

# ZACKS, FREEDMAN & PATTERSON

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BOARD of SUPERVISORS  
2020 FEB -3 P 4: 34  
received by: JW

February 3, 2020

## VIA HAND DELIVERY AND EMAIL

Hon. Norman Yee, President  
San Francisco Board of Supervisors  
c/o Angela Calvillo, Clerk  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102

RE: Appeal of CEQA Categorical Exemption Determination  
File No. 191258 [Administrative Code - Hotel Conversion Ordinance]

Dear President Yee and Honorable Members of the Board of Supervisors:

This office represents the San Francisco SRO Hotel Coalition and numerous other individual owners of SROs (collectively "Owners"). The Owners hereby appeal the California Environmental Quality Act Categorical Exemption determination for File No. 191258.

This ordinance constitutes a citywide rezoning, which may have significant adverse impacts on the environment.

- The Amendment limits lawful short-term rentals at SRO hotels, which will disrupt occupancy patterns and shift occupancy to other parts of the City and region. The impacts of this disruption must be studied.
- The Amendment does not qualify for an existing facilities or new construction Categorical Exemption; rather, this is a change of zoning law.

We also note that a hearing on the proposed ordinance is premature. This ordinance must first be reviewed by the Planning Commission as required by San Francisco Charter Section 4.105 ("An ordinance proposed by the Board of Supervisors concerning zoning shall be reviewed by the Commission."). This hearing has not yet occurred.

Likewise, the ordinance must first be reviewed by the Building Inspection Commission as required by San Francisco Building Code § 104A.2.11.1 ("Upon introduction of an ordinance amending the Codes cited above in Section 104A.2.11" [which includes "other Code enforced by the Department of Building Inspection"], "the Clerk of the Board of Supervisors shall transmit the proposed ordinance to the Building Inspection Commission for a public hearing pursuant to Section D3.750-5 of the San Francisco Charter."). This hearing has not yet occurred.

San Francisco Board of Supervisors  
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Pursuant to Administrative Code § 31.16(b)(3), pending a decision on this appeal, “the Board may not take action to approve the project but may hold hearings on the project and pass any pending approvals out of committee without a recommendation for the purpose of consolidating project approvals and the CEQA appeal before the full Board . . . .”

The Owners have previously submitted for the Board’s record the extensive briefing from the trial and appellate courts, and we again refer the Board’s attention to those records.

The Owners reserve the right to submit additional written and oral comments, bases, and evidence in support of this appeal up to and including the final hearing on this appeal and any and all subsequent permitting proceedings or approvals for the Project. Appellant requests that this letter be placed in and incorporated into the administrative record for BOS File No. 191258 and Planning Case No. 2020-000351 ENV. A copy of this letter of appeal will be concurrently submitted to the Environmental Review Officer.

The Owners respectfully request that the Board of Supervisors revoke the Categorical Exemption determination and require further environmental review pursuant to CEQA.

Very truly yours,

ZACKS, FREEDMAN & PATTERSON, PC



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Ryan J. Patterson

cc: Lisa Gibson, Environmental Review Officer  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103  
lisa.gibson@sfgov.org

Encl.: Categorical Exemption Determination



# SAN FRANCISCO PLANNING DEPARTMENT

## CEQA Categorical Exemption Determination

*Board of Supervisors  
2020 FEB -3 P 4: 34  
Received by: JW*

### PROPERTY INFORMATION/PROJECT DESCRIPTION

<b>Project Address</b>		<b>Block/Lot(s)</b>
BOS FILE #191258 - Administrative Code - Hotel Conversion Ordinance		
<b>Case No.</b>		<b>Permit No.</b>
2020-000351ENV		
<input type="checkbox"/> <b>Addition/ Alteration</b>	<input type="checkbox"/> <b>Demolition (requires HRE for Category B Building)</b>	<input type="checkbox"/> <b>New Construction</b>
<p><b>Project description for Planning Department approval.</b>          BOS FILE #191258: Ordinance repealing Ordinance Nos. 38-17 and 102-19, and reenacting certain provisions by amending the Administrative Code to update the Hotel Conversion Ordinance, including: adding or refining definitions of comparable unit, conversion, and low-income household; revising procedures for permits to convert residential units; harmonizing fees and penalty provisions with the Building Code; eliminating seasonal short-term rentals for residential hotels that have violated provisions of the Hotel Conversion Ordinance in the previous year; authorizing the Department of Building Inspection to issue administrative subpoenas; and affirming the Planning Department's determination under the California Environmental Quality Act.</p>		

### STEP 1: EXEMPTION CLASS

<b>The project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA).</b>	
<input checked="" type="checkbox"/>	<b>Class 1 - Existing Facilities.</b> Interior and exterior alterations; additions under 10,000 sq. ft.
<input checked="" type="checkbox"/>	<b>Class 3 - New Construction.</b> Up to three new single-family residences or six dwelling units in one building; commercial/office structures; utility extensions; change of use under 10,000 sq. ft. if principally permitted or with a CU.
<input type="checkbox"/>	<p><b>Class 32 - In-Fill Development.</b> New Construction of seven or more units or additions greater than 10,000 sq. ft. and meets the conditions described below:</p> <p>(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.</p> <p>(b) The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by urban uses.</p> <p>(c) The project site has no value as habitat for endangered rare or threatened species.</p> <p>(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.</p> <p>(e) The site can be adequately served by all required utilities and public services.</p> <p><b>FOR ENVIRONMENTAL PLANNING USE ONLY</b></p>
<input type="checkbox"/>	<b>Class _____</b>

**STEP 2: CEQA IMPACTS**

**TO BE COMPLETED BY PROJECT PLANNER**

<input type="checkbox"/>	<p><b>Air Quality:</b> Would the project add new sensitive receptors (specifically, schools, day care facilities, hospitals, residential dwellings, and senior-care facilities within an Air Pollution Exposure Zone? Does the project have the potential to emit substantial pollutant concentrations (e.g., backup diesel generators, heavy industry, diesel trucks, etc.)? (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Air Pollution Exposure Zone)</p>
<input type="checkbox"/>	<p><b>Hazardous Materials:</b> If the project site is located on the Maher map or is suspected of containing hazardous materials (based on a previous use such as gas station, auto repair, dry cleaners, or heavy manufacturing, or a site with underground storage tanks): Would the project involve 50 cubic yards or more of soil disturbance - or a change of use from industrial to residential?</p> <p><i>if the applicant presents documentation of enrollment in the San Francisco Department of Public Health (DPH) Maher program, a DPH waiver from the Maher program, or other documentation from Environmental Planning staff that hazardous material effects would be less than significant (refer to EP_ArcMap &gt; Maher layer).</i></p>
<input type="checkbox"/>	<p><b>Transportation:</b> Does the project involve a child care facility or school with 30 or more students, or a location 1,500 sq. ft. or greater? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities?</p>
<input type="checkbox"/>	<p><b>Archeological Resources:</b> Would the project result in soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in a non -archeological sensitive area? If yes, archeo review is required (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Archeological Sensitive Area)</p>
<input type="checkbox"/>	<p><b>Subdivision/Lot Line Adjustment:</b> Does the project site involve a subdivision or lot line adjustment on a lot with a slope average of 20% or more? (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Topography). If yes, Environmental Planning must issue the exemption.</p>
<input type="checkbox"/>	<p><b>Slope = or &gt; 25%:</b> Does the project involve any of the following: (1) square footage expansion greater than 500 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Topography) <b>If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</b></p>
<input type="checkbox"/>	<p><b>Seismic: Landslide Zone:</b> Does the project involve any of the following: (1) square footage expansion greater than 500 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Seismic Hazard Zones) <b>If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</b></p>
<input type="checkbox"/>	<p><b>Seismic: Liquefaction Zone:</b> Does the project involve any of the following: (1) square footage expansion greater than 500 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Seismic Hazard Zones) <b>If box is checked, a geotechnical report will likely be required and Environmental Planning must issue the exemption.</b></p>
<p><b>Comments and Planner Signature (optional):</b> Joy Navarrete</p> <p>Amending the Administrative Code to update the Hotel Conversion Ordinance, mostly procedural, no direct physical changes proposed. Any physical changes may require further environmental review.</p>	

**STEP 3: PROPERTY STATUS - HISTORIC RESOURCE**

TO BE COMPLETED BY PROJECT PLANNER

PROPERTY IS ONE OF THE FOLLOWING: (refer to Property Information Map)	
<input type="checkbox"/>	<b>Category A:</b> Known Historical Resource. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	<b>Category B:</b> Potential Historical Resource (over 45 years of age). <b>GO TO STEP 4.</b>
<input checked="" type="checkbox"/>	<b>Category C:</b> Not a Historical Resource or Not Age Eligible (under 45 years of age). <b>GO TO STEP 6.</b>

**STEP 4: PROPOSED WORK CHECKLIST**

TO BE COMPLETED BY PROJECT PLANNER

Check all that apply to the project.	
<input type="checkbox"/>	1. <b>Change of use and new construction.</b> Tenant improvements not included.
<input type="checkbox"/>	2. <b>Regular maintenance or repair</b> to correct or repair deterioration, decay, or damage to building.
<input type="checkbox"/>	3. <b>Window replacement</b> that meets the Department's <i>Window Replacement Standards</i> . Does not include storefront window alterations.
<input type="checkbox"/>	4. <b>Garage work.</b> A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , and/or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.
<input type="checkbox"/>	5. <b>Deck, terrace construction, or fences</b> not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	6. <b>Mechanical equipment installation</b> that is not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	7. <b>Dormer installation</b> that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .
<input type="checkbox"/>	8. <b>Addition(s)</b> that are not visible from any immediately adjacent public right-of-way for 150 feet in each direction; does not extend vertically beyond the floor level of the top story of the structure or is only a single story in height; does not have a footprint that is more than 50% larger than that of the original building; and does not cause the removal of architectural significant roofing features.
<b>Note: Project Planner must check box below before proceeding.</b>	
<input type="checkbox"/>	Project is not listed. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project <b>does not conform</b> to the scopes of work. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project involves <b>four or more</b> work descriptions. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project involves <b>less than four</b> work descriptions. <b>GO TO STEP 6.</b>

**STEP 5: CEQA IMPACTS - ADVANCED HISTORICAL REVIEW**

TO BE COMPLETED BY PROJECT PLANNER

Check all that apply to the project.	
<input type="checkbox"/>	1. Project involves a <b>known historical resource (CEQA Category A)</b> as determined by Step 3 and conforms entirely to proposed work checklist in Step 4.
<input type="checkbox"/>	2. <b>Interior alterations to publicly accessible spaces.</b>
<input type="checkbox"/>	3. <b>Window replacement</b> of original/historic windows that are not "in-kind" but are consistent with existing historic character.
<input type="checkbox"/>	4. <b>Façade/storefront alterations</b> that do not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	5. <b>Raising the building</b> in a manner that does not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	6. <b>Restoration</b> based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.

<input type="checkbox"/>	7. <b>Addition(s)</b> , including mechanical equipment that are minimally visible from a public right-of-way and meet the <i>Secretary of the Interior's Standards for Rehabilitation</i> .
<input type="checkbox"/>	8. <b>Other work consistent</b> with the <i>Secretary of the Interior Standards for the Treatment of Historic Properties</i> (specify or add comments):
<input type="checkbox"/>	9. <b>Other work</b> that would not materially impair a historic district (specify or add comments):  (Requires approval by Senior Preservation Planner/Preservation Coordinator)
<input type="checkbox"/>	10. <b>Reclassification of property status.</b> (Requires approval by Senior Preservation Planner/Preservation <input type="checkbox"/> Reclassify to Category A a. Per HRER or PTR dated b. Other (specify): <input type="checkbox"/> Reclassify to Category C (attach HRER or PTR)
<b>Note: If ANY box in STEP 5 above is checked, a Preservation Planner MUST sign below.</b>	
<input type="checkbox"/>	<b>Project can proceed with categorical exemption review.</b> The project has been reviewed by the Preservation Planner and can proceed with categorical exemption review. <b>GO TO STEP 6.</b>
Comments (optional):	
Preservation Planner Signature:	

**STEP 6: CATEGORICAL EXEMPTION DETERMINATION**  
**TO BE COMPLETED BY PROJECT PLANNER**

<input checked="" type="checkbox"/>	<b>No further environmental review is required. The project is categorically exempt under CEQA. There are no unusual circumstances that would result in a reasonable possibility of a significant effect.</b>	
	<b>Project Approval Action:</b> Board of Supervisors Ordinance adoption	<b>Signature:</b> Joy Navarrete
	If Discretionary Review before the Planning Commission is requested, the Discretionary Review hearing is the Approval Action for the project.	01/21/2020
Once signed or stamped and dated, this document constitutes a categorical exemption pursuant to CEQA Guidelines and Chapter 31 of the Administrative Code. In accordance with Chapter 31 of the San Francisco Administrative Code, an appeal of an exemption determination can only be filed within 30 days of the project receiving the approval action. Please note that other approval actions may be required for the project. Please contact the assigned planner for these approvals.		

## STEP 7: MODIFICATION OF A CEQA EXEMPT PROJECT

### TO BE COMPLETED BY PROJECT PLANNER

In accordance with Chapter 31 of the San Francisco Administrative Code, when a California Environmental Quality Act (CEQA) exempt project changes after the Approval Action and requires a subsequent approval, the Environmental Review Officer (or his or her designee) must determine whether the proposed change constitutes a substantial modification of that project. This checklist shall be used to determine whether the proposed changes to the approved project would constitute a "substantial modification" and, therefore, be subject to additional environmental review pursuant to CEQA.

### PROPERTY INFORMATION/PROJECT DESCRIPTION

Project Address (If different than front page)		Block/Lot(s) (If different than front page)
BOS FILE #191258 - Administrative Code - Hotel Conversion Ordinance		/
Case No.	Previous Building Permit No.	New Building Permit No.
2020-000351PRJ		
Plans Dated	Previous Approval Action	New Approval Action
	Other (please specify)	
Modified Project Description:		

### DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION

Compared to the approved project, would the modified project:	
<input type="checkbox"/>	Result in expansion of the building envelope, as defined in the Planning Code;
<input type="checkbox"/>	Result in the change of use that would require public notice under Planning Code Sections 311 or 312;
<input type="checkbox"/>	Result in demolition as defined under Planning Code Section 317 or 19005(f)?
<input type="checkbox"/>	Is any information being presented that was not known and could not have been known at the time of the original determination, that shows the originally approved project may no longer qualify for the exemption?
<b>If at least one of the above boxes is checked, further environmental review is required.</b>	

### DETERMINATION OF NO SUBSTANTIAL MODIFICATION

<input type="checkbox"/>	The proposed modification would not result in any of the above changes.
If this box is checked, the proposed modifications are categorically exempt under CEQA, in accordance with prior project approval and no additional environmental review is required. This determination shall be posted on the Planning Department website and office and mailed to the applicant, City approving entities, and anyone requesting written notice. In accordance with Chapter 31, Sec 31.08j of the San Francisco Administrative Code, an appeal of this determination can be filed within 10 days of posting of this determination.	
Planner Name:	Date:

February 1, 2020

We hereby authorize the attorneys of Zacks, Freedman & Patterson, PC to file an appeal of the CEQA Categorical Exemption issued for BOS File No. 191258 (Administrative Code - Hotel Conversion Ordinance) on our behalf.

SAN FRANCISCO SRO HOTEL COALITION

DocuSigned by:

*Sam Patel*

21045050E2E540E...

By: Sam Patel

Its: Authorized Signatory



VOID

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Board of Supervisors

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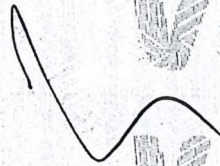
DATE  
02/03/2020

AMOUNT  
\*\*\*\*\*\$640.00

\*\*\* SIX HUNDRED FORTY & 00/100 DOLLARS

San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco CA 94103

42636.001 CEQA Appeal Fee



AUTHORIZED SIGNATURE

Security features included. Details on back