



SAN FRANCISCO PLANNING DEPARTMENT

Discretionary Review Reform

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WHAT IS DISCRETIONARY REVIEW?

Discretionary Review ("DR") is the Planning Commission's authority to review Code-complying projects and take action if the Commission finds the case demonstrates "exceptional and extraordinary" circumstances. It derives from Article 1, Section 26 of the Business and Tax Regulations Code. The City Attorney's interpretation in 1954 noted that this is "*a sensitive discretion and one which must be exercised with the utmost restraint*" (emphasis added).

DR VOLUME AND COST

Department receives approximately 200 applications a year, which costs approximately \$300K in direct staff time. However, the majority of the cost of the process is borne by the project sponsor in project delays and cost, and the Commission in terms of an opportunity loss from instead focusing on higher-level policy issues.

DR REFORM EFFORT

Background

All recent audits recommend changes to DR (Budget Analyst, 2003; Matrix Report, 2006; and SPUR AIA, 2007) because the process is outside of best practices in other jurisdictions and does not produce consistent or fair results.

Public Outreach

Planning Department team created proposal and conducted extensive public outreach among organized neighborhood groups, coalitions of groups, land use professionals, parties who had undergone DR, and other interested individuals.

- **Eight community outreach meetings with over 100 individuals in attendance**
- **Over 50 written comments received, many of which influenced the final proposal**
- **Five Planning Commission hearings** – 12/11/2008, 4/2/09, 5/14/09, 6/18/09, and 3/4/10
- **Five Landuse Committee hearings** - 10/19/09, 11/2/09, 11/23/09, 2/22/10, 3/8/10
- **Formal endorsement from** the Potrero Boosters, District 11 Council, Upper Noe Neighbors, St. Francis Homes Association, Outer Mission Merchants' and Residents' Association, and Housing Action Coalition.

THE DR REFORM PROPOSAL

(Items in italics require legislation for implementation)

The Planning Commission adopted the Discretionary Review Reform Proposal (consisting of a Commission Policy and accompanying legislation) on June 18, 2009 to institutionalize consistency, transparency, public access and fairness into the project review process. The reforms are designed to:

1. Strengthen the Pre-application meeting requirements, broaden the project types that require Pre-application, and make consistent the scope and type of information exchanged at those meetings to improve communication between project sponsors and their neighbors

2. Improve the Department's internal design review process to provide balanced, transparent, and consistent application of the Code and design guidelines (mandatory RDT review)
3. Improve public information about the DR process in general, and provide access to project-specific information on-line
4. Define "exceptional and extraordinary" in the context of DR

"Exceptional and extraordinary circumstances occur where the standard application of adopted design standards to a project does not enhance or conserve neighborhood character, or balance the right to develop the property with impacts on nearby properties or occupants. These circumstances may arise due to complex topography, irregular lot configuration, unusual context, or other conditions not addressed in the design standards"

5. *Use that definition to allow only those projects that could meet the "exceptional and extraordinary" standard to proceed to DR hearings (applications where the standard was not met would not merit a Planning Commission hearing; the permit could be appealed to the Board of Appeals)*
6. Ensure that cases heard by the Commission that are "exceptional and extraordinary" are identified either as one-of-a-kind, or are representative of a policy issue that should be incorporated into design guidelines.
7. *Change name of Residential Design Guidelines to Residential Design Standards*
8. *Offer interested parties the option of "Reconsideration" such that if the Department misapplied the Code or standards, the project would be modified, and the fee would be refunded to the requestor*
9. Adopt timelines for review, response, and hearing of DR applications. (90-days max)
10. Test and evaluate reforms for a 2- year period, and at the two-year mark, the Planning Commission could continue, modify, or discontinue the policy

STATUS OF DR REFORM PROPOSAL

- Following Planning Commission adoption of the DR Reform Proposal on June 18, 2009, the Department implemented all aspects of the proposal possible without legislation (expanded pre-application, strengthened internal review, continued clarity on whether a Commission action is one-of-a-kind or precedent setting, etc.) with positive results which include a reduction in the number of DRs, strong alignment between Planning Commission and Planning staff regarding whether DRs demonstrate "exceptional and extraordinary" circumstances and when projects should be modified, and identification of weaknesses in the Design Guidelines that should be addressed at a policy level.
- After five Landuse Committee hearings, the Committee amended the DR Reform legislation and then continued the item to the Call of the Chair. The primary reason stated for this decision was that many members of the public are not ready for reform because DR is the process by which the public accesses its Commission; more trust must be established with the Department before any delegation of DR can be supported.
- The Department is developing recommendations for the modified trial period and will present these recommendations to the Commission in May.