District ~~unless it is found~~ that such construction is compatible in scale and design  
17 with the District as set forth in Sections 6 and 7 of the Appendix ~~which that~~ describes the  
18 District.

19 (b) Applications for a building or site permit to construct or add to a structure in any  
20 Conservation District shall be reviewed ~~and approved, approved with modifications, or disapproved~~  
21 ~~by the Historic Preservation Commission before any other Planning approval action that may be~~  
22 required, including review by the Planning Commission pursuant to the procedures set forth in  
23 Section 309 and shall only be approved pursuant to Section 309 if they meet the standards  
24 set forth herein. For projects that require Section 309 review, the Planning Commission may modify  
25

1 the decision of the Historic Preservation Commission pursuant to Section 1114, provided that the  
2 project does not concern a designated Significant (Categories I and II) or a Contributory (Category III)  
3 building.

4 (c) ~~\_\_\_\_\_;~~ If a building or site permit application for construction of a building to construct or  
5 add to a structure in any Conservation District is approved by the Historic Preservation Commission  
6 pursuant to this Section Article without modification by the Planning Commission and if the building  
7 is constructed in accordance with such approval, and if the building is located in a  
8 Conservation District for which, pursuant to Section 8 of the Appendix establishing that  
9 district, such a transfer is permitted, the building shall be deemed a Compatible Replacement  
10 Building, and the lot on which such building is located shall be eligible as a Preservation Lot  
11 for the transfer of TDR.

12 SEC. 1114. MODIFICATION OF A DECISION OF THE HISTORIC PRESERVATION  
13 COMMISSION.

14 For projects that require multiple planning approvals, the Historic Preservation Commission  
15 shall review and act on any Permit to Alter or Permit to Demolish before any other Planning approval  
16 action.

17 (a) For projects that require a Conditional Use Authorization or Permit Review under  
18 Section 309 and do not concern a Significant Building (Categories I & II) or a Contributory Building  
19 (Category III only), the Planning Commission may modify any decision on a Permit to Alter or Permit  
20 to Demolish by a two-thirds vote, provided that the Planning Commission shall apply all applicable  
21 historic resources provisions of this Code.

22 (b) For projects to be located on vacant lots, the Planning Commission may modify any  
23 decision on a Permit to Alter by a two-thirds vote, provided that the Planning Commission shall apply  
24 all applicable historic resources provisions of this Code.

1                   SEC. 1115. APPEAL.

2                   The Historic Preservation Commission's or the Planning Commission's decision on a Permit to  
3 Alter or a Permit to Demolish shall be final unless appealed to the Board of Appeals, which may modify  
4 the decision by a four-fifths vote; provided however, that if the project requires Board of Supervisors  
5 approval or is appealed to the Board of Supervisors as a Conditional Use Authorization, the decision  
6 shall not be appealed to the Board of Appeals but rather to the Board of Supervisors, which may modify  
7 the decision by a majority vote. Any appeal must be made within 30 days after the date of the final  
8 action by the Historic Preservation Commission or Planning Commission.  
9

10                   SEC. 1116. UNLAWFUL ALTERATION OR DEMOLITION.

11                   (a)     In addition to any other penalties provided in Section ~~11191120~~ or elsewhere,  
12 alteration or demolition of a Significant or Contributory Building or any building within a  
13 Conservation District in violation of the provisions of this Article shall eliminate the eligibility of  
14 the building's lot as a Preservation Lot, ~~and such~~ Such a lot, if it is the site of an unlawfully  
15 ~~demolished Significant Building, or Contributory Building from which TDR have been transferred,~~  
16 may not be developed in excess of the floor area ratio of the demolished building for a period  
17 of 20 years from the unlawful demolition, if it is the site of an unlawfully demolished Significant  
18 Building (Category I or II), or Contributory Building (Category III) or the site of an unlawfully  
19 demolished Contributory Building (Category IV) from which TDR have been transferred. No  
20 department shall approve or issue a permit that would authorize construction of a structure  
21 contrary to the provisions of this Section.

22                   (b)     A property owner may be relieved of the penalties provided in Subsection (a) if:  
23 (1) as to an unlawful alteration ~~or demolition~~, the owner can demonstrate to the ~~Zoning~~  
24 ~~Administrator~~ Historic Preservation Commission that the violation would have constituted a Minor  
25

1 Alteration and has applied for a Permit for Minor Alteration to legalize the violation~~did not constitute~~  
2 ~~a major alteration as defined in Section 1111.1;~~ or (2) as to an unlawful alteration, the owner  
3 restores the original distinguishing qualities and character of the building destroyed or altered,  
4 including exterior character-defining spaces, materials, features, finishes, exterior walls and  
5 exterior ornamentation. A property owner who wishes to effect a restoration pursuant to  
6 Subsection (b)(2) shall, in connection with the filing of a building or site permit application,  
7 seek approval of the proposed restoration by reference to the provisions of this Section. If the  
8 Historic Preservation Commission approves the application~~is approved~~ and ~~it is determined~~  
9 determines that the proposed work will effect adequate restoration, the ~~City Planning~~Historic  
10 Preservation Commission shall so find. Upon ~~such~~ approval, and the completion of ~~such~~ work,  
11 the lot shall again become an eligible Preservation Lot and the limitation on floor area ratio set  
12 forth in Subsection (a) shall not thereafter apply. The ~~City Planning~~Historic Preservation  
13 Commission may not approve the restoration unless it first finds that the restoration can be  
14 done with a substantial degree of success. The determination under this Subsection (b)(2) is a  
15 final administrative decision.

16 SEC. ~~1115~~1117. CONFORMITY WITH OTHER CITY PERMIT PROCESSES.

17 Except where explicitly so stated, nothing in this Article shall be construed as relieving  
18 any person from other applicable permit requirements. The following requirements are  
19 intended to insure conformity between existing City permit processes and the provisions of  
20 this Article:

21 (a) Upon the designation of a building as a Significant or Contributory Building, or  
22 upon the designation of the Conservation District, the ~~Zoning Administrator~~Planning Department  
23 shall inform the Central Permit Bureau of said designation or, in the case of a Conservation  
24 District, of the boundaries of said District and a complete list of all the buildings within said  
25

1 District and their designations. The Central Permit Bureau shall maintain a current record of  
2 such Buildings and Conservation Districts.

3 (b) Upon receipt of any application for a building permit, demolition permit, site  
4 permit, alteration permit, or any other permit relating to a Significant or Contributory Building  
5 or a building within a designated Conservation District, the Central Permit Bureau shall  
6 forward such application to the Planning Department ~~of City Planning, except as provided in~~  
7 ~~Section IIII~~. If the ~~Zoning Administrator~~ Planning Department determines that the application is  
8 subject to provisions of this Article, processing shall proceed under the provisions of this  
9 Article. The Central Permit Bureau shall not issue any permit for construction, alteration,  
10 removal or demolition of any structure, or for any work involving a Significant or Contributory  
11 Building or a building within a Conservation District unless either the ~~Zoning~~  
12 ~~Administrator~~ Planning Department has determined that such application is exempt from the  
13 provisions of this Article, or processing under this Article is complete and necessary approvals  
14 under this Article have been obtained. The issuance of any permit by a City department or  
15 agency that is inconsistent with any provision of this Article may be revoked by the  
16 ~~Superintendent of the Bureau~~ Director of the Department of Building Inspection pursuant to ~~Section~~  
17 ~~303(e)~~ the provisions of the San Francisco Building Code.

18 (c) No abatement proceedings or enforcement proceedings shall be undertaken by  
19 any department of the City for a Significant or Contributory building or a building within a  
20 Conservation District without, to the extent feasible, prior notification of the ~~Department of City~~  
21 Planning Department and the Historic Preservation Commission. Such proceedings shall comply  
22 with the provisions of this Article where feasible.

23 SEC. ~~III~~ 1118. UNSAFE OR DANGEROUS CONDITIONS.  
24  
25

1 Where the ~~Superintendent of the Bureau~~Director of the Department of Building Inspection or  
2 the Chief of the Bureau of Fire Prevention and Public Safety determines that a condition on or  
3 within a Significant or Contributory Building is unsafe or dangerous and determines further  
4 that repair or other work rather than demolition will not threaten the public safety, said official  
5 shall, after consulting with the ~~Planning Department of City Planning and the Historic Preservation~~  
6 Commission, to the extent feasible, determine the measures of repair or other work necessary  
7 to correct the condition in a manner which, insofar as it does not conflict with State or local  
8 requirements, is consistent with the purposes and standards set forth in this Article.

9  
10 SEC. ~~4471119~~. MAINTENANCE REQUIREMENTS AND ENFORCEMENT  
11 THEREOF.

12 (a) Maintenance. The owner, lessee, or other person in actual charge of a  
13 Significant or Contributory Building shall comply with all applicable codes, laws and  
14 regulations governing the maintenance of property. It is the intent of this Section to preserve  
15 from deliberate or inadvertent neglect the exterior features of buildings designated Significant  
16 or Contributory, and the interior portions thereof when such maintenance is necessary to  
17 prevent deterioration and decay of the exterior. All such buildings shall be preserved against  
18 such decay and deterioration and free from structural defects through prompt corrections of  
19 any of the following defects:

- 20 (1) Facades which may fall and injure members of the public or property;
- 21 (2) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor  
22 supports, deteriorated walls or other vertical structural supports;
- 23 (3) Members of ceilings, roofs, ceiling and roof supports or other horizontal  
24 members which sag, split or buckle due to defective material or deterioration;
- 25



1 (4) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or  
2 floors, including broken windows or doors;

3 (5) Defective or insufficient weather protection for exterior wall covering, including  
4 lack of paint or weathering due to lack of paint or other protective covering;

5 (6) Any fault or defect in the building which renders it not properly watertight or  
6 structurally unsafe.

7 (b) Enforcement Procedures. The procedures set forth in Building Code Section 203114 through 116  
8 governing unsafe buildings or property shall be applicable to any violations  
9 of this Section.

10 SEC. ~~119~~1120. ENFORCEMENT AND PENALTIES.

11 Enforcement and Penalties shall be as provided in Sections 176 and 176.1 of this  
12 Code.

13 SEC. ~~120~~1121. RELATIONSHIP TO ARTICLE 10.

14 Buildings or areas within the C-3 District designated pursuant to the provisions of both  
15 Article 10 and Article 11 shall be regulated pursuant to the procedures of both Articles. In case  
16 of conflict, the more restrictive provision shall control.

17 Notwithstanding the rating of a building in a C-3 District pursuant to the provisions of  
18 Article 11, buildings may be designated as landmarks according to the provisions of Article 10.

19 ~~Where an appeal is taken from a decision regarding alteration of a building which is both a~~  
20 ~~landmark under Article 10 and a Significant or Contributory Building under Article 11, the appeal~~  
21 ~~shall be taken to the Board of Supervisors pursuant to the provisions of Article 10.~~  
22

23 SEC. ~~121~~1122. NOTICE OF AMENDMENT.  
24  
25

1 Notice of ~~any~~the hearing before the ~~City Planning~~Historic Preservation Commission, ~~or, if~~  
2 ~~no hearing, notice of~~and the first hearing before the Board of Supervisors, of a proposed  
3 amendment to this Article which materially alters the limitations and requirements applicable  
4 to any building or class of buildings shall be given to the owners of such buildings by mail.

5  
6 SEC. ~~1122~~1123. NOTICE PROCEDURE.

7 When any provision of this Article requires notice by mail to a property owner, the  
8 officer or body providing the notice shall use for this purpose the names and addresses as  
9 shown on the latest citywide Assessment Roll in the Assessor's Office.

10  
11 SEC. ~~1123~~1124. TIME PROVISIONS.

12 Unless otherwise indicated, all time provisions governing the taking of action by City  
13 officials are directory and not mandatory.

14  
15 SEC. ~~1124~~1125. SEVERABILITY.

16 If any part of this Article 11 is held to be unconstitutional or invalid, such decision shall  
17 not affect the validity of the remaining portions of this Article 11 or any part thereof. The Board  
18 of Supervisors hereby declares that it would have passed all portions of this Article and any  
19 amendments thereto irrespective of the fact that any one or more portions be declared  
20 unconstitutional or invalid.

21  
22 Section 3. The Appendices to Article 10 are not amended by this ordinance and thus  
23 have not been included here for brevity.  
24  
25

1 Section 4. In enacting this Ordinance, the Board intends to amend only those words,  
2 phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams  
3 or any other constituent part of the Planning Code that are explicitly shown in this legislation  
4 as additions, deletions, Board amendment additions, and Board amendment deletions in  
5 accordance with the "Note" that appears under the official title of the legislation. This  
6 Ordinance shall not be construed to effectuate any unintended amendments. Any additions or  
7 deletions not explicitly shown as described above, omissions, or other technical and non-  
8 substantive differences between this Ordinance and the Planning Code that are contained in  
9 this legislation are purely accidental and shall not effectuate an amendment to the Planning  
10 Code. The Board hereby authorizes the City Attorney, in consultation with affected City  
11 departments, to make those necessary adjustments to the published Planning Code, including  
12 non-substantive changes such as renumbering or relettering, to ensure that the published  
13 version of the Planning Code is consistent with the laws that this Board enacts.

14 Section 5. Effective Date. This ordinance shall become effective 30 days from the date  
15 of passage.

16  
17  
18 APPROVED AS TO FORM:  
19 DENNIS J. HERRERA, City Attorney

20 By: \_\_\_\_\_  
21 MARLENA G. BYRNE  
22 Deputy City Attorney  
23  
24  
25

## Economic Hardship Clauses Adopted by Four California Jurisdictions

- Santa Clara County:

### **Sec. C17-18. Determination of hardship.**

A Determination of hardship application may be filed by an owner of a designated landmark where, in the owner's opinion, the owner has been denied, or will be denied, all reasonable use of, or return on, the subject property. Application shall be made to the Department of Planning and Development on forms provided for such purpose and shall be accompanied by a non-refundable filing fee as set forth in the schedule of fees established by resolution of the Board of Supervisors. The application shall be noticed and placed on the agenda of the Board of Supervisors for its determination in the same manner prescribed in Section C17-15. The applicant shall present facts and substantial evidence to support the request for a determination of hardship. Following consideration of relevant information and evidence concerning the application for determination of hardship, the Board of Supervisors may make one of the following findings:

- A. The property owner has been denied, all reasonable use of or return from the designated landmark or undesignated historic resource listed in the Heritage Resource Inventory as a direct result of the denial of the Landmark Alteration Permit. The Board of Supervisors may also recommend relevant conditions be placed on the issuance of the related permit. The department director or designee shall then issue a determination of hardship approving the proposed alteration or demolition, or approving the proposed alteration or demolition with conditions; or
- B. The property owner retains reasonable use of, or return from, the designated landmark or undesignated historic resource listed in the heritage resource inventory despite the denial of the proposed alteration or demolition.

Upon direction by the Board of Supervisors, the department director or designee shall grant, grant with conditions or deny the application for a determination of hardship and notify the applicant by mail of the determination.

(Ord. No. NS-1100.96, 10-17-06)

- City of Chico:

### 19.37.110 Economic hardship.

If an applicant presents evidence to the board that denial of an application for a certificate of appropriateness or certificate of demolition will cause an economic hardship because of conditions peculiar to the particular structure or other feature involved, the board may approve or conditionally approve such application waiving the requirements of this chapter. A determination of economic hardship may be made only if the board finds that:

1. Denial of the application will diminish the value of the subject property so as to leave substantially no value; or
2. Sale or rental of the property is impractical, when compared to the cost of holding such property for uses permitted in the zoning district; or

3. Utilization of the property for lawful purposes is prohibited or impractical; or
4. Rental at a reasonable rate of return is not economically feasible.

- South Pasadena:

(C) Economic Hardship. In considering the appropriateness of either demolition or alteration of a landmark or improvement or natural feature within a historic district, the commission shall approve or conditionally approve a certificate of appropriateness if it finds that such cultural resource cannot be remodeled or rehabilitated in a manner which would allow a reasonable use of or reasonable return from the property to the owner.

(i) The commission may solicit expert testimony or require that the owner submit any or all of the following information before the commission makes a determination on the application:

- a. The past and current use of the property;
- b. The original purchase price;
- c. The current assessed value of the property;
- d. The estimated market value of the property:
  1. In its current condition,
  2. After completion of the proposed construction, alteration, demolition or removal,
  3. After any changes recommended by the commission, and
  4. In the case of demolition, after renovation of the existing property for continued use (if by appraisal, such appraisal shall not be older than six months from the date of submission to the commission);
- e. The current outstanding mortgage debt encumbering the property identifying principal balance and interest rate;
- f. The immediate past three-year history of income and expenses, if income-producing property;
- g. Form of ownership or operation of the property, whether sole proprietorship, for profit or not-for-profit corporation, limited partnership, joint venture or other;
- h. An estimate of the cost of the proposed construction, alteration, demolition or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the commission;
- i. A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation;
- j. In the case of proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser or other real estate professional experienced in rehabilitation, as to the economic feasibility of rehabilitation or reuse of the existing structure on the property;
- k. Such other information of applicant or principal investors in the property, considered necessary by the commission to determine if there is a reasonable return to the owner.

- City of Davis:

**40.23.190 Showing of extreme hardship.**

If the applicant presents evidence clearly demonstrating to the satisfaction of the historical resources management commission that failure to approve the application for a certificate of appropriateness or a demolition permit will cause an extreme hardship because of conditions peculiar to the particular structure or other feature involved, the commission may approve or conditionally approve such application even though it does not meet the standards set forth in

Section 40.23.090. The applicant shall bear the burden of proving the extreme hardship and shall provide substantiation of the claim as the commission may require. The commission is authorized to request that the applicant furnish additional information, documentation and expert testimony, the cost of which shall be paid by the applicant, to be considered by the commission in its related findings. All additional required information shall be provided by a qualified individual or firm selected by the city. In determining whether extreme hardship exists, the commission shall consider evidence that demonstrates:

- (a) Denial of the application will diminish the value of the subject property so as to leave substantially no value;
- (b) Sale or rental of the property is impractical, when compared to the cost of holding such property for uses permitted in the zoning district;
- (c) Utilization of the property for lawful purposes is prohibited or impractical;
- (d) Rental at a reasonable rate of return is not feasible. (Ord. 2124 § 1, 2003)



Scott Wiener

# memorandum

**to:** President Charles Chase, Historic Preservation Commission and Members

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**from:** Supervisor Scott Wiener

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**date:** September 7, 2011

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**re:** Amendments to Articles 10 and 11 of the Planning Code

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Dear Commissioners:

Please consider the following amendments to the amendments of Articles 10 and 11 that are currently before you. I am considering introducing similar amendments to the legislation, when it comes before the Board of Supervisors. I am submitting these to you in the hope that you can review and comment. I welcome any comments you may have.

Article 10:

- SECTION 1002: POWERS AND DUTIES OF THE PLANNING DEPARTMENT AND THE HISTORIC PRESERVATION COMMISSION, subsection (8), edit as follows: (8) Shall have the authority to oversee and direct the survey and inventory of historic properties provided that no such survey or inventory shall proceed unless one of the following two occur: (1) a majority of property owners in the proposed survey area agree to the survey's commencement and the Board of Supervisors, by majority vote of all members, approves the survey's commencement; or (2) the Board of Supervisors, by a 2/3 vote of all members, approves the survey's commencement;
- SEC. 1004.2: DECISION OF THE HISTORIC PRESERVATION COMMISSION, subsection (c), edit as follows: (c) Referral of Proposed Designation. If the HPC recommends approval of a landmark designation, it shall send its recommendation to the Board of Supervisors, without referral to the Planning Commission. If the HPC recommends approval of an historic district designation, it shall refer its recommendation to the Planning Commission, which shall have 45 days to review and comment on the proposed designation, which comments, if any, shall be sent by the Department to the Board of Supervisors with the HPC's recommendation. Such comments shall be transmitted to the Board of Supervisors as a resolution and shall (i) address the consistency of the proposed designation with the General Plan and the priority policies of Section 101.1 and (ii) identify any amendments to the General Plan and to the priority policies of Section 101.1 necessary to facilitate adoption of the proposed designation. If the HPC disapproves designation of a landmark or historic district, that decision shall be final and shall not require referral unless appealed as set forth below.
- SEC. 1004.4: APPEAL TO THE BOARD OF SUPERVISORS, subsection (b), edit as follows: (b) Decision. The Board of Supervisors may overrule the HPC and approve, modify and approve the designation by a majority vote of all its members. The Board of Supervisors may designate an historic district by a majority vote of

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## Scott Wiener

all its members if a majority of the property owners in the proposed historic district consent in writing to the designation; in the event a majority of the property owners in the proposed historic district have not consented in writing to the designation, the Board of Supervisors may nonetheless designate the historic district by a 2/3 vote of all its members.

- SEC. 1006.1. APPLICATIONS FOR CERTIFICATE OF APPROPRIATENESS, subsection (e), edit as follows: (e) Multiple Planning Approvals: For projects that require multiple planning approvals, the HPC must review and act on any Certificate of Appropriateness before any other planning approval action. For projects that (1) require a conditional use authorization or permit review under Section 309, et. seq. of the Code, and (2) do not concern an individually landmarked property, the Planning Commission may modify any decision on a Certificate of Appropriateness by a two-thirds vote, provided that the Planning Commission shall apply all applicable historic resources provisions of the Code and take into account all relevant General Plan and Planning Code policies, in addition to all applicable historic resources provisions. For properties located on vacant lots, the Planning Commission may modify any decision on a Certificate of Appropriateness by a two-thirds vote, provided that the Planning Commission shall apply all applicable historic resources provisions of the Planning Code and take into account all relevant General Plan and Planning Code policies, in addition to all applicable historic resources provisions.
- SEC. 1006.3. SCHEDULING AND NOTICE OF HEARING, subsection (a)(4), edit as follows: (4) For buildings located in historic districts: by mail not less than 20 days prior to the date of the hearing to all owners and occupants of the subject property and owners and occupants of properties within 300 150 feet of the subject property.
- SEC. 1006.7. STANDARDS FOR REVIEW OF APPLICATIONS, subsection (b), edit as follows: (b) The proposed work's compliance with the Secretary of Interior's Standards for the Treatment of Historic Properties, as interpreted by the Planning Department for specific application in San Francisco, including any Guidelines, Interpretations, Bulletins, or other materials that the Planning Department or HPC has adopted (the "San Francisco Standards"), shall be considered. The San Francisco Standards shall be promulgated by the Planning Department following a public planning process, determination of conformance with the General Plan and Planning Code by the Planning Commission, and adoption by the HPC. The proposed work shall comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties.
- SEC. 1014. APPLICABILITY, subsection (a)(2), edit as follows: (2) For historic districts: ~~4-year~~ 180 days after the date of initiation. The HPC or the Board of Supervisors may approve by resolution a one-time extension of up to 90 days of either of the above-time periods. The Board of Supervisors may approve by resolution one further extension of up to 90 days of either of the above time periods. If final action on such designation has not been completed before the end of the relevant time period, the permit application may be approved.

Article 11:

- SEC. 1107. PROCEDURES FOR DESIGNATION OF ADDITIONAL CONSERVATION DISTRICTS OR BOUNDARY CHANGE OF CONSERVATION DISTRICTS, subsection (e), edit as follows: (e) Designation by Board of Supervisors. The Board of Supervisors, or a committee thereof, shall hold a public hearing on any proposal so transmitted to it. The Board of Supervisors may approve, modify and approve, or disapprove the designation or boundary change by a majority vote of all its members if a majority of the property owners in the proposed Conservation District or within the expanded boundaries consent in writing to the designation; if a

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## Scott Wiener

majority of the property owners in the proposed Conservation District or within the expanded boundaries have not consented in writing to the designation, the Board of Supervisors may nonetheless designate and expand the boundaries of the Conservation District by a 2/3 vote of all its members.

- SEC. 1111. APPLICATIONS FOR PERMITS TO ALTER, PERMITS TO DEMOLISH, AND PERMITS FOR NEW CONSTRUCTION IN CONSERVATION DISTRICTS, subsection (b), edit as follows: (b) In addition to the contents specified for applications in (1) above, any application for a Permit to Demolish a Significant building or a Contributory building from which TDR have been transferred shall also contain the following information:
- SEC. 1111. APPLICATIONS FOR PERMITS TO ALTER, PERMITS TO DEMOLISH, AND PERMITS FOR NEW CONSTRUCTION IN CONSERVATION DISTRICTS, subsection (c), the requirements (1)-(6) become (16) to (21) rather than a new subsection (c).
- SEC. 1111.6. STANDARDS AND REQUIREMENTS FOR REVIEW OF APPLICATIONS FOR ALTERATIONS, subsection (b), edit as follows: (b) The proposed work's compliance with the Secretary of Interior's Standards for the Treatment of Historic Properties, as interpreted by the Planning Department for specific application in San Francisco, including any Guidelines, Interpretations, Bulletins, or other materials that the Planning Department or HPC has adopted (the "San Francisco Standards"), shall be considered. The San Francisco Standards shall be promulgated by the Planning Department following a public planning process, determination of conformance with the General Plan and Planning Code by the Planning Commission, and adoption by the HPC. ~~The proposed work shall comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties, including any Guidelines, Interpretations, Bulletins, or other materials that the Historic Preservation Commission has adopted.~~
- SEC. 1111.7. STANDARDS AND REQUIREMENTS FOR REVIEW OF APPLICATIONS FOR DEMOLITION, subsection (a), edit as follows: (a) For Significant Buildings (Category I and II), ~~contributory Buildings (Category III), and for Contributory Buildings in a Conservation District (Category III and IV)~~ from which TDR have been transferred:
- SEC. 1111.7. STANDARDS AND REQUIREMENTS FOR REVIEW OF APPLICATIONS FOR DEMOLITION, subsection (b), edit as follows: (b) For Contributory Buildings ~~in a Conservation District (Category IV)~~ from which no TDR has been transferred:
- SEC. 1111.7. STANDARDS AND REQUIREMENTS FOR REVIEW OF APPLICATIONS FOR DEMOLITION, subsection (c)(A), edit as follows: (A) Based on new documentation presented, the building has not gained additional historical or architectural significance that may make it eligible for classification as a Category I, II, or IV building. Any determination that a Category V building may be eligible for reclassification shall be void if, within 180 days of such determination, the Board of Supervisors has not re-designated the building to a Category I, II or IV building;
- SEC. 1111.7. STANDARDS AND REQUIREMENTS FOR REVIEW OF APPLICATIONS FOR DEMOLITION, subsection (d), edit as follows: The cumulative effects on the integrity of the Conservation District associated with demolition of the Contributory Building shall be considered and may be grounds for denial of the Permit to Demolish if the effects would materially impair the significance of the Conservation District.

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- SEC. 1111.7. STANDARDS AND REQUIREMENTS FOR REVIEW OF APPLICATIONS FOR DEMOLITION, subsection (e), edit as follows: If a building located within a Conservation District (Category II, IV, and V) or a Category III Building located outside of a Conservation District is found to have gained significance pursuant (c)(i1) above and the building has been re-classified by the Board of Supervisors within 180 days, then the Permit to Demolish will be reviewed under Subsection (a) or (b) above, and not under Subsection (c).

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District 8



City and County of San Francisco

Scott Wiener

# memorandum

to: President Charles Chase, Historic Preservation Commission and Members

from: Supervisor Scott Wiener

SW

date: October 3, 2011

re: Amendments to Articles 10 and 11 of the Planning Code

Dear Commissioners:

This memo supplements my memo of September 7, 2011, outlining my thoughts on the current updating of Articles 10 and 11 of the Planning Code. I thank you for considering these proposals and look forward to your feedback as the legislation moves to the Planning Commission and ultimately the Board of Supervisors.

I support including in Articles 10 and 11 a provision allowing for an "economic hardship opt-out" for property owners who want to make changes to their buildings but who do not have the economic means to do so in compliance with historic preservation standards or to pay for a Certificate of Appropriateness. I have spoken with Tim Frye about this issue, and we have engaged in productive dialogue about it. I believe he is researching how this opt-out works in other historic districts in the United States. Obviously, any hardship opt-out would have to be drafted as a narrow exemption that avoids abuse.

An economic hardship opt-out is important to avoid gentrification of historic districts. Many people own property but are of limited economic means. Perhaps they purchased the property many years ago and are of modest income or retired. Perhaps they inherited the property from a parent and have enough money to pay property taxes and basic upkeep but not enough to make more expensive changes. The last thing we want to do is to drive these people out of historic districts or prevent them from making needed improvements to their buildings. For example, if a person of limited means has a sub-standard window that he wishes to replace, preservation rules could require a fairly expensive window replacement and could trigger the need to replace all windows. Although the Planning Department, to its credit, works with property owners and at times allows a longer time window to make the additional triggered changes, for residents of limited means, no amount of time will allow them to have sufficient funds to comply with historic standards.

Historic districts, like all neighborhoods in San Francisco, should be diverse. This diversity includes diversity of income. I am confident that we can formulate an economic hardship opt-out that is narrowly drafted and that will allow everyone to live and remain in these districts.

I look forward to your feedback and to a continuing dialogue.

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Member, Board of Supervisors  
District 8



City and County of San Francisco

Scott Wiener

# memorandum

**to:** President Charles Chase, Historic Preservation Commission and Members

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**from:** Supervisor Scott Wiener

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**date:** October 13, 2011

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**re:** Amendments to Articles 10 and 11 of the Planning Code

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Dear President Chase and Commissioners:

Please consider this response to the Planning Department's 10/05/11 memo to your Commission concerning Planning Code Amendments to Article 10 and 11, including my proposed further amendments to Articles 10 and 11. I welcome any comments you may have.

## Article 10:

**Section 1002:** Regarding surveys, I believe the Planning Department's recommendations are going in the right direction. My preference is to see community engagement policies and procedures set out in one or more administrative bulletins, available online and at the counter. These policies and procedures should clearly delineate the outreach process for survey work, and establish clear performance metrics for outreach that are to be reported semi-annually to both your Commission and the Planning Commission. These published policies and procedures should apply to outreach generally and not be placed in the Preservation Element, but should be more accessible to the public and amended as necessary. Notices regarding survey work should clearly state the expected implications and potential costs to affected property owners, of, for example, identification as a contributor to a potential historic district. Outreach targets must include renters and commercial tenants, who often carry the costs of maintaining and operating property.

**Section 1004.3:** Regarding designation, my preference is to require an informational vote from a majority of property owners prior to a simple majority vote of the Board of Supervisors. I would also like to require the Department to obtain the vote of a majority of property owners in a proposed district before designation can be brought before the Board of Supervisors.

Regarding the Economic Hardship Exemption/Opt-Out, it is my understanding that the Planning Department is researching best practices in this area. I look forward to the results of this research. My intention is to include Affordable Housing projects, regardless of income level, and mixed-use and commercial properties as part of this Exemption/Opt-Out.

**Section 1006.3:** Regarding scheduling and noticing of hearing, the HPC has recommended that all occupants within 300 feet of a property seeking a C of A be noticed 20 days prior to the hearing. This change is very expensive and lacks a data source for "occupants".

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**Section 1006.7:** Regarding the San Francisco Standards, my preference is to bring the proposed Standards, including any Guidelines, Interpretations, Bulletins or other materials to the Planning Commission for recommendation as well as to the HPC for adoption. These standards should also be considered and ultimately adopted by the City to inform and improve review of historic projects under CEQA.

Pending the development of the San Francisco Standards, compliance with the Secretary of Interior's Standards for the Treatment of Historic Properties should only be required of landmarks.

**Section 1014:** My preference is that an additional hold be routed to the BOS on behalf of the Historic Preservation Commission. This allows for further public comment and check-in.

Additionally, for districts and private landmarks subject to Article 10, there should be a uniform standard establishing that only character-defining features visible or accessible from the public right of way or public space can be protected by a designating ordinance.

### Article 11:

**Section 1107:** Regarding designation, my preference is to require an informational vote from a majority of property owners prior to a simple majority vote of the Board of Supervisors. I would also like to require the Department to obtain the vote of a majority of property owners in a proposed district before designation can be brought before the Board of Supervisors.

**Section 1111(b), 1111.6, 111.7(a) and (b):** I believe that owners of Contributory Buildings for which TDR has not been transferred should, at a minimum, receive notice of the proposed changes regarding demolition controls.

**Section 1111.7(d).** If the "materially impair" standard does not work for the Department, I would be interested to hear recommendations on another standard that would convey what constitutes an impact on the integrity of a Conservation District.

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Member, Board of Supervisors  
District 8



City and County of San Francisco

Scott Wiener

# memorandum

**to:** President Charles Chase, Historic Preservation Commission and Members

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**from:** Supervisor Scott Wiener

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**date:** October 17, 2011

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**re:** Amendments to Articles 10 and 11 of the Planning Code

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Dear President Chase and Commissioners:

Please consider the below correction to my 10/13/2011 memo. My apologies for the confusion.

Please replace:

**Article 10:**

Additionally, for districts and private landmarks subject to Article 10, there should be a uniform standard establishing that only character-defining features visible or accessible from the public right of way or public space can be protected by a designating ordinance.

with:

**Article 10:**

Additionally, for districts and private landmarks subject to Article 10, there should be a uniform standard establishing that only exterior character-defining features, or interior character defining architectural features that are or historically have been visible or accessible from the public right of way or public space can be protected by a designating ordinance.

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