

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

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

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

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

11 Section 1. Findings.

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

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

17 (3) On May 23, 2008 the Zoning Administrator promulgated a Bulletin and Letter
18 of Determination setting forth the process that the Planning Department would follow to
19 determine “complete applications” subject to first-come, first-served priority under Section
20 41F.3(b) of the Large Tourist Hotel Conversion Ordinance. As amended on July 14, 2008,
21 the Letter of Determination applied the principles of the Bulletin to establish a priority listing
22 of pending projects. The Board of Appeals affirmed the Zoning Administrator's
23 determination on November 12, 2008.

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

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

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

11 SEC. 41F: TOURIST HOTEL CONVERSION

12 SEC. 41F.1. TITLE.

13 This Chapter may be referred to as the Tourist Hotel Conversion Ordinance.

14 SEC. 41F.2. DEFINITIONS.

15 (a) "Baseline Inventory" shall mean an inventory of the number of Large Tourist
16 Hotel Rooms commercially available for rent as of March 1, 2009. *The Planning Commission*
17 *shall adopt a Baseline Inventory reflecting the number of Large Tourist Hotel Rooms in the City as*
18 *of March 1, 2009, and shall update the Baseline Inventory annually thereafter and no later than*
19 *March 15 of each year. The Planning Department shall provide the public with an opportunity for*
20 *meaningful review and comment on the Baseline Inventory and annual updates, including a public*
21 *hearing. Rooms created by new Large Tourist Hotel Construction and/or expansion shall qualify as*
22 *additional Large Tourist Hotel Rooms in the year they obtain final certificates of occupancy from*
23 *the City, and shall be added to the Baseline Inventory. Losses to the City's Large Tourist Hotel*
24 *inventory, including, but not limited to, Conversions, shall be subtracted from the Baseline*
25 *Inventory.*

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

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

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

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

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

20 **(fg)** "Large Tourist Hotel" shall mean any building in the City containing 100 or
21 more guest rooms or suites of rooms intended or designated to be used for commercial
22 tourist use by providing accommodation to transient guests on a nightly basis or longer, as
23 contemplated by Section 216(b) of the Planning Code. The definition of Large Tourist Hotel
24 shall include, for purposes of this Chapter, a building (or set of buildings, which shall mean
25 buildings on the same lot, adjacent lots, or within the same block and owned by the same

1 entity) which would have qualified as a Large Tourist Hotel in any of the five years
2 preceding the application for Conversion. A building (or set of buildings) shall not be
3 considered a Large Tourist Hotel if the total number of rooms intended to be operated
4 separately for transient use is less than 100 rooms.

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

9 (h~~i~~) "Ancillary Hotel Area" shall mean any area within a Large Tourist Hotel not
10 defined as a Large Tourist Hotel Room, including, but not limited to, restaurant, retail, and
11 parking areas.

12 SEC. 41F.3. CONVERSIONS RESTRICTED..

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

19 (b) Conversion prior to March 1, 2010. Notwithstanding the foregoing restriction,
20 the Planning Commission may approve Conversion credits for a total of up to 550 Large
21 Tourist Hotel Rooms to be Converted prior to March 1, 2010. The Planning Commission
22 shall approve applications for Conversions under this section on a first-come first-served
23 basis. Applicants' place in the Conversion queue for the 550 pre-lottery Conversion credits
24 shall be based upon the date the Planning Department receives a complete subdivision or
25 environmental application, as determined by the Zoning Administrator, and provided the

1 application or subsequent written communication identifies the number of tourist hotel rooms to be
2 Converted.

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

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

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

13 (i) The ~~Annual update to the Baseline~~ Inventory shows a net increase of at
14 least 100 Large Tourist Hotel Rooms over the prior year's inventory, as calculated in Section
15 41F.3(g) below; and ~~during the previous Baseline Inventory year. Large Tourist Hotel Rooms lost~~
16 ~~through authorized conversions shall not be considered for purposes of calculating the net increase~~
17 ~~in Large Tourist Hotel Rooms under this section; and~~

18 (ii) Conducting a lottery would not result in a reduction in the number of Large
19 Tourist Hotel Rooms below the 2009 Baseline Inventory, except as provided in Section 41F.3(g)
20 below. The number of existing Large Tourist Hotel Rooms exceeds the March 2010 Baseline
21 Inventory by at least the number of Conversion credits available in the proposed lottery pursuant to
22 subsection (d)(2), below.

23 (2) The number of Conversion credits available in each lottery shall equal the net
24 increase in Large Tourist Hotel Rooms during the previous year's inventory. Baseline
25 Inventory year, not including Conversions authorized by lottery credits. Large Tourist Hotel

1 Rooms lost through authorized Conversions shall not be considered for purposes of
2 calculating the net increase in Large Tourist Hotel Rooms under this section, as described in
3 Section 41F.3(g), below.

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

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

17 (5) If applicants collectively seek more Conversion credits than are available in
18 the lottery pool, then, after the last winning ticket is drawn, the Planning Department shall
19 draw a reasonable number of alternate tickets for inclusion in a standby list. If, nine months
20 after the lottery, the Planning Department revokes winning credits according to subsection
21 (e)(2), below, the credits shall be reallocated to the standby list, in the order drawn.

22 (e) Large Tourist Hotel Conversion Credits.

23 (1) Except as provided in Sections 41F.3(b) or (c), Conversion is prohibited
24 unless the applicant uses Conversion credits to offset the loss of Large Tourist Hotel
25 Rooms. ~~A lottery~~ An award of Large Tourist Hotel Conversion credits does not grant the

1 credit_holder a right to development or otherwise limit City discretion to deny or approve
2 with conditions a proposed Conversion project. A credit holder must still obtain all
3 otherwise applicable City permits and approvals, including but not limited to Planning
4 Commission approval of the Conversion pursuant to Section 41F.3(f).

5 (2) Credits are building-specific and non-transferable, except that if the credit
6 holder does not make diligent and good faith efforts within nine months of issuance of the
7 Conversion credit(s) the lottery in support of Conversion, the credits ~~will~~ may be revoked and
8 reallocated to the Queue, for pre-lottery credits, or the standby list, for lottery credits. Credits
9 shall permanently expire if the applicant or standby-list recipient fails to diligently and in
10 good faith pursue Conversion for any 12 consecutive months.

11 (f) Conversion Process.

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

15 (12) The notice and hearing requirements applicable to conditional use
16 authorizations shall apply to ~~all~~ Planning Commission's action to approve or deny Conversion
17 applications for use of Conversion credits decisions under this Chapter.

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

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

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

24 (iii) A description of the proposed Conversion including the nature of the

25 Conversion, the total number of Large Tourist Hotel Rooms prior to and following

1 Conversion, a description of the area and/or rooms to be Converted, including floor number
2 and location, and the estimated total number of Condominium Units to be created;

3 (iv) Preliminary drawings showing the existing floor plans and proposed
4 floor plans;

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

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

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

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

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

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

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

24 (3) The Zoning Administrator shall make a recommendation regarding the
25 approval, denial, or approval with conditions of the Conversion application to the Planning

1 Commission, based upon whether the proposed Conversion meets Planning Code
2 requirements including, but not limited to, this Chapter. The Planning Commission shall
3 approve the Conversion, deny it, or approve it with conditions. Any member of the public
4 wishing to appeal the decision of the Planning Commission must appeal the decision to the
5 Board of Supervisors pursuant to the appeals process set forth in Section 308 of the
6 Planning Code.

7 (g) Annual Inventory Procedure.

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

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

16 (3) Calculating Losses from the Annual Inventory.

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

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

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

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SEC. 41F.4. ENFORCEMENT.

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

(b) Civil Penalties.

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

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

(c) Criminal Penalties.

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

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

7 SEC. 41F.5. SUNSET PROVISION.

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

12 SEC. 41F.6. SEVERABILITY.

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

18
19 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

20
21 By: Andrew W. Garth
22 Deputy City Attorney