

Amendment of the Whole
March 19, 2007.

FILE NO. 061688

ORDINANCE NO.

1 [Zoning –Use of TDRs.]

2

3 **Ordinance amending the San Francisco Planning Code by amending Sections 123, 124,**
4 **and 128 to address use of Transferable Development Rights (TDRs) under specified**
5 **circumstances; and adopting findings including environmental findings and findings of**
6 **consistency with the General Plan and the Priority Policies of Planning Code Section**
7 **101.1(b).**

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

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

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Section 1. Findings.

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(a) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
14 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in
15 Planning Commission Resolution No. _____, and incorporates those reasons
16 herein by reference. A copy of said Planning Commission resolution is on file with the Clerk
17 of the Board of Supervisors in File No. _____.

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(b) The Board of Supervisors finds that this ordinance is consistent with the General
19 Plan and the Priority Policies of Planning Code Section 101.1(b) for the reasons set forth in
20 Planning Commission Resolution No. _____, and incorporates
21 those reasons herein by reference.

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(c) The Planning Department has completed environmental review of this ordinance
23 pursuant to the California Environmental Quality Act ("CEQA"), the CEQA Guidelines,
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1 and Chapter 31 of the San Francisco Administrative Code. Documentation of that review is
2 on file with the Clerk of the Board of Supervisors in File No. _____.

3 Section 2. The San Francisco Planning Code is hereby amended by amending Section
4 123, to read as follows:

5 SEC. 123. MAXIMUM FLOOR AREA RATIO.

6 (a) The limits upon the floor area ratio of buildings, as defined by this Code, shall be
7 as stated in this Section and Sections 124 through 128. The maximum floor area ratio for any
8 building or development shall be equal to the sum of the basic floor area ratio for the district,
9 as set forth in Section 124, plus any premiums and floor area transfers which are applicable to
10 such building or development under Sections 125, 127 and 128, and as restricted by the
11 provisions of Sections 123(c) and (d) and 124(b) and(j).

12 (b) No building or structure or part thereof shall be permitted to exceed, except as
13 stated in Sections 172 and 188 of this Code, the floor area ratio limits herein set forth for the
14 district in which it is located.

15 (c) The amount of TDR that may be transferred to a development lot, as allowed by
16 Section 128, is limited as follows:

17 (1) The gross floor area of a structure on a lot in the C-3-O and C-3-O (SD)
18 Districts may not exceed a floor area ratio of 18 to 1;

19 (2) The gross floor area of a structure on a lot in the C-3-R, C-3-G and C-3-S
20 Districts may not exceed a floor area ratio that is 1 1/2 times the basic floor area limit for the
21 district as provided in Section 124. This section shall not apply to the C-3-S (SU) District.

22 (d) The gross floor area of a structure on a lot on which is or has been located a
23 Significant or Contributory Building may not exceed the basic floor area ratio limits stated in
24 Section 124 except as provided in Section_s 128(c)(2) *and 124(f)*.

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1 Section 3. The San Francisco Planning Code is hereby amended by amending Section
2 124, to read as follows:

3 **SEC. 124. BASIC FLOOR AREA RATIO.**

4 (a) Except as provided in Subsections (b), (c) and (e) of this Section, the basic floor
5 area ratio limits specified in the following table shall apply to each building or development in
6 the districts indicated.

7 **TABLE 124**

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10 **BASIC FLOOR AREA RATIO LIMITS**

11 TABLE INSET:

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District	Basic Floor Area Ratio Limit
RH-1(D), RH-1, RH-1(S), RH-2, RH-3, RM-1, RM-2	1.8 to 1
RM-3	3.6 to 1
RM-4	4.8 to 1
RC-1, RC-2	1.8 to 1
RC-3	3.6 to 1
RC-4	4.8 to 1
RED	1.0 to 1

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1	RSD, SPD	1.8 to 1
2	NC-1	1.8 to 1
3	NC-S	
4	Inner Clement	
5	Inner Sunset	
6	Outer Clement	
7	Haight	
8	North Beach	
9	Sacramento	
10	24th Street--Noe Valley	
11	West Portal	
12	NC-2	2.5 to 1
13	Broadway	
14	Upper Fillmore	
15	Polk	
16	Valencia	
17	24th Street-Mission	
18	Castro	3.0 to 1
19	Hayes-Gough	
20	Upper Market	
21	Union	
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1	NC-3	3.6 to 1
2	Chinatown R/NC	1.0 to 1
3	Chinatown VR	2.0 to 1
4	Chinatown CB	2.8 to 1
5	C-1, C-2	3.6 to 1
6	C-2-C	4.8 to 1
7	C-3-C	6.0 to 1
8	C-3-O	9.0 to 1
9	C-3-R	6.0 to 1
10	C-3-G	6.0 to 1
11	C-3-S	5.0 to 1
12	C-3-O (SD)	6.0 to 1
13	C-3-S (SU)	7.5 to 1
14	C-M	9.0 to 1
15	M-1, M-2	5.0 to 1
16	SLR, SLI	2.5 to 1
17	SSO and in a 40 or 50 foot height district	3.0 to 1
18	SSO and in a 65 or 80 foot height district	4.0 to 1
19	SSO and in a 130 foot height district	4.5 to 1

23 (b) In R, NC, and Mixed Use Districts, the above floor area ratio limits shall not apply
24 to dwellings or to other residential uses. In NC Districts, the above floor area ratio limits shall
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1 also not apply to nonaccessory off-street parking. In Chinatown Mixed Use Districts, the
2 above floor area ratio limits shall not apply to institutions, and mezzanine commercial space
3 shall not be calculated as part of the floor area ratio.

4 (c) In a C-2 District the basic floor area ratio limit shall be 4.8 to 1 for a lot which is
5 nearer to an RM-4 or RC-4 District than to any other R District, and 10.0 to 1 for a lot which is
6 nearer to a C-3 District than to any R District. The distance to the nearest R District or C-3
7 District shall be measured from the midpoint of the front line, or from a point directly across
8 the street therefrom, whichever gives the greatest ratio.

9 (d) In the Van Ness Special Use District, as described in Section 243 of this Code, the
10 basic floor area ratio limit shall be 7.0 to 1 where the height limit is 130 feet and 4.5 to 1 where
11 the height limit is 80 feet.

12 (e) In the Waterfront Special Use Districts, as described in Sections 240 through
13 240.3 of this Code, the basic floor area ratio limit in any C District shall be 5.0 to 1.

14 (f) For buildings in C-3-G and C-3-S Districts other than those designated as
15 Significant or Contributory pursuant to Article 11 of this Code, additional square footage above
16 that permitted by the base floor area ratio limits set forth above may be approved for
17 construction of dwellings on the site of the building affordable for 20 years to households
18 whose incomes are within 150 percent of the median income as defined herein, in accordance
19 with the conditional use procedures and criteria as provided in Section 303 of this Code. For
20 buildings in the C-3-G District designated as Significant or Contributory pursuant to Article 11 of this
21 Code, additional square footage above that permitted by the base floor area ratio limits set forth above
22 up to the gross floor area of the existing building may be approved, in accordance with the conditional
23 use procedures and criteria as provided in Section 303 of this Code, where: (i) TDRs (as defined by
24 Section 128(a)(5)) were transferred from the lot containing the Significant or Contributory building

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1 prior to the effective date of the amendment to Section 124(f) adding this paragraph when the floor
2 area transferred was occupied by a non-profit corporation or institution meeting the requirements for
3 exclusion from gross floor area calculation under Planning Code Section 102.9(b)(15); (ii) the
4 additional square footage includes only the amount necessary to accommodate dwelling units and/or
5 group housing units that are affordable for not less than 2050 years to households whose incomes
6 are within 60 percent of the median income as defined herein together with any social, educational,
7 and health service space accessory to such dwelling units; and (iii) the proposed change in use to
8 dwelling units and accessory space and any construction associated therewith, if it requires any
9 alternation to the exterior or other character defining features of the Significant or Contributory
10 Building, is undertaken pursuant to the duly approved Permit to Alter, pursuant to Section 1110;
11 provided, however, that the procedures otherwise required for a Major Alteration as set forth in
12 sections 1111.2-1111.6 shall be deemed applicable to any such Permit to Alter.

13 (1) Any dwelling approved for construction under this provision shall be
14 deemed a "designated unit" as defined below. Prior to the issuance by the Director of the
15 Department of Building Inspection ("Director of Building Inspection") of a site or building
16 permit to construct any designated unit subject to this Section, the permit applicant shall notify
17 the Director of Planning and the Director of Property in writing whether the unit will be an
18 owned or rental unit as defined in Section 313(a) of this Code.

19 (2) Within 60 days after the issuance by the Director of Building Inspection of a
20 site or building permit for construction of any unit intended to be an owned unit, the Director of
21 Planning shall notify the City Engineer in writing identifying the intended owned unit, and the
22 Director of Property shall appraise the fair market value of such unit as of the date of the
23 appraisal, applying accepted valuation methods, and deliver a written appraisal of the unit to
24 the Director of Planning and the permit applicant. The permit applicant shall supply all
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1 information to the Director of Property necessary to appraise the unit, including all plans and
2 specifications.

3 (3) Each designated unit shall be subject to the provisions of Section 313(i) of
4 this Code. For purposes of this Subsection and the application of Section 313(i) of this Code
5 to designated units constructed pursuant to this Subsection, the definitions set forth in Section
6 313(a) shall apply, with the exception of the following definitions, which shall supersede the
7 definitions of the terms set forth in Section 313(a):

8 (A) "Base price" shall mean 3.25 times the median income for a family of four
9 persons for the County of San Francisco as set forth in California Administrative Code Section
10 6932 on the date on which a housing unit is sold.

11 (B) "Base rent" shall mean .45 times the median income for the County of San
12 Francisco as set forth in California Administrative Code Section 6932 for a family of a size
13 equivalent to the number of persons residing in a household renting a designated unit.

14 (C) "Designated unit" shall mean a housing unit identified and reported to the
15 Director by the sponsor of an office development project subject to this Subsection as a unit
16 that shall be affordable to households of low or moderate income for 20 years.

17 (D) "Household of low or moderate income" shall mean a household composed
18 of one or more persons with a combined annual net income for all adult members which does
19 not exceed 150 percent of the qualifying limit for a median income family of a size equivalent
20 to the number of persons residing in such household, as set forth for the County of San
21 Francisco in California Administrative Code Section 6932.

22 (E) "Sponsor" shall mean an applicant seeking approval for construction of a
23 project subject to this Subsection and such applicants' successors and assigns.

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1 (g) The allowable gross floor area on a lot which is the site of an unlawfully
2 demolished building that is governed by the provisions of Article 11 shall be the gross floor
3 area of the demolished building for the period of time set forth in, and in accordance with the
4 provisions of, Section 1114 of this Code, but not to exceed the basic floor area permitted by
5 this Section.

6 (h) In calculating the permitted floor area of a new structure in a C-3 District, the lot on
7 which an existing structure is located may not be included unless the existing structure and
8 the new structure are made part of a single development complex, the existing structure is or
9 is made architecturally compatible with the new structure, and, if the existing structure is in a
10 Conservation District, the existing structure meets or is made to meet the standards of Section
11 1109(c), and the existing structure meets or is reinforced to meet the standards for seismic
12 loads and forces of the 1975 Building Code. Determinations under this Paragraph shall be
13 made in accordance with the provisions of Section 309.

14 (i) In calculating allowable gross floor area on a preservation lot from which any TDRs
15 have been transferred pursuant to Section 128, the amount allowed herein shall be decreased
16 by the amount of gross floor area transferred.

17 (j) Within any RSD, SPD, SLR, SLI or SSO District, live/work units constructed above
18 the floor area ratio limit pursuant to Section 102.9(b)(19) of this Code shall be subject to the
19 following conditions and standards:

20 (1) Considering all dwelling units and all live/work units on the lot, existing and
21 to be constructed, there shall be no more than one live/work unit and/or dwelling unit per 200
22 square feet of lot area, except that, for projects in the RSD District which will exceed 40 feet in
23 height, and therefore are required to obtain conditional use approval, the allowable density for
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1 dwelling units and live/work units shall be established as part of the conditional use
2 determination; and

3 (2) The parking requirement for live/work units subject to this subsection shall
4 be equal to that required for dwelling units within the subject district.

5 Section 4. The San Francisco Planning Code is hereby amended by amending Section
6 128, to read as follows:

7 SEC. 128. TRANSFER OF DEVELOPMENT RIGHTS IN C-3 DISTRICTS.

8 (a) Definitions.

9 (1) "Development Lot." A lot to which TDR may be transferred to increase the
10 allowable gross floor area of development thereon beyond that otherwise permitted by Section
11 124.

12 (2) "Owner of Record." The owner or owners of record in fee.

13 (3) "Preservation Lot." A parcel of land on which is either (i) a Significant or
14 Contributory building (as designated pursuant to Article 11); or (ii) a Category V Building that
15 has complied with the eligibility requirement for transfer of TDR as set forth in Section
16 1109(c); or (iii) a structure designated a landmark pursuant to Article 10 of this Code. The
17 boundaries of the Preservation Lot shall be the boundaries of the Assessor's lot on which the
18 building is located at the time the ordinance or, as to Section 1109(c), resolution, making the
19 designation is adopted, unless boundaries are otherwise specified in the ordinance.

20 (4) "Transfer Lot." A Preservation Lot located in a C-3 District from which TDR
21 may be transferred. A lot zoned P (public) may in no event be a Transfer Lot. unless a
22 building on that lot is (i) owned by the City and County of San Francisco, and (ii) located in a P
23 District adjacent to a C-3 District, and (iii) designated as an historical landmark by Article 10 of
24 this Code or designated as a Category I Significant Building by Article 11 of this Code and
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1 listed as a National Historical Landmark on the National Historical Register, and (iv) the TDR
2 proceeds are used to finance, in whole or in part, a project to rehabilitate and restore the
3 building in accordance with the Secretary of Interior standards. For the purposes of Section
4 128(b), a lot zoned P which satisfies the criteria of this subsection (4) to qualify as a "Transfer
5 Lot" shall be deemed to have an allowable gross floor area of 7.5:1 under Section 124.

6 (5) "Transferable Development Rights (TDR)." Units of gross floor area which
7 may be transferred, pursuant to the provisions of this Section and Article 11 of this Code, from
8 a Transfer Lot to increase the allowable gross floor area of a development on a Development
9 Lot.

10 (6) "Unit of TDR." One unit of TDR is one square foot of gross floor area.

11 (b) Amount of TDR Available for Transfer. The maximum TDR available for transfer
12 from a Transfer Lot consists of the difference between (aa) the allowable gross floor area
13 permitted on the Transfer Lot by Section 124 and (bb) the gross floor area of the development
14 located on the Transfer Lot.

15 (c) Eligibility of Development Lots and Limitation on Use of TDR on Development
16 Lots. TDR may be used to increase the allowable gross floor area of a development on a
17 Development Lot if the following requirements and restrictions are satisfied:

18 (1) (i) The Transfer Lot and the Development Lot are located in the same C-3
19 Zoning District, or (ii) the Transfer Lot is located in a C-3-O, or C-3-R District and the
20 Development Lot is located in the C-3-O(SD) Special Development District; or (iii) the Transfer
21 Lot is a Preservation Lot that contains a Significant building and is located in the Extended
22 Preservation District or a C-3-G or C-3-S District and the Development Lot is located in the C-
23 3-O(SD) Special District, or (iv) the Transfer Lot is in a C-3-R District or a District designated
24 C-3-O (SD) in the Yerba Buena Center Redevelopment Plan and is located in the Yerba
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1 Buena Center Redevelopment Project Area and the Development Lot is located in a C-3-O
2 District; or (v) the Transfer Lot is in a P District adjacent to a C-3 District and meets the
3 requirements established in subsection (a)(4) above and the Development Lot is located in a
4 C-3 District.

5 (2) TDR may not be transferred for use on any lot on which is or has been
6 located a Significant or Contributory building; provided that this restriction shall not apply if the
7 designation of a building is changed to Unrated; nor shall it apply if the City Planning
8 Commission finds that the additional space resulting from the transfer of TDR is essential to
9 make economically feasible the reinforcement of a Significant or Contributory building to meet
10 the standards for seismic loads and forces of the 1975 Building Code, in which case TDR may
11 be transferred for that purpose subject to the limitations of this Section and Article 11,
12 including Section 1111.6. Any alteration shall be governed by the requirements of Sections
13 1111 to 1111.6.

14 (3) Notwithstanding any other provision of this Section, development on a
15 Development Lot is limited by the provisions of this Code, other than those on floor area ratio,
16 governing the approval of projects, including the requirements relating to height, bulk,
17 setback, sunlight access, and separation between towers, and any limitations imposed
18 pursuant to Section 309 review applicable to the Development Lot. The total allowable gross
19 floor area of a development on a Development Lot may not exceed the limitation imposed by
20 Section 123(c).

21 (d) Effect of Transfer of TDR.

22 (1) Transfer of TDR from a Transfer Lot permanently reduces the development
23 potential of the Transfer Lot by the amount of the TDR transferred, except as provided in Section
24 124(f). In addition, transfer of TDR from a Preservation Lot containing a Contributory building
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1 or a landmark designated pursuant to Article 10 causes such building to become subject to
2 the same restrictions on demolition and alteration, and the same penalties and enforcement
3 remedies, that are applicable to Significant buildings Category I, as provided in Article 11.

4 (e) Procedure for Determining TDR Eligibility.

5 (1) In order to obtain a determination of whether a lot is a Transfer Lot and, if it
6 is, of the amount of TDR available for transfer, the owner of record of the lot may file an
7 application with the Zoning Administrator for a Statement of Eligibility. The application for a
8 Statement of Eligibility shall contain or be accompanied by plans and drawings and other
9 information which the Zoning Administrator determines is necessary in order to determine
10 whether a Statement of Eligibility can be issued. Any person who applies for a Statement of
11 Eligibility prior to expiration of the time for request of reconsideration of designation authorized
12 in Section 1105 shall submit in writing a waiver of the right to seek such reconsideration.

13 (2) The Zoning Administrator shall, upon the filing of an application for a
14 Statement of Eligibility and the submission of all required information, issue either a proposed
15 Statement of Eligibility or a written determination that no TDR are available for transfer and
16 shall mail that document to the applicant and to any other person who has filed with the
17 Zoning Administrator a written request for a copy. Any appeal of the proposed Statement of
18 Eligibility or determination of noneligibility shall be filed with the Board of Permit Appeals
19 within 20 days of the date of issuance of the document. If not appealed, the proposed
20 Statement of Eligibility or the determination of noneligibility shall become final on the 21st day
21 after the date of issuance. The Statement of Eligibility shall contain at least the following
22 information: (i) the name of the owner of record of the Transfer Lot; (ii) the address, legal
23 description and Assessor's Block and Lot of the Transfer Lot; (iii) the C-3 use district within
24 which the Transfer Lot is located; (iv) whether the Transfer Lot is a Preservation Lot or
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1 Development Lot; (v) if a Preservation Lot, whether the Transfer Lot contains a Significant or
2 Contributory building, a Category V building, or an Article 10 landmark; (vi) the amount of TDR
3 available for transfer; and (vii) the date of issuance.

4 (3) Once the proposed Statement of Eligibility becomes final, whether through
5 lack of appeal or after appeal, the Zoning Administrator shall record the Statement of Eligibility
6 in the Office of the County Recorder. The County Recorder shall be instructed to mail the
7 original of the recorded document to the owner of record of the Transfer Lot and, if a copy of
8 the document is presented at the time of the recordation, shall conform the copy and mail it to
9 the Zoning Administrator.

10 (f) Cancellation of Eligibility.

11 (1) If reasonable grounds should at any time exist for determining that a
12 building on a Preservation Lot may have been altered or demolished in violation of Articles 10
13 or 11, including Sections 1110 and 1112 thereof, the Zoning Administrator may issue and
14 record with the County Recorder a Notice of Suspension of Eligibility for the affected lot and,
15 in cases of demolition of a Significant or Contributory building, a notice that the restriction on
16 the floor area ratio of a replacement building, pursuant to Section 1114, may be applicable
17 and shall mail a copy of such notice to the owner of record of the lot. The notice shall provide
18 that the property owner shall have 20 days from the date of the notice in which to request a
19 hearing before the Zoning Administrator in order to dispute this initial determination. If no
20 hearing is requested, the initial determination of the Zoning Administrator is deemed final on
21 the twenty-first day after the date of the notice, unless the Zoning Administrator has
22 determined that the initial determination was in error.

23 (2) If a hearing is requested, the Zoning Administrator shall notify the property
24 owner of the time and place of hearing, which shall be scheduled within 21 days of the
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1 request, shall conduct the hearing, and shall render a written determination within 15 days
2 after the close of the hearing. If the Zoning Administrator shall determine that the initial
3 determination was in error, that officer shall issue and record a Notice of Revocation of
4 Suspension of Eligibility. Any appeal of the determination of the Zoning Administrator shall be
5 filed with the Board of Permit Appeals within 20 days of the date of the written determination
6 following a hearing or, if no hearing has been requested, within 20 days after the initial
7 determination becomes final.

8 (3) If after an appeal to the Board of Permit Appeals it is determined that an
9 unlawful alteration or demolition has occurred, or if no appeal is taken of the determination by
10 the Zoning Administrator of such a violation, the Zoning Administrator shall record in the
11 Office of the County Recorder a Notice of Cancellation of Eligibility for the lot, and shall mail to
12 the property owner a conformed copy of the recorded Notice. In the case of demolition of a
13 Significant or Contributory Building, the Zoning Administrator shall record a Notice of Special
14 Restriction noting the restriction on the floor area ratio of the Preservation Lot pursuant to the
15 provisions of Section 1114, and shall mail to the owner of record a certified copy of the Notice.
16 If after an appeal to the Board of Permit Appeals it is determined that no unlawful alteration or
17 demolition has occurred, the Zoning Administrator shall issue and record a Notice of
18 Revocation of Suspension of Eligibility and, if applicable, a Notice of Revocation of the Notice
19 of Special Restriction pursuant to Section 1114, and shall mail conformed copies of the
20 recorded notices to the owner of record.

21 (4) No notice recorded under this Section 128(f) shall affect the validity of TDR
22 that have been transferred from the affected Transfer Lot in compliance with the provisions of
23 this Section prior to the date of recordation of such notice, whether or not such TDR have
24 been used.

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1 (g) Procedure for Transfer of TDR.

2 (1) TDR from a single Transfer Lot may be transferred as a group to a single
3 transferee or in separate increments to several transferees. TDR may be transferred either
4 directly from the original owner of the TDR to the owner of a Development Lot or to persons,
5 firms or entities who acquire the TDR from the original owner of the TDR and hold them for
6 subsequent transfer to other persons, firms, entities or to the owners of a Development Lot or
7 Lots.

8 (2) When TDR are transferred, they shall be identified in each Certificate of
9 Transfer by a number. A single unit of TDR transferred from a Transfer Lot shall be identified
10 by the number "1." Multiple units of TDR transferred as a group for the first time from a
11 Transfer Lot shall be numbered consecutively from "1" through the number of units
12 transferred. If a fraction of a unit of TDR is transferred, it shall retain its numerical
13 identification. (For example, if 5,000- 1/2 TDR are transferred in the initial transfer from the
14 Transfer Lot, they would be numbered "1 through 5,000 and one-half of 5,001.") TDR
15 subsequently transferred from the Transfer Lot shall be identified by numbers taken in
16 sequence following the last number previously transferred. (For example if the first units of
17 gross floor area transferred from a Transfer Lot are numbered 1 through 10,000, the next unit
18 transferred would be number 10,001.) If multiple units transferred from a Transfer Lot are
19 subsequently transferred separately in portions, the seller shall identify the TDR sold by
20 numbers which correspond to the numbers by which they were identified at the time of their
21 transfer from the Transfer Lot. (For example, TDR numbered 1 through 10,000 when
22 transferred separately from the Transfer Lot in two equal portions would be identified in the
23 two Certificates of Transfer as numbers 1 through 5,000 and 5,001 through 10,000.) Once
24 assigned numbers, TDR retain such numbers for the purpose of identification through the
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1 process of transferring and using TDR. The phrase "numerical identification," as used in this
2 section, shall mean the identification of TDR by numbers as described in this Subsection.

3 (3) Transfer of TDR from the Transfer Lot shall not be valid unless (i) a
4 Statement of Eligibility has been recorded in the Office of the County Recorder prior to the
5 date of recordation of the Certificate of Transfer evidencing such transfer and (ii) a Notice of
6 Suspension of Eligibility or Notice of Cancellation of Eligibility has not been recorded prior to
7 such transfer or, if recorded, has thereafter been withdrawn by an appropriate recorded Notice
8 of Revocation or a new Statement of Eligibility has been thereafter recorded.

9 (4) Transfer of TDR, whether by initial transfer from a Transfer Lot or by a
10 subsequent transfer, shall not be valid unless a Certificate of Transfer evidencing such
11 transfer has been prepared and recorded. The Zoning Administrator shall prepare a form of
12 Certificate of Transfer and all transfers shall be evidenced by documents that are substantially
13 the same as the Certificate of Transfer form prepared by the Zoning Administrator, which form
14 shall contain at least the following:

15 (i) For transfers from the Transfer Lot only:

16 (aa) Execution and acknowledgment by the original owner of TDR as the
17 transferor(s) of the TDR; and

18 (bb) Execution and acknowledgment by the Zoning Administrator; and

19 (cc) A notice, prominently placed and in all capital letters, preceded by the
20 underlined heading "Notice of Restriction," stating that the transfer of TDR from the Transfer
21 Lot permanently reduces the development potential of the Transfer Lot by the amount of TDR
22 transferred, with reference to the provisions of this Section.

23 (ii) For all transfers:
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- 1 (aa) The address, legal description, Assessor's Block and Lot, and C-3 use
2 district of the Transfer Lot from which the TDR originates; and
- 3 (bb) The amount of TDR transferred; and
- 4 (cc) Numerical identification of the TDR being transferred; and
- 5 (dd) The names and mailing addresses of the transferors and transferees of
6 the TDR; and
- 7 (ee) Execution and acknowledgment by the transferors and transferees of the
8 TDR; and
- 9 (ff) A reference to the Statement of Eligibility, including its recorded instrument
10 number and date of recordation, and a recital of all previous transfers of the TDR, including
11 the names of the transferors and transferees involved in each transfer and the recorded
12 instrument number and date of recordation of each Certificate of Transfer involving the TDR,
13 including the transfer from the Transfer Lot which generated the TDR.
- 14 (5) When a Certificate of Transfer for the transfer of TDR from a Transfer Lot is
15 presented to the Zoning Administrator for execution, that officer shall not execute the
16 document if a transfer of the TDR would be prohibited by any provision of this Section or any
17 other provision of this Code. The Zoning Administrator shall, within five business days from
18 the date that the Certificate of Transfer is submitted for execution, either execute the
19 Certificate of Transfer or issue a written determination of the grounds requiring a refusal to
20 execute the Certificate.
- 21 (6) Each duly executed and acknowledged Certificate of Transfer containing
22 the information required herein shall be presented for recordation in the Office of the County
23 Recorder and shall be recorded by the County Recorder. The County Recorder shall be
24 instructed to mail the original Certificate of Transfer to the person and address designated
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1 thereon and shall be given a copy of the Certificate of Transfer and instructed to conform the
2 copy and mail it to the Zoning Administrator.

3 (h) Certification of Transfer of TDR for a Project on a Development Lot.

4 (1) When the use of TDR is necessary for the approval of a building permit for
5 a project on a Development Lot, the Superintendent of the Bureau of Building Inspection shall
6 not approve issuance of the permit unless the Zoning Administrator has issued a written
7 certification that the owner of the Development Lot owns the required number of TDR. When
8 the transfer of TDR is necessary for the approval of a site permit for a project on a
9 Development Lot, the Zoning Administrator shall impose as a condition of approval of the site
10 permit the requirement that the Superintendent of the Bureau of Building Inspection shall not
11 issue the first addendum to the site permit unless the Zoning Administrator has issued a
12 written certification that the owner of the Development Lot owns the required number of TDR.

13 (2) In order to obtain certification as required in Section 128(h)(1), the permit
14 applicant shall present to the Zoning Administrator:

15 (i) Information necessary to enable the Zoning Administrator to prepare the
16 Notice of Use of TDR, which information shall be at least the following:

17 (aa) The address, legal description, Assessor's Block and Lot, and zoning
18 classification of the Development Lot;

19 (bb) The name and address of the owner of record of the Development Lot;

20 (cc) Amount and numerical identification of the TDR being used;

21 (dd) A certified copy of each Certificate of Transfer evidencing transfer to the
22 owner of the Development Lot of the TDR being used; and

23 (ii) A report from a title insurance company showing the holder of record of the
24 TDR to be used, all Certificates of Transfer of the TDR, and all other matters of record

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1 affecting such TDR. In addition to showing all such information, the report shall guarantee that
2 the report is accurate and complete and the report shall provide that in the event that its
3 guarantee or any information shown in the report is incorrect, the title company shall be liable
4 to the City for the fair market value of the TDR at the time of the report. The liability amount
5 shall be not less than \$10,000 and no more than \$1,000,000, the appropriate amount to be
6 determined by the Zoning Administrator based on the number of TDR being used.

7 (iii) An agreement whereby the owner of the Development Lot shall indemnify
8 the City against any and all loss, cost, harm or damage, including attorneys' fees, arising out
9 of or related in any way to the assertion of any adverse claim to the TDR, including any loss,
10 cost, harm or damage occasioned by the passive negligence of the City and excepting only
11 that caused by the City's sole and active negligence. The indemnity agreement shall be
12 secured by a first deed of trust on the Development Lot, or other security satisfactory to the
13 Department of City Planning and the City Attorney.

14 (3) If the Zoning Administrator determines that the project applicant has
15 complied with the provisions of Subsection (h)(2) and all other applicable provisions of this
16 Section, and that the applicant is the owner of the TDR, that officer shall transmit to the
17 Superintendent of the Bureau of Building Inspection, with a copy to the project applicant,
18 written certification that the owner of the Development Lot owns the TDR. Prior to transmitting
19 such certification, the Zoning Administrator shall prepare a document entitled Notice of Use of
20 TDR stating that the TDR have been used and may not be further transferred, shall obtain the
21 execution and acknowledgment on the Notice of the owner of record of the Development Lot,
22 shall execute and acknowledge the Notice, shall record it in the Office of the County
23 Recorder, and shall mail to the owner of record of the Development Lot a conformed copy of
24 the recorded Notice. If the Zoning Administrator determines that the project applicant is not
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1 the owner of the TDR, or has not complied with all applicable provisions of this Section, that
2 determination shall be set forth in writing along with the reasons therefor. The Zoning
3 Administrator shall either transmit certification or provide a written determination that
4 certification is inappropriate within 10 business days after the receipt of all information
5 required pursuant to Subsection (h)(2).

6 (i) Cancellation of Notice of Use; Transfer from Development Lot.

7 (1) The owner of a Development Lot for which a Notice of Use of TDR has
8 been recorded may apply for a Cancellation of Notice of Use if (i) the building permit or site
9 permit for which the Notice of Use was issued expires or was revoked or cancelled prior to
10 completion of the work for which such permit was issued and the work may not be carried out;
11 or (ii) any administrative or court decision is issued or any ordinance or initiative or law is
12 adopted which does not allow the applicant to make use of the permit; or (iii) a portion or all of
13 such TDR are not used.

14 (2) If the Zoning Administrator determines that the TDR have not been and will
15 not be used on the Development Lot based on the reasons set forth in subsection (i)(1), the
16 Zoning Administrator shall prepare the Cancellation of Notice of Use of TDR. If only a portion
17 of the TDR which had been acquired are not being used, the applicant may identify which
18 TDR will not be used and the Cancellation of Notice of Use of TDR shall apply only to those
19 TDR. The Zoning Administrator shall obtain on the Cancellation of Notice of Use of TDR the
20 signature and acknowledgment of the owner of record of the Development Lot as to which the
21 Notice of Use of TDR was recorded, shall execute and acknowledge the document, and shall
22 record it in the office of the County Recorder.

23 (3) Once a Cancellation of Notice of Use of TDR has been recorded, the owner
24 of the Development Lot may apply for a Statement of Eligibility in order to transfer the TDR
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1 identified in that document. The procedures and requirements set forth in this Section
2 governing the transfer of TDR shall apply to the transfer of TDR from the owner of a
3 Development Lot after a Notice of Use has been filed, except for the provisions of this Section
4 permanently restricting the development potential of a Transfer Lot upon the transfer of TDR;
5 provided, however, that the district or districts to which the TDR may be transferred shall be
6 the same district or districts to which TDR could have been transferred from the Transfer Lot
7 that generated the TDR.

8 (j) Erroneous Notice of Use; Revocation of Permit. If the Zoning Administrator
9 determines that a Notice of Use of TDR was issued or recorded in error, that officer may direct
10 the Superintendent of the Bureau of Building Inspection to suspend any permit issued for a
11 project using such TDR, in which case the Superintendent shall comply with that directive.
12 The Zoning Administrator shall thereafter conduct a noticed hearing in order to determine
13 whether the Notice of Use of TDR was issued or recorded in error. If it is determined that the
14 Notice of Use of TDR was issued or recorded in error, the Superintendent of the Bureau of
15 Building Inspection shall revoke the permit; provided, however, that no permit authorizing
16 such project shall be revoked if the right to proceed thereunder has vested under California
17 law. If it is determined that the Notice of Use of TDR was not issued or recorded in error, the
18 permit shall be reinstated.

19 (k) Effect of Repeal or Amendment. TDR shall convey the rights granted herein only
20 so long and to the extent as authorized by the provisions of this Code. Upon repeal of such
21 legislative authorization, TDR shall thereafter convey no rights or privileges. Upon amendment
22 of such legislative authorization, TDR shall thereafter convey only such rights and privileges
23 as are permitted under the amendment. No Statement of Eligibility shall convey any right to
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1 use, transfer or otherwise utilize TDR if the maximum floor area ratio for the Transfer Lot is
2 reduced after the Statement of Eligibility is issued.

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5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

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8 By: _____
9 John D. Malamut
10 Deputy City Attorney

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