

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

2
3 **Ordinance amending Administrative Code Chapter 41F to clarify the scope and**
4 **implementation of the Large Tourist Hotel Conversion Ordinance, including minor**
5 **edits to the definition of "Convert" and additional guidance regarding the**
6 **conversion process for Large Tourist Hotels Rooms, and making required**
7 **findings.**

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

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

12 Section 1. Findings.

13 (1) On March 18, 2008, the Board of Supervisors adopted the Large Tourist
14 Hotel Conversion Ordinance.

15 (2) The Board of Supervisors has determined that selected amendments to
16 the ordinance will facilitate the efficient and orderly implementation of the Large Tourist
17 Hotel Conversion Ordinance.

18 (3) On May 23, 2008 the Zoning Administrator promulgated a Bulletin and
19 Letter of Determination setting forth the process that the Planning Department would
20 follow to determine “complete applications” subject to first-come, first-served priority
21 under Section 41F.3(b) of the Large Tourist Hotel Conversion Ordinance. ~~As amended~~
22 ~~on July 14, 2008, the~~ The Letter of Determination applied the principles of the Bulletin to
23 establish a priority listing of pending projects ("Queue"). The Bulletin, Letter of
24 Determination, and Queue contained errors that the Zoning Administrator requested the
25 Board of Appeals correct. The Board of Appeals affirmed the Zoning Administrator's

1 determination issued a decision on November 12, 2008, that corrected the Bulletin,
2 Letter of Determination, and Queue to conform with the Zoning Administrator's intent.

3 (4) The Board of Supervisors intends that these amendments apply
4 retroactively to the effective date of the original ordinance, April 24, 2008, except to the
5 extent that such application would abridge vested rights under the law.

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

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

13 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
18 Tourist Hotel Rooms commercially available for rent as of March 1, 2009, as calculated
19 according to the process described in Section 41F.3(g). *The Planning Commission shall*
20 *adopt a Baseline Inventory reflecting the number of Large Tourist Hotel Rooms in the City as of*
21 *March 1, 2009, and shall update the Baseline Inventory annually thereafter and no later than*
22 *March 15 of each year. The Planning Department shall provide the public with an opportunity*
23 *for meaningful review and comment on the Baseline Inventory and annual updates, including a*
24 *public hearing. Rooms created by new Large Tourist Hotel Construction and/or expansion shall*
25 *qualify as additional Large Tourist Hotel Rooms in the year they obtain final certificates of*

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

4 (b) "Annual Inventory" shall mean the inventory of the number of Tourist Hotel
5 Rooms commercially available for rent as updated in each year after the Baseline inventory, as
6 calculated according to the process described in Section 41F.3(g).

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

11 (ed) "Convert" shall mean: (i) to change the type of ownership of any real
12 property to that defined as a Condominium Project and in which two or more units are
13 newly created wholly or in substantial part within the existing structure of a Large Tourist
14 Hotel, regardless of whether substantial improvements have been made to such
15 structures; or (ii) to change the ownership structure of one or more guest rooms, one or
16 more suites of rooms, or any portion thereof within an existing Large Tourist Hotel in a
17 manner that reduces the number of Large Tourist Hotel Rooms available for rent to the general
18 public.

19 (de) "Dwelling Unit" shall mean any building or portion thereof that contains
20 living facilities, including provisions for sleeping, eating, cooking, and sanitation as
21 required by the Housing Code, for not more than one Family.

22 (ef) "Family" shall mean one or more persons, related or unrelated, living
23 together as a single integrated household in a dwelling unit.

24 (fg) "Large Tourist Hotel" shall mean any building in the City containing 100 or
25 more guest rooms or suites of rooms intended or designated to be used for commercial

1 tourist use by providing accommodation to transient guests on a nightly basis or longer,
2 as contemplated by Section 216(b) of the Planning Code. The definition of Large
3 Tourist Hotel shall include, for purposes of this Chapter, a building (or set of buildings,
4 which shall mean buildings on the same lot, adjacent lots, or within the same block and
5 owned by the same entity) which would have qualified as a Large Tourist Hotel in any of
6 the five years preceding the application for Conversion. A building (or set of buildings)
7 shall not be considered a Large Tourist Hotel if the total number of rooms intended to be
8 operated separately for transient use is less than 100 rooms.

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

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

16 SEC. 41F.3. CONVERSIONS RESTRICTED..

17 (a) General Prohibition. It shall be unlawful for any person to Convert any
18 portion of a Large Tourist Hotel except as provided in this Chapter. *Notwithstanding*
19 *Conversion approval under this Chapter, a Conversion project must in addition obtain all*
20 *applicable City permits and approvals, including any applicable conditional use authorization*
21 *requirements. This Chapter shall not limit City discretion to deny or approve with conditions a*
22 *proposed Conversion project.*

23 (b) Conversion prior to ~~March~~ November 1, 2010. Notwithstanding the
24 foregoing restriction, the Planning Commission may approve use of Conversion credits
25 for a total of up to 550 Large Tourist Hotel Rooms to be Converted prior to ~~March~~

1 November 1, 2010. The Planning Commission shall approve applications for
2 Conversions under this section on a first-come first-served basis. An Applicant's place
3 in the Conversion queue *for the 550 pre-lottery Conversion credits* shall be based upon the
4 date the Planning Department receives a complete *subdivision or environmental*
5 application, *as determined by the Zoning Administrator, and provided the application or*
6 *subsequent written communication identifies the number of tourist hotel rooms to be Converted.*

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

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

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

18 (i) The *Annual update to the Baseline* Inventory shows a net increase of
19 at least 100 Large Tourist Hotel Rooms *over the prior year's inventory, as calculated in*
20 *Section 41F.3(g) below; and during the previous Baseline Inventory year. Large Tourist Hotel*
21 *Rooms lost through authorized conversions shall not be considered for purposes of calculating*
22 *the net increase in Large Tourist Hotel Rooms under this section; and*

23 (ii) *Conducting a lottery would not result in a reduction in the number of*
24 *Large Tourist Hotel Rooms below the 2009 Baseline Inventory, except as provided in Section*
25 *41F.3(g) below. The number of existing Large Tourist Hotel Rooms exceeds the March 2010*

1 ~~Baseline Inventory by at least the number of Conversion credits available in the proposed lottery~~
2 ~~pursuant to subsection (d)(2), below.~~

3 (2) The number of Conversion credits available in each lottery shall equal the
4 net increase in Large Tourist Hotel Rooms during the previous year's inventory. ~~Baseline~~
5 ~~Inventory year, not including Conversions authorized by lottery credits.~~ Large Tourist Hotel
6 Rooms lost through authorized Conversions shall not be considered for purposes of
7 calculating the net increase in Large Tourist Hotel Rooms under this section, as
8 described in Section 41F.3(g), below.

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

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

22 (5) If applicants collectively seek more Conversion credits than are available
23 in the lottery pool, then, after the last winning ticket is drawn, the Planning Department
24 shall draw a reasonable number of alternate tickets for inclusion in a standby list. If,
25 nine months after the lottery, the Planning Department revokes winning credits

1 according to subsection (e)(2), below, the credits shall be reallocated to the standby list,
2 in the order drawn.

3 (e) Large Tourist Hotel Conversion Credits.

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

11 (2) Credits are building-specific and non-transferable, except that if the credit
12 holder does not make diligent and good faith efforts within nine months of issuance of the
13 Conversion credit(s)~~the lottery in support of Conversion~~, the credits ~~will~~ may be revoked and
14 reallocated to the ~~Queue~~ queue, for pre-lottery credits, or the standby list, for lottery
15 credits. Credits shall ~~permanently~~ expire if the applicant or standby-list recipient fails to
16 diligently and in good faith pursue Conversion for any ~~42~~18 consecutive months, as
17 determined by the Zoning Administrator after notice and a public hearing. The Board of
18 Appeals shall hear and determine appeals under this section.

19 (f) Conversion Process.

20 (1) The City may not issue permits related to use of pre-lottery or lottery Conversion
21 credits until and unless the Planning Commission approves a Section 41F.3(g) ~~41F.3(f)~~
22 Conversion application for the proposed Conversion project.

23 (~~1~~2) The notice and hearing requirements applicable to conditional use
24 authorizations shall apply to ~~all~~ Planning Commission's action to approve or deny
25 Conversion applications for use of Conversion credits~~decisions~~ under this Chapter.

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

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

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

8 (iii) A description of the proposed Conversion including the nature of
9 the Conversion, the total number of Large Tourist Hotel Rooms prior to and following
10 Conversion, a description of the area and/or rooms to be Converted, including floor
11 number and location, and the estimated total number of Condominium Units to be
12 created;

13 (iv) Preliminary drawings showing the existing floor plans and proposed
14 floor plans;

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

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

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

22 (viii) Applicants for the lottery must provide information demonstrating
23 that the Conversion will not reduce the supply of Large Tourist Hotel Rooms *to levels*
24 *below the ~~based upon the most recent~~ Baseline Inventory.*

1 (ix) Applicants for Ancillary Hotel Area Conversion must provide
2 information demonstrating that the proposed Conversion will not result in loss of Large
3 Tourist Hotel Rooms in the subject Large Tourist Hotel, including specifying any
4 proposed changes to the subject buildings' inventory of rooms planned in the 5 years
5 following the date of application for Conversion.

6 (x) Applicants for Conversion must pay the Planning Department a
7 processing fee set by the Planning Director at a full cost recovery level.

8 (xi) As a condition of approval, an applicant must provide annual updates to
9 the Planning Department on the status of the approved Conversions until such time as the
10 Conversions are complete or the approved Conversion credits have been used, revoked, or
11 have expired.

12 ~~(3)~~(4) The Zoning Administrator shall make a recommendation regarding the
13 approval, denial, or approval with conditions of the Conversion application to the
14 Planning Commission, based upon whether the proposed Conversion meets Planning
15 Code requirements including, but not limited to, this Chapter. The Planning
16 Commission shall approve the Conversion, deny it, or approve it with conditions. Any
17 member of the public wishing to appeal the decision of the Planning Commission must
18 appeal the decision to the Board of Supervisors pursuant to the appeals process set
19 forth in Section 308 of the Planning Code.

20 (g) Annual Inventory Procedure.

21 (1) Adoption of Annual Inventory. The Planning Commission shall adopt a Baseline
22 Inventory and subsequent Annual Inventories of the number of Large Tourist Hotel Rooms in the
23 City as of March 1 of each year. The Planning Department shall provide the public with an
24 opportunity for meaningful review and comment on Baseline and Annual Inventories, including a
25 public hearing no later than March 15th of each year.

1 (2) Calculating Additions to the Annual Inventory. Large Tourist Hotel Rooms
2 created by new Large Tourist Hotel construction and/or expansion shall be counted as part of
3 the Annual Inventory year in which the City issues final certificates of occupancy.

4 (3) Calculating Losses from the Annual Inventory.

5 (i) Losses of Large Tourist Hotel Rooms shall count in the inventory year in
6 which the rooms cease to be commercially available for rent.

7 (ii) In conducting its Annual Inventory, the Planning Department will
8 distinguish how many Large Tourist Hotel Rooms were lost due to authorized Conversions, and
9 how many were lost for other reasons.

10 (4) Calculating the number of Conversion credits available for the annual lottery.
11 The number of Conversion credits available for each year's lottery shall equal the number of
12 additions as calculated in subsection (2) above, less the number of rooms lost due to reasons
13 other than authorized Conversions, as calculated in subsection (3) above.

14
15 **SEC. 41F.4. ENFORCEMENT.**

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

25 (b) Civil Penalties.

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

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

13 (c) Criminal Penalties.

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

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

20 SEC. 41F.5. SUNSET PROVISION.

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

25 SEC. 41F.6. SEVERABILITY.

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

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7 APPROVED AS TO FORM:
8 DENNIS J. HERRERA, City Attorney

9 By: Andrew W. Garth
10 Deputy City Attorney

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