
SAN FRANCISCO LAND USE UPDATE

**Steve Atkinson***Partner*

415.356.4617

satkinson@luce.com

www.luce.com/steveatkinson

Although construction remained slow in San Francisco in 2010 due to the Great Recession, there was continued activity on legislative and regulatory fronts that will present opportunities - and potential problems - to property owners and developers in 2011. A few interesting highlights:

New Incentives for Building Student Housing.

At the end of 2010, San Francisco adopted an important incentive for the production of new housing for students. Student housing projects meeting specified criteria will be exempted from the City's affordable housing requirements, resulting in substantial savings in development costs. In early 2011, the Planning Department also may initiate legislation addressing other aspects of student housing, including density, parking, etc.

Opportunity for "Legitimization" of Office and Other Uses in Eastern Neighborhood.

San Francisco's Eastern Neighborhoods rezoning, adopted in 2008, set up a relatively simple process for legalization of existing uses that had not been legally established and that are prohibited by the new zoning. Although many properties in this area contain uses of uncertain legality, only a few owners have utilized this procedure, which among other things, allows development impact fees to be paid over several years. (The process was primarily intended for office uses, though other uses are eligible). The City has recently adopted legislation clarifying the procedures for legitimization. The "legitimization" program expires at the end of 2011, and owners in this part of the City are beginning to focus on the program as a way to legalize existing uses and so avoid future enforcement actions, as well as to avoid questions from new tenants and owners about the legal status of existing uses.

Historic Resource Surveys / New Historic Designations.

During 2010, San Francisco released historic resource surveys covering thousands of buildings in several areas of the City, including much of the South of Market area. Additional surveys are expected to be released in 2011. Although adoption of a survey has no directly regulatory impact, the survey information may affect CEQA review of projects that could impact "historic resources", as well as City approvals for development in the affected areas. During 2011, the City is expected to use the surveys to begin to consider legislation for formal designation of additional historic buildings and districts under the Planning Code. Such designations will have a direct regulatory impact on large sections of the City, including bringing many additional areas under the development jurisdiction of the Historical Preservation Commission (HPC) which the voters established in 2008. Both historic survey results, and especially historic designations, may have profound implications for property owners and developers.

San Francisco's Response to the "Palmer" Decision on Affordable Housing Requirements.

The *Palmer/Sixth Street Properties* decision in 2009 cast doubt on the ability of local governments to impose affordable housing requirements on new rental housing. San Francisco's response, enacted into law at the end of 2010, requires new rental projects to pay an affordable housing fee as the primary means of complying with the City's affordable housing requirements, while providing alternative mechanisms for developers that chose to meet the affordable housing requirements by providing below market rate (BMR) units on site. We have just finalized the first such on-site BMR agreement under the new legislation.

New Development Review Procedures.

In December 2010, the Planning Department announced new development review procedures, to take effect in February 2011, for all significant new residential and commercial projects. Most importantly, the process will require project sponsors to go through a "preliminary project assessment" before any applications can be filed. This preliminary assessment phase, which is supposed to take only 60 days, may benefit project sponsors by providing early written (though non-binding) feedback on entitlement issues, but also could potentially delay the already lengthy approval process for some projects.