



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary

Planning Code Text Changes

HEARING DATE: NOVEMBER 20, 2014

Project Name: **Reasonable Modification Ordinance**
Case No.: 2014.0156T
Initiated by: Planning Department
Staff Contact: Menaka Mohan – (415) 575-9141
Menaka.Mohan@sfgov.org
Reviewed by: Kearstin Dischinger
Kearstin.dischinger@sfgov.org
Recommendation: **Recommend Adoption**

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PLANNING CODE AMENDMENT

The proposed ordinance would amend the Planning Code to provide a process for individuals with a disability to request a reasonable modification to residential properties to eliminate any barriers to housing. Reasonable modifications are defined as “a request to modify land use, zoning and building regulations in San Francisco’s Planning Code that does not impose an undue financial or administrative burden on the City of San Francisco or constitute a fundamental alteration to its Zoning and Planning program”. Reasonable modifications include changes to a residential property that enable residents with a disability to access their homes, under Fair Housing Laws. The modification must serve the disability, and be necessary to provide equal opportunity to live in that neighborhood.

Please note that the ordinance you are reviewing today has some minor modifications from the version the Planning Commission initiated on October 16, 2014. The changes are not substantive; they are grammatical, intended to clarify the legislation and make inconsistent language consistent.

The Reasonable Modification Ordinance provides an opportunity for persons with disabilities to apply for accommodations to their homes. For multi-unit buildings if a tenant seeks a reasonable modification, such as a ramp, but is not the property owner, the tenant cannot apply to changes to a property that they do not own. The landlord, however, is still subject to Fair Housing Laws.

As part of the ongoing 2014 Housing Element update, the Department has developed an ordinance that establishes a procedure for making requests for reasonable modification in land use, zoning and building regulations, policies, practices and procedures to comply fully with the intent and purpose of fair housing laws. The proposed ordinance would amend Planning Code section 305 and create an administrative Reasonable Modification variance as well as the standard variance for requests for reasonable modification requests.

The proposed Ordinance would also affirm the Planning Department’s California Environmental Quality Act determination, making findings of consistency with the General Plan, and the eight priority policies

of Planning Code, Section 101.1, and directing the Clerk of the Board of Supervisors to submit this Ordinance to the California Department of Housing and Community Development in accordance with State law.

The Way It Is Now:

Currently requests for reasonable modifications to residential uses are addressed by the Zoning Administrator on a case-by-case basis through the standard variance process. Applicants are not offered a clearly delineated process for reasonable modifications requests. Requests for some basic modifications like the addition of a wheel chair ramp would require permits and entitlements that can delay the process. The City does not provide clear guidelines about how to propose reasonable modifications.

The process is not ideal, and having a local ordinance that provides a clear path for persons with disabilities seeking reasonable modification in their homes is preferred.

The Way It Would Be:

The proposed Ordinance would provide two clear paths for requests for reasonable modification for residential uses under Section 305; -an administrative reasonable modification process and a standard variance procedure depending on the type of modification requested.

Administrative Reasonable Modification

Individuals who request reasonable modifications for residential uses are eligible for an administrative review, which, under certain conditions, would not require a public hearing or public notice. In an effort to expedite certain reasonable modification requests, any request that is consistent with the criteria in this section is eligible for administrative review and approval.

- (1) **Parking, where no physical structure is proposed.** The parking space must be necessary to achieve the modification. If the property already includes a parking space, requests for additional parking cannot be granted administratively. Exceptions may be considered for rear yard and the front setback requirements to accommodate the parking space within reason. In reviewing an Administrative Reasonable Modification for Parking, the Zoning Administrator has the authority to allow the parking space for five years. After five years, applicants may renew the temporary use for additional five-year periods.
- (2) **Access Ramps.** Access Ramps, defined in Building Code Section 1114A. that do not impact the historical structure of the building may also be considered. They should be designed and constructed to meet the accessibility provisions in the California Building Code or the California Historic Building Code. Additionally, the ramp(s) should be easily removable when the ramp(s) are no longer needed for the requested modification.
- (3) **Elevators.** Elevators, dimensions defined in Building Code Section 1124A, may be considered for an administrative variance reasonable modification if the elevator structure is not visible from the public right of way; and is set back 10 feet from the property line. Elevators must be necessary for applicants to access residential uses of the building and must be necessary to achieve the modification requested.
- (4) **Additional Habitable Space.** Additional habitable space will also be considered under administrative reasonable modification provided that the additional space does not result in the addition of a new dwelling unit or require expansion beyond the permitted buildable envelope.

Requests for reasonable modifications in residential uses that do not meet the criteria described above would continue to be reviewed through the existing variance process as described in Section 305 of the Planning Code.

Note that in both the administrative and standard variance procedure if the modification impacts a building that is listed in or eligible for listing in a local, state, or federal historic resource register, then the modifications will be reviewed to ensure conformance with the Secretary of the Interior Standards for the Rehabilitation of Historic Properties by the Planning Department's Historic Preservation Technical Specialists.

This ordinance also proposes a hardship fee waiver for reasonable modification requests for residential uses. If for some reason, an applicant cannot pay the required fee for either Administrative Reasonable Modification or the Standard Variance procedure under Reasonable Modification, a fee waiver may be granted on a case by case basis. Note that the fees involved in building the requested modification is the responsibility of the applicant.

Background:

As part of the 2014 Housing Element, the City of San Francisco is required to enact legislation to enable persons with disabilities to access reasonable modifications for their homes. Adoption of a local ordinance was called for in the 2009 Housing Element. specifically *“Implementation Measure # 39: Planning will develop a legislative ordinance that will enable persons with disabilities who require reasonable accommodation as exceptions to the City’s Planning Code to bypass the currently required variance process, and to access a streamlined procedure permitting special structures or appurtenances such as access ramps of lifts and other non-physical accommodations.”*

The Housing Element is a required component of the City’s General Plan. The Element provides the policy background for housing programs and decisions, and provides broad direction towards meeting the City’s housing goals. It serves to showcase the City’s approach to providing sufficient and healthy housing for current and future San Francisco residents. Housing element law requires local government to adequately plan for existing and projected housing needs of all economic sectors of the community, and San Francisco has embraced this as an opportunity for a community-based vision for housing. Adoption of the Housing Element for every jurisdiction guarantees certain State funding toward affordable housing and open space, including programs geared toward down payment assistance, community development block grants, and grant funds to repair or build new parks near housing that has been constructed for very low or low-income households.

The Federal Housing Act (FHA) and the California Fair Employment and Housing Act (FEHA) require local governments to make reasonable modifications in zoning and land use laws and regulations when such modifications “may be necessary to afford” disabled persons “an equal opportunity to use and enjoy dwelling.” 42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927(c)(1), 12955(1).) Local jurisdictions zoning and land use regulations are subject to both FHA and FEHA.

In San Francisco if a person with a disability requests a reasonable modification they are subject to the standard variance procedure detailed in section 305. In the current planning code, it does not specify what options are available to persons with disabilities if they are seeking modifications covered under both federal and state law. The purpose of this ordinance is to provide a path for persons with disabilities to request modifications necessary to access housing.

Initial meetings and conversations with Current Planners, the Zoning Administrator, other Cities, and the Mayor's Office of Disability revealed there were a few modifications that were discussed repeatedly, namely, ramps, parking, and elevators. Elevators and ramps are useful for people with physical disabilities by allowing access to the home itself and to multiple floors of a residential property. This ordinance proposes a program that allows administrative review for elevators that are limited in location and scale. Parking spaces enable people to access their homes, by limiting the distance necessary to travel between their vehicle and home.

The policy implications of administratively approving modifications such as parking were discussed to understand how much parking should be allowed and how to discourage abuse by persons who do not have a disability from requesting reasonable modifications. This ordinance includes guidelines, for example, parking with no physical structure, and elevators if the elevator structure is not visible from the public right of way and is set back 10 feet from the property line.

Other reasonable modifications that were discussed with the Mayor's Office of Disability included increasing the density on a lot to provide housing for a caregiver. This ordinance does not allow for the addition of a housing unit, however as part of an administrative reasonable modification, an applicant can add habitable space, within the permitted building envelope under this ordinance.

Persons with a Disability

Currently, the US census defines Americans with disabilities using a set of six questions to identify a "serious difficulty" with four basic areas of functioning-hearing, vision, cognition, and ambulation. The 2010 Census estimated almost 49,000 non-institutionalized adults having a physical disability, which is defined as a condition that substantially limits one or more basic physical activities, such as walking, climbing stairs, reaching, lifting or carrying. Well over half of adults with disabilities are over 65 and may require appropriate housing. There are over 19,600 people between 18 and 64 with a physical disability.

Individuals with a disability may require special housing accessible housing with features such as: wheelchair accessible entrances, wide interior spaces for wheelchair circulation, accessible bathing facilities, adjustable heights for counters and cabinets, and other amenities. Since almost three-quarters of San Francisco's housing stock was built before 1950, much of the existing stock was not built with these modifications in mind; some, but not most, can easily be converted to accessible standards.

This ordinance provides a path for individuals to apply for a reasonable modification under two scenarios. The administrative process provides a streamlined path for the most common scenarios and is based on past cases and conversations with the Mayor's Office of Disability. The standard variance exists for situations that are outside the most common scenarios listed.

REQUIRED COMMISSION ACTION

Adopt amendments to the Planning Code. The proposed ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modification to the Board of Supervisors.

PUBLIC COMMENT

The Planning Department has not received public comment on this issue.

This legislation was developed in coordination with the Mayor's Office of Disability. Planning Staff met with the office on two separate occasions and MOD has provided comment on the ordinance to planning staff.

RECOMMENDATIONS

THE DEPARTMENT RECOMMENDS THAT THE COMMISSION RECOMMEND APPROVAL OF THE PROPOSED ORDINANCE AND ADOPT THE ATTACHED DRAFT RESOLUTION TO THAT EFFECT. BASIS FOR RECOMMENDATION

As part of the state mandated Housing Element, the California Department of Housing and Community Development (HCD) requires municipalities "where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities." To meet this requirement, the San Francisco Planning Department has drafted, as called for in the 2009 Housing Element, a local ordinance, such as the one described above. Additionally, the ordinance provides a path for the most common types of modifications requested for persons with disabilities.

ENVIRONMENTAL REVIEW

The proposed Ordinance is covered under Case No. **2014.0156E**, and would be exempt from environmental review under the General Rule Exclusion (GRE), pursuant to CEQA Guidelines Section 15061(b)(3). The GRE is attached in Exhibit C.

RECOMMENDATION: Recommendation of Adoption
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Attachments:

Exhibit A: Draft Ordinance

Exhibit B: Draft Planning Commission Resolution

Exhibit C: Environmental Review: General Rule Exclusion

1 [Planning Code - Procedure for Requesting Modification of Code Requirements or Planning
2 Department Practices and Procedures to Accommodate a Disability]

3
4 **Ordinance amending the Planning Code to establish a process for making and acting**
5 **upon requests for reasonable modification of a Planning Code requirement or a**
6 **Department policy, practice, or procedure to accommodate a disability pursuant to**
7 **federal and state fair housing laws; and affirming the Planning Department's California**
8 **Environmental Quality Act determination and making findings of consistency with the**
9 **City's General Plan, and the eight priority policies of Planning Code, Section 101.1.**

10
11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
12 **Additions to Codes** are in *single-underline italics Times New Roman font.*
13 **Deletions to Codes** are in *strikethrough italics Times New Roman font.*
14 **Board amendment additions** are in double-underlined Arial font.
15 **Board amendment deletions** are in ~~strikethrough Arial font.~~
16 **Asterisks (* * * *)** indicate the omission of unchanged Code
17 subsections or parts of tables.

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

19 Section 1. Findings.

20 (a) The Planning Department has determined that the actions contemplated in this
21 ordinance comply with the California Environmental Quality Act (California Public Resources
22 Code Section 21000 et seq.). The Board of Supervisors hereby affirms this determination.
23 Said determination is on file with the Clerk of the Board of Supervisors in File No. _____
24 and is incorporated herein by reference.

25 (b) On _____, 2014, the Planning Commission, in Resolution No. _____,
adopted findings that the actions contemplated in this ordinance are consistent, on balance,

1 with the City’s General Plan and the priority policies of Planning Code Section 101.1. The
2 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
3 the Board of Supervisors in File No. _____.

4 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that these
5 Planning Code amendments will serve the public necessity, convenience and welfare for the
6 reasons set forth in Planning Commission Resolution No. _____ and the Board of
7 Supervisors hereby incorporates such reasons herein by reference. A copy of Planning
8 Commission Resolution No. _____ is on file with the Clerk of the Board of Supervisors in
9 File No. _____.

10
11 Section 2. The Planning Code is hereby amended by adding Section 305.1, to read as
12 follows:

13 **SEC. 305.1. Requests for Reasonable Modification - Residential Uses.**

14 *(a) Purpose. It is the policy of the City and County of San Francisco to comply with the*
15 *Federal Fair Housing Act, the Americans with Disabilities Act, and the California Fair Employment*
16 *and Housing Act by reasonably modifying its regulations, policies, practices and procedures for people*
17 *with disabilities. The City and County of San Francisco also recognizes the importance of sustaining*
18 *and enhancing our city’s neighborhood character. In determining whether a requested modification is*
19 *reasonable, the City will consider, among other relevant factors, the extent to which the requested*
20 *modification might fundamentally alter its existing zoning or regulations. The purpose of this Section*
21 *305.1 is to establish a process for making and acting upon requests for reasonable modifications to the*
22 *regulations, policies, practices, and procedures of the Planning Department and Code.*

23 **(b) Application.**

1 (1) Requests for reasonable modification can be made for residential uses in any zoning
2 district in the City and County of San Francisco in accordance with the procedures outlined in this
3 Section 305.1.

4 (2) An applicant may seek a modification through this Section 305.1. for an alteration
5 that is available under other sections of this Code, in which case a modification under this Section shall
6 be in lieu of any approval, permit or entitlement that would otherwise be required. An application
7 under this Section may also seek a modification that is not available under any other sections of the
8 Planning Code.

9 (c) Procedure.

10 (1) Request for a Modification. A person with a disability who requests a modification
11 in the application of the Planning Code to ensure having equal access to housing must initiate the
12 request by providing the required information to the Department. The Department shall maintain a
13 form, known as the Reasonable Modification Form, which will detail the process for seeking a
14 modification and identify the information that must be submitted to the Department in connection with
15 the request for modification.

16 (2) Content of Application. The application shall be in accordance with the policies,
17 rules and regulations of the Planning Department, Zoning Administrator, and Planning Commission. In
18 addition to any other information that is required under this Section 305.1, the applicant shall complete
19 the Reasonable Modification Form. The form shall at a minimum include the applicant's contact
20 information and a description of the need for the requested modification including an identifiable
21 relationship, or nexus, between the requested modification and the individual's disability. This
22 information is required for the administrative reasonable modification process and the standard
23 reasonable modification variance procedure.

24 (3) ADA Accommodation in Making Request. If an individual needs assistance in
25 making the request for a reasonable modification, the individual should notify the Department, which

1 will then endeavor to provide the assistance necessary to ensure that the process is accessible to the
2 applicant or applicant's representative.

3 (d) **Request for Administrative Reasonable Modification - No Hearing.** In an effort to
4 expedite the processing and resolution of reasonable modification requests, any request that is
5 consistent with the criteria in this section may receive administrative review and approval. Requests for
6 modifications that meet the requirements for administrative review do not require public notice under
7 Section 306 of this Code.

8 (1) **Parking, where no physical structure is proposed.** One parking space may be
9 considered for an administrative reasonable modification provided that the parking space is necessary
10 to achieve the accommodation and that property does not already include a parking space. Exceptions
11 may be considered from rear yard and the front setback requirements if necessary to accommodate the
12 parking space. In reviewing an administrative reasonable modification request for parking, the Zoning
13 Administrator is authorized to allow the parking space for up to five years, at the end of which period
14 the applicant may renew the temporary use for additional five-year periods.

15 (2) **Access Ramps.** One or more access ramps, defined in Building Code Section 1114A
16 may be considered for an administrative reasonable modification provided that the access ramp is
17 designed and constructed to meet the accessibility provisions in either the California Building Code or
18 the California Historical Building Code and is easily removable when the ramp(s) are no longer
19 needed for the requested modification.

20 (3) **Elevators.** One elevator, with dimensions defined in Building Code Section 1124A,
21 may be considered for an administrative reasonable modification provided that the elevator structure is
22 not visible from the public right of way and is set back a minimum of 10 feet from the property line, and
23 that the elevator is necessary to access residential uses of the building and to achieve the
24 accommodation requested.

1 (4) **Additional habitable space.** Additional habitable space may be considered for an
2 administrative reasonable modification provided that the additional habitable space does not result in
3 the addition of a new dwelling unit or require expansion beyond the permitted building envelope.

4 (e) **All Other Requests for Reasonable Modification - Zoning Administrator Review and**
5 **Approval.**

6 (1) **Standard Variance Procedure - With Hearing.** Requests for reasonable
7 modifications that do not fall within Subsection (d) shall be considered by the Zoning Administrator,
8 who will make the final decision through the existing variance process described in Section 305.

9 (2) **Public Notice of a Request for Reasonable Modification.** Notice for reasonable
10 modifications that fall with subsection (e)(1) are subject to the notice requirements of Section 306. If
11 the request for reasonable modification is part of a larger application, then the noticing can be
12 combined.

13 (f) **Determination.**

14 (1) **Zoning Administrator Authority.** The Zoning Administrator is authorized to
15 consider and act on requests for reasonable modification, whether under Subsection (d) or Subsection
16 (e). The Zoning Administrator may conditionally approve or deny a request. In considering requests
17 for reasonable modification under this Section 305.1, the Zoning Administrator shall consider the
18 factors in Subsection (f)(2).

19 (2) **Criteria for Modification.** When reviewing a request for reasonable modification,
20 the Zoning Administrator shall consider whether:

21 (A) the requested modification is requested by or on the behalf of one or more
22 individuals with a disability protected under federal and state fair housing laws;

23 (B) the requested modification will directly enable the individual to access the
24 individual's residence;

1 (C) the requested modification is necessary to provide the individual with a
2 disability an equal opportunity to use and enjoy a dwelling;

3 (D) there are alternatives to the requested modification that would provide an
4 equivalent level of benefit;

5 (E) the requested modification will not impose an undue financial or
6 administrative burden on the City as “undue financial or administrative burden” is defined under
7 federal and state fair housing laws.

8 (F) the requested modification will, under the specific facts of the case, result in
9 a fundamental alteration in the nature of the Planning Code or General Plan, as “fundamental
10 alteration” is defined under federal and state fair housing laws.

11 (G) the requested modification will, under the specific facts of the case, result in
12 a direct threat to the health or safety of others or cause substantial physical damage to the property of
13 others.

14 (3) **Residential Design Guideline Review.** If the proposed project is in a zoning district
15 that requires residential design guideline review, the Department shall complete the design review and
16 make appropriate recommendations, while also accommodating the reasonable modification.
17 Approvals are subject to compliance with all other applicable zoning or building regulations.

18 (4) **Historic Resource Review.** If the proposed project would affect a building that is
19 listed in or eligible for listing in a local, state, or federal historic resource register, then the
20 modifications, either through the administrative reasonable modification process or the standard
21 reasonable modification variance procedure, will be reviewed by the Planning Department’s Historic
22 Preservation Technical Specialists to ensure conformance with the Secretary of the Interior Standards
23 for the Rehabilitation of Historic Properties.

24 (5) **Written Decision.** Upon issuing a written decision either granting or denying the
25 requested modification in whole or in part, the Zoning Administrator shall forthwith transmit a copy

1 thereof to the applicant. The action of the Zoning Administrator shall be final and shall become
2 effective 10 days after the date of the written decision except upon the filing of a valid appeal to the
3 Board of Appeals as provided in Section 308.2.

4 (g) Fees. The fee for a reasonable modification request is the fee for a variance set forth in
5 Section 352(b) of this Code . If an applicant can demonstrate financial hardship, the Department may
6 waive or reduce the fee pursuant to Section 352(e)(2) of this Code.

7
8 Section 3. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12
13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15 By: _____
16 JUDITH A. BOYAJIAN
17 Deputy City Attorney

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SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution Planning Code Text Amendments

HEARING DATE: NOVEMBER, 20TH 2014

Date: November 20, 2014
Case No.: 2014.0156T
Project Address: **Reasonable Modification Ordinance**
Initiated by: John Rahaim, Director of Planning
Staff Contact: Menaka Mohan – (415) 575-9141
menaka.mohan@sfgov.org
Reviewed by: Kearstin Dischinger
kearstin.dischinger@sfgov.org
Recommendation: **Recommend Approval**

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO PROVIDE A PROCESS FOR INDIVIDUALS REQUESTING REASONABLE MODIFICATIONS TO RESIDENTIAL PROPERTIES BY AMENDING EXISTING PLANNING CODE SECTION 305 TO INCLUDE SECTION 305.1 TO DESCRIBE AN ADMINISTRATIVE REASONABLE MODIFICATION PROCESS AND A STANDARD VARIANCE PROCESS FOR REASONABLE MODIFICATIONS.

PREAMBLE

WHEREAS, it is the policy of the City and County of San Francisco to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act by reasonably modifying its zoning regulations for people with disabilities; and

WHEREAS, the California Department of Housing and Community Development requires that Housing Elements provide a program to “address and where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing for persons with disabilities. The program shall remove constraints to and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities, and

WHEREAS, San Francisco’s 2009 Housing Element calls for a local ordinance in Implementation Measure # 39: Planning will develop a legislative ordinance that will enable persons with disabilities who require reasonable accommodation as exceptions to the City’s Planning Code to bypass the currently required variance process, and to access a streamlined procedure permitting special structures or appurtenances such as access ramps of lifts and other non-physical accommodations, and

WHEREAS, the San Francisco Planning Department developed this proposal in coordination with key stakeholders including the Mayor's Office of Disabilities, to ensure that the legislation comprehensively addresses anticipated reasonable modifications requests made by people with disabilities for residential uses, and

WHEREAS, in determining whether a requested modification of zoning or subdivision regulations is reasonable, the City will consider, among other relevant factors, the extent to which the requested modification might be in conflict with or result in a fundamental alteration in the nature of the Planning Code or General Plans; and

WHEREAS, "fundamental alteration" is defined in federal and state Fair Housing Laws; and

WHEREAS, an applicant may seek a modification through this section for an improvement that is available under other sections of the Planning Code; and

WHEREAS, the proposed legislation will create an Administrative Reasonable Modification and the Standard Variance for persons who seek reasonable accommodations on residential properties; and

WHEREAS, the Planning Commission (hereinafter "Commission") initiated hearings on this legislation on October 16, 2014

WHEREAS, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on November 20, 2014; and

WHEREAS, the proposed Ordinance would be categorically exempt from environmental review under the California Environmental Quality Act Section 15061(b)(3); 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 presented on behalf of Department staff and other interested parties; and

WHEREAS, the all 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 Ordinance:

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors approve the proposed ordinance.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, the Commission finds, concludes and determines as follows:

1. As part of the state mandated Housing Element, the California Department of Housing and Community Development (HCD) requires municipalities "where appropriate and legally

possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities.”

2. The 2009 Housing Element had a specific implementation measure ; **Implementation Measure 39:** *Planning will develop a legislative ordinance that will enable persons with disabilities who require reasonable accommodation” as exceptions to the City’s Planning Code to bypass the currently required variance process, and to access a streamlined procedure permitting special structures or appurtenances such as access ramps of lifts and other non-physical accommodations, which directs the Department to develop a Reasonable Modification Ordinance.*
3. **General Plan Compliance.** The proposed Ordinance is consistent with the Objectives and Policies of the General Plan:

OBJECTIVE 4

FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

POLICY 4.3

Create housing for people with disabilities and aging adults by including universal design principles in new and rehabilitated housing units.

The proposed ordinance would provide a path for persons with disabilities to request modifications to their homes, allowing them equal access to live in different neighborhoods in the City.

1. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative impact on neighborhood serving retail uses and will not impact opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character. The modifications proposed would impose minimal impact on the existing housing and neighborhood character.

3. That the City’s supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City’s supply of affordable housing. The ordinance provides a path for persons with a disability to remain in their homes.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing. The ordinance provides a path for persons with a disability to remain in their home

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an impact on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have a negative impact on the City's Landmarks and historic buildings as any new modifications would be added under the guidance of local law and policy protecting historic resources, when appropriate.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an impact on the City's parks and open space and their access to sunlight and vistas.

4. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance, approved as to form by the City Attorney in Exhibit A, described in this Resolution.

Resolution No.
Hearing Date: November 20, 2014

CASE NO. 2014.0156T
Reasonable Modification Legislation

I hereby certify that the foregoing Resolution was ADOPTED by the San Francisco Planning Commission on November 20, 2014.

Jonas Ionin
Commission Secretary

AYES:

NOES:

ABSENT:



SAN FRANCISCO PLANNING DEPARTMENT

Certificate of Determination Exclusion/Exemption from Environmental Review

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

Case No.: 2014.0156E
Project Title: Reasonable Modification Ordinance
Zoning: Multiple Use Districts
Multiple Height and Bulk Districts
Block/Lot: Multiple
Project Sponsor: San Francisco Planning Department – (415) 558-6378
Staff Contact: Sandy Ngan – (415) 575-9102
Sandy.Ngan@sfgov.org

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT DESCRIPTION:

The proposed ordinance, introduced to the San Francisco Planning Commission on October 16, 2014 by the San Francisco Planning Department, would amend Section 305 of the San Francisco

(continued on next page)

EXEMPT STATUS:

General Rule Exclusion (California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3))

REMARKS:

Please see next page.

DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and local requirements.


Sarah B. Jones

Environmental Review Officer

November 6, 2014
Date

cc: Menaka Mohan, Citywide Planner
Shelley Caltagirone, Preservation Planner
Board of Supervisors

Distribution List
Historic Preservation Distribution List
Virna Byrd, M.D.F.

PROJECT DESCRIPTION (continued):

Planning Code by adding Section 305.1 to establish a process for persons with disabilities to make and act upon requests for reasonable modification of Planning Code policies, practices, and procedures in compliance with federal and state fair housing laws.

The proposed ordinance would adopt findings, including environmental findings, Section 302 findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code Section 101.1.

For the purposes of this ordinance, a reasonable modification is defined as a request to modify land use, zoning, and building regulations in the San Francisco Planning Code that does not impose an undue financial or administrative burden on the City and County of San Francisco or constitute a fundamental alteration to its zoning and planning program. A reasonable modification includes change(s) to a residential property that enable a resident with a disability to access his property. The modification being requested must serve the resident's disability and be necessary to provide him equal opportunity to live at the residential property.¹ This ordinance was developed in coordination with the Mayor's Office of Disability.

The proposed ordinance would amend Section 305 of the Planning Code to add Section 305.1 to establish a process for persons with disabilities to request for reasonable modifications to their residential properties. The main revisions being proposed are as follows:

- The proposed ordinance would allow requests for reasonable modifications to be made for residential properties in any zoning district in the City and County of San Francisco.
- The proposed ordinance would allow persons with disabilities to seek reasonable modifications that are available under other sections of the Planning Code. In such cases, modifications under Section 305 of the Planning Code would take the place of any approval, permit, or entitlement that would otherwise be required. Applicants may also seek modifications that are not available under any other provision of the Planning Code.
- Persons with disabilities who request for reasonable modifications to residential properties are eligible for an administrative reasonable accommodation under certain conditions. These conditions include:
 - Parking, where no physical structure is proposed. The parking space must be necessary to achieve the modification requested. If the property already includes a parking space, requests for additional parking spaces cannot be granted administratively through the administrative reasonable accommodation

¹ The definition of a reasonable accommodation, per this ordinance, is consistent with the definition used by the United States Department of Housing and Urban Development and the United States Department of Justice as outlined in *Joint Statement of the Department of Housing and Urban Development and the Department of Justice – Reasonable Modifications under the Fair Housing Act*. March 5, 2008.

procedure. Exceptions may be considered for rear yard and the front setback requirements to accommodate the parking space within reason. In reviewing an administrative reasonable modification for parking, the Zoning Administrator has the authority to allow the parking space for five years. After five years, applicants may renew the temporary use for additional five-year periods.

- Access Ramps. Access Ramps, defined in Building Code Section 1114A, would be considered for an administrative reasonable modification provided that the access ramp(s) are designed and constructed to meet the accessibility provisions in the California Building Code or the California Historic Building Code. Additionally, the ramp(s) should be easily removable when the ramp(s) are no longer needed for the requested modification.
- Elevators. Elevators, defined in Building Code Section 1124A, would be considered for an administrative reasonable modification provided that the elevator structure would not be visible from the public right-of-way and is set back 10 feet from the property line. The elevators must be necessary for the persons with a disability to access residential uses of the building and must be necessary to achieve the modification requested.
- Additional Habitable Space. Additional habitable space would be considered for an administrative reasonable modification provided that the additional space does not result in the addition of a new dwelling unit or require expansion beyond the permitted buildable envelope.
- Requests for reasonable modifications that are consistent with the criteria for an administrative reasonable accommodation would not require public notice.
- Requests for reasonable modifications in residential uses that do not meet the criteria described above for an administrative reasonable modification would continue to be reviewed through the existing variance (standard variance) procedure as described in Section 305 of the Planning Code.
- Requests for reasonable modifications involving a residential property that is listed in or eligible for listing in a local, state, or federal historic resource register would be reviewed to by the Planning Department's Historic Preservation Technical Specialists to ensure conformance with the Secretary of the Interior Standards for Rehabilitation of Historic Properties. This review would occur as part of the administrative reasonable accommodation and standard variance procedure.
- Future reasonable modification projects located in zoning districts that require residential design review would continue to be subject to the Planning Department's Residential Design Guidelines review process to ensure conformity with the subject property's surrounding neighborhood character.

PROJECT APPROVALS:

On November 20, 2014, the Planning Department will present the legislation to the Planning Commission. The Planning Commission will make a recommendation to the Board of Supervisors. The Land Use Committee of the Board will then hear the legislation, followed by a hearing before the full Board. The Board of Supervisors' approval of the proposed ordinance would constitute the Approval Action pursuant to Chapter 31 of the Administrative Code. The Approval Action date establishes the start of the 30-day appeal period for this CEQA exemption determination pursuant to Section 31.04(h) of the San Francisco Administrative Code.

REMARKS:**Background**

As discussed in the San Francisco Housing Element, despite the cost of housing, San Francisco remains attractive to seniors and persons with disabilities because of the City's transportation, health services, and other resources. However, persons with disabilities often have difficulty finding housing constructed to meet their physical accessibility needs.² A physical disability is defined as a condition that substantially limits one or more basic physical activities such as walking, climbing stairs, reaching, lifting or carrying.³

In 2010, there were an approximately 49,000 non-institutionalized individuals with physical disabilities within the City and County of San Francisco.⁴ Approximately 19,600 of that total are between 18 and 64 years of age and approximately 29,000 of the total are over 65 years of age. Many of these individuals may need reasonable modifications to their residential properties.

Per federal and state requirements, the City and County of San Francisco is required to enact a legislative ordinance to enable persons with disabilities to implement reasonable modifications for their homes. The Federal Housing Act (FHA) and the California Fair Employment and Housing Act (FEHA) require local governments to make reasonable modifications in zoning and land use laws and regulations when such modifications "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy dwelling."⁵ Local jurisdictions' zoning and land use regulations are subject to both FHA and FEHA.

² San Francisco General Plan, Housing Element. The Housing Element is available online at http://www.sf-planning.org/ftp/general_plan/II_Housing.html.

³ Disability Statistics, Frequently Asked Questions. Available online at <http://www.disabilitystatistics.org/faq.cfm>.

⁴ 2010 American Community Survey 1-Year Estimates. S1810 Disability Characteristics in the United States, California, San Francisco (accessed October 14, 2014).

⁵ 42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927(c)(1), 12955(1).

In the City and County of San Francisco's 2009 Housing Element, enactment of a legislative ordinance was specifically called for in Implementation Measure 39. Implementation Measure 39 states that the Planning Department would "develop a legislative ordinance that will enable persons with disabilities who require reasonable accommodation as exceptions to the City's Planning Code to bypass the currently required variance process, and to access a streamlined procedure permitting special structures or appurtenances such as access ramps or lifts and other non-physical accommodations."⁶

Currently, if a person with a disability requests a reasonable modification in the City and County of San Francisco, the applicant is subject to the standard variance procedure detailed in Section 305 of the Planning Code. The Planning Code does not currently specify what options are available to persons with disabilities if they are seeking modifications permitted under both federal and state laws. The purpose of this ordinance is to provide a path for persons with disabilities to request modifications necessary to access housing.

POTENTIAL ENVIRONMENTAL EFFECTS:

California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) establishes the general rule that CEQA applies only to projects that have the potential to cause a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This section discusses the potential for the proposed ordinance to result in significant environmental effects and demonstrates that there is no reasonably foreseeable possibility of significant effects.

Historic Resources. Projects taking advantage of the proposed ordinance could result in reasonable accommodations that could differ in scale, design, or materials from nearby historic resources, potentially altering their historic context. However, the proposed ordinance is not expected to incentivize development of projects in a way that would result in a material impairment to a known/potential historic district and/or known/potential historic resources.

Planning Department preservation staff have reviewed the proposed ordinance and determined that all reasonable modifications to existing structures, such as those outlined for consideration as part of the administrative reasonable modification procedure, would be minor in nature and would not have significant adverse impacts to historic resources or affect their eligibility for inclusion in the California Register⁷, which is the threshold for significant impact to a resource.

⁶ San Francisco General Plan, Housing Element, Part II: Implementation Programs. This section of the Housing Element is available online at http://www.sf-planning.org/ftp/general_plan/II_Housing.html.

⁷ Email from Shelley Caltagirone to Sandy Ngan, September 23, 2014, "RE: Requests for Reasonable Accommodation – Residential Uses."

Projects that would involve a building that is listed or eligible for listing in a local, state, or federal historic resource register would be subject to a historic review by the Planning Department's Historic Preservation Technical Specialists. The historic review would address conformance with the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties and provide the applicant the opportunity to improve the accommodation design such that it is more sensitive to the character of the resource.⁸ This review would also provide further input and information for the Zoning Administrator to use in his determination for modifications that do not fall within an administrative reasonable accommodation.

Based on the above, the proposed ordinance would not have the potential to result in foreseeable significant impacts to historic districts, potential historic districts, potential historic resources, and/or known historic resources.

NEIGHBORHOOD CONCERNS:

A "Notification of Project Receiving Environmental Review" was mailed on October 17, 2014 to potentially interested parties. No comments from the public were received.

CONCLUSION:

As discussed in more detail above, the proposed ordinance is not anticipated to facilitate or result in development of specific projects, but rather enable persons with disabilities to make and act upon requests for reasonable modifications to housing. For these reasons, and the reasons cited above, it is determined with certainty that the proposed legislation would result in no significant environmental impacts.

CEQA Guidelines Section 15061(b)(3) provides an exemption from environmental review where it can be seen with certainty that the proposed project would not have a significant impact on the environment. As noted above, there are no unusual circumstances surrounding the current proposal that would suggest a reasonable possibility of a significant effect. Since the proposed project would have no significant environmental impacts, it is appropriately exempt from environmental review under the General Rule Exclusion (CEQA Guidelines Section 15061(b)(3))

Email from Tina Tam to Sandy Ngan, October 17, 2014, "RE: Reasonable Modifications Ordinance – HR Review – Email for Files."

⁸ Email from Shelley Caltagirone to Sandy Ngan, September 23, 2014, "RE: Requests for Reasonable Accommodation – Residential Uses."