

Date November 21, 2008 Item No. 6

LOCAL AGENCY FORMATION COMMISSION
AGENDA PACKET CONTENTS LIST*

- Board of Supervisors Ordinance – File No. 081058**
- Letter regarding Local Power's recommendation to Board of Supervisors**
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Available for review at City Hall, Room 244

Completed by: Linda Wong

Date: November 19, 2008

***This list reflects the explanatory documents provided**

FILE NO. 081058

ORDINANCE NO.

1 [Planning – Conditional Use Requirement for ~~Steam or Fossil Fuel~~ Power Plants in M-1 and
2 M-2 Zoning Districts.]

3
4 **Ordinance amending Planning Code Section 226 to require that ~~steam or fossil fuel~~**
5 **power plants in M-1 and M-2 zoning districts obtain conditional use authorization,**
6 **adding Section 226.1 requiring additional findings; amending the Administrative Code**
7 **to add Chapter 29A to require the Board of Supervisors consider the criteria of**
8 **Planning Code Section 226.1(c) prior to taking City ~~fossil fuel~~ power plant approval**
9 **actions; making environmental findings, and making findings of consistency with the**
10 **General Plan and priority policies of Planning Code Section 101.1.**

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

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

15 Section 1. General Findings. The Board of Supervisors of the City and County of
16 San Francisco hereby finds and declares as follows:

17 1. Fossil-fuel power generation is associated with pollutants that damage public
18 health, heated water discharges into the San Francisco Bay that damage the Bay's ecology,
19 and emissions of greenhouse gases that contribute towards global warming.

20 2. The City has maintained a policy of seeking to close existing power plants as
21 soon as possible and has been working to develop a plan to replace the need for existing
22 power plants and to ensure reliable electric service to San Francisco.

23 3. Ordinance 124-01 directed City departments to develop plans to implement all
24 practical transmission, conservation, efficiency, and renewable alternatives to fossil fuel
25 generation in the City and County of San Francisco.

1 4. In December 2002, the Board of Supervisors unanimously adopted Resolution
2 827-02, endorsing the Electricity Resource Plan which identifies eight goals that were
3 developed through public comment and used to guide the plan: maximize energy efficiency,
4 develop renewable power, assure reliable power, support affordable electric bills, improve air
5 quality and prevent other environmental impacts, support environmental justice, promote
6 opportunities for economic development, and increase local control over energy resources.

7 5. The City has repeatedly stated its preference for energy efficiency, renewable
8 energy, and transmission over fossil-fueled resources and, consistent with the State's energy
9 policies, has stated that any fossil-fueled resources that are required should be clean,
10 efficient, and flexible in order to promote environmental justice, reduce emissions, and
11 complement increasing reliance on renewable resources.

12 6. Additional zoning controls will promote the pursuit and exploration of non fossil-
13 fueled energy resources by requiring certain findings regarding the availability of renewable
14 alternatives prior to authorizing steam or fossil-fuel power plants.

15 7. Additional zoning controls will encourage cessation of nonconforming uses and
16 prevent expansion, intensification, and extension of such uses.

17 8. If the Planning Commission lacks jurisdiction over a new power plant that is City-
18 funded or otherwise subject to Board of Supervisors approval, the goals of this legislation
19 shall be achieved through Board of Supervisors consideration of the zoning control criteria as
20 part of the Board of Supervisors approval process.

21 Section 2. Environmental Findings, General Plan Findings, and Other Required
22 Findings.

23 (a) The Planning Department has determined that the actions contemplated in this
24 Ordinance are in compliance with the California Environmental Quality Act (California Public
25

Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 080 081058 and is incorporated herein by reference.

(b) On October 23, 2008, the Planning Commission, in Resolution No. 17726 approved and recommended for adoption by the Board this legislation and adopted findings that it is consistent, on balance, with the City's General Plan and eight priority policies of Planning Code Section 101.1 The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. 081058, and is incorporated by reference herein.

(c) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this legislation will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 17726, and incorporates such reasons by reference herein.

Section 3. The San Francisco Planning Code is hereby amended by amending Section 226 to read as follows:

SEC. 226 MANUFACTURING AND PROCESSING

C-1	C-2	C-3	C-3	C-3	C-3	C-M	M-1	M-2	
		O	R	G	S				
									SEC. 226. MANUFACTURING AND PROCESSING.
		P	P	P	P	P	NA	NA	(a) Light manufacturing uses, involving only the assembly, packaging, repairing or processing of previously prepared materials, which are conducted within a building but do not occupy the ground story of any building; provided:

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								(1) That no part of a building so occupied shall have any opening, other than fixed windows and exits required by law, within 50 feet of any R District;
								(2) That the mechanical equipment required for such uses, together with related floor space used primarily by the operators of such equipment, shall not in the aggregate occupy more than 1/4 of the gross floor area of the building in which the uses are located; and
								(3) That no machine shall be used that has more than five horsepower capacity.
				P	P	NA	NA	(b) Light manufacturing which occupies not more than 1/2 the ground story of the building and involves or requires no machine that has more than five horsepower capacity, if conducted entirely within an enclosed building; provided, that no part of a building so occupied shall have any opening, other than fixed windows and exits required by law, within 20 feet of any R District.
				P	P	NA	NA	(c) Light food-processing for delicatessen, catering or restaurant supply, if conducted entirely within an enclosed building; provided, that no part of a building so occupied shall have any opening, other than fixed windows or exits required by law, within 20 feet of any R District.
						P	P	(d) Light manufacturing, not including any use first specifically listed below.

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		P	P	P	P	P	P	P	(e) Industrial or chemical research or testing laboratory, not involving any danger of explosions.
					C	C	P	P	(f) Experimental laboratory.
						P	P	P	(g) Battery manufacture, if conducted on premises not less than 200 feet from any R District.
							P	P	(h) Any of the following uses, when conducted within a completely enclosed building; provided, that no part of a building so occupied shall have any opening, other than fixed windows or exits required by law, within 50 feet of any R District:
									(1) Automobile assembling.
									(2) Bottling plant, brewery, dairy products plant, malt manufacturing or processing or malt products plant;
									(3) Ice manufacturing plant;
									(4) Concrete mixing, concrete products manufacture;
									(5) Electric foundry or foundry for nonferrous metals;
									(6) Metal working or blacksmith shop; excluding presses of over 20 tons' capacity and machine-operated drophammers.
									(7) Enameling, lacquering, wholesale paint mixing from previously prepared pigments and vehicles;

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									(8) Woodworking mill, manufacture of wood-fibre, sawdust or excelsior products not involving chemical processing.
								P	(i) Manufacture of cereals, distilled liquors, felt or shoddy, hair or hair products, pickles, sauerkraut, vinegar, yeast, soda or soda compounds, structural clay products, meat products, not including any use first specifically listed below.
								P	(j) Flour mill.
								P	(k) Sugar refinery.
								P	(l) Wool pulling or scouring.
								C	(m) Blast furnace, rolling mill, smelter.
								C	(n) Manufacture of corrosive acid or alkali, cement, gypsum, lime, plaster of paris, explosive, fertilizer, glue or gelatine from fish or animal refuse.
								C	(o) Production or refining of petroleum products.
								<i>PC*</i> <i>PC*</i>	<i>(p) Steam, or fossil-fuel, or any other type of power plant, if permitted consistent with Planning Code Section 226.1. A "power plant" shall mean an individual power generation unit capable of independent operation or a collection of power generation units operating as a single facility, but shall not include on-site power generation units or facilities less than five ten megawatts in size.</i>
								P	(q) Shipyard.

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					P	P	NA	(r) Live storage, killing or dressing of poultry or rabbits for retail sale on the premises, if conducted on premises not less than 200 feet from any R District.
							P	(s) Live storage, killing or dressing of poultry or rabbits, if conducted on premises not less than 200 feet from any R District, without limitation as to nature of sale.
							C	(t) Stockyard, livestock feed yard, abattoir.
						C	C	(u) Rendering or reduction of fat, bones or other animal material, where adequate provision is made for the control of odors through the use of surface condensers and direct-flame afterburners or equivalent equipment.
							C	(v) Incineration of garbage, refuse, dead animals or parts thereof.
							P	(w) The following uses, when located not less than 500 feet from any R District:
								(1) Manufacture, refining, distillation or treatment of any of the following: abrasives, acid (noncorrosive), alcohol, ammonia, asbestos, asphalt, bleaching powder, candles (from tallow), celluloid, chlorine, coal, coke, creosote, dextrine, disinfectant, dye, enamel, gas carbon or lampblack, gas (acetylene or other inflammable), glucose, insecticide, lacquer, linoleum, matches, oilcloth, oil paint, paper (or pulp), perfume, plastics, poison, potash, printing

1									ink, refuse mash or refuse grain, rubber (including balata or gutta percha or crude or scrap rubber), shellac, shoe or stove polish, soap, starch, tar, turpentine, varnish;
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4									(2) Curing, smoking or drying fish, manufacture of fish oil;
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6									(3) Tanning or curing of raw hides or skins;
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8									(4) Foundry, structural iron or pipe works, boilermaking where riveting is involved, locomotive works, roundhouse or railroad shop.
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Section 4. The San Francisco Planning Code is hereby amended by adding Section 226.1 to read as follows:

SEC. 226.1. CONDITIONAL USE CRITERIA FOR STEAM OR FOSSIL FUEL POWER PLANTS.

(a) Applicability. These controls shall apply to all steam or fossil fuel power plants in M-1 and M-2 Zones.

(b) Prior Nonconforming Uses. Consistent with Article 1.7 of the Planning Code, nonconforming steam or fossil fuel power plant uses shall require conditional use authorization in order to enlarge, intensify, or extend the use if such changes would expand a steam or fossil fuel power plant use, make it more permanent, or substantially change the use. An intensification of use shall include the following changes, without limitation and in addition to the criteria set forth in Article 1.7 of the Planning Code:

(1) An increase in output capability by more than 10% (either an increase in capacity or increase in planned or permitted output per year);

(2) A change in type of fuel;

1 (3) A greater than five percent substantial increase in the volume of monthly discharge
2 of waste water into the sewer or into the San Francisco Bay, or an increase in the temperature of
3 existing waste water discharges into the San Francisco Bay;

4 (4) Any increase greater than five percent in the emission rate or the total annual tons of
5 emission for particulate precursors, ozone precursors or greenhouse gases;

6 (5) A greater than five percent substantial increase in the volume of regulated
7 substances used on-site on a monthly basis, or in the volume of regulated substances stored on-site or
8 in the volume of regulated substances transported to the site on a monthly basis; or

9 (6) Improvements to any power generation unit costing more than 25 percent of the
10 assessed value of the same unit prior to improvement.

11 (c) Criteria. In acting on any application for conditional use authorization for a steam or
12 fossil-fuel power plant under Section 226(p), the Commission shall consider the conditional use
13 authorization requirements set forth in Article 3 of the Planning Code and, in addition, shall only
14 approve an application for a conditional use authorization if facts are presented to establish that, on
15 the basis of the record before the Commission:

16 (1) The additional benefits to the City's energy system resulting from the power
17 energy generated by the proposed steam or fossil-fuel power plant cannot be obtained in a
18 reasonable time from a technically and economically feasible power plant and/or energy
19 conservation project that would have materially fewer potential environmental impacts
20 considering, but not limited to, the following: (a) through less environmentally detrimental
21 means considering emissions of criteria air pollutants and greenhouse gas emissions; (b)
22 stormwater and wastewater discharges, remediation and migration of contaminated soils, and the
23 potential for renewable energy generation alternatives in the foreseeable future; and (c) noise
24 and vibration impacts.

1 (2) A newly proposed power plant use would not directly and adversely impact existing
2 or reasonably foreseeable adjoining land uses, or, as applied to a prior nonconforming use,
3 the extension of the power plant use or the increase in intensity of the use would not result in
4 increased direct and adverse impacts on existing or reasonably foreseeable adjoining land
5 uses; and As applied to a prior nonconforming use, an extension of the power plant use or an
6 increase in intensity of the use would not result in increased environmental or land use
7 impacts, including but not limited to consideration of impacts resulting from the changes in use
8 listed in Section 226.1, subsection (b); and

9 (3) Granting conditional use authorization would not reasonably be expected to leave known
10 contamination in place in such a way that would prolong or increase public health risks
11 associated with such contamination at levels inconsistent with a risk-based remediation
12 consistent with the proposed power plant use interfere with timely and full remediation of
13 contaminated properties by, for example, (a) enabling a remedial action plan based on future
14 site use that permits lesser remedial action for a site than might be expected for other
15 foreseeable uses of the property (b) resulting in a deed restrictions limiting future commercial
16 uses for the site; or (c) delaying remedial action and leaving potentially hazardous
17 contamination in place longer than if the conditional use authorization were denied; and

18 (4) Granting conditional use authorization would not reasonably be expected to
19 preclude future redevelopment and reuse of the property for non-power plant uses.

20 (d) Written Findings. The Planning Commission shall make detailed written findings
21 explaining the basis for its decision under this Section.

22 (e) Severability. In the event that a court or agency of competent jurisdiction holds that
23 federal or state law, rule or regulation invalidates any clause, sentence, paragraph of this Section or
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1 the application thereof to any person or circumstances, it is intended that the court or agency sever
2 such clause, sentence, paragraph or section so that the remainder of this Section shall remain in effect.

3 ~~(f) The Planning Commission, with the approval by ordinance of the Board of~~
4 ~~Supervisors, may modify the requirements of this ordinance if the Commission and the Board~~
5 ~~find that such modification is in the public interest.~~

6 Section 5. The San Francisco Administrative Code is hereby amended by adding Chapter 29A
7 to read as follows:

8 SEC. 29A.1

9 The Board of Supervisors shall not approve any fossil-fuel power plant (as defined in Planning
10 Code Section 226), including approval of project funding and contract approvals, unless it finds that
11 the power plant is consistent with the criteria set forth in Planning Code Section 226.1(c).

12
13 APPROVED AS TO FORM:

14 DENNIS J. HERRERA, City Attorney

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16 By: 

17 Andrew W. Garth
18 Deputy City Attorney
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Local Power.

35 Grove Street, Suite 118
San Francisco, CA 94102

November 14, 2008

To: Eric Brooks, John Rizzo,
Fr: Paul Fenn

Dear Eric and John,

Thanks for asking Local Power to review and comment on the proposed ordinance to require special use permits for certain categories of power generation in San Francisco.

Local Power has been retained by SFLAFCO to review the impacts of ongoing energy developments on the City's CCA Program, an important part of which is a review of the City's existing permitting environment for planned renewable and or efficiency measures required by Ordinances 86-04 and 447-07

Local Power staff and its permitting consultant have read and analyzed the new legislation and has identified several potential barriers to the CCA Program that could result from the text of the legislation as it is drafted.

Analysis of Existing Text (Maxwell, p.6) as Amended October 17, 2008

We would like the Board of Supervisors to consider the following exemptions to insure protection of options for a CCA program:

1. Allow Fuel Switching without re-permitting. CCA would like to use multi fuel options to lower carbon emissions relative to fossil fuel only, with flexibility to adjust fuel and even blending fuel according to multiple criteria including: season, price, availability, renewable qualification, etc.
2. Exempt Renewable Projects over 10 Mw. The CCA is under mandate from the BOS and Implementation Plan to build 72 megawatts of distributed renewable projects in the City. The BOS should have full authority to make decisions regarding the CCA without undue restrictions on its future decisions. This is because CCA facilities are being designed not only as single units, but as a network of urban infrastructure that needs to be considered as a whole for potential larger benefits to the City.
3. Exempt Fuel Cells from the improvement cost and other criteria. Fuel Cells are an ultra-clean technology and should be encouraged. It may be possible that a CCA would want to combine fuel cell units into neighborhood infrastructure over 10 mw to achieve economy of scale that is critical to making this technology viable. Requirement for improvements costing more than 25% above assessed value might inadvertently cover routine replacement of fuel cell stack every five years which can be expensive. This

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would discriminate against an important clean energy option, and trigger a requirement to re-permit.

4. Allow for cogeneration up to 50 mw. This can reduce emissions from power and fossil fuel use, and there are specific opportunities in San Francisco where facilities over 10 mw may be beneficial for reducing carbon footprint and improving energy efficiency.

5. Allow microgrid applications for neighboring/neighborhood electric generation. This would expand the strict "on-site" requirement currently in the text to embrace future microgrid applications that can enhance energy security, costs and efficiency.

6. Allow BOS to retain full authority over CCA contracting. The approval for project funding and contracts according to 226.1c appears to block possible uses for the CCA H Bond authority and contracts. San Francisco is about to build 360 MW in three years. This should be exempted, and allow BOS to have full authority over such future decisions.

Recommended Amendment to Text

We recommend the following amendment to the legislation:

Proposed Modification to Amendments relating to Planning Code Sections 226:
Conditional Use Authorization for Power Plants in M1 & M2 Districts

SEC. 226.1 CONDITIONAL USE CRITERIA FOR POWER PLANTS

(a) Applicability: These controls shall apply to all power plants in M-1 and M-2 Zones, *with the following exceptions:*

- i. Fuel cell technologies*
- ii. Renewable energy projects over 10mW*
- iii. Electrical or gas demand reduction or mitigation measures, including:*

combined heat and power facilities under 51 megawatts and achieving an overall efficiency greater than 70%.

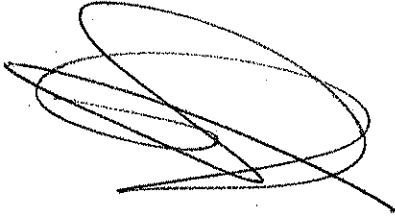
fuel switching that reduces emissions for a power plant

iv. Microgrid applications where neighboring sites share a common electrical generation infrastructure

v. CCA contracted power supply approved by the Board of Supervisors

Again, thanks for asking us to take a look at this legislation. If we can be of any additional assistance to its sponsors in this process, please do not hesitate to contact me at 415 728 8443 or paulfenn@localpower.com.

Yours Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Paul Fenn, CEO
Local Power