

Amendment of the Whole
February 11, 2008.

FILE NO. 071528

ORDINANCE NO.

1 [Administrative Code – Amendment to Creating Large Tourist Hotel Conversion Ordinance.]

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3 **Ordinance amending the Administrative Code to add Section 41F to ~~prohibit~~ limit**
4 **conversion of Large Tourist Hotels into condominium projects, allowing the Planning**
5 **Commission to ~~issue exemptions for~~ approve conversion of up to 500 units in the following**
6 **two years, listing criteria for additional conversions as determined by the Planning**
7 **Commission, before March 1, 2010, establishing conditions precedent and procedures for an**
8 **annual lottery system for conversions after March 1, 2010, requiring applicants for**
9 **exemptions conversions to provide the Planning Department with certain information**
10 **regarding the conversion, creating a 120-month sunset period, and making**
11 **environmental findings.**

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

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

16 Section 1. Findings.

17 (1) As one of the country's premier travel destinations, the City and County of San
18 Francisco (the "City") depends on visitors for its economic health and well-being.

19 (2) In 2005, according to the California Employment Development Department, leisure
20 and hospitality services accounted for 1 in 7 (14%) of the jobs in the City and the San
21 Francisco hotel industry employed over 18,000 workers.

22 (3) In 2006, according to the San Francisco Convention and Visitors Bureau
23 ("SFCVB"), San Francisco hosted 15.8 million visitors, contributing \$7.8 billion to the City's
24 economy. (San Francisco Visitor Volume and Spending Report 2006.)

1 (4) The hospitality industry also provides a crucial source of revenue to the City. 2006
2 visitor taxes totaled \$478 million, or \$14,563 per room (See San Francisco Visitor Volume
3 and Spending Report 2006; SFCVB San Francisco Visitor Industry Statistics.) The San
4 Francisco Controller estimates that during FY 2007-08 the City will glean \$210 million in Hotel
5 Room Tax alone.

6 (5) There are roughly 33,000 tourist hotel rooms in the City, spread across
7 approximately 200 hotels. The majority of these tourist hotel rooms are located in 80 large
8 hotels with 100 or more tourist hotel rooms each. (SFCVB San Francisco Visitor Industry
9 Statistics.)

10 (6) Competition between cities for major conventions, requiring in excess of 8,000
11 rooms, is intense. San Francisco has invested hundreds of millions of dollars in improving its
12 tourism infrastructure, including the construction of public facilities for major conventions.
13 Large conventions depend on a reliable supply of hotel rooms concentrated at one site. The
14 ability of San Francisco to compete for major conventions or events (a national presidential
15 convention, for example) or to bid for events such as the Olympics, will be compromised if the
16 City's major hotels convert tourist hotel rooms to residential use.

17 (7) Residential real estate prices remain near historic highs in San Francisco.
18 Concerns have been raised that the combination of low interest rates and high real estate
19 prices in the City will lead to the conversion of tourist hotel units in condominiums. Such
20 conversions have become a growing trend in other cities such as New York City, Orlando, and
21 the Miami-Ft. Lauderdale area. Such conversions could have a devastating impact on the
22 City's tourism industry and all those whom it employs. (San Francisco Real Estate Trends –
23 Sep 07; NYT 3/6/05 "If They Come, Where Will They Sleep?"; NYT 10/19/05 "Fewer Rooms
24 at the Inn.")

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1 (8) In other cities where hotel rooms have been converted to residential condominiums
2 the units have been sold as extremely high-priced housing. According to the Housing
3 Element of the San Francisco General Plan, San Francisco already exceeds the necessary
4 production of market-rate housing, with a substantial amount being high-end houses and
5 condominium units.

6 Section 2. Environmental Findings. The Planning Department has determined that the
7 actions contemplated in this Ordinance are in compliance with the California Environmental
8 Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is
9 on file with the Clerk of the Board of Supervisors in File No. 071528 and is incorporated
10 herein by reference.

11 Section 3. The San Francisco Administrative Code is hereby amended to add Section
12 41F to read as follows:

13 ~~Sec~~SEC., 41F: TOURIST HOTEL CONVERSION

14 SEC. 41F.1. TITLE.

15 This Chapter may be referred to as the Tourist Hotel Conversion Ordinance.

16 SEC. 41F.2. DEFINITIONS.

17 (a) "Baseline Inventory" shall mean an inventory of the number of Large Tourist
18 Hotel rooms commercially available for rent as of March 1, 2009. The Planning Commission
19 shall adopt a Baseline Inventory reflecting the number of Large Tourist Hotel rooms in the City
20 as of March 1, 2009, and shall update the Baseline Inventory annually thereafter and no later
21 than March 15 of each year. The Planning Department shall provide the public with an
22 opportunity for meaningful review and comment on the Baseline Inventory and annual
23 updates, including a public hearing. Rooms created by new Large Tourist Hotel Construction
24 and/or expansion shall qualify as additional Large Tourist Hotel rooms in the year they obtain

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1 final certificates of occupancy from the City, and shall be added to the Baseline Inventory.
2 Losses to the City's Large Tourist Hotel inventory, including, but not limited to, Conversions,
3 shall be subtracted from the Baseline Inventory.

4 (b) "Condominium Project" shall mean (i) a Community Apartment as defined in Section
5 1308(b) of the Subdivision Code; (ii) a Condominium as defined in Section 1308(c) of the Subdivision
6 Code; (iii) a Stock Cooperative as defined in Section 1308(f) of the Subdivision Code; or (iv) any other
7 subdivided interest in land.

8 (b-c) "Convert" shall mean: (i) to change the type of ownership of any real property to that
9 defined as a Condominium Project and in which two or more units are newly created wholly or in
10 substantial part within the existing structure of a Large Tourist Hotel, regardless of whether substantial
11 improvements have been made to such structures; or (ii) to change one or more guest rooms, one or
12 more sites of rooms, or any portion thereof within an existing Large Tourist Hotel into a Dwelling Unit.

13 (e-d) "Dwelling Unit" shall mean any building or portion thereof that contains living
14 facilities, including provisions for sleeping, eating, cooking, and sanitation as required by the Housing
15 Code, for not more than one Family.

16 (d-e) "Family" shall mean one or more persons, related or unrelated, living together as a
17 single integrated household in a dwelling unit.

18 (e-f) "Large Tourist Hotel" shall mean any building in the City containing 100 or more guest
19 rooms or ~~sites of rooms~~ suites of rooms intended or designated to be used for commercial tourist use
20 by providing accommodation to transient guests on a nightly basis or longer, as contemplated by
21 Section 216(b) of the Planning Code. The definition of Large Tourist Hotel shall include, for
22 purposes of this Chapter, a building (or set of buildings) which would have qualified as a
23 Large Tourist Hotel in any of the five years preceding that building's application for
24 Conversion.

1 (g) "Room" shall mean any room or suite of rooms in a Large Tourist Hotel
2 intended or designated to be used for commercial tourist use by providing accommodation to
3 transient guests on a nightly basis or longer, as contemplated by Section 216(b) of the
4 Planning Code.

5 SEC. 41F.3. CONVERSIONS PROHIBITED RESTRICTED..

6 (a) General Prohibition.. It shall be unlawful for any person to Convert any portion of an
7 existing Large Tourist Hotel except as provided in this Chapter.

8 (b) Conversion prior to March 1, 2010. Notwithstanding the foregoing prohibition
9 restriction, the Planning Commission may approve a total of up to 500 hotel rooms to be Converted in
10 the first two years following the effective date of this ordinance. Following the 24th month
11 after the effective date of this Ordinance, the Planning Commission may further approve hotel
12 rooms to be Converted if the applicant can demonstrate that such Conversion will not reduce
13 the supply of Largest Tourist Hotel rooms available within the City and County of San
14 Francisco prior to March 1, 2010. The Planning Commission shall approve applications for
15 conversions under this section on a first-come first-served basis for applicants. Applicants'
16 place in the Conversion queue shall be based upon the date the Planning Department
17 receives an application satisfying the requirements of Section 41F.3(f)(2).

18 (c) A person may General Exemption. The Planning Commission may, at any time,
19 approve applications to Convert all or any portion of a Large Tourist Hotel, provided that the right
20 of any one person to occupy a Dwelling Unit, guest room, or suite after the Conversion is restricted to
21 not more than 30 consecutive days per year or 90 days in aggregate per year, but only if the original
22 approval of such Large Tourist Hotel was obtained before the effective date of this ordinance as part of
23 a mixed-use development including both tourist hotel and residential uses. The foregoing restrictions
24 on occupancy will not apply to the previously approved residential portion of the development.

1 (d) Conversion Lottery. Beginning in 2010, the Planning Department shall hold an
2 annual lottery for Conversion credits in accordance with the following:

3 (1) The Planning Department shall hold the Large Tourist Hotel Conversion lottery
4 only if:

5 (i) The update to the Baseline Inventory shows a net increase of at least 100
6 Large Tourist Hotel rooms during the previous Baseline Inventory year. Large Tourist Hotel
7 rooms lost through authorized conversions shall not be considered for purposes of calculating
8 the net increase in Large Tourist Hotel rooms under this section; and

9 (ii) The number of existing Large Tourist Hotel rooms exceeds the March
10 2010 Baseline Inventory by at least the number of Conversion credits available in the
11 proposed lottery pursuant to subsection (d)(2), below.

12 (2) The number of Conversion credits available in each lottery shall equal the net
13 increase in Large Tourist Hotel rooms during the previous Baseline Inventory year, not
14 including Conversions authorized by lottery credits. Large Tourist Hotel rooms lost through
15 authorized Conversions shall not be considered for purposes of calculating the net increase in
16 Large Tourist Hotel rooms under this section.

17 (3) In order to participate in the conversion credit lottery, one must be submit a
18 Section 41F.3(f)(2) application within 15 business days of the formal adoption of the Baseline
19 Inventory update. The Planning Department shall issue one lottery ticket per Large Tourist
20 Hotel applicant. Only one application may be submitted per Large Tourist Hotel.

21 (4) The Planning Department shall hold the lottery at a public hearing within 6
22 weeks of the formal adoption of the Baseline Inventory update. Winning lottery tickets shall
23 be chosen randomly, one at a time, and credits shall be awarded in the full amount of the
24 rooms represented by each ticket, unless insufficient credits remain in the pool. If a selected
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1 ticket represents an application for more rooms than remain in the pool, then the selected
2 ticket(s) shall be added to a standby list in the order picked, and the lottery shall continue until
3 the number of Conversions requested by an one remaining lottery participant exceeds the
4 number of credits remaining. If a lottery would otherwise be required by the Chapter and the
5 number of available credits exceed the total number of applicants' requests for Conversion
6 credits in a particular year, then the credits shall be granted and no lottery shall take place.

7 (5) If there are more lottery applicants than winners, then the Planning Department
8 shall ensure that a reasonable number of losing applicants have been added to a standby list
9 during the regular lottery. If, nine months after the lottery, the Planning Department revokes
10 winning credits according to subsection (e)(2), below, the credits shall be reallocated to the
11 standby list, in order, but only if there are sufficient revoked credits to meet the full application
12 request of the standby-list Conversion applicant(s).

13 (e) Use of Credits.

14 (1) Except as provided in Sections 41F.3(b) or (c), Conversion is prohibited unless
15 the applicant uses Conversion credits to offset the loss of Large Tourist Hotel rooms. An
16 award of Large Tourist Hotel Conversion credits does not grant the credit-holder a right to
17 development or otherwise limit City discretion to deny or approve with conditions a proposed
18 Conversion project. A credit holder must still obtain all otherwise applicable City permits and
19 approvals, including but not limited to Planning Commission approval of the Conversion
20 pursuant to Section 41F.3(f).

21 (2) Credits are building-specific and non-transferable, except that if the credit holder
22 does not make diligent and good faith efforts within nine months of the lottery in support of
23 Conversion, the credits will be revoked and reallocated to the standby list. Credits shall

1 permanently expire if the applicant or standby-list recipient fails to diligently and in good faith
2 pursue Conversion for any 12 consecutive months.

3 (f) Conversion Process.

4 (1) The procedural requirements set forth in Planning Code Sections 303 and 306
5 through 306.6 shall apply to all Conversions under this Chapter, including exemptions and
6 credit Conversions.

7 (2) Any party seeking Conversion under this Chapter shall submit a written
8 Conversion application to the Planning Department containing, at minimum, the following
9 information:

10 (i) The name and address of the building in which the conversions are
11 proposed;

12 (ii) The names and addresses of all owners and operators of said building;

13 (iii) A description of the proposed Conversion including the nature of the
14 Conversion, the total number of hotel rooms prior to and following Conversion, a description of
15 the rooms to be Converted, including floor number and location, and the estimated total
16 number of Condominium Units to be created;

17 (iv) Preliminary drawings showing the existing floor plans and proposed floor
18 plans;

19 (v) A description of the improvements or changes proposed to be
20 constructed or installed and the tentative schedule for start of construction;

21 (vi) Information specifying any changes to the subject building or buildings'
22 inventory of rooms in the 5 years preceding the date of application for Conversion;

23 (vii) The average rental rates of the rooms to be converted, calculated over
24 the calendar year preceding the year of application for Conversion;

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1 (viii) Applications for lottery participation must demonstrate that the
2 Conversion will not reduce the supply of Large Tourist Hotel rooms based upon the most
3 recent Baseline Inventory.

4 (ix) Applicants for Conversion must pay the Planning Department a
5 processing fee set by the Planning Director at a full cost-recovery level.

6 (3) The Zoning Administrator shall make a recommendation regarding the approval,
7 denial, or approval with conditions of the Conversion application to the Planning Commission,
8 based upon whether the proposed Conversion meets Planning Code requirements including,
9 but not limited to, this Chapter. The Planning Commission shall approve the Conversion,
10 deny it, or approve it with conditions. Any member of the public wishing to appeal the
11 decision of the Planning Commission must appeal the decision to the Board of Supervisors
12 pursuant to the appeals process set forth in Section 306.8 of the Planning Code.

13 SEC. 41F.4. ENFORCEMENT.

14 (a) The Department of Building Inspection, in consultation with the Departments of
15 Planning and Public Works, shall be responsible for enforcement of this Chapter as it may relate to
16 physical alterations to a Large Tourist Hotel and may take any appropriate action within its powers to
17 enforce this Chapter, including, but not limited to, denial of any building, construction, or change of
18 use permits. The Department of Public Works, in consultation with the Departments of Building
19 Inspection and Planning, shall be responsible for enforcement of this Chapter as it may relate to
20 actions involving a subdivision under the Subdivision Map Act, California Government Code Sections
21 66410 et seq.

22 (b) Civil Penalties.

23 (1) The Department of Building Inspection or the Department of Public Works may
24 recommend to the City Attorney initiation of a civil action hereunder. The City Attorney shall have the
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1 power to bring an action for injunctive relief to restrain or summary abatement to cause the correction
2 or abatement of the violation of this article and for assessment and recovery of a civil penalty and
3 reasonable attorney's fees for such violation, or other judicial relief hereunder.

4 (2) Any person who violates this Article may be liable for a civil penalty, not to exceed \$500
5 per room for each day such violation is committed or permitted to continue, which penalty shall be
6 assessed and recovered in a civil action brought in the name of the people of the City by the City
7 Attorney in any court of competent jurisdiction. The City Attorney also may seek recovery of the
8 attorney's fees and costs incurred in bringing a civil action pursuant to this Section.

9 (c) Criminal Penalties.

10 (1) The Department of Building Inspection or the Department of Public Works may
11 recommend to the District Attorney initiation of a criminal action hereunder.

12 (2) Any person who violates this Article shall be deemed guilty of a misdemeanor. Every
13 violation determined to be a misdemeanor is punishable by a fine of not more than \$1,000 or by
14 imprisonment in the County Jail for a period of not more than six months, or by both such fines or
15 imprisonments.

16 (d) Exemptions

17 (1) Applicants for Conversion pursuant to Section 41F.3(b) or Section 41F.3(c) must
18 provide the following information to the Planning Department:

19 (i) The name and address of the building in which the conversions are
20 proposed;

21 (ii) The names and addresses of all owners and operators of said building;

22 (iii) A description of the proposed conversion including the nature of the
23 conversion, the total number of hotel rooms prior to and following conversion, a description of
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1 the rooms to be converted, including floor number and location, the estimated total number of
2 Condominium Units to be created;

3 (iv) Preliminary drawings showing the existing floor plans and proposed floor
4 plans;

5 (v) A description of the improvements or changes proposed to be constructed
6 or installed and the tentative schedule for start of construction; and

7 (vi) The average rental rates of the rooms to be converted, calculated over the
8 calendar year preceding the year of application for exemption; and

9 (vii) Evidence, if applicable, that such Conversion will not reduce the supply of
10 Large Tourist Hotel Rooms available within the City and County of San Francisco.

11 (2) Upon receipt of the application for exemption, the Planning Department shall
12 issue public notice of the application. A ten-day comment period shall commence on the day
13 of the notice. The Planning Commission shall hold a public hearing on the exemption no
14 sooner than ten days after the day the notice is issued. The Zoning Administrator shall
15 recommend approval of the exemption if the applicant meets the requirements in subsections
16 41F.3(b) or 41F.3(c). When reviewing the request for exemption, the Planning Department
17 may take into consideration Large Tourist Hotel rooms under construction at the time of the
18 application, and must take into consideration other exemptions previously approved pursuant
19 to this subsection, to ensure that no single exemption and no exemptions in aggregate would
20 result in net loss of Large Tourist Hotel rooms. Thus, increase in hotel rooms resulting from a
21 Large Tourist Hotel under construction cannot justify an exemption or exemptions if such
22 exemption or exemptions would reduce the net supply of Large Tourist Hotel rooms available
23 within the City and County of San Francisco except to the extent allowable under subsections
24 41F.3(b) or 41F.3(c). To ensure that exemptions do not result in net loss of Large Tourist
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1 Hotel rooms, multiple applications for exemption under subsections 41F.3(b) or 41F.3(c) will
2 be processed in the order received, and evaluated on the merits of each application, as if no
3 other applications were pending. The Zoning Administrator shall make a recommendation
4 regarding the approval, denial, or approval with conditions of the exemption application to the
5 Planning Commission. The Planning Commission shall approve the exemption, deny it, or
6 approve it with conditions. The decision of the Planning Commission may be appealed to the
7 Board of Supervisors by any member of the public pursuant to the appeals process set forth in
8 Section 306.8 of the Planning Code.

9 SEC. 41F.5. SUNSET PROVISION.

10 This Chapter shall be repealed automatically expire by operation of law 120 months after
11 its initial effective date unless the Board of Supervisors, on or before that date, extends or re-enacts it.
12 The City Attorney shall cause the Chapter to be removed from future editions of the Code.

13 SEC. 41F.6. SEVERABILITY.

14 In the event that a court or agency of competent jurisdiction holds that a federal or state law,
15 rule or regulation invalidates any clause, sentence, paragraph or section of this ordinance or the
16 application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the
17 court or agency sever such clause, sentence, paragraph or section so that the remainder of this
18 ordinance shall remain in effect.

19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By: _____
22 Andrew W. Garth
23 Deputy City Attorney

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