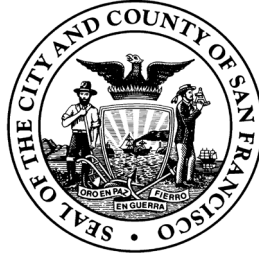


BOARD of SUPERVISORS



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MEMORANDUM

TO: Patrick O’Riordan, Director, Department of Building Inspection
Sonya Harris, Secretary, Building Inspection Commission

FROM: John Carroll, Assistant Clerk
Land Use and Transportation Committee

DATE: November 6, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors’ Land Use and Transportation Committee has received the following legislation, introduced by Mayor Breed on October 29, 2024:

File No. 241067

Ordinance amending the Planning Code to allow tourist hotels and motels to be used for Interim Housing without thereby abandoning or discontinuing the hotel use classification under that Code; amending the Building Code to allow Interim Housing without thereby changing the underlying occupancy classification of the property, and amending Appendix P to remove restriction that emergency housing be located on land owned or leased by the City; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

The proposed ordinance is being transmitted pursuant to Charter, Section D3.750-5, for public hearing and recommendation. It is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission’s recommendation and reports at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: john.carroll@sfgov.org.

c:
Offices of Chair Melgar and Mayor Breed
Tate Hanna, Department of Building Inspection
Patty Lee, Department of Building Inspection

1 [Planning, Building Codes - Interim Housing in Hotels and Motels]

2
 3 **Ordinance amending the Planning Code to allow tourist hotels and motels to be used**
 4 **for Interim Housing without thereby abandoning or discontinuing the hotel use**
 5 **classification under that Code; amending the Building Code to allow Interim Housing**
 6 **without thereby changing the underlying occupancy classification of the property, and**
 7 **amending Appendix P to remove restriction that emergency housing be located on land**
 8 **owned or leased by the City; affirming the Planning Department's determination under**
 9 **the California Environmental Quality Act; and making findings of consistency with the**
 10 **General Plan, and the eight priority policies of Planning Code, Section 101.1, and**
 11 **findings of public necessity, convenience, and welfare under Planning Code, Section**
 12 **302.**

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

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

22 Section 1. Environmental, Land Use, and Related Findings.

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

1 (b) On _____, the Planning Commission, in Resolution No. _____, adopted findings
2 that the actions contemplated in this ordinance are consistent, on balance, with the City's
3 General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts
4 these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of
5 Supervisors in File No. _____, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
7 amendments will serve the public necessity, convenience, and welfare for the reasons set
8 forth in Planning Commission Resolution No. _____ and the Board incorporates such reasons
9 herein by reference. A copy of Planning Commission Resolution No. _____ is on file with the
10 Clerk of the Board of Supervisors in File No. _____.

11 (d) On _____, the Building Inspection Commission considered this
12 ordinance at a duly noticed public hearing pursuant to Charter Section 4.121 and Building
13 Code Section 104A.2.11.1.1. A copy of a letter from the Secretary of the Building Inspection
14 Commission regarding the Commission's recommendation is on file with the Clerk of the
15 Board of Supervisors in File No. _____.

16 (e) No local findings are required under California Health and Safety Code Section
17 17958.7 because the amendments to the Building Code contained in this ordinance do not
18 regulate materials or manner of construction or repair, and instead relate in their entirety to
19 administrative procedures for implementing the code, which are expressly excluded from the
20 definition of a "building standard" by California Health and Safety Code Section 18909(c).

21 (f) To the extent the amendments contained in this ordinance reference existing
22 provisions of San Francisco Building Code Appendix P and could be considered "building
23 standards," California Government Code Sections 8698 through 8698.4 authorize the Board
24 of Supervisors to declare the existence of a shelter crisis upon a finding that a significant
25 number of persons within the jurisdiction are without the ability to obtain shelter, and that the

1 situation has resulted in a threat to the health and safety of those persons. These
2 Government Code provisions authorize the City to suspend strict compliance with state and
3 local statutes, ordinances, and regulations setting housing, health, or safety standards for new
4 public facilities opened to homeless persons in response to the shelter crisis, to the extent that
5 strict compliance would prevent, hinder, or delay the mitigation of the shelter crisis, and allow
6 the City to enact its own standards for the shelters that ensure basic public health and safety.

7 (g) In Ordinance No. 57-16, enacted on April 22, 2016, the Board of Supervisors
8 found that a significant number of persons within the City lack the ability to obtain shelter,
9 which has resulted in a threat to their health and safety. For that reason, and based on
10 factual findings set forth in that ordinance, the Board of Supervisors declared the existence of
11 a shelter crisis in the City pursuant to California Government Code Section 8698 through
12 8698.2.

13 (h) In Ordinance No. 60-19, enacted on April 4, 2019, the Board of Supervisors
14 affirmed that the shelter crisis was still ongoing, and that requiring homeless shelters located
15 on property owned or leased by the City to go through the standard building permitting
16 process for construction, repair and siting prevents, hinders and delays efforts to mitigate the
17 shelter crisis. Therefore, the Board adopted the optional, streamlined approval process
18 codified in Ordinance No. 60-19 in accordance with California Government Code Section
19 8698.4.

20
21 Section 2. General Findings.

22 (a) The tourism and hospitality sector of the San Francisco economy plays a vital role
23 in drawing visitors to the City in record numbers. But hotel occupancy declined precipitously
24 during the COVID -19 crisis. Although hotel occupancy rates have continued to climb upward
25

1 since they hit bottom in 2020, current occupancy rates are still below peak occupancy levels
2 in 2018 and 2019.

3 (b) At the same time, the City lacks sufficient sites to provide shelter for persons who
4 are experiencing homelessness or are at risk of homelessness. The City continues to look for
5 ways to increase opportunities for emergency housing locations, through both shelter options
6 and permanent supportive housing.

7 (c) In Ordinance 92-22, enacted on June 24, 2022, the City created the Places for All
8 Program, which states that it is the policy of the City to offer to every person experiencing
9 homelessness in San Francisco a safe place to sleep. While the first priority is expanding
10 opportunities for safe, affordable, and permanent housing for all residents, the Places for All
11 Program commits the City to exploring opportunities for people experiencing homelessness to
12 have temporary shelter through the following: Navigation Centers, adult emergency shelters,
13 crisis stabilization units, family shelters, hotel placements, Safe Overnight Parking Lots, non-
14 congregate cabins, Safe Sleep Sites, other non-congregate shelter, and shelters for
15 transitional aged youth (“TAY”).

16 (d) Interim Housing is a form of shelter where program participants have individual
17 rooms, with shared amenities such as kitchens, pantries, and laundry facilities. Residents
18 have access to on-site case managers, other supportive services, and additional resources
19 needed to build self-sufficiency.

20 (e) California Civil Code Sections 1954.08 through 1954.093 provide that individuals
21 occupying a shelter located in a hotel or motel are not tenants, and do not have a tenancy or
22 hotel-customer relationship with the hotel operator. It also provides that a hotel or motel may
23 not be designated a nontransient hotel or motel solely as a result of a shelter participant’s
24 stay.

1 (f) While the hotel industry continues to recover and evolve, the public interest would
2 be served if underutilized hotels and motels could provide much needed Interim Housing. It is
3 reasonable for the City to partner with underutilized and vacant hotels and motels to provide
4 safe housing and services for individuals in need of housing.

5 (g) It would be unreasonable and counter to the public interest to require that tourist
6 hotels and motels used as Interim Housing lose their underlying tourist use designation and
7 occupancy classification under the Planning and Building Codes. Accordingly, this ordinance
8 provides just the opposite, that hotels and motels used as Interim Housing will retain their
9 tourist use designation and occupancy classification under the respective codes.

10
11 Section 3. The Planning Code is hereby amended by adding Section 202.15 and
12 revising Section 317, to read as follows:

13 **SEC. 202.15. INTERIM HOUSING IN HOTELS AND MOTELS.**

14 *(a) Purpose. This Section 202.15 is intended to create additional opportunities to locate*
15 *shelters for persons experiencing homelessness or at risk of homelessness where those persons can*
16 *receive on-site supportive services. Interim Housing can help reduce the likelihood of negative*
17 *outcomes for people experiencing homelessness or at risk of experiencing homelessness. Tourist*
18 *Hotels and Motels are authorized under the Planning Code as separate uses, both of which are*
19 *considered part of the Retail Sales and Service use category. Hotels and Motels are generally designed*
20 *to offer privacy for individuals or small groups of individuals in a non-congregate setting while also*
21 *providing a common space for gathering and various services. This layout and structure is a natural fit*
22 *for Interim Housing, where individuals or small groups of individuals may desire or need private*
23 *accommodations while still needing certain supportive services. At the same time, Tourist Hotels and*
24 *Motels may not desire to locate Interim Housing on their premises, if it would result in the loss of the*
25

1 underlying Hotel or Motel use. This Section allows Tourist Hotel and Motel operators to locate Interim
2 Housing, as defined, on their properties without losing the underlying Hotel or Motel use.

3 (b) **Definitions.** For purposes of this Section 202.15, the following definitions shall apply.

4 “Client” means any person residing in or seeking to reside in Interim Housing, and includes
5 any dependent children under the age of 18.

6 “Interim Housing” means a Residential use located on land owned or leased by the City, or
7 provided through a contractual arrangement between the City and a third party, that provides shelter
8 to Clients experiencing homelessness or at risk of homelessness, and provides on-site supportive
9 services, including, without limitation, intake and assessment of Clients’ needs, outreach to the Clients
10 to assist them with health or social needs, management of the health or social needs of Clients, and
11 referrals for services to the Clients.

12 (c) **Interim Housing Use Authorized.** Any Hotel or Motel use may operate all or any portion
13 of its premises as Interim Housing without abandoning or discontinuing its land use authorization as a
14 Hotel or Motel under the Planning Code, irrespective of whether such existing Hotel or Motel use is a
15 principally permitted, conditionally permitted, or nonconforming use. This authorization shall not be
16 interpreted to exempt the Hotel or Motel use from any provision of the Planning Code. Any Interim
17 Housing use authorized pursuant to this Section 202.15 shall be permitted for no more than 90 days
18 after the shelter emergency pursuant to Government Code Section 8698.4 is terminated.

19 (d) **Application.** The property owner or the property owner’s authorized agent (in either case,
20 “Applicant”) shall submit an application for Interim Housing use to the Planning Department, on a
21 form prepared by the Planning Department. The application shall include an affidavit signed by the
22 Applicant, and the property owner, if the Applicant is not the property owner, detailing the proposed
23 Interim Housing use of the property.

24 (e) **No Conversion, Change, Discontinuance, or Abandonment of Use.** The approval or
25 commencement of the Interim Housing authorized under this Section 202.15 shall not be considered a

1 conversion, discontinuance, abandonment, or change of use for purposes of this Code, notwithstanding
2 Sections 178 and 183 of this Code, or any other related provisions. Any Hotel or Motel use established
3 as of the time the Interim Housing use is authorized shall continue to be authorized under the Planning
4 Code for as long as such property is used for Interim Housing pursuant to this Section 202.15.

5 (f) **Application of Other Development Controls and Requirements.** The Interim Housing use
6 that is authorized pursuant to this Section 202.15 shall not be required to comply with development
7 standards applicable to new residential uses, including but not limited to density, rear yard, open
8 space, exposure, and other requirements set forth in Articles 1.2, 1.5, or 2 of the Planning Code. The
9 Interim Housing use shall not be subject to any development impact fees or development requirements
10 set forth in Article 4 of the Planning Code as a prerequisite to obtaining authorization pursuant to this
11 Section 202.15.

12
13 **SEC. 317. LOSS OF RESIDENTIAL AND UNAUTHORIZED UNITS THROUGH**
14 **DEMOLITION, MERGER, AND CONVERSION.**

15 * * * *

16 **(c) Applicability; Exemptions.**

17 * * * *

18 (11) If a Hotel or Motel is lawfully authorized for Interim Housing use in accordance
19 with Planning Code Section 202.15, and such use ceases, the abandonment, cessation, or termination
20 of Interim Housing use shall not be considered a Residential Conversion.

21 * * * *

22
23 Section 4. Chapter 1A and Appendix P of the Building Code are hereby amended by
24 revising Section 106A (specifically Section 106A.2) and Section P101.1, to read as follows:
25

1 **106A.2 Work exempt from permit.** [Section 105.2 of the California Building Code.]

2 Exemptions from the permit requirements of this code shall not be deemed to grant
3 authorization for any work to be done in any manner in violation of the provisions of this code
4 or any other laws or ordinances of this jurisdiction. A building permit shall not be required for
5 the following:

6 * * * *

7 (25) Use of a hotel or motel for Interim Housing use, as defined and authorized in Planning
8 Code Section 202.15, as may be amended from time to time, where the Department confirms the hotel
9 or motel meets the minimum fire and safety requirements set forth in Section P111 of Appendix P to this
10 Code. The use of a hotel or motel or any units within a hotel or motel for Interim Housing shall not
11 change the underlying occupancy classification of the property.

12
13 **SECTION P101 – GENERAL**

14 **P101.1 Scope.** This appendix shall be applicable to emergency housing and
15 emergency housing facilities, as defined in Section P102. The provisions and standards set
16 forth in this appendix shall be applicable to emergency housing established pursuant to the
17 declaration of a shelter crisis under Government Code section 8698 et seq. and located in
18 new or existing buildings, structures, or facilities owned, operated, erected, or constructed by,
19 for, or on behalf of the City and County of San Francisco ~~on land owned or leased by the City and~~
20 ~~County of San Francisco.~~

21
22 Section 5. Effective Date. This ordinance shall become effective 30 days after
23 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
24 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
25 of Supervisors overrides the Mayor’s veto of the ordinance.

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

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/
AUSTIN M. YANG
Deputy City Attorney
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LEGISLATIVE DIGEST

[Planning, Building Codes - Interim Housing in Hotels and Motels]

Ordinance amending the Planning Code to allow tourist hotels and motels to be used for Interim Housing without thereby abandoning or discontinuing the hotel use classification under that Code; amending the Building Code to allow Interim Housing without thereby changing the underlying occupancy classification of the property, and amending Appendix P to remove restriction that emergency housing be located on land owned or leased by the City; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302

Existing Law

Pursuant to state law, the City may declare the existence of a shelter crisis if it finds that a significant number of persons within the City lack the ability to obtain shelter, and that fact has resulted in a threat to their health and safety. The City made these findings in Ordinance No. 57-16 pursuant to California Government Code Section 8698 through 8698.2. Later amendments to that law permitted the City to adopt streamlined Building Code standards if the City determined that strict compliance with the Building Code for shelters located on land owned or leased by the City would prevent, hinder or delay efforts to mitigate the shelter crisis. The City made these findings and adopted the relaxed standard, now codified in Appendix P, in Ordinance No. 60-19. The authorization to declare such a shelter crisis and adopt the streamlined standards was extended in SB 1395 (2024).

Civil Code 1954.08 through 1954.093 provide that operating tourist hotels and motels does not create a landlord tenant relationship between the program participant and the shelter operator. Although these sections were set to expire on January 1, 2025, AB 2835 (2024) recently amended these code sections to remove the sunset date.

Under the Planning Code, if a use is not operated or is discontinued for a certain amount of time, the use is considered abandoned. With limited exceptions, more than one use is not permitted in the same area. The Planning Code considers a Hotel use and a Motel use to each be a form of a Retail Sales and Service use. Homeless shelters are generally considered a Residential use.

Amendments to Current Law

This ordinance would amend the Planning Code to create Interim Housing, which would be a Residential use that provides shelter and services to persons experiencing homelessness or at risk of homelessness. The ordinance would allow existing Tourist Hotels and Motels to be used as Interim Housing without losing the prior authorization as a Hotel or Motel use, and would not require strict adherence with other sections of the Planning Code that apply to Residential uses. The Hotel or Motel use would continue so long as the Tourist Hotel or Motel is being used for Interim Housing.

This ordinance would also allow Tourist Hotels and Motels to rely on the Building Code Standards in Appendix P, which were adopted pursuant to Government Code 8698.4. The ordinance would amend Appendix P to remove the restriction that shelters be located on property owned or leased by the City. The ordinance also would provide that using a Tourist Hotel or Motel as Interim Housing would not change the underlying occupancy classification of the property.

Background Information

The City is still recovering from underutilized and vacant hotels and motels. This ordinance attempts to match underutilized or vacant hotels and shelter service providers.

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