



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 18041

HEARING DATE: MARCH 4, 2010

*Date:* February 25, 2010  
*Case No.* 2009.0227TU  
*Project Sponsor:* Planning Commission  
*Staff Contact:* Elaine Forbes, (415) 558-6417  
[Elaine.forbes@sfgov.org](mailto:Elaine.forbes@sfgov.org)  
Elizabeth Watty, (415) 558-6620  
[Elizabeth.Watty@sfgov.org](mailto:Elizabeth.Watty@sfgov.org)  
*Re:* **Discretionary Review Policy**

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

***Recommendation:* Adopt the Amendments to the DR Policy which was adopted June 18, 2009, as proposed**

**ADOPTING AMENDED PHASE ONE OF THE DISCRETIONARY REVIEW REFORM POLICIES AND PROCEDURES TO BE IMPLEMENTED FOR A TWO-YEAR TRIAL PERIOD; AND ADOPTING ENVIRONMENTAL FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.**

### **PREAMBLE**

WHEREAS, the Planning Commission (hereinafter "Commission") adopted policies and procedures pertaining to the Discretionary Review process, and recommended approval to the Board of Supervisors of proposed changes to Planning Code Sections 311 and 312 related to the Discretionary Review process on June 18, 2009 under Resolution numbers: 17907 and 17908; and

WHEREAS, amendments to these procedures and policies have been forwarded to the Commission by the Planning Department, Board of Supervisors, and community organizations; and

WHEREAS, on March 4, 2010, the Commission conducted a public hearing at a regularly scheduled hearing to consider the proposed amendments; and

WHEREAS the proposed policy amendments have been determined to be categorically exempt from environmental review under the California Environmental Quality Act (CEQA) Section 15060 (c) 2.; and

WHEREAS, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony; and

WHEREAS, all the 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 amendments; and

**MOVED**, that the Commission hereby adopts the proposed amendments to the Discretionary Review Reform policies and procedures, which supersede those found in Resolution No.17907, and adopt this resolution to that effect.

#### **FINDINGS**

Having reviewed the material identified in the preamble above, and having heard all the testimony and arguments, this Commission finds, concludes, and determines as follows: (proposed amendments in italics)

1. The current Discretionary Review process may not produce consistent or fair results, makes the development process more lengthy and costly for all parties involved, and diverts the Planning Commission from addressing significant planning issues; and
2. The community is often disengaged from the early stages of project development, when the cost to the project sponsor of design modifications is typically lower; and
3. The current Discretionary Review process is often exercised as a way to remedy poor communication throughout the development process; and
4. The Discretionary Review process is not needed when a project already warrants entitlements from the Planning Commission, as the burden of proof already falls with the Project Sponsor during the public hearing for their entitlement request; and
5. Discretionary Review is driven by the temperament of neighbors, the level of community involvement, and the funding of the developer, rather than by sound planning principles and land use objectives, thus leading to uneven protections across neighborhoods; and
6. Planning Commission decisions for individual cases may not lead to policy directives, thus producing varied results for similar projects; and
7. The Planning Commission does not see a representative sample of building permit applications and therefore cannot easily dispense consistent and standard treatment to those permits before them; and
8. The current Discretionary Review process can lead to inappropriate financial exchanges and create conflict between neighbors; and
9. Projects that comply with the Planning Code and good design principles are often required to undergo significant time delays and spend a great deal of resources, even when no changes are ultimately required; and

10. The Planning Commission is in support of improved community engagement through a strengthened pre-application process, *including pre-application for new Formula-Retail uses that require a Conditional Use hearing*; and
11. The Planning Commission wants the Department to provide more transparency in its decision-making processes, policies, and procedures, and seeks improved public communication; and
12. The Planning Commission seeks to improve the quality of the Department's design review so that only appropriately-designed projects are noticed to the public under Sections 311 or 312, thus reducing the need for Discretionary Review as a means to gaining quality design for one's neighborhood; and
13. The Planning Commission recognizes that errors may occur from time-to-time, necessitating the need for a Reconsideration request, which can be filed during the Section 311 or 312 notification period, to seek a secondary review of a project to determine whether the Planning Code and/or adopted design standards were appropriately applied to the subject building permit application; and
14. *The Planning Department recognizes that not all residential development projects are adequately addressed in the Residential Design Guidelines*; and
15. The Planning Commission would like to focus its attention on broader-reaching policy issues, providing comprehensive direction to the Department rather than on a case-by-case basis; and
16. The Planning Commission seeks to create a consistent and predictable process to ensure that outcomes of the Discretionary Review process are fair and reliable, and to reduce significantly the time and cost of the process for those requests that do not demonstrate "exceptional or extraordinary circumstances"; and
17. Planning Department staff has conducted its own research, engaged the community about Discretionary Review reform, and reviewed previous audits and reports about Discretionary Review; and
18. **General Plan Compliance:** The DR Reform proposal is, on balance, consistent with the relevant objectives and policies of the General Plan:

**URBAN DESIGN ELEMENT**

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

**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 2.6**

Respect the character of older development nearby in the design of new buildings.

**OBJECTIVE 3**

MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.

**Policy 3.1**

Promote harmony in the visual relationships and transitions between new and older buildings.

19. The proposed amendments to the DR Reform policy and procedures are 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:
  - b. The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:
  - c. The City's supply of affordable housing will be preserved and enhanced:
  - d. The commuter traffic will not impede MUNI transit service or overburden our 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:
  - f. The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

- g. That landmark and historic buildings will be preserved:
- h. Parks and open space and their access to sunlight and vistas will be protected from development:

**NOW THEREFORE BE IT RESOLVED**, that the Planning Commission adopts the amended Phase One of the Discretionary Review reform policy, which includes the following (*amendments in italics*):

1. Implementation of Phase One, which includes: a standardized and improved pre-application process, *including pre-application for Formula Retail uses that require Conditional Use Authorization*; improved public information; a well-defined design review process; a Reconsideration Application in addition to a Discretionary Review Application; a definition of “exceptional and extraordinary circumstances” that must be met in order for a DR Application to be heard by the Planning Commission, *with the exception of new construction and rear yard dwelling expansions*; *establishment of Commission rules for calling-up a DR Application for a hearing*; and a 90-day timeline for the processing of Discretionary Review Applications; all as described in the materials associated with Planning Case No. 2009.0227TU; and
2. The Planning Department will provide the Planning Commission with copies of all Discretionary Review decisions during the first *two years* after adoption of the Discretionary Review reform Planning Code Text Changes (2009.0227TU); and
3. The Planning Director or his designee will provide briefings under the Director’s Report during the weekly Planning Commission hearings regarding that week’s Discretionary Review decisions; and
4. *The Planning Commission may request that a hearing be held on any DR Application within 30 days of the aforementioned briefing with the concurrence and role call vote of one Commissioner*; and,
5. The Planning Department will present quarterly reports to the Planning Commission during the first twenty four (24) months after adoption of the Discretionary Review Reform Planning Code Text Changes, during which emerging policy issues, recommendations for clarifications and modification to design standards, and the effectiveness of Discretionary Review reform will be discussed; and
6. The Planning Commission recommends changing the name of the “Residential Design Guidelines” to the “Residential Design Standards” to make clear that they are required.

**FURTHER BE IT RESOLVED**, that it is the policy of the Planning Commission that this program be implemented on a trial basis, not to exceed 24 months, without the Commission’s evaluation of the program and decision to continue, modify or discontinue the program; and

**FURTHER BE IT RESOLVED**, the Planning Commission will evaluate the effectiveness of these Policy improvements beginning twenty four (24) months of the Planning Code Text Amendments effective date pursuant to Case No. 2009.0227TU, and the Commission will continue, modify, or discontinue the above policy following this evaluation.

I hereby certify that the foregoing Resolution was ADOPTED by the Commission at its meeting on March 4, 2010.

Linda D. Avery

Commission Secretary

AYES: Commissioners Antonini, Borden, Lee, Miguel, Sugaya

NOES: Commissioners Moore, Olague

ABSENT:

ADOPTED: March 4, 2010