

1 [Administrative Code - Update Hotel Conversion Ordinance]

2

3 **Ordinance amending Administrative Code, Chapter 41, to update the Hotel Conversion**  
4 **Ordinance, including: adding or refining definitions of tourist and transit use,**  
5 **comparable unit, conversion, and low-income household; revising procedures for**  
6 **permits to convert residential units; harmonizing fees and penalty provisions with the**  
7 **Building Code; eliminating seasonal short-term rentals for residential hotels that have**  
8 **violated provisions of the Hotel Conversion Ordinance in the previous year; authorizing**  
9 **the Department of Building Inspection to issue administrative subpoenas; adding an**  
10 **operative date; and affirming the Planning Department's determination under the**  
11 **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.

16

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

18

19 Section 1. Environmental Findings.

20 The Planning Department has determined that the actions contemplated in this  
21 ordinance comply with the California Environmental Quality Act (California Public Resources  
22 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
23 Supervisors in File No. 161291 and is incorporated herein by reference. The Board affirms  
24 this determination.

25

1 Section 2. The Administrative Code is hereby amended by revising Sections 41.3,  
2 41.4, 41.9, 41.10, 41.11, 41.12, 41.13, 41.14, 41.19, and 41.20, to read as follows:

3 **SEC. 41.3. FINDINGS**

4 \* \* \* \*

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

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

21 (n) In addition, a form of housing facilities called "transitional housing" provides  
22 housing and supportive services to homeless persons and families and is intended to facilitate  
23 the movement of homeless individuals and families to independent living or longer term  
24 supportive residences in a reasonable amount of time. Transitional housing has individual  
25 living quarters with physical characteristics often similar to a residential hotel (i.e.

1 accommodations which provide privacy to residents) and provides a source of interim housing  
2 for homeless individuals and families seeking to live independently.

3 (d p) The City's public, quasi-public and private social agencies serving the elderly and  
4 needy persons often find it difficult to immediately locate suitable housing units for such  
5 persons returning to independent living after hospitalization or upon leaving skilled-nursing or  
6 intermediate care facilities within a short time after their discharge from a health facility. Such  
7 persons often will require minimum supervision and other interim social service support. The  
8 provision of a stable number of housing units for such emergency needs until permanent  
9 housing can be secured and supportive services arranged are necessary and desirable for the  
10 City. Emergency housing will have physical characteristics similar to "transitional housing" and  
11 is often intended to be occupied for a period of less than one month.

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

18  
19 **SEC. 41.4. DEFINITIONS.**

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

23 (b) **Comparable Unit.** A unit which is similar in size, services, rental amount, and  
24 facilities, and is designated the same category of housing as the existing unit, and ~~which~~ is located  
25

1 within the existing neighborhood or within a neighborhood with similar physical and  
2 socioeconomic conditions, and is similarly affordable for low income, elderly, and disabled persons.

3 (e) **Conversion.** The change or attempted change of the use of a residential unit ~~as~~  
4 ~~defined in subsection (q) below~~ to a Tourist or Transient~~tourist~~ use, or the elimination of a  
5 residential unit, or the voluntary demolition of a residential hotel. However, a change in the  
6 use of a residential hotel unit into a non-commercial use which serves only the needs of the  
7 permanent residents, such as a resident's lounge, ~~storeroom~~community kitchen, or common  
8 area, shall not constitute a conversion within the meaning of this Chapter 41, provided that the  
9 residential hotel owner establishes that eliminating or re-designating an existing tourist unit instead of  
10 a residential unit would be infeasible.

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

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

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

18 (g) **Hotel.** Any building containing six or more guest rooms intended or designed to be  
19 used, or which are used, rented, or hired out to be occupied or which are occupied for  
20 sleeping purposes and dwelling purposes by guests, whether rent is paid in money, goods, or  
21 services. It includes motels, as defined in Section 401~~Chapter XII, Part II~~ of the ~~San Francisco~~  
22 ~~Municipal Code~~ (Housing Code), but does not include any jail, health facilities as defined ~~by~~ in  
23 Section 1250 of the California Health and Safety Code, asylum, sanitarium, orphanage,  
24 prison, convent, rectory, residential care facility for the elderly as defined in Section 1569.2 of  
25 the Health and Safety Code, residential facilities as defined in Section 1502 of the Health and

1 Safety Code or other institution in which human beings are housed or detained under legal  
2 restraint, or any private club and nonprofit organization in existence on September 23, 1979;  
3 provided, however, that nonprofit organizations which operated a residential hotel on  
4 September 23, 1979, shall comply with the provisions of Section 41.8 herein.

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

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

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

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

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

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

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

1           ~~(e)~~ **Posting or Post.** Where posting is required by this Chapter 41, material shall be  
2 posted in a conspicuous location at the front desk in the lobby of the hotel, or if there is no  
3 lobby, in the public entranceway. No material posted may be removed by any person except  
4 as otherwise provided in this Chapter.

5           ~~(f)~~ **Residential Hotel.** Any building or structure which contains a ~~r~~Residential ~~#~~Unit as  
6 defined ~~in (g)~~ below unless exempted pursuant to the provisions of Sections 41.5 or 41.7  
7 below.

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

15           ~~(r)~~ **Tourist Hotel.** Any building containing six or more guest rooms intended or  
16 designated to be used for commercial tourist use by providing accommodation to transient  
17 guests on a nightly basis or longer. A tourist hotel shall be considered a commercial use  
18 pursuant to ~~City~~ Planning Code Section 790.46216(b) and shall not be defined as group  
19 housing permitted in a residential area under ~~City~~ Planning Code Section 209.12.

20           **Tourist or Transient Use.** Any use of a guest room for less than a 32-day term of tenancy by a  
21 party other than a Permanent Resident or prospective Permanent Resident.

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

1           (+) **Transitional Housing.** A project which provides housing and supportive services to  
2 homeless persons and families or ~~Low-i~~Income ~~h~~Households at risk of becoming homeless  
3 which has as its purpose facilitating the movement of homeless individuals or at-risk ~~Low-i~~  
4 Income ~~h~~Households to independent living within a reasonable amount of time. The  
5 transitional housing shall provide services and living quarters as approved by the Planning  
6 Commission that are similar to the residential unit being replaced pursuant to Section 41.13  
7 herein and shall comply with all relevant provisions of City ordinances and regulations.

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9           **SEC. 41.9. RECORDS OF USE.**

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

1 object to providing records for inspection, the Director of the Department of Building Inspection shall  
2 have the authority to issue administrative subpoenas to investigate and enforce this Chapter's  
3 provisions.

4 In addition to the investigative powers and enforcement mechanisms prescribed in this  
5 Chapter, the City Attorney's Office shall have the authority to take further investigative action  
6 and bring additional enforcement proceedings including ~~the immediate~~ proceedings under  
7 California Civil Code Section 1940.1.

8 \* \* \* \*

#### 10 **SEC. 41.10. ANNUAL UNIT USAGE REPORT.**

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

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

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

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

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

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

24 (6) The designation by room number and location of the residential units and  
25 tourist units as of October 15~~th~~ of the year of filing. ~~The O~~wner or operator shall maintain



1 such designated units as tourist or residential units for the following year unless the owner or  
2 operator notifies in writing the Department of Building Inspection of a redesignation of units;  
3 the owner or operator may redesignate units throughout the year, provided they notify the  
4 Department of Building Inspection in writing by the next business day following such  
5 redesignation and maintain the proper number of residential and tourist units at all times. The  
6 purpose of this provision is to simplify enforcement efforts while providing the owner or  
7 operator with reasonable and sufficient flexibility in designation and renting of rooms;

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

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

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

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

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

24 (e) **Renewal of Hotel License and Issuance of New Certificate of Use.** As of the  
25 effective date of this Chapter 41, no hotel license may be issued to any owner or operator of a

1 hotel unless the owner or operator presents with his/her license application a certified  
2 acknowledgment of receipt from the Department of Building Inspection of the Annual Unit  
3 Usage Report for the upcoming year.

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

9 If the Director or the Director's designee determines that additional information is  
10 needed to make a determination, ~~he~~ the Director or designee shall send both the owner and  
11 operator a written request to furnish such information within 15 calendar days of the mailing of  
12 the written request. The letter shall state that if the requested information, or a response  
13 explaining why the requested information will not be provided, is not furnished in the time required,  
14 the residential and tourist units shall be presumed to be unchanged from the previous year  
15 and that the Director shall impose a \$500 penalty for failure to furnish the additional  
16 information within the 15-day period, and a \$500 penalty for each day after the 15-day period for  
17 which the owner or operator fails to furnish the requested information or explanation. If the Director  
18 does not timely receive the information, the Director shall notify both the owner and operator,  
19 by mail or electronic mail, that the Director is imposing a \$500 per day penalty and that the  
20 accumulated penalty ~~which~~ must be paid within 30 days of the mailing of the notification, and  
21 that interest on the penalty shall accrue from the expiration of the 30 days at the rate of  
22 1.5%~~one and one-half percent~~ per full month, compounded monthly. The written notification shall  
23 state that if the penalty is not paid, a lien to secure the amount of the penalty, plus the  
24 accrued interest, will be recorded against the real property pursuant to the provisions of  
25

1 Section 41.20(d) of this Chapter 41, and that the Residential Hotel will be not be eligible for any  
2 temporary tourist rentals as provided in Section 41.19 for 12 months.

3 (g) **Failure to File Annual Unit Usage Report; Penalties.** The Director of the  
4 Department of Building Inspection is authorized to assess penalties as set forth below for  
5 failure to file an Annual Unit Usage Report, with interest on penalties accruing at the rate of  
6 1.5%~~one and one-half percent~~ per full month, compounded monthly from the date the penalty is  
7 due as stated in the Director's notification below.

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

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1           **SEC. 41.11. ADMINISTRATION.**

2           (a) **Fees.** The owner or operator shall pay the following filing fees to the Department of  
3 Building Inspection to cover its costs of investigating and reporting on eligibility. See Section  
4 ~~110A333.2, Hotel Conversion Ordinance Fee Schedule, Table 1A-Q, Part II, Chapter 1~~ of the ~~San~~  
5 ~~Francisco Municipal Code~~ (Building Code) for the applicable fees. The party that brings an  
6 unsuccessful challenge to a report pursuant to this ~~Chapter 41 Article~~ shall be liable for the  
7 ~~change charge~~ in Section ~~110A333.2, Hotel Conversion Ordinance Fee Schedule, Unsuccessful~~  
8 ~~Challenge, Table 1A-Q, Part II, Chapter 1~~ of the ~~San Francisco Municipal Code~~ (Building Code).  
9 Fees shall be waived for an individual who files an affidavit under penalty of perjury stating  
10 that he or she is an indigent person who cannot pay the filing fee without using money needed  
11 for the necessities of life.

12  
13           ~~SEE SAN FRANCISCO MUNICIPAL CODE~~  
14           ~~(BUILDING CODE) SECTION 333.2110A, TABLE 1A-Q~~  
15           ~~HOTEL CONVERSION ORDINANCE FEE SCHEDULE~~

16  
17           (b) **Hearing.**

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

1 provided that the Department of Building Inspection is notified of such an intent 72 hours prior  
2 to the hearing date.

3 (2) **Pre-hearing Submission.** No less than three working days prior to any  
4 hearing, parties to the hearing shall submit written information to the Department of Building  
5 Inspection including, but not limited to, the following: the request or complaint, the statement  
6 of issues to be determined by the Hearing Officer; and a statement of the evidence upon  
7 which the request or complaint is based.

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

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

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

20 (d) **Criminal Penalties for Violations.** Any person or entity wilfully failing to maintain  
21 daily logs or provide and maintain receipts as provided in Sections 41.9(a) and (b) of this  
22 Chapter 41, or failing to post materials as provided in Sections 41.6(a), (c), and (f), 41.9(b),  
23 41.10(b), (g), and (h), 41.11(b) (3), 41.12(b)(10), and 41.18(b) and (c) of this Chapter or  
24 wilfully providing false information in the daily logs, shall be guilty of an infraction for the first  
25

1 such violation or a misdemeanor for any subsequent violation, and the complaint charging  
2 such violation shall specify whether the violation charged is a misdemeanor or an infraction.

3 If charged as an infraction, the penalty upon conviction therefor shall be not less than  
4 \$100 or more than \$500.

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

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

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

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

19 (f) The Director of the Department of Building Inspection may impose a penalty of  
20 ~~\$250~~500 per violation for failure to maintain daily logs or for failure to provide receipts to  
21 occupants as required under Section 41.9 above and for failure to post materials as required  
22 under Sections 41.6(a), (c), and (f), 41.9(b), 41.10(b), (g), and (h), 41.11(b) (3), 41.12(b)(10),  
23 and 41.18(b) and (c). In order to impose such penalties, the Director shall notify both the  
24 owner and operator by certified mail that the Director is imposing the penalty or penalties,  
25 which must be paid within 30 days of the mailing of the notification. The written notification

1 shall state that if the penalty is not paid, a lien to secure the amount of the penalty will be  
2 recorded against the real property pursuant to ~~the provisions of~~ Section 41.20(d) of this Chapter  
3 41.

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

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

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

20  
21 **SEC. 41.12. PERMIT TO CONVERT.**

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

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



- 1 (1) The name and address of the building in which the conversions are  
2 proposed and of the building where replacement housing will be located; and
- 3 (2) The names and addresses of all owners or operators of said buildings; and
- 4 (3) A description of the proposed conversion including the specific method under  
5 Section 41.13(a) that the owner or operator selects as the nature of the conversion, the total  
6 number of units in the building, and their current uses; and
- 7 (4) The room numbers and locations of the units to be converted; and
- 8 (5) Preliminary drawings showing the existing floor plans and proposed floor  
9 plans; and
- 10 (6) A description of the improvements or changes proposed to be constructed  
11 or installed and the tentative schedule for start of construction; and
- 12 (7) The current rental rates for each residential unit to be converted or, if  
13 currently unoccupied, the most recent rental rate when last occupied; and
- 14 (8) The length of tenancy of the permanent residents affected by the proposed  
15 conversion; and
- 16 (9) A statement regarding how one-for-one replacement of the units to be  
17 converted will be accomplished, citing the specific provision(s) of Section 41.13(a) the application  
18 has selected for replacement, and including sufficiently detailed financial information, such as letters  
19 of intent and contracts, establishing how the owner or operator is constructing or causing to construct  
20 the proposed location of replacement housing if replacement is to be provided off-site; and
- 21 (10) A declaration under penalty of perjury from the owner or operator stating  
22 that he/she has complied with the provisions of Section 41.14(b) below and his/her filing of a  
23 permit to convert. On the same date of the filing of the application, a notice that an application  
24 to convert has been filed shall be posted until a decision is made on the application to convert.
- 25

1 (c) Upon receipt of a completed application to convert or demolish, the Department of  
2 Building Inspection shall send the application to the Planning Department ~~of City Planning~~ for  
3 review and shall mail notice of such application to interested community organizations and  
4 such other persons or organizations who have previously requested such notice in writing.  
5 The notice shall identify the hotel requesting the permit, the nature of the permit, the proposal  
6 to fulfill the replacement requirements of Section 41.13 herein, and the procedures for  
7 requesting a public hearing. ~~The Owner~~ or operator shall post a notice informing permanent  
8 residents of such information.

9 (d) Any interested party may submit a written request within 15 days of the date notice  
10 is posted pursuant to subsection (c) above to the ~~City~~ Planning Commission to schedule and  
11 conduct a public hearing on the proposed conversion in order to solicit public opinion on  
12 whether to approve or deny a permit to convert or demolish residential units and to determine  
13 whether proposed replacement units are "comparable units" as defined in Section 41.4~~(b)~~  
14 herein.

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

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

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

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

22 (3) Construct or cause to be constructed or rehabilitated apartment units for  
23 elderly, disabled, or low-income persons or households which may be provided at a ratio of  
24 less than one-to-one; or construct or cause to be constructed transitional housing which may  
25 include emergency housing. The construction of any replacement housing under this

1 subsection shall be subject to restrictions recorded against title to the real property and be  
2 evaluated by the ~~City~~ Planning Commission in accordance with the provisions of Section 303  
3 of the ~~City~~ Planning Code. A notice of said ~~City~~ Planning Commission hearing shall be posted  
4 by the owner or operator 10 calendar days before the hearing; or

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

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

18 \* \* \* \*

19

20 **SEC. 41.14. MANDATORY DENIAL OF PERMIT TO CONVERT.**

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

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

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

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

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

5 \* \* \* \*

6  
7 **SEC. 41.19. TEMPORARY CHANGE OF OCCUPANCY.**

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

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

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

16 (3) A residential unit which is vacant at any time during the period commencing  
17 on May 1~~st~~ and ending on September 30~~th~~ annually may be rented as a tourist unit, provided  
18 that (A) the residential unit was vacant due to voluntary vacation of a permanent resident or  
19 ~~was vacant~~ due to lawful eviction for cause after the permanent resident was accorded all the  
20 rights guaranteed by State and local laws during his/her tenancy, (B) the daily log shows that  
21 the residential unit was legally occupied for at least 50% ~~percent~~ of the period commencing on  
22 October 1~~st~~ and ending on April 30~~th~~ of the previous year, unless owner or operator can  
23 produce evidence to the Department of Building Inspection explaining such vacancy to the  
24 satisfaction of the Department ~~of Building Inspection~~, including but not limited to such factors as  
25 repair or rehabilitation work performed in the unit or good-faith efforts to rent the unit at fair

1 market value; ~~and (Ciii)~~ the residential unit shall immediately revert to residential use upon  
2 application of a prospective permanent resident; and (D) the owner or operator has not committed  
3 unlawful action as defined in this Chapter 41 within 12 months prior to this request.

4 **25-percent Limit.**

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

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

16 Where an owner or operator seeks a hearing in order to exceed the limit on tourist season  
17 rental of vacant residential units pursuant to Section 41.19(a)(3), the requirements of Section  
18 41.11(b)(1), (b)(2), and (b)(3) above shall be applicable except as specifically modified or  
19 enlarged herein:

20 \* \* \* \*

21 (5) Determination of the Hearing Officer. Based upon the evidence presented at  
22 the hearing, conducted in accordance with Section 41.11(b)(3) above, the hearing officer shall  
23 make findings as to (i) whether the residential unit was vacant due to voluntary vacation of a  
24 permanent resident or was vacant due to lawful eviction, (ii) whether the residential unit was  
25 occupied for at least 50% ~~percent~~ of the period commencing on October 1 and ending on April

1 30~~#~~ of the previous year, (iii) whether the owner or operator has committed unlawful action  
2 under this Chapter 41 within 12 months prior to this request, and (iv) whether the owner or  
3 operator made good-faith efforts to rent vacant residential units to prospective permanent  
4 residents at no more than fair market value for a comparable unit during the tourist season  
5 and yet was unable to secure such rentals. Good-faith efforts shall include, but not be limited  
6 to, advertising the availability of the residential units to the public. In determining fair market  
7 value of the residential units, the hearing officer shall consider any data on rental of  
8 comparable units, as defined in Section 41.4(~~b~~) herein.

9 \* \* \* \*

10  
11 **SEC. 41.20. UNLAWFUL CONVERSION; REMEDIES; FINES.**

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

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

16 (2) Rent any residential unit for Tourist or Transient Use~~a term of tenancy less than~~  
17 ~~seven days~~ except as permitted by Section 41.19 of this Chapter;

18 (3) Offer for rent for ~~nonresidential use or~~ Tourist or Transient Use a residential  
19 unit except as permitted by this Chapter.

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

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

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

6 (3) Repeated failure to comply with order<sub>s</sub> of the Department of Building  
7 Inspection or the Department of Public Health to correct code violations with intent to cause  
8 the permanent residents to voluntarily vacate the premises;

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

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

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

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

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

1 ~~authorized use. The daily rate shall be the rate unlawfully charged by the hotel owner or operator to~~  
2 ~~the occupants of the unlawfully converted unit.~~ The Director may also impose penalties upon the  
3 owner or operator of the hotel to reimburse the City or the complainant for the costs, including  
4 reasonable attorneys' fees, of enforcement, ~~including reasonable attorneys' fees,~~ of this Chapter.  
5 The hearing officer's decision shall notify the parties of this penalty provision and shall state  
6 that the Director of the Department of Building Inspection is authorized to impose the  
7 appropriate penalty by written notification to both the owner and operator, requesting payment  
8 within 30 days. If the penalty imposed is not paid, a lien to secure the amount of the penalty  
9 will be recorded against the real property pursuant to the provisions of Section 41.20(d) of this  
10 Chapter 41.

11 \* \* \* \*

12  
13 Section 3. This ordinance has revised Administrative Code Section 41.4 by removing  
14 letter designations for defined terms. The Municipal Code is hereby amended to revise any cross-  
15 references to Section 41.4, including in Administrative Code Sections 41D.1 and 41E.1 and Police  
16 Code Section 919.1, and, at the direction of the City Attorney, anywhere else in the Municipal Code, to  
17 reflect the removal of the letter designations in Section 41.4.

18  
19 Section 4. Effective and Operative Dates. This ordinance shall apply to any residential  
20 hotel that has not procured a permit to convert on or before December 1, 2016. This  
21 ordinance shall become effective 30 days after enactment. Enactment occurs when the  
22 Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the  
23 ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's  
24 veto of the ordinance.



1 Section 5. Scope of Ordinance. Except as stated in Section 3 of this ordinance, in  
2 enacting this ordinance, the Board of Supervisors intends to amend only those words,  
3 phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts,  
4 diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this  
5 ordinance as additions, deletions, Board amendment additions, and Board amendment  
6 deletions in accordance with the "Note" that appears under the official title of the ordinance.

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

10 By: \_\_\_\_\_  
11 KATE H. STACY  
12 Deputy City Attorney

13 n:\legana\as2016\1600676\01155144.docx