

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

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3 **Ordinance amending the Administrative Code to add Section 41F to limit conversion of**
4 **Large Tourist Hotels into condominium projects, allowing the Planning Commission to**
5 **approve conversion of up to 550 Large Tourist Hotel Rooms, before March 1, 2010,**
6 **establishing conditions precedent and procedures for an annual lottery system for**
7 **conversions after March 1, 2010, requiring applicants for conversions to provide the**
8 **Planning Department with certain information regarding the conversion, creating a 120-**
9 **month sunset period, and making environmental findings.**

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

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

14 Section 1. Findings.

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

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

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

23 (4) The hospitality industry also provides a crucial source of revenue to the City. 2006
24 visitor taxes totaled \$478 million, or \$14,563 per room (See San Francisco Visitor Volume
25 and Spending Report 2006; SFCVB San Francisco Visitor Industry Statistics.) The San

1 Francisco Controller estimates that during FY 2007-08 the City will glean \$210 million in Hotel
2 Room Tax alone.

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

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

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

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

3 (9) In 2005, Board of Supervisors Ordinance 241-05 amended the Administrative Code
4 to add Chapter 41F prohibiting large hotel conversions, with certain exceptions. The
5 ordinance expired on September 18, 2007.

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. _____ and is
10 incorporated herein by reference.

11 Section 3. The San Francisco Administrative Code is hereby amended to repeal the
12 previously codified Section 41F.

13 Section ~~4~~3. The San Francisco Administrative Code is hereby amended to add Section
14 41F to read as follows:

15 ~~Sec~~SEC. 41F: TOURIST HOTEL CONVERSION

16 SEC. 41F.1. TITLE.

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

18 SEC. 41F.2. DEFINITIONS.

19 (a) "Baseline Inventory" shall mean an inventory of the number of Large Tourist
20 Hotel Rooms commercially available for rent as of March 1, 2009. The Planning Commission
21 shall adopt a Baseline Inventory reflecting the number of Large Tourist Hotel Rooms in the
22 City as of March 1, 2009, and shall update the Baseline Inventory annually thereafter and no
23 later than March 15 of each year. The Planning Department shall provide the public with an
24 opportunity for meaningful review and comment on the Baseline Inventory and annual
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1 updates, including a public hearing. Rooms created by new Large Tourist Hotel Construction
2 and/or expansion shall qualify as additional Large Tourist Hotel Rooms in the year they obtain
3 final certificates of occupancy from the City, and shall be added to the Baseline Inventory.
4 Losses to the City's Large Tourist Hotel inventory, including, but not limited to, Conversions,
5 shall be subtracted from the Baseline Inventory.

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

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

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

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

20 (e-f) "Large Tourist Hotel" shall mean any building in the City containing 100 or more guest
21 rooms or ~~sites of rooms~~ suites of rooms intended or designated to be used for commercial tourist use
22 by providing accommodation to transient guests on a nightly basis or longer, as contemplated by
23 Section 216(b) of the Planning Code. The definition of Large Tourist Hotel shall include, for
24 purposes of this Chapter, a building (or set of buildings) which would have qualified as a
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1 Large Tourist Hotel in any of the five years preceding the application for Conversion. A
2 building (or set of buildings) shall not be considered a Large Tourist Hotel if the total number
3 of rooms intended to be operated separately for transient use is less than 100 rooms.

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

8 (h) "Ancillary Hotel Area" shall mean any area within a Large Tourist Hotel not
9 defined as a Large Tourist Hotel Room, including, but not limited to, restaurant, retail, and
10 parking areas.

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

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

14 (b) Conversion prior to March 1, 2010. Notwithstanding the foregoing prohibition
15 restriction, the Planning Commission may approve a total of up to 500550 Large Tourist H~~otel~~
16 R~~ooms to be Converted~~ in the first two years following the effective date of this ordinance.
17 Following the 24th month after the effective date of this Ordinance, the Planning Commission
18 may further approve hotel rooms to be Converted if the applicant can demonstrate that such
19 Conversion will not reduce the supply of Largest Tourist Hotel rooms available within the City
20 and County of San Francisco prior to March 1, 2010. The Planning Commission shall
21 approve applications for Conversions under this section on a first-come first-served basis.
22 Applications for Conversion that have been lodged with the Planning Department prior to the
23 effective date of this ordinance shall receive first priority. Applications submitted after the

1 effective date of this ordinance shall be processed based upon the date the Planning
2 Department receives an application satisfying the requirements of Section 41F.3(f)(2).

3 (c) — A person may convert all or any portion of a Large Tourist Hotel, provided that
4 the right of any one person to occupy a Dwelling Unit, guest room, or suite after the
5 Conversion is restricted to not more than 30 consecutive days per year or 90 days in
6 aggregate per year, but only if the original approval of such Large Tourist Hotel was obtained
7 before the effective date of this ordinance as part of a mixed-use development including both
8 tourist hotel and residential uses. The foregoing restrictions on occupancy will not apply to
9 the previously approved residential portion of the development.

10 (c) Ancillary Hotel Areas. A person may Convert all or any portion of an Ancillary
11 Hotel Area upon a showing that the Conversion shall not result in a reduction in Large Tourist
12 Hotel Rooms in the subject hotel. Notwithstanding Conversion approval under the Chapter, a
13 Conversion project must in addition obtain all applicable City permits and approvals. This
14 Chapter shall not limit City discretion to deny or approve with conditions a proposed
15 Conversion project.

16 (d) Conversion Lottery. Beginning in 2010, the Planning Department shall hold an
17 annual lottery for Conversion credits for Large Tourist Hotel Rooms in accordance with the
18 following:

19 (1) The Planning Department shall hold the lottery only if:

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

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

4 (2) The number of Conversion credits available in each lottery shall equal the net
5 increase in Large Tourist Hotel Rooms during the previous Baseline Inventory year, not
6 including Conversions authorized by lottery credits. Large Tourist Hotel Rooms lost through
7 authorized Conversions shall not be considered for purposes of calculating the net increase in
8 Large Tourist Hotel Rooms under this section.

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

13 (4) The Planning Department shall hold the lottery at a public hearing within 6
14 weeks of the formal adoption of the Baseline Inventory update. Winning lottery tickets shall
15 be chosen randomly, one at a time. If not enough credits remain in the pool to satisfy a
16 winning ticket, then the applicant shall receive the number of credits remaining in the pool and
17 receive the remainder as the first applicant on the standby list. If a lottery would otherwise be
18 required by the Chapter and the number of available credits exceeds the total number of
19 applicants' requests for Conversion credits in a particular year, then the credits shall be
20 granted and no lottery shall take place.

21 (5) If applicants collectively seek more Conversion credits than are available in the
22 lottery pool, then, after the last winning ticket is drawn, the Planning Department shall draw a
23 reasonable number of alternate tickets for inclusion in a standby list. If, nine months after the
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1 lottery, the Planning Department revokes winning credits according to subsection (e)(2),
2 below, the credits shall be reallocated to the standby list, in the order drawn.

3 (e) Conversion Credits.

4 (1) Except as provided in Sections 41F.3(b) or (c), Conversion is prohibited unless
5 the applicant uses Conversion credits to offset the loss of Large Tourist Hotel Rooms. A
6 lottery award of Large Tourist Hotel Conversion credits does not grant the credit-holder a right
7 to development or otherwise limit City discretion to deny or approve with conditions a
8 proposed Conversion project. A credit holder must still obtain all otherwise applicable City
9 permits and approvals, including but not limited to Planning Commission approval of the
10 Conversion pursuant to Section 41F.3(f).

11 (2) Credits are building-specific and non-transferable, except that if the credit holder
12 does not make diligent and good faith efforts within nine months of the lottery in support of
13 Conversion, the credits will be revoked and reallocated to the standby list. Credits shall
14 permanently expire if the applicant or standby-list recipient fails to diligently and in good faith
15 pursue Conversion for any 12 consecutive months.

16 (f) Conversion Process.

17 (1) The procedural requirements set forth in Planning Code Sections 303 and 306
18 through 306.6 shall apply to all Conversions under this Chapter.

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

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

24 (ii) The names and addresses of all owners and operators of said building;
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- 1 (iii) A description of the proposed Conversion including the nature of the
2 Conversion, the total number of Large Tourist Hotel Rooms prior to and following Conversion,
3 a description of the area and/or rooms to be Converted, including floor number and location,
4 and the estimated total number of Condominium Units to be created;
- 5 (iv) Preliminary drawings showing the existing floor plans and proposed floor
6 plans;
- 7 (v) A description of the improvements or changes proposed to be
8 constructed or installed and the tentative schedule for start of construction;
- 9 (vi) Information specifying any changes to the subject building or buildings'
10 inventory of rooms in the 5 years preceding the date of application for Conversion;
- 11 (vii) The average rental rates of the rooms to be converted, calculated over
12 the calendar year preceding the year of application for Conversion;
- 13 (viii) Applicants for the lottery must provide information demonstrating that the
14 Conversion will not reduce the supply of Large Tourist Hotel Rooms based upon the most
15 recent Baseline Inventory.
- 16 (ix) Applicants for Ancillary Hotel Area Conversion must provide information
17 demonstrating that the proposed Conversion will not result in loss of Large Tourist Hotel
18 Rooms in the subject Large Tourist Hotel, including specifying any proposed changes to the
19 subject buildings' inventory of rooms planned in the 5 years following the date of application
20 for Conversion.
- 21 (x) Applicants for Conversion must pay the Planning Department a
22 processing fee set by the Planning Director at a full cost recovery level.
- 23 (3) The Zoning Administrator shall make a recommendation regarding the approval,
24 denial, or approval with conditions of the Conversion application to the Planning Commission,
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1 based upon whether the proposed Conversion meets Planning Code requirements including,
2 but not limited to, this Chapter. The Planning Commission shall approve the Conversion,
3 deny it, or approve it with conditions. Any member of the public wishing to appeal the
4 decision of the Planning Commission must appeal the decision to the Board of Supervisors
5 pursuant to the appeals process set forth in Section 306.8 of the Planning Code.

6 SEC. 41F.4. ENFORCEMENT.

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

15 (b) Civil Penalties.

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

21 (2) Any person who violates this Article may be liable for a civil penalty, not to exceed \$500
22 per room for each day such violation is committed or permitted to continue, which penalty shall be
23 assessed and recovered in a civil action brought in the name of the people of the City by the City

1 Attorney in any court of competent jurisdiction. The City Attorney also may seek recovery of the
2 attorney's fees and costs incurred in bringing a civil action pursuant to this Section.

3 (c) Criminal Penalties.

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

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

10 ~~(d) Exemptions~~

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

13 ~~(i) The name and address of the building in which the conversions are~~
14 ~~proposed;~~

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

16 ~~(iii) A description of the proposed conversion including the nature of the~~
17 ~~conversion, the total number of hotel rooms prior to and following conversion, a description of~~
18 ~~the rooms to be converted, including floor number and location, the estimated total number of~~
19 ~~Condominium Units to be created;~~

20 ~~(iv) Preliminary drawings showing the existing floor plans and proposed floor~~
21 ~~plans;~~

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

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

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

5 ~~(2) Upon receipt of the application for exemption, the Planning Department shall~~
6 ~~issue public notice of the application. A ten-day comment period shall commence on the day~~
7 ~~of the notice. The Planning Commission shall hold a public hearing on the exemption no~~
8 ~~sooner than ten days after the day the notice is issued. The Zoning Administrator shall~~
9 ~~recommend approval of the exemption if the applicant meets the requirements in subsections~~
10 ~~41F.3(b) or 41F.3(c). When reviewing the request for exemption, the Planning Department~~
11 ~~may take into consideration Large Tourist Hotel rooms under construction at the time of the~~
12 ~~application, and must take into consideration other exemptions previously approved pursuant~~
13 ~~to this subsection, to ensure that no single exemption and no exemptions in aggregate would~~
14 ~~result in net loss of Large Tourist Hotel rooms. Thus, increase in hotel rooms resulting from a~~
15 ~~Large Tourist Hotel under construction cannot justify an exemption or exemptions if such~~
16 ~~exemption or exemptions would reduce the net supply of Large Tourist Hotel rooms available~~
17 ~~within the City and County of San Francisco except to the extent allowable under subsections~~
18 ~~41F.3(b) or 41F.3(c). To ensure that exemptions do not result in net loss of Large Tourist~~
19 ~~Hotel rooms, multiple applications for exemption under subsections 41F.3(b) or 41F.3(c) will~~
20 ~~be processed in the order received, and evaluated on the merits of each application, as if no~~
21 ~~other applications were pending. The Zoning Administrator shall make a recommendation~~
22 ~~regarding the approval, denial, or approval with conditions of the exemption application to the~~
23 ~~Planning Commission. The Planning Commission shall approve the exemption, deny it, or~~
24 ~~approve it with conditions. The decision of the Planning Commission may be appealed to the~~

1 Board of Supervisors by any member of the public pursuant to the appeals process set forth in
2 Section 306.8 of the Planning Code.

3 SEC. 41F.5. SUNSET PROVISION.

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

7 SEC. 41F.6. SEVERABILITY.

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

13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15 By: _____
16 Andrew W. Garth
17 Deputy City Attorney