



SAN FRANCISCO PLANNING DEPARTMENT

DR Legal Basis and Opinions

The Planning Commission derives its discretionary review (DR) authority from San Francisco's Municipal Code under the Business & Tax Regulations Code, Article 1 Permit Procedures, Section 26 (a):

"Subject to Subsection (b) below, in the granting or denying of any permit, or the revoking or the refusing to revoke any permit, the granting or revoking power may take into consideration the effect of the proposed business or calling upon surrounding property and upon its residents, and inhabitants thereof; and in granting or denying said permit, or revoking or refusing to revoke a permit, may exercise its sound discretion as to whether said permit should be granted, transferred, denied or revoked" (emphasis added); and

The Planning Commission's discretionary powers were first interpreted on May 26, 1954 by Dion R. Holm in City Attorney Opinion No. 845, where Holm cautioned that the authority granted to the Commission by Section 26 of the Business & Tax Regulations Code should be reserved for "exceptional cases":

"I think it is entirely plain, on the authority of the above enunciated general principles, that the reservation of authority in the present ordinances to deal in a special manner with exceptional cases is unassailable upon constitutional grounds. The possibility of abuse of the power granted does not disprove its existence; that possibility exists even in reference to powers that are conceded to exist. An occasional wrong decision by the granting authority is of less importance to the community than the unrelieved arbitrariness of an iron-clad ordinance. This is, however, a sensitive discretion and one which must be exercised with the utmost restraint" (emphasis in original); and

This Opinion was reaffirmed on April 30, 1979 by City Attorney George Agnost in Opinion No. 79-29, where he cited the importance of discretion in the land-use decision making process:

"The chief difficulty in establishing a zoning plan is to make it effective and at the same time avoid arbitrariness. Human wisdom cannot foresee the exceptional cases that can arise in its administration. With the great increase and concentration of population problems have developed, and constantly are developing, which require and will continue to require, additional restrictions in respect to the use and occupation of private lands in urban communities. (Village of Euclid v. Ambler Realty Co., 272 U.S. 365; Bassett on Zoning, New York Russell Sage Foundation (1940))...Sound administration requires that some person or agency be invested with discretion to determine whether the erection of a building of a particular kind or for a particular use, when considered in the context of circumstance and locality, constitutes a subversion of the general purposes of the ordinance."

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377