

FILE NO. 021418

ORDINANCE NO. 186-02

1 [Planning Commission – Alternative ~~Approval~~ Review Process.]  
2 **Emergency ordinance amending the San Francisco Planning Code by amending**  
3 **Section 306, and amending the San Francisco Administrative Code by amending**  
4 **Sections 2A.53 and 31.04, to provide for an alternative process to Planning**  
5 **Commission ~~approval~~ review where the Planning Commission is unable to meet**  
6 **because a majority of its members has not been appointed; adopting declaration of**  
7 **emergency under Charter Section 2.107; and setting forth period of time within which**  
8 **this emergency ordinance shall be operative.**

9 Note: Additions are *single-underline italics Times New Roman*;  
10 deletions are *strikethrough italics Times New Roman*.  
11 Board amendment additions are double underlined.  
12 Board amendment deletions are ~~strikethrough normal~~.

13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. Declaration of Emergency under Section 2.107 of the San Francisco  
15 Charter.

16 Section 2.107 of the San Francisco Charter authorizes the passage of an emergency  
17 ordinance suspending specific sections of the Charter in order to provide for the uninterrupted  
18 operation of any City or County department or office required to comply with the time  
19 limitations established by law. The Board of Supervisors hereby suspends those provisions of  
20 Charter Section 4.105 that require action by the Planning Commission and suspends those  
21 provisions of Charter Section 2.114 that limit the power of the Board of Supervisors to deal  
22 with administrative matters, and makes the following declaration setting forth a clear and  
23 concise description of the emergency requiring passage of this emergency ordinance.

24 The ability of the Planning Department to comply with time limitations established by  
25 State law is in jeopardy due to the following facts:

1           1.     As required by Section 4.105 of the Charter, the terms of office of all then-  
2 existing members of the Planning Commission expired on July 1, 2002. Under Section 4.105,  
3 on June 24, 2002, the Mayor submitted four nominations for the Planning Commission and on  
4 June 24, 2002, the President of the Board of Supervisors submitted three nominations for the  
5 Planning Commission. On July 15, 2002, after the Board of Supervisors' Rules and Audits  
6 Committee submitted a report to the full Board regarding all the nominees, the Board  
7 approved the three nominees of the President of the Board. Before the Board was scheduled  
8 to act on the Mayor's nominations, on July 15, 2002, the Mayor withdrew his four nominees  
9 from consideration. The Mayor has not made any further nominations.

10           2.     Section 4.104 of the Charter requires a majority of any multi-member body  
11 created by the Charter to be present before the body may meet. As of the date of this  
12 emergency ordinance, the Board of Supervisors has approved the nominations of only three  
13 members of the seven-member Planning Commission and there are no pending Planning  
14 Commission nominations that the Mayor has submitted to the Board. Therefore, there is no  
15 quorum of the Planning Commission and it has been unable to meet since July 1, 2002.

16           3.     The Planning Commission is empowered by Charter Section 4.105 to approve  
17 before issuance "[a]ll permits and licenses dependent on, or affected by, the City Planning  
18 Code administered by the Planning Department," as well as conditional use authorizations  
19 and proposed Planning Code amendments. Due to the lack of a majority of appointed  
20 members of the Planning Commission, hearings to approve or disapprove permits and  
21 licenses, as required by the Planning Code, cannot be held.

22           4.     Section 2.114 of the Charter prohibits the Board of Supervisors from dealing  
23 with administrative matters except in the manner provided by the Charter. Acting in a quasi-  
24 adjudicatory capacity is considered under the law as dealing with an administrative matter.  
25

1           4. 5. The State law known as the Permit Streamlining Act (California Government  
2 Code Section 65950 et seq.) requires that all permits for development projects be approved or  
3 disapproved within a set period of time. The City must approve or disapprove a completed  
4 application for a development permit within 180 days from the date of certification of an  
5 Environmental Impact Report ("EIR"), within 90 days from the date of certification of an EIR for  
6 a low-income housing development for which financial assistance has been sought from a  
7 public or federal agency, within 60 days from the adoption of a negative declaration, or within  
8 60 days from the date a development project is determined to be exempt from the California  
9 Environmental Quality Act.

10           6. The California Environmental Quality Act (Public Resources Code Section  
11 21000, et seq.) requires the City to complete and adopt a negative declaration within 180 days  
12 and to certify an Environmental Impact Report within one year.

13           5.7. If the Planning Commission is unable to hold the various hearings required by  
14 the Planning Code and Administrative Code, the Planning Department cannot comply with the  
15 time limitations established by the State Permit Streamlining Act and the California  
16 Environmental Quality Act, because it cannot act to approve environmental documents or to  
17 approve or disapprove any permit requiring a hearing by the Commission.

18           6.8. There are approximately 40 applications for conditional uses, permits and other  
19 authorizations that have been scheduled for a public hearing before the Planning Commission  
20 but either a final decision has not been made or the hearing date has been continued. An  
21 increasing number of other matters are ready to be calendared for a Commission hearing but  
22 have not been scheduled because there is no Commission to hear them.

23           7.9. City officials have received numerous inquiries from members of the public  
24 asking about the State Permit Streamlining Act and seeking to invoke its provisions in order to  
25 obtain permit approval by operation of law. The City must take immediate action to comply

1 with the mandates of State law and balance the public's right to a statutorily-required public  
2 hearing against the permit applicant's right to a decision on the application.

3 8.10. The State Planning and Zoning Law (Government Code Section 65000 et seq.)  
4 imposes certain time requirements upon the City and County of San Francisco with respect to  
5 updating the City's General Plan. The City may be unable to meet these timelines if there  
6 continues to be no functioning Planning Commission.

7 11. Allowing an interested person to file a request for review by the Board of  
8 Supervisors of the Planning Director's recommendation on a discretionary review request will  
9 afford both the permit applicant and members of the public the opportunity for the public  
10 hearing required by the Planning Code.

11 Because this emergency ordinance provides an alternative ~~approval~~ review procedure  
12 when there is no quorum of the Planning Commission due to the lack of a sufficient number of  
13 appointed commissioners, it addresses the City's current inability to comply with the time  
14 limitations established by the State Permit Streamlining Act, the California Environmental  
15 Quality Act, and applicable sections of the State Planning and Zoning Law.

16 Section 2. The San Francisco Planning Code is hereby amended by amending Section  
17 306, to read as follows:

18 SEC. 306. APPLICATIONS AND HEARINGS.

19 (a) General. In case of an amendment to the Planning Code or General Plan, interim  
20 control, conditional use or variance action described in Sections 302 through 305, 306.7 and  
21 340 of this Code, the procedures for applications and hearings shall be as described in  
22 Sections 306 through 306.7. In addition, the Zoning Administrator and the Planning  
23 Commission may from time to time establish policies, rules and regulations which further  
24 define these procedures.

1           **(b) Alternative Approval Review Process.** *The following alternative approval review*  
2 *process shall apply in the event that the Planning Commission is unable to meet because a majority of*  
3 *its members has not been nominated, approved, and sworn in to office under the provisions of Section*  
4 *4.105 of the San Francisco Charter. This alternative approval review process shall go into effect*  
5 *immediately under the provisions of Charter Section 2.107. It shall apply notwithstanding any other*  
6 *provision of this Code, including, but not limited to, the provisions of Article 2, Article 3, Article 10,*  
7 *and Article 11; provided, however, the alternative approval review process shall not apply to those*  
8 *matters that require a hearing before the Planning Commission under a voter-enacted ordinance. All*  
9 *public notice required by this Code for hearings before the Planning Commission shall be given, and*  
10 *the alternative approval review process established by this ordinance shall be described in such*  
11 *notice.*

12           **(i) Planning Code Amendments.** *Notwithstanding the requirements of Section 4.105 of the*  
13 *San Francisco Charter and Sections 302 and Sections 306.1 et seq. of the Planning Code, a hearing*  
14 *and determination by the Planning Commission shall not be required for amendments to the Planning*  
15 *Code proposed under Planning Code Section 302(b) by the Board of Supervisors or by application of*  
16 *one or more interested property owners, residents or commercial lessees or their authorized agents. A*  
17 *recommendation on the proposed Planning Code amendment shall be made instead by the Planning*  
18 *Director, who shall make the findings required by Planning Code Section 302(c), and whose decision*  
19 *shall be presented to the Board of Supervisors by the Director or appealed to the Board by the*  
20 *applicant therefor as provided by Planning Code Sections 302(c) and 308.1.*

21           *In the case of proposed amendments to the Planning Code initiated by the Board of Supervisors*  
22 *under Section 302(b), the Director's recommendation shall be rendered within 30 days from the date of*  
23 *the Board's referral of the proposed amendment to the Department. Failure of the Director to act*  
24 *within the prescribed time shall be deemed to constitute disapproval, except that the Board may, by*  
25 *resolution, extend the prescribed time within which the Director may make his decision. If, after*

1 receiving the Director's recommendation, or the time for the Director to act has expired, the Board  
2 adopts a motion proposing to materially modify the amendment, such amendment and the motion  
3 proposing modification shall be referred back to the Director for consideration and the proposed  
4 modification shall be reviewed under the requirements then applying to review of Planning Code  
5 amendments.

6 (ii) Discretionary Review. Planning Commission policies that mandate a discretionary  
7 review hearing not otherwise required by this Code are hereby suspended during the time this  
8 emergency ordinance is operative, shall be heard by the Director at a public hearing. If a  
9 request for a Planning Commission discretionary review hearing under Section 311, Section 312, or  
10 other section of this Code or the San Francisco Municipal Code has been made, a decision  
11 recommendation on the request shall be made by the Planning Director, who shall hold a public  
12 hearing on the matter as soon as feasible given required noticing and calendaring of a  
13 hearing, take testimony on the matter and take into consideration any written comments provided  
14 by the discretionary review requestor(s), the permit applicant, and members of the public.

15 The Director's decision recommendation shall be issued in writing no later than 10 working  
16 days after the public hearing expiration of the Code-required waiting period, if any, and if there  
17 is no Code-required waiting period, the decision shall be issued within 30 days after receiving  
18 the request for discretionary review. The Director shall mail notice of the written  
19 recommendation upon issuance to the permit applicant, the discretionary review requestor(s), and  
20 any party who has make a prior written request for notice of the decision, and the Department shall  
21 not take action on the permit until the 15-day period for filing a request for review by the Board  
22 of Supervisors has expired.

23 Any person may request a hearing by the Board of Supervisors to review the Director's  
24 discretionary review recommendation. Such request for review shall be filed within 15 days of  
25 the date the Director's recommendation was issued. The Board may uphold, modify, or

1 overrule the Director's recommendation by a vote of six members. If no request for review by  
2 the Board is made within the 15-day period, or if the Board does not act on the matter within  
3 45 days from the filing of the request for hearing, the Director's recommendation shall become  
4 the final decision. The Director shall mail notice of the decision to the permit applicant, the  
5 discretionary review requestor(s), and any party who has made a prior written request for  
6 notice of the decision, before the Department takes action on the permit.

7 (iii) Conditional Use Authorization. By providing written notice to the Director, an  
8 applicant for a new conditional use authorization or modification to an existing conditional use under  
9 Section 303 of this Code may elect to waive a Planning Commission hearing and accept the Director's  
10 decision on the application. The Director shall cause notice of the applicant's election to waive a  
11 public hearing before the Planning Commission and hold a Director's hearing to be given to all  
12 persons entitled to receive notice of a public hearing on the application; such notice shall be provided  
13 in the manner required by this Code for notice of the hearing, except that the posting and  
14 newspaper notice shall be given ten days prior to the Director's hearing.

15 In making a decision, the Director shall make the findings required by Section 303. The  
16 Director shall hold a public hearing to take testimony on the matter and shall also take into  
17 consideration any written comments provided by the applicant for the conditional use and by members  
18 of the public. The Director's decision shall be issued in writing within 10 working days after the  
19 Director's hearing. no sooner than 30 days after notice of the waiver of a public hearing has  
20 been sent and no later than 10 working days after expiration of such 30-day period. The  
21 Director shall mail notice of the decision to the applicant, persons entitled to notice of a public hearing  
22 on the conditional use application, and any party who has made a prior written request for notice of the  
23 decision.

24 In the event that the applicant elects to accept the Director's decision invoke this section,  
25 either the applicant or a member of the public has the right to appeal the decision to the Board of

1 Supervisors under Planning Code Section 308.1 notwithstanding the signature requirements of  
2 Section 308.1.

3 (iv) Exceptions to Code. During the time this emergency ordinance is operative, an  
4 application for exceptions to the Planning Code requiring a hearing by the Planning Commission  
5 under Article 2, Article 3, or any other provision of this Code shall be heard and decided by the Zoning  
6 Administrator under the notice and hearing requirements of Planning Code Section 305. For this  
7 purpose, the Zoning Administrator shall be deemed to be acting in lieu of the Planning Commission  
8 and the Zoning Administrator's decision shall be appealable in accordance with the appeal provisions  
9 set forth in this Code for such matter.

10 (v) Institutional Master Plans; General Plan Amendments. The existing provisions of  
11 Planning Code Sections 304.5 and 340 shall continue to apply during the time this emergency  
12 ordinance is operative; provided, however, in the event an update to the City's General Plan is  
13 mandated to be completed by State law during the period of time this emergency ordinance is  
14 operative, the Department shall forward the proposed General Plan amendments to the Board under  
15 the provisions of Section 340, without a hearing by the Planning Commission.

16 (vi) Historic Preservation. Determinations to be made by the Planning Commission under  
17 Articles 10 and 11 of Planning Code shall be made by the Planning Director and either transmitted to  
18 the Board by the Director or appealed to the Board by interested parties, as provided by Articles 10  
19 and 11. The Director shall give the public notice required by the Code for a hearing by the Planning  
20 Commission, and the alternative procedure established by this emergency ordinance shall be described  
21 in such notice.

22 Section 3. The San Francisco Administrative Code is hereby amended by amending  
23 Sections 2A.53 and 31.04, to read as follows:

24 SEC. 2A.53. GENERAL PLAN REFERRALS.  
25



1 (a) General. The Charter requires that the Planning Department prepare written  
2 reports regarding the conformity with the General Plan for the use of the Board of Supervisors  
3 prior to its action on the acquisition, vacation, sale, change in use or title of public property,  
4 subdivision of land, construction or improvement of public buildings or structures, plans for  
5 public housing or public-assisted private housing, or redevelopment project plans, within the  
6 City and County.

7 (b) Purpose. The General Plan is a compendium of policies on all aspects of the  
8 City and County's physical development, formulated with extensive public participation,  
9 adopted by the Planning Commission, and approved by the Board of Supervisors. In order to  
10 implement the public policy contained in the General Plan, the following procedures will be  
11 used in determining consistency with the General Plan and reporting the findings to the Board  
12 of Supervisors in a timely manner prior to action on the proposal. Early involvement of the  
13 Planning Department in the planning of a project or plan is advisable to avoid delays. The  
14 Planning Department is available to provide policy analysis reports on issues concerning the  
15 physical development of the city as a proactive information tool for decisionmaking and  
16 analysis of applicable public policy as contained in the General Plan.

17 (c) Applicability. The following actions by the Board of Supervisors require a written  
18 report from the Planning Department on the consistency of the proposed action with the  
19 General Plan:

20 (1) Proposed ordinances and resolutions concerning the acquisition, extension,  
21 widening, narrowing, removal, relocation, vacation, abandonment, sale or change in the use  
22 of any public way, transportation route, ground, open space, building, or structure owned by  
23 the City and County;

24 (2) Subdivisions of land within the City and County;

25

1 (3) Projects for the construction or improvement of public buildings or structures  
2 within the City and County, the annual capital expenditure plan, six-year capital improvement  
3 program, a capital improvement project or a long-term financing proposal such as, but not  
4 limited to, general obligation or revenue bonds or nonprofit corporation proposals;

5 (4) Project plans for public housing, or publicly assisted private housing in the City  
6 and County;

7 (5) Redevelopment project plans within the City and County;

8 (6) Programs and schedules which link the General Plan to the allocation of local,  
9 State and federal resources; and

10 (7) Any substantial change to any of the above actions.

11 (d) Application. Property owners, public agencies and their respective agents shall  
12 initiate General Plan referrals by filing a completed application containing all required  
13 information with the Planning Department and paying an initial fee set forth in the Planning  
14 Code. The remainder of the fee, based on time and materials, shall be paid prior to the  
15 transmittal of the General Plan referral report to the applicant or Board of Supervisors. The  
16 Planning Department shall determine whether the application is complete and shall notify the  
17 applicant and, in the case of an incomplete application, request the necessary information.

18 (e) Determination. For most General Plan referral applications, a written General  
19 Plan referral report stating that a proposed action is consistent with the General Plan, shall be  
20 transmitted to the applicant for submittal with the proposal to the Board of Supervisors in 45  
21 days after accepting a complete application. If the response requires more than 45 days  
22 because of environmental review procedures, the complexity of the proposed action, public  
23 controversy generated by the proposal, or a public hearing before the Planning Commission,  
24 the Department shall notify the applicant and Board of Supervisors.

1           Proposals which are inconsistent with the General Plan, complex or have generated  
2 public controversy, shall require a public hearing and determination by the Planning  
3 Commission; provided, however, if the Planning Commission is unable to meet because a majority of  
4 its members has not been nominated, approved, and sworn in to office under Section 4.105 of the San  
5 Francisco Charter, such General Plan referral report shall be made by the Department. The  
6 Planning Commission resolution finding a proposal in conformity with the General Plan shall  
7 be submitted to the Board of Supervisors and the applicant within five business days after  
8 receipt of payment.

9           (f) Board of Supervisor Action. Resolutions or motions for actions listed under  
10 Subsection (c) of this Section shall include a finding of consistency with the General Plan. The  
11 Planning Commission or Department's disapproval of a proposed action may be overruled by a  
12 vote of not less than two-thirds of the members of the Board of Supervisors.

13           SEC. 31.04. RESPONSIBILITY.

14           (a) The City and all its officials, boards, commissions, departments, bureaus and  
15 offices shall constitute a single "local agency," "public agency" or "lead agency" as those  
16 terms are used in CEQA; except that the San Francisco Redevelopment Agency shall be a  
17 separate "local agency" or "public agency" as specified in CEQA. With regard to  
18 establishment of any redevelopment area, the City shall be the "lead agency."

19           (b) The administrative actions required by CEQA with respect to the preparation of  
20 environmental documents, giving of notice and other activities, as specified in this Chapter,  
21 shall be performed by the San Francisco Planning Department as provided herein, acting for  
22 the City.

23           (c) Where adoption of administrative regulations by resolution of the Planning  
24 Commission after public hearing is specified herein, there shall be notice by publication in a  
25 newspaper of general circulation in the City at least twenty (20) days prior to the hearing and

1 by posting in the offices of the Planning Department, with copies of the proposed regulations  
2 sent to the Board of Supervisors and any other affected boards, commissions and  
3 departments of the City and to all organizations and individuals who have previously  
4 requested such notice in writing. The decision of the Commission in adopting administrative  
5 regulations shall be final.

6 (d) The City shall be responsible for conducting environmental review for projects  
7 undertaken by the City within the City's territorial limits and for projects undertaken by the City  
8 outside the territorial limits of the City.

9 (e) Notwithstanding anything to the contrary contained in this Chapter 31, in the event the  
10 Planning Commission is unable to meet because a majority of its members has not been nominated,  
11 approved, and sworn in to office under Section 4.105 of the San Francisco Charter, any appeal of a  
12 negative declaration or certification of an environmental impact report shall be heard by the Board of  
13 Supervisors instead of the Planning Commission.

14 Section 4. Operative Dates. Under Section 2.107 of the San Francisco Charter, this  
15 emergency ordinance shall go into effect immediately upon passage, and shall automatically  
16 terminate on the 61<sup>st</sup> day following passage unless reenacted upon the same terms and  
17 conditions applicable to its initial enactment. If a majority of the members of the Planning  
18 Commission is appointed and sworn in to office during the time this emergency ordinance is  
19 operative, the provisions of this emergency ordinance shall cease to apply to any matter that  
20 has not already been decided under this emergency ordinance's alternative procedures.

21 Section 5. Severability.

22 (a) If any article, section, subsection, paragraph, sentence, clause or phrase of this  
23 emergency ordinance, or any part thereof, is for any reason held to be unconstitutional or  
24 invalid or ineffective by any court of competent jurisdiction, or other competent agency, such  
25 decision shall not affect the validity or effectiveness of the remaining portions of this

1 emergency ordinance or any part thereof. The Board of Supervisors hereby declares that it  
2 would have passed each article, section, subsection, paragraph, sentence, clause or phrase  
3 thereof, irrespective of the fact that any one or more articles, sections, subsections,  
4 paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or  
5 ineffective.

6 (b) If the application of any provision or provisions of this emergency ordinance to  
7 any person, property or circumstances is found to be unconstitutional or invalid or ineffective  
8 in whole or in part by any court of competent jurisdiction, or other competent agency, the  
9 effect of such decision shall be limited to the person, property or circumstances immediately  
10 involved in the controversy, and the application of any such provision to other persons,  
11 properties and circumstances shall not be affected.

12 (c) This Section shall apply to this ordinance as it now exists and as it may exist in  
13 the future, including all modifications thereof and additions and amendments thereto.

14  
15 APPROVED AS TO FORM:  
16 DENNIS J. HERRERA, City Attorney

17  
18 By:

  
19 JUDITH A. BOYAJIAN  
20 Deputy City Attorney  
21  
22  
23  
24  
25



# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails

## Ordinance

---

**File Number:** 021418

**Date Passed:**

Emergency ordinance amending the San Francisco Planning Code by amending Section 306, and amending the San Francisco Administrative Code by amending Sections 2A.53 and 31.04, to provide for an alternative process to Planning Commission review where the Planning Commission is unable to meet because a majority of its members has not been appointed; adopting declaration of emergency under Charter Section 2.107; and setting forth period of time within which this emergency ordinance shall be operative.

---

August 26, 2002 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick, Newsom, Peskin, Sandoval, Yee

August 26, 2002 Board of Supervisors — PASSED AS EMERGENCY MEASURE

Ayes: 10 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick, Newsom, Peskin, Sandoval

Noes: 1 - Yee

File No. 021418

I hereby certify that the foregoing Ordinance  
was PASSED AS EMERGENCY MEASURE  
on August 26, 2002 by the Board of  
Supervisors of the City and County of San  
Francisco.



---

Gloria L. Young  
Clerk of the Board

SEP 06 2002

---

Date Approved



---

Mayor Willie L. Brown Jr.