

1 [Planning Code -- Preservation, and Rehabilitation, and Maintenance of Transfer Preservation  
2 Lots After Sale of Transferable Development Rights; Zoning Map and General Plan Map  
3 Amendments--680 California Street (Old St. Mary's Cathedral)]

4 **Ordinance amending Section 128 of the San Francisco Planning Code to require that**  
5 **~~proceeds from the sale of Transferable Development Rights (TDR) be spent on~~**  
6 **approval of a plan for preservation, and rehabilitation, and maintenance of the a**  
7 **Transfer Preservation Lot property prior to receipt of a Statement of Eligibility for**  
8 **Transferable Development Rights (TDR),** to establish reporting procedures regarding  
9 the **preservation, and rehabilitation, and maintenance,** and to allow the sale of TDR  
10 from an individually landmarked building to any lot in a C-3 zoned district except  
11 **Redevelopment Areas; amending the San Francisco Zoning Map by amending Zoning**  
12 **Use District Map ZN01 to change the use classification of 680 California Street (Old St.**  
13 **Mary's Cathedral), Block 0241, Lots 011 and 012 (the Property), from Chinatown Visitor**  
14 **Retail District to C-3-0 District and making conforming amendments to the Chinatown**  
15 **and Downtown Area Plans of the San Francisco General Plan; adopting findings,**  
16 **including environmental findings and findings of consistency with the General Plan**  
17 **and the Priority Policies of Planning Code Section 101.1.**

18 NOTE: Additions are *single-underline italics Times New Roman*;  
19 deletions are *strike-through italics Times New Roman*.  
20 Board amendment additions are double-underlined;  
Board amendment deletions are ~~strikethrough normal~~.

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

22 Section 1. Findings.

23 A. Pursuant to San Francisco Charter Section 4.105 and Planning Code  
24 Section 340, any amendments to the General Plan shall first be considered by the Planning  
25 Commission and thereafter recommended for approval or rejection by the Board of

1 Supervisors. On June 10, 2010 at a duly noticed public hearing, the Planning Commission in  
2 Resolution No. 18105 found that the proposed General Plan amendments, as well as the  
3 proposed Planning Code amendment, zoning reclassification, and zoning map amendment  
4 were, on balance, consistent with the City's General Plan, as it is proposed for amendment,  
5 and with Planning Code Section 101.1(b). In addition, the Planning Commission  
6 recommended that the Board of Supervisors adopt the Planning Code amendment, zoning  
7 reclassification, zoning map amendment, and General Plan map amendments. A copy of said  
8 Resolution are on file with the Clerk of the Board of Supervisors in File No. 101200  
9 and is incorporated herein by reference. The Board finds that the proposed Planning Code  
10 amendment, zoning reclassification, zoning map amendment, and General Plan map  
11 amendments are consistent with the City's General Plan, as proposed to be amended, and  
12 with Planning Code Section 101.1(b) for the reasons set forth in said Resolution.

13 B. Pursuant to Planning Code Section 302, the Board finds that the proposed  
14 Planning Code amendment, zoning reclassification, zoning map amendment, and General  
15 Plan amendments will serve the public necessity, convenience and welfare for the reasons set  
16 forth in Planning Commission Resolution No. 18105, which reasons are incorporated herein  
17 by reference as though fully set forth.

18 C. On June 2, 2010, at a duly noticed public hearing, the Historic Preservation  
19 Commission considered the proposed Planning Code amendment, zoning reclassification,  
20 zoning map amendment, and General Plan amendments and by Historic Preservation  
21 Commission Resolution No. 646 recommended that the Board of Supervisors adopt the  
22 Planning Code amendment, zoning reclassification, zoning map amendment, and General  
23 Plan map amendments. A copy of said Resolution are on file with the Clerk of the Board of  
24 Supervisors in File No. 101200 and is incorporated herein by reference.

25

1 D. Environmental Findings. The Planning Department has determined that the  
2 actions contemplated in this Ordinance are in compliance with the California Environmental  
3 Quality Act (California Public Resources Code section 21000 et seq.). Said determination is  
4 on file with the Clerk of the Board of Supervisors in File No. 101200 and is  
5 incorporated herein by reference.

6  
7 Section 2. The San Francisco Planning Code is hereby amended by amending  
8 Section 128, to read as follows:

9 **SEC. 128. TRANSFER OF DEVELOPMENT RIGHTS IN C-3 DISTRICTS.**

10 (a) Definitions.

11 (1) "Development Lot." A lot to which TDR may be transferred to increase the  
12 allowable gross floor area of development thereon beyond that otherwise permitted by Section  
13 124.

14 (2) "Owner of Record." The owner or owners of record in fee.

15 (3) "Preservation Lot." A parcel of land on which is either (i) a Significant or  
16 Contributory building (as designated pursuant to Article 11); or (ii) a Category V Building that  
17 has complied with the eligibility requirement for transfer of TDR as set forth in Section  
18 1109(c); or (iii) a structure designated *an individual* landmark pursuant to Article 10 of this  
19 Code. The boundaries of the Preservation Lot shall be the boundaries of the Assessor's lot on  
20 which the building is located at the time the ordinance or, as to Section 1109(c), resolution,  
21 making the designation is adopted, unless boundaries are otherwise specified in the  
22 ordinance.

23 (4) "Transfer Lot." A Preservation Lot located in a C-3 District from which TDR may  
24 be transferred. A lot zoned P (public) may in no event be a Transfer Lot unless a building on  
25 that lot is (i) owned by the City and County of San Francisco, and (ii) located in a P District

1 adjacent to a C-3 District, and (iii) designated as an *historical individual* landmark ~~by~~ pursuant to  
2 Article 10 of this Code, ~~or~~ designated as a Category I Significant Building ~~by~~ pursuant to Article  
3 11 of this Code, ~~and or~~ listed ~~as a National Historical Landmark~~ on the National Register of  
4 Historical Register Places, ~~and (iv) the TDR proceeds are used to finance, in whole or in part, a~~  
5 ~~project to rehabilitate and restore the building in accordance with the Secretary of Interior standards.~~  
6 and (iv) the TDR proceeds are used to finance, in whole or in part, a project to rehabilitate and  
7 restore the building in accordance with the Secretary of Interior standards. For the purposes  
8 of Section 128(b), a lot zoned P which satisfies the criteria of this subsection (4) to qualify as a  
9 "Transfer Lot" shall be deemed to have an allowable gross floor area of 7.5:1 under Section  
10 124.

11 (5) "Transferable Development Rights (TDR)." § Units of gross floor area which may  
12 be transferred, pursuant to the provisions of this Section and Article 11 of this Code, from a  
13 Transfer Lot to increase the allowable gross floor area of a development on a Development  
14 Lot.

15 (6) "Unit of TDR." One unit of TDR is one square foot of gross floor area.

16 (b) Amount of TDR Available for Transfer. The maximum TDR available for transfer  
17 from a Transfer Lot consists of the difference between ~~(aa)~~ the allowable gross floor area  
18 permitted on the Transfer Lot by Section 124 and ~~(bb)~~ the gross floor area of the  
19 development located on the Transfer Lot.

20 (c) Eligibility of Development Lots and Limitation on Use of TDR on Development  
21 Lots. TDR may be used to increase the allowable gross floor area of a development on a  
22 Development Lot if the following requirements and restrictions are satisfied:

23 (1) Transfer of Development Rights shall be limited to the following:

24 (i) The Transfer Lot and the Development Lot are located in the same C-3 Zoning  
25 District; or

1 (ii) the Transfer Lot is located in a C-3-O, or C-3-R District and the Development Lot  
2 is located in the C-3-O(SD) Special Development District; or

3 (iii) the Transfer Lot ~~is a Preservation Lot that~~ contains a Significant building and is  
4 located in the Extended Preservation District, as set forth in Section 819, or a C-3-G or C-3-S  
5 District and the Development Lot is located in the C-3-O(SD) Special District; or

6 (iv) the Transfer Lot is in a C-3-R District or a District designated C-3-O (SD) in the  
7 Yerba Buena Center Redevelopment Plan and is located in the Yerba Buena Center  
8 Redevelopment Project Area and the Development Lot is located in a C-3-O District; or

9 (v) the Transfer Lot is in a P District adjacent to a C-3 District and meets the  
10 requirements established in subsection (a)(4) above and the Development Lot is located in a  
11 C-3 District; or

12 (vi) the Transfer Lot is located in any C-3 District and contains an individual landmark  
13 designated pursuant to Article 10 and the Development Lot is located in any C-3 District but not within  
14 a Redevelopment Agency Plan Area.

15 (2) TDR may not be transferred for use on any lot on which is or has been located a  
16 Significant or Contributory building; provided that this restriction shall not apply if the  
17 designation of a building is changed to Unrated; nor shall it apply if the City Planning  
18 Commission finds that the additional space resulting from the transfer of TDR is essential to  
19 make economically feasible the reinforcement of a Significant or Contributory building to meet  
20 the standards for seismic loads and forces of the ~~1975~~-Building Code, in which case TDR may  
21 be transferred for that purpose subject to the limitations of this Section and Article 11,  
22 including Section 1111.6. Any alteration shall be governed by the requirements of Sections  
23 1111 to 1111.6.

24 (3) Notwithstanding any other provision of this Section, development on a  
25 Development Lot is limited by the provisions of this Code, other than those on floor area ratio,

1 governing the approval of projects, including the requirements relating to height, bulk,  
2 setback, sunlight access, and separation between towers, and any limitations imposed  
3 pursuant to Section 309 review applicable to the Development Lot. The total allowable gross  
4 floor area of a development on a Development Lot may not exceed the limitation imposed by  
5 Section 123(c).

6 (d) Effect of Transfer of TDR.

7 (1) Transfer of TDR from a Transfer Lot permanently reduces the development  
8 potential of the Transfer Lot by the amount of the TDR transferred, except as provided in  
9 Section 124(f). In addition, transfer of TDR from a Preservation Lot containing a Contributory  
10 building or *an individual* landmark designated pursuant to Article 10 causes such building to  
11 become subject to the same restrictions on demolition and alteration, and the same penalties  
12 and enforcement remedies, that are applicable to Significant ~~B~~Buildings Category I, as  
13 provided in Article 11.

14 (e) Procedure for Determining TDR Eligibility.

15 (1) In order to obtain a determination of whether a lot is a Transfer Lot and, if it is, of  
16 the amount of TDR available for transfer, the owner of record of the lot may file an application  
17 with the Zoning Administrator for a Statement of Eligibility. The application for a Statement of  
18 Eligibility shall contain or be accompanied by plans and drawings and other information which  
19 the Zoning Administrator determines is necessary in order to determine whether a Statement  
20 of Eligibility can be issued. Any person who applies for a Statement of Eligibility prior to  
21 expiration of the time for request of reconsideration of designation authorized in Section 1105  
22 shall submit in writing a waiver of the right to seek such reconsideration.

23 (2) The Zoning Administrator shall, upon the filing of an application for a Statement  
24 of Eligibility and the submission of all required information, issue either a proposed Statement  
25 of Eligibility or a written determination that no TDR are available for transfer and shall mail that

1 document to the applicant and to any other person who has filed with the Zoning Administrator  
2 a written request for a copy, and shall post the proposed Statement of Eligibility or written  
3 determination on the Planning Department website. Any appeal of the proposed Statement of  
4 Eligibility or determination of noneligibility shall be filed with the Board of Permit Appeals  
5 within 20 days of the date of issuance of the document. If not appealed, the proposed  
6 Statement of Eligibility or the determination of noneligibility shall become final on the 21st day  
7 after the date of issuance. The Statement of Eligibility shall contain at least the following  
8 information: (i) the name of the owner of record of the Transfer Lot; (ii) the address, legal  
9 description and Assessor's Block and Lot of the Transfer Lot; (iii) the C-3 use district within  
10 which the Transfer Lot is located; (iv) ~~whether the Transfer Lot is a Preservation Lot or~~  
11 ~~Development Lot;~~ (v) ~~if a Preservation Lot,~~ whether the Transfer Lot contains a Significant or  
12 Contributory building, a Category V building, or an Article 10 individually designated landmark;  
13 (vi) the amount of TDR available for transfer; and (vii) the date of issuance.

14 (3) Once the proposed Statement of Eligibility becomes final, whether through lack  
15 of appeal or after appeal, the Zoning Administrator shall record the Statement of Eligibility in  
16 the Office of the County Recorder. The County Recorder shall be instructed to mail the  
17 original of the recorded document to the owner of record of the Transfer Lot and, ~~if a copy of~~  
18 ~~the document is presented at the time of the recordation,~~ shall a conformed the copy and mail  
19 it to the Zoning Administrator.

20 (f) Cancellation of Eligibility.

21 (1) If reasonable grounds should at any time exist for determining that a building on  
22 a Preservation Lot may have been altered or demolished in violation of Articles 10 or 11,  
23 including Sections 1110 and 1112 thereof, the Zoning Administrator may issue and record  
24 with the County Recorder a Notice of Suspension of Eligibility for the affected lot and, in cases  
25 of demolition of a Significant or Contributory building, a notice that the restriction on the floor

1 area ratio of a replacement building, pursuant to Section 1114, may be applicable and shall  
2 mail a copy of such notice to the owner of record of the lot. The notice shall provide that the  
3 property owner shall have 20 days from the date of the notice in which to request a hearing  
4 before the Zoning Administrator in order to dispute this initial determination. If no hearing is  
5 requested, the initial determination of the Zoning Administrator is deemed final on the twenty-  
6 first day after the date of the notice, unless the Zoning Administrator has determined that the  
7 initial determination was in error.

8 (2) If a hearing is requested, the Zoning Administrator shall notify the property  
9 owner of the time and place of hearing, which shall be scheduled within 21 days of the  
10 request, shall conduct the hearing, and shall render a written determination within 15 days  
11 after the close of the hearing. If the Zoning Administrator shall determine that the initial  
12 determination was in error, that officer shall issue and record a Notice of Revocation of  
13 Suspension of Eligibility. Any appeal of the determination of the Zoning Administrator shall be  
14 filed with the Board of Permit Appeals within 20 days of the date of the written determination  
15 following a hearing or, if no hearing has been requested, within 20 days after the initial  
16 determination becomes final.

17 (3) If after an appeal to the Board of Permit Appeals it is determined that an  
18 unlawful alteration or demolition has occurred, or if no appeal is taken of the determination by  
19 the Zoning Administrator of such a violation, the Zoning Administrator shall record in the  
20 Office of the County Recorder a Notice of Cancellation of Eligibility for the lot, and shall mail to  
21 the property owner a conformed copy of the recorded Notice. In the case of demolition of a  
22 Significant or Contributory Building, the Zoning Administrator shall record a Notice of Special  
23 Restriction noting the restriction on the floor area ratio of the Preservation Lot pursuant to the  
24 provisions of Section 1114, and shall mail to the owner of record a certified copy of the Notice.  
25 If after an appeal to the Board of Permit Appeals it is determined that no unlawful alteration or



1 demolition has occurred, the Zoning Administrator shall issue and record a Notice of  
2 Revocation of Suspension of Eligibility and, if applicable, a Notice of Revocation of the Notice  
3 of Special Restriction pursuant to Section 1114, and shall mail conformed copies of the  
4 recorded notices to the owner of record.

5 (4) No notice recorded under this Section 128(f) shall affect the validity of TDR that  
6 have been transferred from the affected Transfer Lot in compliance with the provisions of this  
7 Section prior to the date of recordation of such notice, whether or not such TDR have been  
8 used.

9 (g) Procedure for Transfer of TDR.

10 (1) TDR from a single Transfer Lot may be transferred as a group to a single  
11 transferee or in separate increments to several transferees. TDR may be transferred either  
12 directly from the original owner of the TDR to the owner of a Development Lot or to persons,  
13 firms or entities who acquire the TDR from the original owner of the TDR and hold them for  
14 subsequent transfer to other persons, firms, entities or to the owners of a Development Lot or  
15 Lots.

16 (2) When TDR are transferred, they shall be identified in each Certificate of Transfer  
17 by a number. A single unit of TDR transferred from a Transfer Lot shall be identified by the  
18 number "1." Multiple units of TDR transferred as a group for the first time from a Transfer Lot  
19 shall be numbered consecutively from "1" through the number of units transferred. If a fraction  
20 of a unit of TDR is transferred, it shall retain its numerical identification. (For example, if 5,000-  
21 1/2 TDR are transferred in the initial transfer from the Transfer Lot, they would be numbered  
22 "1 through 5,000 and one-half of 5,001.") TDR subsequently transferred from the Transfer Lot  
23 shall be identified by numbers taken in sequence following the last number previously  
24 transferred. (For example if the first units of gross floor area transferred from a Transfer Lot  
25 are numbered 1 through 10,000, the next unit transferred would be number 10,001.) If multiple

1 units transferred from a Transfer Lot are subsequently transferred separately in portions, the  
2 seller shall identify the TDR sold by numbers which correspond to the numbers by which they  
3 were identified at the time of their transfer from the Transfer Lot. (For example, TDR  
4 numbered 1 through 10,000 when transferred separately from the Transfer Lot in two equal  
5 portions would be identified in the two Certificates of Transfer as numbers 1 through 5,000  
6 and 5,001 through 10,000.) Once assigned numbers, TDR retain such numbers for the  
7 purpose of identification through the process of transferring and using TDR. The phrase  
8 "numerical identification," as used in this section, shall mean the identification of TDR by  
9 numbers as described in this Subsection.

10 (3) Transfer of TDR from the Transfer Lot shall not be valid unless (i) a Statement of  
11 Eligibility has been recorded in the Office of the County Recorder prior to the date of  
12 recordation of the Certificate of Transfer evidencing such transfer and (ii) a Notice of  
13 Suspension of Eligibility or Notice of Cancellation of Eligibility has not been recorded prior to  
14 such transfer or, if recorded, has thereafter been withdrawn by an appropriate recorded Notice  
15 of Revocation or a new Statement of Eligibility has been thereafter recorded.

16 (4) Transfer of TDR, whether by initial transfer from a Transfer Lot or by a  
17 subsequent transfer, shall not be valid unless a Certificate of Transfer evidencing such  
18 transfer has been prepared and recorded. The Zoning Administrator shall prepare a form of  
19 Certificate of Transfer and all transfers shall be evidenced by documents that are substantially  
20 the same as the Certificate of Transfer form prepared by the Zoning Administrator, which form  
21 shall contain at least the following:

22 (i) For transfers from the Transfer Lot only:

23 (aa) Execution and acknowledgment by the original owner of TDR as the  
24 transferor(s) of the TDR; and

25 (bb) Execution and acknowledgment by the Zoning Administrator; and

1 (cc) A notice, prominently placed and in all capital letters, preceded by the  
2 underlined heading "Notice of Restriction," stating that the transfer of TDR from the Transfer  
3 Lot permanently reduces the development potential of the Transfer Lot by the amount of TDR  
4 transferred, with reference to the provisions of this Section.

5 (ii) For all transfers:

6 (aa) The address, legal description, Assessor's Block and Lot, and C-3 use district of  
7 the Transfer Lot from which the TDR originates; and

8 (bb) The amount and sale price of TDR transferred; and

9 (cc) Numerical identification of the TDR being transferred; and

10 (dd) The names and mailing addresses of the transferors and transferees of the  
11 TDR; and

12 (ee) Execution and acknowledgment by the transferors and transferees of the TDR;  
13 and

14 (ff) A reference to the Statement of Eligibility, including its recorded instrument  
15 number and date of recordation, and a recital of all previous transfers of the TDR, including  
16 the names of the transferors and transferees involved in each transfer and the recorded  
17 instrument number and date of recordation of each Certificate of Transfer involving the TDR,  
18 including the transfer from the Transfer Lot which generated the TDR.

19 (5) When a Certificate of Transfer for the transfer of TDR from a Transfer Lot is  
20 presented to the Zoning Administrator for execution, that officer shall not execute the  
21 document if a transfer of the TDR would be prohibited by any provision of this Section or any  
22 other provision of this Code. The Zoning Administrator shall, within five business days from  
23 the date that the Certificate of Transfer is submitted for execution, either execute the  
24 Certificate of Transfer or issue a written determination of the grounds requiring a refusal to  
25 execute the Certificate.

1           (6) Each duly executed and acknowledged Certificate of Transfer containing the  
2 information required herein shall be presented for recordation in the Office of the County  
3 Recorder and shall be recorded by the County Recorder. The County Recorder shall be  
4 instructed to mail the original Certificate of Transfer to the person and address designated  
5 thereon and shall be given a copy of the Certificate of Transfer and instructed to conform the  
6 copy and mail it to the Zoning Administrator.

7           (h) Certification of Transfer of TDR for a Project on a Development Lot.

8           (1) When the use of TDR is necessary for the approval of a building permit for a  
9 project on a Development Lot, the Superintendent of the Bureau of Building Inspection shall  
10 not approve issuance of the permit unless the Zoning Administrator has issued a written  
11 certification that the owner of the Development Lot owns the required number of TDR. When  
12 the transfer of TDR is necessary for the approval of a site permit for a project on a  
13 Development Lot, the Zoning Administrator shall impose as a condition of approval of the site  
14 permit the requirement that the Superintendent of the Bureau of Building Inspection shall not  
15 issue the first addendum to the site permit unless the Zoning Administrator has issued a  
16 written certification that the owner of the Development Lot owns the required number of TDR.

17           (2) In order to obtain certification as required in Section 128(h)(1), the permit  
18 applicant shall present to the Zoning Administrator:

19           (i) Information necessary to enable the Zoning Administrator to prepare the Notice  
20 of Use of TDR, which information shall be at least the following:

21           (aa) The address, legal description, Assessor's Block and Lot, and zoning  
22 classification of the Development Lot;

23           (bb) The name and address of the owner of record of the Development Lot;

24           (cc) Amount and numerical identification of the TDR being used;

25

1 (dd) A certified copy of each Certificate of Transfer evidencing transfer to the owner  
2 of the Development Lot of the TDR being used; and

3 (ii) A report from a title insurance company showing the holder of record of the TDR  
4 to be used, all Certificates of Transfer of the TDR, and all other matters of record affecting  
5 such TDR. In addition to showing all such information, the report shall guarantee that the  
6 report is accurate and complete and the report shall provide that in the event that its  
7 guarantee or any information shown in the report is incorrect, the title company shall be liable  
8 to the City for the fair market value of the TDR at the time of the report. The liability amount  
9 shall be not less than \$10,000 and no more than \$1,000,000, the appropriate amount to be  
10 determined by the Zoning Administrator based on the number of TDR being used.

11 (iii) An agreement whereby the owner of the Development Lot shall indemnify the  
12 City against any and all loss, cost, harm or damage, including attorneys' fees, arising out of or  
13 related in any way to the assertion of any adverse claim to the TDR, including any loss, cost,  
14 harm or damage occasioned by the passive negligence of the City and excepting only that  
15 caused by the City's sole and active negligence. The indemnity agreement shall be secured  
16 by a first deed of trust on the Development Lot financial balance sheet certified by an auditor or a  
17 corporate officer showing that the owner has assets equal to or greater than the value of the TDR, or  
18 other security satisfactory to ~~the Department of City~~ Planning Department and the City Attorney.

19 (3) If the Zoning Administrator determines that the project applicant has complied  
20 with the provisions of Subsection (h)(2) and all other applicable provisions of this Section, and  
21 that the applicant is the owner of the TDR, that officer shall transmit to the Superintendent of  
22 the Bureau of Building Inspection, with a copy to the project applicant, written certification that  
23 the owner of the Development Lot owns the TDR. Prior to transmitting such certification, the  
24 Zoning Administrator shall prepare a document entitled Notice of Use of TDR stating that the  
25 TDR have been used and may not be further transferred, shall obtain the execution and

1 acknowledgment on the Notice of the owner of record of the Development Lot, shall execute  
2 and acknowledge the Notice, shall record it in the Office of the County Recorder, and shall  
3 mail to the owner of record of the Development Lot a conformed copy of the recorded Notice.  
4 If the Zoning Administrator determines that the project applicant is not the owner of the TDR,  
5 or has not complied with all applicable provisions of this Section, that determination shall be  
6 set forth in writing along with the reasons therefor. The Zoning Administrator shall either  
7 transmit certification or provide a written determination that certification is inappropriate within  
8 10 business days after the receipt of all information required pursuant to Subsection (h)(2).

9 (i) Cancellation of Notice of Use; Transfer from Development Lot.

10 (1) The owner of a Development Lot for which a Notice of Use of TDR has been  
11 recorded may apply for a Cancellation of Notice of Use if (i) the building permit or site permit  
12 for which the Notice of Use was issued expires or was revoked or cancelled prior to  
13 completion of the work for which such permit was issued and the work may not be carried out;  
14 or (ii) any administrative or court decision is issued or any ordinance or initiative or law is  
15 adopted which does not allow the applicant to make use of the permit; or (iii) a portion or all of  
16 such TDR are not used.

17 (2) If the Zoning Administrator determines that the TDR have not been and will not  
18 be used on the Development Lot based on the reasons set forth in subsection (i)(1), the  
19 Zoning Administrator shall prepare the Cancellation of Notice of Use of TDR. If only a portion  
20 of the TDR which had been acquired are not being used, the applicant may identify which  
21 TDR will not be used and the Cancellation of Notice of Use of TDR shall apply only to those  
22 TDR. The Zoning Administrator shall obtain on the Cancellation of Notice of Use of TDR the  
23 signature and acknowledgment of the owner of record of the Development Lot as to which the  
24 Notice of Use of TDR was recorded, shall execute and acknowledge the document, and shall  
25 record it in the office of the County Recorder.

1           (3)     Once a Cancellation of Notice of Use of TDR has been recorded, the owner of  
2 the Development Lot may apply for a Statement of Eligibility in order to transfer the TDR  
3 identified in that document. The procedures and requirements set forth in this Section  
4 governing the transfer of TDR shall apply to the transfer of TDR from the owner of a  
5 Development Lot after a Notice of Use has been filed, except for the provisions of this Section  
6 permanently restricting the development potential of a Transfer Lot upon the transfer of TDR;  
7 provided, however, that the district or districts to which the TDR may be transferred shall be  
8 the same district or districts to which TDR could have been transferred from the Transfer Lot  
9 that generated the TDR.

10           (j)     Erroneous Notice of Use; Revocation of Permit. If the Zoning Administrator  
11 determines that a Notice of Use of TDR was issued or recorded in error, that officer may direct  
12 the Superintendent of the Bureau of Building Inspection to suspend any permit issued for a  
13 project using such TDR, in which case the Superintendent shall comply with that directive.  
14 The Zoning Administrator shall thereafter conduct a noticed hearing in order to determine  
15 whether the Notice of Use of TDR was issued or recorded in error. If it is determined that the  
16 Notice of Use of TDR was issued or recorded in error, the Superintendent of the Bureau of  
17 Building Inspection shall revoke the permit; provided, however, that no permit authorizing  
18 such project shall be revoked if the right to proceed thereunder has vested under California  
19 law. If it is determined that the Notice of Use of TDR was not issued or recorded in error, the  
20 permit shall be reinstated.

21           (k)     Effect of Repeal or Amendment. TDR shall convey the rights granted herein only  
22 so long and to the extent as authorized by the provisions of this Code. Upon repeal of such  
23 legislative authorization, TDR shall there after convey no rights or privileges. Upon  
24 amendment of such legislative authorization, TDR shall thereafter convey only such rights and  
25 privileges as are permitted under the amendment. No Statement of Eligibility shall convey any

1 right to use, transfer or otherwise utilize TDR if the maximum floor area ratio for the Transfer  
2 Lot is reduced after the Statement of Eligibility is issued.

3 (l) Preservation, and Rehabilitation, and Maintenance Requirements for Transfer  
4 Preservation Lots.

5 (1) Any net proceeds from the sale of TDR sold after July 1, 2010 shall first be used  
6 to pay for or finance, or make payment on any loans used to finance, the preservation, and/or  
7 rehabilitation, of the building on the Transfer Lot, related to any mandatory seismic  
8 strengthening or retrofit work, work required to comply with disability access or life safety  
9 requirements, or any work to correct any Notices of Violation outstanding at the time of the  
10 Certificate of Transfer. Such work shall comply with the Secretary of the Interior's Standards  
11 for the Treatment of Historic Properties.

12 In addition to the material required to be submitted with an application for a Statement  
13 of Eligibility set forth in subsection 128(e), the owner of the Preservation Lot shall:

14 (i) Demonstrate that any and all outstanding Notices of Violation have been abated;  
15 and

16 (ii) Submit for approval by the Department a Preservation, Rehabilitation, and  
17 Maintenance Plan that describes any proposed preservation and rehabilitation work and that  
18 guarantees the maintenance and upkeep of the Preservation Lot. This Plan shall include:

19 (aa) a plan for the ongoing maintenance of the Preservation Lot;

20 (bb) information regarding the nature and cost of any rehabilitation, restoration or  
21 preservation work to be conducted on the Preservation Lot, including information about any  
22 required seismic, life safety, or disability access work;

23 (cc) a construction schedule; and

24 (dd) any other such information as the Department may require to determine  
25 compliance of this subsection 128(l).



1 All such work, shall comply with the Secretary of the Interior's Standards for the  
2 Treatment of Historic Properties. The requirements of the approved Plan shall be recorded  
3 along with the final Statement of Eligibility in the Office of the County Recorder.

4 Notwithstanding the foregoing, the owner of the Preservation Lot may apply to the  
5 Department for a hardship exemption from the requirements of subsection (i). Such hardship  
6 exemption shall demonstrate to the satisfaction of the Department that sale of TDR is  
7 necessary to fund the work required to cure the outstanding Notice(s) of Violation on the  
8 Preservation Lot.

9 ~~(2) Prior to the issuance of the Certificate of Transfer, the owner of the Transfer Lot~~  
10 ~~shall submit a report to the Zoning Administrator containing: (i) a report detailing the~~  
11 ~~preservation rehabilitation work proposed to be done to the Transfer Lot per subsection (1)~~  
12 ~~above (ii) a construction schedule or any such other documentation as the Zoning~~  
13 ~~Administrator may require; and (iii) a plan outlining work for ongoing maintenance of the~~  
14 ~~Building. The Zoning Administrator shall act on the Certificate of Transfer Application and~~  
15 ~~issue the Certificate of Transfer within thirty days of a complete submittal. The requirements of~~  
16 ~~this subsection shall apply only to the initial transfer of TDR from the Transfer Lot and not to~~  
17 ~~any subsequent transfer.~~

18 Approval of the Statement of Eligibility shall be conditioned on execution of the  
19 requirements described in subsection (l)(1). Once a Statement of Eligibility has been issued  
20 and a Notice of Special Restrictions has been recorded on the property, the owner of the  
21 Preservation Lot, at the owner's sole discretion, may withdraw from the TDR program prior to  
22 the sale of any TDR sold. The Department shall rescind the Statement of Eligibility and  
23 request removal of such condition(s) on the Preservation Lot. Once any TDR is transferred  
24 from the Preservation Lot, the Statement of Eligibility and conditions may not be withdrawn.

1           (3) Within one year of the sale of TDR issuance of the Statement of Eligibility, the  
2 owner of the Transfer Property Preservation Lot shall submit a status report to the Zoning  
3 Administrator Department detailing how the requirements of subsection (l)(1) have been  
4 completed and describing ongoing maintenance activities. showing completion of all required  
5 preservation, rehabilitation, and maintenance work. Such report shall include: (i) information  
6 detailing the work completed; (ii) copies of all permits obtained for the work, including any Certificates  
7 of Appropriateness or Permits to Alter; (iii) any inspection reports or other documentation from the  
8 Department of Building Inspection showing completion of the work; (iv) itemized receipts of payment  
9 for work performed; and (v) any such other documentation as the Zoning Administrator Department  
10 may require to determine compliance with the requirements of this subsection 128(l). The deadline for  
11 completion of the work and submittal of this report may be extended at the discretion of the Zoning  
12 Administrator Department upon application of the owner of the Preservation Lot and only upon a  
13 showing that the owner has diligently pursued all required permits and completion of the work.

14           (4) Failure to comply with the requirements of this subsection (l), including all reporting  
15 requirements, shall be grounds for enforcement under this Code, including but not limited to under  
16 Sections 176 and 176.1. Penalties for failure to comply may include, but shall not be limited to, a lien  
17 on the Transfer Property Preservation Lot equal to the sale price of the TDR sold.

18  
19           Section 3. In accordance with Planning Code Sections 106 and 302, the following  
20 changes are hereby adopted as amendments to Zoning Use District Map ZN01 of the Zoning  
21 Map of the City and County of San Francisco:  
22  
23  
24  
25

Description of Property	Use District to be Superseded	Use District Hereby Approved
Assessor's Block No. 0241, Lots Nos. 011 and 012	Chinatown Visitor Retail (CVR)	<u>C-3-O</u>

Section 4. The Board of Supervisors hereby approves the following amendment to the Chinatown Land Use and Density Plan of the Chinatown Area Plan of the General Plan of the City and County of San Francisco:

Assessor's Block No. 0241, Lots Nos. 011 and 012 are hereby removed from the Chinatown Land Use and Density Plan Map and are no longer zoned Chinatown Visitor Retail District (CVRD).

Section 5. The Board of Supervisors hereby approves the following amendment to the Downtown Land Use and Density Plan of the Downtown Area Plan of the General Plan of the City and County of San Francisco:

Assessor's Block No. 0241, Lots Nos. 011 and 012 are hereby added to the Downtown Land Use and Density Plan Map as C-3-O.

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

By: \_\_\_\_\_  
Marlena G. Byrne  
Deputy City Attorney