



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Amendment

HEARING DATE: NOVEMBER 4, 2010

*Project Name:* **Amendments relating to the Upper Market NCD**  
*Case Number:* 2010.0833T [Board File No. pending]  
*Initiated by:* Planning Commission  
*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Recommendation:* **Recommend Adoption of Amendments With Modificaiton**

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

### PLANNING CODE AMENDMENT

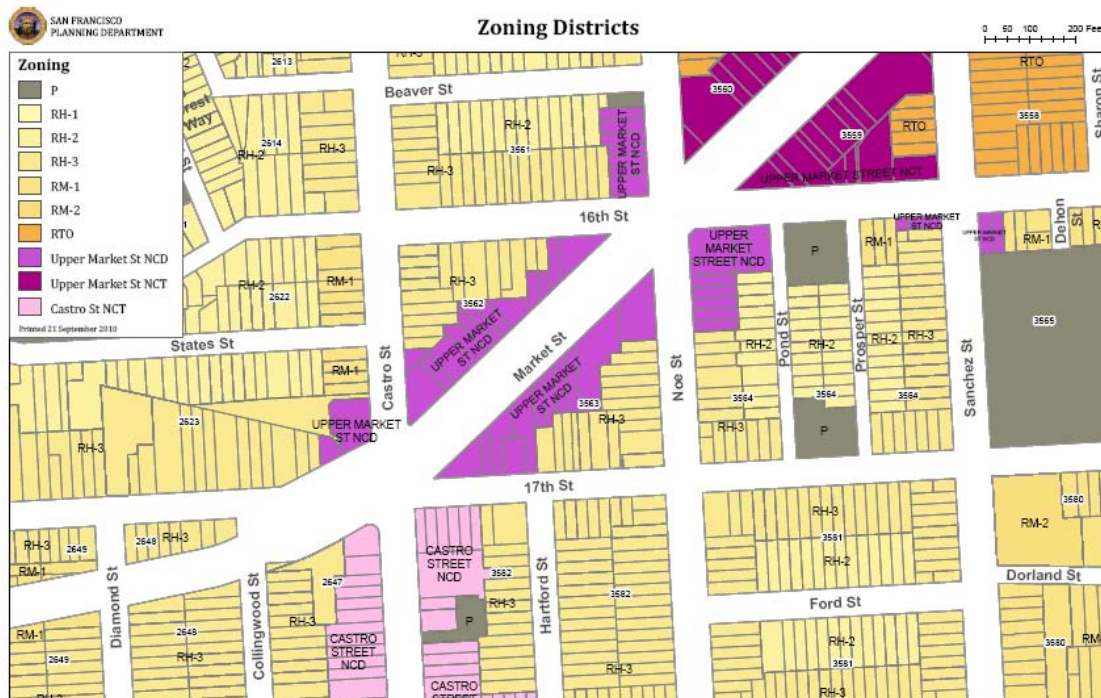
The proposed Ordinance would amend the San Francisco Planning Code by amending Sections 134, 145.4, 151.1, 155, 207.7, 207.8, 263.20, 401, 416 et seq., 421.1, 421.3, 421.5, 721, and 721.1 as the sections relate to the Upper Market Street Neighborhood Commercial District (Upper Market NCD) and to extend the Market and Octavia Community Infrastructure Fee area to include the Upper Market Street Neighborhood Commercial District lying outside the Market and Octavia Plan area.

The proposed Planning Code amendment is intended to achieve the following: 1) ensure commercial and residential development in the Upper Market NCD is consistent with existing development patterns; 2) provide relief from parking requirements and encourage more transit-oriented development in the Upper Market NCD; and 3) ensure new development in the Upper Market NCD provides community benefits to offset new impacts to infrastructure due to new development.

#### The Way It Is Now:

The area that would be affected by the proposed legislation is the only remaining block in the City with the zoning district "Upper Market Neighborhood Commercial". See attached map on the following page. The controls for this area were established in the mid-1980's during the neighborhood commercial rezoning effort. While the district has had minor changes to the planning controls since its inception, in large part the substance of the zoning controls for the district have not been updated since the original adoption.

After three successful community workshops, the Upper Market neighbors have developed a community vision and design guidelines. These documents were endorsed by the Planning Commission on October 23, 2008.



The existing zoning controls for this district can be summarized as follows:

- **Section 134 Rear Yards** currently requires rear yards at the lowest level containing a dwelling unit and above.
- **Section 145.4 Required Ground Floor Commercial Uses** currently does not apply to this district.
- **Section 151.1 Off-Street Parking** currently requires one parking space per dwelling unit. Commercial parking controls are governed by Section 721.1.
- **Section 155 General Standards for Parking and Loading** does not currently apply to this area.
- **Section 207.7 Restrictions On Demolition, Conversion, And Merger Of Existing Dwelling Units In RTO And NCT Districts** currently does not apply to the Upper Market NCD.
- **Section 207.8 Division of Dwelling Units** currently does not apply to the Upper Market NCD.
- **Section 263.20 Special Height Exception** does not currently apply in this area.
- **Section 401 Definitions for Development Impact Fees; Section 416 et. Seq Market and Octavia Area Plan Affordable Housing Fee; Section 421.1 Findings for Development Impact Fees; Section 421.3 Application of Community Improvement Impact Fees; and Section 421.5 Market and Octavia Community Improvements Fund.** These Sections currently do not apply to this area. Parcels zoned Upper Market NCD are not currently subject to area-specific community improvement impact fees.
- **Section 721 and 721.1 Upper Market Street Neighborhood Commercial District Description and Zoning Control Table** currently makes little mention of multimodal transportation choices in the area; requires no commercial parking if the occupied floor area is less than 5000 sf; does not reference the proposed new controls discussed below including changes to require active street frontages; to place certain prohibitions on new vehicular access; to provide opportunity for

the special height exception for generous ground floor spaces consistent with existing buildings; to add restrictions to residential unit divisions; to increased the rear yard requirement; and to replace commercial and residential parking minimum requirements with parking maximum limits.

#### The Way It Would Be:

The proposed Ordinance would amend the zoning controls for this district as follows:

- **Section 134 Rear Yards** would be amended to generally provide for rear yards at the ground floor and above.
- **Section 145.4 Required Ground Floor Commercial Uses** would be amended to require ground floor commercial uses in this district.
- **Section 151.1 Off-Street Parking** would generally be amended to permit up to one car for each two dwelling units and to allow by conditional use authorization up to 0.75 cars per dwelling units and to generally permit up to 1 commercial parking space per 1,500 square feet of occupied floor area, with an exception to allow more for retail grocery stores.
- **Section 155 General Standards for Parking and Loading** would be amended to not permit new garage entries on Market Street in this area.
- **Section 207.7 Restrictions On Demolition, Conversion, And Merger Of Existing Dwelling Units In RTO And NCT Districts** would be amended to add restrictions on loss of existing units in the area above and beyond existing unit demolition controls that currently apply from Section 317.
- **Section 207.8 Division of Dwelling Units** would be amended to add restrictions onto the splitting of dwelling units into smaller units.
- **Section 263.20 Special Height Exception** would be amended to allow a 5 foot height bonus in the portions of the Upper Market NCD that are currently zoned for heights of 40 and 50 feet.
- **Section 401 Definitions for Development Impact Fees; Section 416 et. Seq Market and Octavia Area Plan Affordable Housing Fee; Section 421.1 Findings for Development Impact Fees; Section 421.3 Application of Community Improvement Impact Fees; and Section 421.5 Market and Octavia Community Improvements Fund** would all be amended to include the Upper Market NCD in the "Program Area" for certain impact fees so that impact fees due in the Market and Octavia Area Plan would also be due in the Upper Market NCD.
- **Section 721 and 721.1 Upper Market Street Neighborhood Commercial District Description and Zoning Control Table District** would be amended to note the multimodal transportation options in the area; to include certain prohibitions on new vehicular access; to reference new height and bulk limits; to increase the rear yard requirement; to add provisions for active street frontages; and to replace commercial and residential parking minimum requirements with parking maximum limits; to reference restrictions to residential unit divisions.

The changes proposed by the draft Ordinance that may pertain to historic resources for this area can be summarized as follows:

- **The proposed Ordinance would increase restrictions and controls on changes to existing units by adding controls on the demolition, conversion, merger or subdivision of existing units.** This change would help to preserve the existing character of the housing stock.
- **The proposed Ordinance offers a 5' height bonus for active retail but contains no changes to the underlying height districts.** The change to Section 263.20 would authorize a 5' height bonus to encourage ground floor retail, however, this change would generally not enable the construction of additional floors instead it would ensure a more new development that is more compatible with the existing character which features generous ground floor retail spaces.
- **The proposed Ordinance would not require parking.** This would also enable the construction of new structures without parking, similar to the majority of the existing built character of the block.

## REQUIRED COMMISSION ACTION

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. The proposed Resolution is before the Commission so that it may recommend approval or disapproval to the proposed Planning Code amendments.

## RECOMMENDATION

The Department recommends that the Commission recommend *approval* of the resolution and the proposed the Planning Code amendments with one modification. The Department recommends that the proposed Ordinance be modified to grandfather in certain existing applications.

## BASIS FOR RECOMMENDATION

Residents and property owners within the Upper Market Area have raised the issue of adjusting the zoning controls for this area at several Planning Commission hearings in 2010. According to a July 8, 2010 article in the San Francisco Chronicle<sup>1</sup>, support for the amendments to the Planning Code is strong in the area. The article states that:

"... Cohen's group [Duboce Triangle Neighborhood Association] along with organizations like Castro Area Planning & Action, the Eureka Valley Neighborhood Association and Livable City, wants planners to extend the more restrictive zoning rules all the way to Castro, reunifying that section of Market Street."

The Planning Commission requested that the Planning Department explore the citizen request. Staff analysis of the citizen proposal found the citizen request to be in line with recent planning work by the Department. The Department met with a coalition of people representing neighborhood and local advocacy groups including the Duboce Triangle Neighborhood Association, the Eureka Valley Neighborhood Association, the Castro Business Improvement District and Livable City. At this meeting

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<sup>1</sup> "S.F. Quandary Develops Over 'Orphan' Block", San Francisco Chronicle. Wildermuth, John. July 08, 2010.

it was decided that the Department would conduct the required public notice and advertisements while the community coalition would spearhead a neighborhood meeting and supplemental outreach.

**Recommended Modification**

Most of the Ordinances introduced by the Planning Commission are the result of lengthy community planning processes which provide some level of notice to property owners and potential developers. Because this draft Ordinance did not benefit from a substantial process whereby potential developers would be aware of pending fee changes, the Department recommends apply all the controls upon adoption of the Ordinance while providing an exemption from certain impact fees for pre-existing projects. The Department recommends adding an “applicability” section that would grandfather pipeline projects from impact fee payment in the following manner:

:

1. Effect of Amendments on Approved Projects. A Development Application that would modify an Entitled Project shall be governed provisions of the Planning Code which it received its original entitlement until October 28, 2012.
2. Effect of Amendments on Projects for Which No Project Approval Has Occurred. Projects that meet all of the following criteria shall not be subject to Section 416 or 421:
  - a. Is a Code Conforming Project;
  - b. Has filed a first Development Application with the Planning Department prior to October 28, 2010;
  - c. Has received Planning Department entitlements before October 28, 2012; and
  - d. Does not require extension or renewal of Conditional Use permit, or other planning entitlement.
3. The above dates may be extended by the Zoning Administrator due to appeals or court challenges. The dates cannot be extended due to hardship, economic cycles, or other circumstances.

**ENVIRONMENTAL REVIEW**

The proposal to amend the Planning Code would be reviewed by the Planning Department prior to the adoption hearing.

**PUBLIC COMMENT**

As of the date of this report, the Planning Department received one attached letter from Sternberg Benjamin Architects Concerning 376 Castro Street requesting “grandfathering” for project applications submitted prior to December 31, 2005.

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| <b>RECOMMENDATION:</b> <b>Recommend Approval</b> |
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**Attachments**

- Exhibit A:        Draft Ordinance
- Exhibit B:        Draft Resolution
- Exhibit C:        Letter from Sternberg Benjamin Architects Concerning 376 Castro Street



# SAN FRANCISCO PLANNING DEPARTMENT

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## Draft Planning Commission Resolution Planning Code Text Change HEARING DATE: NOVEMBER 4, 2010

*Project Name:* **Amendments relating to the Upper Market NCD**  
*Case Number:* 2010.0833T [Board File No. pending]  
*Initiated by:* Planning Commission  
*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Recommendation:* **Approve Amendment with Modifications**

1650 Mission St.  
Suite 400  
San Francisco,  
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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND VARIOUS SECTIONS OF THE PLANNING CODE TO ACHIEVE THE FOLLOWING: 1) ENSURE COMMERCIAL AND RESIDENTIAL DEVELOPMENT IN THE UPPER MARKET NEIGHBORHOOD COMMERCIAL DISTRICT (UPPER MARKET NCD) IS CONSISTENT WITH EXISTING DEVELOPMENT PATTERNS; 2) PROVIDE RELIEF FROM PARKING REQUIREMENTS AND ENCOURAGE MORE TRANSIT-ORIENTED DEVELOPMENT IN THE UPPER MARKET NCD; AND 3) ENSURE NEW DEVELOPMENT IN THE UPPER MARKET NCD PROVIDES COMMUNITY BENEFITS TO OFFSET NEW IMPACTS TO INFRASTRUCTURE DUE TO NEW DEVELOPMENT AND ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

### PREAMBLE

WHEREAS, Section 4.105 of the Charter of the City and County of San Francisco mandates that the Planning Department shall periodically recommend to the Board of Supervisors for approval or rejection proposed amendments to the Planning Code.

The San Francisco Planning Commission is proposing to amend the Planning Code to amend the Upper Market Neighborhood Commercial District to update the Planning Code regulations governing this area per a citizen request that is consistent with recent planning work.

After three successful community workshops, the Upper Market neighbors have developed a community vision and design guidelines. These documents were endorsed by the Planning Commission on October 23, 2008.

A draft ordinance, attached hereto, has been drafted in order to make revisions to the Planning Code to amend the Upper Market Street NCD to be more consistent with the community vision articulated in the Upper Market Community Plan amending Planning Code Sections by amending Sections 134, 145.4, 151.1, 155, 207.7, 207.8, 263.20, 401, 416 et seq., 421.1, 421.3, 421.5, 721, and 721.1 as the sections relate to the Upper Market Street Neighborhood Commercial District (Upper Market NCD) and to extend the Market and Octavia Area Plan Impact Fees area to include the Upper Market Street Neighborhood Commercial District lying outside the Market and Octavia Plan area. The City Attorney's Office has reviewed the draft ordinance and approved it as to form; and

The proposed legislation is intended to resolve the aforementioned issues; and

Pursuant to Planning Code Section 302(b), the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to initiate the proposed Ordinance on September 30, 2010 at which the Commission approved scheduling an adoption hearing on or after November 4, 2010 ; and

Whereas, the proposed zoning changes will be reviewed under the California Environmental Quality Act and CEQA findings will be developed prior to approval actions by either the Historic Preservation Commission and the Planning Commission; and

Whereas, the Planning Commission (hereinafter the "Commission") 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 the applicant, 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 COMMISSION has reviewed the proposed Ordinance; and

**MOVED**, that the COMMISSION hereby recommends that the Board of Supervisors recommends *approval with modification of the proposed Ordinance* and adopts this Draft Resolution to that effect.

The recommended modification would be to add an "applicability" section that would grandfather pipeline projects from impact fee payment in the following manner:

1. Effect of Amendments on Approved Projects. A Development Application that would modify an Entitled Project shall be governed provisions of the Planning Code which it received its original entitlement until October 28, 2012.
2. Effect of Amendments on Projects for Which No Project Approval Has Occurred. Projects that meet all of the following criteria shall not be subject to Section 416 or 421:
  - a. Is a Code Conforming Project;
  - b. Has filed a first Development Application with the Planning Department prior to October 28, 2010;
  - c. Has received Planning Department entitlements before October 28, 2012; and

- d. Does not require extension or renewal of Conditional Use permit, or other planning entitlement.
3. The above dates may be extended by the Zoning Administrator due to appeals or court challenges. The dates cannot be extended due to hardship, economic cycles, or other circumstances.

## **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. The proposed Ordinance responds to requests from residents and property owners within the Upper Market Area have raised the issue of adjusting the zoning controls for this area at several Planning Commission hearings in 2010;
2. The Commission requested that the Planning Department explore the citizen request and staff analysis of the citizen proposal found the citizen request to be in line with recent planning work by the Department;
3. The Department met with a coalition of people representing neighborhood and local advocacy groups including the Duboce Triangle Neighborhood Association, the Eureka Valley Neighborhood Association, the Castro Business Improvement District and Livable City;
4. At this meeting it was decided that the Department would conduct the required public notice and advertisements while the community coalition would spearhead a neighborhood meeting and supplemental outreach.
5. The community coalition hosted a public discussion of the proposal on Monday, October 25, 2010 at the Chase Bank Community Meeting Room at Market and Sanchez Streets that was attended by approximately 20 people, including two planning staff.
6. Most of the Ordinances introduced by the Planning Commission are the result of lengthy community planning processes which provide some level of notice to property owners and potential developers. Because this draft Ordinance did not benefit from a substantial process whereby potential developers would be aware of pending fee changes, the Department recommends apply all the controls upon adoption of the Ordinance while providing an exemption from certain impact fees for pre-existing projects. The Department recommends adding an "applicability" section that would grandfather pipeline projects from impact fee payment in the following manner:
7. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

### **I. AIR QUALITY ELEMENT**



**OBJECTIVE 3:**

DECREASE THE AIR QUALITY IMPACTS OF DEVELOPMENT BY COORDINATION OF LAND USE AND TRANSPORTATION DECISIONS.

**II. TRANSPORTATION ELEMENT**

**POLICY 1.1**

Involve citizens in planning and developing transportation facilities and services, and in further defining objectives and policies as they relate to district plans and specific projects.

**III. COMMERCE & INDUSTRY ELEMENT**

**OBJECTIVE 6:**

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

8. **CEQA Findings:** In determining to approve the proposed, the Commission makes and adopts the following findings of fact under the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq. ("CEQA"), , the Guidelines for Implementation of CEQA, 14 California Code of Regulations Sections 15000 et seq. ("CEQA Guidelines"), particularly Sections 15162 and 15164, and Chapter 31 of the San Francisco Administration Code:

**a. Environmental Review:**

- i. Market and Octavia Plan EIR: The Planning Commission on April 5, 2007, by Motion No. 17406 certified the Final Environmental Impact Report (FEIR) for the Market and Octavia Plan Additionally, by Motion No. \_\_\_\_\_, the Commission approved the Market and Octavia Plan, adopted findings under CEQA, including a Statement of Overriding Considerations, and adopted a Mitigation Monitoring and Reporting Program for the Plan.
- ii. Planning Department Major Environmental Review has prepared an Addendum to the Market and Octavia Plan EIR, dated October 27, 2010, ("Addendum") analyzing the actions contemplated in the proposed ordinance.

- b. **Location of Records.** All documents comprising the record pursuant to Public Resources Code Section 21167.6(e) are located at the Planning Department, 1650 Mission Street, 4<sup>th</sup> Floor, San Francisco, CA 94103. These findings are based upon substantial evidence in the entire record.

**c. CEQA Findings.**

- d. The Addendum found that the proposed Ordinance would not result in any of the conditions described in CEQA Guidelines 15162, calling for preparation of a subsequent environmental impact report or negative declaration and that, thus, an addendum to the FEIR was appropriate. The Commission, having reviewed and considered the Addendum, makes the following findings:

- i. No substantial changes have been proposed to the project considered in the FEIR and no substantial changes have occurred with respect to the circumstances under which

the project would be undertaken that would require major revisions of the FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

- ii. No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the FEIR was certified concerning the project, its significant effects, or its mitigation measures or alternatives has come to light since the certification of the FEIR.
- iii. Consideration of the environmental effects of the proposed Ordinance requires only minor technical changes and additions to the FEIR and none of the conditions described in CEQA Guidelines section 15162 have occurred.

9. **Section 302 Findings:** The proposed Ordinance has been initiated by the Planning Commission and as is required by Section 302(b) and serves the public necessity, convenience and general welfare as necessary for Ordinances to amend the Planning Code by Section 302(a);
10. **Section 101.1 Findings:** The proposed Planning Code Text Amendment is 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 through the addition of more attractive landscaping.  
*The proposed Ordinance contains regulations that would preserve existing uses and help maintain generous ground floor retail space conducive to retail uses.*
- B) The existing housing and neighborhood character will not be adversely impacted by the proposed Ordinance.  
*The proposed Ordinance contains regulations that would preserve existing uses and help maintain generous ground floor retail space conducive to retail uses.*
- C) The City's supply of affordable housing will be preserved and enhanced:  
*The proposed Ordinance strengthens the existing controls to preserve existing housing by placing new controls on mergers, demolitions, and subdivisions. Additionally, the application of affordable housing impact fees governed by Section 416 et. seq. will help enhance future projects.*
- 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. Any new construction or alteration associated with a use would be executed in compliance with all applicable construction and safety measures.*
- G) That landmark and historic buildings will be preserved:  
*Landmarks and historic buildings would be unaffected by the proposed amendments. Should a proposed use be located within a landmark or historic building, such site would be evaluated under typical Planning Code provisions and comprehensive Planning Department policies, including the CEQA provisions afforded to projects within an area that is eligible for inclusion in a historic district as is this area.*
- H) Parks and open space and their access to sunlight and vistas will be protected from development:  
*The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments.*

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on November 4, 2010.

Linda Avery  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: October 20, 2010

STERNBERG  
BENJAMIN  
ARCHITECTS  
INC.

October 18, 2010

San Francisco Planning Commission  
1650 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

Re: 376 Castro Street  
Planning Department Case No.: 2004.0976E  
Hearing Date: November 4, 2010

Dear Planning Commissioners:

We prepared the plans for the filing of a conditional use application for a proposed residential project at 376 Castro Street on November 10, 2005 and paid fees of \$18,591 at that time (see attached receipt). The environmental review application for the project at 376 Castro Street was filed in November 2004 (see attached notification of project receiving environmental review).

We recently heard informally (but have not received any written notice from the Department) that the Planning Commission will consider proposed legislation to extend the boundaries of the Market-Octavia Plan in such a manner as to include upper Market Street properties including 376 Castro Street on November 4, 2010. We were quite shocked to learn that this draft legislation has been under consideration for some time, and that no one had notified us. We have since contacted the staff planner for the proposed legislation and confirmed with her that this information is indeed correct.

At the public hearing on November 4, 2010, in your consideration of the proposed Market-Octavia Plan expansion, we urge you to grandfather pipeline projects for which an application was filed prior to December 31, 2005. We can confirm that the 6-year delay on our application to date is due solely to the normal Planning Department processes, as well as to an Upper Market planning study that was commissioned by Supervisor Bevan Dufty.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have questions or comments.

Yours truly,



Mitchell Benjamin

cc: President Ron Miguel  
Vice-President Christina Olague  
Commissioner Michael J. Antonini  
Commissioner Gwyneth Borden  
Commissioner William L. Lee  
Commissioner Kathrin Moore  
Commissioner Hisashi Sugaya  
Ann Marie Rogers, Planner  
Elizabeth Watty, Planner