



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Historic Preservation Commission

HEARING DATE: OCTOBER 5, 2011

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Project Name: **Planning Code Amendments: Articles 10 & 11**
Case Number: 2011.0167I
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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, 2011, Supervisor Weiner circulated a Memorandum to the Historic Preservation Commission with proposed further amendments to Articles 10 and 11.

Included in today's packet are:

1. A clean copy of Article 10 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 August 17 and September 7th public hearings;
2. Revisions to the HPC-amended Article 11 recommended by the City Attorney's office in order to clarify the intent and to enable a legal, approved-to-form ordinance;
3. A Memorandum to the HPC from Supervisor Weiner dated September 7, 2011;
4. Draft Resolutions recommending that the Board of Supervisors adopt with modifications an ordinance that would amend Articles 10 and 11 of the Planning Code;

SUMMARY OF THE SEPTEMBER 21, 2011 HEARING

The focus of the September 21, 2011 HPC hearing was the review of the suggested modifications to Article 11 made by Deputy City Attorney Marlena Byrne. The following table summarizes comments made by Deputy City Attorney Byrne (identified by comment number and page number) discussed at the September 21, 2011 hearing:

Comment	Page No.	Summary
MB Comment 5	10	Notice to owners should also be provided.
MB Comment 6	11	MB added "disapprove." After discussion, it was decided *not* to add the phrase "or disapprove." In addition, delete the word "or" on line 11.
MB Comment 8	12	"May" was inserted instead of "shall." Both concern and support were voiced -- no clear consensus.
MB Comment 11	14	Provide notice to the full district.
MB Comment 12	14	The HPC makes recommendations regarding the boundaries -- the BOS makes ultimate determination.
MB Comment 13	14	The Department is responsible for transmittal of recommendations to the BOS.
MB Comment 14	15	Consensus was that it is not necessary to add "and disapprove," and that the comment would be deleted.
MB Comments 15-17	15	1. Only the first (if there are multiple hearings) gets mailed notice, 2. Notice will be mailed to applicants, not initiators (which are the HPC or the BOS), 3. The whole district will be notified.
MB Comments 21-22	17	The consensus was to add a cross-reference to the appendix for each district.
MB Comment 24	19	Authority is granted by the Charter, not in the Code.
MB Comment 27	19	MB removed the phrase, "failure to do so is a violation of Article 11." However, after discussion, MB agreed to revise the modification.
MB Comment 31	22	MB questioned the rationale for the request of the information.
MB Comment 34	24	MB suggested replacing "shall" with "may." After discussion, MB agreed to go back to the "shall." In addition -- Tim Frye brought up relocating Section 1111.1(a)(1), so that ordinary maintenance and repair does not require a hearing. No final decision was reached.
MB Comment 36	24	Substituted "and" and used "or," -- grammatical change.

ISSUES FOR CONSIDERATION AT THE OCTOBER 5, 2011 HEARING: ARTICLE 11

Of the comments summarized in the table above, a number of points were discussed without full resolution at the September 21st hearing. The Department seeks additional guidance from the HPC in the following three areas:

- In reference to Sections 1107 (MB Comment 8 on Page 12) and Section 1111.1(a) (MB Comment 34 on Page 24): In both cases, Deputy City Attorney Byrne recommended replacing the “shall” phrases to “may” phrases, as a way to acknowledge that the authority is granted by the Charter, and the HPC may choose to exercise the authority through the Planning Code. However, there

was discussion about this change, and the Department seeks guidance as to how the HPC would like the final language to appear.

- In reference to Section 1111(b)(3) (MB Comment 31, Page 22): Deputy City Attorney Byrne's comment questioned the rationale behind requiring information that includes the party from whom property is purchased, and a description of the business or family relationship, if any, between the owner and the person from whom the property was purchased. The Department seeks clarification on whether a modification is necessary for this section.
- In reference to Section 1111.1 (Page 24): Tim Frye suggested moving this section in order to avoid a required public hearing for work that is considered "ordinary maintenance and repair." No consensus was reached at the public hearing.

ISSUES FOR CONSIDERATION ON OCTOBER 5, 2011: SUPERVISOR WEINER'S MEMO

Department Staff has reviewed the Memo from Supervisor Weiner outlining suggested amendments to Articles 10 and 11 of the Planning Code. The following specific points in response to the Supervisor Weiner Memo may provide the basis for a discussion at the October 5th public hearing.

Article 10:

1. SECTION 1002: POWERS AND DUTIES OF THE PLANNING DEPARTMENT AND THE HISTORIC PRESERVATION COMMISSION,

The amended language 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.

Department recommendation: *Remove the amended language and propose an interim policy to be adopted by the HPC until the Preservation Element is finalized. The interim policy shall 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.*

2. SEC. 1004.2: DECISION OF THE HISTORIC PRESERVATION COMMISSION

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.

3. SEC. 1004.4: APPEAL TO THE BOARD OF SUPERVISORS

Department Recommendation: It appears that this language was intended for Section 1004.3. If it is amended to 1004.3 it should not be amended to 1004.4 because it may require the Planning Department to reconfirm consent.

If documentation of owner consent is desired, it can be done, but it will add a significant amount of time to the process, and would be in addition to all existing community noticing and outreach processes in place.

If documentation of owner consent is required then the Department seeks guidance on the following aspects:

1. *Clarification about how consent will be recorded, such as certified mail to confirm receipt and affidavit form to return to Planning Department to confirm property ownership.*
2. *Time frame for when notice will be sent and consent recorded, such as within 90 days of the initiation hearing by the HPC. Also, some property owners may never send in a form stating whether or not consent is granted. If the owner fails to give written consent by leaving the request unanswered, the Department does not believe that the unanswered request should be considered a "no."*

The proposed amendment requires a high bar for designation without owner consent. The Department does not believe that a 2/3 vote by the Board of Supervisors should be required when a majority of property owners have not consented. A designation under Section 1004.3 and 1004.4 should remain by a simple majority. Article 10 or 11 designations are text changes to the Planning Code. There are no other zoning changes that require 2/3 approval by the Board of Supervisors.

Currently, the Department forwards all public comments to the decision-making bodies in order for comments to be considered prior to vote. As a matter of consistency, the Department recommends that documentation of owner consent be recorded and submitted to the HPC, Planning Commission, and Board of Supervisors in order to inform the decision-making process. However, the Department also recommends that the requirement for property owners to give consent for the Board of Supervisors to approve designation be eliminated.

4. SEC. 1006.1. APPLICATIONS FOR CERTIFICATE OF APPROPRIATENESS

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

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

- *150-ft to owners and occupants for individuals*
- *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 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.

6. SEC. 1006.7. STANDARDS FOR REVIEW OF APPLICATIONS

Department recommendation: Rewording 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

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.

Article 11:

1. SEC. 1107. PROCEDURES FOR DESIGNATION OF ADDITIONAL CONSERVATION DISTRICTS OR BOUNDARY CHANGE OF CONSERVATION DISTRICTS

Department recommendation: Same recommendations as above with Section 1004.4

2. SEC. 1111. APPLICATIONS FOR PERMITS TO ALTER, PERMITS TO DEMOLISH, AND PERMITS FOR NEW CONSTRUCTION IN CONSERVATION DISTRICTS, subsection (b)

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)

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

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),

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),

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),

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),

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.

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

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

RECOMMENDATION

The Department recommends that the Historic Preservation Commission adopt the attached draft resolutions for Articles 10 and 11.

The Department also recommends that the Historic Preservation Commission provide comments to Supervisor Weiner regarding his September 7, 2011 Memo in advance of the introduction of new legislation by the Supervisor.