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Executive Director

2007 FRANKLIN ST.
SAN FRANCISCO
CALIFORNIA 94109

TEL 415-441-3000

FAX 415-441-3015

www.sfheritage.org

January 26, 2012

San Francisco Planning Commission
Attn: Linda Avery, Commission Secretary
1650 Mission Street, Suite 400
San Francisco, CA 94103-2479
Email: linda.avery@sfgov.org

RE: Amendments to Articles 10 & 11 (Supervisor Scott Wiener)

Dear Members of the Commission:

On behalf of San Francisco Architectural Heritage (Heritage), thank you for the opportunity to comment on proposed revisions to Articles 10 and 11 recommended by the Historic Preservation Commission (HPC) and further amendments introduced by Supervisor Scott Wiener. Although some of Supervisor Wiener's more controversial proposals have been abandoned, Heritage remains opposed to amendments that would impose unique procedural hurdles on the designation of historic districts¹ and exempt certain classes of projects from historic review.²

HERITAGE ANALYSIS OF SUPERVISOR WIENER'S AMENDMENTS TO ARTICLES 10 & 11

1. ARTICLE 10

- **SECTION 1002 – COMMUNITY ENGAGEMENT.** Supervisor Wiener has inserted language that would require historic resource surveys to "be carried out with robust community engagement and pursuant to clearly set out, broadly available published procedures."

HERITAGE POSITION: Although Heritage supports "robust" community engagement, the Planning Code is not the right place for the proposed language. In order to be most responsive to the values and changing demographics of San Francisco's residents, such policies and procedures should instead be published in Department-wide administrative bulletins reviewed by the HPC and the Planning Commission.

- **SECTION 1004.1 – OWNER SUPPORT REQUIREMENT FOR HISTORIC DISTRICTS.** Reversing the unanimous recommendation of the HPC, Supervisor Wiener has reinserted language requiring 66% owner support as a prerequisite for community-sponsored historic district nominations. The HPC had specifically

¹ See proposed amendments to Sections 1004.1, 1004.2, 1004.3 and 1107(d)-(e).

² See proposed amendments to Sections 1005(e)(4), 1006.6(h), 1110(a) and 1111(g).

removed this provision from Section 1004.1. (There is no minimum owner support requirement for HPC-initiated nominations.)

HERITAGE POSITION: The intent of Proposition J was to update Articles 10 and 11 to reflect best practices nationwide. The 66% owner consent threshold is a relic of the original landmarks ordinance adopted in 1967 and is out of step with widely-recognized preservation practice today. As noted by the California Office of Historic Preservation, “The vast majority of preservation ordinances nationwide wisely avoid any type of owner consent provisions.”³ The 66% owner consent threshold imposes an extraordinarily high bar on neighborhood-sponsored nominations and completely disenfranchises all those who rent their homes in the city. It is also entirely unnecessary. The Board of Supervisors retains complete discretion to approve or deny historic district nominations. Indeed, only 11 local historic districts have been designated in San Francisco in the past 45 years—and none since 2003—comprising about one percent of all city parcels.

- **SECTION 1004.2 – PLANNING COMMISSION FINDINGS FOR HISTORIC DISTRICTS.** For historic district nominations, Supervisor Wiener would require the Planning Commission to make findings that “(i) address the consistency of the proposed designation with the policies embodied in the General Plan and the priority policies of Section 101.1, particularly the provision of housing to meet the City’s Regional Housing Needs Allocation, and the provision of housing near transit corridors; (ii) identify any amendments to the General Plan necessary to facilitate adoption of the proposed designation; and (iii) evaluate whether the district would conflict with the Sustainable Communities Strategy for the Bay Area.”

HERITAGE POSITION: The proposed language improperly elevates the Regional Housing Needs Allocation, Sustainable Communities Strategy, and “the provision of housing near transit corridors” over other General Plan polices, including Priority Policy 7 (stating “that landmarks and historic buildings be preserved”). There has been no justification provided by Supervisor Wiener for this amendment or analysis by Department staff of the potential adverse impacts on historic resources. Heritage opposes the amended language because it singles out proposed historic districts for disparate treatment. Indeed, we are not aware of any other zoning changes that are subject to such rigorous review against vague regional planning goals.

- **SECTION 1004.3 – VOTING ON HISTORIC DISTRICTS.** Before the Board of Supervisors can vote on a proposed historic district, Supervisor Wiener would require the Planning Department to “invite all property owners in the proposed district area to express their opinion in writing on the proposed designation be it in the form of a vote or a survey”

³ Technical Assistance Bulletin #14, “Drafting Effective Historic Preservation Ordinances: A Manual for California's Local Governments” (California Office of Historic Preservation, 2005).

and to provide information to owners on “the practical consequences of the adoption of the district...” The amended language further provides that, “The Department’s goal shall be to obtain the participation of at least half of all property owners in the proposed district.”

HERITAGE POSITION: Heritage opposes any amendments that would impose unique procedural hurdles on the designation of historic districts.⁴ Historic districts should be subject to the same public outreach requirements as other proposed zoning changes. For the reasons outlined above, we feel that enhanced community engagement policies and procedures for historic districts, historic resource surveys, and other neighborhood planning processes should be published in Department-wide administrative bulletins, and not in the Planning Code.

- **SECTION 1005(e)(4) – EXEMPTING SIDEWALKS AND STREETS FROM HISTORIC REVIEW.** Supervisor Wiener is proposing to exempt work on a sidewalk or a street within a historic district from review under Article 10, unless they have been called out as a character-defining features in the designating ordinance.

HERITAGE POSITION: Heritage opposes the proposed amendment without an analysis of its potential impacts on the city’s 11 existing historic districts based on a review of the designating ordinance for each. Older designating ordinances tend to provide less detail on features that contribute to a historic district’s significance. In general, we support limiting review under Article 10 to contributing features listed in the designating ordinance, but only if applied prospectively.

- **SECTION 1006.1(e) – GENERAL PLAN CONSISTENCY.** For projects that require multiple planning approvals, Supervisor Wiener would explicitly require the HPC and the Planning Commission to “take into account all relevant General Plan and Planning Code policies, in addition to all applicable historic resources provisions.” Heritage believes that the proposed amendment is unnecessary because the HPC, like the Planning Commission, already makes consistency findings under Section 101 when reviewing applications for Certificates of Appropriateness.
- **SECTION 1006.1(f) – FEE WAIVER FOR ECONOMIC HARDSHIP.** Heritage supports Supervisor Wiener’s proposal for a fee waiver for Certificates of Appropriateness in narrowly defined cases of economic hardship.

⁴ The proposed amendment raises other policy and procedural issues regarding how the vote or survey would be conducted, where the funding would come from, the disenfranchisement of the resident renter community, how the Department would treat non-responses, and the legitimacy of community-sponsored petitions.

- **SECTION 1006.6(b) – LOCAL INTERPRETATIONS OF THE SECRETARY’S STANDARDS.**

Supervisor Wiener’s amendment directs the Planning Department to develop “Guidelines, Interpretations, Bulletins, or other Policies” that translate the *Secretary of the Interior’s Standards* for specific application in San Francisco. Since the Planning Commission hearing on December 8, 2011, Supervisor Wiener has introduced new language that would require “the proposed work [to] comply with the *Secretary of the Interior’s Standards for the Treatment of Historic Properties* for individual Landmarks and contributors within historic districts as well as any applicable Guidelines, local Interpretations, Bulletins, or other policies.”

HERITAGE POSITION: Although the new amended language is much-improved, Heritage continues to believe that the proposal to develop San Francisco interpretations of the *Secretary’s Standards* is a costly, time-consuming, and unnecessary exercise. The *Secretary’s Standards* provide ample flexibility to accommodate local development needs.⁵ As stated by Commissioner Wolfram at the November 16th HPC hearing, “I disagree very strongly that we should create our own standards. [T]he *Secretary’s Standards* are a very useful and flexible tool used by countless communities around the country and there is no need to create ‘San Francisco Standards.’” Despite repeated requests by the HPC, Supervisor Wiener has not provided one example of a project that has been denied for failing to meet the *Secretary’s Standards*.

- **The City Charter designates the HPC as the City’s local historic preservation review commission for the purposes of the Certified Local Government Program.** Supervisor Wiener’s proposed amendment would require both the Planning Commission and the HPC to review and adopt local interpretations of the *Secretary’s Standards*. However, under City Charter Section 4.135, the HPC is deemed the City’s exclusive “local historic preservation review commission for the purposes of the Certified Local Government Program,” including maintaining consistency of design review decisions with the *Secretary’s Standards*.⁶
- **District-by-district design guidelines are strongly preferable to citywide standards.** Other cities have successfully developed historic district design guidelines that interpret—and are equivalent to—the *Secretary’s Standards*. The City of Los Angeles, for example, requires design guidelines to be developed in conjunction with any new historic district designation. Given the diversity of development patterns, density, architectural styles, and neighborhood character across San Francisco, Heritage

⁵ The HPC and its predecessor, the Landmarks Preservation Advisory Board, have frequently applied the *Secretary’s Standards* to approve major additions to historic buildings and infill projects, such as 72 Townsend, 690 Market Street, and 178 Townsend (currently under construction).

⁶ See California Office of Historic Preservation, Appendix G, Certified Local Government Application and Procedures, August 1999, pp. 41-47 (<http://ohp.parks.ca.gov/pages/1072/files/clgrequirements.pdf>).

favors modifying the proposed amendment to require district-by-district design guidelines in lieu of uniform citywide standards.

- **SECTION 1006.6(h) – ECONOMIC HARDSHIP.** Supervisor Wiener’s proposed amendment would exempt “residential projects where 80% or more of the units are designated for households with an income of 150% or less than the area median income” from obtaining a Certificate of Appropriateness when conformance would create a significant economic hardship, provided that the scope of work does not include demolition, fees have been waived pursuant to Section 1006.1, all other aspects of the projects are Code-complying, and the HPC has determined that the proposal is not detrimental to the landmark or the district. (Under the City Charter, the Planning Commission “may modify any decision” by the HPC on a Certificate of Appropriateness not involving an individual landmark by a two-thirds vote.)

HERITAGE POSITION: Although we support adoption of a narrowly-drawn economic hardship provision, Heritage opposes Supervisor Wiener’s proposal because it is overly broad and would primarily benefit market rate residential projects. The proposed amendment to exempt “residential projects where 80% or more of the units are designated for households with an income of 150% or less than the area median income”—equivalent to \$154,500 for a household of four⁷—has potentially far-reaching impacts, especially when applied in conjunction with Section 1004.2’s prioritization of regional housing goals over other General Plan policies. Heritage joins the HPC in recommending that the proposed economic hardship provision be developed in an independent process with input from all affected parties.⁸

- **The proposed “economic hardship” provision would primarily benefit market-rate housing developers:** Supervisor Wiener’s proposal potentially exempts market rate residential projects from obtaining a Certificate of Appropriateness based on suspect claims of “economic hardship.” At the January 18, 2012 HPC hearing, Supervisor Wiener explained that the proposed 150% Average Median Income ceiling “has to do not with individuals seeking hardship but rather with affordable housing

⁷ The United States Department of Housing and Urban Development (HUD) determines the thresholds by household size for these incomes for the San Francisco HUD Metro FMR Area (HMFA). The HMFA includes San Francisco, Marin, and San Mateo counties. As defined by the Planning Department, an “affordable rental unit” is “[a] unit for which rent equals 30% of the income of a household with an income at or below 80% of the HUD median income for the San Francisco HFMA, utilities included.” In 2012, the HUD median income for San Francisco HFMA is \$103,000 for a household of four. (Source: HUD. “FY 2012 HUD Income Limits Briefing Materials.”)

⁸ “The HPC feels that substantive topics, such as language that addresses economic hardship, a requirement for community balloting prior to historic district designation, or the creation of local interpretations of the *Secretary of the Interior’s Standards for the Treatment of Historic Properties*, merit additional research and further discussion prior to adoption.” Letter from Charles Chase, President, Historic Preservation Commission, to Supervisor Scott Wiener, December 1, 2011.

projects...focused on moderate and middle income folks.” The proposed amendment, he continued, would “primarily impact...acquisition or rehab projects up to 2, 3, 4 unit buildings that are being converted into affordable housing which currently tend to be low income, very low income housing but in the future we may see more of an emphasis on moderate income housing.” Unlike many economic hardship provisions that target low-income owners, Supervisor Wiener’s proposal would primarily benefit projects that significantly exceed the City’s existing definition of “moderate income” units (120% of median income), even if they displace low income and very low income residents.

- **Economic hardship claims should be contingent on the applicant first taking advantage of preservation incentives.** In addition to permit fee waivers, those claiming economic hardship should be required to demonstrate that they have pursued all other financial and regulatory incentives, including Mills Act property tax abatement, TDR, and cost-saving alternatives under the State Historical Building Code.⁹ In addition, Supervisor Chiu is proposing a series of new incentives for owners of historic properties, and Heritage is currently working with Supervisor Wiener to find ways to broaden access to the City’s Mills Act program.

- **Any economic hardship provision should require substantial evidence of extreme and immediate economic hardship, especially for larger projects.** The provision should authorize the HPC to require documentation or testimony in order to substantiate any claim of economic hardship. Several cities in California, including Davis, Pasadena, Pomona, Santa Clara, Santa Monica, and South Pasadena, among many others, require specific documentation in order to substantiate claims of economic hardship. For larger projects, local preservation commissions are typically authorized to require the following types of information, at their discretion, when determining whether an applicant qualifies for an economic hardship exemption: the amount paid for the property; real estate taxes over several years; mortgage balance, appraisals, and available financial resources; an estimated cost of the proposed construction, alteration, or demolition; and/or report(s) from a licensed engineer and/or architect.

⁹ The City of Pomona requires that available economic incentives be explored prior to determining whether an economic hardship is present, including, “All means involving City sponsored incentives such as tax abatements, financial assistance, building code modifications, amendments to the zoning ordinance, loans, grants, and reimbursements...” (City of Pomona Municipal Code, §5809-13.) The City of Glendale’s ordinance includes a similar prerequisite, stating that the “Council shall consider the value of property tax incentives allowed by the historic preservation ordinance and other benefits as may be available for historic preservation or stabilization in determining if economic hardship” exists. (City of Glendale Municipal Code, Chapter 15, §15.20.055.)

2. ARTICLE 11

- **SECTIONS 1107(d), 1107(e) and 1110(a)**. Same as Heritage position regarding Sections 1004.2, 1004.3, 1005(e)(4) above, respectively.
- **SECTION 1111(b) – DEMOLITION OF CATEGORY V BUILDINGS AND BUILDINGS THAT HAVE NOT TRANSFERRED TDR**. The proposed amendment would significantly narrow the scope of this section by exempting (1) all buildings that have not transferred TDR and (2) all Category V buildings from the requirement to provide an updated historic resource evaluation. The proposed amendment would also eliminate the ability of the HPC to consider “the amount and value of [available] untransferred TDR” when reviewing permits to demolish.

HERITAGE POSITION: Heritage joins the Planning Department in opposing the proposed amendment. As stated in the Department’s November 16, 2011 staff report to the HPC: “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.”

- **SECTION 1111(g)**. Same as Heritage position regarding Section 1006.6(h), above.
- **SECTION 1111.7(a)(1)**. Heritage opposes the proposed amendment to the extent it would exempt Category III buildings from which no TDR has been transferred from rigorous demolition review standards under Section 1111.7(a)(1). To eliminate any confusion, we propose this section be rewritten as follows: “(a) For Contributory Buildings in a Conservation District (Category IV) from which TDR have been transferred, and for Significant Buildings (Category I and II), Contributory Buildings (Category III):”
- **SECTION 1111.7(a)(3)**. The proposed amendment imposes a 180-day time limit on the process for reclassification of Category V buildings that may have “gained additional historical or architectural significance that may make it eligible for classification as a Category I, II, or IV building.”

HERITAGE POSITION: As set forth in Section 1106, the process for reclassification of Category V buildings involves several steps, including notice, referral to the HPC, action by the HPC, designation by the Board of Supervisors, and possible appeal to the Board of

Supervisors. The amended language does not indicate when the 180-day clock would start, and Section 1106 does not currently include time limits to ensure speedy disposition. Such clarifications are critical and should incorporate input from staff, neighborhood advocates and the development community in order to be appropriately applied and fairly enforced.

On behalf of San Francisco Architectural Heritage, thank you for the opportunity to comment on Supervisor Wiener's proposed amendments to Articles 10 and 11. Please do not hesitate to contact me at mbuhler@sfheritage.org or (415) 441-3000x15 should you have any questions or need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Buhler", is centered below the text "Sincerely,".

Mike Buhler
Executive Director

cc: Historic Preservation Commission
Supervisor Scott Wiener
John Rahaim, Director of Planning
Sophie Hayward, Legislative Affairs
Tim Frye, Preservation Coordinator
Milford Wayne Donaldson, FAIA, State Historic Preservation Officer
Sarah Karlinsky, Deputy Director, SPUR