

BOARD of SUPERVISORS



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MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection
John Rahaim, Director, Planning Department
Jeff Kositsky, Director, Department of Homelessness and Supportive Housing

FROM: Victor Young, Assistant Clerk *Victor Young*
Rules Committee

DATE: December 26, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation on December 10, 2019:

File No. 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.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

C: William Strawn, Building Inspection
Scott Sanchez, Planning Department
Corey Teague, Planning Department
Lisa Gibson, Planning Department
Devyani Jain, Planning Department
Adam Varat, Planning Department
Dan Sider, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Laura Lynch, Planning Department

1 [Administrative Code - Hotel Conversion Ordinance]

2
3 **Ordinance repealing Ordinance Nos. 38-17 and 102-19, and reenacting certain**
4 **provisions by amending the Administrative Code to update the Hotel Conversion**
5 **Ordinance, including: adding or refining definitions of comparable unit, conversion,**
6 **and low-income household; revising procedures for permits to convert residential**
7 **units; harmonizing fees and penalty provisions with the Building Code; eliminating**
8 **seasonal short-term rentals for residential hotels that have violated provisions of the**
9 **Hotel Conversion Ordinance in the previous year; authorizing the Department of**
10 **Building Inspection to issue administrative subpoenas; and affirming the Planning**
11 **Department's determination under the California Environmental Quality Act.**

12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
13 **Additions to Codes** are in *single-underline italics Times New Roman font*.
14 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
15 **Board amendment additions** are in double-underlined Arial font.
16 **Board amendment deletions** are in ~~strikethrough Arial font~~.
17 **Asterisks (* * * *)** indicate the omission of unchanged Code
18 subsections or parts of tables.

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

20 Section 1. Environmental Findings.

21 The Planning Department has determined that the actions contemplated in this
22 ordinance comply with the California Environmental Quality Act (California Public Resources
23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
24 Supervisors in File No. _____ and is incorporated herein by reference. The Board affirms
25 this determination.

1 Section 2. Repeal of Ordinance Nos. 38-17 and 102-19.

2 (a) Except as stated in Section 4 of this ordinance, Ordinance No. 38-17 is hereby
3 repealed in its entirety.

4 (b) Ordinance No. 102-19 is hereby repealed in its entirety.

5 (c) Ordinance No. 38-17 included amendments to Sections 41.3, 41.4, 41.9, 41.10,
6 41.11, 41.12, 41.13, 41.14, 41.19, and 41.20 of the Administrative Code; and Ordinance No.
7 102-19 included a further amendment of Section 41.4. There have been no other
8 amendments to any of those Administrative Code sections following the enactment of
9 Ordinance No. 38-17. Hence the effect of repealing Ordinance Nos. 38-17 and 102-19 is that
10 the text of each of the Administrative Code sections listed above reverts to the text as it
11 existed immediately prior to the effective date of Ordinance No. 38-17.

12 (d) Accordingly, the amendments to Sections 41.3, 41.4, 41.9, 41.10, 41.11, 41.12,
13 41.13, 41.14, 41.19, and 41.20 of the Administrative Code in Section 3 of this ordinance are
14 based on the text of those sections as it existed immediately prior to the effective date of
15 Ordinance No. 38-17.

16
17 Section 3. The Administrative Code is hereby amended by revising Sections 41.3,
18 41.4, 41.9, 41.10, 41.11, 41.12, 41.13, 41.14, 41.19, and 41.20, to read as follows. In
19 accordance with subsection (d) of Section 2 of this ordinance, for purposes of this Section 3,
20 the "Unchanged Code text" referenced in the "Note" that appears under the official title of the
21 ordinance means the text of the Administrative Code sections listed above as it existed
22 immediately prior to the effective date of Ordinance No. 38-17.

23 **SEC. 41.3. FINDINGS.**

24 * * * *

1 ~~(m) Since enactment of this Chapter, residential units have been converted to tourist units and~~
2 ~~the hotel operators have paid the 40 percent in-lieu fee to the City. This amount, 40 percent of the cost~~
3 ~~of construction of comparable units plus site acquisition cost, has not been adequate to provide~~
4 ~~replacement units. Federal, state and local funds were incorrectly assumed at that time to be available~~
5 ~~and sufficient to make up the shortfall between the 40 percent in-lieu fee and actual replacement costs.~~
6 ~~For example, in 1979 the federal government was spending 32 billion dollars on housing and is~~
7 ~~spending only 7 billion dollars in 1989.~~

8 (m #) Certain uses provide both living accommodation and services, such as health
9 care, personal care, and counseling, to residents of the City. Examples of such uses are
10 hospital, skilled nursing facility, AIDS hospice, intermediate care facility, asylum, sanitarium,
11 orphanage, prison, convent, rectory, residential care facility for the elderly, and community
12 care facility. Such facilities are often operated in buildings owned or leased by non-profit
13 organizations and provide needed services to the City's residents. To subject such facilities to
14 the provisions of this Chapter may deter future development of such facilities. It is desirable
15 that such facilities exist and the City should encourage construction and operation of such
16 facilities.

17 (n #) In addition, a form of housing facilities called "transitional housing" provides
18 housing and supportive services to homeless persons and families and is intended to facilitate
19 the movement of homeless individuals and families to independent living or longer term
20 supportive residences in a reasonable amount of time. Transitional housing has individual
21 living quarters with physical characteristics often similar to a residential hotel (i.e.,
22 accommodations which provide privacy to residents) and provides a source of interim housing
23 for homeless individuals and families seeking to live independently.

24 (o #) The City's public, quasi-public, and private social agencies serving the elderly and
25 needy persons often find it difficult to immediately locate suitable housing units for such

1 persons returning to independent living after hospitalization or upon leaving skilled-nursing or
2 intermediate care facilities within a short time after their discharge from a health facility. Such
3 persons often will require minimum supervision and other interim social service support. The
4 provision of a stable number of housing units for such emergency needs until permanent
5 housing can be secured and supportive services arranged are necessary and desirable for the
6 City. Emergency housing will have physical characteristics similar to "transitional housing" and
7 is often intended to be occupied for a period of less than one month.

8 (p q) The City also wishes to provide positive incentives to encourage residential hotel
9 owners and operators to comply with the terms of this Chapter. Hotel owners have expressed
10 a need to rent certain residential units on a short term basis during the winter months. In an
11 effort to address this need and to encourage compliance with this Chapter, the City wishes to
12 provide an opportunity to hotel owners who have complied with the terms of this Chapter to
13 rent a limited number of residential units to tourists during the winter months.

14
15 **SEC. 41.4. DEFINITIONS.**

16 *For purposes of this Chapter 41, the following terms shall have the following meanings:*

17 (a) **Certificate of Use.** Following the initial unit usage and annual unit usage
18 determination pursuant to the provisions of Sections 41.6 and 41.10 below, every hotel shall
19 be issued a certificate of use specifying the number of residential and tourist units herein.

20 (b) **Comparable Unit.** A unit which is similar in size, services, rental amount, and
21 facilities, and is designated the same category of housing as the existing unit, and which is located
22 within the existing neighborhood or within a neighborhood with similar physical and
23 socioeconomic conditions, and is similarly affordable for low income, elderly, and disabled persons.

24 (c) **Conversion.** The change or attempted change of the use of a residential unit ~~as~~
25 ~~defined in subsection (q) below~~ to a tourist use, or the elimination of a residential unit, or the

1 voluntary demolition of a residential hotel. However, a change in the use of a residential hotel
2 unit into a non-commercial use which serves only the needs of the permanent residents, such
3 as a resident's lounge, storeroom community kitchen, or common area, shall not constitute a
4 conversion within the meaning of this Chapter 41, provided that the residential hotel owner
5 establishes that eliminating or re-designating an existing tourist unit instead of a residential unit would
6 be infeasible.

7 ~~(d)~~ **Disabled Person.** A recipient of disability benefits.

8 ~~(e)~~ **Elderly Person.** A person 62 years of age or older.

9 ~~(f)~~ **Emergency Housing.** A project which provides housing and supportive services to
10 elderly or low-income persons upon leaving a health facility and which has its primary purpose
11 ~~of~~ facilitating the return of such individuals to independent living. The emergency housing shall
12 provide services and living quarters pursuant to Section 41.13 herein and may be provided as
13 part of a "transitional housing" project.

14 ~~(g)~~ **Hotel.** Any building containing six or more guest rooms intended or designed to be
15 used, or which are used, rented, or hired out to be occupied or which are occupied for
16 sleeping purposes and dwelling purposes by guests, whether rent is paid in money, goods, or
17 services. It includes motels, as defined in Section 401 Chapter XII, Part II of the San Francisco
18 Municipal Code (Housing Code), but does not include any jail, health facilities as defined ~~by~~ in
19 Section 1250 of the California Health and Safety Code, asylum, sanitarium, orphanage,
20 prison, convent, rectory, residential care facility for the elderly as defined in Section 1569.2 of
21 the Health and Safety Code, residential facilities as defined in Section 1502 of the Health and
22 Safety Code or other institution in which human beings are housed or detained under legal
23 restraint, or any private club and nonprofit organization in existence on September 23, 1979;
24 provided, however, that nonprofit organizations which operated a residential hotel on
25 September 23, 1979, shall comply with the provisions of Section 41.8 herein.

1 ~~(h)~~ **Interested Party.** A permanent resident of a hotel, or his or her authorized
2 representative, or a former tenant of a hotel who vacated a residential unit within the past 90
3 days preceding the filing of a complaint or court proceeding to enforce the provisions of this
4 Chapter 41. Interested party shall also mean any nonprofit organization, as defined in this
5 Section 41.4~~(h)~~, which has the preservation or improvement of housing as a stated purpose in
6 its articles of incorporation and/or bylaws.

7 ~~(i)~~ **Low-Income Household.** A household whose income does not exceed 60%
8 percent of the Area ~~Median~~ Income *as set forth in Charter Section 16.110 for the San Francisco*
9 *Standard Metropolitan Statistical Area as published by the United States Department of Housing and*
10 *Urban Development and Housing and Community Development Act of 1974.*

11 ~~(j)~~ **Low-Income Housing.** Residential units whose rent may not exceed 30% percent of
12 the gross monthly income of a Low-Income ~~Household~~ as defined *in subsection (i) above.*

13 ~~(k)~~ **Nonprofit Organization.** An entity exempt from taxation pursuant to Title 26,
14 Section 501 of the United States Code.

15 ~~(l)~~ **Operator.** *An operator includes* The lessee or any person or legal entity whether or
16 not the owner, who is responsible for the day-to-day operation of a residential hotel and to
17 whom a hotel license is issued for a Residential ~~Hotel~~.

18 ~~(m)~~ **Owner.** *Owner includes a* Any person or legal entity holding any ownership interest
19 in a Residential ~~Hotel~~.

20 ~~(n)~~ **Permanent Resident.** A person who occupies a guest room for at least 32
21 consecutive days.

22 ~~(o)~~ **Posting or Post.** *The display of a notice or information* ~~Where posting is required by this~~
23 ~~Chapter, material shall be posted~~ in a conspicuous location at the front desk in the lobby of the
24 hotel, or if there is no lobby, in the public entranceway. No material posted may be removed
25 by any person except as otherwise provided in this Chapter.

1 ~~(p)~~ **Residential Hotel.** Any building or structure which contains a ~~#~~Residential ~~#~~Unit as
2 defined ~~in (q)~~ below unless exempted pursuant to the provisions of Sections 41.5 or 41.7
3 below.

4 ~~(q)~~ **Residential Unit.** Any guest room as defined in Section ~~401203.7 of Chapter XII,~~
5 ~~Part II~~ of the ~~San Francisco Municipal Code (Housing Code)~~ which had been occupied by a
6 permanent resident on September 23, 1979. Any guest room constructed subsequent to
7 September 23, 1979, or not occupied by a permanent resident on September 23, 1979, shall
8 not be subject to the provisions of this Chapter ~~41~~; provided however, if designated as a
9 residential unit pursuant to Section 41.6 of this Chapter or constructed as a replacement unit,
10 such residential units shall be subject to the provisions of this Chapter.

11 ~~(r)~~ **Tourist Hotel.** Any building containing six or more guest rooms intended or
12 designated to be used for commercial tourist use by providing accommodation to transient
13 guests on a nightly basis or longer. A tourist hotel shall be considered a commercial use
14 pursuant to ~~City~~ Planning Code Section ~~790.46216(b)~~ and shall not be defined as group
15 housing permitted in a residential area under ~~City~~ Planning Code Section 209.~~12~~.

16 * * * *

17 ~~(s)~~ **Tourist Unit.** A guest room which ~~was not occupied on September 23, 1979, by a~~
18 permanent resident or is certified as ~~a #~~Tourist ~~#~~Unit pursuant to Sections 41.6, 41.7, or 41.8
19 below. Designation as a tourist unit under this Chapter ~~41~~ shall not supersede any limitations
20 on use pursuant to the Planning Code.

21 ~~(t)~~ **Transitional Housing.** A project which provides housing and supportive services to
22 homeless persons and families or ~~Low-i~~Low-~~i~~Income ~~h~~Households at risk of becoming homeless
23 which has as its purpose facilitating the movement of homeless individuals or at-risk ~~Low-i~~Low-~~i~~I
24 Income ~~h~~Households to independent living within a reasonable amount of time. The
25 ~~#~~Transitional ~~h~~Housing shall provide services and living quarters as approved by the Planning

1 Commission that are similar to the residential unit being replaced pursuant to Section 41.13
2 herein and shall comply with all relevant provisions of City ordinances and regulations.

3
4 **SEC. 41.9. RECORDS OF USE.**

5 (a) **Daily Log.** Each residential hotel shall maintain a daily log containing the status of
6 each room, whether it is occupied or vacant, whether it is used as a residential unit or tourist
7 unit, the name under which each adult occupant is registered, and the amount of rent
8 charged. Each hotel shall also provide receipts to each adult occupant, and maintain copies of
9 the receipts, showing: the room number; the name of each adult occupant; the rental amount
10 and period paid for; and any associated charges imposed and paid, including but not limited to
11 security deposits and any tax. The daily log and copies of rent receipts shall be available for
12 inspection pursuant to ~~the provision of~~ Section 41.11(c) of this Chapter 41 upon demand by the
13 Director of the Department of Building Inspection or the Director's designee or the City
14 Attorney's Office between the hours of 9 a.m. and 5 p.m., Monday through Friday, unless the
15 Director of the Department of Building Inspection or the City Attorney's Office reasonably
16 believe that further enforcement efforts are necessary for specified residential hotels, in which
17 case the Department of Building Inspection or the City Attorney's Office shall notify the hotel
18 owner or operator that the daily logs and copies of rent receipts shall be available for
19 inspection between the hours of 9 a.m. and 7 p.m. Each hotel shall maintain the daily logs and
20 copies of rent receipts for a period of no less than 24 months. Should an owner or operator
21 object to providing records for inspection, the Director of the Department of Building Inspection shall
22 have the authority to issue administrative subpoenas to investigate and enforce this Chapter's
23 provisions.

24 In addition to the investigative powers and enforcement mechanisms prescribed in this
25 Chapter, the City Attorney's Office shall have the authority to take further investigative action

1 and bring additional enforcement proceedings including ~~the immediate~~ proceedings under
2 California Civil Code Section 1940.1.

3 * * * *

4
5 **SEC. 41.10. ANNUAL UNIT USAGE REPORT.**

6 (a) **Filing.** On November 1~~st~~ of each year, every hotel owner or operator subject to this
7 Chapter 41 shall file under penalty of perjury with the Department of Building Inspection, either
8 through an online form on the Department's website or a paper copy delivered to the Department, an
9 Annual Unit Usage Report containing the following information:

10 (1) The total number of units in the hotel as of October 15~~th~~ of the year of filing;

11 (2) The number of residential and tourist units as of October 15~~th~~ of the year of
12 filing;

13 (3) The number of vacant residential units as of October 15~~th~~ of the year of
14 filing; if more than 50% percent of the units are vacant, ~~explain~~ an explanation why;

15 (4) The average rent for the residential hotel units as of October 15~~th~~ of the year
16 of filing;

17 (5) The number of residential units rented by week or month as of October 15~~th~~
18 of the year of filing; and

19 (6) The designation by room number and location of the residential units and
20 tourist units as of October 15~~th~~ of the year of filing, along with a graphic floorplan reflecting room
21 designations for each floor. ~~The O~~owner or operator shall maintain such designated units as
22 tourist or residential units for the following year unless the owner or operator notifies in writing
23 the Department of Building Inspection of a redesignation of units; the owner or operator may
24 redesignate units throughout the year, provided they notify the Department of Building
25 Inspection in writing by the next business day following such redesignation, and update the

1 graphic floorplan on file with the Department of Building Inspection and maintain the proper
2 number of residential and tourist units at all times. The purpose of this provision is to simplify
3 enforcement efforts while providing the owner or operator with reasonable and sufficient
4 flexibility in designation and renting of rooms;

5 (7) The nature of services provided to the permanent residents and whether
6 there has been an increase or decrease in the services so provided;

7 (8) A copy of the Daily Log, showing the number of units which are residential,
8 tourist, or vacant on the first Friday of each month ~~October 1st, February 1st, May 1st and August 1st~~
9 of the year of filing.

10 (b) **Notice of Annual Unit Usage Report.** On the day of filing, the owner or operator
11 shall post a notice that a copy of the Annual Unit Usage Report submitted to the Department
12 of Building Inspection is available for inspection between the hours of 9:00 a.m. and 5:00 p.m.
13 Monday through Friday, which notice shall remain posted for 30 days. The Department shall
14 maintain a list of those properties that have filed or failed to submit annual reports on its website.

15 (c) **Extension of Time for Filing.** Upon application by an owner or operator and upon
16 showing good cause therefor, the Director of the Department of Building Inspection may grant
17 one extension of time not to exceed 30 days for said filing.

18 (d) **Certificate of Annual Unit Usage Report.** After receipt of a completed Annual
19 Unit Usage Report, the Department of Building Inspection shall issue a certified
20 acknowledgment of receipt.

21 (e) **Renewal of Hotel License and Issuance of New Certificate of Use.** As of the
22 effective date of this Chapter 41, no hotel license may be issued to any owner or operator of a
23 hotel unless the owner or operator presents with his/her/the license application a certified
24 acknowledgment of receipt from the Department of Building Inspection of the Annual Unit
25 Usage Report for the upcoming year.

1 (f) **Insufficient Filing; Penalties.** The Director of the Department of Building
2 Inspection is authorized to assess a penalty as set forth below for insufficient filing, with
3 interest on the penalty accruing at the rate of 1.5%~~one and one-half percent~~ per full month,
4 compounded monthly from the date the penalty is due as stated in the Director's written
5 notification below.

6 If the Director or the Director's designee determines that additional information is
7 needed to make a determination, ~~he~~ the Director or designee shall send both the owner and
8 operator a written request to furnish such information within 15 calendar days of the mailing of
9 the written request. The letter shall state that if the requested information, or a response
10 explaining why the requested information will not be provided, is not furnished in the time required,
11 the residential and tourist units shall be presumed to be unchanged from the previous year
12 and that the Director shall impose a \$500 penalty for failure to furnish the additional
13 information within the 15-day period, and a \$500 penalty for each day after the 15-day period for
14 which the owner or operator fails to furnish the requested information or explanation. If the Director
15 does not timely receive the information, the Director shall notify both the owner and operator,
16 by mail or electronic mail, that the Director is imposing a \$500 per day penalty and that the
17 accumulated penalty ~~which~~ must be paid within 30 days of the mailing of the notification, and
18 that interest on the penalty shall accrue from the expiration of the 30 days at the rate of
19 1.5%~~one and one-half percent~~ per full month, compounded monthly. The written notification shall
20 state that if the penalty is not paid, a lien to secure the amount of the penalty, plus the
21 accrued interest, will be recorded against the real property pursuant to the provisions of
22 Section 41.20(d) of this Chapter 41, and that the Residential Hotel will not be eligible for any
23 temporary tourist rentals as provided in Section 41.19 for 12 months.

24 (g) **Failure to File Annual Unit Usage Report; Penalties.** The Director of the
25 Department of Building Inspection is authorized to assess penalties as set forth below for

1 failure to file an Annual Unit Usage Report, with interest on penalties accruing at the rate of
2 ~~1.5%~~~~one and one-half percent~~ per full month, compounded monthly from the date the penalty is
3 due as stated in the Director's notification below.

4 If the owner or operator fails to file an Annual Unit Usage Report, the Director or the
5 Director's designee shall notify the owner and operator by registered or certified mail and shall
6 post a notice informing the owner and operator that unless submission of the Annual Unit
7 Usage Report and application for renewal of the hotel license is made within 15 calendar days
8 of the mailing of the letter, the residential and tourist units shall be presumed to be unchanged
9 from the previous year, and the Director shall impose a penalty of ~~\$500~~1,000 per month ~~effor~~
10 each month the annual report is not filed and the Residential Hotel will be not be eligible for any
11 temporary tourist rentals as provided in Section 41.19 for the next 12 months. If the Director does
12 not receive the report, the Director shall notify both the owner and operator, by mail that the
13 Director is imposing the appropriate penalty, as prorated, which must be paid within 30 days
14 of the mailing of the notification and that interest on the penalty shall accrue from the
15 expiration of the 30 days at the rate of ~~1.5%~~~~one and one-half percent~~ per full month,
16 compounded monthly. The written notification shall state that if the penalty is not paid, a lien
17 to secure the amount of the penalty, plus the accrued interest, will be recorded against the
18 real property pursuant to the provisions of Section 41.20(d) of this Chapter 41.

19 * * * *

20
21 **SEC. 41.11. ADMINISTRATION.**

22 (a) **Fees.** The owner or operator shall pay the ~~following~~ filing fees to the Department of
23 Building Inspection to cover its costs of investigating and reporting on eligibility, as set forth in.
24 See Section 110A333.2, Hotel Conversion Ordinance Fee Schedule, Table 1A-Q, Part II, Chapter
25 1 of the San Francisco Municipal Code (Building Code) for the applicable fees. Further, tThe party

1 that brings an unsuccessful challenge to a report pursuant to this ~~Chapter 41Article~~ shall be
2 liable for the ~~changecharge~~ in Section ~~110A333.2~~, Hotel Conversion ~~Ordinance~~ Fee Schedule,
3 Unsuccessful Challenge, ~~Table 1A-Q- Part II, Chapter 1~~ of the ~~San Francisco Municipal Code~~
4 (~~Building Code~~). Fees shall be waived for an individual who files an affidavit under penalty of
5 perjury stating that he or she is an indigent person who cannot pay the filing fee without using
6 money needed for the necessities of life.

7
8 ~~SEE SAN FRANCISCO MUNICIPAL CODE~~

9 ~~(BUILDING CODE) SECTION 333.2110A, TABLE 1A-Q~~

10 ~~HOTEL CONVERSION ORDINANCE FEE SCHEDULE~~

11
12 **(b) Hearing.**

13 (1) **Notice of Hearing.** Whenever a hearing is required or requested ~~in~~ under
14 this Chapter 41, the Director of the Department of Building Inspection shall, within 45 calendar
15 days, notify the owner or operator of the date, time, place, and nature of the hearing by
16 registered or certified mail. The Director of the Department of Building Inspection shall appoint
17 a hearing officer. Notice of such a hearing shall be posted by the Department of Building
18 Inspection. The owner or operator shall state under oath at the hearing that the notice
19 remained posted for at least 10 calendar days prior to the hearing. Said notice shall state that
20 all permanent residents residing in the hotel may appear and testify at the public hearing,
21 provided that the Department of Building Inspection is notified of such an intent 72 hours prior
22 to the hearing date.

23 (2) **Pre-hearing Submission.** No less than three working days prior to any
24 hearing, parties to the hearing shall submit written information to the Department of Building
25 Inspection including, but not limited to, the following: the request or complaint, the statement

1 of issues to be determined by the Hearing Officer; and a statement of the evidence upon
2 which the request or complaint is based.

3 (3) **Hearing Procedure.** If more than one hearing for the same hotel is
4 required, the Director of the Department of Building Inspection shall consolidate all of the
5 appeals and challenges into one hearing; however, if a civil action has been filed pursuant to
6 ~~the provisions of~~ Section 41.20(e) of ~~the~~ Chapter 41, all hearings on administrative complaints
7 of unlawful conversions involving the same hotel shall be abated until such time as final
8 judgment has been entered in the civil action; an interested party may file a complaint in
9 intervention. The hearing shall be tape recorded. Any party to the appeal may, at his/her own
10 expense, cause the hearing to be recorded by a certified court reporter. The hearing officer is
11 empowered to issue subpoenas upon application of the parties seven calendar days prior to
12 the date of the hearing. During the hearing, evidence and testimony may be presented to the
13 hearing officer. Parties to the hearing may be represented by counsel and have the right to
14 cross-examine witnesses. All testimony shall be given under oath. Written decision and
15 findings shall be rendered by the hearing officer within ~~twenty~~ 20 working days of the hearing.
16 Copies of the findings and decision shall be served upon the parties to the hearing by
17 registered or certified mail. A notice that a copy of the findings and decisions is available for
18 inspection between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday shall be
19 posted by the owner or operator.

20 (4) **Administrative Review.** Unless otherwise expressly provided in this
21 Chapter 41, any decision of the hearing officer shall be final unless a valid written appeal is
22 filed with the Board of ~~Permit~~ Appeals within 15 days following the date of the hearing officer's
23 written determination. Such an appeal may be taken by any interested party as defined by
24 Section 41.4(~~g~~) herein.
25

1 (c) **Inspection.** The Director of the Department of Building Inspection shall have the
2 authority to issue administrative subpoenas as necessary or appropriate to conduct inspections
3 pursuant to this Chapter 41. The Director of the Department of Building Inspection shall
4 conduct, from time to time, on-site inspections of the daily logs, other supporting documents,
5 including the graphic floorplan, and units listed as vacant in the daily logs, to determine if the
6 owner or operator has complied with the provisions of this Chapter. In addition, the Director of
7 the Department of Building Inspection or the Director's designee shall conduct such an
8 inspection as soon as practicable upon the request of a current or former occupant of the
9 hotel. If, upon such an inspection, the Director or Director's designee determines that an
10 apparent violation of the provisions of this Chapter has occurred, ~~he/she~~ the Director or designee
11 shall post a notice of apparent violation informing the permanent residents of the hotel thereof,
12 or shall take action as set forth in Section 41.11(d) and (e) below. This notice shall remain
13 posted until the Director of the Department of Building Inspection, or the Director's designee,
14 determines that the hotel is no longer in violation of the provisions of this Chapter.

15 (d) **Criminal Penalties for Violations.** Any person or entity wilfully failing to maintain
16 daily logs or provide and maintain receipts as provided in Sections 41.9(a) and (b) of this
17 Chapter 41, or failing to post materials as provided in Sections 41.6(a), (c), (d), and (f),
18 41.9(b), 41.10(b), (g), and (h), 41.11(b)(3), 41.12(b)(10), and 41.18(b) and (c) of this Chapter
19 or wilfully providing false information in the daily logs, shall be guilty of an infraction for the
20 first such violation or a misdemeanor for any subsequent violation, and the complaint charging
21 such violation shall specify whether the violation charged is a misdemeanor or an infraction.

22 If charged as an infraction, the penalty upon conviction therefor shall be not less than
23 \$100 or more than \$500.
24
25

1 If charged as a misdemeanor, the penalty upon conviction therefor shall be a fine of not
2 less than \$500 or more than \$1,000 or imprisonment in the county jail, not exceeding six
3 months, or both fine and imprisonment.

4 Every day such violation shall continue shall be considered as a new offense.

5 For purposes of Sections 41.11(d) and (e), violation shall include, but not limited to,
6 intentional disobedience, omission, failure or refusal to comply with any requirement imposed
7 by the aforementioned Sections or with any notice or order of the Director of the Department
8 of Building Inspection or the Director of Public Works regarding a violation of this Chapter.

9 (e) **False Information Misdemeanor.** It shall be unlawful for an owner or operator to
10 wilfully provide false information to the Director of the Department of Building Inspection or the
11 Director's designees. Any owner or operator who files false information shall be guilty of a
12 misdemeanor. Conviction of a misdemeanor hereunder shall be punishable by a fine of not
13 more than \$500 or by imprisonment in the County Jail for a period not to exceed six months,
14 or by both.

15 (f) The Director of the Department of Building Inspection may impose a penalty of
16 ~~\$250~~500 per violation for failure to maintain daily logs or for failure to maintain and provide
17 receipts to occupants as required under Section 41.9 above and for failure to post materials
18 as required under Sections 41.6(a), (c), (d), and (f), 41.9(b), 41.10(b), (g), and (h), 41.11(b)
19 (3), 41.12(b)(10), and 41.18(b) and (c). In order to impose such penalties, the Director shall
20 notify both the owner and operator by certified mail that the Director is imposing the penalty or
21 penalties, which must be paid within 30 days of the mailing of the notification. The written
22 notification shall state that if the penalty is not paid, a lien to secure the amount of the penalty
23 will be recorded against the real property pursuant to ~~the provisions of~~ Section 41.20(d) of this
24 Chapter 41.

1 (g) **Costs of Enforcement.** ~~*The Department of Building Inspection shall be entitled to*~~
2 ~~*recover costs for enforcement as provided in Building Code Section 102A.7(d). The proceeds from the*~~
3 ~~*filing fees and civil fines assessed shall be used exclusively to cover the costs of investigation and*~~
4 ~~*enforcement of this ordinance by the City and County of San Francisco. The Director of the*~~
5 ~~*Department of Building Inspection shall annually report these costs to the Board of Supervisors and*~~
6 ~~*recommend adjustments thereof.*~~

7 (h) **Inspection of Records.** The Department of Building Inspection shall maintain a file
8 for each residential hotel which shall contain copies of all applications, exemptions, permits,
9 reports, and decisions filed pursuant to the provisions of this Chapter 41. All documents
10 maintained in said files, except for all tax returns and documents specifically exempted from
11 the California Public Record^s Act, shall be made available for public inspection and copying.

12 (i) **Promulgation of Rules and Regulations.** The Director of the Department of
13 Building Inspection shall propose rules and regulations governing the appointment of an
14 administrative officer and the administration and enforcement of this Chapter 41. After
15 reasonable notice and opportunity to submit written comment are given, final rules and
16 regulations shall be promulgated.

17 **SEC. 41.12. PERMIT TO CONVERT.**

18 (a) Any owner or operator, or his/her authorized agent, of a residential hotel may apply
19 for a permit to convert one or more residential units by submitting an application and the
20 required fee to the Central Permit Bureau.

21 (b) The permit application shall contain the following information:

22 (1) The name and address of the building in which the conversions are
23 proposed and of the building where replacement housing will be located; and

24 (2) The names and addresses of all owners or operators of said building^s; and
25

1 (3) A description of the proposed conversion including the specific method under
2 Section 41.13(a) that the owner or operator selects as the nature of the conversion, the total
3 number of units in the building, and their current uses; and

4 (4) The room numbers and locations of the units to be converted; and

5 (5) Preliminary drawings showing the existing floor plans and proposed floor
6 plans; and

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

9 (7) The current rental rates for each residential unit to be converted or, if
10 currently unoccupied, the most recent rental rate when last occupied; and

11 (8) The length of tenancy of the permanent residents affected by the proposed
12 conversion; and

13 (9) A statement regarding how one-for-one replacement of the units to be
14 converted will be accomplished, citing the specific provision(s) of Section 41.13(a) the application
15 has selected for replacement, and including sufficiently detailed financial information, such as letters
16 of intent and contracts, establishing how the owner or operator is constructing or causing to construct
17 the proposed location of replacement housing if replacement is to be provided off-site; and

18 (10) A declaration under penalty of perjury from the owner or operator stating
19 that he/she has complied with the provisions of Section 41.14(b) below and his/her filing of a
20 permit to convert. On the same date of the filing of the application, a notice that an application
21 to convert has been filed shall be posted until a decision is made on the application to convert.

22 (c) Upon receipt of a completed application to convert or demolish, the Department of
23 Building Inspection shall send the application to the Planning Department of City Planning for
24 review and shall mail notice of such application to interested community organizations and
25 such other persons or organizations who have previously requested such notice in writing.

1 The notice shall identify the hotel requesting the permit, the nature of the permit, the proposal
2 to fulfill the replacement requirements of Section 41.13 herein, and the procedures for
3 requesting a public hearing. *The Owner* or operator shall post a notice informing permanent
4 residents of such information upon submission of a complete application.

5 (d) Any interested party may submit a written request within ~~1520~~ days of the date *that*
6 *the Department of Building Inspection mailed the* notice ~~is posted~~ pursuant to subsection (c) above
7 to the ~~City~~ Planning Commission to schedule and conduct a public hearing on the proposed
8 conversion in order to solicit public opinion on whether to approve or deny a permit to convert
9 or demolish residential units and to determine whether proposed replacement units are
10 "comparable units" as defined in Section 41.4~~(b)~~ herein.

11 **SEC. 41.13. ONE-FOR-ONE REPLACEMENT.**

12 (a) Prior to the issuance of a permit to convert, the owner or operator shall provide
13 one-for-one replacement of the units to be converted by one of the following methods:

14 (1) Construct or cause to be constructed a comparable unit to be made
15 available at comparable rent to replace each of the units to be converted; or

16 (2) Cause to be brought back into the housing market a comparable unit from
17 any building which was not subject to the provisions of this Chapter 41; or

18 (3) Construct or cause to be constructed or rehabilitated apartment units for
19 elderly, disabled, or low-income persons or households which may be provided at a ratio of
20 less than one-to-one; or construct or cause to be constructed transitional housing which may
21 include emergency housing. The construction of any replacement housing under this
22 subsection shall be subject to restrictions recorded against title to the real property and be
23 evaluated by the ~~City~~ Planning Commission in accordance with the provisions of Section 303
24 of the ~~City~~ Planning Code. A notice of said ~~City~~ Planning Commission hearing shall be posted
25 by the owner or operator 10 calendar days before the hearing; or

1 (4) Pay to the City and County of San Francisco an amount equal to 80%
2 *percent* of the cost of construction of an equal number of comparable units plus site acquisition
3 cost. All such payments shall go into a San Francisco Residential Hotel Preservation Fund
4 Account. The Department of Real Estate shall determine this amount based upon two
5 independent appraisals; or

6 (5) Contribute to a public entity or nonprofit organization, ~~wh~~*which* will use the
7 funds to construct comparable units, an amount at least equal to 80% *percent* of the cost of
8 construction of an equal number of comparable units plus site acquisition cost. The
9 Department of Real Estate shall determine this amount based upon two independent
10 appraisals. In addition to compliance with all relevant City ordinances and regulations, the
11 public entity or nonprofit organization and the housing development proposal of such public
12 entity or nonprofit organization shall be subject to approval by the Mayor's Office of Housing
13 *and Community Development*.

14 * * * *

15
16 **SEC. 41.14. MANDATORY DENIAL OF PERMIT TO CONVERT.**

17 A permit to convert shall be denied by Director of the Department of Building Inspection
18 if:

19 (a) The requirements of Sections 41.12 or 41.13, above, have not been fully complied
20 with;

21 (b) The application is incomplete or contains incorrect information;

22 (c) An applicant has committed unlawful action as defined in this Chapter 41 within 12
23 months ~~previous~~ *prior* to the ~~issuance~~ *filing of* ~~for~~ a permit to convert *application*; *or*

24 (d) The proposed conversion or the use to which the unit would be converted is not
25 permitted by the ~~City~~ Planning Code.

1 * * * *

2
3 **SEC. 41.19. TEMPORARY CHANGE OF OCCUPANCY.**

4 (a) **Temporary Change of Occupancy.**

5 (1) A tourist unit may be rented to a permanent resident, until voluntary vacation
6 of that unit by the permanent resident or upon eviction for cause, without changing the legal
7 status of that unit as a tourist unit.

8 (2) A permanent resident may be relocated for up to 21 days to another unit in
9 the residential hotel for purposes of complying with the Building Code requirements imposed
10 by the UMB Seismic Retrofit Ordinance, Ordinance No. 219-92, without changing the
11 designation of the unit.

12 (3) A residential unit which is vacant at any time during the period commencing
13 on May 1~~st~~ and ending on September 30~~th~~ annually may be rented as a tourist unit, provided
14 that the owner or operator establishes, and the Department of Building Inspection confirms, that: (A*i*)
15 the residential unit was vacant due to voluntary vacation of a permanent resident or ~~was vacant~~
16 due to lawful eviction for cause after the permanent resident was accorded all the rights
17 guaranteed by State and local laws during his/her tenancy, (B*ii*) ~~the daily log shows that~~ the
18 residential unit was legally occupied for at least 50% ~~percent~~ of the period commencing on
19 October 1~~st~~ and ending on April 30~~th~~ of the previous year, unless owner or operator can
20 produce evidence to the Department of Building Inspection explaining such vacancy to the
21 satisfaction of the Department ~~of Building Inspection~~, including but not limited to such factors as
22 repair or rehabilitation work performed in the unit or good-faith efforts to rent the unit at fair
23 market value; ~~and~~ (C*iii*) the residential unit shall immediately revert to residential use upon
24 application of a prospective permanent resident; ~~and~~ (D) the owner or operator has not committed
25 unlawful action as defined in this Chapter 41 within 12 months prior to this request.

1 **25-percent Limit.**

2 However, at no time during the period commencing on May 1~~st~~ and ending on
3 September 30~~th~~ may an owner or operator rent for nonresidential use or tourist use more than
4 25% ~~percent~~ of the hotel's total residential units unless the owner or operator can demonstrate
5 that (~~A~~) the requirements of Section 41.19(a)(3) above are met, and (~~B~~) good-faith efforts
6 were made to rent such units to prospective permanent residents at fair market value for
7 comparable units and that such efforts failed ~~and (iii) the owner or operator has not committed~~
8 ~~unlawful action as defined in this Chapter within 12 months prior to this request.~~ Owners or
9 operators who seek to exceed this limit must request a hearing pursuant to Section 41.11(b)
10 above and the decision whether to permit owners or operators to exceed this limit is within the
11 discretion of the hearing officer.

12 (b) Special Requirements for Hearings on Tourist Season Rental of Residential Units.

13 Where an owner or operator seeks a hearing in order to exceed the limit on tourist season
14 rental of vacant residential units pursuant to Section 41.19(a)(3), the requirements of Section
15 41.11(b)(1), (b)(2), and (b)(3) above shall be applicable except as specifically modified or
16 enlarged herein:

17 * * * *

18 (5) Determination of the Hearing Officer. Based upon the evidence presented at
19 the hearing, conducted in accordance with Section 41.11(b)(3) above, the hearing officer shall
20 make findings as to (~~i~~) whether the residential unit was vacant due to voluntary vacation of a
21 permanent resident or was vacant due to lawful eviction, (~~ii~~) whether the residential unit was
22 occupied for at least 50% ~~percent~~ of the period commencing on October 1 and ending on April
23 30~~th~~ of the previous year, (~~iii~~) whether the owner or operator has committed unlawful action
24 under this Chapter 41 within 12 months prior to this request, and (~~iv~~) whether the owner or
25 operator made good-faith efforts to rent vacant residential units to prospective permanent

1 residents at no more than fair market value for a comparable unit during the tourist season
2 and yet was unable to secure such rentals. Good-faith efforts shall include, but not be limited
3 to, advertising the availability of the residential units to the public. In determining fair market
4 value of the residential units, the hearing officer shall consider any data on rental of
5 comparable units, as defined in Section 41.4~~(b)~~ herein.

6 * * * *

7
8 **SEC. 41.20. UNLAWFUL CONVERSION; REMEDIES; FINES.**

9 (a) **Unlawful Actions.** It shall be unlawful to:

10 (1) Change the use of, or to eliminate a residential hotel unit or to demolish a
11 residential hotel unit except pursuant to a lawful abatement order, without first obtaining a
12 permit to convert in accordance with the provisions of this Chapter 41;

13 (2) Rent any residential unit for a term of tenancy less than seven days except
14 as permitted by Section 41.19 of this Chapter;

15 (3) Offer for rent for nonresidential use or tourist use a residential unit except as
16 permitted by this Chapter.

17 (b) **Hearing for Complaints of Unlawful Conversions.** Upon the filing of a complaint
18 ~~by an interested party~~ that an unlawful conversion has occurred and payment of the required
19 fee, the Director of the Department of Building Inspection shall schedule a hearing pursuant to
20 ~~the provisions of~~ Section 41.11(b). The complainant shall bear the burden of proving that a unit
21 has been unlawfully converted. The hearing officer shall consider, among others, the following
22 factors in determining whether a conversion has occurred:

23 (1) Shortening of the term of an existing tenancy without the prior approval of
24 the permanent resident;

1 (2) Reduction of the basic services provided to a residential unit intended to
2 lead to conversion. For the purpose of this subsection (b)(2), basic services are defined as
3 access to common areas and facilities, food service, housekeeping services, and security;

4 (3) Repeated failure to comply with orders of the Department of Building
5 Inspection or the Department of Public Health to correct code violations with intent to cause
6 the permanent residents to voluntarily vacate the premises;

7 (4) Repeated citations by the Director of the Department of Building Inspection
8 or the Department of Public Health for Code violations;

9 (5) Offer of the residential units for nonresidential use or tourist use except as
10 permitted in this Chapter 41;

11 (6) Eviction or attempts to evict a permanent resident from a residential hotel on
12 grounds other than those specified in Sections 37.9(a)(1) through 37.9(a)(8) of the ~~San~~
13 ~~Francisco~~ Administrative Code except where a permit to convert has been issued; and

14 (7) Repeated posting by the Director of the Department of Building Inspection of
15 notices of apparent violations of this Chapter 41 pursuant to Section 41.11(c) above.

16 (c) **Civil Penalties.** Where the hearing officer finds that an unlawful conversion has
17 occurred, the Director of the Department of Building Inspection shall impose a civil penalty of
18 ~~three times the daily rate up to \$500~~ per day for each unlawfully converted unit from the day the
19 complaint is filed until such time as the unit reverts to its authorized use, for the first unlawful
20 conversion at a Residential Hotel within a calendar year. For the second and any subsequent unlawful
21 conversions at the same Residential Hotel within the same calendar year, the Director of the
22 Department of Building Inspection shall impose a civil penalty of up to \$750 per day for each
23 unlawfully converted unit from the day the complaint is filed until such time as the unit reverts to its
24 authorized use. The daily rate shall be the rate unlawfully charged by the hotel owner or operator to
25 the occupants of the unlawfully converted unit. The Director may also impose penalties upon the

1 owner or operator of the hotel to reimburse the City or the complainant for the costs, including
2 reasonable attorneys' fees, of enforcement, ~~including reasonable attorneys' fees~~, of this Chapter.

3 The hearing officer's decision shall notify the parties of this penalty provision and shall state
4 that the Director of the Department of Building Inspection is authorized to impose the
5 appropriate penalty by written notification to both the owner and operator, requesting payment
6 within 30 days. If the penalty imposed is not paid, a lien to secure the amount of the penalty
7 will be recorded against the real property pursuant to the provisions of Section 41.20(d) of this
8 Chapter 41.

9 (d) **Lien Proceedings.** If any penalty imposed pursuant to Sections 41.10(d), 41.10(f),
10 41.10(g), 41.11(f), or 41.20(c) is not received within the required time period, the Director of
11 the Department of Building Inspection shall initiate proceedings under Article XX of Chapter
12 10 of the San Francisco Administrative Code to make the penalty, plus accrued interest, a lien
13 against the real property regulated under this Chapter. Except for the release of lien recording
14 fee authorized by Administrative Code Section 10.237, all sums collected by the Tax Collector
15 pursuant to this ordinance shall be held in trust by the Treasurer and distributed as provided in
16 Section 41.8(e) of this Chapter.

17 * * * *

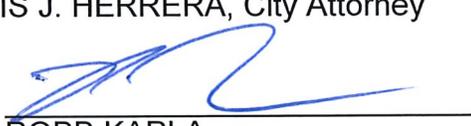
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19 Section 4. This ordinance has revised Administrative Code Section 41.4 by removing
20 letter designations for defined terms, as did Ordinance No. 38-17. To the extent Ordinance
21 No. 38-17 amended any cross-references to Section 41.4 in the Municipal Code to reflect the
22 removal of the letter designations in Section 41.4, including in Administrative Code Sections
23 41D.1 and 41E.1 and Police Code Section 919.1, and, at the direction of the City Attorney,
24 anywhere else in the Municipal Code, that feature – and only that feature – of Ordinance No.
25 38-17 is not repealed.

1 Section 5. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

5
6 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
8 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
10 additions, and Board amendment deletions in accordance with the "Note" that appears under
11 the official title of the ordinance. For purposes of this Section 6, and consistent with Section 3
12 of this ordinance, the Municipal Code referenced herein is the text of the Administrative Code
13 sections amended in Section 3 as it existed immediately prior to the effective date of
14 Ordinance No. 38-17.

15
16 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

17
18 By:


ROBB KAPLA
Deputy City Attorney

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