

1 [Defense Costs of Residential Hotel Ordinance.]

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3 **Ordinance amending Section 41.13 of the San Francisco Administrative Code, the**  
4 **Residential Hotel Unit Conversion and Demolition Ordinance, to clarify that funds in the**  
5 **Residential Hotel Preservation Fund may be expended both to create replacement**  
6 **housing and to administer the Ordinance, including defending it against legal**  
7 **challenge.**

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

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

12 Section 1. The San Francisco Administrative Code is hereby amended by amending  
13 Section 41.13, to read as follows:

14 Sec. 41.13. ONE-FOR-ONE REPLACEMENT.

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

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

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

21 (3) Construct or cause to be constructed or rehabilitated apartment units for elderly,  
22 disabled or low- income persons or households which may be provided at a ratio of less than  
23 one-to-one; or construct or cause to be constructed transitional housing which may include  
24 emergency housing. The construction of any replacement housing under this subsection shall  
25 be evaluated by the City Planning Commission in accordance with the provisions of Section

1 303 of the City Planning Code. A notice of said City Planning Commission hearing shall be  
2 posted by the owner or operator 10 calendar days before the hearing; or

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

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

15 (A) Such contribution shall be paid to the approved public entity or nonprofit organization  
16 in installments from an escrow account supervised by the Mayor's Office of Housing, upon  
17 application by such public entity or nonprofit organization to the Mayor's Office of Housing, for  
18 specified expenditures, including but not limited to site acquisition costs, architect's fees, and  
19 construction costs; such payment shall be approved by the Mayor's Office of Housing prior to  
20 release of funds.

21 (B) The permit to convert shall be issued by the City when owner or operator deposits  
22 the full amount of funds in an escrow account described in subsection 41.13(a)(5)(A) above,  
23 or provides other form of non- refundable security acceptable to the City Attorney and the  
24 Mayor's Office of Housing.

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1 (C) In the event that the public entity or nonprofit organization is unable to complete  
2 construction of the replacement housing, any unpaid amounts shall be released to the City. All  
3 such funds shall go into a San Francisco Residential Hotel Preservation Fund Account.

4 (b) Any displaced permanent resident relocated to replacement units provided under  
5 Subdivision (a) above shall be deemed to have continued his occupancy in the converted unit  
6 for the purpose of administering Subsection (k) of Section 37.2, San Francisco Administrative  
7 Code (San Francisco Rent Stabilization and Arbitration Ordinance).

8 (c) Any replacement units shall continue to be subject to the provisions of this Chapter.

9 (d) In the event that a completed application for a permit to convert is filed by a hotel  
10 owner or operator no later than the effective date of this amended Chapter, and such hotel  
11 owner or operator elects to provide one-for-one replacement of the residential units pursuant  
12 to Section 41.13(a) (4) or Section 41.13(a) (5) herein, the hotel owner or operator shall be  
13 obligated to pay to the City and County of San Francisco an amount equal to 40 percent of the  
14 cost of construction of an equal number of comparable units plus site acquisition cost,  
15 provided that such hotel owner or operator shall pay such amount to the City or provide to the  
16 City security for such payment in a form satisfactory to the Mayor's Office of Housing and the  
17 City Attorney within 90 days following the date that the Department of Building Inspection  
18 determines that the application for a permit to convert is complete, or, if necessary, 10 days  
19 following final action, including any appeals, by the Planning Commission or appellate body,  
20 or 10 days following the Department of Real Estate's determination of such amount,  
21 whichever occurs latest. In the event that a hotel owner or operator elects to provide one-for-  
22 one replacement pursuant to Section 41.13(a)(2) or (a)(5) herein and the Mayor's Office of  
23 Housing has not approved a proposal or organization thereunder prior to the effective date of  
24 this amended Chapter, the Department of Building Inspection shall not reject such application  
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1 as incomplete for such lack of information. If a hotel owner or operator applies for a permit to  
2 convert using the one-for-one replacement option described in 41.13(a)(2) or (a)(5) and the  
3 Mayor's Office of Housing does not approve a housing development proposal or a nonprofit  
4 organization, or such project fails to progress through no fault of the owner or operator, such  
5 applicant shall be permitted to provide one-for-one replacement pursuant to Section  
6 41.13(a)(4) at 40 percent of the cost of construction of an equal number of comparable units  
7 plus site acquisition costs, provided that such applicant files the application under Section  
8 41.13(a)(2) or (a)(5) no later than the effective date of this amended Chapter. The hotel owner  
9 or operator shall identify such housing proposal or nonprofit organization within 180 days of  
10 the effective date of this amended Chapter. In the event that the Mayor's Office of Housing  
11 finds that the permit applicant has acted in good faith in seeking a project, the Mayor's Office  
12 of Housing may exercise its reasonable discretion to extend the provisions of this subsection  
13 for an additional 180 days. In the event that a project approved by the Mayor's Office of  
14 Housing fails to move forward through no fault of the permit applicant, the applicant may  
15 substitute another project within six months of being notified by the Mayor's Office of Housing  
16 of a failure of the prior project to move forward. The Mayor's Office of Housing may extend  
17 this period for an additional 180 days to identify such new proposal. The City shall issue a  
18 permit to convert under this subsection 41.13(d) only if the hotel owner or operator has either  
19 paid the 40-percent in lieu fee to the City pursuant to Section 41.13(a)(4) herein or complied  
20 with the requirements of Sections 41.13(a)(2) or (a)(5) as applicable. In the event that a hotel  
21 owner or operator has not complied with any of these requirements and the City has not  
22 issued a permit to convert or if the Mayor's Office of Housing has not found the hotel owner or  
23 operator has acted in good faith in seeking a project pursuant to subsections 41.13(a)(2) or  
24 (a)(5) or this subsection, no later than 180 days following the effective date of this amended  
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1 Chapter, or such later date as herein provided, this Subsection 41.13(d) shall no longer be  
2 applicable, City shall refund any amounts deposited as security pursuant to the terms herein,  
3 and such hotel owner or operator shall comply with all applicable terms of this Chapter.

4 (e) When a residential unit is approved for conversion to another use pursuant to the  
5 provisions of Subsection 41.13(a)(2), (a)(4) or (a)(5) above, such unit shall not be deemed to  
6 be reconverted into a residential unit regardless of any interim uses after payment as set forth  
7 in Subsections 41.13(a)(2), (a)(4) or (a)(5).

8 (f) The funds deposited in the Residential Hotel Preservation Fund may be used to (i) create new  
9 affordable rental housing to replace the affordable housing lost as a result of the conversion or  
10 demolition of residential hotel units subject to this Ordinance and (ii) administer the Ordinance,  
11 including the legal costs and attorney's fees incurred in defending the Ordinance against legal  
12 challenge.

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

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17 By: \_\_\_\_\_  
18 Judith A. Boyajian  
19 Deputy City Attorney

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