

1 [Planning Commission – Alternative Review Process.]

2 **Ordinance reenacting emergency ordinance amending the San Francisco Planning**
3 **Code by amending Section 306, and amending the San Francisco Administrative Code**
4 **by amending Sections 2A.53 and 31.04, to provide for an alternative process to**
5 **Planning Commission 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 reenacted 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. An emergency ordinance enacted under Charter Section 2.107
20 automatically terminates on the 61st day after passage, but may be reenacted upon the same terms and
21 conditions applicable to its initial enactment.

22 On Monday, August 26, 2002, the Board of Supervisors approved an emergency ordinance
23 under Charter Section 2.107 that suspended certain provisions of Charter Sections 4.105 and 2.114
24 and enacted an alternative process for reviewing various matters that required a public hearing and
25 action by the Planning Commission while the Commission was unable to meet because a majority of its
members had not been nominated, approved, and sworn in to office under Charter Section 4.105. That

1 emergency ordinance became effective on September 6, 2002 and terminates automatically on
2 November 6, 2002. The Board of Supervisors hereby suspends those provisions of Charter Section
3 4.105 that require action by the Planning Commission and suspends those provisions of Charter
4 Section 2.114 that limit the power of the Board of Supervisors to deal with administrative matters, and
5 makes the following declaration setting forth a clear and concise description of the emergency
6 requiring passage of this emergency ordinance.

7 In adopting the emergency ordinance on August 26, 2002, the Board found that ~~F~~ the ability of
8 the Planning Department to comply with time limitations established by State law ~~is~~ was in
9 jeopardy due to the following facts:

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

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

1 3. The Planning Commission is empowered by Charter Section 4.105 to approve
2 before issuance “[a]ll permits and licenses dependent on, or affected by, the City Planning
3 Code administered by the Planning Department,” as well as conditional use authorizations
4 and proposed Planning Code amendments. Due to the lack of a majority of appointed
5 members of the Planning Commission, hearings to approve or disapprove permits and
6 licenses, as required by the Planning Code, cannot be held.

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

10 5. The State law known as the Permit Streamlining Act (California Government
11 Code Section 65950 et seq.) requires that all permits for development projects be approved or
12 disapproved within a set period of time. The City must approve or disapprove a completed
13 application for a development permit within 180 days from the date of certification of an
14 Environmental Impact Report (“EIR”), within 90 days from the date of certification of an EIR for
15 a low-income housing development for which financial assistance has been sought from a
16 public or federal agency, within 60 days from the adoption of a negative declaration, or within
17 60 days from the date a development project is determined to be exempt from the California
18 Environmental Quality Act.

19 6. The California Environmental Quality Act (Public Resources Code Section
20 21000, et seq.) requires the City to complete and adopt a negative declaration within 180 days
21 and to certify an Environmental Impact Report within one year.

22 7. If the Planning Commission is unable to hold the various hearings required by
23 the Planning Code and Administrative Code, the Planning Department cannot comply with the
24 time limitations established by the State Permit Streamlining Act and the California
25

1 Environmental Quality Act, because it cannot act to approve environmental documents or to
2 approve or disapprove any permit requiring a hearing by the Commission.

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

8 9. City officials have received numerous inquiries from members of the public
9 asking about the State Permit Streamlining Act and seeking to invoke its provisions in order to
10 obtain permit approval by operation of law. The City must take immediate action to comply
11 with the mandates of State law and balance the public's right to a statutorily-required public
12 hearing against the permit applicant's right to a decision on the application.

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

17 On October 8, 2002, after referral from the Board's Rules and Audits Committee, the
18 Board approved three of the Mayor's nominees to the Planning Commission and rejected the
19 Mayor's fourth nominee. As of the date of this Board's consideration of reenactment of the
20 emergency ordinance, there are no pending Mayoral nominations to the Planning Commission and the
21 Board understands that the three Mayoral nominees approved by the Board have not been
22 sworn into office and have refused to serve. Only the three nominees of the President of the Board
23 have been approved and sworn in to office. and—There is no quorum of the Planning Commission
24 and it has been unable to meet since July 1, 2002.

1 Since the passage of the emergency ordinance on August 26, 2002, 65 cases have
2 been heard by the Planning Director, thus achieving the purpose of reducing backlog before
3 the Planning Commission. To date, four appeals of the Director's recommendations are
4 pending before the Board of Supervisors. Approximately 90 cases remain pending with the
5 Planning Commission and additional items are referred to the Commission on a weekly basis.

6 44. Allowing an interested person to file a request for review by the Board of
7 Supervisors of the Planning Director's recommendation on a discretionary review request will
8 afford both the permit applicant and members of the public the opportunity for the public
9 hearing required by the Planning Code, and serves the public's interest in having an
10 opportunity for review by a multi-member elected or appointed body.

11 Because this emergency ordinance provides an alternative review procedure when
12 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 Accordingly, For all of the reasons set forth above, the Board finds that the same terms and
17 conditions applicable to initial enactment of the emergency ordinance continue to exist and hereby
18 reenacts its provisions by suspending those provisions of Charter Section 4.105 that require action by
19 the Planning Commission, suspending those provisions of Charter Section 2.114 that limit the power of
20 the Board of Supervisors to deal with administrative matters, and modifying the Planning Code as set
21 forth below.

22 Section 2. The San Francisco Planning Code is hereby amended by amending Section
23 306, to read as follows:

24 SEC. 306. APPLICATIONS AND HEARINGS.

1 (a) General. In case of an amendment to the Planning Code or General Plan, interim
2 control, conditional use or variance action described in Sections 302 through 305, 306.7 and
3 340 of this Code, the procedures for applications and hearings shall be as described in
4 Sections 306 through 306.7. In addition, the Zoning Administrator and the Planning
5 Commission may from time to time establish policies, rules and regulations which further
6 define these procedures.

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

18 (i) Planning Code Amendments. Notwithstanding the requirements of Section
19 4.105 of the San Francisco Charter and Sections 302 and Sections 306.1 et seq. of the
20 Planning Code, a hearing and determination by the Planning Commission shall not be
21 required for amendments to the Planning Code proposed under Planning Code Section
22 302(b) by the Board of Supervisors or by application of one or more interested property
23 owners, residents or commercial lessees or their authorized agents. A recommendation on
24 the proposed Planning Code amendment shall be made instead by the Planning Director, who
25 shall make the findings required by Planning Code Section 302(c), and whose decision shall

1 be presented to the Board of Supervisors by the Director or appealed to the Board by the
2 applicant therefor as provided by Planning Code Sections 302(c) and 308.1.

3 In the case of proposed amendments to the Planning Code initiated by the Board of
4 Supervisors under Section 302(b), the Director's recommendation shall be rendered within 30
5 days from the date of the Board's referral of the proposed amendment to the Department.
6 Failure of the Director to act within the prescribed time shall be deemed to constitute
7 disapproval, except that the Board may, by resolution, extend the prescribed time within which
8 the Director may make his decision. If, after receiving the Director's recommendation, or the
9 time for the Director to act has expired, the Board adopts a motion proposing to materially
10 modify the amendment, such amendment and the motion proposing modification shall be
11 referred back to the Director for consideration and the proposed modification shall be
12 reviewed under the requirements then applying to review of Planning Code amendments.

13 (ii) Discretionary Review. Planning Commission policies that mandate a
14 discretionary review hearing not otherwise required by this Code shall be heard by the
15 Director at a public hearing. If a request for a Planning Commission discretionary review
16 hearing under Section 311, Section 312, or other section of this Code or the San Francisco
17 Municipal Code has been made, a recommendation on the request shall be made by the
18 Planning Director, who shall hold a public hearing on the matter as soon as feasible given
19 required noticing and calendaring of a hearing, take testimony on the matter and take into
20 consideration any written comments provided by the discretionary review requestor(s), the
21 permit applicant, and members of the public.

22 The Director's recommendation shall be issued in writing no later than 10 working days
23 after the public hearing. The Director shall mail notice of the written recommendation upon
24 issuance to the permit applicant, the discretionary review requestor(s), and any party who has
25 make a prior written request for notice of the decision, and the Department shall not take

1 action on the permit until the 15-day period for filing a request for review by the Board of
2 Supervisors has expired.

3 Any person may request a hearing by the Board of Supervisors to review the Director's
4 discretionary review recommendation. Such request for review shall be filed within 15 days of
5 the date the Director's recommendation was issued. The Board may uphold, modify, or
6 overrule the Director's recommendation by a vote of six members. If no request for review by
7 the Board is made within the 15-day period, or if the Board does not act on the matter within
8 45 days from the filing of the request for hearing, the Director's recommendation shall become
9 the final decision. The Director's recommendation shall also become the final decision if this
10 emergency ordinance expires after issuance of the Director's recommendation but prior to
11 expiration of the 15-day period for appeal of the Director's recommendation to the Board of
12 Supervisors.

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

22 In making a decision, the Director shall make the findings required by Section 303.
23 The Director shall hold a public hearing to take testimony on the matter and shall also take
24 into consideration any written comments provided by the applicant for the conditional use and
25 by members of the public. The Director's decision shall be issued in writing within 10 working

1 days after the Director's hearing. The Director shall mail notice of the decision to the
2 applicant, ~~persons entitled to notice of a public hearing on the conditional use application~~, and any
3 party who has made a prior written request for notice of the decision.

4 In the event that the applicant elects to invoke this section, either the applicant or a
5 member of the public has the right to appeal the decision to the Board of Supervisors under
6 Planning Code Section 308.1.

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

14 (v) Institutional Master Plans; General Plan Amendments. The existing provisions
15 of Planning Code Sections 304.5 and 340 shall continue to apply during the time this
16 emergency ordinance is operative; provided, however, in the event an update to the City's
17 General Plan is mandated to be completed by State law during the period of time this
18 emergency ordinance is operative, the Department shall forward the proposed General Plan
19 amendments to the Board under the provisions of Section 340, without a hearing by the
20 Planning Commission; and further provided that in the case of an abbreviated institutional master
21 plan, the Director may determine whether it is in the public interest to hold a hearing before the
22 Commission.

23 (vi) Historic Preservation. Determinations to be made by the Planning Commission
24 under Articles 10 and 11 of Planning Code shall be made by the Planning Director and either
25 transmitted to the Board by the Director or appealed to the Board by interested parties, as

1 provided by Articles 10 and 11. The Director shall give the public notice required by the Code
2 for a hearing by the Planning Commission, and the alternative procedure established by this
3 emergency ordinance shall be described in such notice.

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

6 SEC. 2A.53. GENERAL PLAN REFERRALS.

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

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

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

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

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

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

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

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

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

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

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

23 (e) Determination. For most General Plan referral applications, a written General
24 Plan referral report stating that a proposed action is consistent with the General Plan, shall be
25 transmitted to the applicant for submittal with the proposal to the Board of Supervisors in 45

1 days after accepting a complete application. If the response requires more than 45 days
2 because of environmental review procedures, the complexity of the proposed action, public
3 controversy generated by the proposal, or a public hearing before the Planning Commission,
4 the Department shall notify the applicant and Board of Supervisors.

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

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

17 SEC. 31.04. RESPONSIBILITY.

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

23 (b) The administrative actions required by CEQA with respect to the preparation of
24 environmental documents, giving of notice and other activities, as specified in this Chapter,
25

1 shall be performed by the San Francisco Planning Department as provided herein, acting for
2 the City.

3 (c) Where adoption of administrative regulations by resolution of the Planning
4 Commission after public hearing is specified herein, there shall be notice by publication in a
5 newspaper of general circulation in the City at least twenty (20) days prior to the hearing and
6 by posting in the offices of the Planning Department, with copies of the proposed regulations
7 sent to the Board of Supervisors and any other affected boards, commissions and
8 departments of the City and to all organizations and individuals who have previously
9 requested such notice in writing. The decision of the Commission in adopting administrative
10 regulations shall be final.

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

14 (e) Notwithstanding anything to the contrary contained in this Chapter 31, in the
15 event the Planning Commission is unable to meet because a majority of its members has not
16 been nominated, approved, and sworn in to office under Section 4.105 of the San Francisco
17 Charter, any appeal of a negative declaration shall be heard by the Director of Planning,
18 whose decision shall be final unless appealed to the Board of Supervisors within 15 days of
19 the date of the decision, ~~public hearing on a draft environmental impact report, or a~~
20 Certification of an environmental impact report shall be heard by the Board of Supervisors
21 instead of the Planning Commission only if such environmental impact report has already
22 come before the Board on appeal under Section 31.16 of this Code and then remanded to the
23 Planning Department for modification. Such decision of the Board shall not be subject to a
24 further appeal under Section 31.16.
25

1 Section 4. Operative Dates. Under Section 2.107 of the San Francisco Charter, this
2 emergency ordinance shall go into effect immediately upon passage, and shall automatically
3 terminate on the 61st day following passage unless reenacted upon the same terms and
4 conditions ~~applicable to its initial enactment~~. If a majority of the members of the Planning
5 Commission is appointed and sworn in to office during the time this emergency ordinance is
6 operative, the provisions of this emergency ordinance shall cease to apply ~~to any matter that~~
7 ~~has not already been decided under this emergency ordinance's alternative procedures and~~
8 the amendments to the Planning Code and Administrative Code made herein shall be of no
9 further force and effect; provided, however, in those discretionary review cases where the
10 Director of Planning has held a public hearing and issued a recommendation, and a timely
11 appeal has been filed with the Board of Supervisors prior to expiration of this emergency
12 ordinance, those appeals shall continue to be governed by the provisions of this emergency
13 ordinance notwithstanding the existence of a quorum of the Planning Commission.

14 Section 5. Severability.

15 (a) If any article, section, subsection, paragraph, sentence, clause or phrase of this
16 emergency ordinance, or any part thereof, is for any reason held to be unconstitutional or
17 invalid or ineffective by any court of competent jurisdiction, or other competent agency, such
18 decision shall not affect the validity or effectiveness of the remaining portions of this
19 emergency ordinance or any part thereof. The Board of Supervisors hereby declares that it
20 would have passed each article, section, subsection, paragraph, sentence, clause or phrase
21 thereof, irrespective of the fact that any one or more articles, sections, subsections,
22 paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or
23 ineffective.

24 (b) If the application of any provision or provisions of this emergency ordinance to
25 any person, property or circumstances is found to be unconstitutional or invalid or ineffective

1 in whole or in part by any court of competent jurisdiction, or other competent agency, the
2 effect of such decision shall be limited to the person, property or circumstances immediately
3 involved in the controversy, and the application of any such provision to other persons,
4 properties and circumstances shall not be affected.

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

7 APPROVED AS TO FORM:
8 DENNIS J. HERRERA, City Attorney

9
10 By:


11 JUDITH A. BOYAJIAN
12 Deputy City Attorney



City and County of San Francisco

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San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 021609

Date Passed:

October 15, 2002 Board of Supervisors — CONTINUED

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

October 21, 2002 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE
BEARING SAME TITLE

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

October 21, 2002 Board of Supervisors — FINALLY PASSED

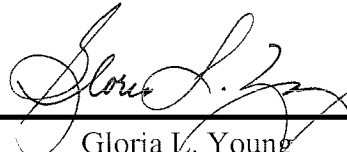
Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick,
Newsom, Peskin, Sandoval, Yee

File No. 021609

I hereby certify that the foregoing Ordinance
was FINALLY PASSED on October 21, 2002
by the Board of Supervisors of the City and
County of San Francisco.

NOV 01 2002

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Willie L. Brown Jr.