

BOARD of SUPERVISORS



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MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection
John Rahaim, Director, Planning Department
Olson Lee, Director, Mayor's Office of Housing and Community
Development
Jeff Kositsky, Director, Department of Homelessness and Supportive
Housing
Barbara A. Garcia, Director, Department of Public Health

FROM: *u*
bn Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

DATE: December 15, 2016

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following substitute legislation, introduced by Supervisor Peskin on December 6, 2016:

File No. 161291

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

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: William Strawn, Department of Building Inspection
Carolyn Jayin, Department of Building Inspection

Scott Sanchez, Planning Department
Lisa Gibson, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Jeanie Poling, Planning Department
Eugene Flannery, Mayor's Office of Housing and Community Development
Kate Hartley, Mayor's Office of Housing and Community Development
Greg Wagner, Department of Public Health
Colleen Chawla, Department of Public Health

1 [Administrative Code - Update Hotel Conversion Ordinance]

2
3 **Ordinance amending Administrative Code, Chapter 41 to update the Hotel Conversion**
4 **Ordinance, including: adding or refining definitions of tourist and transit use,**
5 **comparable unit, conversion, and low-income household; revising procedures for**
6 **permits to convert residential units; harmonizing fees and penalty provisions with the**
7 **Building Code; eliminating seasonal short-term rentals for residential hotels that have**
8 **violated provisions of the Hotel Conversion Ordinance in the previous year; authorizing**
9 **the Department of Building Inspection to issue administrative subpoenas; adding an**
10 **operative date; and affirming the Planning Department's determination under the**
11 **California Environmental Quality Act.**

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

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

20 Section 1. Environmental Findings.

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

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

3 **SEC. 41.3. FINDINGS**

4 * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8
9 **SEC. 41.9. RECORDS OF USE.**

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

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

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

8 * * * *

9
10 **SEC. 41.10. ANNUAL UNIT USAGE REPORT.**

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

- 15 (1) The total number of units in the hotel as of October 15~~th~~ of the year of filing;
16 (2) The number of residential and tourist units as of October 15~~th~~ of the year of
17 filing;
18 (3) The number of vacant residential units as of October 15~~th~~ of the year of
19 filing; if more than 50% ~~percent~~ of the units are vacant, explain why;
20 (4) The average rent for the residential hotel units as of October 15~~th~~ of the year
21 of filing;
22 (5) The number of residential units rented by week or month as of October 15~~th~~
23 of the year of filing; and
24 (6) The designation by room number and location of the residential units and
25 tourist units as of October 15~~th~~ of the year of filing. The Owner or operator shall maintain

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

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

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

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

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

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

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

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

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

9 If the Director or the Director's designee determines that additional information is
10 needed to make a determination, ~~he~~ the Director or designee shall send both the owner and
11 operator a written request to furnish such information within 15 calendar days of the mailing of
12 the written request. The letter shall state that if the requested information, or a response
13 explaining why the requested information will not be provided, is not furnished in the time required,
14 the residential and tourist units shall be presumed to be unchanged from the previous year
15 and that the Director shall impose a \$500 penalty for failure to furnish the additional
16 information within the 15-day period, and a \$500 penalty for each day after the 15-day period for
17 which the owner or operator fails to furnish the requested information or explanation. If the Director
18 does not timely receive the information, the Director shall notify both the owner and operator,
19 by mail or electronic mail, that the Director is imposing a \$500 per day penalty and that the
20 accumulated penalty ~~which~~ must be paid within 30 days of the mailing of the notification, and
21 that interest on the penalty shall accrue from the expiration of the 30 days at the rate of
22 1.5%~~one and one-half percent~~ per full month, compounded monthly. The written notification shall
23 state that if the penalty is not paid, a lien to secure the amount of the penalty, plus the
24 accrued interest, will be recorded against the real property pursuant to the provisions of
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1 Section 41.20(d) of this Chapter 41, and that the Residential Hotel will be not be eligible for any
2 temporary tourist rentals as provided in Section 41.19 for 12 months.

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

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

23 * * * *

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1 **SEC. 41.11. ADMINISTRATION.**

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

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

16
17 (b) **Hearing.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 * * * *

19
20 **SEC. 41.14. MANDATORY DENIAL OF PERMIT TO CONVERT.**

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

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

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

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

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

5 * * * *

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

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

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

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

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

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

4 **25-percent Limit.**

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

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

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

20 * * * *

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

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

9 * * * *

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

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

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

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

18 (3) Offer for rent for ~~nonresidential use or~~ *T*ourist *or Transient U*se a residential
19 unit except as permitted by this Chapter.

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

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

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

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

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

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

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

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

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

1 ~~authorized use. The daily rate shall be the rate unlawfully charged by the hotel owner or operator to~~
2 ~~the occupants of the unlawfully converted unit.~~ The Director may also impose penalties upon the
3 owner or operator of the hotel to reimburse the City or the complainant for the costs, including
4 reasonable attorneys' fees. of enforcement, ~~including reasonable attorneys' fees,~~ of this Chapter.

5 The hearing officer's decision shall notify the parties of this penalty provision and shall state
6 that the Director of the Department of Building Inspection is authorized to impose the
7 appropriate penalty by written notification to both the owner and operator, requesting payment
8 within 30 days. If the penalty imposed is not paid, a lien to secure the amount of the penalty
9 will be recorded against the real property pursuant to the provisions of Section 41.20(d) of this
10 Chapter 41.

11 * * * *

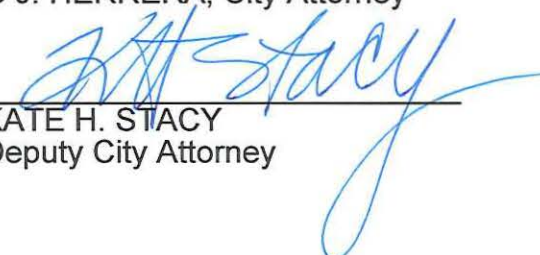
12
13 Section 3. This ordinance has revised Administrative Code Section 41.4 by removing
14 letter designations for defined terms. The Municipal Code is hereby amended to revise any cross-
15 references to Section 41.4, including in Administrative Code Sections 41D.1 and 41E.1 and Police
16 Code Section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

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

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

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

10 By:


11 KATE H. STACY
12 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(Substituted, 12/6/2016)

[Administrative Code - Update Hotel Conversion Ordinance]

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

Existing Law

The Hotel Conversion Ordinance ("HCO"), Administrative Code Chapter 41, regulates roughly 18,000 residential units within 500 residential hotels across the City. The HCO prohibits residential hotel operators from demolishing or converting registered residential units to tourist or transient use. The HCO defines conversion as eliminating a residential unit, renting a residential unit for a less than 7-day tenancy, or offering a residential unit for tourist or nonresidential use. The HCO allows seasonal tourist rentals of residential units during the summer if the unit is vacant because a permanent resident voluntarily vacated the unit or was evicted for cause by the hotel operator.

The HCO requires hotel owners or operators who wish to convert or demolish a residential unit to seek a permit to convert from the Department of Building Inspection ("DBI"). The permit to convert application process does not require submission of all the essential information that DBI needs to make a preliminary determination on an application, such as the location of the proposed replacement units and the last known rent of the units to be converted.

The HCO requires hotel operators to maintain records to demonstrate compliance with the ordinance and to provide these records for inspection by DBI. DBI does not have administrative subpoena power to compel production if a hotel operator objects to providing records for inspection.

Amendments to Current Law

The proposed legislation defines tourist and transient use as the rental of a residential unit for less than 32 days to a party other than a permanent resident or prospective permanent resident. The proposed legislation revises the definition of unlawful conversions to prohibit renting or offering to rent a residential unit for tourist or transient use. This change would allow hotel operators to rent residential units to existing or prospective permanent residents of

the hotel—those who have resided or intend to reside in the hotel for more than 32 days—for any duration of tenancy. The change also clarifies that residential units are reserved for residential use and cannot be rented for tenancies of less than 32-days to parties other than existing or potential permanent residents. Similarly, the proposed legislation would make it unlawful to offer a residential unit for a tenancy of less than 32 days to a party other than a permanent or prospective permanent resident.

The proposed legislation would eliminate seasonal tourist rentals of vacant residential units for hotels that have violated any provision of the Chapter in the last calendar year.

The proposed legislation would update the requirements for permit to convert applications, by requiring that applicants provide information about where replacement units will be located and the most recent rental amount for the units to be converted. The updated definition of “comparable unit” would also require any replacement housing to be the same category of housing as the residential unit being replaced, and affordable to a similar resident, including the disabled, elderly and low income tenant.

The proposed legislation would authorize DBI to issue administrative subpoenas to compel production of records where a hotel operator objects to producing them for inspection.

The proposed legislation also updates the penalty provisions and amounts for: insufficient and late filing of annual unit usage reports, failure to maintain daily logs, and unlawful conversions. The proposed legislation revises the administrative costs provisions to harmonize with the applicable Building Code cost provisions.

The legislation would apply to any residential hotels that have not procured a permit to convert on or prior to December 1, 2016.

Background Information

The HCO was first enacted in 1981. The HCO’s purpose is to “benefit the general public by minimizing adverse impact on the housing supply and on displaced low income, elderly, and disabled persons resulting from the loss of residential hotel units through their conversion and demolition.” The HCO includes findings that the City suffers from a severe shortage of affordable rental housing; that many elderly, disabled and low-income persons reside in residential hotel units, making it in the public interest to regulate and provide remedies for unlawful conversion of residential hotel units.

The Board last amended and updated the provisions of the HCO in 1990. The proposed legislation is designed to update key provisions and clarify the application of the HCO in response to issues that have arisen over the last 26 years.