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Mr. John Arntz
Director of Elections
Department of Elections
City and County of San Francisco
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VIA INTERDEPARTMENTAL MAIL AND
VIA ELECTRONIC MAIL TO: barbara.carr@sfgov.org

RE: Voter Approval of Waterfront Development Height Increases – June 2014 Ballot

Dear Director Arntz,

Thank you for the opportunity to review the "Voter Approval of Waterfront Development Height Increases" initiative measure ("Measure") that will appear on the June 3, 2014 ballot barring a court action to remove the measure. As you requested, and in anticipation of the Ballot Simplification Committee's ("BSC") preparation of a fair and impartial summary of the Measure, the Planning Department ("Department") is providing an objective analysis of the Measure's impact on current law and current Department and City practices along with technical observations intended to inform the BSC's deliberations.

1. **The Measure would modify existing City review and approval procedures by transferring the authority to increase height limits on lands controlled by the Port of San Francisco ("Port") from the City's Planning Commission, Board of Supervisors ("Board") and Mayor to the voters.**

Current law requires that a zoning height change be subject to neighborhood notification and public hearings at the Planning Commission, Board Land Use Committee, and full Board, with additional hearings required in certain circumstances at the Historic Preservation and other Commissions. These hearings and resultant decisions are preceded by substantial technical and policy analyses by City staff. No voter approval is required.

The Measure would preclude any City Commission, the Board, or the Mayor from acting on any development on Port-controlled property that requires an increase in height over the height controls in effect on January 1, 2014. Rather, a vote of the people would become the first approval for any such development. Once the matter is certified to appear on the ballot, City staff could present only objective and impartial information about the project and could not provide a recommendation on the project, per our current practice. In addition, there would be no required public hearings or technical analyses that are now part of the review and approval process for conventional projects. Voters would be reliant on the written description in the Voter's Guide

rather than the analysis and public review conducted by the Planning Department under current practice.

2. The Measure could impact Department and City practices by changing the way we conduct staff reviews, Commission reviews, and reviews required by the California Environmental Quality Act ("CEQA").

The actual impact of the Measure on Department practices would depend on the specific content of a ballot measure related to a particular project. Project-specific ballot measures put forward by developers could range anywhere on a spectrum from only addressing height limits to authorizing the entirety of the proposed project. The more detail about a project included in a ballot measure, the less ability the Department would have to carry out the review and approval processes conducted today.

If a developer chose to craft a ballot measure that included aspects of a project in addition to height limits - such as proposed uses, amount of parking, and/or size of buildings - those aspects of the project would also be approved by voters if the measure passes. Under such a scenario, any subsequent project approval might be constrained in that certain modifications to the project (e.g. height of the project or the size of the project or the number of parking spaces) could have been expressly restricted by the voters. We would likely conduct environmental reviews as we do today, but the impacts identified in those reviews could not be addressed through mitigations for impacts created by those aspects of the project that were approved by the voters.

It is true that certain development projects requiring increased height limits, among other zoning approvals, have in the past voluntarily sought voter approval.[1] However, by making it mandatory that height increases go before the voters, it is very likely that a developer would seek to include several aspects of the project on a ballot measure, in addition to the height limit, in order to inform voters as to the purpose of the proposed height measure increase.

The number of ballot measures seeking *project approvals* under increased height limits - not just the height limit increases themselves - is therefore likely to increase. In such cases, the City's current development review and approval processes would likely be affected.

By prohibiting any project approval in advance of a vote on a height increase, the Measure would likely alter the current sequence of events that occurs during the project review process conducted by the Department. The Department believes it likely that at some very early point in a project's review process, that review would pause in order for the electorate to consider an increase in height limits and then, if approved, the project would be re-inserted into the conventional process.

Again, in instances where many aspects of the project are on the ballot, the developer could use the vote as an opportunity for an up-front authorization of those various aspects of the project (e.g. an architectural design, land use program, height limit increase and any other required approvals). This would allow the typical analysis otherwise applicable to each aspect to be

[1] There have been at least three other measures put before San Francisco voters that involved a height change: "The Downtown Ballpark" (Proposition P) in November 1989, "Ballpark" (Proposition B) in March 1996, and "Candlestick Point Stadium Land Use" (Proposition F) in June 1997.

avoided and a detailed development proposal could be "locked-in" through voter approval such that some or all of the conventional review process would likely not occur. This could create a situation where the project is not reviewed in light of the city's General Plan, Planning Code or other codes, but would be allowed to proceed anyway because it had been approved by the voters.

The Department's environmental review pursuant to CEQA could be similarly affected. CEQA exists to provide the public with knowledge about the likely environmental impacts of development prior to its approval. The review process under CEQA can be time consuming and expensive, with various stages of City and public review. If voters are considering aspects of projects that have not undergone CEQA review, they will not have the opportunity to obtain the information and have the involvement that CEQA provides.

The reason that CEQA may not apply in these situations is that measures placed on the ballot by any means other than a vote of the full Board are not "actions" taken by the City, and therefore they are not "projects" subject to CEQA. More precisely, placing some or all of the elements of a development project on the ballot for approval may not be subject to CEQA review depending on how the measure reaches the ballot. Subsequently, should the voters approve any project elements that appear on the ballot – and depending on the language of the particular ballot measure - it is possible that few, if any further discretionary approvals relating to those elements could be required by the City. Because discretionary approvals are generally those which are subject to CEQA, ensuing CEQA review could therefore be limited.

Nonetheless, CEQA review would be required for any follow-on discretionary City actions on elements of the project that were *not* subject to a vote. While CEQA could, and typically does, examine the whole of a project, and might include the crafting of project alternatives, mitigation measures, and/or other conditions, the City would be constrained in implementing any of these because the defining parameters of the project would presumably have already been approved by the voters.

It is important to note that many Port lands – particularly those that are tangential to the water's edge - are also subject to the jurisdiction of the State Lands Commission ("SLC") and/or the Bay Conservation and Development Commission ("BCDC"). Regardless of any local process that may be modified by the Measure, neither the SLC or BCDC - because they are State agencies - would be subject to the Measure. Thus, any required approvals from these State agencies would be subject to review under CEQA and other applicable State laws. Such review, however, would be not be conducted by the City.

3. For Port lands, the Measure could preclude City Staff, City Departments and City Commissions from providing policy recommendations on the merits or detriments of height increases or other aspects of development proposals placed on the ballot.

At present, the Department prepares technical analyses under the Planning Code, General Plan, and applicable City policies, and provides professional guidance to the Planning Commission, the Board of Supervisors, and the Mayor in their decision-making roles on proposed height increases and other aspects of development projects.

City law limits City employees, Departments and Commissions to objective and impartial analysis of measures placed on the ballot once those items have been certified for the ballot. Because of

this, the Department might be constrained in providing professional guidance on the merits and/or failings of a development project to the decision-makers – in this case the voters. In other words, the Department would no longer be permitted to make a recommendation to decision-makers as we do today.

4. The title of the Measure and proposed language in the Ballot Digest are inconsistent with the scope of the Measure.

A reasonable person could conclude that the "waterfront development" contemplated in the Measure's title means development that fronts, at least in part, water. In fact, the term "waterfront" is defined in the final section of the Measure to generally mean any property under the ownership or jurisdiction of the Port of San Francisco.

Many Port lands, particularly in the southeast part of the City, have no water frontage and are located as much as a half-mile from the water. Similarly, Port lands in the northeast part of the City can be located notably inland (west) of The Embarcadero. For example, properties at the corners of Illinois & 22nd Streets and Vallejo & Front Streets would be within the scope of the Measure but would not, by most reasonable definitions, be considered "waterfront" properties.

Conversely, numerous properties along the waterfront - including some immediately along the water's edge and some facing the waterfront immediately west of The Embarcadero - are not Port properties, and therefore are not subject to the Measure. For example, many of the private parcels facing the bay on the west side of The Embarcadero from Broadway to Harrison Street are not Port properties and are not subject to the Measure.

Additionally, properties fronting the water in a portion of the Central Waterfront (Dogpatch), Hunter's Point, Candlestick Point, and the entire waterfront west of Aquatic Park and extending to the San Mateo County Line, are not Port properties and thus are not subject to the Measure.

Language in the proposed Ballot Digest is similarly inconsistent in its description of the Measure's scope. When describing Port land, the Digest language lists only land on and near piers and "land on the west side of the Embarcadero roadway." This suggests that the Measure applies only to the northeast waterfront north of Mission Creek, as The Embarcadero roadway exists only north of Mission Creek.

Given these geographic complexities, we suggest making a map available to the public that graphically shows the properties subject to the Measure.

The effects of the Measure on current law and practice are clearly complex. Accordingly, please do not hesitate to consult us as your deliberations move forward by contacting Daniel Sider of my staff at dan.sider@sfgov.org or (415) 558-6697.

Sincerely,

John Rahaim
Director of Planning