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February 4, 2019

Angela Calvillo
Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

RE: File No. 190049 [Administrative Code - Definition of Tourist or Transient Use Under the Hotel Conversion Ordinance]. Rules Committee Hearing - February 4, 2019

Dear Ms. Calvillo,

This office represents the San Francisco SRO Hotel Coalition, Hotel Des Arts and numerous other individual owners of SROs (collectively "Owners"). Owners have been damaged by a prior 2017 Ordinance unlawfully regulating their commercial hotel properties. Owners will be further damaged by adoption of File No. 190049 ("the Amendment"). Owners therefore object both substantively and procedurally to the Amendment based on CEQA, this Board's rules of order, local, state and federal law.

The Amendment purports to amend the Administrative Code to revise the definition of Tourist or Transient Use under the Hotel Conversion Ordinance ("HCO") to make it unlawful to offer a residentially designated unit for occupancy of less than 30 days. Contrary to the Legislative Digest and draft Amendment, the current state of the law is that residentially designated hotel rooms may be offered for terms of 7 days or more, not 32 days, as stated in the Existing Law description of the Digest. While it is correct that in 2017 this Board amended the HCO to change the definition of "Unlawful Action" under the HCO, the 2017 amendment is not in effect as the result of a decision by the California Court of Appeal (Exhibit A attached herein) and stipulated court order. For the reasons described in the Court of Appeal's decision, SRO rooms are currently subject to the prior 7-day minimum term or guest "stay." CEQA analysis is categorically required for this significant land use change. By restricting weekly access to more than ten thousand available guest rooms, the Amendment perpetuates and causes significant adverse impacts on the environment.

PETITIONERS SUBMIT FOR THE BOARD'S RECORD THE EXTENSIVE BRIEFING FROM THE TRIAL AND APPELLATE COURTS IN OPPOSITION TO THE AMENDMENT.

Please see the below referenced briefs and court orders for detailed arguments as to each stated objection.

- Owners dispute the validity of the Amendment under CEQA. See Petitioner's Opening and Reply Briefs on the Merits in Support of Petitions for Peremptory Writs of Mandate in SRO Hotel Coalition et al v CCSF, SF Superior No. CPF-17-515656 submitted herewith. Declaration of Ryan Patterson dated February 4, 2019, Exhibit D.
- Owners dispute the validity of the Amendment based on the Lawful Non-Conforming Use Doctrine. The Amendment interferes with Owners' property rights. The hotel business is substantially different than the landlord-tenant business, and a minimum 30-day term of occupancy does not cure the defects identified by the Court of Appeal. See appellate decision in SF SRO Hotel Coalition et al v CCSF A15847 (2018) *non-published,* Appellants' Opening and Reply Briefs on Appeal in Case No. A15847 submitted herewith. Declaration of Ryan Patterson dated February 4, 2019, Exhibit E.
- The Amendment compounds Owners' already accruing damages based on the City's inverse condemnation of their commercial hotel properties. The Amendment effectuates an unconstitutional taking of Owners' hotel business without compensation. See appellate decision in SF SRO Hotel Coalition et al v CCSF A15847 (2018) *non-published.*
- Owners submit the Trial Court Order Regarding Plaintiffs' Motion for Preliminary Injunction. The Notice of Entry of Order was filed on December 5, 2018 in the SRO Hotel Coalition et al v CCSF, SF Superior No. CPF-17-515656 case. Said Notice of Entry of Order is submitted herewith—see Declaration of Ryan Patterson dated February 4, 2019, Exhibit A for inclusion in the record of these proceedings. This Order establishes that the legislative digest and the Amendment erroneously describe the substance and effect of the Amendment by referencing an unenforceable prior amendment. The Amendment changes the required length of occupancy for SRO units to a minimum of 30 days from the presently operative required term of 7 days which "changes the fundamental nature" of Owners' businesses "making them landlords rather than hotel owners." See appellate decision in SF SRO Hotel Coalition et al v CCSF A15847 (2018) *non-published.*

THE RULES COMMITTEE HEARING IS PREMATURE UNDER THIS BOARD'S OWN RULES, LOCAL LAW AND CEQA.

The Amendment (and the 2017 amendment) amount to a rezoning or reclassification of allowable land use for approximately 500 buildings in San Francisco. Changes in local law that involve land use must be referred to the Planning Commission for general plan consistency findings and CEQA review. (Planning Code § 302.) The required referral by the Clerk occurred on January 29, 2019. The Planning Commission has not reviewed the Amendment and no CEQA review appears to have occurred.

In noticing the Amendment sooner than 30 days from introduction, the Committee appears to be relying on Board rule of order 3.23. That rule purports to authorize a waiver of the 30-day rule AFTER the Board Clerk's referral, yet the Board President purported to waive the 30-day rule PRIOR to the Board Clerk's referral—on the premise that the Amendments are not "significant". This is procedurally and substantively inappropriate. Given the City's failure to review the substantial individual and cumulative adverse environmental effects of the Amendment (and the 2017 Amendment), Rule 3.23 is inapplicable. Rule 3.23 is also unlawful under CEQA to the extent it unlawfully delegates preliminary CEQA determinations to the Board President by shortcutting the CEQA review process and interfering with the Planning Department's role as lead agency for purposes of CEQA review of land use regulation.

OWNERS SUBMIT THE PROPOSED ADMINISTRATIVE AND LEGISLATIVE RECORD IN SF SRO HOTEL COALITION et al v CCSF, SF SUPERIOR NO. CPF-17-515656 AND THE EXCERPTS OF RECORD LODGED IN THAT MATTER AND REQUEST THEY BE INCLUDED IN THE RECORD OF THIS LEGISLATIVE PROCEEDING.

Petitioner's proposed administrative record prepared in litigation against San Francisco challenging the 2017 Amendment to the HCO is more than seven thousand pages. These documents have been delivered to the City Attorney in connection with SF SRO Hotel Coalition et al v CCSF, SF Superior No. CPF-17-515656 and all of the documents in this record are from the files of various city departments and agencies. Owners offer to submit another hard copy of these documents upon request of the Clerk of the Board of Supervisors, the Clerk of the Rules Committee or any individual member of the Board of Supervisors. An electronic copy of Petitioners' Proposed Administrative Record can be accessed here: https://zacks.egnyte.com/fl/GQcpEHzgFh. Owners request the aforementioned, proposed administrative record be included in the record of these proceedings.

Owners submit the index of the excerpts of record and the excerpts submitted in connection to the SF SRO Hotel Coalition et al v CCSF, SF Superior No. CPF-17-515656,

Declaration of Ryan Patterson dated February 4, 2019 filed herewith, Exhibits B and C. Owners further request the aforementioned Declaration of Ryan Patterson, including all Exhibits, be included in the record of these proceedings.

Respectfully submitted,

ZACKS, FREEDMAN & PATTERSON, PC

Andrew M. Zacks by MB

Andrew M. Zacks

encl. Court of Appeal Decision (Appeal #A15847)

cc via email:

- Rules Committee Members (Supervisors Ronen, Walton & Mar)
- Planning Director John Rahaim
- Supervisor Peskin
- Mayor London Breed
- City Attorney Dennis Herrera
- Deputy City Attorney Kristen Jensen
- Deputy City Attorney Jim Emery
- Deputy City Attorney Andrea Ruiz-Esquide

EXHIBIT A

Filed 10/15/18

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

SAN FRANCISCO SRO HOTEL COALITION, et al.,

Plaintiffs and Appellants,

v.

CITY AND COUNTY OF SAN FRANCISCO, et al.,

Defendants and Respondents.

A151847

(San Francisco County
Super. Ct. No. CPF17515656)

In 2017, the City and County of San Francisco (City) amended section 41.20 of the San Francisco Administrative Code to require the rental of residential single room occupancy units (SROs) for terms of at least 32 days, when protections under the City's rent control ordinance arise. Previously, SROs could be rented for periods between seven and 31 days. Plaintiffs San Francisco SRO Hotel Coalition (Coalition), Hotel des Arts, LLC and Brent Haas brought this action for administrative mandate, seeking, among other things, the invalidation of the 2017 Amendments as an unlawful taking under article 1, section 19 of the California Constitution. We reverse the superior court's order denying plaintiffs' request for a preliminary injunction enjoining the enforcement of the 2017 Amendments on the ground that plaintiffs were unlikely to prevail. We remand the case for a determination of the balance of hardships.

I. BACKGROUND

An SRO is a small hotel room that typically lacks a private kitchen or bathroom, similar to a college dormitory room. Many low income, elderly and disabled persons reside in SROs throughout the City. Our Supreme Court has recognized that while SRO units "may not be an ideal form of housing, such units accommodate many whose only other options might be sleeping in public spaces or in a City shelter." (*San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, 674 (*San Remo*).)

In 1979, responding to a "severe shortage" of affordable rental housing for low income, elderly and disabled residents, the San Francisco Board of Supervisors imposed a temporary moratorium on the conversion of residential hotel rooms into tourist hotel rooms. (S.F. Admin Code, §§ 41.3(a)-(g).) In 1981, the City enacted a permanent Hotel Conversion Ordinance (HCO) to regulate future residential hotel room conversions. (S.F. Ord. No. 330-81, S.F. Admin. Code, § 41.1 et seq.)

The HCO required hotel owners in San Francisco to identify all residential hotel units as of September 23, 1979, which were then placed on a registry. (S.F. Admin. Code, § 41.6.) A "Residential Unit" was defined as a "guest room" occupied by a "Permanent Resident" on September 23, 1979. (S.F. Admin. Code, former § 41.4(q).) A "Permanent Resident" was defined as "[a] person who occupies a guest room for at least 32 consecutive days." (S.F. Admin. Code, former § 41.6(n).) Under the San Francisco Rent Control Ordinance, "housing accommodations in hotels, motels, inns, tourist houses, rooming and boarding houses" are subject to rent control and related protections "at such time as an accommodation has been occupied by a tenant for [thirty-two] 32 continuous days or more." (S.F. Admin. Code, § 37.2(r)(1).)

The HCO provided that residential hotel rooms could only be converted into tourist units by obtaining a permit with the Department of Building Inspection, which in turn could only be obtained if the owner constructed new residential units, rehabilitated existing residential units, or paid an "in lieu" fee to the City's Residential Hotel Preservation Fund. (S.F. Admin. Code, §§ 41.4, 41.12-41.13, 41.20) Additionally, Section 41.20(a) of the HCO provided, "(a) Unlawful Actions. It shall be unlawful to:[¶]

(1) Change the use of, or eliminate a residential hotel unit or to demolish a residential hotel unit except pursuant to a lawful abatement order, without first obtaining a permit to convert in accordance with the provisions of this Chapter; [¶] (2) Rent any residential unit for a term of tenancy less than seven days, except as permitted by Section 41.19 of this Chapter; (3) Offer for rent for nonresidential use or tourist use a residential unit except as permitted by this Chapter." (Former S.F. Admin. Code, § 41.20(a).)[1] The HCO was the subject of numerous lawsuits, and the courts have upheld the ordinance against claims that it violates the principles of due process and equal protection (*Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 907–908) or effects an unconstitutional taking of property without just compensation (*id.* at p. 912; *Bullock v. City and County of San Francisco* (1990) 221 Cal.App.3d 1072, 1089 (*Bullock*)).

In 2017, the City revisited the HCO due to concerns that certain SROs were being advertised and rented as tourist units. As relevant here, section 41.20(a) was amended as follows: "(a) Unlawful Actions. It shall be unlawful to: [¶] (1) Change the use of, or eliminate a residential hotel unit or to demolish a residential hotel unit except pursuant to a lawful abatement order, without first obtaining a permit to convert in accordance with the provisions of this Chapter; [¶] (2) Rent any residential unit for *Tourist or Transient Use* ~~*a term of tenancy less than seven days*~~ except as permitted by Section 41.19 of this Chapter; [¶] (3) Offer for rent for ~~*nonresidential use or*~~ *T*~~*t*~~*ourist or Transient U*~~*u*~~*se a residential unit except as permitted by this Chapter." (S.F. Admin Code, § 41.20(a), 2017 Amend.) The amended HCO defined "Tourist or Transient Use" as "[a]ny use of a guest

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[1] Section 41.19 allowed for temporary tourist rentals of residential units for less than seven days during the summer season (May 1 through September 30) so long as those units were vacant due to the voluntary vacation or lawful eviction of a permanent resident. (S.F. Admin. Code, former § 41.19(a)(3)(b).) A 1990 revision to the HCO restricted summer tourist rentals of residential units by, among other things, limiting such rentals, absent special permission from the City's Bureau of Building Inspection, to 25 percent of a hotel's residential rooms. (S.F. Admin. Code, former § 41.19(a)(3).) The revision also allowed a limited number of residential rooms to be rented to tourists during the winter months as well. (S.F. Admin. Code, § 41.19(c).) (See *San Remo*, *supra*, 27 Cal.4th at pp. 651–652.)

room for less than a 32-day term of tenancy by a party other than a Permanent Resident." (S.F. Admin. Code, § 41.4.)[2]

Plaintiffs filed the instant action seeking a writ of administrative mandate and declaratory relief. The first cause of action alleged that the 2017 Amendments to the HCO was a "project" under the California Environmental Quality Act (CEQA; Pub. Res. Code, § 21000 et seq.) requiring environmental review. The second cause of action, brought as to plaintiffs Coalition and Hotel des Arts only, alleged that the 2017 Amendments amounted to a taking of private property without just compensation under the California Constitution (Cal. Const., art. 1, § 19) to the extent they precluded rentals for seven days to 31 days, which had been allowed under the previous law. The third and fourth causes of action, brought as to plaintiffs Coalition and Hotel des Arts, sought injunctive and declaratory relief based on a violation of due process and equal protection. The fifth cause of action, brought as to plaintiffs Coalition and Hotel des Arts, sought injunctive relief for a violation of civil rights under 42 United States Code section 1983.

Plaintiffs sought a preliminary injunction to enjoin the enforcement of the 2017 Amendments with respect to existing SROs. They argued the 2017 Amendments infringed upon their vested right as owners and representatives of the owners of residential hotel rooms to rent SROs for periods of seven to 31 days under the former version of the HCO, thus eliminating a lawful use of the land without just compensation or some other mechanism to avoid constitutional infirmity. Plaintiffs argued that by requiring SROs to be offered for an initial rental period of at least 32 days, the City was effectively forcing them out of the hotel business and into the landlord/tenant business, "subject to the onerous requirements of the Rent Ordinance, including eviction controls."

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[2] The 2017 Amendments also eliminated seasonal tourist rentals of vacant residential units for hotels which had violated the HCO during the last calendar year (S.F. Admin. Code, § 41.19(a)(3)(D)), updated the requirements for conversion permit applications (*id.*, § 41.12), authorized the use of administrative subpoenas to compel production of hotel records (*id.*, § 41.9(a), 41.11(c)), and updated provisions regarding penalties and administrative costs (*id.*, §§ 41.11(g), 41.20(c)). These provisions are not at issue in this appeal.

The trial court denied the preliminary injunction. "The pre-2017 Amendments version of the [HCO] did allow certain types of rentals of residential units that are now prohibited by the Amendments, e.g., seven day[s] (or longer) rentals for residential use to non-permanent residents. However[,] plaintiffs have not demonstrated the existence of a vested right of which they have been wrongfully and unlawfully deprived. Because plaintiffs failed to demonstrate a likelihood of succeeding on the merits of their takings claim, the Court may not issue a preliminary injunction and thus it does not reach the issue of whether the balance of harms favors granting a preliminary injunction."

II. DISCUSSION

A *Appealability and Standard of Review*

The general purpose of a preliminary injunction is to preserve the status quo pending a determination on the merits of the action. (*Jamison v. Department of Transportation* (2016) 4 Cal.App.5th 356, 361 (*Jamison*).) " ' "In deciding whether to issue a preliminary injunction, a trial court must evaluate two interrelated factors: (i) the likelihood that the party seeking the injunction will ultimately prevail on the merits of his [or her] claim, and (ii) the balance of harm presented, i.e., the comparative consequences of the issuance and nonissuance of the injunction. [Citations.]" [Citation.] "The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. [Citation.]" [Citation.] However, '[a] trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim.' " (*Id.* at pp. 361–362.)

An order denying a preliminary injunction is appealable. (Code Civ. Proc., § 904.1, subd. (a)(6).) " 'Ordinarily, appellate review is limited to whether the trial court abused its discretion in evaluating the foregoing factors. [Citation.] "Occasionally, however, the likelihood of prevailing on the merits depends upon a question of pure law rather than upon [the] evidence to be introduced at a subsequent full trial. This issue can arise, for example, when it is contended that an ordinance or statute is unconstitutional on

its face and that no factual controversy remains to be tried. " ' " (*Jamison, supra,* 4 Cal.App.5th at p. 362.) Such questions of law are subject to de novo review. (*Ibid.*)

B. *Were Plaintiffs Likely to Prevail on Their Takings Claim?*

Plaintiffs[3] contend the trial court erred in concluding they were not likely to prevail on the merits of their takings claim. They argue that by prohibiting the rental of residential units for "tourist or transient use," and by defining "tourist or transient use" to mean any rental to someone other than a "permanent resident," i.e., a person who occupies a room for at least 32 days, the 2017 Amendments to the HCO impermissibly eliminated their business of renting residential units for periods between seven and 31 days as they had been allowed to do under the previous version of the Ordinance. Plaintiffs contend that because 32-day rentals are subject to San Francisco's rent control ordinance, this will change the nature of their business in significant and detrimental ways. We agree.

We begin by analyzing the extent to which the 2017 Amendments changed the law. Key to this is our interpretation of San Francisco Administrative Code former section 41.20(a)(2) and (a)(3). Section 41.20(a)(2) made it illegal to "[r]ent any residential unit for a term of less than seven days." Section 41.20(a)(3) made it illegal to "offer for rent for nonresidential use or tourist use a residential unit." The former version of the HCO does not define "nonresidential," although it defines a "permanent resident" as someone who has lived in the room for 32 days or longer. Section 50519 of the Health and Safety Code (which is incorporated in Civil Code section 1940.1, cited by the City) defines a "residential hotel" as a hotel containing six or more units "intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests."

Thus, there is more than one possible interpretation of the provision making it illegal to "offer for rent for nonresidential use or tourist use a residential unit" within the

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[3] Only two of the plaintiffs, the Coalition and Hotel des Arts, alleged inverse condemnation as a cause of action.

meaning of San Francisco Administrative Code, former section 41.20(a)(3). A use might be deemed illegal if a room was offered for a term of less than 32 days, the amount of time necessary to become a permanent resident, but this does not jibe with former section 41.20(a)(2)'s prohibition of a term of occupancy of less than seven days. Or it might be deemed illegal to offer a tenancy of less than seven days, which would be consistent with the period in section 41.20(a)(2). Or it could mean that it was illegal to offer the room as something other than a renter's primary residence, although as counsel for plaintiffs notes, this could be difficult to accurately and lawfully ascertain.

In the trial court below, the City offered another interpretation of "nonresidential" in San Francisco Administrative Code former section 41.20(a)(3), and argued that it has always required the occupants of residential rooms to be residents of San Francisco, making it illegal to offer residential rooms to persons who are not residents of San Francisco. In their respondent's brief, the City reiterated that the former version of the law required the owners of SROs to rent residential rooms to permanent residents of San Francisco. But this runs contrary to previous briefing filed in this Court by the City in 1997 and 1998, in which the City asserted that the former version of the HCO prohibited only rentals of less than seven days and equated the seven-day period of section 41.20(a)(2) with the demarcation between "residential" and "tourist" use. (*Tenderloin Housing Clinic v. Patel*, A177469/A080669, Applications to File Amicus Briefs.)

It appears the City has historically allowed the rental and offering of residential units for any period of seven days or longer, regardless of the reason for the rental, and has foregone the enforcement of San Francisco Administrative Code section 41.20(a)(3) to the extent that part of the HCO might be otherwise construed.[4] The City does not now actively dispute this. The trial court found that the former version of the HCO "did allow certain types of rentals of residential units that are now prohibited by the Amendments,

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[4] Evidence Code section 623 provides, "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it."

e.g., seven day (or longer) rentals for residential use to non-permanent residents," although it disagreed that these rentals gave rise to a vested right that had been abridged. This is the interpretation of the former version of section 41.20 that we adopt: It precluded rentals of less than seven days, regardless of a showing of the renter's purpose, and it is the seven-day period which demarcates residential from tourist rentals.

Having concluded that the former version of the HCO allowed rentals of seven days or more regardless of purpose, the 2017 Amendments effected a substantial change by making the minimum term 32 days unless the person was already a permanent resident. This means that shorter-term tenancies to nonpermanent residents are no longer allowed and that hotel owners will be subject to rent control at the end of the initial term of tenancy unless the occupant voluntarily vacates the premises or is lawfully evicted. Whether or not this is a desirable result, a subject on which we express no opinion (*Santa Monica Beach, Ltd. v. Superior Court* (1999) 19 Cal.4th 952, 962), it is certainly a change. The City minimizes the nature of this change, arguing that a room's occupant could always refuse to leave before 32 days were up, regardless of the length of the original rental, and state law makes it illegal to move the occupant of an SRO for the purpose of evading rent control. (Civ. Code, § 1940.1, subd. (a).) But the former version of the HCO allowed hotel owners to target shorter-term, more traditional hotel stays by people who had another home. Someone who has another home seems very unlikely to make a room her residence or overstay the terms of the rental. The remote possibility that renters would behave as the City suggests does not change the fundamental nature of the business allowed under the statute.

A local government's power to eliminate an existing land use through a new regulation is restricted: "[I]f the law effects an unreasonable, oppressive, or unwarranted interference with an existing use. . . the ordinance may be invalid as applied to that property unless compensation is paid. . . . [¶] Accordingly, a provision which exempts existing nonconforming uses 'is ordinarily included in zoning ordinances because of the hardship and doubtful constitutionality of compelling the immediate discontinuance of nonconforming uses.' " (*Hansen Brothers Enterprises, Inc. v. Board of Supervisors*

(1996) 12 Cal.4th 533, 551–552.) In this context, a "nonconforming use" is " ' " 'a lawful use existing on the effective date of the [] restriction and continuing since that time in nonconformance to the ordinance.' " ' " (*Id.* at p. 579.) " '[A] city seeking to eliminate nonconforming uses may pursue [one of] two constitutionally equivalent alternatives: It can eliminate the use immediately by payment of just compensation, or it can require removal of the use without compensation following a reasonable amortization period.' " (*United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 179; see *Tahoe Regional Planning Agency v. King* (1991) 233 Cal.App.3d 1365, 1394–1395 (*Tahoe*).)

Plaintiffs rely on a number of authorities to support their argument that the 2017 Amendments to the Ordinance should have been accompanied by either compensation to hotel owners or a reasonable amortization period. In *Jones v. City of Los Angeles* (1930) 211 Cal. 304, the city rezoned the neighborhood in which the plaintiff was operating a sanitarium to prohibit residential mental health facilities, and the court ruled that compensation was required because the rezoning had "destroyed" or "eradicated" the business, rendering it completely without value. (*Id.*, at pp. 310, 314, 319.) In *City of Los Angeles v. Gage* (1954) 127 Cal.App.2d 442, 447–448, the city rezoned an area in which plaintiffs were operating a plumbing business, restricting the property to residential use only, and provided that nonconforming uses had to be eliminated within five years. The court upheld the zoning ordinance as a lawful exercise of the city's police powers due to the amortization period, and reversed a trial court judgment denying the city's suit for an injunction requiring the plaintiffs to cease operations. (*Id.* at pp. 447, 455, 460–462.) In *Livingston Rock & Gravel Co. v. County of Los Angeles* (1954) 43 Cal.2d 121, 123–128, the court held that the county was entitled to enforce a zoning provision that eliminated the operation of a plaintiff's cement mixing plant as a permissible use, but provided an automatic exception allowing the plant to continue operations for 20 years. In *Castner v. City of Oakland* (1982) 129 Cal.App.3d 94, 96–97, the court upheld an order denying a petition for writ of mandate to compel the city to grant a conditional use permit to an adult bookstore following the enactment of an

ordinance that banned adult entertainment within 1,000 feet of a residential zone and provided a grace period of one year. Other cases cited by plaintiffs involve ordinances that required the physical removal of existing outdoor signage, upholding those ordinances when they provided for an adequate amortization period within which the sign owners could recoup their costs of the investment. (*National Advertising Co. v. County of Monterey* (1970) 1 Cal.3d 875; *Tahoe*, *supra*, 233 Cal.App.3d 1365; *National Advertising Co. v. County of Monterey* (1962) 211 Cal.App.2d 375; *City of Santa Barbara v. Modern Neon Sign Co.* (1961) 189 Cal.App.2d 188.)

The ordinances or zoning laws analyzed by each of these decisions had the effect of rendering it impossible to continue operating a legal, existing business; accordingly, the local government was required to either pay compensation or provide a reasonable amortization period for the business owners. The 2017 Amendments do neither. True, they do not require plaintiffs to shut their doors completely. But they do, on their face, require owners of SROs to forego more classically styled hotel rentals in favor of more traditional tenancies. This changes the fundamental nature of their business, by making them landlords rather than hotel operators.

We recognize that one of the plaintiffs' arguments is based on the application of rent control, and rent control regulations are permissible against a takings claim "if they are 'reasonably calculated to eliminate excessive rents and at the same time provide landlords with a just and reasonable return on their property.' " (*Colony Cove Properties LLC. v. City of Carson* (2013) 220 Cal.App.4th 840, 865, citing *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 158–159.) In their facial challenge to the 2017 Amendments, plaintiffs make no showing they have been denied a just and reasonable return on their property. (See *California Bldg. Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 464–465.) But the issue here is not the application of rent control to an existing landlord-tenant business; it is a forced change in the nature of the business without compensation or a reasonable amortization period.

The City argues that a preliminary injunction enjoining enforcement of the 2017 HCO Amendments is inappropriate because the different hotel owners represented by

plaintiff Coalition will not be similarly situated and the inverse condemnation claim involves a facial challenge to the Amendments rather than an assessment of each owners' situation. They also argue that property owners are entitled to money damages if they prove their inverse condemnation claim, making a preliminary injunction inappropriate. While these may be factors for the trial court to consider, remand is appropriate so it can consider in the first instance the balance of the hardships.

III. DISPOSITION

The order denying the preliminary injunction is reversed and the case is remanded for a determination of the balance of the hardships. Appellants are entitled to their ordinary costs on appeal.

NEEDHAM, J.

We concur.

JONES, P.J.

SIMONS, J.

(A151847)

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RULES COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

File Number: 140049: Administrative Code - Definition of Tourist or Transient Use Under the Hotel Conversion Ordinance

DECLARATION OF RYAN J. PATTERSON

Date: February 4, 2019
Time: 10:00 AM
Room: 263

I, Ryan J. Patterson, hereby declare:

1. I am an attorney at Zacks, Freedman & Patterson, PC, a firm retained by the San Francisco SRO Hotel Coalition, Hotel Des Arts, and numerous individual owners of SROs. I have personal knowledge of the matters set forth herein and competently could and would testify thereto if called upon to do so. I am over the age of 18 years and am not a party to this action.

2. Attached hereto in the following enumerated exhibits are true and correct copies of the following documents:

Exhibit

A. Notice of Entry of Order Regarding Plaintiffs' Motion for Preliminary Injunction in San Francisco Superior Court Case No. CPF-17-515656.

B. Joint Excerpts of the Administrative Record in San Francisco Superior Court Case No. CPF-17-515656.

C. Amended Notice of Partial Certification of Administrative Record of Proceedings in San Francisco Superior Court Case No. CPF-17-515656, including, as attached thereto, a list and description of the documents contained in said Administrative Record.

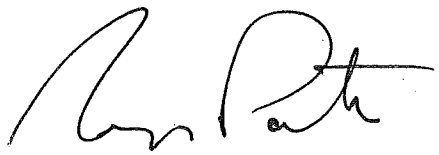
D. Appellants' Opening Trial Brief and Reply Brief on the Merits in Support of Petitions for Peremptory Writs of Mandate under (1) CEQA and (2) Public Records Act in San Francisco Superior Court Case No. CPF-17-515656.

E. Appellants' Opening Brief and Appellants' Reply Brief in California Court of Appeal, First District, Case No. A151847.

F. Declarations of Andrew M. Zacks, Brent Haas, Shamed Shahamiri, and Samantha Felix in Support of Plaintiffs' Motion for Preliminary Injunction in San Francisco Superior Court Case No. CPF-17-515656.

G. A newspaper article titled "Candice Payne Got 30 Hotel Rooms for Homeless People in Chicago During Severe Cold Snap," New York Times, by Sandra E. Garcia, February 2, 2019, available at https://www.nytimes.com/2019/02/02/us/candice-payne-homeless-chicago.html, retrieved February 3, 2019.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this was executed on February 4, 2019.



Ryan J. Patterson

ZACKS, FREEDMAN & PATTERSON, PC
235 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

EXHIBIT A

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Attorneys for Plaintiffs and Petitioners SAN FRANCISCO SRO HOTEL COALITION, HOTEL DES ARTS, LLC, and BRENT HAAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

SAN FRANCISCO SRO HOTEL COALITION, an unincorporated association, HOTEL DES ARTS, LLC, a Delaware limited liability company, and BRENT HAAS,

Plaintiffs and Petitioners,

v.

CITY AND COUNTY OF SAN FRANCISCO, a public agency, acting by and through the BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO; DEPARTMENT OF BUILDING INSPECTION OF THE CITY AND COUNTY OF SAN FRANCISCO; EDWIN LEE, in his official capacity as Mayor of the City and County of San Francisco, and DOES 1 through 100, inclusive,

Respondents and Defendants.

Case No. CPF-17-515656

NOTICE OF ENTRY OF ORDER REGARDING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

CEQA Case

Action Filed: May 8, 2017
Trial Date: Jan, 18, 2019

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 30, 2018, the Superior Court of San Francisco issued an Order Regarding Plaintiffs' Motion for Preliminary Injunction. A true and correct copy of that Order is attached hereto as Exhibit A.

Dated: December 5, 2018

ZACKS, FREEDMAN & PATTERSON, PC

/s/ Andrew M. Zacks
ANDREW M. ZACKS
Attorneys for Plaintiffs and Petitioners SAN FRANCISCO SRO HOTEL COALITION, HOTEL DES ARTS, LLC, and BRENT HAAS

Exhibit A

DENNIS J. HERRERA, State Bar #139669
City Attorney
ANDREA RUIZ-ESQUIDE, State Bar #233731
KRISTEN A. JENSEN, State Bar #130196
JAMES M. EMERY, State Bar #153630
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Attorneys for Defendants
CITY AND COUNTY OF SAN FRANCISCO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

SAN FRANCISCO SRO HOTEL COALITION, an unincorporated association, HOTEL DES ARTS, LLC, a Delaware limited liability company, and BRENT HAAS,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a public agency, acting by and through the BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO; DEPARTMENT OF BUILDING INSPECTION OF THE CITY AND COUNTY OF SAN FRANCISCO; EDWIN LEE, in his official capacity as Mayor of the City and County of San Francisco,

Defendants.

Case No. CPF-17-515656

STIPULATION AND ORDER REGARDING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

CEQA ACTION

Date: Dec. 19, 2018
Time: 9:30 a.m.
Dept: CEQA, room 503
Judge: Hon. Cynthia Ming-mei Lee

Date Action Filed: May 8, 2017
Trial Date: Jan. 18, 2019

WHEREAS, on June 7, 2017, Plaintiffs' motion for preliminary injunction ("the Motion") came on for hearing in room 503 of this Court, located at 400 McAllister Street, San Francisco, the Hon. Teri L. Jackson, presiding;

WHEREAS, on June 14, 2017, this Court entered an Order denying the Motion and Plaintiffs appealed;

WHEREAS, on October 15, 2018, the Court of Appeal filed its decision in Appeal No. A151847 ("the Decision"). In the Decision, the Court reversed this Court's Order denying the Motion and remanded the matter for a determination of the balance of the hardships as between the City and County of San Francisco and SRO hotel owners;

NOW THEREFORE,

1. San Francisco agrees that pending final resolution of this action, or further order of the Superior Court, subsections 41.20(a)(2) and (a)(3) of the Hotel Conversion Ordinance (S.F. Admin. Code, § 41) are inoperable and shall not be enforced in any way, by any person or entity, for any purpose; and

2. This stipulation and order disposes of the pending Motion.

SO STIPULATED.

Date: November 29, 2018

ZACKS, FREEDMAN & PATTERSON, PC

Andrew Zacks
Attorneys for Plaintiffs/Petitioners

Date: November 29, 2018

MILLER, STARR & REGALIA

Arthur Coon
Attorneys for Plaintiffs/Petitioners

Date: November 29, 2018

DENNIS HERRERA
San Francisco City Attorney

James Emery
Attorneys for Defendant/Respondents

PURSUANT TO THE PARTIES' STIPULATION, AND GOOD CAUSE APPEARING, IT IS SO ORDERED:

Date: November 30, 2018

Hon. Cynthia Ming-mei Lee
Judge San Francisco Superior Court

PROOF OF SERVICE

Superior Court of California, County of *San Francisco*
Case No.: CPF-17-515656

I, Emma Heinichen, declare that:

I am employed in the County of San Francisco, State of California. I am over the age of 18, and am not a party to this action. My business address is 235 Montgomery Street, Suite 400, San Francisco, California 94104.

On December 5, 2018, I served:

Notice of Entry of Order Regarding Plaintiffs' Motion for Preliminary Injunction

in said cause addressed as follows:

ARTHUR F. COON BRYAN W. WENTER S. GISELLE ROOHPARVAR MILLER STARR REGALIA A Professional Law Corporation 1331 N. California Blvd., Fifth Floor Walnut Creek, California 94596 arthur.coon@msrlegal.com bryan.wenter@msrlegal.com giselle.roohparvar@msrlegal.com	DENNIS J. HERRERA ANDREA RUIZ-ESQUIDE KRISTEN A. JENSEN JAMES M. EMERY Deputy City Attorneys City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 andrea.ruiz-esquide@sfcityatty.org kristen.jensen@sfcityatty.org jim.emery@sfcityatty.org

/XX/ **(BY MAIL)** By placing a true copy thereof enclosed in a sealed envelope. I placed each such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at San Francisco, California, following ordinary business practices.

/XX/ **(BY E-SERVICE)** I served the above documents through File & ServeXpress in accordance with the Court's Local Rule 2.11 requiring all documents be served upon interested parties via File & ServeXpress e-Service System.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 5, 2018, at San Francisco, California.

EMMA HEINICHEN

EXHIBIT B

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

December 15, 2016

File No. 161291

Lisa Gibson
Acting Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On December 6, 2016, Supervisor Peskin introduced the following substitute legislation:

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.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

for By: Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

Joy Navarrete 12/15/16

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.

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FILE NO. 161291

LEGISLATIVE DIGEST

[Administrative Code - Hotel Conversion Ordinance Update]

Ordinance amending the Administrative Code 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; 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 mandates that hotel owners or operators that wish to convert or demolish a residential unit must 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 illustrate 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. This will increase flexibility for residents who wish to establish or maintain permanent residency, but cannot afford to pay for an entire week's rent at one time. 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. Hotel operators would be able to advertise residential units to travelers or other parties that do not intend to make the City their permanent home, but the operator cannot offer the unit for a tenancy of less than 32 days.

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 mandating that applicants provide information about where replacement units will be located and the most recent rental amount for the units to be converted.

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.

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; that the number of such units had decreased by more than 6,000 between 1975 and 1979; that loss of such units had created a low-income housing "emergency" in San Francisco, making it in the public interest to regulate and provide remedies for unlawful conversion of residential hotel units; that the City had instituted a moratorium on residential hotel conversion effective November 21, 1979; and that because tourism is also essential to the City, the public interest also demands that some moderately priced tourist hotel rooms be available, especially during the summer tourist season.

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

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

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

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

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

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

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

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

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

161291 **[Administrative Code - Hotel Conversion Ordinance Update]**
Sponsor: Peskin
Ordinance amending the Administrative Code 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; and affirming the Planning Department's determination under the California Environmental Quality Act. ASSIGNED UNDER 30 DAY RULE to Land Use and Transportation Committee.

Resolutions

161292 **[Accept and Expend Grant - Centers for Disease Control and Prevention - Enhancing Health Resilience to Climate Change Through Adaptation - $213,713]**
Sponsor: Mayor
Resolution retroactively authorizing the San Francisco Department of Public Health to accept and expend a grant in the amount of $213,713 from Centers for Disease Control and Prevention to participate in a program entitled, Enhancing Health Resilience to Climate Change Through Adaptation for the period of September 1, 2016, through August 31, 2017. (Public Health Department). RECEIVED AND ASSIGNED to Budget and Finance Committee.

161293 **[Accept and Expend Grant - United States Department of Energy - Advancing Fuel Cell Vehicles - $249,970]**
Sponsor: Mayor
Resolution retroactively authorizing the Department of the Environment to accept and expend a grant in the amount of $249,970 from the United States Department of Energy to harmonize local regulations and building codes to ease the siting and construction of hydrogen fueling stations for zero-emission Fuel Cell Electric Vehicles in San Francisco and the greater San Francisco Bay Area for the term of October 1, 2016, through September 30, 2018. (Environment). RECEIVED AND ASSIGNED to Budget and Finance Committee.

161294 **[Accept and Expend Grant - California Public Utilities Commission - Energy Efficiency Program - $20,790,000]**
Sponsor: Mayor
Resolution authorizing the Department of the Environment to accept and expend a grant in the amount of $20,790,000 from the California Public Utilities Commission, through Pacific Gas and Electric Company, to continue an Energy Use and Demand Reduction Through Energy Efficiency Program in the City and County of San Francisco for the term of January 1, 2017, through December 31, 2019. (Environment). RECEIVED AND ASSIGNED to Budget and Finance Committee.

161295 **[Accept In-Kind Grant - San Francisco Parks Alliance - John McLaren Bike Park, Phase I - $147,268]**
Sponsor: Mayor
Resolution authorizing the San Francisco Recreation and Park Department to accept an in-kind grant of $147,268 from the San Francisco Parks Alliance to support the John McLaren Bike Park. (Recreation and Park Department). RECEIVED AND ASSIGNED to Budget and Finance Committee.

161291 **[Administrative Code - Hotel Conversion Ordinance Update]**
Sponsor: Peskin
Ordinance amending the Administrative Code 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; and affirming the Planning Department's determination under the California Environmental Quality Act. ASSIGNED UNDER 30 DAY RULE to Land Use and Transportation Committee.

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[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.

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

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

Section 1. Environmental Findings.

The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources 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.

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

SEC. 41.3. FINDINGS

* * * *

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

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

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

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

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

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

SEC. 41.4. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

~~(j)~~ **Low-Income Housing.** Residential units whose rent may not exceed 30% ~~*percent*~~ of the gross monthly income of a ~~l~~*L*ow-~~i~~*I*ncome ~~h~~*H*ousehold as defined ~~*in subsection (i)*~~ above.

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

~~(l)~~ **Operator.** An ~~o~~*O*perator includes the lessee or any person or legal entity whether or not the owner, who is responsible for the day-to-day operation of a residential hotel and to whom a hotel license is issued for a ~~r~~*R*esidential ~~h~~*H*otel.

~~(m)~~ **Owner.** Owner includes any person or legal entity holding any ownership interest in a ~~r~~*R*esidential ~~h~~*H*otel.

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

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

~~(p)~~ **Residential Hotel.** Any building or structure which contains a ~~r~~Residential ~~u~~Unit as defined ~~in (q)~~ below unless exempted pursuant to the provisions of Sections 41.5 or 41.7 below.

~~(q)~~ **Residential Unit.** Any guest room as defined in Section *401~~203.7 of Chapter XII, Part II~~* of the San Francisco ~~*Municipal Code (*~~Housing Code~~)* which had been occupied by a permanent resident on September 23, 1979. Any guest room constructed subsequent to September 23, 1979 or not occupied by a permanent resident on September 23, 1979, shall not be subject to the provisions of this Chapter *41*; provided however, if designated as a residential unit pursuant to Section 41.6 of this Chapter or constructed as a replacement unit, such residential units shall be subject to the provisions of this Chapter.

~~(r)~~ **Tourist Hotel.** Any building containing six or more guest rooms intended or designated to be used for commercial tourist use by providing accommodation to transient guests on a nightly basis or longer. A tourist hotel shall be considered a commercial use pursuant to ~~*City*~~ Planning Code Section *790.46~~216(b)~~* and shall not be defined as group housing permitted in a residential area under ~~*City*~~ Planning Code Section 209.*1~~2~~*.

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

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

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

SEC. 41.9. RECORDS OF USE.

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

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

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

* * * *

SEC. 41.10. ANNUAL UNIT USAGE REPORT.

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

(1) The total number of units in the hotel as of October 15~~*th*~~ of the year of filing;

(2) The number of residential and tourist units as of October 15~~*th*~~ of the year of filing;

(3) The number of vacant residential units as of October 15~~*th*~~ of the year of filing; if more than 50*%* ~~*percent*~~ of the units are vacant, explain why;

(4) The average rent for the residential hotel units as of October 15~~*th*~~ of the year of filing;

(5) The number of residential units rented by week or month as of October 15~~*th*~~ of the year of filing; and

(6) The designation by room number and location of the residential units and tourist units as of October 15~~*th*~~ of the year of filing. *The* ~~*O*~~*o*wner or operator shall maintain

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

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

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

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

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

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

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

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

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

If the Director or the Director's designee determines that additional information is needed to make a determination, ~~*he*~~ *the Director or designee* shall send both the owner and operator a written request to furnish such information within 15 calendar days of the mailing of the written request. The letter shall state that if the requested information*, or a response explaining why the requested information will not be provided,* is not furnished in the time required, the residential and tourist units shall be presumed to be unchanged from the previous year and that the Director shall impose a $500 penalty for failure to furnish the additional information within the 15-day period*, and a $500 penalty for each day after the 15-day period for which the owner or operator fails to furnish the requested information or explanation*. If the Director does not timely receive the information, the Director shall notify both the owner and operator, by mail *or electronic mail*, that the Director is imposing a $500 *per day* penalty *and that the accumulated penalty* ~~*which*~~ must be paid within 30 days of the mailing of the notification, and that interest on the penalty shall accrue from the expiration of the 30 days at the rate of *1.5%*~~*one-and-one-half percent*~~ per full month, compounded monthly. The written notification shall state that if the penalty is not paid, a lien to secure the amount of the penalty, plus the accrued interest, will be recorded against the real property pursuant to the provisions of

Section 41.20(d) of this Chapter *41, and that the Residential Hotel will be not be eligible for any temporary tourist rentals as provided in Section 41.19 for 12 months*.

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

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

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SEC. 41.11. ADMINISTRATION.

(a) **Fees.** The owner or operator shall pay the following filing fees to the Department of Building Inspection to cover its costs of investigating and reporting on eligibility. See Section *110A~~333.2~~*, Hotel Conversion *Ordinance* Fee Schedule, *Table 1A-Q ~~Part II, Chapter I~~* of the *~~San Francisco Municipal Code (~~*Building Code*~~)~~* for the applicable fees. The party that brings an unsuccessful challenge to a report pursuant to this *Chapter 41~~Article~~* shall be liable for the *~~change~~charge* in Section *110A~~333.2~~*, Hotel Conversion *Ordinance* Fee Schedule, Unsuccessful Challenge, *Table 1A-Q ~~Part II, Chapter I~~* of the *~~San Francisco Municipal Code (~~*Building Code*~~)~~*. Fees shall be waived for an individual who files an affidavit under penalty of perjury stating that he or she is an indigent person who cannot pay the filing fee without using money needed for the necessities of life.

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

(b) **Hearing.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The Director of the Department of Building Inspection may impose a penalty of $~~250~~*500* per violation for failure to maintain daily logs or for failure to provide receipts to occupants as required under Section 41.9 above and for failure to post materials as required 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), and 41.18(b) and (c). In order to impose such penalties, the Director shall notify both the owner and operator by certified mail that the Director is imposing the penalty or penalties, which must be paid within 30 days of the mailing of the notification. The written notification

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

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

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

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

SEC. 41.12. PERMIT TO CONVERT.

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

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

(1) The name and address of the building in which the conversions are proposed *and of the building where replacement housing will be located*; and

(2) The names and addresses of all owners or operators of said building*s*; and

(3) A description of the proposed conversion including *the specific method under Section 41.13(a) that the owner or operator selects as* the nature of the conversion, the total number of units in the building, *and* their current uses; and

(4) The room numbers and locations of the units to be converted; and

(5) Preliminary drawings showing the existing floor plans and proposed floor plans; and

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

(7) The current rental rates for each residential unit to be converted *or, if currently unoccupied, the most recent rental rate when last occupied*; and

(8) The length of tenancy of the permanent residents affected by the proposed conversion; and

(9) A statement regarding how one-for-one replacement of the units to be converted will be accomplished, *citing the specific provision(s) of Section 41.13(a) the application has selected for replacement, and* including *sufficiently detailed financial information, such as letters of intent and contracts, establishing how the owner or operator is constructing or causing to construct* ~~*the proposed location of*~~ replacement housing if replacement is to be provided off-site; and

(10) A declaration under penalty of perjury from the owner or operator stating that he/she has complied with the provisions of Section 41.14(b) below and his/her filing of a permit to convert. On the same date of the filing of the application, a notice that an application to convert has been filed shall be posted until a decision is made on the application to convert.

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

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

SEC. 41.13. ONE-FOR-ONE REPLACEMENT.

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

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

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

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

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

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

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

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SEC. 41.14. MANDATORY DENIAL OF PERMIT TO CONVERT.

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

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

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

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

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

* * * *

SEC. 41.19. TEMPORARY CHANGE OF OCCUPANCY.

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

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

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

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

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

25-percent Limit.

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

(b) Special Requirements for Hearings on Tourist Season Rental of Residential Units. Where an owner or operator seeks a hearing in order to exceed the limit on tourist season rental of vacant residential units pursuant to Section 41.19(a)(3), the requirements of *Section* 41.11(b)(1), (b)(2), and (b)(3) above shall be applicable except as specifically modified or enlarged herein:

* * * *

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

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

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SEC. 41.20. UNLAWFUL CONVERSION; REMEDIES; FINES.

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

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

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

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

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

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

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

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

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

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

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

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

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

authorized use. ~~*The daily rate shall be the rate unlawfully charged by the hotel owner or operator to the occupants of the unlawfully converted unit.*~~ The Director may also impose penalties upon the owner or operator of the hotel to reimburse *the* City or *the* complainant for the costs, *including reasonable attorneys' fees,* of enforcement~~, *including reasonable attorneys' fees,*~~ of this Chapter. The hearing officer's decision shall notify the parties of this penalty provision and shall state that the Director of the Department of Building Inspection is authorized to impose the appropriate penalty by written notification to both the owner and operator, requesting payment within 30 days. If the penalty imposed is not paid, a lien to secure the amount of the penalty will be recorded against the real property pursuant to the provisions of Section 41.20(d) of this Chapter *41*.

* * * *

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

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

Section 5. Scope of Ordinance. Except as stated in Section 3 of this 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:
DENNIS J. HERRERA, City Attorney

By: _____
KATE H. STACY
Deputy City Attorney

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FILE NO. 161291

REVISED LEGISLATIVE DIGEST
(1/31/2017, Amended in Board)

[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. 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 permanent residents of the hotel 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 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 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.

This legislative digest reflects amendments adopted by the Land Use and Transportation Committee on January 23, 2017 to further amend the definition of "Tourist or transient use."

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FILE NO. 161291 AMENDED IN BOARD 1/31/2017 ORDINANCE NO.

[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.

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

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

Section 1. Environmental Findings.

The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 161291 and is incorporated herein by reference. The Board affirms this determination.

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

SEC. 41.3. FINDINGS

* * * *

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

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

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

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

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

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

SEC. 41.4. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(p)~~ **Residential Hotel.** Any building or structure which contains a ~~r~~Residential ~~u~~Unit as defined ~~in (q)~~ below unless exempted pursuant to the provisions of Sections 41.5 or 41.7 below.

~~(q)~~ **Residential Unit.** Any guest room as defined in Section *401~~203.7 of Chapter XII, Part II~~* of the San Francisco ~~*Municipal Code (*~~Housing Code~~)~~ which had been occupied by a permanent resident on September 23, 1979. Any guest room constructed subsequent to September 23, 1979 or not occupied by a permanent resident on September 23, 1979, shall not be subject to the provisions of this Chapter *41*; provided however, if designated as a residential unit pursuant to Section 41.6 of this Chapter or constructed as a replacement unit, such residential units shall be subject to the provisions of this Chapter.

~~(r)~~ **Tourist Hotel.** Any building containing six or more guest rooms intended or designated to be used for commercial tourist use by providing accommodation to transient guests on a nightly basis or longer. A tourist hotel shall be considered a commercial use pursuant to ~~*City*~~ Planning Code Section *790.46~~216(b)~~* and shall not be defined as group housing permitted in a residential area under ~~*City*~~ Planning Code Section 209.*1~~2~~*.

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

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

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

SEC. 41.9. RECORDS OF USE.

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

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

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

* * * *

SEC. 41.10. ANNUAL UNIT USAGE REPORT.

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

(1) The total number of units in the hotel as of October 15~~*th*~~ of the year of filing;

(2) The number of residential and tourist units as of October 15~~*th*~~ of the year of filing;

(3) The number of vacant residential units as of October 15~~*th*~~ of the year of filing; if more than 50% ~~*percent*~~ of the units are vacant, explain why;

(4) The average rent for the residential hotel units as of October 15~~*th*~~ of the year of filing;

(5) The number of residential units rented by week or month as of October 15~~*th*~~ of the year of filing; and

(6) The designation by room number and location of the residential units and tourist units as of October 15~~*th*~~ of the year of filing, along with a graphic floorplan reflecting

room designations for each floor. *The* ~~*O*~~owner or operator shall maintain such designated units as tourist or residential units for the following year unless *the* owner or operator notifies in writing the Department of Building Inspection of a redesignation of units; *the* owner or operator may redesignate units throughout the year, provided they notify the Department of Building Inspection in writing by the next business day following such redesignation, and update the graphic floorplan on file with the Department of Building Inspection and maintain the proper number of residential and tourist units at all times. The purpose of this provision is to simplify enforcement efforts while providing *the* owner or operator with reasonable and sufficient flexibility in designation and renting of rooms;

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

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

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

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

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

(e) **Renewal of Hotel License and Issuance of New Certificate of Use.** As of the effective date of this Chapter *41*, no hotel license may be issued to any owner or operator of a hotel unless the owner or operator presents with his/her license application a certified acknowledgment of receipt from the Department of Building Inspection of the Annual Unit Usage Report for the upcoming year.

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

If the Director or the Director's designee determines that additional information is needed to make a determination, *~~he~~ the Director or designee* shall send both the owner and operator a written request to furnish such information within 15 calendar days of the mailing of the written request. The letter shall state that if the requested information, *or a response explaining why the requested information will not be provided,* is not furnished in the time required, the residential and tourist units shall be presumed to be unchanged from the previous year and that the Director shall impose a $500 penalty for failure to furnish the additional information within the 15-day period, *and a $500 penalty for each day after the 15-day period for which the owner or operator fails to furnish the requested information or explanation.* If the Director does not timely receive the information, the Director shall notify both the owner and operator, by mail *or electronic mail*, that the Director is imposing a $500 *per day* penalty *and that the accumulated penalty* ~~*which*~~ must be paid within 30 days of the mailing of the notification, and that interest on the penalty shall accrue from the expiration of the 30 days at the rate of *1.5%~~one-and-one-half percent~~* per full month, compounded monthly. The written notification shall state that if the penalty is not paid, a lien to secure the amount of the penalty, plus the

accrued interest, will be recorded against the real property pursuant to the provisions of Section 41.20(d) of this Chapter *41, and that the Residential Hotel will be not be eligible for any temporary tourist rentals as provided in Section 41.19 for 12 months*.

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

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

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SEC. 41.11. ADMINISTRATION.

(a) **Fees.** The owner or operator shall pay the following filing fees to the Department of Building Inspection to cover its costs of investigating and reporting on eligibility. See Section *110A~~333.2~~*, Hotel Conversion *Ordinance* Fee Schedule, *Table 1A-Q, ~~Part II, Chapter 1~~* of the *~~San Francisco Municipal Code (~~*Building Code*~~)~~* for the applicable fees. The party that brings an unsuccessful challenge to a report pursuant to this *Chapter 41~~Article~~* shall be liable for the *~~change~~charge* in Section *110A~~333.2~~*, Hotel Conversion *Ordinance* Fee Schedule, Unsuccessful Challenge, *Table 1A-Q ~~Part II, Chapter 1~~* of the *~~San Francisco Municipal Code (~~*Building Code*~~)~~*. Fees shall be waived for an individual who files an affidavit under penalty of perjury stating that he or she is an indigent person who cannot pay the filing fee without using money needed for the necessities of life.

~~SEE SAN FRANCISCO MUNICIPAL CODE~~

~~(BUILDING CODE) SECTION 333.2110A, TABLE 1A-Q~~

~~HOTEL CONVERSION ORDINANCE FEE SCHEDULE~~

(b) **Hearing.**

(1) **Notice of Hearing.** Whenever a hearing is required or requested in this Chapter *41*, the Director of the Department of Building Inspection shall, within 45 calendar days, notify the owner or operator of the date, time, place, and nature of the hearing by registered or certified mail. The Director of the Department of Building Inspection shall appoint a hearing officer. Notice of such a hearing shall be posted by the Department of Building Inspection. The owner or operator shall state under oath at the hearing that the notice remained posted for at least 10 calendar days prior to the hearing. Said notice shall state that

all permanent residents residing in the hotel may appear and testify at the public hearing, provided that the Department of Building Inspection is notified of such an intent 72 hours prior to the hearing date.

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

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

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

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

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

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

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

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

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

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

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

(f) The Director of the Department of Building Inspection may impose a penalty of $~~250~~*500* per violation for failure to maintain daily logs or for failure to provide receipts to occupants as required under Section 41.9 above and for failure to post materials as required 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), and 41.18(b) and (c). In order to impose such penalties, the Director shall notify both the owner and operator by certified mail that the Director is imposing the penalty or penalties, which must be paid within 30 days of the mailing of the notification. The written notification

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

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

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

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

SEC. 41.12. PERMIT TO CONVERT.

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

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

(1) The name and address of the building in which the conversions are proposed *and of the building where replacement housing will be located*; and

(2) The names and addresses of all owners or operators of said building*s*; and

(3) A description of the proposed conversion including *the specific method under Section 41.13(a) that the owner or operator selects as* the nature of the conversion, the total number of units in the building, *and* their current uses; and

(4) The room numbers and locations of the units to be converted; and

(5) Preliminary drawings showing the existing floor plans and proposed floor plans; and

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

(7) The current rental rates for each residential unit to be converted *or, if currently unoccupied, the most recent rental rate when last occupied*; and

(8) The length of tenancy of the permanent residents affected by the proposed conversion; and

(9) A statement regarding how one-for-one replacement of the units to be converted will be accomplished, *citing the specific provision(s) of Section 41.13(a) the application has selected for replacement, and* including *sufficiently detailed financial information, such as letters of intent and contracts, establishing how the owner or operator is constructing or causing to construct ~~the proposed location of~~* replacement housing if replacement is to be provided off-site; and

(10) A declaration under penalty of perjury from the owner or operator stating that he/she has complied with the provisions of Section 41.14(b) below and his/her filing of a permit to convert. On the same date of the filing of the application, a notice that an application to convert has been filed shall be posted until a decision is made on the application to convert.

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

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

SEC. 41.13. ONE-FOR-ONE REPLACEMENT.

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

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

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

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

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

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

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

* * * *

SEC. 41.14. MANDATORY DENIAL OF PERMIT TO CONVERT.

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

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

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

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

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

* * * *

SEC. 41.19. TEMPORARY CHANGE OF OCCUPANCY.

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

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

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

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

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

25-percent Limit.

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

(b) Special Requirements for Hearings on Tourist Season Rental of Residential Units. Where an owner or operator seeks a hearing in order to exceed the limit on tourist season rental of vacant residential units pursuant to Section 41.19(a)(3), the requirements of *Section* 41.11(b)(1), (b)(2), and (b)(3) above shall be applicable except as specifically modified or enlarged herein:

* * * *

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

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

* * * *

SEC. 41.20. UNLAWFUL CONVERSION; REMEDIES; FINES.

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

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

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

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

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

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

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

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

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

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

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

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

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

authorized use. ~~*The daily rate shall be the rate unlawfully charged by the hotel owner or operator to the occupants of the unlawfully converted unit.*~~ The Director may also impose penalties upon the owner or operator of the hotel to reimburse *the* City or *the* complainant for the costs, *including reasonable attorneys' fees,* of enforcement~~, *including reasonable attorneys' fees,*~~ of this Chapter. The hearing officer's decision shall notify the parties of this penalty provision and shall state that the Director of the Department of Building Inspection is authorized to impose the appropriate penalty by written notification to both the owner and operator, requesting payment within 30 days. If the penalty imposed is not paid, a lien to secure the amount of the penalty will be recorded against the real property pursuant to the provisions of Section 41.20(d) of this Chapter *41*.

* * * *

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

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

Section 5. Scope of Ordinance. Except as stated in Section 3 of this 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:
DENNIS J. HERRERA, City Attorney

By: _____
ROBB KAPLA
Deputy City Attorney

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City and County of San Francisco
Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 161291 **File Type:** Ordinance **Status:** Mayors Office

Enacted: **Effective:**

Version: 4 **In Control:** Land Use and Transportation Committee

File Name: Administrative Code - Update Hotel Conversion Ordinance **Date Introduced:** 12/06/2016

Requester: **Cost:** **Final Action:** 02/07/2017

Comment:

Title: 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.

Sponsors: Peskin; Kim, Safai, Sheehy, Cohen, Ronen, Yee and Breed

History of Legislative File 161291

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	11/29/2016	ASSIGNED UNDER 30 DAY RULE	Land Use and Transportation Committee	12/29/2016	
2	President	12/06/2016	SUBSTITUTED AND ASSIGNED	Land Use and Transportation Committee	12/29/2016	

Supervisor Peskin submitted a substitute Ordinance bearing a new title.

2	Clerk of the Board	12/15/2016	REFERRED TO DEPARTMENT			

Referred legislation (version 2) to Planning Department for environmental review; to Small Business Commission for comment and recommendation; and to Department of Building Inspection, Planning Department, Mayor's Office of Housing and Community Development, Department of Homelessness and Supportive Housing, and Department of Public Health for informational purposes.

2	Planning Department	12/15/2016	RESPONSE RECEIVED			

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

2	Land Use and Transportation Committee	01/23/2017	AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE	Passed

Maria Aviles, Katie Selcraig and Roshann Pressman (Mission SRO Collaborative); Chirag Bhakta (Mission Housing); Tim Houh (Mission SRO Collaborative); Gail Gilman (Department of Building Inspection Commission); Araceli Lara (Mission SRO Collaborative); Tommi Avicolli Mecca (Housing Rights Committee); Randy Shaw, Director (Tenderloin Housing Clinic); Pei Juan Zheng (Community Tenants Association); Jordan Davis (Mission SRO Collaborative); Hui Ying Li and Hui Ling Yu (SRO Families United Collaborative); Raymond Castillo (South of Market Community Action Network); Ian Lewis (Local 2); Juvy Barbonio (South of Market Community Action Network); Male Speaker; Andrea Manzo (Mission SRO Collaborative); Tony Robles (Senior Disability Action); Theresa Flandrich (North Beach Tenants Committee); Diana Martinez (Mission SRO Collaborative); Frida Washington (Senior Disability Action); Miriam M. (South of Market Community Action Network); Gail Seagraves (Central City SRO Collaborative); Greg Ledbetter (Mission SRO Collaborative); Ace Washington; Rio Scharf and Michael Harrington (Central City SRO Collaboration); Corey Smith (San Francisco Housing Commission); Fernando Marti; Raul Fernandez; spoke in support of the hearing matter.

Supervisors Sheehy and Cohen requested to be added as co-sponsors.

3	Land Use and Transportation Committee	01/23/2017	RECOMMENDED AS AMENDED	Passed
3	Board of Supervisors	01/31/2017	AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE	Passed

Supervisor Yee requested to be added as a co-sponsor.

4	Board of Supervisors	01/31/2017	PASSED ON FIRST READING AS AMENDED	Passed
4	Board of Supervisors	02/07/2017	FINALLY PASSED	Passed

Supervisor Breed requested to be added as a co-sponsor.

[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.

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

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

Section 1. Environmental Findings.

The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 161291 and is incorporated herein by reference. The Board affirms this determination.

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

SEC. 41.3. FINDINGS

* * * *

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

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

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

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

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

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

SEC. 41.4. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

~~(j)~~ **Low-Income Housing.** Residential units whose rent may not exceed 30% ~~percent~~ of the gross monthly income of a ~~l~~*L*ow-~~i~~*I*ncome ~~h~~*H*ousehold as defined ~~in subsection (i)~~ above.

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

~~(l)~~ **Operator.** An ~~o~~*O*perator includes the lessee or any person or legal entity whether or not the owner, who is responsible for the day-to-day operation of a residential hotel and to whom a hotel license is issued for a ~~r~~*R*esidential ~~h~~*H*otel.

~~(m)~~ **Owner.** Owner includes any person or legal entity holding any ownership interest in a ~~r~~*R*esidential ~~h~~*H*otel.

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

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

~~(p)~~ **Residential Hotel.** Any building or structure which contains a ~~r~~Residential ~~u~~Unit as defined ~~in (q)~~ below unless exempted pursuant to the provisions of Sections 41.5 or 41.7 below.

~~(q)~~ **Residential Unit.** Any guest room as defined in Section *401~~203.7 of Chapter XII, Part II~~* of the San Francisco ~~*Municipal Code (*~~Housing Code~~)~~ which had been occupied by a permanent resident on September 23, 1979. Any guest room constructed subsequent to September 23, 1979 or not occupied by a permanent resident on September 23, 1979, shall not be subject to the provisions of this Chapter *41*; provided however, if designated as a residential unit pursuant to Section 41.6 of this Chapter or constructed as a replacement unit, such residential units shall be subject to the provisions of this Chapter.

~~(r)~~ **Tourist Hotel.** Any building containing six or more guest rooms intended or designated to be used for commercial tourist use by providing accommodation to transient guests on a nightly basis or longer. A tourist hotel shall be considered a commercial use pursuant to ~~City~~ Planning Code Section *790.46~~216(b)~~* and shall not be defined as group housing permitted in a residential area under ~~City~~ Planning Code Section 209.*1~~2~~*.

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

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

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

SEC. 41.9. RECORDS OF USE.

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

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

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

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SEC. 41.10. ANNUAL UNIT USAGE REPORT.

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

(1) The total number of units in the hotel as of October 15~~*th*~~ of the year of filing;

(2) The number of residential and tourist units as of October 15~~*th*~~ of the year of filing;

(3) The number of vacant residential units as of October 15~~*th*~~ of the year of filing; if more than 50% ~~*percent*~~ of the units are vacant, explain why;

(4) The average rent for the residential hotel units as of October 15~~*th*~~ of the year of filing;

(5) The number of residential units rented by week or month as of October 15~~*th*~~ of the year of filing; and

(6) The designation by room number and location of the residential units and tourist units as of October 15~~*th*~~ of the year of filing, along with a graphic floorplan reflecting

room designations for each floor. *The* ~~*O*~~owner or operator shall maintain such designated units as tourist or residential units for the following year unless *the* owner or operator notifies in writing the Department of Building Inspection of a redesignation of units; *the* owner or operator may redesignate units throughout the year, provided they notify the Department of Building Inspection in writing by the next business day following such redesignation, and update the graphic floorplan on file with the Department of Building Inspection and maintain the proper number of residential and tourist units at all times. The purpose of this provision is to simplify enforcement efforts while providing *the* owner or operator with reasonable and sufficient flexibility in designation and renting of rooms;

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

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

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

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

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

(e) **Renewal of Hotel License and Issuance of New Certificate of Use.** As of the effective date of this Chapter *41*, no hotel license may be issued to any owner or operator of a hotel unless the owner or operator presents with his/her license application a certified acknowledgment of receipt from the Department of Building Inspection of the Annual Unit Usage Report for the upcoming year.

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

If the Director or the Director's designee determines that additional information is needed to make a determination, ~~*he*~~ *the Director or designee* shall send both the owner and operator a written request to furnish such information within 15 calendar days of the mailing of the written request. The letter shall state that if the requested information*, or a response explaining why the requested information will not be provided,* is not furnished in the time required, the residential and tourist units shall be presumed to be unchanged from the previous year and that the Director shall impose a $500 penalty for failure to furnish the additional information within the 15-day period*, and a $500 penalty for each day after the 15-day period for which the owner or operator fails to furnish the requested information or explanation*. If the Director does not timely receive the information, the Director shall notify both the owner and operator, by mail *or electronic mail*, that the Director is imposing a $500 *per day* penalty *and that the accumulated penalty* ~~*which*~~ must be paid within 30 days of the mailing of the notification, and that interest on the penalty shall accrue from the expiration of the 30 days at the rate of *1.5%*~~*one and one-half percent*~~ per full month, compounded monthly. The written notification shall state that if the penalty is not paid, a lien to secure the amount of the penalty, plus the

accrued interest, will be recorded against the real property pursuant to the provisions of Section 41.20(d) of this Chapter *41, and that the Residential Hotel will be not be eligible for any temporary tourist rentals as provided in Section 41.19 for 12 months*.

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

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

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SEC. 41.11. ADMINISTRATION.

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

~~SEE SAN FRANCISCO MUNICIPAL CODE~~

~~(BUILDING CODE) SECTION 333.2110A, TABLE 1A-Q~~

~~HOTEL CONVERSION ORDINANCE FEE SCHEDULE~~

(b) **Hearing.**

(1) **Notice of Hearing.** Whenever a hearing is required or requested in this Chapter *41*, the Director of the Department of Building Inspection shall, within 45 calendar days, notify the owner or operator of the date, time, place, and nature of the hearing by registered or certified mail. The Director of the Department of Building Inspection shall appoint a hearing officer. Notice of such a hearing shall be posted by the Department of Building Inspection. The owner or operator shall state under oath at the hearing that the notice remained posted for at least 10 calendar days prior to the hearing. Said notice shall state that

all permanent residents residing in the hotel may appear and testify at the public hearing, provided that the Department of Building Inspection is notified of such an intent 72 hours prior to the hearing date.

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

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

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

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

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

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

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

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

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

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

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

(f) The Director of the Department of Building Inspection may impose a penalty of $~~250~~*500* per violation for failure to maintain daily logs or for failure to provide receipts to occupants as required under Section 41.9 above and for failure to post materials as required 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), and 41.18(b) and (c). In order to impose such penalties, the Director shall notify both the owner and operator by certified mail that the Director is imposing the penalty or penalties, which must be paid within 30 days of the mailing of the notification. The written notification

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

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

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

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

SEC. 41.12. PERMIT TO CONVERT.

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

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

(1) The name and address of the building in which the conversions are proposed *and of the building where replacement housing will be located*; and

(2) The names and addresses of all owners or operators of said building*s*; and

(3) A description of the proposed conversion including *the specific method under Section 41.13(a) that the owner or operator selects as* the nature of the conversion, the total number of units in the building, *and* their current uses; and

(4) The room numbers and locations of the units to be converted; and

(5) Preliminary drawings showing the existing floor plans and proposed floor plans; and

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

(7) The current rental rates for each residential unit to be converted *or, if currently unoccupied, the most recent rental rate when last occupied*; and

(8) The length of tenancy of the permanent residents affected by the proposed conversion; and

(9) A statement regarding how one-for-one replacement of the units to be converted will be accomplished, *citing the specific provision(s) of Section 41.13(a) the application has selected for replacement, and* including *sufficiently detailed financial information, such as letters of intent and contracts, establishing how the owner or operator is constructing or causing to construct* ~~*the proposed location of*~~ replacement housing if replacement is to be provided off-site; and

(10) A declaration under penalty of perjury from the owner or operator stating that he/she has complied with the provisions of Section 41.14(b) below and his/her filing of a permit to convert. On the same date of the filing of the application, a notice that an application to convert has been filed shall be posted until a decision is made on the application to convert.

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

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

SEC. 41.13. ONE-FOR-ONE REPLACEMENT.

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

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

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

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

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

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

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

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SEC. 41.14. MANDATORY DENIAL OF PERMIT TO CONVERT.

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

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

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

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

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

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SEC. 41.19. TEMPORARY CHANGE OF OCCUPANCY.

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

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

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

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

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

25-percent Limit.

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

(b) Special Requirements for Hearings on Tourist Season Rental of Residential Units. Where an owner or operator seeks a hearing in order to exceed the limit on tourist season rental of vacant residential units pursuant to Section 41.19(a)(3), the requirements of *Section* 41.11(b)(1), (b)(2), and (b)(3) above shall be applicable except as specifically modified or enlarged herein:

* * * *

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

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

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SEC. 41.20. UNLAWFUL CONVERSION; REMEDIES; FINES.

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

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

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

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

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

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

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

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

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

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

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

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

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

authorized use. ~~*The daily rate shall be the rate unlawfully charged by the hotel owner or operator to the occupants of the unlawfully converted unit.*~~ The Director may also impose penalties upon the owner or operator of the hotel to reimburse *the* City or *the* complainant for the costs, *including reasonable attorneys' fees,* of enforcement~~*, including reasonable attorneys' fees,*~~ of this Chapter. The hearing officer's decision shall notify the parties of this penalty provision and shall state that the Director of the Department of Building Inspection is authorized to impose the appropriate penalty by written notification to both the owner and operator, requesting payment within 30 days. If the penalty imposed is not paid, a lien to secure the amount of the penalty will be recorded against the real property pursuant to the provisions of Section 41.20(d) of this Chapter *41*.

* * * *

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

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

Section 5. Scope of Ordinance. Except as stated in Section 3 of this 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:
DENNIS J. HERRERA, City Attorney

By: _____
ROBB KAPLA
Deputy City Attorney

n:\legana\as2017\1600676\01166930.docx

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 161291 **Date Passed:** February 07, 2017

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.

January 23, 2017 Land Use and Transportation Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

January 23, 2017 Land Use and Transportation Committee - RECOMMENDED AS AMENDED

January 31, 2017 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

January 31, 2017 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

February 07, 2017 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

File No. 161291

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 2/7/2017 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

2/17/2017
Date Approved

January 20th, 2017

Supervisor Aaron Peskin
1 Dr. Carlton B Goodlett Pl
San Francisco, CA 94102

Supervisor Peskin,

United to Save the Mission is writing to you to formally provide our endorsement of the current proposed changes to the Hotel Conversion Ordinance (HCO). More specifically, we are encouraged to know that the loophole long abused by SRO landlords regarding the amount of days a unit must be occupied to be considered "residential" will be closed. We support the shift from 7 days to 32 days, as it will bring clear uniformity with the Rent Ordinance.

We believe the time has come to update the current legislation, and are willing to provide assistance in aiding its passing.

Thank you,

United to Save the Mission

United to Save the Mission

United to Save the Mission is a coalition of community groups and individuals seeking to protect and enhance the Mission neighborhood: the lives of its low-to-moderate income residents, our historical Latinx culture, our artists and arts spaces, our community-serving businesses, our nonprofits, and our blue-collar jobs and their industry spaces.

January 22, 2017

Supervisor Aaron Peskin
1 Dr. Carlton B Pl.
Room 244
San Francisco, CA 94102

Dear Supervisor Peskin,

I am writing to you to formally provide my endorsement for the proposed changes to the Hotel Conversion Ordinance (HCO) Chapter 41. This Chapter of the code has needed to be updated for some time.

As a DBI Commissioner, I appreciate the thoughtful and inclusive way that you and your staff went about gathering input, analyzing the current regulations, and formulating the proposed amendments. DBI staff were involved every step of the way, as well as DBI's CBO-funded programs (SRO Collaboratives), and SRO owners.

More specifically, I am excited that the loopholes, such as the amount of days a unit must be occupied to be considered "residential," will be closed, as it will bring clear uniformity between Chapter 41 and the Rent Ordinance. It will also ensure that the conversion process is more transparent and recognizes the reality of today's housing market.

Protecting this type of housing stock is critical to preserve neighborhoods, preventing homelessness among our low-income residents and stopping displacement of the very diversity that makes San Francisco a great city.

Updating Chapter 41 will ensure that the diversity of San Francisco remains, and that current low-income residents of these properties have more protections.

I fully support and endorse these amendments to Chapter 41 and applaud you and your office for taking on this endeavor.

Sincerely,

Gail Gilman
DBI Commissioner

CC: Supervisor Cohen,
Chair Land Use Committee, BOS

From:	Juned Usman Shaikh
To:	Tang, Katy (BOS)
Cc:	Summers, Ashley (BOS); Quizon, Dyanna (BOS); Law, Ray (BOS)
Subject:	Hotel Conversion Ordinance Legislation (HCO) - Preservation of Weekly Rentals for SRO Hotels. - Hotel Owner / Operator Meeting- Monday January 30,2017 at 2:30 pm- Room 278
Date:	Friday, January 27, 2017 6:10:22 PM

From: Juned Usman Shaikh, GM - Hotel Tropica

To: Honorable Supervisor Katy Tang

No. of Pages: 3

RE: Proposed HCO Legislation, Affecting Weekly Rentals in SRO Hotels.

January 27, 2017

Dear Honorable Supervisor Katy Tang,

Honorable Supervisor Aaron Peskin has proposed legislation to revise HCO Ordinance that will negatively impact thousands of tenants in the City of San Francisco. The proposal calls for a minimum 32 Day Rental of Residential SRO Rooms; eliminating Weekly Rentals which is a flexible and convenient housing option for renters from all walks of life; all over San Francisco

If this legislation passes it will be one of the biggest catastrophes in the San Francisco Housing Market, this legislation will paralyze the already strained housing market in San Francisco. Tenants will be put into the difficult situation of finding first month rent & deposit; not to mention enduring credit check's and income verification. This legislation will Most Definitely Hurt Tenants who are most vulnerable.

If you actually speak to tenants who we live our lives with here in our Hotels and experience what difficulties they face you will understand how impractical this legislation is. Many cases they are trying to balance their budget between rent, food and medicine; and living paycheck to paycheck.

Before you vote, please hear us out at a meeting Scheduled with Supervisor Peskin on Monday January 30th, at 2:30 PM, City Hall – Room # 278.

{Please see attached Letter.}

Sincerely,

Juned Usman Shaikh, GM
663 Valencia Street
San Francisco, CA 94110
Office: (415) 701-7666

Cellular: (415) 609-4187
Fax: (415) 701-9329
js@hoteltropica.com

January 26th, 2016
The Honorable Aaron Peskin
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Hotel Conversion Ordinance Legislation - Preservation of Weekly Rentals for SRO Hotels.

Dear Honorable Supervisor Peskin,

I hope this letter finds you in the best of spirits. I would like to Thank you wholeheartedly for sitting down with me and my cousin Mr. Nasir Patel a few weeks ago regarding the SRO Ordinance Issue.

I understand and appreciate the time and effort Ms. Sunny Angulo and your staff have devoted to this sensitive matter. Supervisor Peskin When I saw you personally at the meeting I felt relieved and honored that you took time out of your schedule to hear us out.

I am extremely concerned about the changes proposed in the HCO ordinance and how it will affect our Hotel Business and our Local Community.

I look into the immediate future and first and foremost sadly see our Prenatal Homeless Program being stopped immediately if we **cannot** accommodate **Weekly Rentals**, looking beyond that I see myself not being able to provide housing to so many different people from our Great City.

By eliminating Weekly Rentals you are removing a very affordable and approachable housing option; Fully Furnished, All Utilities included Hotel Rooms with Week to Week Flexibility for San Franciscan's. We are the only housing option left in San Francisco that someone with even questionable credit or even NO Credit or Verifiable References can walk in off the street and take advantage of and receive immediate housing. At our Hotel Tropica and countless others in San Francisco we don't even ask for proof of income or even a deposit at time of check in. By eliminating Weekly Rentals Local San Franciscan's will be unfairly punished by having to come up with thousands of dollars in rent and deposit not to mention red tape just to rent a simple hotel room.

Not all San Franciscan's have the ability to come up with a large amount of an entire monthly rent payment all together at the beginning of each and every month; which is what makes the Weekly Rental option even more critical for persons who are working in industries and sectors where the pay and schedules fluctuate depending on various economic factors; I.e. Taxi Drivers, Restaurant Industry Workers, Blue Collar Jobs, Construction Workers, Couriers and Delivery Guys.

Some of the types of Local People & Social Service Providers we provide housing for are:

- Expecting Mothers & Newborn Babies from Homeless Prenatal Program.
- Local San Franciscan's - In between jobs or careers.
- San Francisco Residents - Who need a temporary place to stay while they are

switching apartments or having renovations done.

- UCSF and General Hospital Patients In and out of the hospital.
- Red Cross Sponsored Fire Victims.
- Veterans From Swords to Plowshares
- And Countless Other members of our Local Community from all walks of life who appreciate the Accessibility, Convenience, Flexibility and Value that can be found only in SRO Hotels with **Weekly Rentals**.

All of the Persons and Social Service Programs mentioned above; had one thing in common they all started off their Tenancies as Weekly Rentals that sometimes continue for 5, 10 and even 20 Years all the while having the Flexibility of making rental payments in Weekly Installments.

Weekly Rentals give San Francisco Locals and City Based Social Services a choice and *quick* go-to option in finding housing in Our Great City. Please Let the Local San Francisco Public Choose for themselves. Don't take an affordable, Flexible, Easily available Housing Option away from the people of San Francisco.

In conclusion I humbly request you Honorable Supervisor Peskin *to please remove the 32 Day Minimum Stay requirement in your proposed HCO legislation; and let us continue to operate our SRO with Weekly Rental's just like we have been for many decades.*

If we eliminate Weekly Rentals from SRO Hotels; Tenants and Landlords will suffer equally. Having spent my entire life in the SRO Hotel Business in San Francisco; I truly believe available SRO Housing Stock Will decrease rather than increase and the people of San Francisco will have more difficulty in finding stable, affordable housing if this Legislation passes. ***Please allow us to continue Weekly Rentals and continue to serve the Fine Citizens of San Francisco.***

Thank you for taking the time to read my letter.

P.S. I live on-site with my family here at "Hotel Tropica" I invite you or your staff over to visit us at any time day or night. You are always most welcome.

Sincerely,

Juned Usman Shaikh, GM

663 Valencia Street

San Francisco, CA 94110

Office: (415) 701-7666

Cellular: (415) 609-4187

Fax: (415) 701-9329

js@hoteltropica.com

From:	Juned Usman Shaikh
To:	Lee, Mayor (MYR)
Cc:	Peskin, Aaron (BOS); Breed, London (BOS); Cohen, Malia (BOS); Farrell, Mark (BOS); Fewer, Sandra (BOS); Kim, Jane (BOS); Ronen, Hillary; Safai, Ahsha (BOS); Sheehy, Jeff (BOS); Tang, Katy (BOS); Yee, Norman (BOS)
Subject:	Hotel Conversion Ordinance Legislation (HCO) - Preservation of Weekly Rentals for SRO Hotels. - Hotel Owner / Operator Meeting- Monday January 30,2017 at 2:30 pm- Room 278
Date:	Friday, January 27, 2017 7:08:24 PM

January 27, 2017

RE: Hotel Conversion Ordinance Legislation (HCO) - Preservation of Weekly Rentals for SRO Hotels. - Hotel Owner / Operator Meeting- Monday January 30,2017 at 2:30 pm- Room 278

Dear Honorable Mayor Edwin M. Lee & Honorable San Francisco Board of Supervisors,

Honorable Supervisor Aaron Peskin has proposed legislation to revise HCO Ordinance that will negatively impact thousands of tenants in the City of San Francisco. The proposal calls for a minimum 32 Day Rental of Residential SRO Rooms; eliminating Weekly Rentals *which is a flexible and convenient housing option for renters from all walks of life; all over San Francisco*

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Honorable Mayor Edwin M. Lee and Honorable Board of Supervisors –
Please hear us out at a meeting Scheduled with Supervisor Peskin & SRO Owners, Operators & Manager(s) on Monday January 30th, at 2:30 PM, City Hall – Room # 278.

P.S.

Please scroll down for a detailed letter written to Supervisor Peskin in support of Maintaining Weekly Rentals in SRO Hotels written from an independent SRO Hotel Operator who has been in the SRO Hotel Business all of his life and actually lives with his family and works on-site in an SRO Hotel.

{Please see attached Letter.}

Sincerely,

Juned Usman Shaikh, GM

663 Valencia Street

San Francisco, CA 94110

Office: (415) 701-7666

Cellular: (415) 609-4187

Fax: (415) 701-9329

js@hoteltropica.com

January 26th, 2016

The Honorable Aaron Peskin
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Hotel Conversion Ordinance Legislation - Preservation of Weekly Rentals for SRO Hotels.

Dear Honorable Supervisor Peskin,

I hope this letter finds you in the best of spirits. I would like to Thank you wholeheartedly for sitting down with me and my cousin Mr. Nasir Patel a few weeks ago regarding the SRO Ordinance Issue.

I understand and appreciate the time and effort Ms. Sunny Angulo and your staff have devoted to this sensitive matter. Supervisor Peskin When I saw you personally at the meeting I felt relieved and honored that you took time out of your schedule to hear us out.

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Some of the types of Local People & Social Service Providers we provide housing for are:

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- Local San Franciscan's - In between jobs or careers.

- San Francisco Residents - Who need a temporary place to stay while they are switching apartments or having renovations done.
- UCSF and General Hospital Patients In and out of the hospital.
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Thank you for taking the time to read my letter.

P.S. I live on-site with my family here at "Hotel Tropica" I invite you or your staff over to visit us at any time day or night. You are always most welcome.

Sincerely,

Juned Usman Shaikh, GM

663 Valencia Street

San Francisco, CA 94110

Office: (415) 701-7666

Cellular: (415) 609-4187

Fax: (415) 701-9329

js@hoteltropica.com

From:	Vinay Patel
To:	Farrell, Mark (BOS); Tang, Katy (BOS); Sheehy, Jeff (BOS); Ronen, Hillary; Cohen, Malia (BOS); Safai, Ahsha (BOS); Kim, Jane (BOS); Peskin, Aaron (BOS)
Subject:	Please support a continuance to Hotel Conversion Ordinance
Date:	Tuesday, January 31, 2017 1:21:09 PM

Dear Supervisors,

I'm writing to urge you to support a continuance on the vote for changes to the Hotel Conversion Ordinance today.

Over 50 hotel operators and tenant showed up yesterday for a meeting with Supervisor Peskin after they found out about the proposed changes only on the Friday before. For over 40 years this community has worked with this city and to not be engaged in potential changes is very disturbing.

This community is not against stopping the stock of SRO rooms from dropping but certain changes will have some undesired consequences. The community is also not against reporting reforms.

The community is very concerned about the 7 to 32 day rental change. One consequence is many potential renters not able to afford a month's rent and deposit because they are check to check. Also it will change the way screenings will take place for these private hotels to feel comfortable in entering long term agreements.

We are asking for a continuance so the dozens of San Francisco operators can have a two way conversation on what would be best for the city.

Below is a letter written to Supervisor Peskin for your review.

All the best,
Vinay Patel

January 26th, 2016
The Honorable Aaron Peskin
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Re: Hotel Conversion Ordinance Legislation - Preservation of Weekly Rentals for SRO Hotels.
Dear Honorable Supervisor Peskin,

I hope this letter finds you in the best of spirits. I would like to Thank you wholeheartedly for sitting down with me and my cousin Mr. Nasir Patel a few weeks ago regarding the SRO Ordinance Issue.

I understand and appreciate the time and effort Ms. Sunny Angulo and your staff have devoted to this sensitive matter. Supervisor Peskin When I saw you personally at the meeting I felt relieved and honored that you took time out of your schedule to hear us out.

I am extremely concerned about the changes proposed in the HCO ordinance and how it will affect our Hotel Business and our Local Community.

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***In conclusion I humbly request you** Honorable Supervisor Peskin to please remove the 32 Day Minimum Stay requirement in your proposed HCO legislation; and let us continue to operate our SRO with Weekly Rental's just like we have been for many decades.*

If we eliminate Weekly Rentals from SRO Hotels; Tenants and Landlords will suffer equally. Having spent my entire life in the SRO Hotel Business in San Francisco; I truly believe available SRO Housing Stock Will decrease rather than increase and the people of San Francisco will have more difficulty in finding stable, affordable housing if this Legislation passes. Please allow us to continue Weekly Rentals and continue to serve the Fine Citizens of San Francisco.

Thank you for taking the time to read my letter.

P.S. I live on-site with my family here at "Hotel Tropica" I invite you or your staff over to visit us at any time day or night. You are always most welcome.

Sincerely,

Juned Usman Shaikh, GM

From:	Brad Patel
To:	Tang, Katy (BOS); Sheehy, Jeff (BOS); Ronen, Hillary; Cohen, Malia (BOS); Safai, Ahsha (BOS); Kim, Jane (BOS); Peskin, Aaron (BOS); Breed, London (BOS); Fewer, Sandra (BOS); Yee, Norman (BOS); Farrell, Mark (BOS)
Subject:	Please vote for continuation for Hotel Conversion Ordinance Amendment
Date:	Monday, February 06, 2017 7:41:50 PM

Dear Supervisors

We are imploring you to vote for a continuance on the Hotel Conversion Ordinance Amendment. Our hotel community is and have been a vital and integral member of this city spanning over 40 years and over three generations of hotel operators.

We are asking for a continuance in this matter because we have not been reached out to nor been asked for input in reshaping this ordinance. There are approximately 400 hotels in the City and County of San Francisco who had no prior knowledge of this proposed HCO Amendment. We feel that our input is vital to creating a holistic policy for our collective future. Many of us are immigrants and operate minority owned businesses. We have not been invited to the table as a stakeholder and this seems extremely against San Francisco's principles of openness and inclusion. We want to work together with the City and its' residents that is fair for everyone involved. We have been denied due process.

We feel strongly that the undesired consequences for transitional residents will be tragic as they may not have the ability to pay a full month's rent. We've worked with many residents over the decades and conclude that this ordinance does not seem to have their best interests in mind. We believe that the many organizations who endorsed this HCO Amendment were shortsighted to the needs of all communities seeking affordable housing.

We are hoping for a continuance.

Sincerely
Concerned Hotelier

From:	Mukesh Patel
To:	Farrell, Mark (BOS); Tang, Katy (BOS); Sheehy, Jeff (BOS); Ronen, Hillary; Cohen, Malia (BOS); Safai, Ahsha (BOS); Kim, Jane (BOS); Peskin, Aaron (BOS); Breed, London (BOS); Fewer, Sandra (BOS); Yee, Norman (BOS)
Subject:	Please vote for continuation for Hotel Conversion Ordinance Amendment
Date:	Monday, February 06, 2017 8:36:34 PM

Dear Supervisors

We are imploring you to vote for a continuance on the Hotel Conversion Ordinance Amendment. Our hotel community is and have been a vital and integral member of this city spanning over 40 years and over three generations of hotel operators.

We are asking for a continuance in this matter because we have not been reached out to nor been asked for input in reshaping this ordinance. There are approximately 400 hotels in the City and County of San Francisco who had no prior knowledge of this proposed HCO Amendment. We feel that our input is vital to creating a holistic policy for our collective future. Many of us are immigrants and operate minority owned businesses. We have not been invited to the table as a stakeholder and this seems extremely against San Francisco's principles of openness and inclusion. We want to work together with the City and its' residents that is fair for everyone involved. We have been denied due process.

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We are hoping for a continuance.

Sincerely,

Concerned Hotelier

MILLER STARR
REGALIA

1331 N. California Blvd.
Fifth Floor
Walnut Creek, CA 94596

T 925 935 9400
F 925 933 4126
www.msrlegal.com

Bryan W. Wenter
Direct Dial: 925 941 3268
bryan.wenter@msrlegal.com

February 7, 2017

VIA E-MAIL

London Breed, President, and Honorable Supervisors
City and County of San Francisco
Legislative Chamber, Room 250
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689
E-Mail: London.Breed@sfgov.org

Re: February 7, 2017 Board of Supervisors Agenda Item #13
161291 — Administrative Code - Update Hotel Conversion Ordinance
And Public Act Records Request

Dear President Breed and Honorable Supervisors:

This law firm represents the San Francisco SRO Hotel Coalition, whose members own and operate numerous residential hotels in San Francisco that would be affected by the amendments proposed by the above-referenced agenda item ("Proposed Amendments") to the City's Hotel Conversion Ordinance ("HCO"). While we understand and appreciate the City's desire to maintain the existing stock of residential hotels, the Proposed Amendments would directly affect the property rights of some 500 hoteliers and they are virtually certain to have myriad unintended and adverse consequences for the environment – including the very vulnerable human population the Proposed Amendments are purportedly intended to benefit. This letter is written in part to highlight those negative consequences, to object to adoption of the Proposed Amendments as currently drafted, and to urge further consideration and study prior to adopting these or any HCO revisions. This letter also identifies a range of procedural issues and problems with the proposed enactment and explains why approving the Proposed Amendments to the HCO in the manner now proposed and on the current record would violate the California Environmental Quality Act ("CEQA"; Pub. Resources Code, § 21000 *et seq.*) and the CEQA Guidelines (14 Cal. Code Regs., § 15000 *et seq.*).

We also request that the City produce relevant documents pursuant to the California Public Records Act, (Gov. Code, § 6250 *et seq.*), as set forth in Attachment A to this letter.

The proposed HCO Amendments would lead to a range of unintended, and detrimental, consequences to tenants.

Attached hereto as Exhibit A is a copy of an email setting forth the content of a January 26, 2017 letter delivered on that date to Supervisor Aaron Peskin by Juned Usman Shaikh, owner of the Tropicana Hotel, and one of the many hoteliers whose properties and businesses would be affected by the Proposed Amendments. As underscored by the Shaikh letter, the most serious unintended consequence of the Proposed Amendments' elimination of rentals for less than a 32-day period (i.e., hotel elimination of weekly rentals, which have been allowed for almost 40 years, since the HCO's inception) will be a dramatic reduction in the number of SRO housing units available to possible users – and consequent displacements of large numbers of SRO tenants directly into the City's streets and/or homeless shelters. Hundreds of residential hotels will be affected by the Proposed Amendments, exposing multiple hundreds of short-term rental SRO tenants to displacement and possible homelessness. As the California Supreme Court has aptly observed in upholding a prior version of the City's HCO against various takings challenges: "While a single room without a private bath and kitchens may not be an ideal form of housing, such units accommodate many whose only other options might be sleeping in public spaces or in a City shelter. Plaintiffs do not dispute that San Francisco has long suffered from a shortage of affordable housing or that residential hotel units serve many who cannot afford security and rent deposits for an apartment." (*San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, 674, emph. added.)

As demonstrated by the Shaikh letter previously submitted to the Board, and as confirmed by our client, many SRO units will not be able to be rented under the Proposed Amendments requiring minimum rentals of not less than 32 days because most SRO users cannot come up with a full month's rent or deposit, and most operators cannot have units occupied on a weekly installment payment basis because of difficulties in evicting non-paying longer-term occupants. The result of this will be that many short-term users and renters will no longer have the benefit of these SRO units. The monthly rental value of SRO units in most cases will be beyond the means of low income, disabled, elderly, and "transient" users, resulting in the units remaining vacant under the proposed HCO Amendments. As noted, this will also foreseeably cause a displacement of such tenants into the City's streets or shelters, with resulting direct and reasonably foreseeable indirect adverse environmental impacts that have not been studied, or even acknowledged, by the City.

Other adverse consequences will ensue. Due to their unusual character, severe economic impacts, and interference with longstanding investment-backed expectations, the Proposed Amendments will effect an unlawful taking of private property rights of affected hoteliers. (*See, e.g., Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528 and *Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104.) Additionally, there will be a concomitant serious reduction of staff/labor

because of operators' inability to rent out SRO units on a weekly basis, resulting in lower SRO hotel revenues. The ultimate economic consequence for SRO hotel employees will be a greater volume of lay-offs for lower wage earners, including those with families.

Further, the Amendments do not define "prospective Permanent Resident" or even give any helpful guidance or assistance on this issue. An unintended consequence of this will be encouraging deception and lack of transparency on this issue.

The Proposed Amendments appear to have been planned and passed as a matter of political expediency for certain constituents without a larger vision as to real housing solutions and practical environmental, human and economic impacts. In addition to the very real adverse but unstudied environmental and human impacts, this will only delay and divert the City from productively engaging in the hard work and committing the resources necessary to create more adequate "residential" units for the truly very low income.

The City's meeting agendas are inadequate under the Brown Act and the City's own Sunshine Ordinance, and they fail to follow the City Attorney's Good Government Guide.

The Ralph M. Brown Act (Cal. Gov. Code, § 54950 *et seq.*[1]) is designed to encourage public participation in government decision making. (*Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 681.) "[T]he keystone of the Brown Act is the requirement that '[a]ll meetings of the legislative body of a local agency shall be open and public . . . .' " (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 375.)

The Brown Act begins with a forceful declaration of the Legislature's purpose:

> In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.
>
> The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.
> § 54950.

[1] All statutory references in this section are to the California Government Code.

In relevant part, the Brown Act requires that "[a]t least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting . . . A brief general description of an item generally need not exceed 20 words." § 54954.2. In addition, "[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda . . . ." § 54954.2(a)(3).

The courts have explained that agenda drafters must give the public a fair chance to participate in matters of particular or general concern by providing the public with more than mere clues from which they must then guess or surmise the essential nature of the business to be considered by a local agency. Thus, in *Moreno v. City of King* (2005) 127 Cal.App.4th 17, although a city was considering taking disciplinary action against its finance director, including possible termination, its agenda item was inadequate because it merely stated that in closed session the city would consider: " 'Per Government Code Section 54957: Public Employee (employment contract).' " (*Id.* at p. 21)

In holding this failed to give notice to either the public, or the finance director, that the council was considering disciplining or terminating him, the court stated: "It was undisputed that at least a quarter of the meeting was actually devoted to a discussion of [the finance director] and whether to terminate him . . . The agenda's description provided no clue that the dismissal of a public employee would be discussed at the meeting." (*Id.* at pp. 26–27)

Importantly, the court went on to point out how easily the city council could have met the requirements of the Brown Act: "[A]n agenda that said simply 'Public Employee Dismissal' would have provided adequate public notice of a closed session at which the Council would consider [the finance director's] dismissal." (*Moreno, supra*, at p. 27)

The Sunshine Ordinance (San Francisco Administrative Code Chapter 67) provides a notable twist on the Brown Act's minimum noticing requirement. Instead of requiring a "brief general description" the Sunshine Ordinance requires that the City "post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting." (Sunshine Ordinance at § 67.7(a)) The Sunshine Ordinance explains that "[a] description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English." (*Id.* at § 67.7(b))

In *The Good Government Guide*, the City Attorney explains that "[i]n particular instances, it may be unclear whether the description of an agenda item satisfies the 'meaningful description' standard. And on occasion there can be tension between a

description that is meaningful and one that is brief and concise. In such cases, it often is better to err on the side of a longer, more informative description."

Here, the January 31, 2017, and February 7, 2017 meeting agendas for the Proposed Amendments merely provide as follows:

> **[Administrative Code - Update Hotel Conversion Ordinance]**
> **Sponsors: Peskin; Kim, Safai, Sheehy, Cohen, Ronen and Yee**
> 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.

Instead of fairly describing the "essential nature" of the Proposed Amendments, the agendas provide a sanitized description that fails to disclose that the Proposed Amendments are intended to dramatically reshape the City's SRO market by imposing strict limits on the ways hoteliers may operate and use their properties. The key feature of the Proposed Amendments is to prohibit SRO rentals for less than 32 days, yet the agendas fail to say anything about that attempt at central planning. Instead, with respect to this issue, the agendas simply state "adding or refining definitions of tourist and transient use." Moreover, the agendas fail to say that the Proposed Amendments would impose new application requirements, sharply increase penalties on hoteliers, and increase reporting requirements.

In short, the notices provided by the City in connection with adoption of the Proposed Amendments fail to comply with the minimum requirements of the Brown Act and the City's Sunshine Ordinance. The City must not only comply with state law, but with its own code requirements, including those of the Sunshine Ordinance. (*Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012 ("the city's incantation of a 'policy and practice' in direct violation of its own code cannot conform that alleged policy and practice to due process."].)

The HCO and Proposed Amendments constitute a zoning ordinance, subject to the procedural requirements for adopting and amending such ordinances.

The HCO is organized structurally as part of the City's Administrative Code, which regulates on a wide range of issues such as nondiscrimination in contracts, sick leave, jails and prisoners, payroll procedure, and public health. As a practical matter, however, the HCO regulates land use and zoning, and as such the HCO and the Proposed Amendments are subject to the requirements of the state's Planning and Zoning Laws and in particular Government Code section 65850(a), which states that the legislative body may adopt ordinances that "[r]egulate the use of buildings,

structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes."

The Court of Appeal interpreted and applied section 65850 recently in *People v. Optimal Global Healing, Inc.* (2015) 241 Cal.App.4th Supp. 1. There, a medical marijuana business argued that a ballot initiative to regulate such businesses affected land use and, as such, contained a zoning component subject to section 65850. (*Id.* at p. 7-9) Among other things, the initiative makes it a misdemeanor to makes it a misdemeanor to "own, establish, operate, use, or permit the establishment or operation of" a medical marijuana business. (*Id.*) Rejecting the City of Los Angeles' argument that the initiative was "a nuisance ordinance related to public health, safety and morals, not a zoning ordinance," the Court held that the initiative "must also have the effect of "[r]egulat[ing] the use of buildings, structures, and land." (*Id.*)

The Legislative Digest that accompanies the Proposed Amendments makes clear precisely how the HCO and the Proposed Amendments are a zoning ordinance. In particular, the Legislative Digest explains that

> The Hotel Conversion Ordinance ("HCO"), Administrative Code Chapter 41, regulates some 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.

As a zoning ordinance, the HCO and the Proposed Amendments "shall be adopted in the manner set forth in Sections 65854 to 65857, inclusive." (Gov. Code, § 65853.) There are numerous procedures and notice requirements that must be followed for the adoption and amendment of zoning ordinances under those sections. For example, the planning commission must hold a public hearing on the

Proposed Amendments with notice to be given pursuant to Government Code § 65090 "and, if the proposed ordinance or amendment to a zoning ordinance affects the permitted uses of real property, notice shall also be given pursuant to Section 65091." The latter section requires notice to be given in numerous ways: "(1) ... mailed or delivered at least 10 days prior to the hearing to the owner of the subject real property . . . . Notice shall also be mailed to the owner's duly authorized agent, if any, and to the project applicant . . . . (4) Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property . . . within 300 feet of the real property that is the subject of the hearing . . . ." (Gov. Code, § 65091(a)(1), (4).)) The notice must include the information specified in § 65094 (Gov. Code, § 65091(b)), which includes "a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing." Other procedural and notice requirements apply to city council hearings on zoning ordinances, for which notice pursuant to Section 65090 must be given. (Gov. Code, § 65856.) None of these procedures have been followed to provide the legally required notice of the Proposed Amendments to the affected hoteliers/property owners here.

The proposed amendments would have significant adverse and unstudied environmental effects, including those resulting from displacement of vulnerable low-income tenants.

Contrary to the City's determination, adoption of the Proposed Amendments is a discretionary CEQA "project" undertaken by the City and is not categorically exempt. A "project" for purposes of CEQA is any activity that may cause a direct or reasonably foreseeable indirect change in the environment. (Pub. Resources Code, § 21065; CEQA Guidelines, § 15378.) Zoning ordinances like the Proposed Amendments that affect land use are clearly CEQA projects. Substantial evidence supports at the very least a fair argument that the Proposed Amendments may cause significant adverse direct environmental impacts subject to mandatory CEQA review, study and analysis, including hundreds and hundreds of displaced tenants and the resulting increase in homelessness and people living on the City's streets and in its public spaces. (*See, e.g. Muzzy Ranch v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372 [holding that development displaced by density limits is not too speculative of an impact to require CEQA analysis].)

It is reasonably foreseeable that adverse changes to the physical environment from such massive tenant displacement will also include public trash, human feces, urination, pollution of waterways, waters, and City public and private spaces, and adverse impacts to the displaced human beings themselves from lack of water and livable accommodations, exposure, cold, suffering, and disease. The City's Department of Public Health (SFDPH) has for years routinely included residential displacement analyses in its Environmental Impact Assessments ("EIAs") for other projects (e.g., demolition and rezoning) to assess adverse effects on human

populations and housing, and the Board should require no less under CEQA here. Substantial record evidence and common sense show the HCO Amendments will or may lead to decreases in residential housing options for hundreds of low income residents, and resulting increased voluntary and involuntary displacements of residents incapable of renting on more than a week-to-week basis. CEQA requires the City to conduct an analysis of these reasonably foreseeable and significant environmental impacts, and develop and consider alternatives and mitigation measures that would avoid or ameliorate them, before further proceeding with its project to adopt the Proposed Amendments.

Sincerely,

MILLER STARR REGALIA

Bryan W. Wenter, AICP

BWW/klw

Attachments
cc: Angela Calvillo, Clerk of the Board (angela.calvillo@sfgov.org)
San Francisco SRO Hotel Coalition
Arthur F. Coon, Esq.

ATTACHMENT A

Pursuant to the Public Records Act and all applicable law, we hereby formally request that the City make available for inspection and copying the following public records that are within its possession, custody, or control: all "writings" (as defined in California Evidence Code, § 250) that comprise, constitute, or relate to all of the following:

- The person, persons, organizations, or entities that suggested the Proposed Amendments or that in any way initiated the Proposed Amendments or caused the Proposed Amendments to be initiated.
- The rationale or justification for the Proposed Amendments.
- CEQA review or studies for any aspect of the Proposed Amendments or potential environmental effect of the Proposed Amendments, including but not limited to displacement of tenants.
- The City's record retention policies.

With regard to all of the requested documents, the public records we seek include all writings, regardless of physical form or characteristics, prepared, kept, owned, received, used, or provided to or by City, whether such records are on a publicly owned or privately owned computer, tablet, phone, or electronic device, and whether on a publicly owned and maintained or privately owned and maintained account or server.

"Records" should be broadly construed to include any handwriting, typewriting, electronic mail, text message, voicemail, printing, photostatting, photography, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds or symbols or any combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

"City" should be broadly construed to include any council, board, commission, department, committee, official, officer, council member, commissioner, employee, agent, or representative of the City.

This request reasonably describes identifiable public records or information to be produced from those public records. If the City contends it is unable to comply with this request because the City believes the request is not sufficiently focused, then pursuant to California Government Code section 6253.1(a), we request that the City (1) assist us in identifying the records and information that are responsive to our request and/or to the purpose of our request, (2) describe the information technology and physical location in which the records exist, and (3) provide us with suggestions for overcoming any practical basis for denying access to the records or information we are seeking.

Under Government Code section 6253(b), we ask that the City make the records promptly available for inspection and copying. This is a matter of some urgency to my clients given the pendency of their appeal to the Planning Commission.

We do not believe any provision of law exempts the records from disclosure. However, if the City determines that a portion of the records we have requested is exempt from disclosure, Government Code section 6253(a) requires segregation and deletion of those materials so that the remainder of the records may be promptly released. Article I, § 3(b)(2) of the California Constitution requires a broad construction of any statute, court rule, or other authority intended to further the people's right of access and a narrow construction of any statute, court rule, or other authority if it limits the right of access. If the City determines that an express provision of law exempts from disclosure all or a portion of the records requested, Government Code section 6253(c) requires the City to promptly notify us of that determination and the reasons for it with 10 days from receipt of this request. In addition, Government Code section 6253(d) prohibits the use of the 10-day period or any other provision of the PRA to delay or obstruct the inspection or copying of public records.

For any responsive public record kept in electronic format, we request that an electronic copy of the document be produced in that format, pursuant to Government Code section 6253.9.

Please notify us by phone or email when any portion of the documents is ready, and we will arrange for its pick up by courier. Also, please notify us regarding the reasonable copying costs, and we will promptly send payment.

If documents are voluminous, then please indicate in your response the approximate volume of documents responsive to this request, and the location, dates, and times upon which inspection will be allowed. If you can provide documents in response to one or more of the above requests sooner than for others, please so indicate, and we will arrange for their pick up as such documents become available.

If you have any questions or concerns, or need additional information to comply with this request, please contact the undersigned at your earliest convenience. Thank you in advance for your prompt attention to this request.

From: "Juned Usman Shaikh" <js@hoteltropica.com>
Date: January 26, 2017 at 11:22:27 AM PST
To: <Aaron.Peskin@sfgov.org>, <Sunny.Angulo@sfgov.org>, <Lee.Hepner@sfgov.org>
Cc: <sdarbar@aol.com>, <dipakstayinsf@gmail.com>, <sp@bmshotels.com>, <amotawala@live.com>, <anilpatel855@yahoo.com>, <vikcpatel@gmail.com>, <nap310@sbcglobal.net>, <rstratton@hansonbridgett.com>, <nayno33@sbcglobal.net>, <dpatel46@sbcglobal.net>, <pagnoletti@ehmergroup.com>, <clubrio232@aol.com>, <laynehotel@aol.com>, "'Kiran Patel'" <km_patel@yahoo.com>, <kenpatel04@gmail.com>, <kbthakor@gmail.com>, <dannypatel73@yahoo.com>, <winsor206@sbcglobal.net>, <akshayamin@sbcglobal.net>, <rpatel1541@gmail.com>, <nasir24@aol.com>
Subject: RE: Hotel Conversion Ordinance Legislation (HCO) - Preservation of Weekly Rentals for SRO Hotels. - January 26th, 2016 To: Honorable Supervisor Aaron Peskin
Reply-To: <js@hoteltropica.com>

January 26th, 2016

The Honorable Aaron Peskin
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Hotel Conversion Ordinance Legislation - Preservation of Weekly Rentals for SRO Hotels.

Dear Honorable Supervisor Peskin,

I hope this letter finds you in the best of spirits. I would like to Thank you wholeheartedly for sitting down with me and my cousin Mr. Nasir Patel a few weeks ago regarding the SRO Ordinance Issue.

I understand and appreciate the time and effort Ms. Sunny Angulo and your staff have devoted to this sensitive matter. Supervisor Peskin When I saw you personally at the meeting I felt relieved and honored that you took time out of your schedule to hear us out.

I am extremely concerned about the changes proposed in the HCO ordinance and how it will affect our Hotel Business and our Local Community.

1
EXHIBIT A

I look into the immediate future and first and foremost sadly see our Prenatal Homeless Program being stopped immediately if we **cannot** accommodate **Weekly Rentals**, looking beyond that I see myself not being able to provide housing to so many different people from our Great City.

By eliminating Weekly Rentals you are removing a very affordable and approachable housing option; Fully Furnished, All Utilities included Hotel Rooms with Week to Week Flexibility for San Franciscan's. We are the only housing option left in San Francisco that someone with even questionable credit or even NO Credit or Verifiable References can walk in off the street and take advantage of and receive immediate housing. At our Hotel Tropica and countless others in San Francisco we don't even ask for proof of income or even a deposit at time of check in. By eliminating Weekly Rentals Local San Franciscan's will be unfairly punished by having to come up with thousands of dollars in rent and deposit not to mention red tape just to rent a simple hotel room.

Not all San Franciscan's have the ability to come up with a large amount of an entire monthly rent payment all together at the beginning of each and every month; which is what makes the Weekly Rental option even more critical for persons who are working in industries and sectors where the pay and schedules fluctuate depending on various economic factors; I.e. Taxi Drivers, Restaurant Industry Workers, Blue Collar Jobs, Construction Workers, Couriers and Delivery Guys.

Some of the types of Local People & Social Service Providers we provide housing for are:

- Expecting Mothers & Newborn Babies from Homeless Prenatal Program.
- Local San Franciscan's - In between jobs or careers.
- San Francisco Residents - Who need a temporary place to stay while they are switching apartments or having renovations done.
- UCSF and General Hospital Patients In and out of the hospital.
- Red Cross Sponsored Fire Victims.
- Veterans From Swords to Plowshares
- And Countless Other members of our Local Community from all walks of life who appreciate the Accessibility, Convenience, Flexibility and Value that can be found only in SRO Hotels with **Weekly Rentals**.

All of the Persons and Social Service Programs mentioned above; had one thing in common they all started off their Tenancies as Weekly Rentals that sometimes continue for 5, 10 and even 20 Years all the while having the Flexibility of making rental payments in Weekly Installments.

Weekly Rentals give San Francisco Locals and City Based Social Services a choice and *quick* go-to option in finding housing in Our Great City. Please Let the Local San Francisco Public Choose for themselves. Don't take an affordable, Flexible, Easily available Housing Option away from the people of San Francisco.

In conclusion I humbly request you Honorable Supervisor Peskin *to please remove the 32 Day Minimum Stay requirement in your proposed HCO legislation; and let us continue to operate our SRO with Weekly Rental's just like we have been for many decades.*

If we eliminate Weekly Rentals from SRO Hotels; Tenants and Landlords will suffer equally. Having spent my entire life in the SRO Hotel Business in San Francisco; I truly believe available SRO Housing Stock Will decrease rather than increase and the people of San

Francisco will have more difficulty in finding stable, affordable housing if this Legislation passes. ***Please allow us to continue Weekly Rentals and continue to serve the Fine Citizens of San Francisco.***

Thank you for taking the time to read my letter.

P.S. I live on-site with my family here at "Hotel Tropica" I invite you or your staff over to visit us at any time day or night. You are always most welcome.

Sincerely,

Juned Usman Shaikh, GM
663 Valencia Street
San Francisco, CA 94110
Office: (415) 701-7666
Cellular: (415) 609-4187
Fax: (415) 701-9329
js@hoteltropica.com

From:	Juned Usman Shaikh
Cc:	Peskin, Aaron (BOS); Breed, London (BOS); Cohen, Malia (BOS); Farrell, Mark (BOS); Fewer, Sandra (BOS); Kim, Jane (BOS); Ronen, Hillary; Safai, Ahsha (BOS); Sheehy, Jeff (BOS); Tang, Katy (BOS); Yee, Norman (BOS)
Subject:	Dear San Francisco Board of Supervisors, Please vote for continuation for Hotel Conversion Ordinance Amendment. - We are imploring you to vote for a continuance on the Hotel Conversion Ordinance Amendment.
Date:	Tuesday, February 07, 2017 4:49:23 AM

February 7, 2017
Dear San Francisco Board of Supervisors,

We are imploring you to vote for a continuance on the Hotel Conversion Ordinance Amendment. Our hotel community is and have been a vital and integral member of this city spanning over 40 years and over three generations of hotel operators.

We are asking for a continuance in this matter because we have not been reached out to nor been asked for input in reshaping this ordinance. There are approximately 400 hotels in the City and County of San Francisco who had no prior knowledge of this proposed HCO Amendment. We feel that our input is vital to creating a holistic policy for our collective future. Many of us are immigrants and operate minority owned businesses. We have not been invited to the table as a stakeholder and this seems extremely against San Francisco's principles of openness and inclusion. We want to work together with the City and its' residents that is fair for everyone involved. We have been denied due process.

We feel strongly that the undesired consequences for transitional residents will be tragic as they may not have the ability to pay a full month's rent. We've worked with many residents over the decades and conclude that this ordinance does not seem to have their best interests in mind. We believe that the many organizations who endorsed this HCO Amendment were shortsighted to the needs of all communities seeking affordable housing.

By eliminating Weekly Rentals you are removing a very affordable and approachable housing option; Fully Furnished, All Utilities included Hotel Rooms with Week to Week Flexibility for San Franciscan's. We are the only housing option left in San Francisco that someone with even questionable credit or even NO Credit or Verifiable References can walk in off the street and take advantage of and receive immediate housing. At our Hotel and hundreds of others in San Francisco we do not even ask for proof of income or even a deposit at time of check in. By eliminating Weekly Rentals Local San Franciscan's will be unfairly punished by having to come up with thousands of dollars in rent and deposit not to mention red tape just to rent a simple hotel room.

Not all San Franciscan's have the ability to come up with a large amount of an entire monthly rent payment all together at the beginning of each and every month; and many times residents incomes fluctuate; which is what makes the Weekly Rental option even more critical for persons who are working in industries and sectors where the pay and schedules fluctuate depending on various economic factors; I.e. Taxi Drivers, Restaurant Industry Workers, Blue Collar Jobs, Construction Workers, Couriers and Delivery Guys.

We are hoping for a continuance.

Sincerely,
Concerned Hotelier,
Juned Usman Shaikh
js@hoteltropica.com

From:	Hemant
To:	Farrell, Mark (BOS); Tang, Katy (BOS); Sheehy, Jeff (BOS); Ronen, Hillary; Cohen, Malia (BOS); Safai, Ahsha (BOS); Kim, Jane (BOS); Peskin, Aaron (BOS); Breed, London (BOS); Fewer, Sandra (BOS); Yee, Norman (BOS)
Subject:	Please vote for continuation for Hotel Conversion Ordinance Amendment
Date:	Tuesday, February 07, 2017 7:04:41 AM

Dear Supervisors

We are imploring you to vote for a continuance on the Hotel Conversion Ordinance Amendment. Our hotel community is and have been a vital and integral member of this city spanning over 40 years and over three generations of hotel operators.

We are asking for a continuance in this matter because we have not been reached out to nor been asked for input in reshaping this ordinance. There are approximately 400 hotels in the City and County of San Francisco who had no prior knowledge of this proposed HCO Amendment. We feel that our input is vital to creating a holistic policy for our collective future. Many of us are immigrants and operate minority owned businesses. We have not been invited to the table as a stakeholder and this seems extremely against San Francisco's principles of openness and inclusion. We want to work together with the City and its' residents that is fair for everyone involved. We have been denied due process.

We feel strongly that the undesired consequences for transitional residents will be tragic as they may not have the ability to pay a full month's rent. We've worked with many residents over the decades and conclude that this ordinance does not seem to have their best interests in mind. We believe that the many organizations who endorsed this HCO Amendment were shortsighted to the needs of all communities seeking affordable housing.

We are hoping for a continuance.

Sincerely Hotelier

From:	Aashik Patel
To:	Farrell, Mark (BOS); Tang, Katy (BOS); Sheehy, Jeff (BOS); Ronen, Hillary; Cohen, Malia (BOS); Safai, Ahsha (BOS); Kim, Jane (BOS); Peskin, Aaron (BOS); Breed, London (BOS); Fewer, Sandra (BOS); Yee, Norman (BOS)
Subject:	Please vote for continuation for Hotel Conversion Ordinance Amendment
Date:	Tuesday, February 07, 2017 8:30:42 AM

Dear Supervisors

We are imploring you to vote for a continuance on the Hotel Conversion Ordinance Amendment. Our hotel community is and have been a vital and integral member of this city spanning over 40 years and over three generations of hotel operators.

We are asking for a continuance in this matter because we have not been reached out to nor been asked for input in reshaping this ordinance. There are approximately 400 hotels in the City and County of San Francisco who had no prior knowledge of this proposed HCO Amendment. We feel that our input is vital to creating a holistic policy for our collective future. Many of us are immigrants and operate minority owned businesses. We have not been invited to the table as a stakeholder and this seems extremely against San Francisco's principles of openness and inclusion. We want to work together with the City and its' residents that is fair for everyone involved. We have been denied due process.

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We are hoping for a continuance.

Sincerely,

Aashik Patel
Concerned Hotelier

From:	Pete
To:	Farrell, Mark (BOS); Tang, Katy (BOS); Sheehy, Jeff (BOS); Ronen, Hillary; Cohen, Malia (BOS); Safai, Ahsha (BOS); Kim, Jane (BOS); Peskin, Aaron (BOS); Breed, London (BOS); Fewer, Sandra (BOS); Yee, Norman (BOS)
Subject:	SRO Ordinance
Date:	Tuesday, February 07, 2017 11:05:35 AM

Dear Supervisors

We are imploring you to vote for a continuance on the Hotel Conversion Ordinance Amendment. Our hotel community is and have been a vital and integral member of this city spanning over 40 years and over three generations of hotel operators. I was born in San Francisco and was raised in an SRO South of Market and later in the Tenderloin. I lived in an SRO for the first 28 years of my life.

We are asking for a continuance in this matter because we have not been reached out to nor been asked for input in reshaping this ordinance. There are approximately 400 hotels in the City and County of San Francisco who had no prior knowledge of this proposed HCO Amendment including the ones I have interest in. We feel that our input is vital to creating a holistic policy for our collective future. All of us are immigrants, children or grand children of immigrants. We are a minority owned businesses. We have not been invited to the table as a stakeholder and this seems extremely against San Francisco's principles of openness and inclusion. We want to work together with the City and its' residents that is fair for everyone involved. We have been denied a seat at the table.

We feel strongly that the undesired consequences for transitional residents will be tragic as that many low income individuals will not have the ability to pay a full month's rent and security deposit. We've worked with many residents over the decades and conclude that this ordinance does not seem to have their best interests in mind. Many of our residents live pay check to pay check and are only able to gather together a week's rent, and they will be left out in the cold with this ordinance. Further, the initial weekly stay allows operators to screen tenants without tenants having to come up with a security deposit prior to them able to obtain full residential rights. We believe that the many of the organizations who endorsed this HCO Amendment were shortsighted to the needs of all communities seeking affordable housing.

We are hoping for a continuance.

Sincerely

Pete Patel

From:	Pete
To:	Farrell, Mark (BOS); Tang, Katy (BOS); Sheehy, Jeff (BOS); Ronen, Hillary; Cohen, Malia (BOS); Safai, Ahsha (BOS); Kim, Jane (BOS); Peskin, Aaron (BOS); Breed, London (BOS); Fewer, Sandra (BOS); Yee, Norman (BOS)
Subject:	SRO Ordinance
Date:	Tuesday, February 07, 2017 11:05:38 AM

Dear Supervisors

We are imploring you to vote for a continuance on the Hotel Conversion Ordinance Amendment. Our hotel community is and have been a vital and integral member of this city spanning over 40 years and over three generations of hotel operators. I was born in San Francisco and was raised in an SRO South of Market and later in the Tenderloin. I lived in an SRO for the first 28 years of my life.

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Sincerely

Pete Patel

From:	PETE KUMAR
To:	Farrell, Mark (BOS); Tang, Katy (BOS); Sheehy, Jeff (BOS); Ronen, Hillary; Cohen, Malia (BOS); Safai, Ahsha (BOS); Kim, Jane (BOS); Peskin, Aaron (BOS); Breed, London (BOS); Fewer, Sandra (BOS); Yee, Norman (BOS)
Subject:	Request for Continuance-SRO Ordinance
Date:	Tuesday, February 07, 2017 11:20:53 AM

Dear Supervisors

We are imploring you to vote for a continuance on the Hotel Conversion Ordinance Amendment. Our hotel community is and have been a vital and integral member of this city spanning over 40 years and over three generations of hotel operators.

We are asking for a continuance in this matter because we have not been reached out to nor been asked for input in reshaping this ordinance. There are approximately 400 hotels in the City and County of San Francisco who had no prior knowledge of this proposed HCO Amendment. We feel that our input is vital to creating a holistic policy for our collective future. All of us are immigrants and are a minority owned businesses. We have not been invited to the table as a stakeholder and this seems extremely against San Francisco's principles of openness and inclusion. We want to work together with the City and its' residents that is fair for everyone involved. We have been denied due process.

We feel strongly that the undesired consequences for transitional residents will be tragic as that many low income individuals will not have the ability to pay a full month's rent . We've worked with many residents over the decades and conclude that this ordinance does not seem to have their best interests in mind. We believe that the many of the organizations who endorsed this HCO Amendment were shortsighted to the needs of all communities seeking affordable housing.

We are hoping for a continuance.

Sincerely

Pravin Patel

From:	PETE KUMAR
To:	Farrell, Mark (BOS); Tang, Katy (BOS); Sheehy, Jeff (BOS); Ronen, Hillary; Cohen, Malia (BOS); Safai, Ahsha (BOS); Kim, Jane (BOS); Peskin, Aaron (BOS); Breed, London (BOS); Fewer, Sandra (BOS); Yee, Norman (BOS)
Subject:	Request for Continuance-SRO Ordinance
Date:	Tuesday, February 07, 2017 11:20:54 AM

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Sincerely

Pravin Patel

From:	rajsf@aol.com
To:	Peskin, Aaron (BOS); Farrell, Mark (BOS); Sheehy, Jeff (BOS); Tang, Katy (BOS); Ronen, Hillary; Cohen, Malia (BOS); Safai, Ahsha (BOS); Kim, Jane (BOS); Breed, London (BOS); Fewer, Sandra (BOS); Yee, Norman (BOS)
Subject:	Continuation of HCO ordinance
Date:	Tuesday, February 07, 2017 11:37:41 AM

Dear Supervisors

We are imploring you to vote for a continuance on the Hotel Conversion Ordinance Amendment. Our hotel community is and have been a vital and integral member of this city spanning over 40 years and over three generations of hotel operators. I lived in SRO's since I was 6 years old and to this day still live in one. I have owned and operated for the past 25 years. My struggles have been many and the struggles of other owners and operators. It's not easy to to maintain, repair, upgrade and pay the bills along with other regulations and city agency fees. Rent control, though I understand it, does not help SRO's and the new ordinance will make it even more difficult for us. No matter the letters the city and non-profits give us, at the end of the day, these were and should be hotels...Daily, Weekly, and Monthly... The business or property should determine how they wish to operate them, of course, following all building and health dept. regulations.
We are asking for a continuance in this matter because we have not been reached out to nor been asked for input in reshaping this ordinance. There are approximately 400 hotels in the City and County of San Francisco who had no prior knowledge of this proposed HCO Amendment. We feel that our input is vital to creating a holistic policy for our collective future. Many of us are immigrants and operate minority owned businesses. We have not been invited to the table as a stakeholder and this seems extremely against San Francisco's principles of openness and inclusion. We want to work together with the City and its' residents that is fair for everyone involved. We have been denied due process.

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We are hoping for a continuance.

Sincerely

Roger Patel
Concerned Hotelier

From:	prime hotel
To:	Farrell, Mark (BOS); Tang, Katy (BOS); Sheehy, Jeff (BOS); Ronen, Hillary; Cohen, Malia (BOS); Safai, Ahsha (BOS); Kim, Jane (BOS); Peskin, Aaron (BOS); Breed, London (BOS); Fewer, Sandra (BOS); Yee, Norman (BOS)
Subject:	SRO
Date:	Tuesday, February 07, 2017 11:58:08 AM

Dear Supervisors

We are imploring you to vote for a continuance on the Hotel Conversion Ordinance Amendment. Our hotel community is and have been a vital and integral member of this city spanning over 40 years and over three generations of hotel operators.

We are asking for a continuance in this matter because we have not been reached out to nor been asked for input in reshaping this ordinance. There are approximately 400 hotels in the City and County of San Francisco who had no prior knowledge of this proposed HCO Amendment. We feel that our input is vital to creating a holistic policy for our collective future. All of us are immigrants and are a minority owned businesses. We have not been invited to the table as a stakeholder and this seems extremely against San Francisco's principles of openness and inclusion. We want to work together with the City and its' residents that is fair for everyone involved. We have been denied due process.

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We are hoping for a continuance.

Sincerely

Vishnu Shah

From:	Kiran Thakor
To:	Farrell, Mark (BOS); Tang, Katy (BOS); Sheehy, Jeff (BOS); Ronen, Hillary; Cohen, Malia (BOS); Safai, Ahsha (BOS); Kim, Jane (BOS); Peskin, Aaron (BOS); Breed, London (BOS); Fewer, Sandra (BOS); Yee, Norman (BOS)
Subject:	Please vote for continuation for Hotel Conversion Ordinance Amendment
Date:	Tuesday, February 07, 2017 1:41:47 PM

Dear Supervisors

We are imploring you to vote for a continuance on the Hotel Conversion Ordinance Amendment. Our hotel community is and have been a vital and integral member of this city spanning over 40 years and over three generations of hotel operators.

We are asking for a continuance in this matter because we have not been reached out to nor been asked for input in reshaping this ordinance. There are approximately 400 hotels in the City and County of San Francisco who had no prior knowledge of this proposed HCO Amendment. We feel that our input is vital to creating a holistic policy for our collective future. Many of us are immigrants and operate minority owned businesses. We have not been invited to the table as a stakeholder and this seems extremely against San Francisco's principles of openness and inclusion. We want to work together with the City and its' residents that is fair for everyone involved. We have been denied due process.

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We are hoping for a continuance.

Sincerely,

Concerned Hotelier Kiran Thakor - District 6

--

Regards,

Kiran Thakor
151 Leavenworth Street
San Francisco, CA. 94102
pho: 415.602.0928
fax: 415.447.0499
email: kbthakor@gmail.com

From:	Kiran Thakor
To:	Farrell, Mark (BOS); Tang, Katy (BOS); Sheehy, Jeff (BOS); Ronen, Hillary; Cohen, Malia (BOS); Safai, Ahsha (BOS); Kim, Jane (BOS); Peskin, Aaron (BOS); Breed, London (BOS); Fewer, Sandra (BOS); Yee, Norman (BOS)
Subject:	Please vote for continuation for Hotel Conversion Ordinance Amendment
Date:	Tuesday, February 07, 2017 1:41:48 PM

Dear Supervisors

We are imploring you to vote for a continuance on the Hotel Conversion Ordinance Amendment. Our hotel community is and have been a vital and integral member of this city spanning over 40 years and over three generations of hotel operators.

We are asking for a continuance in this matter because we have not been reached out to nor been asked for input in reshaping this ordinance. There are approximately 400 hotels in the City and County of San Francisco who had no prior knowledge of this proposed HCO Amendment. We feel that our input is vital to creating a holistic policy for our collective future. Many of us are immigrants and operate minority owned businesses. We have not been invited to the table as a stakeholder and this seems extremely against San Francisco's principles of openness and inclusion. We want to work together with the City and its' residents that is fair for everyone involved. We have been denied due process.

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We are hoping for a continuance.

Sincerely,

Concerned Hotelier Kiran Thakor - District 6

--
Regards,

Kiran Thakor
151 Leavenworth Street
San Francisco, CA. 94102
pho: 415.602.0928
fax: 415.447.0499
email: kbthakor@gmail.com

From: Lea Artis
To: Cohen, Malia (BOS)
Subject: Preserve SROs for Residents
Date: Sunday, February 12, 2017 2:59:07 PM

Dear Supervisor:

Displacement is a fight for the soul of San Francisco, and protecting SROs are essential to protecting each other, our elders, our artists, and the very essence that keeps the embers of San Francisco alive: http://www.sfchronicle.com/bayarea/article/Chinatown-elderly-suffer-during-building-s-10887500.php

I write to urge you to support the legislation to update and strengthen our city's Residential Hotel Conversion law. SROs are an essential part of our City's affordable housing supply. They are the last source of unsubsidized housing affordable to working class families and seniors relying on Social Security. SROs are essential to our city's racial, social, and cultural diversity.

But SROs as homes for San Franciscans are at risk. Contrary to the intent of the law, SROs are being used increasingly as rentals for tourists. For this reason it is extremely important that SROs designated as housing for permanent residents should not be rented out for less than thirty days. Units for permanent residents should be rented for a minimum of a month. Such a requirement will increase our supply of SRO units for permanent residents of the city and enable the ordinance to achieve its intended purpose.

Sincerely,

Lea Artis

94117

From:	Maybaum, Erica (BOS)
To:	Low, Jen (BOS)
Subject:	FW: RESPONSE REQUIRED BY 2/15/17: Public Records Request - File No. 161291: Update Hotel Conversion Ordinance
Date:	Wednesday, February 15, 2017 9:31:22 AM

Hi Jen- Below is the only correspondence related to the Sunshine request File 161291.

From: Juned Usman Shaikh [mailto:js@hoteltropica.com]
Sent: Friday, January 27, 2017 7:13 PM
To: Lee, Mayor (MYR) <mayoredwinlee@sfgov.org>
Cc: Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Breed, London (BOS) <london.breed@sfgov.org>; Cohen, Malia (BOS) <malia.cohen@sfgov.org>; Farrell, Mark (BOS) <mark.farrell@sfgov.org>; Fewer, Sandra (BOS) <sandra.fewer@SFGOV1.onmicrosoft.com>; Kim, Jane (BOS) <jane.kim@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Sheehy, Jeff (BOS) <jeff.sheehy@sfgov.org>; Tang, Katy (BOS) <katy.tang@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>
Subject: Hotel Conversion Ordinance Legislation (HCO) - Preservation of Weekly Rentals for SRO Hotels. - Hotel Owner / Operator Meeting- Monday January 30,2017 at 2:30 pm- Room 278

January 27, 2017

RE: Hotel Conversion Ordinance Legislation (HCO) - Preservation of Weekly Rentals for SRO Hotels. - Hotel Owner / Operator Meeting- Monday January 30,2017 at 2:30 pm- Room 278

Dear Honorable Mayor Edwin M. Lee & Honorable San Francisco Board of Supervisors,

Honorable Supervisor Aaron Peskin has proposed legislation to revise HCO Ordinance that will negatively impact thousands of tenants in the City of San Francisco. The proposal calls for a minimum 32 Day Rental of Residential SRO Rooms; eliminating Weekly Rentals *which is a flexible and convenient housing option for renters from all walks of life; all over San Francisco*

If this legislation passes it will be one of the biggest catastrophes in the San Francisco Housing Market, this legislation will paralyze the already strained housing market in San Francisco. Tenants will be put into the difficult situation of finding first month rent & deposit; not to mention enduring credit check's and income verification. This legislation will Most Definitely Hurt Tenants who are most vulnerable.

If you actually speak to tenants who we live our lives with here in our Hotels and experience what difficulties they face you will understand how impractical this legislation is. Many cases they are trying to balance their budget between rent, food and medicine; and

living paycheck to paycheck.

Honorable Mayor Edwin M. Lee and Honorable Board of Supervisors –
Please hear us out at a meeting Scheduled with Supervisor Peskin & SRO Owners, Operators & Manager(s) on Monday January 30th, at 2:30 PM, City Hall – Room # 278.

P.S.
Please scroll down for a detailed letter written to Supervisor Peskin in support of Maintaining Weekly Rentals in SRO Hotels written from an independent SRO Hotel Operator who has been in the SRO Hotel Business all of his life and actually lives with his family and works on-site in an SRO Hotel.

{Please see attached Letter.}

Sincerely,

Juned Usman Shaikh, GM
663 Valencia Street
San Francisco, CA 94110
Office: (415) 701-7666
Cellular: (415) 609-4187
Fax: (415) 701-9329
js@hoteltropica.com

January 26th, 2016
The Honorable Aaron Peskin
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Hotel Conversion Ordinance Legislation - Preservation of Weekly Rentals for SRO Hotels.

Dear Honorable Supervisor Peskin,

I hope this letter finds you in the best of spirits. I would like to Thank you wholeheartedly for sitting down with me and my cousin Mr. Nasir Patel a few weeks ago regarding the SRO Ordinance Issue.

I understand and appreciate the time and effort Ms. Sunny Angulo and your staff have devoted to this sensitive matter. Supervisor Peskin When I saw you personally at the meeting I felt relieved and honored that you took time out of your schedule to hear us out.

I am extremely concerned about the changes proposed in the HCO ordinance and how it will affect our Hotel Business and our Local Community.

I look into the immediate future and first and foremost sadly see our Prenatal Homeless

Program being stopped immediately if we **cannot** accommodate **Weekly Rentals**, looking beyond that I see myself not being able to provide housing to so many different people from our Great City.

By eliminating Weekly Rentals you are removing a very affordable and approachable housing option; Fully Furnished, All Utilities included Hotel Rooms with Week to Week Flexibility for San Franciscan's. We are the only housing option left in San Francisco that someone with even questionable credit or even NO Credit or Verifiable References can walk in off the street and take advantage of and receive immediate housing. At our Hotel Tropica and countless others in San Francisco we don't even ask for proof of income or even a deposit at time of check in. By eliminating Weekly Rentals Local San Franciscan's will be unfairly punished by having to come up with thousands of dollars in rent and deposit not to mention red tape just to rent a simple hotel room.

Not all San Franciscan's have the ability to come up with a large amount of an entire monthly rent payment all together at the beginning of each and every month; which is what makes the Weekly Rental option even more critical for persons who are working in industries and sectors where the pay and schedules fluctuate depending on various economic factors; I.e. Taxi Drivers, Restaurant Industry Workers, Blue Collar Jobs, Construction Workers, Couriers and Delivery Guys.

Some of the types of Local People & Social Service Providers we provide housing for are:

- Expecting Mothers & Newborn Babies from Homeless Prenatal Program.
- Local San Franciscan's - In between jobs or careers.
- San Francisco Residents - Who need a temporary place to stay while they are switching apartments or having renovations done.
- UCSF and General Hospital Patients In and out of the hospital.
- Red Cross Sponsored Fire Victims.
- Veterans From Swords to Plowshares
- And Countless Other members of our Local Community from all walks of life who appreciate the Accessibility, Convenience, Flexibility and Value that can be found only in SRO Hotels with **Weekly Rentals**.

All of the Persons and Social Service Programs mentioned above; had one thing in common they all started off their Tenancies as Weekly Rentals that sometimes continue for 5, 10 and even 20 Years all the while having the Flexibility of making rental payments in Weekly Installments.

Weekly Rentals give San Francisco Locals and City Based Social Services a choice and *quick* go-to option in finding housing in Our Great City. Please Let the Local San Francisco Public Choose for themselves. Don't take an affordable, Flexible, Easily available Housing Option away from the people of San Francisco.

In conclusion I humbly request you Honorable Supervisor Peskin *to please remove the 32 Day Minimum Stay requirement in your proposed HCO legislation; and let us continue to operate our SRO with Weekly Rental's just like we have been for many decades.*

If we eliminate Weekly Rentals from SRO Hotels; Tenants and Landlords will suffer equally. Having spent my entire life in the SRO Hotel Business in San Francisco; I truly believe available SRO Housing Stock Will decrease rather than increase and the people of

San Francisco will have more difficulty in finding stable, affordable housing if this Legislation passes. ***Please allow us to continue Weekly Rentals and continue to serve the Fine Citizens of San Francisco.***

Thank you for taking the time to read my letter.

P.S. I live on-site with my family here at "Hotel Tropica" I invite you or your staff over to visit us at any time day or night. You are always most welcome.

Sincerely,

Juned Usman Shaikh, GM

663 Valencia Street

San Francisco, CA 94110

Office: (415) 701-7666

Cellular: (415) 609-4187

Fax: (415) 701-9329

js@hoteltropica.com

Lim, Victor (MYR)

From: Lee, Mayor (MYR)
Sent: Tuesday, October 10, 2017 7:32 AM
To: Lim, Victor (MYR)
Subject: FW: Hotel Conversion Ordinance Legislation (HCO) - Preservation of Weekly Rentals for SRO Hotels. - Hotel Owner / Operator Meeting- Monday January 30,2017 at 2:30 pm- Room 278

Selina Sun
Assistant to the Chief of Staff
Office of the Mayor
City and County of San Francisco
415-554-6147
www.sfgov.org | selina.sun@sfgov.org

Get Connected with Mayor Ed Lee
www.sfmayor.org
Twitter @mayoredlee

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Sent: Friday, January 27, 2017 7:13 PM
To: Lee, Mayor (MYR) <mayoredwinlee@sfgov.org>
Cc: Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Breed, London (BOS) <london.breed@sfgov.org>; Cohen, Malia (BOS) <malia.cohen@sfgov.org>; Farrell, Mark (BOS) <mark.farrell@sfgov.org>; Fewer, Sandra (BOS) <sandra.fewer@SFGOV1.onmicrosoft.com>; Kim, Jane (BOS) <jane.kim@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Sheehy, Jeff (BOS) <jeff.sheehy@sfgov.org>; Tang, Katy (BOS) <katy.tang@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>
Subject: Hotel Conversion Ordinance Legislation (HCO) - Preservation of Weekly Rentals for SRO Hotels. - Hotel Owner / Operator Meeting- Monday January 30,2017 at 2:30 pm- Room 278

January 27, 2017

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{Please see attached Letter.}

Sincerely,

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663 Valencia Street
San Francisco, CA 94110
Office: (415) 701-7666
Cellular: (415) 609-4187
Fax: (415) 701-9329
js@hoteltropica.com

January 26th, 2016
The Honorable Aaron Peskin
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

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All of the Persons and Social Service Programs mentioned above; had one thing in common they all started off their Tenancies as Weekly Rentals that sometimes continue for 5, 10 and even 20 Years all the while having the Flexibility of making rental payments in Weekly Installments.

Weekly Rentals give San Francisco Locals and City Based Social Services a choice and *quick* go-to option in finding housing in Our Great City. Please Let the Local San Francisco Public Choose for themselves. Don't take an affordable, Flexible, Easily available Housing Option away from the people of San Francisco.

In conclusion I humbly request you Honorable Supervisor Peskin *to please remove the 32 Day Minimum Stay requirement in your proposed HCO legislation; and let us continue to operate our SRO with Weekly Rental's just like we have been for many decades.*

If we eliminate Weekly Rentals from SRO Hotels; Tenants and Landlords will suffer equally. Having spent my entire life in the SRO Hotel Business in San Francisco; I truly believe available SRO Housing Stock Will decrease rather than increase and the people of San Francisco will have more difficulty in finding stable, affordable housing if this Legislation passes. ***Please allow us to continue Weekly Rentals and continue to serve the Fine Citizens of San Francisco.***

Thank you for taking the time to read my letter.

P.S. I live on-site with my family here at "Hotel Tropica" I invite you or your staff over to visit us at any time day or night. You are always most welcome.

Sincerely,

Juned Usman Shaikh, GM

663 Valencia Street

San Francisco, CA 94110

Office: (415) 701-7666

Cellular: (415) 609-4187

Fax: (415) 701-9329

js@hoteltropica.com

City and County of San Francisco

Legislation Introduced:

Office of Economic Analysis Response December 6, 2016

Office of Economic Analysis

Economic Reports for legislation introduced on December 6, 2016.

- YES: indicates "Economic impact report **will** be filed by OEA."
- NO: indicates "Economic impact report **will not** be filed by OEA"
- Pending Further Review: indicates "OEA is inquiring if material economic impact exists, and will inform the Clerk our determination"

Submitted to Clerk's Office on December 14, 2016 by

(Ted Egan, OEA, Controller's Office)

File #	Name	Type	OEA Determination
140877	Planning Code - Downtown Support Special Use District; Fees in Lieu of On-Site Open Space	Ordinance	No
161291	Administrative Code - Update Hotel Conversion Ordinance	Ordinance	No
161316	Administrative, Business and Tax Regulations, Police Codes - Elimination of Fees	Ordinance	No
161315	Affirming Support for the Use of Force Policy Recommendations by the San Francisco Police Commission and the United States Department of Justice	Resolution	No
161317	Transfer of Affordable Housing Property Assets - Office of Community Investment and Infrastructure - Mayor's Office of Housing and Community Development	Resolution	No
161318	Grant Agreement - Preservation of Affordable Housing Units - Bayside Village Associates, L.P. - Bayside Village Apartments (3 Bayside Village Place) - $21,680,000	Resolution	No
161319	Accept and Expend Grant - California Department of Public Health - Prescription Drug Overdose Prevention Project - $434,777	Resolution	No
161320	Accept and Expend Grant - Prospect Silicon Valley - MarketZero Project - $150,000	Resolution	No
161321	Accept and Expend Grant - San Francisco Community Clinic Consortium - Health Care for the Homeless - Oral Health Expansion - $207,500	Resolution	No
161322	Accept and Expend Grant - California Department of Health - California Project LAUNCH - $367,968	Resolution	No
161323	Urging the Evaluation and Allocation of Properties for Urban Agriculture	Resolution	No
161324	Declaration of Election Results of the November 8, 2016, Consolidated General Election	Resolution	No
161325	Recognizing the Youth Commission's 20th Anniversary	Resolution	No
161326	Commending Supervisor John Avalos	Resolution	No
161327	Commending Supervisor David Campos	Resolution	No
161328	Commending Supervisor Eric Mar	Resolution	No
161329	Hearing - Plans to Protect Immigrant Families from Deportation	Hearing	No
161330	Petitions and Communications	Communication	No

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

MEMORANDUM
CLERK'S OFFICE - BOARD OF SUPERVISORS

TO: Budget Analyst

FROM: Angela Calvillo, Clerk of the Board

DATE: **December 9, 2016**

SUBJECT: Fiscal Impact Determination (Legislation Introduced by Supervisors and by the President at the request of Departments on **December 6, 2016.**

Pursuant to Administrative Code Section 2.6-3, the attached list of legislation is being referred to you for fiscal impact determination.

Please return this document no later than Tuesday, December 13, 2016, with your comments to bos.legislation@sfgov.org, Legislation Division.

Budget Analyst

12/12/16

Date

Attachments : Legislation Introduced

Board of Supervisors

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689
Tel. No. 554-5184
TDD No. 554-5227

Legislation Introduced at Roll Call

Tuesday, December 6, 2016

Introduced by a Supervisor or the Mayor

Pursuant to Charter Section 2.105, an Ordinance or Resolution may be introduced before the Board of Supervisors by a Member of the Board, a Committee of the Board, or the Mayor and shall be referred to and reported upon by an appropriate Committee of the Board.

Ordinances

140877 **[Planning Code - Downtown Support Special Use District; Fees in Lieu of On-Site Open Space]**

Sponsor: Kim

Not Applicable (NA)

Ordinance amending the Downtown Support Special Use District to authorize a monetary contribution (in lieu fee) to satisfy required on-site open space requirements, exclude certain features from floor area ratio and gross floor area calculations, and dedicate the monetary contribution for lighting and safety improvements at Victoria Manolo Draves Park; 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. SUBSTITUTED AND ASSIGNED to Land Use and Transportation Committee.

161291 **[Administrative Code - Update Hotel Conversion Ordinance]**

Sponsor: Peskin

No

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. SUBSTITUTED AND ASSIGNED to Land Use and Transportation Committee.

161316 **[Administrative, Business and Tax Regulations, Police Codes - Elimination of Fees]**

Sponsor: Yee

No

Ordinance amending the Administrative, Business and Tax Regulations, and Police Codes to eliminate various fees imposed by the City. ASSIGNED UNDER 30 DAY RULE to Budget and Finance Committee.

City and County of San Francisco

Meeting Agenda

Land Use and Transportation Committee

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Members: Malia Cohen, Aaron Peskin, Jeff Sheehy

Clerk: Alisa Somera (415) 554-7711

Monday, January 23, 2017 **1:30 PM** **City Hall, Legislative Chamber, Room 250**

Regular Meeting

ROLL CALL AND ANNOUNCEMENTS

AGENDA CHANGES

REGULAR AGENDA

1. 161165 **[Subdivision Code - Requirements for Communications Services Facilities]**
Sponsor: Farrell
Ordinance amending the Subdivision Code to require that the design of a subdivision for a tentative map or parcel map provide for communications services facilities to each parcel; and affirming the Planning Department's determination under the California Environmental Quality Act.

10/25/16; ASSIGNED UNDER 30 DAY RULE to the Land Use and Transportation Committee.

11/1/16; REFERRED TO DEPARTMENT.

11/10/16; RESPONSE RECEIVED.

2. 161291 **[Administrative Code - Update Hotel Conversion Ordinance]**
Sponsor: Peskin
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.

11/29/16; ASSIGNED UNDER 30 DAY RULE to the Land Use and Transportation Committee.

12/6/16; SUBSTITUTED AND ASSIGNED to the Land Use and Transportation Committee.

12/15/16; REFERRED TO DEPARTMENT.

12/15/16; RESPONSE RECEIVED.

161291 **[Administrative Code - Update Hotel Conversion Ordinance]**

Sponsors: Peskin; Kim, Sheehy, Cohen and Safai

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.

11/29/16; ASSIGNED UNDER 30 DAY RULE to Land Use and Transportation Committee, expires on 12/29/2016.

12/06/16; SUBSTITUTED AND ASSIGNED to Land Use and Transportation Committee. Supervisor Peskin submitted a substitute Ordinance bearing a new title.

12/15/16; REFERRED TO DEPARTMENT. Referred legislation (version 2) to Planning Department for environmental review; to Small Business Commission for comment and recommendation; and to Department of Building Inspection, Planning Department, Mayor's Office of Housing and Community Development, Department of Homelessness and Supportive Housing, and Department of Public Health for informational purposes.

12/15/16; RESPONSE RECEIVED. Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

Maria Aviles, Katie Selcraig and Roshann Pressman (Mission SRO Collaborative); Chirag Bhakta (Mission Housing); Tim Houh (Mission SRO Collaborative); Gail Gilman (Department of Building Inspection Commission); Araceli Lara (Mission SRO Collaborative); Tommi Avicolli Mecca (Housing Rights Committee); Randy Shaw, Director (Tenderloin Housing Clinic); Pei Juan Zheng (Community Tenants Association); Jordan Davis (Mission SRO Collaborative); Hui Ying Li and Hui Ling Yu (SRO Families United Collaborative); Raymond Castillo (South of Market Community Action Network); Ian Lewis (Local 2); Juvy Barbonio (South of Market Community Action Network); Male Speaker; Andrea Manzo (Mission SRO Collaborative); Tony Robles (Senior Disability Action); Theresa Flandrich (North Beach Tenants Committee); Diana Martinez (Mission SRO Collaborative); Frida Washington (Senior Disability Action); Miriam M. (South of Market Community Action Network); Gail Seagraves (Central City SRO Collaborative); Greg Ledbetter (Mission SRO Collaborative); Ace Washington; Rio Scharf and Michael Harrington (Central City SRO Collaboration); Corey Smith (San Francisco Housing Commission); Fernando Marti; Raul Fernandez; spoke in support of the hearing matter.

Supervisors Sheehy and Cohen requested to be added as co-sponsors.

Vice Chair Peskin moved that this Ordinance be AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE, on Page 6, Line 21, by striking 'or prospective Permanent Resident' after 'Permanent Resident'. The motion carried by the following vote:

Ayes: 3 - Cohen, Peskin, Sheehy

Vice Chair Peskin moved that this Ordinance be RECOMMENDED AS AMENDED. The motion carried by the following vote:

Ayes: 3 - Cohen, Peskin, Sheehy

Chair Cohen recessed the meeting at 2:54 p.m. and recovened at 3:54 p.m.

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
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TDD/TTY No. 554-5227

December 15, 2016

File No. 161291

Lisa Gibson
Acting Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On December 6, 2016, Supervisor Peskin introduced the following substitute legislation:

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.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

for By: Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

Joy Navarrete 12/15/16

SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 41
RESIDENTIAL HOTEL UNIT CONVERSION & DEMOLITION (HCO)
ORIGIN & PURPOSE

- **Provides Protection for Diminishing Housing Stock:**
  - The continuing and primary purpose of the HCO is to preserve residential guest rooms that provide crucial housing for the elderly, disabled, and low income persons. Prior to the HCO adoption the Planning Department estimated that 6098 residential guest rooms were lost from 1975-1979.
  - In 1981 the city declared ***a housing emergency*** impacting elderly, disabled, and low income households as a result of the loss of residential guest room units from the rental market.
- **Current Jurisdiction:**
  - The HCO regulates the preservation of approximately 20,000 residential guest rooms in 500 hotels throughout the city.
  - The Department of Building Inspection is responsible for HCO implementation and enforcement.

4332

PPAR_000703

SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 41
RESIDENTIAL HOTEL UNIT CONVERSION & DEMOLITION (HCO)
SUMMARY OF ORDINANCE UPDATES

Key elements of the HCO must be fully functional to properly monitor and implement residential guest room preservation. To ensure the strongest and most effective protections are in place these amendments proposes to:

- Clarify pertinent definitions
- Update the Record-keeping provisions
- Revise the Annual Reporting Requirements
- Refine the criteria necessary for Permit to Convert submittals
- Modernize antiquated Enforcement Tools

4333

38. 170016 **[Emergency Declaration - Temporary Replacement and Repair of Dewatering Equipment - Oceanside Wastewater Treatment Plant - Total Estimated Cost of Work and Contract $435,450]**

Resolution approving an emergency declaration of the San Francisco Public Utilities Commission (SFPUC) pursuant to Administrative Code, Section 21.15(c), for the temporary replacement and repair of the dewatering equipment at the Oceanside Wastewater Treatment Plant, with a total estimated cost of $435,450. (Public Utilities Commission)

(Fiscal Impact)

Question: Shall this Resolution be ADOPTED?

Recommendations of the Land Use and Transportation Committee

Present: Supervisors Cohen, Peskin, Sheehy

39. 160925 **[Planning Code - Transportation Demand Management Program Requirement]**

Sponsors: Cohen; Sheehy

Ordinance amending the Planning Code to establish a citywide Transportation Demand Management (TDM) Program, to require Development Projects to incorporate design features, incentives, and tools that support sustainable forms of transportation; create a new administrative fee to process TDM Plan applications and compliance reports; make conforming amendments to various sections of the Planning Code; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of public necessity, convenience, and welfare under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1. (Planning Commission)

Question: Shall this Ordinance be PASSED ON FIRST READING?

40. 161165 **[Subdivision Code - Requirements for Communications Services Facilities]**

Sponsor: Farrell

Ordinance amending the Subdivision Code to require that the design of a subdivision for a tentative map or parcel map provide for communications services facilities to each parcel; and affirming the Planning Department's determination under the California Environmental Quality Act.

Question: Shall this Ordinance be PASSED ON FIRST READING?

41. 161291 **[Administrative Code - Update Hotel Conversion Ordinance]**

Sponsors: Peskin; Kim, Sheehy, Cohen and Safai

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.

Question: Shall this Ordinance be PASSED ON FIRST READING?

FILE NO. 161291

REVISED LEGISLATIVE DIGEST
(1/31/2017, Amended in Board)

[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. 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 permanent residents of the hotel 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 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 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.

This legislative digest reflects amendments adopted by the Land Use and Transportation Committee on January 23, 2017 to further amend the definition of "Tourist or transient use."

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Recommendations of the Land Use and Transportation Committee

Present: Supervisors Cohen, Peskin, Sheehy

12. 160925 [Planning Code - Transportation Demand Management Program Requirement]
Sponsors: Cohen; Sheehy, Farrell, Breed and Safai
Ordinance amending the Planning Code to establish a citywide Transportation Demand Management (TDM) Program, to require Development Projects to incorporate design features, incentives, and tools that support sustainable forms of transportation; create a new administrative fee to process TDM Plan applications and compliance reports; make conforming amendments to various sections of the Planning Code; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of public necessity, convenience, and welfare under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1. (Planning Commission)

01/31/2017; AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE.

01/31/2017; PASSED ON FIRST READING AS AMENDED.

Question: Shall this Ordinance be FINALLY PASSED?

13. 161291 [Administrative Code - Update Hotel Conversion Ordinance]
Sponsors: Peskin; Kim, Safai, Sheehy, Cohen, Ronen and Yee
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.

01/31/2017; AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE.

01/31/2017; PASSED ON FIRST READING AS AMENDED.

Question: Shall this Ordinance be FINALLY PASSED?

history of a rather complicated ordinance that has been around since 1936. Shortly before the ordinance was adopted in 1981, there was a moratorium that the city actually passed to protect these units because it was seeing these residential guestrooms disappear. And at the time, the city then declared that there was a housing emergency for this type of housing because it was being occupied primarily by low-income, elderly, and disabled.

So, as you said, Supervisor, this ordinance really has not been amended since 1990-1992, and was adopted in 1981, so it's been around a while. And we do have currently antiquated measures to enforce the ordinance. Primarily to keep these residential units from being converted, there are approximately 20,000--a little less than 20,000 residential guestrooms at about 500 hotels. About 300 of those are for-profit hotels; the rest are run by nonprofits.

A lot of those--a lot of the nonprofit buildings participate in city programs. And a lot of the problems we do have is really with the for-profit hotels and a conversion of a lot of the residential guestrooms to weekly tourist

RESPONSE TO THE APPEAL OF THE PRELIMINARY NEGATIVE DECLARATION FOR THE RESIDENTIAL HOTEL CONVERSION AND DEMOLITION ORDINANCE

1. CONCERN: The Ordinance would generate increased demands for urban services used by residential hotel tenants.

   RESPONSE: Inasmuch as the Ordinance would not change any existing uses, it would not have any direct environmental impacts. The amounts of services (transit, gas, water, electricity, medical, safety, etc.) used by residential hotel tenants will not change as a result of the Ordinance. Therefore, this does not constitute a substantial adverse change in environmental conditions.

2. CONCERN: The one-for-one replacement housing provision of the Ordinance would generate significant numbers of replacement units.

   RESPONSE: The Board of Supervisors first established interim regulations on the conversion and demolition of residential hotel units in November, 1979. The Ordinance in its present form (Ordinance No. 331-81) was adopted in June, 1981, and has been in effect since then.

   Past experience with the Ordinance in effect has shown that the one-for-one replacement housing provision does not generate significant numbers of replacement units. In the three and a half years since some form of the Ordinance was adopted, only two proposals to convert have been presented. Neither of these proposals resulted in the construction of new residential hotels in the city because the project sponsors are utilizing alternative methods of replacing residential units which the Ordinance provides for. In addition, any replacement housing proposal would be governed by existing zoning regulations and would be subject to environmental review. Based on this past experience, it is anticipated that the construction of new replacement units would be at a minimum, with minimum attendant impacts on the physical environment.

3. CONCERN: The Ordinance would create a shortage of affordable hotel units in San Francisco.

   RESPONSE: Currently, there is no shortage of affordable hotel units in San Francisco. Vacancy rates for moderately priced hotel rooms have risen from 13% in 1979 to 33% in 1982. In addition, the Ordinance provides for the use of vacant residential hotel units as tourist units during the tourist season. The demand for moderately priced hotel units depends on factors that are not land use related, such as economic conditions. However, any shortage of hotel units or increase in hotel rates, were they to occur, would not in themselves be physical environmental issues, and therefore are not subject to CEQA.

4. CONCERN: The Ordinance would create pressure in outlying areas of the city and on the San Francisco peninsula to build additional hotel units.

   RESPONSE: The vacancy rates for moderately-priced hotel units both within San Francisco and in San Mateo and Santa Clara counties during the past

three and a half years do not indicate any pressure to build hotel units in outlying areas. Since the Ordinance was implemented, there have been no proposals for hotels in outlying areas other than those proposed in established tourist areas. In addition, current zoning regulations define areas where hotels are permitted uses, and any tourist hotel proposals would be subject to environmental review. Based on this past experience, it is concluded that the Ordinance would not give rise to construction of new moderately priced hotel units in outlying areas, that were not otherwise planned regardless of the presence or absence of the Ordinance, and therefore would not have a significant environmental effect.

5. CONCERN: The Ordinance would affect traffic congestion and transit patterns due to visitors occupying more moderately priced hotel units south of San Francisco.

   RESPONSE: Since there is no indication that the Ordinance has resulted in a trend toward tourist hotel construction in outlying areas, there is no evidence that the Ordinance will have an effect on traffic construction and transit from outlying areas. In addition, tourists tend to travel during non-peak periods of the day when transit and street systems are not near capacity, and do not generally contribute to peak hour and transit congestion. Therefore, it is concluded that the Ordinance could not have significant transportation effects.

6. CONCERN: Alternative methods of obtaining adequate housing for residential hotel tenants should be discussed.

   RESPONSE: The Residence Element of the Comprehensive Plan is specific in its goal of preserving residential hotels. Objective 3, Policy 1 seeks to "Discourage the demolition of existing housing"; Policy 2 expresses the need to "Restrict the conversion of housing in commercial and industrial areas"; and Policy 3 calls for "Preserv(ing) the existing stock of residential hotels."

   In addition, projects that do not have significant effects on the environment do not require discussion of project alternatives.

PROPOSED AMENDMENTS TO THE PRELIMINARY NEGATIVE DECLARATION FOR 83.52E:
RESIDENTIAL HOTEL CONVERSION AND DEMOLITION ORDINANCE

1. Page 1, paragraph 4 - Replace paragraph with the following:

   "The Ordinance is consistent with the Residence Element of the San Francisco Master Plan, and particularly addresses the following: Objective 3, Policy 1: "Discourage the demolition of existing housing.", Policy 2: "Restrict the conversion of housing in commercial and industrial areas.", and Policy 3: "Preserve the existing stock of residential hotels.""

2. Page 2, paragraph 2, lines 3, 7 and 10 - Change "principle" to "principal".

3. Page 6, paragraph 2 - Replace paragraph with the following:

   " All of the known proposed amendments to the Ordinance are merely procedural in nature, affecting only the administration of the Ordinance. Therefore, these procedural amendment proposals would not affect the conclusions stated above."

RESPONSE TO THE APPEAL OF THE PRELIMINARY NEGATIVE DECLARATION FOR THE RESIDENTIAL HOTEL CONVERSION AND DEMOLITION ORDINANCE

1. CONCERN: The Ordinance would generate increased demands for urban services used by residential hotel tenants.

   RESPONSE: Inasmuch as the Ordinance would not change any existing uses, it would not have any direct environmental impacts. The amounts of services (transit, gas, water, electricity, medical, safety, etc.) used by residential hotel tenants will not change as a result of the Ordinance. Therefore, this does not constitute a substantial adverse change in environmental conditions.

2. CONCERN: The one-for-one replacement housing provision of the Ordinance would generate significant numbers of replacement units.

   RESPONSE: The Board of Supervisors first established interim regulations on the conversion and demolition of residential hotel units in November, 1979. The Ordinance in its present form (Ordinance No. 331-81) was adopted in June, 1981, and has been in effect since then.

   Past experience with the Ordinance in effect has shown that the one-for-one replacement housing provision does not generate significant numbers of replacement units. In the three and a half years since some form of the Ordinance was adopted, only two proposals to convert have been presented. Neither of these proposals resulted in the construction of new residential hotels in the city because the project sponsors are utilizing alternative methods of replacing residential units which the Ordinance provides for. In addition, any replacement housing proposal would be governed by existing zoning regulations and would be subject to environmental review. Based on this past experience, it is anticipated that the construction of new replacement units would be at a minimum, with minimum attendant impacts on the physical environment.

3. CONCERN: The Ordinance would create a shortage of affordable hotel units in San Francisco.

   RESPONSE: Currently, there is no shortage of affordable hotel units in San Francisco. Vacancy rates for moderately priced hotel rooms have risen from 13% in 1979 to 33% in 1982. In addition, the Ordinance provides for the use of vacant residential hotel units as tourist units during the tourist season. The demand for moderately priced hotel units depends on factors that are not land use related, such as economic conditions. However, any shortage of hotel units or increase in hotel rates, were they to occur, would not in themselves be physical environmental issues, and therefore are not subject to CEQA.

4. CONCERN: The Ordinance would create pressure in outlying areas of the city and on the San Francisco peninsula to build additional hotel units.

   RESPONSE: The vacancy rates for moderately-priced hotel units both within San Francisco and in San Mateo and Santa Clara counties during the past

three and a half years do not indicate any pressure to build hotel units in outlying areas. Since the Ordinance was implemented, there have been no proposals for hotels in outlying areas other than those proposed in established tourist areas. In addition, current zoning regulations define areas where hotels are permitted uses, and any tourist hotel proposals would be subject to environmental review. Based on this past experience, it is concluded that the Ordinance would not give rise to construction of new moderately priced hotel units in outlying areas, that were not otherwise planned regardless of the presence or absence of the Ordinance, and therefore would not have a significant environmental effect.

5. CONCERN: The Ordinance would affect traffic congestion and transit patterns due to visitors occupying more moderately priced hotel units south of San Francisco.

   RESPONSE: Since there is no indication that the Ordinance has resulted in a trend toward tourist hotel construction in outlying areas, there is no evidence that the Ordinance will have an effect on traffic construction and transit from outlying areas. In addition, tourists tend to travel during non-peak periods of the day when transit and street systems are not near capacity, and do not generally contribute to peak hour and transit congestion. Therefore, it is concluded that the Ordinance could not have significant transportation effects.

6. CONCERN: Alternative methods of obtaining adequate housing for residential hotel tenants should be discussed.

   RESPONSE: The Residence Element of the Comprehensive Plan is specific in its goal of preserving residential hotels. Objective 3, Policy 1 seeks to "Discourage the demolition of existing housing"; Policy 2 expresses the need to "Restrict the conversion of housing in commercial and industrial areas"; and Policy 3 calls for "Preserv(ing) the existing stock of residential hotels."

   In addition, projects that do not have significant effects on the environment do not require discussion of project alternatives.

the information filed is correct.

Sec. 41.16. Unlawful Conversion; Remedies; Fines

(a) Unlawful Actions

It shall be unlawful to:

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

(2) Rent any residential unit for a daily or weekly term of tenancy unless specifically provided for in subsection (3) below.

(3) Offer for rent for non-residential use or tourist use a residential unit except as follows:

(A) A tourist unit may be rented to a permanent resident without changing the legal status of that unit as a tourist unit upon voluntary vacation of that unit by the permanent resident or upon evictinn for cause;

(B) A residential unit which is vacant at any time during the period commencing on May 1 and ending on September 30 annually may be rented as a tourist unit, provided that the residential unit was vacant due to voluntary vacation of a permanent resident or was vacant due to lawful eviction for cause after the tenant was accorded all the rights guaranteed by State and local laws during his/her tenancy, and further provided that that residential hotel unit shall immediately revert to residential use on application of a prospective permanent resident.

(C) Rental of a Residential hotel unit for a weekly term shall be considered tourist use unless the resident of the unit occupies the unit for at least thirty-two (32) consecutive days.

THIS NOTICE AND FILINGS PRE-EMPTS ALL PREVIOUS NOTIFICATIONS AND FILINGS!!

City and County of San Francisco **Department of Public Works**
Bureau of Building Inspection

CHAPTER 41 NOTIFICATION & SUMMARY
"HOTEL CONVERSION AND DEMOLITION ORDINANCE"

Div. Apt & Htl Inspn
450 McAllister #205
SF CA 94102

Dear hotel owner/operator,

Effective 11/23/79, ord. #564-79 established an Interim moratorium on the demolition or conversion of residential hotel units or apartments to tourist or any other use until a set of permanent and comprehensive controls could be drafted. Ordinance #330-81, effective 7/27/81, amended chapter 41 of the San Francisco Administrative Code, providing such regulations concerning residential hotel units. Entitled: the Hotel Conversion and Demolition Ordinance, (HCDO), the ordinance supercedes the interim moratorium and a previously-enacted version of the ordinance. All prior notification is superceded.

If you are the owner/operator of a hotel, you are subject to the new version of chapter 41, which now requires a Certificate of Use to be issued to every hotel not exempt from the ordinance, in addition to the Permit of Occupancy and the Hotel License presently required of every San Francisco hotel. The Certificate of Use will specify the number of tourist units and residential units allowed within a Residential Hotel. It is unlawful to convert or eliminate a residential hotel unit from a Residential Hotel except as provided in the ordinance.

The Hotel Conversion and Demolition Ordinance establishes criteria by which certain types of hotels will be declared exempt from the ordinance,, and criteria by which the initial unit usage status will be determined. There are also new procedural regulations to which each Residential Hotel owner must adhere, (such as the posting of certificates and reports, keeping of daily logs, etc.), and standards under which an owner may lawfully convert all or some of his or her residential hotel units. The HCDO also provides civil remedies and penalties for violation of the ordinance.

To establish whether or not you qualify for exemption from the HCDO, or the number of tourist units to which you are entitled under the ordinance, you must submit, along with all available documentary evidence to support your filing, the appropriate filing form and fee within 60 days of the effective date of the ordinance. (See attached forms and instructions for filing tourist usage. Owners of a hotel which may qualify for an exemption under the ordinance may file either a Statement of Exemption, a Claim of Exemption Based on Low Income Housing, or a Claim of Exemption Based on a Partially-Completed Conversion. All others must file an Initial

General Reasons the HCO Requires Extensive Update

- To effectively achieve the legislative intent of the HCO in today's economic market, residential use of a guest room certified for protection by Chapter41, should be defined as a thirty-two (32) day minimum rental. This is consistent with the HCO definition of a" Permanent Resident", and the Rent Ordinance. In addition, low income, elderly, and disabled persons should be allowed to pay in seven (7) day increments so they, as the target population to be served, have access to this housing.
- Definitions should to be updated to reflect current hotel usage, be consistence with the Planning Code, and preserve the housing goals of the HCO.
- Current residential hotel record keeping requirements are outdated, easily subject to misrepresentation, and do not reflect actual business activities.
- For-profit hotel annual reporting should be more comprehensive to ensure on-going business activities are compliant with the HCO.
- HCO code enforcement provisions reflect a thirty year old methodology, and do not require substantive consequences for illegal conversion /failure to maintain required records.
- The Permit to Convert methods delineated for replacement units, i.e., in-lieu fees, and construction costs have not been updated since 1992 and do not reflect contemporary financial benchmarks.
- The current Permit to Convert replacement criteria does not require deed restrictions for constructing, or causing to construct units which could result in replacement housing that is unavailable to low income, elderly, and disabled persons.
- Replacement assistance, notification, and moving expenses provided to permanent residents (displaced by Permit to Convert proposals) are grossly insufficient, and not in keeping with the present-day economic realities necessary to secure alternate housing (when life time leases are not an option).
- Privileges associated with temporary changes in occupancy require amendment to discourage and penalize illegal conversions and diminish residential guest room housing inventory.

Brief Highlights of HCO Deficiencies by Section (continued)

Definitions (Section 41.4): (Where applicable recommended additions are underlined and deletions are indicated with a strikeout.)

- **Comparable Unit:** A unit which is similar in size, services, rental aunt and facilities, and which is located within the existing neighborhood or within a neighborhood with similar physical and socioeconomic conditions ~~.~~ that is affordable for low income, elderly, and disabled persons.

- **Conversion:** The change or attempted change of the use of a residential unit as defined in subsection (q) below to a tourist use, short term rental, or the elimination of a residential unit or the voluntary demolition of a residential hotel. However, a change in the use of a residential hotel unit into a non-commercial use which serves only the needs of the permanent residents, such as resident's lounge, ~~storeroom~~ community kitchen, or common area, shall not constitute a conversion within the meaning of this chapter provided that such guest room re-designations are first acquired from any existing tourist units within the hotel.

- **Tourist or Transient Use:** A guest room rented to other than a permanent resident. (Further research is needed to be consistent with Planning Code and capture current business practices that illegally convert residential units).

- Update the following definitions – further research is required: **Low-Income Household**, **Low-Income Housing**, **Permanent Resident** (strengthen this provision), **Residential Hotel**, **Residential Unit, Tourist Hotel, Transitional Housing**.

- Identify additional definitions that should be added.

Records of Use (Section 41.9):

- The Daily Logs, Weekly Reports, and corresponding receipts are too easily manipulated to convey that the residential hotel is compliant with Chapter 41 when actual business activities are sponsoring illegal conversions.
- The "records of use" format has not been modified in thirty-five (35) years.
    - New tools and techniques are necessary to document, track, and enforce the record keeping provisions that are consistent with HCO goals, and reflect actual business activities, and best practices.
    - The HCO should be amended to require "real" business records similar to those produced when a residential hotel is served with a civil subpoena for business records by the City Attorney.

Brief Highlights of HCO Deficiencies by Section (continued)

- The HCO should expressly require that receipts be given at the same time the rental payment is received.
- At the time of a site inspection the hotel operator should be required to provide DBI with copies of any required HCO records requested and/or inspected.
- More effective consequences/penalties should be imposed when a residential hotel violates this section. See discussion regarding the following sections Administration (Section 41.11) and Unlawful Demolition (Section 41.20).

Annual Unit Usage Report (AUUR) (Section 41.10):

- The Annual Unit Usage Report and required attachments are too easily manipulated to indicate that the residential hotel is compliant with Chapter 41 when actual business activities are sponsoring illegal conversions.
- The Annual Unit Usage Report format has not been modified in thirty-five (35) years.
  - New tools and techniques are necessary to document, track, and enforce the AUUR filings that are consistent with HCO goals, and reflect actual business activities, and best practices.
  - In addition to a yearly submittal the residential hotels should be required to file more that a four (4) day sampling of daily rental information. The HCO should be amended to require the filing of a substantial sampling of daily rental documentation quarterly to DBI.
  - The AUUR & daily rental information should be more transparent.
    - The residential hotel operators should be required to file an on-line form that would free staff time to address enforcement for failure to file the requisite records, and be readily available for stake holder review.
  - More effective consequences/ penalties should be imposed when a residential hotel violates this section.
  - Failure to file the AUUR (affirmed through the administrative process of this section and Section 41.11) should result in an automatic denial of the temporary occupancy privileges identified in Section 41.19.

Brief Highlights of HCO Deficiencies by Section (continued)

Administration (Section 41.11):

- Penalties for failure to maintain the records of use should be more substantial than $250.00 per violation.
- Notice of Apparent Violation (41.11(c): This Section should be amended to change Notices of Apparent Violation to Notices of Violation and be subject to Assessments of Costs similar to that for Housing and Building Code enforcement cost recovery.
- Costs of Enforcement (41.11(g): Filing Fees and civil fines do not currently cover investigation and enforcement costs.

Permit to Convert (Section 41.12):

- Updates to Section 41.12(b) should include:
  - 41.12(b) (1)&(2): The applicant should provide the name and contact information for all property owners associated with the parcel(s) that are to provide replacement housing.
  - 41.12(b)(3)&(9): The applicant should be required to specify the method(s) to be utilized that are delineated in Section 41.13(a).
  - 41.12(b)(3)&(9): If the replacement unit includes constructing or causing to construct units off-site (other than the original hotel site seeking to convert), the applicant shall provide detailed financial information how this is to be achieved, to include but not be limited to letters of intent, contracts, etc.

One-For-One Replacement (Section 41.13):

- Updates to Section 41.13(a) should include:
  - 41.13(a)(1)(2): Require financial information and other documentation delineating how the applicant has constructed or caused to be constructed the replacement units including but not be limited to letters of intent, contracts, etc. Deed restrictions should be added to all proposals to construct new housing to ensure these units are affordable for low income, elderly, or disabled persons.
  - 41.13(a)(4)&(5) Construction and acquisition costs need to be increased in keeping with current market economic benchmarks.

Brief Highlights of HCO Deficiencies by Section (continued)

Mandatory Denial of Permit to Convert (Section 41.14):

- Update Section 41.14(c) Amend as follows:
  - An applicant has committed unlawful action as defined in this Chapter within 12 months previous to the ~~issuance~~ filing of the permit to convert application.

Unlawful Conversion; Remedies; Fines (Section 41.20):

- Section 41.20(a)(3): Revise this section to require a thirty-two (32) day minimum rental but and payment on a seven (7) day increment to allow low income, elderly, and disabled persons to have economic access to these residential units.

City and County of San Francisco
Department of Building Inspection

Edwin M. Lee, Mayor
Tom C. Hui, S.E., C.B.O., Director

MEMORANDUM

September 25, 2015

TO: AnnMarie Rodgers, Senior Policy Advisor, City Planning

FROM: Rosemary Bosque, Chief Housing Inspector,DBI

RE: Residential Hotel Data For 2015 Housing Balance Report
Residential Hotel Unit Conversion & Demolition Ordinance.
Chapter 41 of the Administrative Code (HCO)

Dear Ms. Rogers:

Policies/Factors that Affect Data Adjustments & Fluctuations

Delineated below is available data for the years 2012 through 2014. This information has been adjusted from previous DBI information provided to the Planning Department for the Housing Element based on the same criteria delineated for building and guest room changes. These totals fluctuate due to: (1) re-categorization of residential hotels through approved Permits to Convert, (2) conversions to nonprofit status, (3) previous Ellis Act filings, (4) restoration of guest rooms previously unavailable due to egress requirements, and (5) data base updates/corrections.

FOR-PROFIT RESIDENTIAL HOTELS				NON-PROFIT RESIDENTIAL HOTELS		TOTAL #	
YEAR	NO. OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS	CERTIFIED # OF TOURIST ROOMS	NO. OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS	NO. OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS
2012	414	13680	2805	88	5230	502	18910
2013	414	13903	2942	87	5105	501	19008
2014	412	13678	2901	91	5434	503	19112

Summary of Proposed Guest Room Conversions:

DBI is currently processing a Permit to Convert application which proposes to convert 238 residential guest rooms from five (5) residential hotels to newly constructed dwelling units at 361 Turk Street and 145 Leavenworth Street. It is anticipated that this DBI application will be amended by the project proponents as the parallel Conditional Use applications proceed through the Planning Code process.

Please let me know if you require further information.

cc: Dan Lowrey
Bill Strawn
Andy Karcs
HCO Correspondence File

HOUSING INSPECTION SERVICES
1660 Mission Street-San Francisco, Ca. 94103
Office (415) 558-6220 – Fax (415) 558-6249 – www.sfdbi.org

DEPARTMENT OF BUILDING INSPECTION

City & County of San Francisco
1660 Mission Street, San Francisco, California 94103-2414

INTEROFFICE MEMORANDUM

July 27, 2006

To: Claudia Flores, Department of City Planning

From: Jul Lynn Parsons, Housing Inspection Services

Re: Residential Hotel Data Request

Pages: 1

Delineated below is the data you have requested. The table reflects current totals from the Residential Hotel database for these categories. The differences from 2004 to 2005 are caused by re-categorization of residential hotels due to Permits to Convert, conversions to nonprofit status, Ellis Act filings and database updates and corrections.

FOR PROFIT RESIDENTIAL HOTELS				NON PROFIT RESIDENTIAL HOTELS		TOTAL NUMBER	
YEAR	# OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS	CERTIFIED # OF TOURIST ROOMS	# OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS	# OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS
2004	455	15,767	3,239	65	3,652	520	19,491
2005	435	15,106	3,345	71	4,217	506	19,323

Please note that the figures in the ***For Profit Residential Hotels*** portion of the table represent the number of residential guest rooms certified (authorized) by the HCO for Residential Hotels which file an Annual Unite Usage Report. Note that this is dated material, subject to future hotel status changes.

Also note that the table above does not include 1,129 for 2004 and 1,235 for 2005 Tourist Guest Rooms (certified by the HCO) that are contained in the 65 and 71 Residential Hotels operated by nonprofit agencies – which are generally used as residential guest rooms.

If you have any questions or need further information please contact Oscar at 415.558.6101, fax 415.558.6249.

Cc: Oscar Williams

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HOUSING INSPECTION SERVICES
MEMORANDUM

December 29, 2004

TO: Sue Exline, DCP

FROM: Rosemary Bosque, HIS

RE: Residential Hotel Data Request

Delineated below is the data you have requested. The table reflects current totals compiled from the Residential Hotel database for these categories. The differences from 2003 to 2004 are caused by recategorization of residential hotels due to Permits to Convert, conversions to Nonprofit status, Ellis Act filings, and database updates and corrections.

FOR-PROFIT RESIDENTIAL HOTELS				NON-PROFIT RESIDENTIAL HOTELS		TOTAL #	
YEAR	NO. OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS	CERTIFIED # OF TOURIST ROOMS	NO. OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS	NO. OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS
2003	455	15,878	3,520	62	3,495	517	19,373
2004	455	15,767	3,239	65	3,652	520	19,419

Please note that the figures in the ***For Profit Residential Hotels*** portion of the table represent the number of residential guest rooms certified (authorized) by the HCO for Residential Hotels which file an Annual Unit Usage Report. Note that this is dated material, subject to future hotel status changes.

Also note that the table above does not include 1,035 for 2003 and 1,129 for 2004 Tourist Guest Rooms (certified by the HCO) that are contained in the 62 and 65 Residential Hotels operated by Non-Profit agencies - which are generally used as residential guest rooms.

If you have any questions or need further information please contact Oscar at (415) 558-6191, Fax (415) 558-6249.

cc: Jul Lynn Parsons
Chief=s Correspondence File

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HOUSING INSPECTION SERVICES
MEMORANDUM

May 30, 2003

TO: Teresa Ojeda, DCP

FROM: Rosemary Bosque, HIS

RE: 2002 Housing Inventory, Request for Residential Hotel data.
As authorized by the Residential Hotel Unit Conversion & Demolition Ordinance.
Chapter 41 of the Administrative Code (HCO)

Dear Teresa:

Delineated below is the data you requested for the DCP ***2002 Housing Inventory***. The table reflects current totals compiled from the Residential Hotel data base for the categories you requested. The differences from 2001 to 2002 are caused by recategorization of residential hotels due to Permits to Convert, conversions to Nonprofit status, Ellis Act filings, and data base updates/ corrections.

FOR-PROFIT RESIDENTIAL HOTELS				NON-PROFIT RESIDENTIAL HOTELS		TOTAL #	
YEAR	NO. OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS	CERTIFIED # OF TOURIST ROOMS	NO. OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS	NO. OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS
2002	**457**	**15902**	**3846**	**61**	**3473**	**518**	**19375**

Please note that the figures in the ***For Profit Residential Hotels*** portion of the table represent the number of residential guest rooms certified (authorized) by the HCO for Residential Hotels which file an Annual Unit Usage Report. Note that this is dated material, subject to future hotel status changes.

Also note that the table above does not include 966 Tourist Guest Rooms (certified by the HCO) that are contained in the 61 Residential Hotels operated by Non-Profit agencies - which are generally used as residential guest rooms.

If you have any questions or need further information please contact me at (415) 558-6202, Fax (415) 558-6249.

cc: Jul Lynn Parsons
HCO File
Chief=s Correspondence File

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HOUSING INSPECTION SERVICES
MEMORANDUM

February 14, 2001

TO: Teresa Ojeda, DCP

FROM: Rosemary Bosque, HIS

RE: 2000 Housing Inventory, Request for Residential Hotel data.
As authorized by the Residential Hotel Unit Conversion & Demolition Ordinance.
Chapter 41 of the Administrative Code (HCO)

Dear Teresa:

Delineated below is the data you requested for the DCP ***2000 Housing Inventory***. The table reflects current totals compiled from the Residential Hotel data base for the categories you requested. The differences from 1999 to 2000 are caused by recategorization of residential hotels due to Permits to Convert, conversions to Nonprofit status, Ellis Act filings, and data base updates/ corrections.

FOR-PROFIT RESIDENTIAL HOTELS				NON-PROFIT RESIDENTIAL HOTELS		TOTAL #	
YEAR	NO. OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS	CERTIFIED # OF TOURIST ROOMS	NO. OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS	NO. OF BUILDINGS	CERTIFIED # OF RESIDENTIAL ROOMS
2000	**457**	**16331**	**3781**	**61**	**3314**	**518**	**19645**

Please note that the figures in the ***For Profit Residential Hotels*** portion of the table represent the number of residential guest rooms certified (authorized) by the HCO for Residential Hotels which file an Annual Unit Usage Report. Note that this is dated material, subject to future hotel status changes.

Also note that the table above does not include 1120 Tourist Guest Rooms (certified by the HCO) that are contained in the 61 Residential Hotels operated by Non-Profit agencies - which are generally used as residential guest rooms.

If you have any questions or need further information please contact me at (415) 558-6202, Fax (415) 558-6249.

cc: David Gogna
Jul Parsons
HCO File

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General Reasons the HCO Requires Extensive Update

- To effectively achieve the legislative intent of the HCO in today's economic market, residential use of a guest room certified for protection by Chapter41, should be defined as a thirty-two (32) day minimum rental. This is consistent with the HCO definition of a" Permanent Resident", and the Rent Ordinance. In addition, low income, elderly, and disabled persons should be allowed to pay in seven (7) day increments so they, as the target population to be served, have access to this housing.
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One-For-One Replacement (Section 41.13):

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- 41.13(a)(4)&(5) Construction and acquisition costs need to be increased in keeping with current market economic benchmarks.

Brief Highlights of HCO Deficiencies by Section (continued)

Mandatory Denial of Permit to Convert (Section 41.14):

- Update Section 41.14(c) Amend as follows:
  - An applicant has committed unlawful action as defined in this Chapter within 12 months previous to the ~~issuance~~ filing of the permit to convert application.

Unlawful Conversion; Remedies; Fines (Section 41.20):

- Section 41.20(a)(3): Revise this section to require a thirty-two (32) day minimum rental but and payment on a seven (7) day increment to allow low income, elderly, and disabled persons to have economic access to these residential units.

SAN FRANCISCO LEASING STRATEGIES REPORT DRAFT

Introduction

The hardest-to-house populations – persons with felony records, multiple evictions, behavioral health challenges, and histories of long-term or chronic homelessness – have historically faced difficulties affording market rate rental units and meeting the screening criteria set by property owners, managers, and landlords. In order to enable these vulnerable populations to overcome these barriers to access and retain housing, it is critical to affirmatively engage in landlord outreach.

Understanding landlord interests and behavior is a key consideration in selecting strategies for engagement. Agencies implementing housing programs must keep in mind how to balance landlord needs with those of the program participants and the agencies. As business people, landlords are driven by financial incentives, including profit, stability of income, protection of their assets, and minimizing tenant conflict and legal action.

Another important factor is the unique context of San Francisco's current rental market. While the federal government set the Fair Market Rent in 2015 at $1,635[1] for a one-bedroom apartment, the private sector reports that the median rent for one bedroom apartments hit a record high in January at $3,410.[2] In a city where two-thirds of the population are renters, skyrocketing high-wage job creation and lack of housing production have reinforced the rental housing crunch. Any strategy must into take into account that even "desirable" tenants have a hard time finding and maintaining affordable housing.

The following is a list of strategies for encouraging landlords to rent their properties to those who are, were, or are at risk of being homeless.

Financial Strategies

Financial incentives can help mitigate the real and perceived risks associated with renting to homeless households, such as non-payment of rent, property damage, or the burden of having to deal with other potential problems caused by tenants. The following is a list of potential financial strategies that may help convince landlords that it is in their financial interest to provide housing to vulnerable households.

[1] http://www.huduser.org/portal/datasets/fmr/fmrs/FY2015_code/2015summary.odn
[2] http://www.huffingtonpost.com/2015/02/03/san-francisco-rent-2015-most-expensive-city_n_6609396.html

1. RISK MITIGATION POOLS

"Risk mitigation pools," also known as insurance pool grants and landlord guarantee funds, reduce landlord exposure to financial risks caused by excessive damage costs and non-payment of rent. Risk mitigation pools create a reserve fund that can be accessed by landlords to reimburse payments for damage and inconveniences that are not covered by a security deposit. These pools also enable programs to guarantee full and timely rent in circumstances where a client cannot pay.

Some examples of risk mitigation pools in practice include the Landlord Liaison Project in King County, Washington (Seattle); the Home Forward Program in Portland; The South Hampton Roads Insurance Pool Grant in Norfolk, Virginia; and the Risk Mitigation Pool of the City of Portland that is held and administered on behalf of the City of Portland Bureau of Housing and Community Development. King County provides funding for and holds management and oversight of the risk mitigation pool; staff oversee the process of approving and submitting claims to the County for damages. Examples of typical costs include: carpet, vinyl floor, wall damage, cleaning, garbage hauling, and legal costs.[3]

Several restraints and guidelines that are common across risk mitigation pools include the following:

- Claims against tenants for funds from the risk mitigation pool must be above and beyond those costs covered by the security deposit
- Most risk mitigation pools do not cover normal operating costs for landlords such as repainting or replacement of furniture for reasons such as "wear and tear"
- Landlords must provide receipts for repairs caused by excessive damage in order to be reimbursed through the risk mitigation pool
- Funds from the risk mitigation pool are usually capped between $1,000-2,000 per household
- Financial guarantees are often time-limited, expiring after six to twelve months of responsible tenancy

COST OF IMPLEMENTATION

Risk mitigation pools vary in size, but are often between $800,000 and $1,000,000.[4]

[3] www.kingcounty.gov/.../DCHS/Levy/ProcurementPlans/VHS_Levy_2_3.ashx

[4] http://partnering-for-change.org/wp-content/uploads/2011/07/LandlordIncentivesProtections.pdf, http://www.homeforward.org/landlords/section-8-features, http://www.endhomelessness.org/page/-/files/MOU%20for%20Insurance%20Pool%20Funds.pdf.

EFFECTIVENESS

Establishing a fund that can help mitigate risk for landlords by guaranteeing timely rent and/or covering costs above a security deposit is an especially popular strategy because it provides landlords with confidence that they will not incur significant losses.

However, managing and raising money for such a fund may be a significant challenge if clients are constantly drawing from the fund. Programs must find a way to sustain this funding pool, whether through private or government funding.

2. PROTECTIVE PAYEE PROGRAMS

Protective payee programs hold a client's monthly income in an escrow account that is managed by a third party who becomes responsible for making rent payments on behalf of the tenant. Protective payee services should not be confused with representative payee services; the latter are targeted for individuals deemed incapable of handling their own finances (e.g., severely disabled individuals on SSI), while the former have no legal requirements for participation.

Protective payee programs encourage landlords and management companies to relax screening criteria while enabling program participants to build budgeting and financial management skills. For example, the Shelter to Independent Living (SIL) Program in Lancaster, Pennsylvania uses a protective payee program on a time-limited basis as a means of addressing landlords' concerns about high income-to-rent ratios and poor credit histories among hard to house clients.[5]

COST OF IMPLEMENTATION

In 2012, Milwaukee's Protective Payee Program cost about $32 per month, per client.[6] At this rate, the estimated cost for providing this service for 500 residents would be $192,000 per year. However, it is possible that this system could be automated for the clients who receive regular income or housing subsidies, such as Section 8, Continuum of Care permanent supportive housing or rapid re-housing funding, or SSI; this could significantly reduce the cost to $100,000 per year.

EFFECTIVENESS

The effectiveness of this program depends on how long a program plans to implement a protective payee framework for individual clients. While a client would ideally transition to independence over time, this program may provide the temporary assistance needed to help the client access and retain the housing at an early stage when more support is needed.

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[5] http://partnering-for-change.org/wp-content/uploads/2011/07/LandlordIncentivesProtections.pdf.
[6] http://publicpolicyforum.org/sites/default/files/ProtectivePayeeReport.pdf

3. TENANT VETTING & HOLDING FEES

Some programs provide landlords with financial incentives through costs saved in tenant vetting and referral processes, as well as holding fees while the agencies conduct background checks. Tenant vetting programs broadly involve checking referral, credit, and assessment information for the client to create a comprehensive character reference and background check for the landlord to evaluate. Landlords may view those clients as more attractive potential tenants if they have been thoroughly vetted and referred by a program that has a vested interest in that client's success.[7]

Payment of administrative costs and holding fees can also serve as a financial incentive for landlords. For example, the Rapid Exit Program in Hennepin County, Minnesota pays holding fees for vacant units while a landlord considers a client's application.[8]

COST OF IMPLEMENTATION

The cost of conducting background checks for clients ranges from $50-$100 per client, and holding fees could cost around $100 per unit. For 500 SRO units, the vetting could cost $25,000 to $50,000, and holding fees could cost around $50,000.

EFFECTIVENESS

Having programs conduct background checks for clients is one way to ensure that tenant selection is not unnecessarily restrictive; programs could more thoroughly consider clients who have questionable credit or other histories. However, programs must be careful not to be overly permissive, as they need to build trust with landlords. It may also be challenging for programs to build the capacity to conduct thorough yet efficient background checks; one possible strategy is to have a centralized agency conduct these checks to create economies of scale.

Since the San Francisco rental market moves so quickly, holding fees may be a key incentive for landlords to maintain a vacancy long enough for the agency to conduct a background check.

4. INCREASED SECURITY DEPOSITS

Some programs provide landlords with increased security deposit payments as an incentive. Programs can negotiate with landlords to determine new security deposit amounts to reflect the real and perceived risks for landlords. For example, the Rapid Exit Program in Hennepin County, Minnesota pays double security deposits for clients with poor rental history.[9]

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[7] http://www.crisis.org.uk/data/files/publications/Youth%20&%20PRS%20report.pdf.
[8] http://partnering-for-change.org/wp-content/uploads/2011/07/LandlordIncentivesProtections.pdf.
[9] http://partnering-for-change.org/wp-content/uploads/2011/07/LandlordIncentivesProtections.pdf.

Rapid rehousing providers often utilize ESG and TANF funds to pay for modest incentives including paying security deposits for program participants or negotiating increases in deposit amounts. CalWORKS provides move-in costs, such as last month's rent, security deposits, utility deposits, and cleaning fees, provided that the total rent does not exceed eighty percent of the family's total monthly income. Generally, this assistance is only available once in a lifetime, unless the homelessness was the result of domestic violence or a natural disaster.[1011] Yolo County's 2014 strategic plan outlines an objective to partner with the Center for Families to ensure that this resource is reaching eligible families.[12]

The Emergency Solutions Grant program (ESG) includes the following eligible costs for financial assistance: rental application fees, security deposits, last month's rent, utility deposits, utility payments, and moving costs.[13] In Los Angeles County, the Department of Public Social Services is using ESG funding to provide security and utility assistance for families moving into permanent housing and those enrolled in a rapid re-housing program.[14]

COST OF IMPLEMENTATION

The 2015 FMR for SROs in San Francisco is $942.[15] Assuming security deposits range from 1-2 months rent, the cost to provide security deposits for 500 units would range from $471,000- $942,000.

EFFECTIVENESS

This practice is a straightforward way to reduce risk for landlords without significantly increasing costs because the security deposit is ultimately returned if no damage occurs. This provides incentive both for programs and for clients to prevent property damage.

However, start-up costs may be considerable to ensure sufficient funding for increased security deposits; programs will have to consider how to raise and maintain these funds.

5. PRE-LEASING INCENTIVES: LEASING BONUSES AND BROKER'S FEES

Leasing bonuses can be provided to landlords or real estate brokers as a non-refundable reward for leasing to "hard-to-house" tenants.[16] There are two types of leasing bonuses in practice:

[10] http://www.lafla.org/service.php?sect=govern&sub=help;
[11] http://www.211scc.org/downloads/CalWORKs%20Resource%20Guide%202014.pdf
[12] http://www.yolocounty.org/home/showdocument?id=26136
[13] https://www.hudexchange.info/resources/documents/ESG-Program-Components-Quick-Reference.pdf
[14] http://documents.lahsa.org/Programs/funding/2014/rfp/HFSS/FINAL-2014-HFSS-RFP-AND-APP.pdf
[15] http://www.huduser.org/portal/datasets/fmr/fmrs/FY2015_code/2015summary.odn
[16] http://partnering-for-change.org/wp-content/uploads/2011/07/Brief_RehsingStrategiesFINAL.pdf.

- A fixed bonus amount provided to landlords for each unit they rent to clients (Example: $35 bonus administrative fee/unit rented)
- A fixed-scale system where the leasing bonus provided is determined by the type of unit (Example for unit size: $200/studio)

COST OF IMPLEMENTATION

Bonuses could range from $35 to cover administrative fees to more significant bonuses of $100-200 per unit. A $35 administrative/pre-leasing fee for 500 SROs would be about $17,500, while a $100 bonus per unit for 500 SROs would be $50,000.

EFFECTIVENESS

Since San Francisco is currently experiencing a housing crunch where many renters in the mainstream rental market are willing to pay above asking price, there may not be sufficient funding to provide a bonus that makes housing a "hard-to-house" tenant more profitable.

FOUR FINANCIAL STRATEGIES

While financial incentives can be helpful to gain landlord interest, community examples show that financial incentives alone are insufficient to substantially increase and maintain landlord participation in rental assistance programs. Programs with the greatest success in recruiting landlords, housing residents, and retaining both tenants and landlords alike provide robust nonfinancial as well as financial incentives for landlords.[17]

The primary categories of nonfinancial incentives are tenant supports, landlord supports, landlord outreach and marketing, engaging real estate brokers, and master leasing.

1. TENANT SUPPORTS

Supporting homeless persons in both accessing and maintaining housing is critical for encouraging landlords to accept them as tenants. The following are ways that programs can provide support to tenants to help them in this process:

- Accessing Housing:
  - Tenant education and certification programs that provide hard-to-house clients with training in areas such as budgeting, tenant rights and duties, repairing credit, and other life skills to help them become a responsible tenant. Clients who complete the program receive certificates of completion

[17] http://partnering-for-change.org/wp-content/uploads/2011/07/Brief_RehsingStrategiesFINAL.pdf.

or recommendation letters that allow them to apply for housing from landlords partnered with the program.
    - Character recommendation letters from case managers and/or respected third parties, such as religious leaders, employers, or even parole officers, describing how the head of household or individual concerned has participated in specialized services (e.g., substance abuse treatment, mental health counseling, financial education classes) and has made great strides in overcoming personal problems indicates to a landlord a level of commitment, motivation, and ability to turn one's life around.
    - Co-signing leases with a client to reduce or eliminate risk for landlords.
- Maintaining Housing:
    - On-site and off-site case management and support services provided during transitional housing period (ex. mental health, chemical dependency, treatment, counseling, life skills).
    - Tenant peer support groups.

COST OF IMPLEMENTATION

The cost for these supports varies widely, depending on the extent of training and services provided. Ideally, project coordinators and/or case managers would provide both the trainings and the case management services as needed during a tenant's transition into housing. These services would be more intensive before and at the beginning of tenancy, with the objective to phase out over time, with the exception of those who need permanent supportive housing services due to disability or chronic condition. Many of these case management supportive services could be contracted or leveraged from social service agencies and organizations, reducing the cost.

EFFECTIVENESS

Tenant education and training, as well as supportive services and case management, are essential for ensuring that hard-to-house persons are equipped to live independently in mainstream housing. Certification and character letters, while not necessary for the tenants themselves, may be the official markers necessary to assuage any concerns that a landlord might have in light of poor rental, credit, and/or criminal history.

2. LANDLORD SUPPORTS

In addition to supporting tenants, programs can incentivize landlords to provide housing for persons who were, are, or are at risk of being homeless by providing special assistance to them in the following ways:

- Landlord access to support hotlines / responsive staff specialized in landlord management.
- Quick turnaround on issuing checks to landlords for agencies that provide rent payment or other financial services.

- Mediation services for any landlord-tenant conflicts.
- Property maintenance for client-occupied units provided by rental assistance program or associated agencies.
- Landlord recognition programs (e.g. thank you cards from staff and clients, hosting owner appreciation breakfasts at which partners receive plaques or other type of recognition).
- Creating landlord support network – Inviting landlords to open houses where they can meet staff, agency leadership, and each other.

COST OF IMPLEMENTATION

The cost of these strategies vary based on extent of services provided – the primary cost would be hiring program staff to manage these services, with each FTE costing around $80,000 to $110,000 depending on the skill and experience desired. For 500 SRO units, three to five coordinators at an estimated cost of $95,000, or $285,000 to $475,000 total.

EFFECTIVENESS

Providing responsive, knowledgeable, and effective service to landlords is key in building the trust necessary to convince landlords to rent to clients who are otherwise more challenging. For this reason, many programs hire staff to provide some level of landlord relationship management. Note that these positions can also be combined with landlord outreach and marketing (see below).

3. LANDLORD OUTREACH & MARKETING

Increasing the number of landlords willing to rent to homeless persons is necessary to ensure sufficient housing for more challenging tenants. The following list includes ways programs can expand the pool of landlords, and thereby housing, available for hard-to-house clients:

- Marketing campaigns that explain the financial and social benefits of providing housing to these populations, as well as the many safeguards in place to reduce risk. Sample marketing strategies including brochures, letters, community forums and presentations, media (email, news), individual meetings, and tours.
- Create a Landlord Advisory Committee to build a core group of landlords who are willing to commit to the program, provide feedback on program design and evaluation, and engage their peers.
- Searching for Landlords
  - Housing Authority listings for Section 8 are more likely to rent to hardest-to-house populations.
  - Reach out to real estate brokers and provide them with finders' fees or add them to program advisory boards/committees to increase engagement

  - Cold calling can work, but landlords who use mainstream housing sources (such as Craigslist) may not be willing to participate in a supported housing program.
- Creating and regularly updating a spreadsheet of landlords to keep track of engagement efforts.

Note: In outreach, it is critical that programs be consistent in their messaging about housing need and a Housing First framework (i.e. providing housing will enable vulnerable populations to stabilize and address their challenges, such as drug and alcohol use and/or mental illness).

COST OF IMPLEMENTATION

The most significant costs for marketing lie in the initial development of landlord education materials and presentations. Depending on whether these efforts can be supported by program staff or outside marketing consultants, the cost could range from $5,000 to $20,000 for a comprehensive outreach campaign.

Subsequent marketing, landlord search, and tracking can be implemented by program staff, including those who provide landlord supports (see above).

EFFECTIVENESS

Marketing and education for landlords is critical to combat the stigma against renting to homeless or formerly homeless persons. For this reason, creating and broadly disseminating persuasive marketing materials, in addition to actively soliciting landlords, are necessary to increase the number of rental units available for hard-to-house persons.

4. MASTER LEASING

Under master leasing, an agency or housing provider rents units, and then subleases them to individual clients. As the primary lease-holder, the agency assumes responsibility for the clients.

COST OF IMPLEMENTATION

Establishing a master lease can be a costly and time-intensive endeavor, as it requires setting up the legal structure and active management of the property. The primary cost would be staff time, as well as any repairs or upkeep needed to maintain the unit at a certain level.

EFFECTIVENESS

Some agencies have traditionally provided master leases, especially in situations where they can master lease an entire complex with multiple units. Landlords may favor this option if they have many units available, as it reduces their work and places most of the liability on the agency managing the master lease. However, many agencies are wary of this option because of the challenges of managing property and tenants.

OTHER COMMUNITY EXPERIENCES

The following are examples of how several major cities across the country have implemented landlord engagement strategies, as well as their outcomes.

L. LANDLORD LIAISON PROJECT: KING COUNTY, SEATTLE

The Landlord Liaison Project (LLP) began in March 2009, as a means of increasing access to private market and non-profit owned rental housing for vulnerable populations moving out of homelessness into permanent housing. The LLP is supported by the King County Department of Community and Human Services, the City of Seattle, King County, Representative of the United Way of King County, and a broad array of service and nonprofit housing providers.[18]

The Landlord Liaison Project provides landlords with the following services:

- Access to qualified, vetted applicants to fill vacant units
- Access to LLP's 24-hour hotline to address immediate issues
- Rapid response to landlord concerns by partnering agencies and the YWCA
- Access to a Landlord Risk Reduction Fund in the case of excessive property damage and/or the nonpayment of rent. The Risk Reduction Fund established in King County is $1 million.

The LLP provides clients with important services as well, such as move-in costs and rental assistance, eviction prevention, tenant trainings, mediation with landlords, and access to support services through partner agencies for at least the first year of their tenancy in permanent housing.

During its first 10 months, the Landlord Liaison Project placed 147 households in permanent housing with a retention rate of 96% of households after 6 months of tenancy. 68% of the tenants were subsidy holders. During the same time period there were 87 interventions/mediations on behalf of housed clients between the landlords and case managers, but no calls placed after hours to the 24-hour emergency hotline. In 2009, the LLP used only $2,663 from the Risk Reduction Fund for repairs to damage

[18] http://partnering-for-change.org/wp-content/uploads/2011/07/LandlordIncentivesProtections.pdf.

caused in three client units. Finally, 71% of landlords involved in the program stated that they were "satisfied" or "very satisfied", with 79% ranking the financial guarantees of the LLP as the most important factor for their participation.[19] [20]

2. HOME FORWARD: PORTLAND, OREGON

Home Forward, the housing authority in Multnomah County, Oregon, has emphasized the need to provide better housing choices and accessibility to rental properties for Section 8 voucher holders. The program provides landlords with financial incentives to take on Section 8 voucher holders as tenants, while still allowing landlords to charge market rate for their units. Home Forward pays a set amount directly to the landlord, and the renter pays the difference. Landlord rents have to be reasonable compared to rents for similar units in the same market area.

Home Forward has created the Landlord Incentive Fund, which is a $100 leasing bonus paid directly to the landlord each time he or she rents a unit in a low-poverty census tract to a Section 8 participant. The housing authority has also established the Landlord Guarantee Fund (LGF), which will reimburse up to two months of rent for damage beyond wear and tear that exceeds $1,000 in a client's unit.[21]

Home Forward has experienced mixed results through its Section 8 housing and landlord incentive program. In the first six months of 2012 alone, the program helped 301 voucher-holders find rental units in low-poverty neighborhoods.[22] However, the program also received criticisms for not strictly enforcing their policies on renting in low-poverty census tracts and allowing clients to rent substandard units in high-poverty census tracts through Home Forward. Furthermore, the $100 leasing bonus was incorporated into Home Forward policy after the Landlord Guarantee Fund failed to recruit or retain Section 8 landlords.[23] Home Forward's director of rent assistance has indicated that the new financial incentive has not resulted in a substantial increase in landlord participation.

3. HOUSING STABILITY PLUS: NEW YORK CITY

Housing Stability Plus (HSP) provided rental subsidies to long-term clients in the City's homeless service system, while also providing landlord incentives to encourage the leasing of units to subsidy holders and "hard to house" tenants.

[19] All statistics found in the Landlord Liaison Project 2010 Performance and Evaluation Report.
[20] For more information, see: http://www.landlordliaisonproject.org/.
[21] http://www.homeforward.org/landlords/section-8-features.
[22] http://www.oregonlive.com/portland/index.ssf/2013/02/oregon_bill_would_end_section.html.
[23] http://www.oregonlive.com/portland/index.ssf/2014/03/home_forward_plans_to_give_low.html.

The financial incentives provided to landlords through HSP were substantial, including[24]:

- Advanced payment of three months rent to landlords
- Increased security deposit payments consisting of one month's rent
- 15% finder's fee for real estate brokers who found apartments for HSP clients to lease[25]
- Streamlined application and inspection process for lease signing

The Program received about 50% of its funding from Temporary Assistance for Needy Families/Social Security Insurance, 25% from State contributions and 25% from city levy taxes.

During its three years, the program served 6,400 households with children and 1,600 without children, with only 100 households vacating their tenancy early or dropping out of the program.[26] Despite the incentives, family homelessness rose to a record high for the city, as there was a 23% increase in the number of families entering the system and an 11% decline in the number of families moving into permanent housing in 2006.[27]

Landlords and program administrators identified two fundamental causes for the limitations of the HSP program:

1) The program's requirement that participants be on welfare resulted in frequent stoppage of rent payments because any disruption in welfare caused automatic cessation of rent payment. During the course of the program, 65% of families faced welfare disruptions, rather than the 20% expected. This resulted in uncertainty among landlords, who dropped out of the program.[28]
2) The rigidity of the housing process, time limits placed upon participation, and an annual decline of 20% in the value of the subsidies resulted in instability in housing retention, further decreasing landlord participation.

These three issues - among others - caused New York City to discontinue the program in 2007 in favor of an alternative rental subsidy program designed to rectify these issues. The lessons of the Housing Stability Plus program should inform the design of a new San Francisco rental subsidy program, in particular financial guarantees designed to alleviate and eliminate landlord insecurity and maintain or increase the available housing stock and a flexible system of subsidies that accounts for the housing needs of clients and the financial needs of landlords.

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[24] http://coalhome.3cdn.net/0fc1b9afcc11c89627_dgm6vdpb8.pdf, http://partnering-for-change.org/wp-content/uploads/2011/07/LandlordIncentivesProtections.pdf
[25] http://partnering-for-change.org/wp-content/uploads/2011/07/LandlordIncentivesProtections.pdf.
[26] http://partnering-for-change.org/wp-content/uploads/2011/07/LandlordIncentivesProtections.pdf
[27] http://www.nytimes.com/2007/03/19/nyregion/19homeless.html?pagewanted=all&_r=0
[28] http://www.nytimes.com/2007/03/19/nyregion/19homeless.html?pagewanted=all

RECOMMENDATIONS FOR SAN FRANCISCO

Given San Francisco's extremely competitive rental market and general lack of affordable housing, the City should focus first on the landlord engagement strategies most likely to result in successful access to and maintenance of housing for challenging populations, followed by the most cost-effective financial incentives for landlords to rent to these clients, building relationships with landlords, and utilizing any relatively low-cost strategy that can reinforce these efforts.

1. TENANT SUCCESS

Strategies that promote tenant success should be prioritized because landlords will not rent to challenging clients unless they are confident that these tenants will be just as profitable as any other. The primary strategies supporting this objective are:

- Tenant education programs (with or without certification)
- Case management & supportive services
- Tenant peer support groups

2. COST-EFFECTIVE FINANCIAL INCENTIVES

In order to combat the stigma and risk regarding housing homeless and other vulnerable persons, the City will need to provide additional financial incentives and/or risk mitigation to demonstrate to landlords that renting to these clients makes good business sense. Out of the many financial incentives options, the City should select the strategies that provide the most value to the landlords at the lowest cost, which include:

- Risk Mitigation Pools
- Increased Security Deposits
- Protective Payee Program

3. BUILDING LANDLORD RELATIONSHIPS

The City must educate and build relationships with landlords so that they are informed of the successful tenancy of these hard-to-house populations and the financial benefits of renting to them. The following strategies have been the most effective in engaging landlords on these issues:

- Marketing campaign to landlords

- Landlord support hotline / mediation services
- Creating a landlord support network and/or Landlord Advisory Committee
- Quick turnaround for payments for agencies that provide payments

4. RELATIVELY LOW COST SUPPORTIVE STRATEGIES

Finally, there are several strategies which reinforce the above objectives in a cost-effective manner, and are worth adding on if additional resources are available:

- Character recommendation letters for prospective tenants
- Supporting the background check process
- Searching for landlords
- Tracking landlord engagement efforts on a spreadsheet

File No. 162-81-4

AMENDMENT OF THE WHOLE
AS AMENDED IN BOARD 6/8/81
AND 6/15/81.

ORDINANCE No. 330-81

AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING CHAPTER 41 THEREOF, REVISING DEFINITIONS, NOTICE REQUIREMENTS, REPORTING REQUIREMENTS, TIME LIMITS, EXEMPTIONS AND PENALTIES OF THE RESIDENTIAL HOTEL UNIT CONVERSION AND DEMOLITION ORDINANCE.

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

Section 1. The provisions of Ordinance 15-81 as amended by Ordinance 106-81 are hereby repealed; however, this section may not be interpreted to have abolished any cause of action arising out of Ordinance 564-79 and Ordinance 15-81 as amended by Ordinance 106-81 and which cause of action is pending before the Superior Court or the Department of Public Works as of the effective date of this ordinance.

Section 2. Chapter 41 of the San Francisco Administrative Code is hereby amended to read as follows:

CHAPTER 41

Residential Hotel Unit Conversion and Demolition

Sec. 41.1. Title.

This Chapter shall be known as the Residential Hotel Unit Conversion and Demolition Ordinance.

Sec. 41.2. Purpose.

It is the purpose of this ordinance 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. This is to be accomplished by establishing the status of residential hotel units, by regulating the demolition and conversion of residential hotel units to other uses, and by appropriate administrative and judicial remedies.

Sec. 41.3. Findings.

The Board of Supervisors finds that

(a) There is a severe shortage of decent, safe, sanitary and affordable rental housing in the City and County of San Francisco and this shortage affects most severely the elderly, the disabled and low-income persons.

(b) The people of the City and County of San Francisco, cognizant of the housing shortage in San Francisco, on November 4, 1980, adopted a declaration of policy to increase the city's housing supply by 20,000 units.

(c) Many of the elderly, disabled and low-income persons and households reside in residential hotel units.

(d) A study prepared by the Department of City Planning estimated that there were only 26,884 residential hotel units in the City in December of 1979, a decrease of 6098 such units from 1975. The decrease is caused by vacation, conversion or demolition of residential hotel units. Continued vacation, conversion or demolition of residential hotel units will aggravate the existing shortage of affordable, safe and sanitary housing in the City and County of San Francisco.

(e) As a result of the removal of residential hotel units from the rental housing market, a housing emergency exists within

the City and County of San Francisco for its elderly, disabled and low-income households.

(f) Residential hotel units are endangered housing resources and must be protected.

(g) The Board of Supervisors and the Mayor of the City and County of San Francisco recognized this housing emergency and enacted an ordinance which established a moratorium on the demolition or conversion of residential hotel units to any other use. The moratorium ordinance became effective on November 23, 1979.

(h) The conversion of residential hotel units affects those persons who are least able to cope with displacement in San Francisco's housing market.

(i) It is in the public interest that conversion of residential hotel units be regulated and that remedies be provided where unlawful conversion has occurred, in order to protect the resident tenants and to conserve the limited housing resources.

(j) The tourist industry is one of the major industries of the City and County of San Francisco. Tourism is essential for the economic well being of San Francisco. Therefore, it is in the public interest that a certain number of moderately priced tourist hotel units be maintained especially during the annual tourist season between May 1 and September 30.

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Sec. 41.4. Definitions.

(a) Hotel

Any building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes and dwelling purposes by guests, whether rent is paid in money, goods, or services. It includes motels, as defined in Chapter XII, Part II of the San Francisco Municipal Code, (Housing Code) but does not include any jail, hospital, asylum, sanitarium, orphanage, prison detention home or other institution in which human beings are housed and detained under legal restraint, or nursing home or any private club and non-profit organization in existence on September 23, 1979; provided, however, that no building excluded from the terms of this Chapter as a result of operation by a non-profit organization shall be excluded if the non-profit organization seeks to demolish the building or to remove units within the building from housing use, or sells the building. For the purposes of this ordinance a non-profit organization shall mean an entity exempt from taxation pursuant to Title 26, Section 501 of the United States Code.

(b) Residential Hotel

Any building or structure which contains a residential hotel unit as defined in (c) below unless exempted pursuant to the provisions of Sections 41.5 and 41.6 below.

(c) Residential Unit

Any guest room as defined in Section 203.7 of Chapter XII,

Part II of the San Francisco Municipal Code (Housing Code) which had been occupied by a permanent resident on September 23, 1979, or any guest room designated as a residential unit pursuant to Sections 41.6 or 41.7 below.

(d) Permanent Resident

A person who occupies a guest room for at least thirty-two (32) consecutive days.

(e) Tourist Unit

A guest room which was not occupied on September 23, 1979, by a permanent resident or is certified as a tourist unit pursuant to Sections 41.6 and 41.7 below.

(f) Conversion

The change or attempted change of the use of a residential unit as defined in subsection (c) above to a tourist use, or the elimination of a residential unit contrary to the provisions of this Chapter or the voluntary demolition of a residential hotel. However, a change in the use of a residential hotel unit into a non- commercial use which serves only the needs of the permanent residents, such as residents' lounge, storeroom or common area shall not constitute a conversion within the meaning of this Chapter.

(g) Low-Income Household

A household whose income does not exceed eighty percent (80%) of the median income for the San Francisco Standard Metropolitan Statistical Area as published by the United States Department of Housing and Urban Development and adjusted

according to the determination of that Department pursuant to the Housing and Community Development Act of 1974.

(h) Low-Income Housing

Residential units whose rent may not exceed thirty percent (30%) of the gross monthly income of a low-income household as defined in subsection (g) above.

(i) Elderly Person

A person 62 years of age or older.

(j) Disabled Person

A recipient of disability benefits.

(k) Owner

Owner includes any person or legal entity holding any ownership interest in a residential hotel.

(l) Operator

An operator includes, the lessee or any person or legal entity whether or not the owner, who is responsible for the day-to-day operation of a residential hotel and to whom a hotel license issued for a residential hotel.

(m) Interested Party

A permanent resident of a hotel, or his or her authorized representative, or a former tenant of a hotel who vacated a residential unit within the past ninety (90) days preceding the filing of complaint or court proceeding to enforce the provisions of this Chapter, or a tenants' organization provided that such organization certifies under the penalty of perjury that the alleged unlawful act or acts have been committed by the owner or

operator against five (5) or more permanent residents within the past ninety (90) days preceding the filing of the complaint or court proceeding to enforce the provisions of this Chapter.

(n) Certificate of Use

Following the initial unit usage and annual unit usage determination pursuant to the provisions of Sections 41.6 and 41.7 below, every hotel shall be issued a certificate of use specifying the number of residential and tourist units therein.

(o) Posting or Post

Where posting is required by this Chapter, material shall be posted in a conspicuous location at the front desk in the lobby of the hotel or, if there is no lobby, in the public entranceway. No material posted may be removed by any person except as otherwise provided in this Chapter.

Section 41.5. Applicability of this Chapter.

The provisions of this Chapter shall not apply to:

(a) The change in use of a residential unit where the unit has been found to be unfit for human habitation prior to November 23, 1979 and ordered to be vacated by the Department of Public Health; or

(b) A hotel wherein ninety-five percent (95%) of the guest rooms were tourist units on September 23, 1979; or

(c) A unit which rents for over one thousand dollars ($1,000.00) per month.

(d) A hotel in which ninety-five percent (95%) of the total number of guest rooms are either tourist units or rented

for more than one thousand dollars ($1,000.00) per month on September 23, 1979; or

(e) A building which was unlawfully converted to a rooming house or hotel in violation of the provisions of the City Planning Code; or

(f) A building which meets the requirements of Section 41.6 (3) below for a claim of exemption for partially-completed conversions; or

(g) A building which meets the requirements of Section 41.6 (2) below for a claim of exemption for low-income housing.

Sec. 41.6. Initial Status Determinations; Exemptions.

(a) Distribution of Summary of Ordinance and Reporting Forms for Initial Unit Usage Report

No later than four (4) weeks after the effective date of this ordinance, the Bureau of Building Inspection of the Department of Public Works shall provide to every known owner or operator, a summary of the requirements of this ordinance, and prescribed forms for filing an initial unit usage report, a statement of exemption and a claim of exemption. The notification shall clearly indicate that any prior notification has been superceded. This notice requirements is intended to be directory in so far as the failure to give this notice shall not release any owner or operator of his/her obligations under this ordinance or preclude the City or any person with standing to initiate an enforcement proceeding under the provisions of this Chapter.

(b) Filing of Initial Status Determinations; Time Limit

Within thirty (30) calendar days of the mailing date of the summary of the ordinance and the prescribed reporting forms, the owner or operator of each hotel shall file either a statement of exemption, a claim of exemption based on low-income housing, a claim of exemption based on partially completed conversion, or an initial unit usage report as specified below. All filing shall be accompanied by supporting evidence. However, upon application by an owner or operator and upon showing of good cause therefor, the Superintendent of the Bureau of Building Inspection may grant an extension of time not to exceed thirty (30) days for said filing. A notice that a copy of the initial status determination document filed with the Superintendent of the Bureau of Building Inspection is available for inspection between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday shall be posted on the day of filing.

(1) Statement of Exemption

Any hotel claiming exemption under the provisions of Sections 41.5(a) through 41.5(d) shall file a statement of exemption specifying the basis for the exemption. Any hotel claiming exemption under the provisions of Sections 41.5(b) through 41.5(c) shall also state the total number of guest rooms and the number of residential hotel units with monthly rent over one thousand dollars ($1,000.00) per month.

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(2) Claim of Exemption Based on Low-Income Housing

To qualify for a claim of exemption based on low-income housing, the units to be rehabilitated must meet the following requirements:

(A) A claim for this exemption has been filed and the requisite fees paid to the Bureau of Building Inspection no later than sixty (60) calendar days after the effective date of this ordinance;

(B) With the exception of ground floor commercial space, the entire building must be completely occupied as low income housing;

(C) The Superintendent of the Bureau of Building Inspection finds that the proposed elimination of a unit is necessary to comply with Building Code and Housing Code requirements; and

(D) Alternate guest rooms are made available within the building to the displaced permanent residents; or

(E) In those circumstances where it is necessary to relocate a permanent resident offsite, the permanent resident shall receive the actual moving expenses and the difference between the rent at the time of relocation and the rent of the temporary housing during the period of rehabilitation.

(F) The owner or operator and successors in interest shall continue to maintain all units in the rehabilitated hotel as low-income housing for

twenty-five (25) years. A deed restriction on such use shall be submitted to the City Attorney's Office for approval. An approved copy shall be forwarded to the Superintendent of the Bureau of Building Inspection and the original shall be filed with the Recorder by the owner or operator.

(3) Claim of Exemption Based on Partially Completed Conversion

A claim of exemption based on partially completed conversion shall not be approved until and unless all of the following requirements are met:

(A) An application for a partially completed conversion was filed no later than sixty (60) calendar days after the effective date of this ordinance;

(B) The owner or operator has commenced work on extensive Capital Improvements and Rehabilitation Work, prior to November 23, 1979, as defined in Section 37.2 of the San Francisco Administrative Code (the San Francisco Rent Stabilization and Arbitration Ordinance) and has completed such work on at least thirty-five percent (35%) of the units intended to be converted or has expended forty percent (40%) of the total sum budgeted for said work;

(C) The owner or operator or previous owner or operator shall have clearly demonstrated his intention to convert all of the residential units in the subject

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building to tourist units as of November 23, 1979. Satisfactory evidence of intention to convert may be demonstrated by the following factors, including but not limited to:

(i) Whether an architect has been engaged to prepare plans and specifications; or

(ii) Whether bids for construction work have been received; or

(iii) Whether applications for the necessary permits have been submitted to all relevant city departments; or

(iv) Whether a building permit has been issued.

(D) Each permanent resident displaced by the conversion is offered relocation assistance as set forth in Section 41.~~13~~ 14 below; and

(E) For each vacant residential unit converted, but not occupied by a permanent resident, a sum of two hundred and fifty dollars ($250.00) per unit not to exceed a total of ten thousand dollars ($10,000.00) shall be deposited in the San Francisco Residential Hotel Preservation Account of the Repair and Demolition Fund established pursuant to Section 203.L of the San Francisco Building Code (being Chapter I, Article 2, Part II of the San Francisco Municipal Code) to be used exclusively for the repair, purchase and rehabilitation of residential hotel units by

agencies of the City and County of San Francisco and to be administered by the Department of Public Works.

(4) Filing of Initial Unit Usage Report

All hotels not covered by the above filings must file an initial unit usage report containing the following:

(A) The number of residential and tourist units in the hotel as of September 23, 1979;

(B) The designation by room number and location of the residential units and tourist units as of seven (7) calendar days prior to the date of filing the report;

(C) The total number of residential and tourist rooms in the hotel as of seven (7) calendar days prior to the date of filing the report.

(c) Insufficient Filing

If the Superintendent of the Bureau of Building Inspection or his designee determines that additional information is needed to make a determination, he shall request the additional information in writing. The owner or operator shall furnish the requested information within fifteen (15) calendar days upon receipt of the written request and post a notice that a copy is available for inspection between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, on the same date as it is furnished, of the information requested. If the requested information is not furnished, all the guest rooms not supported by evidence shall be deemed to be residential units.

(d) Certification of Units

The Superintendent of the Bureau of Building Inspection shall review the information and accompanying supporting data. A certified copy of hotel tax returns for the calendar year 1979 may be used to establish the number of tourist units. If, in the opinion of the Superintendent of the Bureau of Building Inspection, the initial unit usage report is supported by adequate supporting evidence, he shall certify the number of residential and tourist units within ninety (90) calendar days of its submission. The owner or operator shall have the burden of proving the number of tourist units claimed by a preponderance of evidence.

Notwithstanding any other provisions in this Chapter, if an owner or operator took possession of the hotel operation after September 23, 1979 and before June 15, 1981, and if the owner or operator can demonstrate that good cause exists why he/she cannot obtain supporting evidence from the previous owner or operator to file the initial report, the owner or operator shall base his filing on information available to him two weeks after he took possession of the hotel; any units which are vacant on that date shall be allocated equally between tourist and residential uses; provided that a permanent resident may rebut this presumption by clear and convincing evidence.

After the Superintendent of the Bureau of Building Inspection certifies the number of residential and tourist units, he shall issue a certificate of use for one year. A notice that

copy of the certificate of use is available for inspection between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday must be posted.

(e) Failure to File Statement of Exemption, Claim of Exemption and Initial Units Usage Report

If no initial units usage report, or statement of exemption, or a claim of exemption based on partially completed conversion, or a claim of exemption based on low-income housing for all of the guest rooms, is filed for a hotel within the time set forth in Section 41.6(b), the Superintendent of the Bureau of Building Inspection shall mail a notice to the owner or operator of record by registered or certified mail stating that all the rooms in the hotel shall be deemed residential units unless the owner or operator files a unit usage report within ten (10) calendar days of the mailing date of said notice and that a late filing fee of Fifty Dollars ($50.00) will be assessed in addition to the fee set forth in Section 41.8 of this Chapter. If the owner or operator fails to submit a unit usage report within ten (10) calendar days after notification by the Bureau of Building Inspection, a certificate of use for residential units only shall be issued.

(f) Appeal of Initial Determination

An owner or operator may appeal the initial unit status determination by the Superintendent of the Bureau of Building Inspection provided that there was no challenge pursuant to the provisions of subsection (g) below, and further provided that an

appeal is filed within ten (10) calendar days of the mailing of the certification. If an appeal is filed, a copy of the notice of appeal shall be posted by the owner or operator and a hearing pursuant to the provisions of Section 41.8(b) shall be scheduled.

(g) Challenge; Standing; Statute of Limitation

Challenges to the information contained in the initial status determination report filed by the owner or operator may be filed by an interested party in writing provided that it is submitted within fifteen (15) calendar days from the date the report to the Bureau of Building Inspection is filed. Upon receipt of a challenge, a hearing shall be held by the Superintendent of the Bureau of Building Inspection or his designee pursuant to the provisions of Section 41.8(b). The owner or operator shall have the burden of proving by a preponderance of evidence that the information filed is correct.

(h) Daily Log

Following the effective date of this ordinance, each residential hotel shall maintain a daily log containing the status of each room, whether it is occupied or vacant, whether it is used as residential unit or tourist unit and the name under which the occupant is registered. Each hotel shall also maintain copies of rent receipts showing the amount and period paid for. The daily log shall be available for inspection pursuant to the provision of Section 41.8(c) of this Chapter upon demand between the hours of 9:00 a.m. and 5:00 p.m. between Monday and Friday.

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Sec. 41.7. Annual Unit Usage Report.

(a) Posting

Following the initial status determination, an owner or operator of residential units shall post on each Monday before 12 noon the following information:

(1) The number of tourist units to which the owner or operator is currently entitled and the date of the certification of use was last issued.

(2) The number of guest rooms which each day of the preceding week were used as tourist units. Evidence of compliance with the requirements imposed hereunder shall be preserved by the owner or operator for a period of not less than two (2) years after the date each posting is required to be made. The owner or operator shall permit the Superintendent of the Bureau of Building Inspection or his designee, to inspect the hotel records and other supporting evidence to determine the accuracy of the information posted.

(b) Filing

(1) On October 15, 1982, and on October 15 of each succeeding year thereafter, every hotel owner or operator required to file an initial unit usage report shall file with the Bureau of Building Inspection an Annual Unit Usage Report containing the following information:

(A) The number of rooms in the hotel as of September 30 of the year of filing;

(B) The number of residential and tourist units as of September 30 of the year of filing;

(C) The number of vacant residential units as of September 30 of the year of filing;

(D) The average rent for the residential hotel units as of September 30 of the year of filing; and

(E) The number of residential hotel units rented by week or month as of September 30 of the year of filing;

(F) The designation by room number and location of the residential units and tourist units as of September 30 of the year of filing;

(2) The nature of services provided to the permanent residents and whether there has been an increase or decrease in the services so provided. This information will not be used for determining the entitlement of residential or tourist units.

(3) On the day of filing, the owner or operator shall post a notice that a copy of the Annual Unit Usage Report submitted to the Bureau of Building Inspection is available for inspection between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday which notice shall remain posted until a new certificate of use has been issued.

However, upon application by an owner or operator and upon showing of good cause therefor, the Superintendent of the Bureau of Building Inspection may grant one extension of time not to exceed thirty (30) days for said filing.

(c) Certification of Annual Unit Usage Report

After receipt of the Annual Unit Usage Report, the Bureau of Building Inspection shall issue a certified acknowledgment of receipt.

(d) Renewal of Hotel License and Issuance of New Certificate of Use

As of the effective date of this ordinance, no hotel license may be issued to any owner or operator of a hotel unless the owner or operator presents with his/her license application a certified acknowledgment of receipt from the Bureau of Building Inspection of the Annual Unit Usage Report for the upcoming year. Upon payment of the license fee, the Tax Collector shall notify the Bureau of Building Inspection that a current certificate of use for the ensuing year may be issued. The Bureau of Building Inspection shall issue said permit within forty five (45) working days of payment of that license fee.

(e) Insufficient Filing

If the Superintendent of the Bureau of Building Inspection or his designee determines that additional information is needed to make a determination, he shall request the additional information in writing. The owner or operator shall furnish the requested information within fifteen (15) calendar days upon receipt of the written request. If the requested information is not furnished in the time required, the residential and tourist units shall be presumed to be unchanged from the previous year. A civil penalty of five hundred dollars ($500.00) shall be

assessed against the owner or operator for failure to furnish the requested information and a lien for the amount so assessed shall be recorded by the Superintendent of the Bureau of Building Inspection.

(f) Failure to File Annual Unit Usage Report

If the owner or operator fails to file an Annual Unit Usage Report, the Bureau of Building Inspection shall notify the owner or operator by registered or certified mail and shall post a notice informing the owner or operator that unless submission of the Annual Unit Usage Report and application for renewal of the hotel license is made within fifteen (15) calendar days, the residential and tourist units shall be presumed to be unchanged from the previous year. A civil penalty of three hundred dollars ($300.00) for each month the annual report is not filed shall be assessed against the owner or operator and a lien for the amount so assessed shall be recorded by the Superintendent of the Bureau of Building Inspection.

(g) Appeal of Annual Usage Determination

An owner or operator may appeal the annual unit usage determination by the Superintendent of the Bureau of Building Inspection provided that there was no challenge pursuant to the provisions of subsection (h) below, and further provided that an appeal is filed within twenty (20) calendar days from the date of issuance of the certificate of use. If an appeal is filed, a copy of the notice of appeal shall be posted by the owner or operator and a hearing pursuant to the provisions of Section

41.8(b) shall be scheduled.

(h) Challenge; Standing; Statute of Limitation

Any interested party may file a challenge to the information contained in the annual unit usage report filed by the owner or operator provided that such a challenge is in writing and is submitted within fifteen (15) calendar days from the date the report to the Bureau of Building Inspection is filed. Upon receipt of a challenge, a hearing pursuant to the provisions of Section 41.8(b) shall be scheduled. The owner or operator shall have the burden of proving by a preponderance of evidence that the information filed is correct.

Sec. 41.8. Administration.

(a) Fees

The owner or operator shall pay the following filing fees to the Bureau of Building Inspection to cover its costs of investigating and reporting on eligibility. Fees shall be waived for an individual who files an affidavit under penalty of perjury stating that he or she is an indigent person who cannot pay the filing fee without using money needed for the necessities of life.

(1) Statement of exemption: One hundred and twenty five dollars ($125.00).

(2) Claim of exemption based on low-income housing: One hundred and twenty-five dollars ($125.00).

(3) Claim of exemption based on partially completed conversion: Two hundred and fifty dollars ($250.00).

(4) Initial Unit Usage Report: One hundred and

twenty five dollars ($125.00.) if no challenge is filed. If a challenge is filed, the party with the adverse decision shall be assessed an additional two hundred dollars ($200.00) to reimburse the City for costs of public hearing prior to the issuance of a certificate of use as defined in Section 41.4(n).

(5) Annual Unit Usage Report: Twenty dollars ($20.00) if no challenge is filed. If a challenge is filed the party with the adverse decision shall be assessed an additional two hundred dollars ($200.00) to reimburse the City for costs of public hearing prior to the issuance of a certificate of use as defined in Section 41.4(n).

(6) Permit to convert: Two hundred dollars ($200.00).

(7) Challenge to claims of exemption, Initial Inits Usage Report or Annual Unit Usage Report: Ten Dollars ($10.00).

(8) Complaint of unlawful conversion: Ten dollars ($10.00).

(9) Appeal of initial or annual status determination: fifty dollars ($50.00). The party with the adverse decision shall be assessed an additional two hundred dollars ($200.00) to reimburse the City for costs of public hearing prior to the issuance of a certificate of use as defined in Section 41.4(n).

(10) Determination by Department of Real Estate: Seven hundred and fifty dollars ($750.00) and the actual

amount necessary to reimburse the Department for obtaining independent appraisals.

(b) Hearing

(1) Notice of Hearing

Whenever a hearing is required or requested in this Chapter, the Superintendent of the Bureau of Building Inspection shall within forty five (45) calendar days notify the owner or operator of the date, time, place and nature of the hearing by registered or certified mail. The Superintendent of the Bureau of Building Inspection shall appoint a hearing officer. Notice of such a hearing shall be posted by the Bureau of Building Inspection. The owner or operator shall state under oath at the hearing that the notice remained posted for at least ten (10) calendar days prior to the hearing. Said notice shall state that all permanent residents residing in the hotel may appear and testify at the public hearing, provided that the Bureau of Building Inspection is notified of such an intent 72 hours prior to the hearing date.

(2) Hearing Procedure

If more than one hearing for the same hotel is required, the Superintendent of the Bureau of Building Inspection shall consolidate all of the appeals and challenges into one hearing; however, if a civil action has been filed pursuant to the provisions of Section 41.16(d)

of this Chapter, all hearings on administrative complaints of unlawful conversions involving the same hotel shall be abated until such time as final judgment has been entered in the civil action; an interested party may file a complaint in intervention. The hearing shall be tape recorded. Any party to the appeal may, at his/her own expense, cause the hearing to be recorded by a certified court reporter. The hearing officer is empowered to issue subpoenas upon application of the parties three (3) calendar days prior to the date of the hearing. During the hearing, evidence and testimony may be presented to the hearing officer. Parties to the hearing may be represented by counsel and have the right to cross-examine witnesses. All testimony shall be given under oath. Written decision and findings shall be rendered by the hearing officer within twenty (20) working days of the hearing. Copies of the findings and decision shall be served upon the parties to the hearing by registered or certified mail. A notice that a copy of the findings and decision is available for inspection between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday shall be posted by the owner or operator.

(3) Judicial Review

The decision of the hearing officer shall be final unless judicial review pursuant to Section 1094.5 of the Code of Civil Procedure is filed with a court of competent

jurisdiction within thirty (30) calendar days of the issuance of the written decision.

(c) Inspection

The Superintendent of the Bureau of Building Inspection shall conduct from time to time on-site inspections of the daily logs and other supporting documents to determine if the provisions of this Chapter have been complied with. In addition, the Superintendent of the Bureau of Building Inspection or his designee shall conduct such an inspection as soon as practicable upon the request of a permanent resident of the hotel. If upon such an inspection, the Superintendent or his designee determines that an apparent violation of the provisions of this Chapter has occurred, he shall post a notice of apparent violation informing the permanent residents of the hotel thereof.

(d) Costs of Enforcement

The proceeds from the filing fees and civil fines assessed shall be used exclusively to cover the costs of investigation and enforcement of this ordinance by the City and County of San Francisco. The Superintendent of the Bureau of Building Inspection shall annually report these costs to the Board of Supervisors and recommend adjustments thereof.

(e) Inspection of Records

The Bureau of Building Inspection shall maintain a file for each residential hotel which shall contain copies of all applications, exemptions, permits, reports and decisions filed pursuant to the provisions of this Chapter. All documents

maintained in said files, execpt for all tax returns and documents specifically exempted from the California Public Record Act, shall be made available for public inspection and copying.

(f) Promulgation of Rules and Regulations

The Superintendent of the Bureau of Building Inspection shall propose rules and regulations governing the appointment of an administrative officer and the administration and enforcement of this Chapter. After reasonable notice and opportunity to submit written comment are given, final rules and regulations shall be promulgated.

Sec. 41.9. Permit to Convert.

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

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

(1) The name and address of the building in which the conversions are proposed; and

(2) The names and addresses of all owners or operators of said building; and

(3) A description of the proposed conversion including the nature of the conversion, the total number of units in the building, their current uses; and

(4) The room numbers and locations of the units to be converted; and

(5) Preliminary drawings showing the existing floor plans and proposed floor plans; and

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

(7) The current rental rates for each residential unit to be converted; and

(8) The length of tenancy of the permanent residents affected by the proposed conversion; and

(9) A statement regarding how one-for-one replacement of the units to be converted will be accomplished, including the proposed location of replacement housing if replacement is to be provided off-site; and

(10) A declaration under penalty of perjury from the owner or operator stating that he has complied with the provisions of Section 41.14(b) below and his filing of a permit to convert. On the same date of the filing of the application, a notice that an application to convert has been filed shall be posted until a decision is made on the application to convert.

Sec. 41.10. One-for-One Replacement.

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

(1) Construct or cause to be constructed a substantially comparable-sized unit to be made available at

comparable rent to replace each of the units to be converted; or

(2) Cause to be brought back into the housing market a comparable unit from any building which was not subject to the provisions of this Chapter to be offered at comparable rent to replace each unit to be converted; or

(3) Construct or cause to be constructed or rehabilitated apartment units for elderly, disabled or low-income persons or households at a ratio of less than one-to-one to be determined by the City Planning Commission in accordance with the provisions of Section 303 of the City Planning Code. A notice of said City Planning Commission hearing shall be posted by the owner or operator seven (7) calendar days before the hearing.

(4) Pay to the City and County of San Francisco an amount equal to Forty percent (40%) of the cost of construction of an equal number of comparable units plus site acquisition cost All such payments shall go into a San Francisco Residential Hotel Preservation Fund Account The Department of Real Estate shall determine this amount based upon two independent appraisals.

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

and Arbitration Ordinance).

Sec. 41.11. Mandatory Denial of Permit to Convert.

A permit to convert shall be denied by Superintendent of the Bureau of Building Inspection if:

(a) Any of the requirements in Sections 41.9 or 41.10, above, have not been fully complied with;

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

(c) An applicant has committed unlawful action as defined in this Chapter within twelve (12) months previous to the issuance for a permit to convert.

Sec. 41.12. Approval and Issuance of Permit to Convert.

The Superintendent of the Bureau of Building Inspection shall issue a permit to convert, provided that:

(a) The requirements of Section 41.9 have been met;

(b) Evidence of compliance with the requirements of Section 41.10 has been submitted. Satisfactory evidence of compliance may be:

(1) A certification of final completion or permit of occupancy on the replacement housing; or

(2) A receipt from the City Treasurer that the in-lieu payment determined by the Department of Real Estate has been received; and

(3) Evidence of compliance with the requirements of Section 41.14 herein.

Concurrent with the issuance of a permit to convert, the

Superintendent of the Bureau of Building Inspection shall issue a new certificate of use which shall state the newly certified number of residential units and tourist units.

Sec. 41.13. Appeal of Denial or Approval of Permit to Convert.

(a) Denial or approval of a permit application may be appealed to the Board of Permit Appeals, pursuant to Sections 8 et seq, Part III of the San Francisco Municipal Code.

(b) The owner or operator shall submit a statement under the penalty of perjury that he has notified all the affected permanent residents of his appeal and of the day, time, and place of the hearing before the Board of Permit Appeals seven (7) calendar days prior to the scheduled hearing.

(c) The owner or operator shall have the burden of proving that the determination of the Superintendent of the Bureau of Building Inspection is invalid.

Sec. 41.14. Rights of Permanent Residents and Relocation Assistance.

(a) Rights of Permanent Residents

(1). All permanent residents residing in said building at the time of an application for a permit to convert and thereafter shall be timely informed of all public hearings and administrative decisions concerning said conversion; said notices shall be posted by the owner or operator;

(2) A permanent resident has the right to occupy his/her residential unit for sixty (60) calendar days from

the issuance of the permit to convert;

(3) A permanent resident shall be offered comparable available units in the building, or to any replacement housing provided pursuant to subdivision 41.10(a)(1) or (2); and

(4) All displaced permanent residents are entitled to relocation assistance as provided for in subsection (b) below.

(5) Seven (7) calendar days prior to the filing of an application for a permit to convert, the owner or operator shall notify, in writing, by personal service, or registered or certified mail, every permanent resident affected by the proposed conversion of his/her intent to convert designated units.

(5) The notification required by subsection (4) above shall also inform the permanent residents of their rights under subsections (1) through (3) above.

(b) Relocation Assistance

(1) A permanent resident, who as a result of the conversion of his/her unit must relocate off site, shall be reimbursed the actual moving expenses not to exceed three hundred dollars ($300.00) or may consent to be moved by the owner or operator;

(2) A displaced permanent resident shall have the right of first refusal for the rental or leasing of replacement units, if any, provided pursuant to the

provisions of Sections 41.10(a)(1) or 41.10(a)(2);

(3) A permanent resident displaced by partially completed conversion under the provisions of Section 41.6 (c)(3) shall be entitled to a displacement allowance of one thousand dollars ($1,000.00) per displaced person.

Sec. 41.15 Demolition.

(a) This section shall apply only to demolition of buildings pursuant to an abatement order of the Director of Public Works or the Superior Court of the State of California.

(b) Upon submission of an application for a demolition permit, the owner or operator shall post a copy of said application.

(c) Upon notification by the Central Permit Bureau that a demolition permit has been issued, the owner or operator shall post a notice explaining the procedure for challenging the issuance of the demolition permit to the Board of Permit Appeals.

(d) When issued a demolition permit, the owner or operator shall provide written notice of the demolition within ten (10) calendar days of issuance of the permit to each residential permanent resident. Each permanent resident shall be notified in writing of his/her rights to relocation assistance and to occupy the same unit for a period of up to sixty (60) days after issuance of the demolition permit.

(e) The subsequent issuance of a building permit for construction on the demolished site shall be conditioned on the owner or operator's agreement to replace, on a one-for-one basis,

the demolished residential units as required by the provisions of Section 41.10. No building permit shall be issued until the provisions of Section 41.10 have been complied with.

(f) The conditions for issuance of a demolition permit set forth in subsection (e) above shall be recorded by the Bureau of Building Inspection at the time of issuance of the demolition permit in order to provide notice of said conditions to all subsequent purchasers and interested parties.

Sec. 41.16. Unlawful Conversion; Remedies; Fines.

(a) Unlawful Actions

It shall be unlawful to:

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

(2) Rent any residential unit for a daily term of tenancy unless specifically provided for in subsection (3) below.

(3) Offer for rent for non-residential use or tourist use a residential unit except as follows:

(A) A tourist unit may be rented to a permanent resident without changing the legal status of that unit as a tourist unit upon voluntary vacation of that unit by the permanent resident or upon eviction for cause;

(B) A residential unit which is vacant at any time during the period commencing on May 1 and ending on September 30 annually may be rented as a tourist unit, provided that the residential unit was vacant due to voluntary vacation of a permanent resident or was vacant due to lawful eviction for cause after the tenant was accorded all the rights guaranteed by State and local laws during his/her tenancy, and further provided that that residential hotel unit shall immediately revert to residential use on application of a prospective permanent resident.

(b) Hearing Standards to Be Applied

Upon the filing of a complaint by an interested party that an unlawful conversion has occurred and payment of the required fee, the Superintendent of the Bureau of Building Inspection shall schedule a hearing pursuant to the provisions of Section 41.8(b). The Complainant shall bear the burden of proving that a unit has been unlawfully converted. The hearing officer shall consider, among others, the following factors in determining whether a conversion has occurred:

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

(2) Reduction of the basic services provided to a residential hotel unit intended to lead to onversion. For the purpose of this section, basic services are defined as access to common areas and facilities, food service,

housekeeping services and security;

(3) Repeated failure to comply with orders of the Bureau of Building Inspection or the Department of Public Health to correct code violations with intent to cause the permanent residents to voluntarily vacate the premises;

(4) Repeated citations by the Superintendent of the Bureau of Building Inspection or the Department of Public Health of code violations;

(5) Offer of the residential units for non-residential use or tourist use except as provided in this Chapter;

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

(c) Civil Penalties

Where it is determined by the hearing officer and any subsequent appeal therefrom that an unlawful conversion has occurred, a civil penalty of three (3) times the daily rate per day for each unlawfully converted unit from the day the complaint is filed until such time as the living unit reverts to its authorized use, not to exceed the total sum of Five Thousand Dollars ($5,000.00) shall be imposed. A lien in the amount of the civil penalty assessed shall be recorded by the Superintendent of the Bureau of Building Inspection.

(d) Civil Action

A permanent resident injured by any action unlawful under this Chapter shall be entitled to injunctive relief and damages in a civil action. Counsel for the permanent resident shall notify the City Attorney's Office of the City and County of San Francisco of any action filed pursuant to this section. In determining whether an unlawful conversion has occurred, the court may consider, among other factors, those enumerated in Section 41.16(b) of this Chapter.

Sec. 41.17. Annual Review of Residential Hotel Status.

(a) The Department of City Planning shall prepare and submit to the Board of Supervisors an annual status report containing the following:

(1) Current data on the number of residential hotels and the number of residential units in each of the residential hotels in the City and County of San Francisco, including, to the extent feasible, information regarding rents, services provided, and violations of the City's codes;

(2) Current data on the number of residential hotel units converted pursuant to a permit to convert;

(3) Current data on the number of residential hotel units demolished or eliminated due to code abatement proceedings and fire;

(4) Current data on the number of residential hotel units illegally converted;

(5) Current data on the number of replacement housing

units rehabilitated or constructed;

(6) A summary of the enforcement efforts by all City agencies responsible for the administration of this Chapter;

(7) An analysis of the effectiveness of this Chapter relative to the preservation of and construction of low and moderate income housing and the availability of moderately priced tourist units in the City and County of San Francisco.

(b) The Planning, Housing and Development Committee of the Board of Supervisors shall conduct a hearing on the annual report submitted by the Department of City Planning and shall recommend appropriate actions to be taken by the Board of Supervisors.

Sec. 41.18. Construction.

(a) Nothing in this Chapter may be construed to supersede any other lawfully enacted ordinance of the City and County of San Francisco.

(b) Clauses of this Chapter are declared to be severable and if any provision or clause of this Chapter or the application thereof is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of this Chapter.

Approved as to form:

Deputy City Attorney

4512B

June 11, 1981.

Passed for Second Reading
Board of Supervisors, San Francisco
JUN 8 1981

Ayes: Supervisors ~~Britt~~ Dolson, Hongisto, Kennedy, Kopp, Molinari, Nelder, Renne, Silver, ~~Walker~~ Ward.

Noes: Supervisors BRITT

Absent: Supervisors WALKER

Clerk

162-81-4
File No.

Approved

Mayor

Read Second Time and Finally Passed
Board of Supervisors, San Francisco

Ayes: Supervisors Britt, Dolson, Hongisto, Kennedy, Kopp, Molinari, Nelder, Renne, Silver, Walker, Ward.

Noes: Supervisors

Absent: Supervisors

I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco.

Clerk

Passed for Second Reading
Board of Supervisors, San Francisco
JUN 15 1981

Ayes: Supervisors ~~Britt~~ Dolson, Hongisto, Kennedy, Kopp, Molinari, Nelder, Renne, Silver, ~~Walker~~ Ward.

Noes: Supervisors BRITT, WALKER

~~Absent: Supervisors~~

Clerk

162-81-4
File No.

JUN 22 1981
Approved

Read Second Time and Finally Passed
Board of Supervisors, San Francisco
JUN 22 1981

Ayes: Supervisors ~~Britt~~ Dolson, Hongisto, Kennedy, Kopp, Molinari, Nelder, Renne, ~~Walker~~ Ward.

Noes: Supervisors BRITT, WALKER

Absent: Supervisors SILVER

I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco

Clerk

Mayor

CALIFORNIA SUPERIOR COURT

CITY AND COUNTY OF SAN FRANCISCO

DEPARTMENT NUMBER TEN

TERMINAL PLAZA CORPORATION, a California corporation,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO, et al.,

Defendants.

JIM PARODI and CHINATOWN COALITION FOR BETTER HOUSING,

Intervenors.

No. 786779

TENTATIVE DECISION

Portions of this case were argued in Court on August 4, 1982, and the matter was thereafter submitted on briefs on October 18, 1982. The case involves several challenges to the validity of the Residential Hotel Unit Conversion and Demolition Ordinance, hereafter referred to as "Residential Conversion Ordinance". The ordinance is an amendment of Chapter 41 of the San Francisco Municipal Code, which prohibits the conversion of rooms in various hotels

throughout the city from permanent or periodic residential use by elderly and economically disadvantaged persons to use as transient overnight accommodations for tourists. Over 26,000 living units defined as "Residential Hotel Units" were essentially frozen in that status after September 23, 1979. The ordinance establishes data collection, verification and reporting procedures for the regulated hotels by which the Bureau of Building Inspection can insure that the net unit count is not decreased without the prior issuance of a Conversion Permit.

Conditions precedent to the issuance of a Conversion Permit include relocation assistance for displaced permanent tenants and the creation of replacement housing or payment of certain sums "in lieu" thereof.

The plaintiffs allege that the ordinance in effect creates a new land use classification and, consequently, falls within the mandate of City Charter section 7.501 which requires that all matters relating to zoning and the use of land and structures within the city be heard and considered by the Planning Commission. The Court finds that the Residential Conversion Ordinance regulates and controls the use or related aspects of buildings and land. Adoption of the ordinance without it first having been submitted to the Planning Commission for hearings and consideration, therefore, resulted in a violation of the City's charter. The adoption of the ordinance having been procedurally defective, plaintiffs' request for injunctive relief will be granted, prohibiting enforcement of the Residential Conversion Ordinance until such time as the Board of Supervisors takes action consistent with the findings and opinions expressed herein.

Plaintiffs further allege that it cannot be seen with

certainty that the implementation of the ordinance will create no possibility of a significant impact on the environment. The replacement housing requirement in itself creates the possibility of a significant impact on the physical environment. Since the ordinance has been determined to be a land use regulation, it qualifies as a "project" within the meaning of 14 Calif. Admin. Code section 15037(a) (1) and (c). Because the exercise of discretion is required in the process through which a Conversion Permit is issued, the ordinance constitutes a discretionary project requiring at least an initial study. Failure to undertake such a study violated the provisions of the California Environmental Quality Act, hereinafter referred to as "CEQA".

Plaintiffs allege that the replacement housing requirement is in effect a conversion tax and, as such, constitutes a "special tax" adopted in violation of Article XIIIA of the state constitution. The Court has determined that the replacement requirement does not constitute such a tax, and, even if it did, it would not be a "special tax" within the meaning or contemplation of Article XIIIA.

As to the plaintiffs' two remaining allegations, the Court finds that on its face the ordinance does not violate state or federal constitutional requirements regarding Due Process and Equal Protection. Facts and arguments which would permit the determination of whether those rights are violated by the ordinance in its application are not before this Court.

I.

Section 7.501 of the City Charter provides in pertinent part that the Planning Commission shall consider and hold hearings on proposed ordinances and amendments thereto regulating or controlling, among other things, the "use or related aspects of any

building or structure or land, including but not limited to the zoning ordinance." San Francisco Planning Code section 102.24 defines "use" as "the purpose for which land or a structure, or both, are designed, constructed, arranged, or intended, or for which they are occupied or maintained, let or leased."

The Residential Conversion Ordinance regulates the purposes for which certain hotels may be occupied or maintained. Those establishments which have been determined pursuant to section 41.5 of the ordinance to contain residential hotel units, must continue to offer that type of occupancy to persons meeting the low-income criteria defined in section 41.4 until relieved of that obligation through compliance with one of the relevant provisions of the ordinance. The Residential Conversion Ordinance requires that units so designated be maintained for the purpose of providing low-income housing. The ordinance, therefore, regulates the use of those structures falling within its ambit.

The ordinance regulates and controls the purpose for which certain hotel units may be <u>let</u>. Those units classified as residential hotel units may be let only for the purpose of providing permanent residences for qualified low income persons. Once thus defined, the unit may not be let for another purpose, specifically for overnight transient tourist accommodation, without first obtaining a Conversion Permit pursuant to section 41.6.

Defendants argue that the ordinance in essence only regulates the economic relationship between certain parties who may occupy the positions of landlord and tenant or master leaseholder with respect to each other. The ordinance, however, actually creates new rights in the tenants of residential hotel units, and specifies

the conditions under which those rights can be abrogated. The obligations placed on residential hotel landlords by the ordinance are based on the Board of Supervisors' finding of necessity in the public interest, and are argued by the City to be a valid exercise of the City's police power in the protection of the public health, safety and morals. Defendants urge that the ordinance regulates a segment of the hotel business community, that it does not alter the areas in which such a business may be conducted, and, therefore, does not constitute a land use regulation.

It has been recognized, however, that an ordinance regulating a business under the general police power may also constitute a land use regulation under the narrower and more specific standards of zoning law. City of Escondido v. Desert Outdoor Advertising, Inc. (1974), 8 Cal.3d 785. In the case at bar, the ordinance not only has the effect of regulating and controlling the use of certain properties, it also contains mechanisms which are tantamount to land use regulations, such as a Conditional Use Permit.

The Conversion Permit required by section 41.6 has the same major elements as the typical Conditional Use Permit. It applies to a specific parcel of property, allowing a specific use, for a specific purpose, under specific conditions. (See California Land Use Regulations by Longtin, section 2.112[1] p. 229; analyzing Essick v. City of Los Angeles (1950), 34 Cal.3d 614.622.) The requirement that such a permit be obtained prior to changing a unit from a residential to a tourist use applies to specific parcels within zoning districts throughout the city which permit hotel,motel and certain group housing uses as defined in sections 209.2 and 216 of the Planning Code. The specific use permitted is for overnight

accommodations, and the specific purpose is for catering to the city's tourist trade, as opposed to meeting the demand for housing. Among the specific conditions precedent to the issuance of a conversion permit is proof of compliance with the replacement housing requirement of section 41.7 of the ordinance. This latter requirement alone could bring a would-be converter fully within the purview of the zoning ordinance and require approval by the planning commission. The primary distinction between the conditional use permit and the conversion permit is that the latter is required in order to change or to discontinue an existing use, rather than to initially put a property or structure to a particular use.

Looking thus at the overall effect of the Residential Conversion Ordinance, it is determined that the ordinance regulates and controls the use or related aspects of buildings and land in addition to its impacts on the conduct of certain hotel businesses.

II.

Further support for the proposition that the Charter requires submission of the Residential Conversion Ordinance to the Planning Commission for consideration may be found in section 7.500 of the Charter and in section 175 of the Planning Code. Charter section 7.500 provides that: "no permit or license that is dependent on or affected by the zoning, set-back or other ordinances of the city or county administered by the city planning department shall be issued except on prior approval of the city planning commission." While the Residential Conversion Ordinance is administered by the Bureau of Building Inspection, issuance of a Conversion Permit is affected by the Planning Code. The relevant section thereof states: "no application for a building permit or other permit or license,

or for a Permit of Occupancy, shall be approved by the Department of City Planning, and no permit or license shall be issued by any city department, which would authorize a new use, a change of use or maintenance of an existing use of any land or structure contrary to the provisions of this code. (emphasis added.)

The residential hotel unit is no longer a use within the definition of Hotel in Planning Code section 209.2 (e) or 216(b) since it is not "offered primarily for the accommodation of transient overnight guests." Such use is in fact prohibited. The use which it most closely resembles is Group Housing, defined in sections 209.2(a) and 216(a) as: "providing lodging or both meals and lodging, without individual cooking facilities, by prearrangement for a week or more at a time and housing six or more persons in a space not defined by this code as a dwelling unit." The "living units" referred to in the ordinance are characterized by the lack of cooking facilities.

The various "R" and "C" zones in which hotel or group housing uses are permitted as principal uses or conditional uses vary significantly. To allow the Bureau of Building Inspection to issue a permit for a change from a residential to a commercial use within a zone permitting either, but under different conditions, would be to allow the issuance of a permit covered by section 175 contrary to the provisions of the Planning Code relating to use changes.

The Court need not determine whether the residential hotel unit constitutes a new land use classification, and specifically rejects the plaintiffs' contention that the ordinance effects a "reclassification of property" under City Charter section 7.501.

As used there, that phrase is parenthetically qualified by "change in district boundaries". Such is clearly not the case here.

As the intervenors observed in referring to Miller v. Board of Public Works (1925), 195 Cal.477 486, zoning regulations are enactments that divide a city into districts and impose restrictions on real estate within each prescribed district or zone. The restrictions fall within two classes: (1) those which regulate the height or bulk of buildings within certain designated districts - in other words, those regulations which have to do with the structural and architectural designs of the buildings, and (2) those which prescribe the use to which buildings within certain designated districts may be put. The Residential Conversion Ordinance does not affect the boundaries of any designated use district, but does regulate and control uses within those districts which permit the conduct of hotel and group housing businesses. Consequently, it constitutes a land use regulation and should have been referred to the City Planning Commission prior to its adoption by the Board of Supervisors. As the court observed in City of Escondido v. Desert Outdoor Advertising, Inc., supra, 790, "We emphasize that ordinarily municipalities must follow statutory or charter zoning procedures strictly whenever they propose a substantial interference with land use, for such procedures are constitutionally mandated to insure that private property owners receive due process of law." C.f. Taschner v. City Council (1973), 31 Cal.App.3d 48.

III.

Having thus determined that the Residential Conversion

Ordinance is a land use regulation, it may also be determined that, as such, the ordinance constitutes a "project" within the meaning of Public Resources Code section 21080 and 14 Cal.Admin.Code 15037 (a)(1) requiring at least an initial environmental evaluation. The Planning Department's finding pursuant to 14 California Administrative Code section 15060 that it could be seen with certainty that there is no possibility that the ordinance would have a significant impact on the environment is without foundation. While it is argued that the ordinance merely maintains the status quo and therefore is neutral in its environmental impact, the one-for-one replacement housing required for issuance of a Conversion Permit creates the very real possibility of a significant environmental impact. This impact is magnified by its cumulative potential.

Prior to the enactment of the current ordinance, sections 21100 and 21151 of the Public Resources Code were amended to restrict the consideration of environmental impacts to physical conditions. Considering the scarcity of undeveloped property within the city and the limited opportunities for creating replacement housing without increasing the density of urban development, a physical impact would appear to be presented to which some study should be given. The necessity and desirability of an environmental document's informational use where serious public controversy exists has been stressed as an integral element in the analytical process of CEQA. No Oil Inc. v. City of Los Angeles (1974), 13 Cal.3d 68.

It may be assumed that some of those hotel owners whose

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properties fall within the ambit of the Residential Conversion Ordinance will seek a Conversion Permit. The issuance of that permit involves various actions requiring the exercise of discretion. (See San Diego Trust and Savings Bank v. Friends of Gil (1981), 121 Cal.App.3d 203, 211.) Although much of the regulation required by the ordinance is ministerial in nature, the combination of both ministerial and discretionary elements requires that the ordinance be deemed to be discretionary and therefore subject to CEQA review. People v. Dept. of H.C.D. (1975), 45 Cal.App.3d 185, 194. At a minimum, the ordinance should receive an initial study to determine whether a Negative Declaration or a full E.I.R. is required.

Finally, the plaintiffs are not barred from an attack on the city's failure to undertake an environmental review. The current ordinance under review by this Court was passed in June of 1981 and became effective the following month. Plaintiff's complaint was filed in October of 1981 and is therefore within the 180-day limitation period contained in Public Resources Code section 21167(a). California Mfrs. Assn. v. Industrial Welfare Com. (1980), 109 Cal.App.3d 95.

IV.

The plaintiff's argument that the Residential Conversion Ordinance violates Article XIIIA of the California Constitution is based on the premise that the replacement housing requirement is actually a conversion tax, and as such, constitutes a "special tax" adopted without the two-thirds vote of San Francisco's citizenry required by that article.

The general means for determining whether a governmental

ENVIRONMENTAL EVALUATION CHECKLIST
(Initial Study)

File No: 83.52E Title: Residential Hotel Ordinance

Street Address: City-wide Assessor's Block/Lot: Various

Initial Study Prepared by: Ginny Puddefoot

A. COMPATIBILITY WITH EXISTING ZONING AND PLANS. Could the project:	YES	NO	DISCUSSE
1. Require a variance, special authorization, or change to the City Planning Code or Zoning Map?		✓	
*2. Conflict with the Comprehensive Plan of the City and County of San Francisco?		✓	✓
*3. Conflict with any other adopted environmental plans and goals of the City or Region?		✓	
B. ENVIRONMENTAL EFFECTS. Could the project:			
1. Land Use			
*a. Disrupt or divide the physical arrangement of an established community?		✓	✓
b. Have any substantial impact upon the existing character of the vicinity?		✓	✓
2. Visual Quality			
*a. Have a substantial, demonstrable negative aesthetic effect?		✓	
b. Substantially degrade or obstruct any scenic view or vista now observed from public areas?		✓	
c. Generate obstrusive light or glare substantially impacting other properties?		✓	
3. Population			
*a. Induce substantial growth or concentration of population?		✓	✓
*b. Displace a large number of people (involving either housing or employment)?		✓	✓
c. Create a substantial demand for additional housing in San Francisco, or substantially reduce the housing supply?		✓	✓
4. Transportation/Circulation			
*a. Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system?		✓	✓
b. Interfere with existing transportation systems, causing substantial alterations to circulation patterns or major traffic hazards?		✓	✓

* Derived from State EIR Guidelines, Appendix G, normally significant effect.

ED3.11, 12/82

	YES	NO	DISCUSSED
c. Cause a substantial increase in transit demand which cannot be accommodated by existing or proposed transit capacity?	—	✓	✓
d. Cause a substantial increase in parking demand which cannot be accommodated by existing parking facilities?	—	✓	✓
5. Noise			
*a. Increase substantially the ambient noise levels for adjoining areas?	—	✓	—
b. Violate Title 25 Noise Insulation Standards, if applicable?	—	✓	—
c. Be substantially impacted by existing noise levels?	—	✓	—
6. Air Quality/Climate			
*a. Violate any ambient air quality standard or contribute substantially to an existing or projected air quality violation?	—	✓	—
*b. Expose sensitive receptors to substantial pollutant concentrations?	—	✓	—
c. Permeate its vicinity with objectionable odors?	—	✓	—
d. Alter wind, moisture or temperature (including sun shading effects) so as to substantially affect public areas, or change the climate either in the community or region?	—	✓	—
7. Utilities/Public Services			
*a. Breach published national, state or local standards relating to solid waste or litter control?	—	✓	—
*b. Extend a sewer trunk line with capacity to serve new development?	—	✓	—
c. Substantially increase demand for schools, recreation or other public facilities?	—	✓	—
d. Require major expansion of power, water, or communications facilities?	—	✓	✓
8. Biology			
*a. Substantially affect a rare or endangered species of animal or plant or the habitat of the species?	—	✓	—
*b. Substantially diminish habitat for fish, wildlife or plants, or interfere substantially with the movement of any resident or migratory fish or wildlife species?	—	✓	—
c. Require removal of substantial numbers of mature, scenic trees?	—	✓	—
9. Geology/Topography			
*a. Expose people or structures to major geologic hazards (slides, subsidence, erosion and liquefaction).	—	✓	—
b. Change substantially the topography or any unique geologic or physical features of the site?	—	✓	—

	YES	NO	DISCUSSED
10. Water			
*a. Substantially degrade water quality, or contaminate a public water supply?		✓	
*b. Substantially degrade or deplete ground water resources, or interfere substantially with ground water recharge?		✓	
*c. Cause substantial flooding, erosion or siltation?		✓	
11. Energy/Natural Resources			
*a. Encourage activities which result in the use of large amounts of fuel, water, or energy, or use these in a wasteful manner?		✓	
b. Have a substantial effect on the potential use, extraction, or depletion of a natural resource?		✓	
12. Hazards			
*a. Create a potential public health hazard or involve the use, production or disposal of materials which pose a hazard to people or animal or plant populations in the area affected?		✓	
*b. Interfere with emergency response plans or emergency evacuation plans?		✓	
c. Create a potentially substantial fire hazard?		✓	
13. Cultural			
*a. Disrupt or adversely affect a prehistoric or historic archaeological site or a property of historic or cultural significance to a community or ethnic or social group; or a paleontological site except as a part of a scientific study?		✓	
*b. Conflict with established recreational, educational, religious or scientific uses of the area?		✓	
c. Conflict with preservation of any buildings of City landmark quality?		✓	
C. OTHER			
Require approval of permits from City Departments other than DCP or BBI, or from Regional, State or Federal Agencies?	✓		✓

	YES	NO	N/A	DISCUSSE
D. MITIGATION MEASURES				
1. If any significant effects have been identified, are there ways to mitigate them?			✓	
2. Are all mitigation measures identified above included in the project?			✓	

ED3.11, 12/82

E. MANDATORY FINDINGS OF SIGNIFICANCE

	YES	NO	DISCUSSED
*1. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or pre-history?		✓	
*2. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?		✓	
*3. Does the project have possible environmental effects which are individually limited, but cumulatively considerable? (Analyze in the light of past projects, other current projects, and probable future projects.)		✓	✓
*4. Would the project cause substantial adverse effects on human beings, either directly or indirectly?		✓	
*5. Is there a serious public controversy concerning the possible environmental effect of the project?		✓	

F. ON THE BASIS OF THIS INITIAL STUDY:

✓ I find the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared by the Department of City Planning.

_____ I find that although the proposed project could have a significant effect on the environment, there WILL NOT be a significant effect in this case because the mitigation measures, numbers _____, in the discussion have been included as part of the proposed project. A NEGATIVE DECLARATION will be prepared.

_____ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

Alec S. Bash

Alec S. Bash
Environmental Review Officer

for

Dean L. Macris
Director of Planning

Date: April 15, 1983

FILE

City and County of San Francisco **Department of City Planning**

May 5, 1983

William A. Falik
Hodge, Falik & Dupree
300 Montgomery Street, Suite 1200
San Francisco, CA 94104

Re: 83.52E, Residential Hotel Conversion Ordinance

Dear Mr. Falik:

We have received your letter of April 27, 1983, concerning the subject project. On April 15, 1983 the Department prepared a preliminary negative declaration and posted that determination at its offices, advertised the determination in the San Francisco Progress, and mailed the document to a number of interested organizations.

Apparently you were not on our mailing list for this determination. Although the 10-day period for an appeal specified in San Francisco Administrative Code Section 31.24(d) has passed, clearly Terminal Plaza Corporation is an interested party. Accordingly, we have consulted with the City Attorney's Office as to whether your letter may be accepted as an appeal. Under these special circumstances we will agree to consider your letter as an appeal, provided that you remit the $35 fee specified in Administrative Code Section 31.46(a)3. This fee must be received by the Department prior to a public hearing on the appeal.

We have calendared the public hearing before the City Planning Commission on this matter for May 12, 1983 at 3:30 P.M. in Room 282, City Hall.

Please do not hesitate to call me or Ginny Puddefoot of this Department if you have any questions concerning this matter.

Sincerely,

Alec S. Bash

Alec S. Bash
Environmental Review Officer

cc: Alice Barkley, Deputy City Attorney

ASB/11

Regarding the amounts of services used by residential hotel tenants, this represents no change in current conditions and therefore does not constitute a substantial adverse change in environmental conditions. This is discussed in the preliminary negative declaration on pages 2 and 3.

As you know, these and other issues related to the Ordinance will be the subject of a public hearing before the City Planning Commission on May 19, 1983 at 7:00 PM in Room 282 of City Hall.

Please contact me or Ginny Puddefoot of this Department if you have questions regarding the above.

Sincerely,

Alec S. Bash
Environmental Review Officer

cc: Alice Barkley
Ginny Puddefoot
Robert D. Links

ASB:GP:rsl

One concern raised is that the ordinance would generate increased demands for urban services used by residential hotel tenants. This is not the case. The amounts of services used by residential hotel tenants will not change as a result of the ordinance. Inasmuch as the ordinance would not change any existing uses, it would not have any direct environmental impacts.

A second concern raised is that the one-for-one replacement housing provision of the ordinance would generate significant numbers of replacement units. Past experience with the ordinance in effect has shown that this is not true. In the three and a half years since some form of the ordinance was adopted, only two proposals to convert have been presented. Neither of these has resulted in construction of new residential hotels.

A third concern raised is that the ordinance would create a shortage of affordable hotel units in San Francisco. Currently there is no shortage of affordable hotel units in the City. Vacancy rates for moderately priced hotel rooms have risen from 13 percent in 1979 to 33 percent in 1982. However, any shortage of hotel units or increase in hotel rates, were they to occur, would not in themselves be physical environmental issues and, therefore, are not subject to CEQA.

FILE NO._____ ORDINANCE NO._____

ADOPTING FINAL NEGATIVE DECLARATION, FINDING AND DETERMINING THAT AMENDMENT OF THE ADMINISTRATIVE CODE CONCERNING RESIDENTIAL HOTEL UNIT CONVERSIONS AND DEMOLITIONS WILL HAVE NO SIGNIFICANT IMPACT ON THE ENVIRONMENT, AND ADOPTING AND INCORPORATING FINDINGS OF FINAL NEGATIVE DECLARATION.

WHEREAS, On April 15, 1983, the Department of City Planning issued a preliminary negative declaration 83.52E, for the proposed amendment of the Administrative Code concerning residential hotel unit conversions and demolitions, and

WHEREAS, On April 27, 1983, the preliminary negative declaration 83.52E for the proposed amendment was appealed to the City Planning Commission and that said Commission approved the issuance of the negative declaration with modification; and

WHEREAS, On , this Board of Supervisors received a copy of the final negative declaration 83.52E issued by the Department of City Planning; and

WHEREAS, This Board has conducted a public hearing on the matter of adoption of the final negative declaration, prior to consideration of the proposed amendment of the Administrative Code concerning residential hotel unit conversions and demolitions; now, therefore be it

RESOLVED, That this Board of Supervisors has considered and reviewed the final declaration and adopts said final negative declaration; and be it

FURTHER RESOLVED, That this Board of Supervisors hereby finds and determines that the proposed adoption of an ordinance amending the Administrative Code with respect to residential hotel unit conversions and demolitions will have no significant impact on the environment; and be it

FURTHER RESOLVED, That this Board of Supervisors adopts and incorporates herein by reference the findings of the final negative declaration, 83.52E, issued by the Department of City Planning on June 23, 1983, a copy of which is on file with the Clerk of the Board of Supervisors.

RECOMMENDED:
CITY PLANNING COMMISSION

By Dean L. Macris
Dean L. Macris
Director of Planning

BOARD OF SUPERVISORS

DRAFT

Residential Hotel Conversion & Demolition Ordinance
June 23, 1983

File No. 83.52E
Motion No. M

MOTION

ADOPTING FINDINGS RELATED TO THE APPEAL OF THE NEGATIVE DECLARATION, FILE NO. 83.52E, FOR THE PROPOSED ADDITION OF CHAPTER 41 TO THE SAN FRANCISCO ADMINISTRATIVE CODE, COMMONLY REFERRED TO AS THE RESIDENTIAL HOTEL CONVERSION AND DEMOLITION ORDINANCE ("PROJECT"), WHICH REGULATES THE CONVERSION AND DEMOLITION OF RESIDENTIAL HOTELS.

MOVED, that the San Francisco Planning Commission ("Commission") hereby AFFIRMS the decision to issue a Negative Declaration, with modifications to the text of the preliminary Negative Declaration, based on the following findings:

1. On February 9, 1983, pursuant to the provisions of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines, and Chapter 31 of the California Administrative Code, the Department of City Planning ("Department") began an initial evaluation to determine whether the Residential Hotel Conversion and Demolition Ordinance (hereinafter "Project") might have a significant impact on the environment.

2. On April 15, 1983, the Department determined, based on an Initial Study, that the Project could not have a significant effect on the environment.

3. On April 15, 1983, a notice of determination that a Preliminary Negative Declaration would be issued for the Project was duly published in a newspaper of general circulation in the City, was posted in the Department offices, and was mailed to a number of interested parties, all in accordance with law.

4. On April 27, 1983, an appeal of the decision to issue a Negative Declaration was filed by William Falik, on behalf of Terminal Plaza Corporation.

5. On May 19, 1983, the Commission held a duly noticed and advertised public hearing on the appeal of the Negative Declaration and at its conclusion, closed the public hearing and continued the matter to June 2, 1983 for decision.

6. The Preliminary Negative Declaration has been amended to correct typographical error, to make correct reference to the newly adopted Residence Element of the Master Plan, and to correct the description of the amendments to the Project.

7. The Residence Element of the Comprehensive Plan is specific in its goal of preserving residential hotels. Objective 3, Policy 1 seeks to "Discourage the demolition of existing housing"; Policy 2 expresses the need to "Restrict the conversion of housing in commercial and industrial areas"; and Policy 3 calls for "Preserv(ing) the existing stock of residential hotels."

8. The Project would not change any existing uses; it would not have any environmental impacts. The amounts of services (transit, gas, water, electricity, medical, safety, etc.) used by residential hotel tenants would not change as a result of the Project. Therefore, this Project would not cause a substantial adverse change in environmental conditions.

9. The Board of Supervisors first established interim regulations on the conversion and demolition of residential hotel units in November, 1979. The Project is identical to Ordinance No. 331-81, which was adopted in June, 1981, and has been in continuous effect since that date.

10. Past experience with Ordinance No. 331-81 and its predecessors has shown that the one-for-one replacement housing provision does not generate significant numbers of replacement units. In the three and a half years since some form of the Ordinance was adopted, only two proposals to convert have been presented. Neither of these proposals resulted in the construction of new residential hotels in the city because the project sponsors are utilizing the alternative methods of replacing residential units provided for by the Ordinance The in-lieu fee option will not generate construction of new residential hotel units in that these funds will be more efficiently used for the purpose of rehabilitating existing housing units. Based on this past experience, it is anticipated that the construction of new replacement units, if any, resulting from this Project, would not constitute a significant effect on the environment.

11. Currently, there is no shortage of affordable hotel units in San Francisco. Vacancy rates for moderately priced hotel rooms have risen from 13% in 1979 to 33% in 1982. In addition, the Project provides for the use of vacant residential hotel units as tourist units during the tourist season. The demand for moderately priced hotel units depends on factors, such as economic conditions, that are not land use related. However, any shortage of hotel units or increase in hotel rates, were they to occur, would not in themselves be physical environmental issues, and therefore are not subject to CEQA.

12. The vacancy rates for moderately-priced hotel units both within San Francisco and in San Mateo and Santa Clara counties during the past three and a half years do not indicate any pressure to build hotel units in outlying areas. Since some form of Ordinance No. 331-81 was implemented, there have been no proposals for hotels in outlying areas of San Francisco other than those proposed in established tourist areas. Hotels in outlying areas near the San Francisco International Airport have been predominantly used by corporate business and convention travelers and are chosen because of their proximity to the airport. Based on the above, it is concluded that the Project would not cause the construction of new moderately priced hotel units in outlying areas, and therefore would not have a significant environmental effect.

13. There is no indication that any form of Ordinance 331-81 has resulted in a trend toward tourist hotel construction in outlying areas. In addition, tourists tend to travel during non-peak periods of the day when transit and street systems are not near capacity. Therefore, there is no evidence that the Project will have an effect on traffic congestion and transit from outlying areas, and the Project could not have significant transportation effects.

14. In reviewing the Negative Declaration issues for the Project, the Commission has had available for its review and consideration all studies, letters, plans and reports pertaining to the Project in the Department's case file.

15. The City Planning Commission HEREBY DOES FIND that the proposed Project could not have a significant effect on the environment and HEREBY DOES AFFIRM the decision of the Department of City Planning to issue a Negative Declaration, as amended.

NEGATIVE DECLARATION

Date of Publication of
Preliminary Negative Declaration: April 15, 1983

Lead Agency: City and County of San Francisco, Department of City Planning, 450 McAllister St. - 5th Floor, San Francisco, CA 94102

Agency Contact Person: Ginny Puddefoot Tel: (415) 558-5261

Project Title: 83.52E: Residential Hotel Conversion and Demolition Ordinance

Project Sponsor: Board of Supervisors

Project Contact Person: Robert Passmore

Project Address: City and County of San Francisco

Assessor's Block(s) and Lot(s): Various

City and County: San Francisco

Project Description: The proposed project is the addition to the San Francisco Administrative Code of Chapter 41, commonly referred to as the Residential Hotel Conversion and Demolition Ordinance, which regulates the conversion and demolition of residential hotels.

THIS PROJECT COULD NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT. This finding is based upon the criteria of the Guidelines of the State Secretary for Resources, Sections 15081 (Determining Significant Effect), 15082 (Mandatory Findings of Significance) and 15084 (Decision to Prepare an EIR), and the following reasons as documented in the Initial Evaluation (Initial Study) for the project, which is attached:

See Attached

Mitigation measures, if any, included in this project to avoid potentially significant effects:

None

Final Negative Declaration adopted and issued on June 23, 1983, as amended

cc: Robert Passmore
Dan Sullivan
Joe Fitzpatrick
George Williams
Lois Scott
Mike Estrada
Alice Barkley
Paul Wartelle
Distribution List
DCP Bulletin Board
Board Of Supervisors

Allen S. Bash

Allec Bash, Environmental Review Officer

Negative Declaration
Hotel Conversion Ordinance

The proposed project is the addition of Chapter 41 to the San Francisco Municipal Code, commonly referred to as the Residential Hotel Conversion and Demolition Ordinance (hereinafter "Ordinance"), which regulates the conversion and demolition of residential hotels.

The Ordinance is city-wide in scope. While residential hotels exist throughout the City, they are concentrated in three major sub-areas of the Citi: Chinatown/North Beach, Union Square/ North of Market, and South of Market. Over two-thirds of all residential hotel units in San Francisco are in these three general areas. Eighty-six percent (86%) are located in commercially-zoned districts.

The Board of Supervisors first established interim regulations on the conversion and demolition of residential hotel units in November, 1979. The Ordinance in its present form (Ordinance No. 331-81) was adopted in June, 1981. Ordinance No. No. 331-81 was declared invalid by the Superior Court because its adoption was procedurally defective. The Superior Court stayed enforcement of its order until July 29, 1983 in order that the City may reconsider adoption of a similar ordinance.

The Ordinance is consistent with the Residence Element of the San Francisco Master Plan, and particularly addresses the following: Objective 3, Policy 1: "Discourage the demolition of existing housing.", Policy 2: "Restrict the conversion of housing

in commercial and industrial areas.", and Policy 3: "Preserve the existing stock of residential hotels."

The Ordinance seeks to maintain uses that currently exist. Inasmuch as the Ordinance will not change any existing uses, it would not have any direct environmental impacts. The environmental effects of the Ordinance, if any, are limited to the following potential indirect effects:

1. The construction of new residential hotels to replace residential hotel units to be converted or demolished, and

2. The construction of new medium priced tourist hotels in the City as a result of stringent regulations against conversion or demolition of existing residential hotel units.

Residential hotels and tourist hotels are permitted as Conditional Uses in RC (Residential-Commercial, Combined) Districts. They are permitted as principal uses in all commercial districts with the exception of Special Use Districts where a Special Use permit may be required. Motels, as defined in Section 216(c) and (d) of the City Planning Code, are permitted as principal uses in C-1 Districts provided that the entrance to the motel is within 200 feet of and immediately accessible from a major thoroughfare as designated in the Master Plan. They are permitted as principal uses in C-2 (Community Business), C-3-G (Downtown General Commercial), C-3-S (Downtown Support), and C-M (Heavy Commercial) Districts (again, with the exception of Special Use Districts). Under the present Planning Code, new residential hotels may be constructed in any of the aforementioned districts

throughout the City. As will be fully discussed below, the potential environmental effects, however, would be negligible.

Almost one-third (1/3) of the tenants residing in residential hotel units are elderly (61 years or older); twenty-six percent (26%) of this population consists of minority households; and one in five of these residential tenants are physically disabled. Therefore, residential hotel tenants have a lower rate of car ownership and generate less vehicular traffic and off-street parking demand. This segment of the population also generate fewer trips than any other residential dwellers because of less social activity. Because of the high percentage of elderly and disabled households among this population, they tend to travel in non-peak hours. Thus, they do not contribute to the peak hour traffic or affect existing Muni peak hour services. Any replacement housing constructed would not increase usage of energy, water and other City services. In fact, energy usage should decrease because the existing residential hotel structures are old and are not energy efficient; new residential hotel structures, which must comply with new State energy standards, would be much more energy efficient.

Since the City has adopted some form of control on the conversion of residential hotel units, only two proposals to convert have been presented. These two proposals would result in a conversion of a total of 70 units from residential hotel use to nonresidential (tourist hotel) use. Neither of these proposals will result in the construction of new residential hotels in the

city because one of the developers will use the in-lieu fee contribution provision, and the other proposal involves apartment rehabilitation. Based on past experience, it is anticipated that the construction of new replacement units would be at a minimum with minimum attendant impacts on the physical environment. Since the Ordinance provides for alternative methods of replacing residential units which are proposed to be converted or demolished, quantification of new residential hotel construction would be, at best, speculative.

Turning to the effect of the Ordinance on the potential construction of new tourist hotels, the Department concludes that its effects are equally impossible to quantify because: (1) the Ordinance provides for the use of vacant residential hotel units as tourist units during the tourist season and (2) the demand of moderately priced hotel units depends on factors which are not land use related; such as, financing and other economic conditions. An examination of the City's permit history over a five-year period from 1975 to 1980, prior to adoption of the Ordinance indicates that about 2,500 residential hotel units were converted to tourist use. Assuming a similar trend, this would mean a demand for construction of about 500 tourist hotel units per year. This assumption is flawed in that it presumes an indefinite increased demand for tourist hotels, whereas the tourist hotel vacancy rate has increased. This increase in vacancy rates is particularly noticeable in moderately priced (under $55 per night) hotels: from a 13% vacancy rate in 1979 to

a high of 33% in 1982. Therefore, any increase in tourists to San Francisco in the near future could be accommodated by the existing tourist hotels.

A review of applications received by the Department of City Planning for the construction of new tourist hotels since 1979 (when regulation of conversion of residential hotel units began) also supports a conclusion that the Ordinance would not lead to massive construction of new moderately priced tourist hotel units. Since November of 1979, a total of 6,666 tourist hotel units have been proposed[1]. Among these proposed tourist hotel rooms, 4,307 units are classified as first-class or deluxe and are located in the downtown area. 636 of these proposed hotel units would fall into the moderately-priced category; a majority of these are located along the Lombard Street corridor and in Fisherman's Wharf. No proposals were received for hotels in other outlying commercial areas; and no motel proposals were received. Therefore, it is concluded that the Ordinance would not give rise to construction of new moderately priced motel or hotel units in the outlying areas of San Francisco.

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[1] Of the approximately 6,700 new tourist hotel rooms, 2,200 rooms would be located at the Yerba Buena Center, 800 rooms at the Rincon Point/South Beach Redevelopment Area, 2,107 rooms in the downtown area, 250 rooms at Fisherman's Wharf, 261 rooms along the Lombard Street corridor, and 125 rooms in a hotel in Van Ness Avenue. Proposals for 923 rooms in the downtown area were withdrawn.

Assuming that new proposals to construct moderately priced hotels and motels would be forthcoming for outlying areas of the City, these proposals would not be concentrated in any particular area. Therefore, the impacts on the physical environment, if any, would depend on the precise location proposed and would be subject to further environmental evaluation. Moreover, any proposals for new tourist hotels or replacement residential hotels must comply with the height, bulk, density, use and other provisions of the City Planning code, which contains provisions designed to ensure compatibility with existing neighborhoods and uses. If, in the future, there are indicia of a trend to construct either moderately-priced tourist hotel units or residential hotel units with potentially significant adverse environment effects on outlying areas, measures could be taken at that time to ensure no adverse changes. These measures could include amendments to the City Planning Code related to parking or the principal permitted uses in C-1, C-2, and RC districts.

All of the known proposed amendments to the Ordinance are merely procedural in nature, affecting only the administration of the Ordinance. Therefore, these procedural amendment proposals would not affect the conclusions stated above.

5473C

The Ordinance and any proposed amendments require approval of the City Planning Commission and the Board of Supervisors.

Given the many other factors that contribute to the demand for tourist hotels, the lack of any newly constructed replacement housing proposals, and the above discussion, the Residential Hotel Conversion and Demolition Ordinance could not have a significant effect on the environment.

Sources:

1. "A Study of the Conversion and Demolition of Residential Hotel Units", prepared for the Board of Supervisors of the City and County of San Francisco by the Department of City Planning, November, 1980.

2. "Report on the Operation of San Francisco's Residential Hotel Conversion and Demolition Ordinance," prepared by the Department of City Planning, February, 1983.

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These reports are on file with the Office of Environmental Review.

3970C

NEGATIVE DECLARATION

Date of Publication of
Preliminary Negative Declaration: April 15, 1983

Lead Agency: City and County of San Francisco, Department of City Planning, 450 McAllister St. - 5th Floor, San Francisco, CA 94102

Agency Contact Person: Ginny Puddefoot Tel: (415) 558-5261

Project Title: 83.52E: Residential Hotel Conversion and Demolition Ordinance

Project Sponsor: Board of Supervisors

Project Contact Person: Robert Passmore

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Assessor's Block(s) and Lot(s): Various

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Mitigation measures, if any, included in this project to avoid potentially significant effects:

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Final Negative Declaration adopted and issued on June 23, 1983, as amended

cc: Robert Passmore
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Board Of Supervisors

Alec Bash, Environmental Review Officer

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Assuming that new proposals to construct moderately priced hotels and motels would be forthcoming for outlying areas of the City, these proposals would not be concentrated in any particular area. Therefore, the impacts on the physical environment, if any, would depend on the precise location proposed and would be subject to further environmental evaluation. Moreover, any proposals for new tourist hotels or replacement residential hotels must comply with the height, bulk, density, use and other provisions of the City Planning code, which contains provisions designed to ensure compatibility with existing neighborhoods and uses. If, in the future, there are indicia of a trend to construct either moderately-priced tourist hotel units or residential hotel units with potentially significant adverse environment effects on outlying areas, measures could be taken at that time to ensure no adverse changes. These measures could include amendments to the City Planning Code related to parking or the principal permitted uses in C-1, C-2, and RC districts.

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5473C

The Ordinance and any proposed amendments require approval of the City Planning Commission and the Board of Supervisors.

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These reports are on file with the Office of Environmental Review.

3970C

August 17, 1983

MEMORANDUM

TO: GINNY PUDDEFOOT

FROM: MIKE ESTRADA

RE: AMENDMENTS TO THE RESIDENTIAL HOTEL CONVERSION AND DEMOLITION ORDINANCE

Attached are the remaining two sets of amendments to the Residential Hotel Ordinance(BOS file #'s 131-82, and 131-82-1). These two sets, plus the two sets that I gave you at our August 10 meeting (BOS file #'s 151-83-2 and 113-83-1), are the complete package of amendments which the CPC must review and pass back to the Board. A quick review of the new amendments indicates that they can all be covered in a Negative Declaration, following the same arguments that we raised at the Aug. 10 meeting. The only potential area of disagreement could be the summer/winter clause(file #131-82-1, Sec. 41.16). I would argue that the change would have no environmental impact, as summer/winter tourist use is still allowed, but would now be limited to only 20% of the residential units in any hotel. Unless someone can document that more than 20% of the residential units (not all the units) in residential hotels, in addition to the existing tourist hotels plus existing tourist units in residential hotels, are needed for the summer, no impact would be generated. Even if one could make the case for such demand, it would be difficult to argue that limiting conversion to 20% of the units would have an impact, such as leading to new construction.

For the purposes of getting this project off the ground, Lois will be including all of the amendments in the Negative Declaration that she will be preparing and submitting for OER review.

cc Williams, Bash, Scott

5295A

ENVIRONMENTAL EVALUATION CHECKLIST
(Initial Study)

File No: 83.600ETT Title: Chinatown-North Beach Residential Hotel Conversion Moratorium

Street Address: Chinatown-North Beach see attached map Assessor's Block/Lot: various-37 blocks

Initial Study Prepared by: Gunny Puddefoot

A. COMPATIBILITY WITH EXISTING ZONING AND PLANS. Could the project:	YES	NO	DISCUSSED
1. Require a variance, special authorization, or change to the City Planning Code or Zoning Map?	✓		✓
*2. Conflict with the Comprehensive Plan of the City and County of San Francisco?		✓	✓
*3. Conflict with any other adopted environmental plans and goals of the City or Region?		✓	
B. ENVIRONMENTAL EFFECTS. Could the project:			
1. Land Use			
*a. Disrupt or divide the physical arrangement of an established community?		✓	✓
b. Have any substantial impact upon the existing character of the vicinity?		✓	✓
2. Visual Quality			
*a. Have a substantial, demonstrable negative aesthetic effect?		✓	
b. Substantially degrade or obstruct any scenic view or vista now observed from public areas?		✓	
c. Generate obstrusive light or glare substantially impacting other properties?		✓	
3. Population			
*a. Induce substantial growth or concentration of population?		✓	✓
*b. Displace a large number of people (involving either housing or employment)?		✓	✓
c. Create a substantial demand for additional housing in San Francisco, or substantially reduce the housing supply?		✓	✓
4. Transportation/Circulation			
*a. Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system?		✓	
b. Interfere with existing transportation systems, causing substantial alterations to circulation patterns or major traffic hazards?		✓	

* Derived from State EIR Guidelines, Appendix G, normally significant effect.

ED3.11, 12/82

	YES	NO	DISCUSSED
c. Cause a substantial increase in transit demand which cannot be accommodated by existing or proposed transit capacity?	___	✓	___
d. Cause a substantial increase in parking demand which cannot be accommodated by existing parking facilities?	___	✓	___
5. Noise			
*a. Increase substantially the ambient noise levels for adjoining areas?	___	✓	___
b. Violate Title 25 Noise Insulation Standards, if applicable?	___	✓	___
c. Be substantially impacted by existing noise levels?	___	✓	___
6. Air Quality/Climate			
*a. Violate any ambient air quality standard or contribute substantially to an existing or projected air quality violation?	___	✓	___
*b. Expose sensitive receptors to substantial pollutant concentrations?	___	✓	___
c. Permeate its vicinity with objectionable odors?	___	✓	___
d. Alter wind, moisture or temperature (including sun shading effects) so as to substantially affect public areas, or change the climate either in the community or region?	___	✓	___
7. Utilities/Public Services			
*a. Breach published national, state or local standards relating to solid waste or litter control?	___	✓	___
*b. Extend a sewer trunk line with capacity to serve new development?	___	✓	___
c. Substantially increase demand for schools, recreation or other public facilities?	___	✓	___
d. Require major expansion of power, water, or communications facilities?	___	✓	___
8. Biology			
*a. Substantially affect a rare or endangered species of animal or plant or the habitat of the species?	___	✓	___
*b. Substantially diminish habitat for fish, wildlife or plants, or interfere substantially with the movement of any resident or migratory fish or wildlife species?	___	✓	___
c. Require removal of substantial numbers of mature, scenic trees?	___	✓	___
9. Geology/Topography			
*a. Expose people or structures to major geologic hazards (slides, subsidence, erosion and liquefaction).	___	✓	___
b. Change substantially the topography or any unique geologic or physical features of the site?	___	✓	___

ED3.11, 12/82

	YES	NO	DISCUSSED
10. Water			
*a. Substantially degrade water quality, or contaminate a public water supply?	—	✓	—
*b. Substantially degrade or deplete ground water resources, or interfere substantially with ground water recharge?	—	✓	—
*c. Cause substantial flooding, erosion or siltation?	—	✓	—
11. Energy/Natural Resources			
*a. Encourage activities which result in the use of large amounts of fuel, water, or energy, or use these in a wasteful manner?	—	✓	—
b. Have a substantial effect on the potential use, extraction, or depletion of a natural resource?	—	✓	—
12. Hazards			
*a. Create a potential public health hazard or involve the use, production or disposal of materials which pose a hazard to people or animal or plant populations in the area affected?	—	✓	—
*b. Interfere with emergency response plans or emergency evacuation plans?	—	✓	—
c. Create a potentially substantial fire hazard?	—	✓	—
13. Cultural			
*a. Disrupt or adversely affect a prehistoric or historic archaeological site or a property of historic or cultural significance to a community or ethnic or social group; or a paleontological site except as a part of a scientific study?	—	✓	—
*b. Conflict with established recreational, educational, religious or scientific uses of the area?	—	✓	—
c. Conflict with preservation of any buildings of City landmark quality?	—	✓	—
C. OTHER			
Require approval of permits from City Departments other than DCP or BBI, or from Regional, State or Federal Agencies?	✓	—	✓

	YES	NO	N/A	DISCUSSED
D. MITIGATION MEASURES				
1. If any significant effects have been identified, are there ways to mitigate them?	—	—	✓	—
2. Are all mitigation measures identified above included in the project?	—	—	✓	—

ED3.11, 12/82

E. MANDATORY FINDINGS OF SIGNIFICANCE

	YES	NO	DISCUSSED
*1. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or pre-history?		✓	
*2. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?		✓	
*3. Does the project have possible environmental effects which are individually limited, but cumulatively considerable? (Analyze in the light of past projects, other current projects, and probable future projects.)		✓	✓
*4. Would the project cause substantial adverse effects on human beings, either directly or indirectly?		✓	
*5. Is there a serious public controversy concerning the possible environmental effect of the project?		✓	

F. ON THE BASIS OF THIS INITIAL STUDY:

✓ I find the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared by the Department of City Planning.

_____ I find that although the proposed project could have a significant effect on the environment, there WILL NOT be a significant effect in this case because the mitigation measures, numbers _____, in the discussion have been included as part of the proposed project. A NEGATIVE DECLARATION will be prepared.

_____ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

Alec S. Bash
Environmental Review Officer
for
Dean L. Macris
Director of Planning

Date: February 16, 1984

ENVIRONMENTAL EVALUATION CHECKLIST
(Initial Study)

File No: 84.564ET/84.236ET Title: Residential Hotel Conversion Ord. Amendme

Street Address: Residential Hotels throughout SF Assessor's Block/Lot: various

Initial Study Prepared by: Catherine Bauman

A. COMPATIBILITY WITH EXISTING ZONING AND PLANS	Not Applicable	Discussed
1) Discuss any variances, special authorizations, or changes proposed to the City Planning Code or Zoning Map, if applicable.	—	✓
*2) Discuss any conflicts with the Comprehensive Plan of the City and County of San Francisco, if applicable.	✓	—
*3) Discuss any conflicts with any other adopted environmental plans and goals of the City or Region, if applicable.	✓	—

B. ENVIRONMENTAL EFFECTS - Could the project:	YES	NO	DISCUSSED
1) Land Use			
*(a) Disrupt or divide the physical arrangement of an established community?	—	✓	—
(b) Have any substantial impact upon the existing character of the vicinity?	—	✓	—
2) Visual Quality			
*(a) Have a substantial, demonstrable negative aesthetic effect?	—	✓	—
(b) Substantially degrade or obstruct any scenic view or vista now observed from public areas?	—	✓	—
(c) Generate obstrusive light or glare substantially impacting other properties?	—	✓	—
3) Population			
*(a) Induce substantial growth or concentration of population?	—	✓	—
*(b) Displace a large number of people (involving either housing or employment)?	—	✓	—
(c) Create a substantial demand for additional housing in San Francisco, or substantially reduce the housing supply?	—	✓	—
4) Transportation/Circulation			
*(a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system?	—	✓	—
(b) Interfere with existing transportation systems, causing substantial alterations to circulation patterns or major traffic hazards?	—	✓	—
(c) Cause a substantial increase in transit demand which cannot be accommodated by existing or proposed transit capacity?	—	✓	—
(d) Cause a substantial increase in parking demand which cannot be accommodated by existing parking facilities?	—	✓	—
5) Noise			
*(a) Increase substantially the ambient noise levels for adjoining areas?	—	✓	—
(b) Violate Title 25 Noise Insulation Standards, if applicable?	—	✓	—
(c) Be substantially impacted by existing noise levels?	—	✓	—

* Derived from State EIR Guidelines, Appendix G, normally significant effect.

4/84

ED 3.11/1

	YES	NO	DISCUSSED
6) Air Quality/Climate			
*(a) Violate any ambient air quality standard or contribute substantially to an existing or projected air quality violation?	—	✓	—
*(b) Expose sensitive receptors to substantial pollutant concentrations?	—	✓	—
(c) Permeate its vicinity with objectionable odors?	—	✓	—
(d) Alter wind, moisture or temperature (including sun shading effects) so as to substantially affect public areas, or change the climate either in the community or region?	—	✓	—
7) Utilities/Public Services			
*(a) Breach published national, state or local standards relating to solid waste or litter control?	—	✓	—
*(b) Extend a sewer trunk line with capacity to serve new development?	—	✓	—
(c) Substantially increase demand for schools, recreation or other public facilities?	—	✓	—
(d) Require major expansion of power, water, or communications facilities?	—	✓	—
8) Biology			
*(a) Substantially affect a rare or endangered species of animal or plant or the habitat of the species?	—	✓	—
*(b) Substantially diminish habitat for fish, wildlife or plants, or interfere substantially with the movement of any resident or migratory fish or wildlife species?	—	✓	—
(c) Require removal of substantial numbers of mature, scenic trees?		✓	
9) Geology/Topography			
*(a) Expose people or structures to major geologic hazards (slides, subsidence, erosion and liquefaction).	—	✓	—
(b) Change substantially the topography or any unique geologic or physical features of the site?	—	✓	—
10) Water			
*(a) Substantially degrade water quality, or contaminate a public water supply?	—	✓	—
*(b) Substantially degrade or deplete ground water resources, or interfere substantially with ground water recharge?	—	✓	—
*(c) Cause substantial flooding, erosion or siltation?	—	✓	—
11) Energy/Natural Resources			
*(a) Encourage activities which result in the use of large amounts of fuel, water, or energy, or use these in a wasteful manner?	—	✓	—
(b) Have a substantial effect on the potential use, extraction, or depletion of a natural resource?	—	✓	—
12) Hazards			
*(a) Create a potential public health hazard or involve the use, production or disposal of materials which pose a hazard to people or animal or plant populations in the area affected?	—	✓	—
*(b) Interfere with emergency response plans or emergency evacuation plans?	—	✓	—
(c) Create a potentially substantial fire hazard?	—	✓	—
13) Cultural			
*(a) Disrupt or adversely affect a prehistoric or historic archaeological site or a property of historic or cultural significance to a community or ethnic or social group; or a paleontological site except as a part of a scientific study?	—	✓	—
(b) Conflict with established recreational, educational, religious or scientific uses of the area?	—	✓	—
(c) Conflict with preservation of any buildings of City landmark quality?	—	✓	—

C. OTHER

	YES	NO	DISCUSSED
Require approval of permits from City Departments other than Department of City Planning or Bureau of Building Inspection, or from Regional, State or Federal Agencies?	—	✓	—

D. MITIGATION MEASURES

	YES	NO	N/A	DISCUSSED
1) If any significant effects have been identified, are there ways to mitigate them?	—	—	✓	—
2) Are all mitigation measures identified above included in the project?	—	—	✓	—

E. MANDATORY FINDINGS OF SIGNIFICANCE

	YES	NO	DISCUSSED
*1) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or pre-history?	—	✓	—
*2) Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?	—	✓	—
*3) Does the project have possible environmental effects which are individually limited, but cumulatively considerable? (Analyze in the light of past projects, other current projects, and probable future projects.)	—	✓	—
*4) Would the project cause substantial adverse effects on human beings, either directly or indirectly?	—	✓	—
*5) Is there a serious public controversy concerning the possible environmental effect of the project?	—	✓	—

F. ON THE BASIS OF THIS INITIAL STUDY

✓ I find the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared by the Department of City Planning.

___ I find that although the proposed project could have a significant effect on the environment, there there WILL NOT be a significant effect in this case because the mitigation measures, numbers _____, in the discussion have been included as part of the proposed project. A NEGATIVE DECLARATION will be prepared.

___ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

Alec S. Bash

ALEC S. BASH
Environmental Review Officer
for

DEAN L. MACRIS
Director of Planning

DATE: 12/18/84

ASB:pr

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NEGATIVE DECLARATION

Date of Publication of Preliminary Negative Declaration: December 28, 1984

Lead Agency: City and County of San Francisco, Department of City Planning, 450 McAllister St. - 5th Floor, San Francisco, CA 94102

Agency Contact Person: Catherine Bauman Tel: (415) 558-5261

Project Title: 84.236ET 84.564ET Amendments to Residential Hotel Conversion Ordinance

Project Sponsor: Board of Supervisors

Project Contact Person: John Taylor

Project Address: Residential Hotels throughout the City

Assessor's Block(s) and Lot(s): various

City and County: San Francisco

Project Description:

Amendments to the Residential Hotel Conversion and Demolition Ordinance affecting definition of interested parites, time limits for compliance, and penalties for violation and other aspects of administration of the Ordinance.

THIS PROJECT COULD NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT. This finding is based upon the criteria of the Guidelines of the State Secretary for Resources, Sections 15081 (Determining Significant Effect), 15082 (Mandatory Findings of Significance) and 15084 (Decision to Prepare an EIR), and the following reasons as documented in the Initial Evaluation (Initial Study) for the project, which is attached:

The project consists of several amendments to Chapter 41 of the San Francisco Administrative Code, commonly refered to as the Residential Hotel Conversion and Demolition Ordinance (hereinafter "Ordinance"), which regulates the conversion of rooms in residential hotels to other uses, including tourist occupancy, and demolition of such rooms. It would affect residential hotels throughout the city.

The Ordinance was adopted in June 1981 in response to concerns about the loss of residential hotels as a housing resource because of the conversion of these hotels to tourist occupancy and other uses. The 1981 ordinance received environmental review, with a final negative declaration (File 83.52E) adopted and issued on June 23, 1983.

The currently proposed amendments to the Ordinance are primarily procedural and administrative in nature. One amendment, File 84.236ET (Board of Supervisors File 113-84-1) would expand the definition of interested parties to include certain non-profit organizations with a demonstrated interest in housing issues.

-over-

Mitigation measures, if any, included in this project to avoid potentially significant effects:

NONE

Final Negative Declaration adopted and issued on January 9, 1985

cc: Katherine Pennypacker, City Attorney's Office
Glenda Skiffer
Lois Scott
Peter Burns, BBI
R. Passmore
DCP Bulletin Board
MDF

Alec S. Bash

Alec Bash, Environmental Review Officer

The remaining amendments are contained in File 84.564ET (Board of Supervisors File 113-84-2). They include provisions directing the Superintendent of the Bureau of Building Inspection to impose interest on penalties resulting from the failure of the owner and operator of a hotel to file complete and timely Annual Usage Reports. The amendments would not change the contents of Annual Usage Reports or the requirement that they be filed. The project would extend the time limit to file a challenge to an Annual Usage Report from fifteen to thirty days. It would also raise the fee for filing an Annual Usage Report from twenty to forty dollars.

The project would require that notices of apparent violation of the Ordinance remain posted until the Superintendent of the Bureau of Building Inspection determines that the hotel is no longer in violation of the Ordinance. Penalties would be imposed on hotel owners and operators who fail to maintain daily logs, or to post materials as required by the Ordinance.

The project would result in a change of burden of proof requirement from the owner or operator of the hotel to the appellant in appeals of the decision to issue or deny permits to convert. It would require the owner, rather than the Bureau of Building Inspection, to record conditions for issuance of demolition permits. The proposal would direct hearing officers to consider the repeated posting by the Superintendent of the Bureau of Building Inpection of notices of apparent violation of the Ordinance as a factor at hearings on unlawful conversion.

The proposal would authorize the Superintendent of the Bureau of Building Inspection to impose the penalties included in the Ordinance and establishes lien procedures to be followed by the Superintendent where penalties remain unpaid. The proposed amendments include a new section, Section 41.16A, which makes the filing of false information under the ordinance a misdemeanor punishable by a fine of not more than $500 or by imprisonment for up to six months or both.

These amendments are intended to assist in the administration and enforcement of the Ordinance. They would not change the standards of the Ordinance and would not mandate the conversion of a greater or smaller number of hotel rooms from residential occupancy to other uses. Increased compliance with the Ordinance and a resulting decrease in illegal conversions of residential hotel rooms would be a likely result of the incorporation of the proposed amendments into the Ordinance, The City Planning Commission, when it affirmed the negative declaration following an appeal, determined that the Ordinance could not have significant effect on the environment. It was the Commission's assumption that the Ordinance would be enforced and that hotel owners and operators would comply with the terms of the Ordinance. Clearly, these amendments to the Ordinance, which are purely procedural in nature, could not have a significant effect on the environment.

Gene Porter: The ordinance says that so long as non-profit operators use the units as housing they are exempt but if they demolish or convert then they are subject to the RHO replacement requirement. The problem is that we don't know what they are doing. BBI annually sends non-profit RH operators a letter asking them if they still operate as non-profits. Perhaps this letter could be expanded to site purpose of ordinance and require reporting the number of residential hotel units and vacancies. Perhaps we need a minimal reporting or monitoring of non-profit residential hotels.

Richard Livingston: I think non-profits are the biggest problem in conversions and loss of residential hotel units from the market place. There has only been one for profit tourist conversion with the loss of a small number of units compared to the thousands of units converted to the operation of the City's homeless program and thousands of other units used by non-profits for the operation of their programs. Many of those who use to rent transient hotels are now housed under the City's homeless program. Much of the problem is also with the operators of some of these hotels and the $3 million a year drug business in the area.

ISSUES 2 & 3.: Differences in Types of Hotels and Problems in Regulation by Monthly vs daily or weekly rentals.

This is a new issue discussed by Richard Livingston from the Cadillac Hotel and long time community activist. Others in the meeting participated in this discussion although they are not coded in this summary.

Distinction between residential, transient, and tourist hotels. Residential hotels are unique in that often they serve to mix of users which include lower income tourists/visitors, local transients on a daily, weekly or monthly rates, and more permanent residents which rent on a monthly basis for years. The problem with the ordinance is that it separates buildings of units in the building according to the length of occupancy (less than 31 days as transient or tourist and 32 days or more as residential units) when the mix of residential, transient and tourist units always vary from time to time. The more important distinction is the lower income housing market they serve and not whether they rent to a person for a night, a week, 2 weeks or more than a month. Often, there is a need to stabilize and balance this mix in terms of an operator's cash flow, changing population, demand, and neighborhood impact.

Some operators are renting the residential hotel units on a weekly basis provided that the occupant signs a note

saying that they plan to stay for a month or longer. If the occupant leaves before 32 days the operator can say that the occupant broke the agreement.

Some hotels have a large number of transient units (non-residential hotel designated units) because when they claimed most of the units as tourist when they were first required to report the units. Now transient hotels are scared to rent to anyone over 30 days because they don't want these units classified as residential hotel units. However, in terms of a balance mix the ordinance is a disincentive for many operators to rent for 32 days or more at a time. Many operators would rather leave the residential hotel units vacant.

More positive incentives are needed such as the transient tax threshold which has raised from $5 to $20 a night. Renting a room for $10 to $20 a night is not bad. There is a lower income transient population which needs these kind of places. Tenants may travel between different cities (Reno, San Francisco, Sacramento, etc.), some are locals who move around the city, others are low budget backpackers from other states or Europe, and there were the traditional seamen.

Richard Livingston would like the option of renting by the week or month to test tenants behavior. Operators don't want to be stuck with bad tenants that would take months to get out. The Cadillac Hotel was built to have both transient and more permanent residents. Some residential hotels are better designed for transient use (the St. George - 33 room walk up and no kitchen or bathrooms). Some hotels have switched from being tourist to residential and to homeless program.

David Prowler: Where would the rent cut off be if the ordinance regulated the hotel this way instead of how long the resident stayed. Could we say no more than $11 per night.

Marsha Rosen: What legal basis would there be for such a cut off. How could you structure the regulations or incentives. Where is the balance point? How do you prevent from totally transforming to high cost and tourist use?

Roger Herrera: The rent on residential hotels range from $45 to $1,500 for some units which offer full health care for the elderly. The average is more in the lower range below $250. Current data indicates that there has been no significant increase in rents since the last reporting period in 1984.

Ed Lee: Chinatown has a more stable residential hotel population with units renting for $45 a month to seniors that have lived there for over 30 years. The Tenderloin and Sixth Street may be more transient.

Roger Herrera
Brad Paul

Perhaps what we need is residential hotels which would differ by district such as Chinatown, North Beach, South of Market, Tenderloin, etc. and that may have thresholds on tourist, residential and transient units. A neighborhood approach can recognize the different needs between neighborhoods. We were addressing the whole city in the ordinance when different parts of the city have different problems. The Tenderloin and Sixth Street may need to serve a more transient lower income population. (This discussion flowed from a number of participants.)

Richard Livingston: Transient lower income population. In the past some residential hotels were part of a more extended community (such as the I-Hotel) which related in other ways than just whether it was 30 days or 1 night occupancy. Conversion to upscale tourist is in a certain type of hotel and location: Fisherman's Wharf, North Beach, and Union Square, etc. and not Sixth Street or Tenderloin. [Can these hotels, areas be identified?]

ISSUE 4. Is the City's Residential Hotel Homeless Program in conflict with the Residential Hotel Ordinance?

Richard Livingston: Some of the hotels for the homeless have become shooting galleries. These type of hotels need to have a better balance of transient and resident occupants. These hotels and the neighborhood would improve if some low income tourist use would be allowed. This relates to the no more than 50% homeless proposal by Supervisor Maher.

Brad Paul: The Social Service Commission has thrown out the bids because some of the hotels are including residential hotel units in the units proposed for the homeless program. [City Attorney Rick Judd has indicated that the Social Service Homeless Program wants to respect the Residential Hotel Ordinance, but that some amendments may be considered.]

ISSUE 5. Definition of residential hotels. The addition of kitchens to residential hotels is not allowed by the ordinance because that would upgrade the units to apartment.

Brad Paul: The RHO does not allow addition of kitchens because the ordinance wanted to prevent the loss of rooms to mergers and expanded units with kitchens.

Richard Livingston: The Cadillac Hotel was told by BBI that they could not put in just one kitchen. It was either none or one kitchen for every 10 units. But no more than 12 kitchens or else it becomes an apartment building.

Gene Porter: The residential hotel at 1405 Van Ness wanted to put kitchens and bathrooms so they could quality for elderly Section 8 but BBI would not allow it.

ENVIRONMENTAL EVALUATION CHECKLIST
(Initial Study)

File No: 87.351E Title: EXTEND CHINATOWN - NORTH BEACH RESIDENTIAL HOTEL CONVERSION MORATORIUM

Street Address: (SEE MAP) Assessor's Block/Lot: (SEE DESCRIPTIO

Initial Study Prepared by: ANDREA MACKENZIE

A. COMPATIBILITY WITH EXISTING ZONING AND PLANS	Not Applicable	Discussed
1) Discuss any variances, special authorizations, or changes proposed to the City Planning Code or Zoning Map, if applicable.	—	✓
*2) Discuss any conflicts with any adopted environmental plans and goals of the City or Region, if applicable.	✓	—

B. ENVIRONMENTAL EFFECTS - Could the project:	YES	NO	DISCUSSED
1) Land Use			
*(a) Disrupt or divide the physical arrangement of an established community?	—	✓	—
*(b) Have any substantial impact upon the existing character of the vicinity?	—	✓	✓
2) Visual Quality			
*(a) Have a substantial, demonstrable negative aesthetic effect?	—	✓	—
(b) Substantially degrade or obstruct any scenic view or vista now observed from public areas?	—	✓	—
(c) Generate obtrusive light or glare substantially impacting other properties?	—	✓	—
3) Population			
*(a) Induce substantial growth or concentration of population?	—	✓	—
*(b) Displace a large number of people (involving either housing or employment)?	—	✓	✓
(c) Create a substantial demand for additional housing in San Francisco, or substantially reduce the housing supply?	—	✓	✓
4) Transportation/Circulation			
*(a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system?	—	✓	—
(b) Interfere with existing transportation systems, causing substantial alterations to circulation patterns or major traffic hazards?	—	✓	—
(c) Cause a substantial increase in transit demand which cannot be accommodated by existing or proposed transit capacity?	—	✓	—
(d) Cause a substantial increase in parking demand which cannot be accommodated by existing parking facilities?	—	✓	—
5) Noise			
*(a) Increase substantially the ambient noise levels for adjoining areas?	—	✓	—
(b) Violate Title 24 Noise Insulation Standards, if applicable?	—	✓	—
(c) Be substantially impacted by existing noise levels?	—	✓	—

* Derived from State EIR Guidelines, Appendix G, normally significant effect.

ED 3.11 6/87

	YES	NO	DISCUSSED
6) Air Quality/Climate			
*(a) Violate any ambient air quality standard or contribute substantially to an existing or projected air quality violation?	—	✓	—
*(b) Expose sensitive receptors to substantial pollutant concentrations?	—	✓	—
(c) Permeate its vicinity with objectionable odors?	—	✓	—
(d) Alter wind, moisture or temperature (including sun shading effects) so as to substantially affect public areas, or change the climate either in the community or region?	—	✓	—
7) Utilities/Public Services			
*(a) Breach published national, state or local standards relating to solid waste or litter control?	—	✓	—
*(b) Extend a sewer trunk line with capacity to serve new development?	—	✓	—
(c) Substantially increase demand for schools, recreation or other public facilities?	—	✓	—
(d) Require major expansion of power, water, or communications facilities?	—	✓	—
8) Biology			
*(a) Substantially affect a rare or endangered species of animal or plant or the habitat of the species?	—	✓	—
*(b) Substantially diminish habitat for fish, wildlife or plants, or interfere substantially with the movement of any resident or migratory fish or wildlife species?	—	✓	—
(c) Require removal of substantial numbers of mature, scenic trees?	—	✓	—
9) Geology/Topography			
*(a) Expose people or structures to major geologic hazards (slides, subsidence, erosion and liquefaction).	—	✓	—
(b) Change substantially the topography or any unique geologic or physical features of the site?	—	✓	—
10) Water			
*(a) Substantially degrade water quality, or contaminate a public water supply?	—	✓	—
*(b) Substantially degrade or deplete ground water resources, or interfere substantially with ground water recharge?	—	✓	—
*(c) Cause substantial flooding, erosion or siltation?	—	✓	—
11) Energy/Natural Resources			
*(a) Encourage activities which result in the use of large amounts of fuel, water, or energy, or use these in a wasteful manner?	—	✓	—
(b) Have a substantial effect on the potential use, extraction, or depletion of a natural resource?	—	✓	—
12) Hazards			
*(a) Create a potential public health hazard or involve the use, production or disposal of materials which pose a hazard to people or animal or plant populations in the area affected?	—	✓	—
*(b) Interfere with emergency response plans or emergency evacuation plans?	—	✓	—
(c) Create a potentially substantial fire hazard?	—	✓	—
13) Cultural			
*(a) Disrupt or adversely affect a prehistoric or historic archaeological site or a property of historic or cultural significance to a community or ethnic or social group; or a paleontological site except as a part of a scientific study?	—	✓	—
(b) Conflict with established recreational, educational, religious or scientific uses of the area?	—	✓	—
(c) Conflict with the preservation of buildings subject to the provisions of Article 10 or Article 11 of the City Planning Code?	—	✓	—

C. OTHER

	YES	NO	DISCUSSED
Require approval and/or permits from City Departments other than Department of City Planning or Bureau of Building Inspection, or from Regional, State or Federal Agencies?	—	✓	—

D. MITIGATION MEASURES

	YES	NO	N/A	DISCUSSED
1) If any significant effects have been identified, are there ways to mitigate them?	—	—	✓	—
2) Are all mitigation measures identified above included in the project?	—	—	✓	—

E. MANDATORY FINDINGS OF SIGNIFICANCE

	YES	NO	DISCUSSED
*1) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or pre-history?	—	✓	—
*2) Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?	—	✓	—
*3) Does the project have possible environmental effects which are individually limited, but cumulatively considerable? (Analyze in the light of past projects, other current projects, and probable future projects.)	—	✓	—
*4) Would the project cause substantial adverse effects on human beings, either directly or indirectly?	—	✓	—

F. ON THE BASIS OF THIS INITIAL STUDY

✓ I find the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared by the Department of City Planning.

___ I find that although the proposed project could have a significant effect on the environment, there there WILL NOT be a significant effect in this case because the mitigation measures, numbers _____, in the discussion have been included as part of the proposed project. A NEGATIVE DECLARATION will be prepared.

___ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

Barbara W. Sahm

BARBARA W. SAHM
Environmental Review Officer
for

DEAN L. MACRIS
Director of Planning

DATE: 7/30/87

BWS:eh
OER:23

NEGATIVE DECLARATION

Date of Publication of
Preliminary Negative Declaration: July 31, 1987

Lead Agency: City and County of San Francisco, Department of City Planning
450 McAllister Street, 5th Floor, CA 94102

Agency Contact Person: Andrea Mackenzie Telephone: (415) 558-6388

Project Title: 87.351ET
12-Month Extension of
Chinatown - North
Beach Residential Hotel
Conversion Moratorium

Project Sponsor: Board of Supervisors

Project Contact Person: Robert Passmore

Project Address: 43 Block Area Within Chinatown - North Beach (see map)

Assessor's Block(s) and Lot(s): A/Bs: 134, 143-148, 159-164, 165/10, 175-180, 191-196, 208-212, 224-227, 241, 242, 257, 258, 269/5, 270,271,272/8,285-287, 288/25,294/21.

City and County: San Francisco

Project Description: Amend Sections 41B.2 and 41B.11 of the San Francisco Administrative Code to extend for twelve months, the moratorium on permits to convert residential hotel units in the Chinatown-North Beach area .

Building Permit Application Number, if Applicable: None

THIS PROJECT COULD NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT. This finding is based upon the criteria of the Guidelines of the State Secretary for Resources, Sections 15064 (Determining Significant Effect), 15065 (Mandatory Findings of Significance) and 15070 (Decision to Prepare a Negative Declaration), and the following reasons as documented in the Initial Evaluation (Initial Study) for the project, which is attached:

The proposed project would be an amendment to sections 41B.2 and 41B.11 of the San Francisco Administrative Code for the purpose of extending the current Chinatown - North Beach Residential Hotel Unit Moratorium Ordinance for 12 months. The ordinance covers a 43-block area of Chinatown-North Beach, generally from Vallejo and Green Streets on the north to Sutter Street on the south, and from Mason Street on the west to Sansome Street on the east.

Mitigation measures, if any, included in this project to avoid potentially significant effects:
None

Final Negative Declaration adopted and issued on 8/11/87

Barbara W. Sahm
BARBARA W. SAHM
Environmental Review Officer

cc: Robert Passmore
Lois Scott
Paul Rosetter
Sponsor
Distribution List
Bulletin Board
Master Decision File

BWS:ALM:emb
ALM:72

As of September, 1984, there were approximately 4,818 residential hotel units within the moratorium area. This number represents a decrease of 322 units since 1980, despite the existence of the Residential Hotel Unit Conversion Ordinance. As of 1984, the average monthly rent within the Chinatown-North Beach Moratorium area was $127.87 per month.

The purpose of the moratorium ordinance is to prohibit the approval of any permit:

(a) to convert any residential hotel unit to another use including conversion to apartment use.

(b) that would cause the demolition of any residential hotel unit or prevent its use.

On May 24, 1987 the Chinatown Mixed Use District Controls, which established the Chinatown Community Business, Chinatown Visitor Retail and Chinatown Residential Neighborhood Commercial Districts, became permanent. The provisions established within the controls prohibit the conversion or demolition of residential hotel units within the three-district boundaries. Extension of the moratorium would afford protection to some areas that do not fall within the area covered by the Chinatown Mixed Use District controls.

It is necessary to extend the moratorium for an additional year to allow the Board of Supervisors sufficient time to review the Residential Hotel Conversion and Demolition Ordinance and adopt amendments to this Ordinance. The extension would also allow the Department of City Planning to complete an ongoing study of housing demolition and conversion controls which would result in conditional use standards for demolitions and conversions, citywide.

The Board of Supervisors first established interim regulations on the conversion and demolition of residential hotel units in November 1979. Since June 1981, residential hotel conversions have been regulated by Chapter 41 of the San Francisco Administrative Code, commonly known as the Residential Hotel Conversion and Demolition Ordinance. This Ordinance is permanent and citywide in scope. It was evaluated by the Department of City Planning in order to determine any potential environmental effects. The Department determined that the Ordinance could not have a significant effect on the environment, and a Final Negative Declaration was issued on June 23, 1983. (File No. 83.52E, on file at the Office of Environmental Review).

The findings contained in the Final Negative Declaration prepared for the Residential Hotel Conversion and Demolition Ordinance (File No. 83.52E) are hereby incorporated by reference. That Negative Declaration concluded that the potential environmental effects, both direct and indirect resulting from the citywide Ordinance would be negligible. It included the relevant Residence Element (Comprehensive Plan) policies dealing with conservation of existing housing resources. It determined that, since the Ordinance seeks to maintain uses that currently exist, it would not have any direct environmental effects. It further determined that, based on past experience with some form of control of conversions in effect and the many other factors involved in development decisions, the Ordinance would not be likely to generate a substantial amount of new residential or tourist hotel construction.

The Chinatown-North Beach Moratorium differs from the citywide Ordinance in the following ways:

1) It affects the Chinatown-North Beach area only
2) It would be in effect for a temporary period
3) It contains no provision for in-lieu fees or replacement of existing residential hotel units proposed for conversion
4) It contains no provision for summer conversion to tourist use.

On February 17, 1984, the Department of City Planning determined the Chinatown-North Beach Residential Hotel Unit Moratorium could not have a significant effect on the environment and a Final Negative Declaration was issued on February 29, 1984 (File No. 83.600 ETT). The findings contained in the Final Negative Declaration for 83.600 ETT, the Chinatown-North Beach Moratorium, are hereby incorporated by reference. The potential effects that were analyzed were:

1) Potential increase in conversion or demolition of other types of residential uses or other land uses to office or commercial use

2) Potential increase in summer conversions of residential hotel units outside of the Chinatown-North Beach area.

3) Potential increase in demand for new moderately - priced hotel rooms during the summer months.

The Negative Declaration concluded that the potential environmental effects of adopting the moratorium for one year would be indirect and minimal. Previous extensions, cases 85.87ETZ and 86.247E, also received Negative Declarations adopted May 1, 1985 and May 29, 1986, respectively. The facts and findings of these negative declarations are hereby incorporated by reference.

The proposed extension of the Moratorium would require approval by the Board of Supervisors.

In November 1986, the voters of San Francisco approved Proposition M, the "Accountable Planning Initiative", which establishes eight Priority Policies. These policies are: preservation and enhancement of neighborhood-serving retail uses; protection of neighborhood character; preservation and enhancement of affordable housing; discouragement of commuter automobiles; protection of industrial and service land uses from commercial office development and enhancement of residential employment and business ownership; earthquake preparedness; landmark and historic building preservation; and protection of open space. Prior to issuing a permit for any project which requires an Initial Study under CEQA or adopting any zoning ordinance or development agreement, the City is required to find that the proposed project or legislation is consistent with the Priority Policies.

The issue, for the purposes of this environmental review, is whether the proposed extension of the moratorium would have the potential to cause effects on the environment beyond those analyzed in the environmental review on the initial one year ordinance.

Because the moratorium applies to only a limited area of the City and to a limited proportion of the City's total residential hotel stock (which is regulated by permanent controls similar to, but somewhat less restrictive than, the current moratorium), the extension of the current moratorium for any length of time could not cause a measurable increase in the minimal impacts which were discussed in Negative Declarations 83.600ET, 85.87ETZ, and 86.247E.

Given the above discussion, the proposed extension of the Chinatown-North Beach Residential Hotel Conversion Moratorium could not have a significant effect on the environment.

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March 11, 1988

REPORT ON RESIDENTIAL HOTELS POLICY AND LEGISLATIVE ISSUES

INTRODUCTION

In the fall of 1987 the Department of City Planning conducted a series of meetings to discuss the operation of the Residential Hotel Ordinance with Bureau of Building Inspection staff, community housing groups, and residential hotel owners and operators. This report summarizes the principal findings and recommendations resulting from these meetings and solicit further public review of the issues and refinement of the proposals.

Follow-up workshop meetings will be scheduled this Spring to attempt to build consensus on a legislative package to amend the Ordinance and improve its workability.

In conjuction with this report, a separate informational report has been prepared which contains data on the status of all residential hotels, including information on the number of residential and tourist units , neighborhood subarea totals, rents, vacancies, and Bureau of Building Inspection enforcement efforts. The informational report finds that the Residential Hotel Ordinance has been largely effective in preserving the stock of residential hotels, although there are a number of important issues which need to be addressed.

These issues are listed and grouped under substantative areas pertaining to Operation, Affordability, Replacement, and Administration. Some background information is provided on each of the ten issues discussed, followed by either proposals or alternative recommendations.

SYNOPSIS

OPERATIONAL ISSUES

1. Transient Low Income Users (32 day rule)
2. Vacant Units
3. Homeless Program

AFFORDABILITY ISSUES

4. Rent Stabilization
5. Funding for Seismic Upgrading

REPLACEMENT ISSUES

6. More Public Input/Notice
7. More Specificity About Location

ADMINISTRATIVE ISSUES

8. Reporting by Non-Profits
9. Revisions to Reporting Requirement
10. Consistent Definition of Residential Hotel Units.

ISSUES AND PROPOSALS

OPERATIONAL ISSUES

ISSUE 1: Transient Low Income Users (32 day rule)

The Residential Hotel Ordinance prohibits residential hotel units from renting for less than 32 days. Units rented for less than 32 days can be cited and fined by BBI as violating the Ordinance. Residential hotel operators are having a difficult time complying with this provision because residential hotels were designed for temporary use with very small rooms without kitchens or bathrooms and traditionally they have exercise some flexibily on whether a unit is rented on a monthly, weekly, or daily basis. The 32 day rental requirement often works against the rental of vacant residential hotel units as operators have to refuse occupancy to weekly tenants, even though some residential hotel units may have been vacant for long periods.

Temporary rentals (less than 32 days) traditionally filled up vacant residential hotel units as transient hotel users often become permanent hotel residents. Weekly rentals are used by operators to screen potential trouble making tenants. Without this option, operators are leaving units vacant rather than risk renting to potentially troublesome tenants on a monthly basis. This provision combined with the "summer-winter" clause encourages vacancies because units are not rented for transient or residential use and are left vacant to be rented as tourist units during the summer.

The availability of transient hotel units has been decreasing as a result of the Residential Hotel Ordinance. Most hotel units are now either residential hotel units (renting for 32 days or more), tourist units (renting for less than 32 days), non-profit hotel units primarily for program or membership use, or hotel units used by the homeless program. As with the "summer-winter" tourist conversion option a window of flexibility is needed to permit a limited number of units to be rented for transient hotel use.

Some transient and economy tourist use off-sets low rents on many residential hotel units. The Ordinance attempts to balance between residential, tourist, and transient hotel needs during the summer with the "summer-winter" clause which permits operators of residential hotels to rent up to 25% of the vacant residential hotel units for less than 32 days from May to September. The Ordinance prohibits renting any residential hotel unit for less than 32 days during the off-season from November to April. However, a balance between residential, transient, and tourist use needs to be maintained all year around. The following proposals provide some alternatives.

Alternatives:

(1) Create a window of flexibility for residential hotels operators so that up to 25% of the residential hotel units could be rented for periods less than 32 days provided that rents in such units are prorated affordable to occupants with very low incomes (below 50% of the HUD median income). In 1986 this would have been a monthly rent of $377. or a daily rate of $12.50. This provision would permit greater flexibility in renting vacant residential hotel units to lower income transient and residential hotel users and would be separate and different from the existing summer tourist conversion clause.

(2) Permit a 25% increase in the number of tourist units provided that the "summer-winter" tourist conversion provision is eliminated. This alternative would simplify enforcement and eliminate the incentive to keep units vacant during the winter to convert them to tourist units during the summer, and permit some year around flexibility between daily, weekly and monthly rentals.

(3) Instead of permitting a blanket increase in the number of tourist

units as in Alternative (2), it may be more appropriate to simply extend the existing 25% summer tourist conversion option throughout the year on a case-by-case basis base on a demostrated need by individual residential hotel operators. A further refinement of this proposal would be to limit the off-season (November to April) conversion option to 25% of a hotel's total number of units, including any tourist units it may have.

Under this proposal all existing residential hotel units would continue to be protected by the Ordinance, and operators would still be permitted to exercise the summer tourist conversion option as presently permitted except that during the off-season some vacant residential hotel units could be rented on a weekly basis, provided that the number of hotel units which exercise this option does not exceed 25% of the total number of units in the hotels (including tourist units), and provided that the units are first offered as residential as per the "summer-winter" conversion clause. This provision takes into account the fact that some residential hotels have no tourist units and others have a great number of tourist units which can exercise greater discretion in renting to transient, tourist, or residential hotel users. As with other City Planning Code, this provision would be permitted only in neighborhood areas that do not have more restrictive Planning Code regulations.

(4) Eliminate the distinction between residential hotel units and transient hotel units provided that rental vacancy controls and a rental cap be established for residential hotel units. Vacant residential hotel units could then be rented on a daily, weekly, or monthly basis provided that rent increases on vacant units do not exceed the annual rent stabilization ordinance rate, and provided that rents do not exceed an affordability threshold of $400 per month or $13.00 per day (95% of all the residential hotel units rent for less than $400). This is about the maximum that very low income single room occupants could afford at 50% of the HUD median income. A lower rental threshold may be appropriate in very low income residential hotels.

Higher annual rates could be permitted on vacant units if the City's Rent Arbitration Board determines that comparable rents for similar units are substantially higher, and provided that the maximum affordability threshold is not exceeded. Designated tourist units as well as "summer only tourist units" could continue to be exempt from any affordability requirements.

This alternative would provide residential hotel renters greater affordability protection and give operators greater flexibility on whether units are rented on a daily, weekly, or monthly basis.

In conjunction with this proposal, some economic incentives need to be developed which would encourage long term affordability for low income residential hotel units. These incentives could include favorable low income housing tax credits, sales tax exemptions, and

other more favorable tax treatments. Currently, only new construction or major renovation can use federal low income tax credits.

(5) Tailor residential hotel regulations to neighborhood areas and hotel types, e.g. stable residential hotels in Chinatown versus more transient residential hotels in the North and South of Market areas, or North Beach tourist oriented hotels. This approach would require more extensive research and additional staff resources to develop and implement.

ISSUE 2: Vacant Hotel Units

In 1986 20 residential hotels were reported totally vacant and in additional 10 buildings were 70% or more vacant. These 30 hotels accounted for about 1,000 units of the 2,687 vacant units reported in 1986. High vacancies reduce the limited stock of affordable low income residential hotel housing units.

Community groups have voiced their concerns over high vacancies in residential hotels and the need to eliminate regulations which encourage vacancies and develop regulations which prohibit owners from willfully keeping buildings vacant.

Proposal:

Require owners of buildings with more than 50% vacancies report the reason for vacancies to BBI and that the City develop a program to bring these vacant units back into use, which may include building code enforcement, restoration financing incentives, fines, or acquisition by non-profit housing groups with City assistance. In addition, require that Building Inspectors verify reported vacancy data as part of routine and scheduled Building Code and Residential Hotel inspections.

Adjustment of the 32 day rule may also help to increase the utilization of vacant units.

ISSUE 3: Homeless Program in Residential Hotels

The City's homeless program uses approximately 1,900 residential hotel units to house the homeless. The homeless use these units for five days or less. This practice may be in conflict with the Residential Hotel Ordinance's 32 day minimal rental requirement. Operators claim that the City uses a double standard by using residential hotel units on a daily and weekly basis while it prohibits residential hotel operators from doing the same, and community groups object to the use of residential hotel to house the homeless because it diminishes the availability of residential and transient units. There is also concern over increases in crime and

blight from the use of residential hotels by the homeless.

Proposal:

As a City policy require that the homeless program contract only with operators of transient hotel units, or exempt residential hotel units used by the homeless from the 32 day minimum rental requirement.

AFFORDABILITY ISSUES

ISSUE 4. Protection From Rent Escalation

Residential hotel units are protected by the rent control ordinance because these units must be rented on a monthly basis. However, rapid turnover rates in residential hotels and vacancy decontrol permitted rent escalations of 20% per year from 1980 to 1984. According to the information provided by redidential hotel operators rents have leveled off at about $250 per month since 1985. Residential hotels remain among the most affordable units in the City.

Residential hotel units could be exempt from the vacancy decontrol provision of the rent control ordinance because the affordability of residential hotel units is more endangered by rapid turnover rates and vacancy decontrol than apartment units. The affordability of many residential hotel units can be again threatened if rent escalation in vacant units were to resume.

Proposal:

Eliminate vacancy decontrol of vacant residential hotel units with a provision that would permit higher rent increases on vacant units if the owner demonstrates to the Rent Arbitration Board that higher rents are merited because of major new improvements or because the units are significantly underpriced compared to other similar units.

ISSUE 5. Funding for Major Renovation and Retrofitting

Approximately 44% of the residential hotel buildings are high-risk unreinforced masonry buildings. In the event of a major earthquake collapse of these buildings, up to 4,000 deaths may occur per 10,000 occupants. To minimize these hazardous conditions, some earthquake retrofitting measures are needed. Seismic upgrading would cost at a minimum about $10,000 per unit.

The costs for required renovation and retrofitting would pose a severe economic hardship on both owners and tenant of low income residential hotels. Community groups claim that even minor renovation costs passed on

to existing low income residential hotel tenants can lead to displacement and increase in the homeless population. Meanwhile residential hotel operators complain that they are already squeezed by regulations which protect low income residential hotel users and additional building code requirements which increase their costs.

Proposal:

Develop a financing assistance program for building code rehabilitation, and seismic upgrading of residential hotels serving low income tenants. This issue will be addressed through the seismic upgrade study which the City has initiated.

REPLACEMENT ISSUES

ISSUE 6: More Public Review for Conversions and Demolition Permits

The RH Ordinance permits conversions and demolitions as a matter-of-right provided that replacement or in-lieu fees and other requirements are satisfied. No public review is required although BBI now as a matter of practice notifies City Planning and interested community groups of any pending demolition or conversion permit application. Even though only a few demolition and conversion applications have been processed by BBI, community groups claim that notification and public review has been inadequate and that it could become a bigger problem if residential hotel owners begin to exercise the "buy-out" option as a way of avoiding replacement.

Community groups proposed to make demolitions and conversions subject to a public review process similar to the Planning Commission Conditional Use Review process which requires formal notification, a public hearing, and permits discretion as to whether a project should be approved or denied based on established criteria.

Proposal

Retain permit review authority within BBI but require that interested community groups and the Department of City Planning be formally notified when a demolition or conversion permit application is received and require that BBI conduct a public hearing to solicit public input on a proposed demolition or conversion permit application, or complaint of conversion. These procedures would formalize a practice which BBI already has initiated. Amend the Ordinance to require notification and solicit public review of each demolition or conversion application.

ISSUE 7: More Specificity About Location in Replacement Units Requirements

Additional criteria are needed in determining what are acceptable replacement units for units proposed for conversion or demolition. The Ordinance is silent as to location and this is an important consideration in determining comparable units. Consequently an operator attempted to replace residential hotel units in North Beach for units in a less desirable area South of Market. In this case BBI denied the application but in another case comparable units could be interpreted narrowly and such a conversion may be approved because the ordinance requires only that the units be replaced with comparable units similar in size. Chinatown community groups have proposed that replacement units be located within the existing neighborhood because to relocate elderly and other tenants outside their community would impose a severe hardship on existing tenants.

Proposal:

Amend the Ordinance to require that replacement units be located within the existing neighborhood or within a neighborhood similar in character.

ADMINISTRATIVE ISSUES

ISSUE 8. Reporting Requirements for Non-Profit Residential Hotels

Residential hotels operated by non-profit organizations are exempt under the RH Ordinance from reporting information but not from the conversion or demolition replacement requirements. To qualify as a non-profit residential hotel, a hotel must have a 501(c)(3) IRS status. As non-profit hotels, they do not have to maintain daily logs, post weekly summaries, or prepare annual unit usage reports as other residential hotels are required.

Without such base-line information it is difficult for BBI to enforce the Ordinance's one-for-one replacement requirement if a non-profit applies for a legal conversion.

With 57 hotels with approximately 2,845 residential units as non-profit exempt hotels, there is a definite potential for tourist conversions to occur within these hotels. To comply with the Residential Hotel Ordinance, some minimal reporting requirements are needed from non-profit operated hotels.

Proposal:

Require that non-profit status residential hotels file an initial unit usage report, if they have not done so already, to determine the precise number of residential and tourist units each non-profit hotel may have; and require that a minimal status report be submitted annually to BBI indicating the number of units used as

residential, tourist, or program use and any changes in the usage of the units.

ISSUE 9: Improvement of Enforcement and Reporting Records

The Ordinance requires that operators prepare (1) a daily log with information on the status of each hotel room, (2) a weekly report on the number of tourist units, and (3) an annual usage report on the status of each hotel room as of September 30 of each year. This reporting system has been unwieldy to maintain and not very useful in verifying compliance with the Ordinance. Operators find the daily log they must keep too time consuming to complete and argue that this information is already contained in their own accounting records. The information on the weekly tourist reports is also redundant and not very useful either in terms of verifying compliance. BBI inspectors are not trained as accountants to be able to sort through often incomplete record to determine compliance with the Ordinance's 32 day rental requirements for residential units.

The Annual Unit Usage report requires that operators report number of tourist and residential units on the last day of the summer tourist season when operator have the greatest flexibility in the number of tourist units. Consequently the information provided on the Annual Units Usage reports is not very useful in identifying discrepancies between the number of tourist units permitted and the actual number of units used as tourist units.

Proposal:

Improve and streamline the Ordinance's information reporting requirements by replacing the current daily, weekly, and annual reports with monthly posting and biannual units usage reports to BBI which would contain information on the number of residential and tourist units, vacancies, and rental rates. Information provided in these reports could need to be verifiable from the hotel's own accounting receipts and records which BBI inspectors could review. If records are not properly maintained by operators or if incomplete, operators would be fined or charged for required accounting work in exess of what is acceptable. A reporting system base on monthly residential hotel unit use and biannual reports to BBI would permit monitoring summer and winter changes in unit usage and would be simpler to administer and enforce. However, additional BBI staff may be required to improve monitoring and compliance.

ISSUE 10: Definition of Residential Hotel Units

The definition of Residential Hotels is contained within the Administrative Code. Neither the Building Code nor the Planning Code contain any language with reference to residential hotels. The City Planning Code considers residential hotels as group housing although

residential hotels are not specifically mentioned as a type of group housing. Group housing is considered residential in the Planning Code, but residential hotels may have both residential units and tourist units which are considered commercial in the Planning Code. A consistent definition of residential hotels needs to be established which takes into account these definition and mixed usage problems.

There are also definition problems in the treatment of residential hotel units in the Building Code and Housing Code. A dwelling unit is defined in the Building Code as a unit having both a kitchen and a bathroom, but residential hotel units generally have neither kitchens nor bathrooms.

There is a problem with the definition of a residential hotel unit as a guest room and the exclusion of units with kitchens or bathrooms. Residential hotel units vary in that some motel units may have small kitchens but no individual bathrooms and others may have individual bathrooms but no kitchens. If a unit has both a kitchen and a bathroom then it is considered an apartment which as an apartment it is exempt from the Ordinance.

The Ordinance prohibits kitchens from being added to individual residential hotel units and requires that shared kitchens can not serve more than 10 guest rooms. Requiring that a kitchen be added for every 10 guest rooms is unworkable in most residential hotels. To operate as residential hotels more cooking facilities are needed to improve the residential quality of these units, provided that such improvements comply with appropriate health and safety codes and they do not substantially reduce the number of residential hotel units. Mini kitchens can prevent the use of unathorized hot plates which are a fire hazards.

There is also a problem with units which clearly are not residential in some motels but which are classified residential because the owners never submitted a unit usage report and were classified residential hotels by default.

The supply of residential hotels needs to be replenished and expanded with new construction. There is a need to develop planning controls which would encourage new construction of affordable residential hotel units and expand the supply of low cost single room occupancy units (SRO's).

Proposals:

(1) Resolve residential hotel definition inconsistencies between the City Planning Code, Building Code, and Administrative Code.

(2) Develop controls which which would permit residential hotels to become more residential in character by permitting small individual kitchens or the creation of "microapartments" provided that they remain subject to the Ordinance, and permit greater flexibility in the number of shared kitchens that may be added.

(3) Clarify applicable residential hotel Planning Code regulations and develop City Planning Code which would facilitate the construction of new single room occupancy (SRO's) residential hotels where consistent with existing land uses.

(4) Permit residential hotels which never submitted a unit usage report to resubmit a unit usage report for the effective date of the Ordinance. Failure to comply could be subject to a fine and suspension of any tourist usage.

POTENTIAL HOMELESS POPULATION AND SUPPLY OF TRANSIENT HOTEL UNITS

The homeless come from a variety of backgrounds, including individuals in formerly middle-class families, families with children, and teenagers and elderly individuals. Some of them are homeless because they can not afford to pay for even the least expensive housing. The study and understanding of the very low income housing market is crucial to any plan for at least this group of the homeless. Economic trends and shifts which affect those at the lowest end of the housing market, as well as regulations which affect the availability of transient and very low income housing are important aspects of such a plan.

A. REDUCTION IN THE SUPPLY OF TRANSIENT HOTEL UNITS

Before 1975, there was a larger supply of inexpensive residential hotels where transients could stay for a night, a week or longer before they moved to another hotel or to other more permanent housing. However, the supply of low income transient units has diminished significantly as many of these units have since been (1) converted to tourist use, (2) classified residential so they no longer are available for transient use, (3) classified non-profit for program users only, or (4) contracted with the city's homeless program. Consequently there are fewer private sector units available for transient low income use.

A Study of the Conversion and Demolition of Residential Hotel Units conducted by the Department of City Planning in 1980 showed that there were about 610 low income hotels with about 33,000 units. These hotels by-and-large served both transient and long term residents. With the adoption of the Residential Hotel Ordinance in 1980, these units have been classified either residential or tourist. Currently there are about 500 residential hotels with about 18,700 residential units and about 4,700 tourist units; an additional 57 hotels with about 2,800 units are classified non-profit hotels. Of the designated residential units about 2,000 units participate in the City's Homeless Program and about 2,500 units are reported vacant. Conversions and demolitions since 1980 account for the loss of about 200 units. That leaves a balance of about 6,600 units out of the 33,000 units available for transient use prior to 1980. These units are in hotels classified tourist hotels and other hotels which by definition are not considered residential hotels subject to the Residential Hotel Ordinance.

BBI does not know how many low income transient hotel units there are because these hotels are not regulated. However, most of these unregulated hotels are either tourist hotels or transient hotels which contract with the City's Homeless Program, leaving fewer private sector transient hotels units.

The existing law allows operators who would desire to violate the law to do so with relative impunity since gaining access to each and every room to determine usage is virtually impossible. This proposal will simplify the verification process of both room count and the log books. The proposal also allows operators to change these designations by providing written notification to the Bureau.

Summer Tourist Use

The original ordinance provided for renting to tourists during the summer with certain limitations. It appears that the ordinance may encourage operators to leave those rooms vacant during the winter months so that they will be available for tourist rental during the summer. The records show an 18% vacancy rate as of Nov. 1, 1988 according to the Annual Unit Usage Report filed by operators.

The amending ordinance to encourage the rental of guest rooms to residents in the winter would be consistent with the spirit of the ordinance and may also improve the operator's profitability. The proposal would require that a residential unit must have been occupied for at least 50% of the winter season (October 1 through April 30) before it can be rented on a tourist basis. There is a provision in the ordinance that will address and accommodate extenuating circumstances when this requirement cannot be met.

The proposal would allow more than the 25% tourist rental normally permitted provided that certain conditions are met, including a showing that units were occupied during the winter period. This is an additional incentive for the operator to rent rooms during the winter, opening up more rooms for permanent residents.

Weekly Rentals

The ordinance states that rentals of residential units for less than 32 days is unlawful. The problem was that many tenants could not afford to pay on a monthly basis and thus landlords were technically violating the ordinance by renting weekly. The proposed change will allow landlords to rent weekly, with certain conditions and restrictions. This change will resolve the legal dilemma of the landlord, facilitate occupancy of residential rooms by low income permanent residents who might not otherwise be accommodated and provide a control mechanism for the Bureau to detect illegal tourist rentals.

Strengthened Enforcement Mechanisms

The present ordinance restricted the ability of the Bureau to perform thorough and unannounced inspections, particularly in cases where there were allegations of violations of the ordinance. While most operators do

File 83.52E
82.52E

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September 22, 1989

M E M O R A N D U M

TO: 82.52E
Files 83.52E: Residential Hotel Conversion and Demolition Ordinance, and 84.236ET/84.564ET: Amendments to Residential Hotel Conversion Ordinance

FROM: Carol Roos, Office of Environmental Review

RE: MODIFICATION OF THE PROJECT

On June 23, 1983, the Department of City Planning issued a Final Negative Declaration for Chapter 41 of the San Francisco Administrative Code, commonly referred to as the Residential Hotel Conversion and Demolition Ordinance. The Negative Declaration analyzed the ordinance which regulates conversion of rooms in residential hotels to other use, including tourist occupancy, and demolition of such rooms, for residential hotels citywide.

On January 9, 1985, the Department of City Planning issued a Final Negative Declaration for amendments to the ordinance affecting definition of interested parties, time limits for compliance, penalties for violation, and other aspects of administration of the ordinance.

Currently, amendments are proposed revising definitions, notice requirements, reporting requirements, time limits, replacement requirements, exemptions and penalties of the ordinance, and amending Part II, Chapter 1 of the San Francisco Municipal (Building Code), Section 333.2, to amend the hotel conversion fee schedule.

Section 31.35(c) of the San Francisco Administrative Code states that a modified project must be reevaluated and that, "If on the basis of such reevaluation, the Department of City Planning determines that there could be no substantial change in the environmental effects of the project as a result of such modification, this determination and the reasons therefore shall be noted in the case record, and no further evaluation shall required by this Chapter."

Principally, the proposed amendments include: 1) clarification of, and more detailed, reporting requirements; 2) expansion of reporting requirements for non-profit organizations; 3) notice requirement of intent to convert from residential hotel to other uses and of hearings on complaints; 4) an increase in the fee to be paid to the City in lieu of building replacement units for those converted, from 40% to 80% of the construction costs; 5) clarification of the requirements regarding temporary conversions, including authorization to use some units as tourist hotel units during the summer season under defined limited circumstances, or as weekly rather than monthly rentals during winter months under defined limited circumstances; 6) addition and clarification of enforcement mechanisms; 7) requirements that permits to convert to non-residential hotel use be consistent with the City Planning Code; 8) requirements that units demolished due to major fires, natural causes or accidents be replaced on a one-for-one basis prior to issuance of a building permit for new construction on the affected site; and 9) numerous small technical and procedural corrections and clarifications such as increased fees, additions to and reorganization of definitions, changes in penalties for conversion and language corrections.

The proposed amendments would be largely procedural and housekeeping measures to improve operation and enforcement of the ordinance. The increase in lieu replacement fees from 40% to 80% of construction costs is an adjustment based on lack of supplemental funds. It might increase the amount of replacement units made available through the City funding mechanism, but not in proportion to the increase in money, since the original ordinance at 40% did assume other subsidies would be available. If any increase in construction of replacement units were to occur, it would be impossible to assess any impacts at this time, because there is no way to predict when, where or how many additional units might be built.

The new requirement that demolitions caused by major fires or other natural causes be replaced on a one-for-one basis could also mean that more than one-for-one replacement would occur on some sites. As with the in lieu fee, it is impossible to analyze any potential physical effects resulting from this new provision because when, where and how many new units might be built cannot be established. Both of these provisions would result in building permit applications for replacement units; these applications would be reviewed pursuant to CEQA in the usual course of plan checking, so any direct physical effects would be more appropriately analyzed then.

Many of the proposed revisions, as noted, are procedural in nature, affecting only the administration of the ordinance. Clearly, they could have no physical effect on the environment.

The proposed amendments are intended to assist in the administration and enforcement of the ordinance. They would not change the standards of the ordinance and would not mandate the conversion of a greater or smaller number of hotel rooms from residential occupancy to other uses. Increased compliance with the ordinance and a resulting decrease in illegal conversions of residential hotel rooms would be a likely result of the incorporation of the proposed amendments into the ordinance. The City Planning Commission, when it affirmed the original negative declaration following an appeal, determined that the ordinance could not have a significant effect on the environment. The Department of City Planning in issuing a subsequent Final Negative Declarations on amendments to the ordinance, similarly determined that amendments to the ordinance could not have a significant effect on the environment. It was the assumption of the City Planning Commission and the Department of City Planning that the ordinance would be enforced and that hotel owners and operators would comply with the terms of the ordinance.

Because of the nature of the currently proposed amendments, and their effects as discussed above, the revisions to the previously analyzed project would not cause the impacts described in the Negative Declaration to change substantially from those described.

It is clear that the proposed modifications do not have the potential to involve "new significant environmental impacts not considered" in the Negative Declaration. There have been no substantial changes in the environmental setting which would require revisions to the Negative Declaration, and no new information is now available which would change the conclusion of the Negative Declaration that the project could not have a significant impact on the environment. Therefore, pursuant to Section 15162 of the California Environmental Quality Act Guidelines and Section 31.35 of Chapter 31 of the San Francisco Administrative Code, no additional environmental review is needed.

CFR143

Exhibit A
HCO Annual Reports
Initiated by DBI in 2000

Hotel Unit Conversion and Demolition Ordinance

Legislative History

The Residential Hotel Unit Conversion and Demolition Ordinance (HCO) was originally adopted by the Board of Supervisors as Ordinance No. 330-81 on June 26, 1981. The Board found that the Ordinance was necessary to preserve the existing stock of residential guest rooms as housing for low-income, elderly, and disabled persons. The Board noted in 1981 that the residential guest room housing stock had been decreasing at an alarming rate due to vacation, conversion and demolition of these units to tourist and other uses. The Board found that this reduction created a housing emergency, and adopted Chapter 41 of the San Francisco Administrative Code to minimize the conversion and demolition of residential guest rooms.

Residential Hotel Certification

Beginning in 1981, the HCO required all hotel and apartment house owners and operators with guest rooms to report to the Bureau of Building Inspection (now the Department of Building Inspection) how the guest rooms were being used on September 23, 1979. If the guest room was actually occupied by a tenant for thirty-two consecutive days or longer, the room was designated as residential. If the guest room was occupied for less than thirty-two days the room was designated tourist. The property owner/operator had fifteen days to appeal the certification of these designations by the Bureau of Building Inspection.

Residential Hotel Description

A hotel is considered residential if it has one or more residential guest rooms as certified by the HCO. Approximately five hundred and six (506) hotels are designated residential by Chapter 41 of the S. F. Administrative Code, which includes those hotels owned or operated by non profit organizations. The overall number of residential hotels can fluctuate because the Ordinance permits a hotel to change its residential designation upon approval of a Permit to Convert. Residential guest rooms can be legally converted to tourist uses with approval by the Director of Building Inspection. The Permit to Convert requires the hotel owner to replace the converted residential guest rooms with in lieu (replacement housing) fees, the construction of new units, or the creation of new residential guest rooms in an existing building.

Reports And Records Required

All residential hotels which do not have documentation on file with the Department of Building Inspection indicating that the hotel is operated by a non-profit (recognized by the IRS) must file an Annual Unit Usage Report on November 1st every calendar year. These residential hotels must also maintain daily logs, weekly reports and corresponding receipts for up to two years. The Certificate of Use indicating the number of residential and tourist guest rooms assigned to the hotel must be posted at the hotel lobby along with the weekly report.

Residential hotel owners and operators must rent residential guest rooms certified by the HCO for seven days or longer. From May 1st through September 30th a residential hotel operator may rent twenty-five percent of their residential guest rooms on a nightly basis provided that the guest room is legitimately vacant and offered for residential use first.

The Housing Inspection Services Division maintains files on residential hotels which are available for public review. These files contain documentation required by Chapter 41 of the San Francisco Administrative Code, such as the Certificate of Use, filed Annual Unit Usage Reports and Complaint Tracking Data regarding enforcement activities.

Within the last five years, no winter rentals have been applied for pursuant to Sections 41.19(a)(3) and 41.19(c) of Chapter 41of the S. F. Administrative Code.

Funds deposited into the San Francisco Residential Hotel Preservation Fund Account are transmitted to the Mayor's Office of Housing for dispersal pursuant to Section 41.13 of the Chapter 41 of the S. F. Administrative Code. During this fiscal year three Permits to Convert were approved which required replacement housing fees to be deposited in the San Francisco Residential Hotel Preservation Fund Account.

Residential hotel owners and operators must rent residential guest rooms certified by the HCO for seven days or longer. From May 1st through September 30th a residential hotel operator may rent 25 percent of their residential guest rooms on a nightly basis provided that the guest room is legitimately vacant and offered for residential use first.

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Summary Of Enforcement Efforts:

Delinquent notices are sent to those residential hotel owners/operators who have not filed their Annual Unit Usage Report (due November 1st, every year) or are missing other historical information.

RESIDENTIAL HOTEL UNIT CONVERSION AND DEMOLITION ORDINANCE
ANNUAL REPORT
Fiscal Year 2005 - 2006

REPORTS AND RECORDS REQUIRED:

All residential hotels which do not have documentation on file with the Department of Building Inspection indicating that the hotel is operated by a nonprofit (recognized by the IRS) must file an Annual Unit Usage Report on November 1st every calendar year. These residential hotels must also maintain daily logs, weekly reports and corresponding receipts for up to two years. The Certificate of Use indicating the number of residential and tourist guest rooms assigned to the hotel must be posted at the hotel lobby along with the weekly report.

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Patricia Beasley and Paul Landsdorf work diligently helping customers

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SAN FRANCISCO
PLANNING DEPARTMENT

DATE:	September 18, 2013
TO:	San Francisco Planning Department
FROM:	Sarah Jones, Environmental Review Officer
RE:	Processing Guidance: Not a project under CEQA

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PURPOSE

In evaluating the appropriate level of environmental review, the lead agency must first establish whether the proposed activity is considered a project under the California Environmental Quality Act (CEQA). This memorandum lists permit activities, reviewed by the San Francisco Planning Department, that are not considered a project, as defined by CEQA Section 21065 and State CEQA Guidelines Section 15378. Therefore, they are not subject to CEQA review.

CEQA defines a "project" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" and is undertaken, supported, or approved by a public agency. (Pub. Res. Code, § 21065.) Approvals, including any Planning permits, for these activities should receive no further action under CEQA.

The following activities have been deemed as "not a project" by the San Francisco Planning Department:

- Interior renovations of structures, where the interiors are not publicly accessible, the renovations do not increase the density or intensity of use (i.e. no new units), and there are no exterior modifications;
- Exterior in-kind repair or replacement work on portions of an existing structure not visible from the public right-of-way involving no expansion of the structure (i.e. in-kind repair or replacement of windows, stairs, fences, stucco, siding, roofing and decks);
- Interior renovations of publicly-accessible structures involving no change or expansion of use, where the interior of the structure is not historically significant and/or does not contribute to the building's historic significance;
- Legalization of existing, occupied uses or units;
- Condominium conversions that: (1) involve no activity subject to a building permit or are limited to permitted work not considered a project; and (2) do not require a Planning Commission authorization.

No exemptions shall be issued for any of the activities listed above.

Who IS CEO?

SAN FRANCISCO SRO LEASING STRATEGIES

HomeBase

March 2, 2015

Overview

- Introduction
- Financial Strategies
- Non-Financial Strategies
- Community Experiences
- Recommendations

Introduction

Key Principles

- Understand landlord interests and behavior
  - Profitability
  - Consistent income
  - Asset protection
  - Minimizing conflict / legal action
- Balance landlord needs with program/agency and program participants
- Account for San Francisco's tight rental market

Financial Strategies

Pre-Leasing Incentives

- Leasing Bonuses
  - Fixed bonus for each unit
  - Fixed-scale bonus for each type of unit
- Cost – One-Time
  - $35 administrative fee x 500 SROs = $17,500
  - $100 bonus x 500 SROs = $50,000
- Effectiveness
  - Token amount may not be compelling in tight market

Protective Payee

- Third party Management of Escrow Account
- Cost – Monthly
  - $32 /mo x 500 client= $16,000 /mo
  - Likely cheaper if scaled up / automated
- Effectiveness
  - Cost-effective if temporary and cost is reduced by automating and scaling up

Tenant Vetting & Holding fees

- Conduct background check & provide holding fees
- Cost – One-time
  - $50-100/background check (credit) x 500 clients = $25,000-$50,000
  - $100/client holding fee x 500 clients = $50,000
- Effectiveness
  - Depends on economies of scale
  - Holding fee = insufficient incentive due to rapid turnover and competitive rental market

Risk Mitigation Pools

- Insurance pool grants, landlord guarantee funds
- Covers: damage (not covered by security deposit), unpaid/late rent
- Cost – Requires consistent fundraising
  - $800,000 – $1,000,000
- Effectiveness
  - Significantly reduces risk for landlords

Increased security deposits

- Higher deposit for higher risk tenants
- Cost – Requires consistent fundraising
  - $942-$1884/security deposit x 500 units = $471,000–$942,000
- Effectiveness
  - Provides incentive to programs to help prevent damage

Non-Financial Strategies

Tenant Supports

- Accessing Housing
  - Tenant education & certification programs
  - Character recommendation letters
  - Co-signing leases
- Maintaining Housing
  - Case management & Supportive Services
  - Tenant peer support groups

Tenant Supports

- Cost
  - Varies widely depending on service
- Effectiveness
  - Case management & Supportive Services are essential
  - Certification, co-signing leases, character letters, & peer support groups may be helpful

Landlord Supports

- Support hotlines / responsive landlord management staff
- Rapid turnaround on providing financial services
- Neutral mediation services
- Property maintenance
- Landlord recognition
- Landlord support network

Landlord Supports

- Cost
  - Varies widely depending on service
  - Ex. 3 staff x $95,000-$285,000 FTE = $475,000
- Effectiveness
  - Landlord relationship management is essential

Landlord Outreach & Marketing

- Marketing campaigns/materials
- Landlord Advisory Committee
- Landlord Search (Section 8 listings, finders' fees)
- Tracking database

Landlord Outreach & Marketing

- Cost
  - Varies widely depending on level of campaign
  - Estimated $5,000 – $50,000
- Effectiveness
  - Critical for combating stigma

Master Leasing

- Cost
  - Estimate varies widely depending on size of lease
- Effectiveness
  - May result in significant property management challenges

Community Experiences

Landlord Liaison Project: King County, Seattle

- March 2009
- Increase access to private market & non-profit-owned rental housing
- Sponsors
  - County Dept. of Community & Human Services
  - City of Seattle
  - United Way
  - service providers

Landlord Liaison Project: King County, Seattle

- Services Provided to Landlords
  - Access to qualified, vetted applicants
  - Access to 24-hour hotline
  - Rapid response to landlord concerns by partnering agencies
  - Access to Landlord Risk Reduction Fund ($1 million) for excessive property damage/non-payment of rent

Landlord Liaison Project: King County, Seattle

- Services Provided to Tenants
  - Move-in costs, rental assistance
  - Eviction prevention
  - Tenant trainings
  - Mediation with landlords
  - Access to supportive services for at least 1 year

Landlord Liaison Project: King County, Seattle

- Results (10 months)
  - 147 households placed
  - 96% retention rate at 6 months
  - 87 interventions/mediations, but no calls to landlord
  - Only $2,663 used from Fund for damage to 3 units
  - 71% landlords "satisfied" or "very satisfied"

Recommendations

Priorities

- Tenant Success
  - Tenant education programs
  - Case management & supportive services
  - Tenant peer support groups
- Cost-Effective Financial Incentives
  - Risk mitigation pools
  - Increased security deposits
  - Protective payee program

Under Administrative Code Chapter 41A, owners of the 413 private hotels are required to file with the Department of Building Inspection (DBI) an Annual Unit Usage Report (AUUR), indicating the total number of units in the hotel as of October 15th of the filing year; the number of residential and tourist units; the number of vacant residential units as of October 15th; the average rent for the units; the nature of services provided at the hotel, and other pertinent information. DBI mails the usage report to all of the hotels annually.

In 2014, only 179 of the 413 hotels returned the usage report. Our office attempted to contact the remaining 234 private hotels, as well as all 90 of the non-profit owned and operated hotels in the City. We received vacancy information for an additional 49 private hotels, and for 32 of the non-profit owned and operated hotels, resulting in vacancy information for 260 non-profit operated and/or privately owned and operated hotels, or 52 percent of the total 503 hotels. The hotels for which we received no vacancy information had disconnected numbers, did not return phone calls, or would not provide information. As a result, it was impossible to verify whether they are still in operation, or to include vacancy information for them.[2]

The Chief Housing Inspector for the Department of Building Inspection stated that all of the 413 privately-owned residential hotels are thought to be in operation, but that they might not be serving the population that is traditionally thought of as occupying residential hotel units. While the Administrative Code does not restrict who may be served by residential hotels, according to Administrative Code Section 41.3, "Many of the elderly, disabled and low-income persons and households reside in residential hotel units."

A few of the buildings that our office called for this analysis indicated that they are serving populations other than the low-income, disabled, and elderly individuals whom the units are intended to serve. The hotels may be providing long-term rental housing to students or to young technology sector workers, both of which would be allowed under the provisions of Chapter 41.

Chapter 41 restricts the extent to which the residential units in these hotels can be converted to tourist rooms, other types of short-term housing, or to commercial uses. Prior to the issuance of a permit to convert, the owner or operator of the hotel must provide one-for-one replacement of the units to be converted by one of the following methods:

[2] DBI actively transmits notices to residential hotel owners who do not file the Annual Unit Usage Report (AUUR) or fail to submit complete reports. This process includes the imposition of fines that accrue over time. If not paid, a lien will be placed on the property tax bill for the hotel in question, as specified by Section 41.10(g) of Chapter 41. As of July, 2015, DBI has issued 234 notices for failure to properly file the 2014 AUUR.

- Construct or cause to be constructed a comparable unit to be made available at comparable rent to replace each of the units to be converted;
- Cause to be brought back into the housing market a comparable unit from any building which was not subject to the provisions of this Chapter;
- Construct or cause to be constructed or rehabilitated apartment units for elderly, disabled or low-income persons or households which may be provided at a ratio of less than one-to-one; or construct or cause to be constructed transitional housing which may include emergency housing;
- Pay to the City and County of San Francisco an amount equal to 80 percent of the cost of construction of an equal number of comparable units plus site acquisition cost; and
- Contribute to a public entity or nonprofit organization that will use the funds to construct comparable units, an amount at least equal to 80 percent of the cost of construction of an equal number of comparable units plus site acquisition cost.

SRO hotels that were built before June 13, 1979, are also covered under San Francisco rent control laws. The rents for residential units in these buildings may only be raised a certain amount annually as dictated by the Rent Board.

VACANCIES IN PRIVATE SROs

Our office found that 3.4 percent of the units were vacant in the 32 SRO hotels that are owned and operated by non-profit organizations and that are outside of the master-lease programs run by DPH and HSA. We found that 11.9 percent of the units were vacant in the 228 privately owned and operated hotels for which data was obtained, as illustrated in Table 2 below.

Table 2: Vacancy Rate by Hotel Type

Hotel Type	Number of Hotels	Total Residential Units	Total Vacant Residential Units	Percent Vacant
Non-profit owned and operated	32	2,667	91	3.4%
Privately owned and operated	228	7,241	864	11.9%
Total	260	9,908	955	

Source: Department of Building Inspection; Interviews with hotel management

There are a few additional SRO hotels in other parts of Oakland, along International Boulevard in East Oakland and along West MacArthur Boulevard. However, these hotels were not analyzed as part of the Department of Housing and Community Development's survey, so information about their vacancy rates is unknown at this time.

CONCLUSIONS

Given the low rate of response to Building Inspection's annual Hotel Unit Usage Report (AUUR), it is difficult to know precisely both the total number of residential units available in private and non-profit owned and operated SRO hotels, and the actual vacancy rates for these buildings. Our attempt to contact the unresponsive hotels revealed numerous unavailable or disconnected numbers. We also confirmed that at least three of the hotels are now providing long-term housing for students only, a use which is allowed under Chapter 41, but which does not accomplish the goal of providing rooms for low-income and disabled populations.

Based on the Budget and Legislative Analyst's survey, DPH and HSA information, and DBI's reporting, master-leased and non-profit owned SROs have fewer vacancies than privately-owned SROs. HSA reported an average of 3.5 percent vacancies and DPH reported an average of 4.2 percent vacancies in the master-leased units, although each department reports vacancies differently. Based on DBI reporting and the Budget and Legislative Analyst survey, non-profit owned SROs had vacancies of 3.4 percent and privately owned SROs had vacancies of 11.9 percent.

Rhorer, Trent (HSA) (DSS)

From: Simmons, Noelle (HSA) (DSS)
Sent: Thursday, August 27, 2015 8:54 PM
To: Rhorer, Trent (HSA) (DSS)
Subject: mandatory shelter

Hi Trent,
My two cents . . .

The Problem

- You define the problem as the failure of current policies and programs to reduce the street population. This is true, which suggests both the reality of the magnet effect and the reality that people we've successfully housed still spend time on the streets. I think an also true but different problem is that current strategies are designed to house people, not to address undesirable street behaviors like using in public, aggressive panhandling, public defecation, etc.

Why It's a Problem

- The 2nd problem you identify is public health risk, and the main paragraph speaks to this. The sub-bullets speak to me of a different problem, which is the individual human suffering that results from homelessness, and the attendant societal costs. Alternately, the 2nd sub-bullet on costs associated with high users could be combined with problem 4, which also addresses the budgetary impacts of homelessness.
- I think problems 1 and 3 could be combined – they both speak to the duty of a responsible representative gov't to be accountable to its citizens, both by addressing their identified concerns and by demonstrating effective use of public resources.

Solution

- I support the idea of a mandatory shelter policy but am not convinced that this alone will visibly reduce the street problem. We can't mandate people to remain in the shelter all day; like our PSH residents who are still spending their days on the street, I think we should expect the same would be true for shelter residents. There's also the risk that we will see the same "if you build it they will come" phenomenon with shelter that we've seen with housing (in other words, it seems possible that might we add 3,600 shelter beds and still see little change in the street count come 2017).
- For the threat of incarceration to be effective, a night in jail has to feel a lot worse than a night in shelter; otherwise the calculation becomes, "maybe I won't be cited, and if I am I just go to jail for the night, which is better/the same as shelter anyway." So in addition to the stick it seems like we need a carrot to draw people to shelter.
- Is the proposal to expand long-term beds or one-night beds? Either way, we know that the underlying reasons for negative street behavior aren't addressed by simply giving people a room.
- I'm thinking that to make a visible impact on the streets, mandatory shelter needs to be coupled with: (1) treatment on demand, (2) long-term stays so there's time to work with residents and link them to services/alternative arrangements, and (3) enforcement that goes beyond banning sleeping/camping on the streets and in parks, e.g. that extends to quality of life offenses like public defecation, public dealing and drug use, failure to control dogs that are threatening people, etc.

NYC Questions - Looks like a comprehensive list; just a couple additions:

1. Per my last bullet above, when you ask whether law enforcement plays a role, could you probe around the specific laws that are enforced?
2. When you ask about whether shelters are designed for specific populations I'd also be curious about TAY.
3. When you ask what they do for the seriously mentally ill, I'd have the same question about people with substance abuse issues.

DRAFT POLICY DOCUMENT – NOT FOR PUBLIC DISTRIBUTION

The Problem:

Despite ending homelessness for over 21,000 individuals through placement into supportive housing and transportation home through the Homeward Bound Program, the street population in San Francisco persists. The Homeless Point in Time Count in 2015 identified over 3,600 individuals on the streets. This is relatively the same number of individuals counted in 2009, 2011 and 2013. During this same period; however, SF placed thousands of homeless in permanent housing and reunified about the same number through Homeward Bound. San Francisco's current policies and programs have proven extremely effective at permanently ending homelessness at the individual level but they have proven largely ineffective at reducing the street population. In fact, it could be argued that these policies aren't designed to reduce the street population (harm reduction, no compulsory shelter, etc). While San Francisco should continue to pursue our effective strategies to permanently end homelessness for single adults, the City must develop solutions to address a problem that it has not heretofore effectively tackled: there are thousands of homeless individuals on the street every day and night.

Why is it a problem?

1) San Francisco's residents generally identify street homelessness as the #1 problem in the Controllers annual resident survey. Put simply, San Francisco taxpayers identify it as a problem that the City needs to address and it is incumbent upon a responsible representative government to attempt to address its citizens' needs.

2) It's a public health crisis as living on the street is not only harmful to a person's physical and mental health but it poses health risks to the general public due to the presence of excrement, used needles, vermin, etc that are often byproducts of persons living on the streets or in our parks.

- Studies have shown that a person's untreated and or un-medicated mental illness results in more severe psychosis over time and the propensity to self-medicate with drugs and/or alcohol increases. In addition, untreated physical health problems generally result in persons getting sicker and requiring more invasive health remedies and longer hospital stays.
- The individual human harm of living outdoors is also often accompanied with increase City budgetary costs resulting from increased use of emergency room care, increased hospitalizations and longer inpatient stays, increased EMS responses, etc.

3) It undermines public confidence in the City's significant investment to address homelessness and masks the effectiveness of our taxpayer funded interventions. While we have housed over 10,000 people, [95%] the public by and large doesn't see these successes. They only see the failures that are represented by the thousands on the streets.

4) Over time, it can potentially have a negative effect on the tourism and convention industries, which is one of the key drivers of San Francisco's economy and tax revenue base.

The Proposed Solution:

San Francisco should no longer allow individuals to live on City streets or in City parks. Instead the City should provide a nightly shelter bed to ALL individuals who are living on the streets or in our parks and homeless individuals living outdoors will be required to accept the offer of a shelter bed or face criminal penalty. It is important to note that this new policy is **NOT** a solution to homelessness, but instead is a solution to the problem (as enumerated above) of individuals living on the streets and in our parks. The current strategies to prevent and end homelessness (eviction prevention, rental subsidies, supportive housing, behavioral health treatment, etc.) will continue and need to increase under this new City policy.

Patricia Beasley and Paul Landsdorf work diligently helping customers

RESIDENTIAL HOTEL CERTIFICATION:

Beginning in 1981, the HCO required all hotel and apartment house owners and operators with guest rooms to report to the Bureau of Building Inspection (now the Department of Building Inspection) how the guest rooms were being used on September 23, 1979. If the guest room was actually occupied by a tenant for thirty-two consecutive days or longer, the room was designated as residential. If the room was occupied for less than thirty-two days the room was designated tourist. The property owner/operator had fifteen days to appeal the certification of these designations by the Bureau of Building Inspection.

RESIDENTIAL HOTEL DESCRIPTION:

A hotel is considered residential if it has one or more residential guest rooms are certified by the HCO. Approximately five hundred and twenty-one hotels are designated residential by Chapter 41 of the S. F. Administrative Code, which includes those hotels owned or operated by non profit organizations. The overall number of residential hotels can fluctuate because the Ordinance permits a hotel to change its residential designation upon approval of a Permit to Convert. Residential guest rooms can be legally converted to tourist uses with approval by the Director of Building Inspection. The Permit to Convert requires the hotel owner to replace the converted residential guest rooms with in lieu (replacement houisng) fees, the construction of new units, or the creation of new residential guest rooms in an existing building.

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RESIDENTIAL HOTEL UNIT CONVERSION AND DEMOLITION ORDINANCE

ANNUAL REPORT

Fiscal Year 2014 – 2015

REPORTS AND RECORDS REQUIRED:

All residential hotels which do not have documentation on file with the Department of Building Inspection indicating that the hotel is operated by a nonprofit (recognized by the IRS) must file an Annual Unit Usage Report on November 1st every calendar year. These residential hotels must also maintain daily logs, weekly reports and corresponding receipts for up to two years. The Certificate of Use indicating the number of residential and tourist guest rooms assigned to the hotel must be posted at the hotel lobby along with the weekly report.

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Funds deposited into the San Francisco Residential Hotel Preservation Fund Account are transmitted to the Mayor's Office of Housing for disbursal pursuant to Section 41.13 of the Chapter 41 of the S. F. Administrative Code. During this fiscal year one Permit to Convert was approved which required replacement housing fees to be deposited in the San Francisco Residential Hotel Preservation Fund Account.

SUMMARY OF ENFORCEMENT EFFORTS:

Delinquent notices are sent to those residential hotel owners/operators who have not filed their Annual Unit Usage Report (due November 1, every year) or are missing other historical information.

REPORTS AND RECORDS REQUIRED

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ANNUAL REPORTING HIGHLIGHTS:

Total Number of Residential Hotels: (Which file an Annual Unit Usage Report)	**417**
Total Number of Residential Guest Rooms: (Protected by the HCO to be conserved)	**13,903**
Total Number of Residential Guest Rooms: (Reported as occupied by the Annual Unit Usage Report)	**9,950**
Residential Guest Room (Overall) Average Rent:	**$626**
Residential Hotels offering services: (include Maid Service, Linen Service, Security Service, Intercom System, Meal Service, Utilities Paid and Other)	**287**
HCO Violations	
Complaints received:	**5**
Complaints abated: (Includes cases initiated from the previous year)	**5**
Residential Guest Rooms Converted: (Through the Permit to Convert Process)	**46**
Residential Units temporarily unavailable or effected by fire:	**0**

Hotel Unit Conversion and Demolition Ordinance

Legislative History

The Residential Hotel Unit Conversion and Demolition Ordinance (HCO) was originally adopted by the Board of Supervisors as Ordinance No. 330-81 on June 26, 1981. The Board found that the Ordinance was necessary to preserve the existing stock of residential guest rooms as housing for low-income, elderly, and disabled persons. The Board noted in 1981 that the residential guest room housing stock had been decreasing at an alarming rate due to vacation, conversion and demolition of these units to tourist and other uses. The Board found that this reduction created a housing emergency, and adopted Chapter 41 of the San Francisco Administrative Code to minimize the conversion and demolition of residential guest rooms.

Residential Hotel Certification

Beginning in 1981, the HCO required all hotel and apartment house owners and operators with guest rooms to report to the Bureau of Building Inspection (now the Department of Building Inspection) how the guest rooms were being used on September 23, 1979. If the guest room was actually occupied by a tenant for thirty-two consecutive days or longer, the room was designated as residential. If the guest room was occupied for less than thirty-two days the room was designated tourist. The property owner/operator had fifteen days to appeal the certification of these designations by the Bureau of Building Inspection.

Residential Hotel Description

A hotel is considered residential if it has one or more residential guest rooms as certified by the HCO. Approximately five hundred and six (506) hotels are designated residential by Chapter 41 of the S. F. Administrative Code, which includes those hotels owned or operated by non profit organizations. The overall number of residential hotels can fluctuate because the Ordinance permits a hotel to change its residential designation upon approval of a Permit to Convert. Residential guest rooms can be legally converted to tourist uses with approval by the Director of Building Inspection. The Permit to Convert requires the hotel owner to replace the converted residential guest rooms with in lieu (replacement housing) fees, the construction of new units, or the creation of new residential guest rooms in an existing building.

Reports And Records Required

All residential hotels which do not have documentation on file with the Department of Building Inspection indicating that the hotel is operated by a non-profit (recognized by the IRS) must file an Annual Unit Usage Report on November 1st every calendar year. These residential hotels must also maintain daily logs, weekly reports and corresponding receipts for up to two years. The Certificate of Use indicating the number of residential and tourist guest rooms assigned to the hotel must be posted at the hotel lobby along with the weekly report.

Residential hotel owners and operators must rent residential guest rooms certified by the HCO for seven days or longer. From May 1st through September 30th a residential hotel operator may rent twenty-five percent of their residential guest rooms on a nightly basis provided that the guest room is legitimately vacant and offered for residential use first.

The Housing Inspection Services Division maintains files on residential hotels which are available for public review. These files contain documentation required by Chapter 41 of the San Francisco Administrative Code, such as the Certificate of Use, filed Annual Unit Usage Reports and Complaint Tracking Data regarding enforcement activities.

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Residential hotel owners and operators must rent residential guest rooms certified by the HCO for seven days or longer. From May 1st through September 30th a residential hotel operator may rent 25 percent of their residential guest rooms on a nightly basis provided that the guest room is legitimately vacant and offered for residential use first.

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Summary Of Enforcement Efforts:

Delinquent notices are sent to those residential hotel owners/operators who have not filed their Annual Unit Usage Report (due November 1st, every year) or are missing other historical information.

RESIDENTIAL HOTEL UNIT CONVERSION AND DEMOLITION ORDINANCE
ANNUAL REPORT
Fiscal Year 2005 - 2006

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Residential Hotel Certification

Beginning in 1981, the HCO required all hotel and apartment house owners and operators with guest rooms to report to the Bureau of Building Inspection (now the Department of Building Inspection) how the guest rooms were being used on September 23, 1979. If the guest room was actually occupied by a tenant for thirty-two consecutive days or longer, the room was designated as residential. If the room was occupied for less than thirty-two days the room was designated tourist. The property owner/operator had fifteen days to appeal the certification of these designations by the Bureau of Building Inspection.

Residential Hotel Description

A hotel is considered residential if it has one or more residential guest rooms certified by the HCO. Approximately 517 hotels are designated residential by Chapter 41 of the S. F. Administrative Code, which includes those hotels owned or operated by non profit organizations. The overall number of residential hotels can fluctuate because the Ordinance permits a hotel to change its residential designation upon approval of a Permit to Convert. Residential guest rooms can be legally converted to tourist uses with approval by the Director of Building Inspection. The Permit to Convert requires the hotel owner to replace the converted residential guest rooms with in lieu (replacement housing) fees, the construction of new units, or the creation of new residential guest rooms in an existing building.

Reports And Records Required

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SAN FRANCISCO DEPARTMENT OF BUILDING INSPECTION

Reports and Records Required

All residential hotels which do not have documentation on file with the Department of Building Inspection indicating that the hotel is operated by a non-profit organization (recognized by the IRS) must file an Annual Unit Usage Report on November 1st every calendar year. These active residential hotels must also maintain daily logs, weekly reports and corresponding receipts for up to two years. The Certificate of Use indicating the number of residential and tourist guest rooms assigned to the hotel must be posted at the hotel lobby along with the weekly report.

Residential hotel owners and operators must rent residential guest rooms certified by the HCO for seven days or longer. From May 1st through September 30th a residential hotel operator may rent 25% of their residential guest rooms on a nightly basis provided that the guest room is legitimately vacant.

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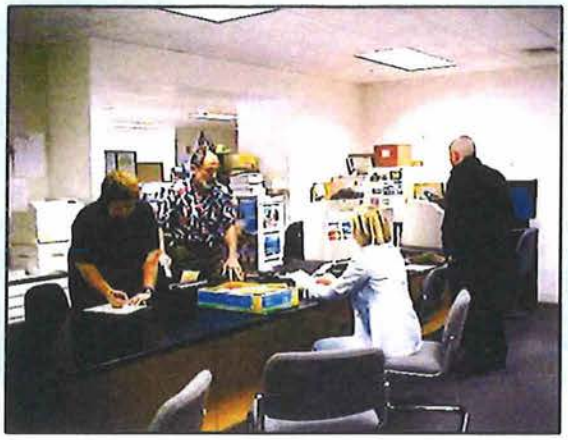

Patricia Beasley and Paul Landsdorf work diligently helping customers

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Residential Hotel Description:

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Table 3: Vacancy Rates for All SRO Respondents

Non-Master Lease Hotels	Number of Hotels	Total Residential Units	Total Vacant Residential Units	Vacancy Rate
Privately owned	354	11,473	1,488	13.0%
Non-profit owned	29	2,028	84	4.1%
Subtotal	383	13,501	1,572	11.6%
Master-Lease Hotels				
HSA Developed Master Lease	30	2,660	106	4.0%
DPH Developed Master Lease	6	450	11	2.4%
Master Lease Subtotal	36	3,110	117	3.8%
Total	**419**	**16,611**	**1,689**	**10.2%**

Sources: DBI, DHSH, Real Estate Division, Interviews with SRO management.

Many SROs had disconnected numbers, did not return phone calls, or were unable to provide information. As a result, it was impossible to verify whether they are still in operation, or to include vacancy information for them. SROs that fail to file AUURs are subject to code enforcement by DBI.

Vacancies in Non-Master-Leased Buildings

Of the 383 non master-lease SROs, 1,572 of 13,501 units (11.6 percent) were vacant. Our point-in-time analysis found privately-owned SRO hotels had a vacancy rate of 13.0 percent, whereas the non-profit SRO hotels had a vacancy rate of 4.1 percent, as shown in Table 3 above.

Vacancies in Master-Leased Buildings

Master-lease buildings developed by HSA and DPH throughout the City had a total vacancy rate of 3.8 percent, as shown in Table 3 above.

HSA Developed Master-Leased Buildings

Non-profit SRO providers in master-lease buildings developed by HSA report a point-in-time occupancy in the buildings on the last day of the month to DHSH (formerly a function of HSA), which provides a snapshot of room availability, rather than an average vacancy rate. As of June 30, 2016, the vacancy rate for the 2,660 units in the 30 HSA developed master-leased buildings was 4.0 percent, as shown in Table 3 above.

According to the Manager of Adult Services for DHSH (formerly under HSA), of the 106 vacant rooms, some already had clients in the screening process, some were offline for building repairs or pest control, and others were sealed off by the Coroner's office.

The Department has various methods, depending on building type, for filling vacancies as they arise. Once a candidate is referred to screen for a vacancy, that unit is not considered vacant, although the unit will technically not be occupied

According to ABAG, out of 102 cities in the Bay Area, 24 cities and four unincorporated portions of counties have SRO regulating policies, as shown in Table 5 below.

Table 5: Bay Area Counties with SRO Regulating Policies

County	City
Alameda	Albany
	Oakland
Contra Costa	Antioch
	Clayton
	Concord
	Danville*
	Hercules*
	Moraga
	Oakley
	Pleasant Hill*
	Richmond
	San Pablo
	San Ramon
	Unincorporated Contra Costa County
Marin	San Rafael
Napa	City of Napa
	Unincorporated Napa County*
San Francisco	San Francisco
San Mateo	Brisbane
	San Carlos
	South San Francisco*
Santa Clara	Campbell*
	Cupertino
	Saratoga*
Solano	Fairfield
	Unincorporated Solano County*
Sonoma	Cloverdale
	Unincorporated Sonoma County*

Source: Association of Bay Area Governments

* Housing policies gathered by ABAG from Housing Elements, but unverified by local staff.

Conclusions

Current San Francisco Administrative Code provisions require tracking of SRO utilization but do not restrict how SROs can be utilized. SRO residential units can be rented to other than low-income residents or can remain vacant. The citywide vacancy rate for SROs in San Francisco in 2015 was 10.2 percent, with higher rates of vacancy for privately-owned and operated SROs (13 percent) and lower rates for nonprofit-owned (4.1 percent) and master-leased (3.8 percent) SROs.

Angulo, Sunny (BOS)

From: Rio Scharf <rio@thclinic.org>
Sent: Wednesday, October 05, 2016 5:23 PM
To: Angulo, Sunny (BOS)
Subject: Data re: 7-day Rentals
Attachments: Briefing Points.docx

Hey Sunny,

Sorry for the delay. Thank you again for your work on this. Here is the list of hotels where we suspect there are violations of Hotel Conversion Ordinance because owners have advertised rooms to tourists for 7+ night stays. Also, attached you will find our briefing points, outlining the need for clarity around seven day tourist rentals and evidence of at least three buildings advertising 7+ day tourist rentals. Please let us know anything else we can do to help. If you want to reference the buildings below publicly, please let me know. I will get confirmation that they continue to illegally court tourists for their residential rooms.

- Cable Car Court (1499 California Street)
- Nob Hill Place (1155 Jones Street)
- Kenmore (1570 Sutter Street)
- Monroe (1870 Sacramento Street)
- Gaylord (620 Jones Street)
- Emperor Norton (615 Post Street)
- Sheldon (629 Post Street)
- Steinhart (952 Sutter Street)
- Tropicana (661 Valencia Street)
- Entella (905 Colmbus Avenue)
- Balmoral Hotel (640 Clay Street)
- Astoria (510 Bush Street)
- Hotel Des Artes (447 Bush Street)

Best,

Rio Scharf
Community Organizer
Central City SRO Collaborative
48 Turk Street
Cell: (510) 629-0603
Office: (415) 775-7110 x109

BRIEFING POINTS FOR HOTEL CONVERSION ORDINANCE AMENDMENTS

The Central City SRO Collaborative (CCSRO) and the Department of Building Inspection (DBI) are proposing a series of amendments to the 1981 Hotel Conversion Ordinance (HCO). Created 35 years ago, this ordinance has been invaluable in preserving low-income residential hotels in San Francisco by giving the city and housing non-profits the tools to prevent unlawful building conversions, demolitions loss of residential units to the tourist market and more. However, the last three decades have seen drastic changes in the housing market and have revealed certain limitations in the HCO as it currently stands. These amendments seek to strengthen enforcement efforts, bring the ordinance up to date and offer corrections for parts of the ordinance that have proven ineffective.

WHY THE NEED FOR AMENDMENTS?

1. PRICES IN THE CURRENT MARKET

Single Room Occupancy Hotels have remained one of the only sources of affordable housing for seniors, disabled people and those on a fixed-income in our city. Yet, in recent years, we have seen the rents at these buildings rise enormously. It has become increasingly difficult for residents on a fixed-income to locate affordable SRO rooms. We believe that the increased rent at SRO hotels is due, in part, to the diminished supply of residential rooms caused by SRO owners renting residential rooms to tourists.

2. OUR ENFORCEMENT EFFORTS

The Central City SRO Collaborative has surveyed over 100 SRO hotels to investigate if they are illegally renting their residential rooms to tourists. We found a handful of hotels that are illegally renting their residential rooms to tourists at a nightly rate and we took action against them. However, we found more hotels that are renting their residential rooms to tourists at a weekly rate. This practice contradicts the spirit of the Hotel Conversion Ordinance, yet the wording in the original Ordinance ensures that we are not likely to succeed in taking action against hotels that engage in this practice.

3. CASE STUDIES

1. The Monroe Residence Club, which has 104 residential rooms and 0 tourist rooms, explicitly advertises to tourists and meets their needs by offering weekly and bi-weekly rates. (figure A)
2. At the Hotel Des Artes, 75% of their rooms are designated residential, yet they advertise all of their rooms to tourists. They try to evade the Hotel Conversion Ordinance by offering their residential rooms to tourists for no less than 7 days at a time. (figure B)
3. The Tropicana Hotel, on Valencia Street in the Mission, is a 100% residential building. However, they have gotten away with offering tourist rentals on AirBnB because they only allow tourists to book a room for 7 nights or more.

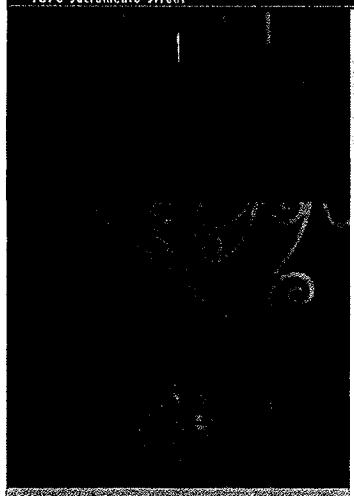
BRIEFING POINTS FOR HOTEL CONVERSION ORDINANCE AMENDMENTS

MONROE

RESIDENCE CLUB

1870 Sacramento Street San Francisco Call us: (415) 474-6200

HOME AMENITIES RATES CONTACT



Rates at the Monroe

ACCOMMODATION	1 WEEK	2 WEEKS	1 MONTH
Private suite, private bath	$550.00	$990.00	$1980.00
Private room, private bath	$500.00	$940.00	$1880.00
Private room, shared bath	$475.00	$890.00	$1780.00
Private room, hall bath	$450.00	$840.00	$1680.00
Shared suite, private bath	$375.00	$620.00	$1240.00
Shared room, shared bath	$350.00	$590.00	$1180.00
Shared room, hall bath	$325.00	$560.00	$1120.00

These rates are PER PERSON

Accepted methods of payment: Cash, Traveler's checks, Visa, Mastercard

MONROE RESIDENCE CLUB
1870 Sacramento Street (Map)
San Francisco, California 94109
Phone: (415) 474-6200
Fax: (415) 346-1870
Email: reservations@monroeresidenceclub.com

Figure A
Monroe Residence Club

Reservations

Click here to make a reservation

Figure B
Hotel Des Artes
447 Bush Street

Room Descriptions:

Residential Standard Shared Queen (SRO-SQ):
Our standard rooms feature a queen-size bed. Each room contains a washbasin and closet. Shower and toilet are shared among just a few rooms. Booking restriction applied of 7 nights or more.

Residential Deluxe Queen (SRO-DQ):
Our standard deluxe rooms feature one queen-size bed with a private bathroom. Booking restriction applied of 7 nights or more.

Artist (AR):
Our standard artist rooms feature one queen-size bed with a private bathroom. This room can be booked on a daily basis.

Residential Single Family Room (SRO-SU):
The Single Family Room features one queen size bed and private bathroom with the option of connecting to a second room with a Sofa/Bed. Up to 4 people can stay in this room. Booking restriction applied of 7 nights or more.

Residential Double Family Room (SRO-D2):

The Double Family Room features two full size beds and private bathroom with the option of connecting to a second room with a Sofa/Bed. Up to 6 people can stay in this room. Booking restriction applied of 7 nights or more.

All room rates include double occupancy. $15 extra for a third person (and 4th, 5th and 6th person for the Family Rooms). Weekly discount rates are also available upon request.

All rooms are painted and have Flat TV screens, mini frickes and desks.

BRIEFING POINTS FOR HOTEL CONVERSION ORDINANCE AMENDMENTS

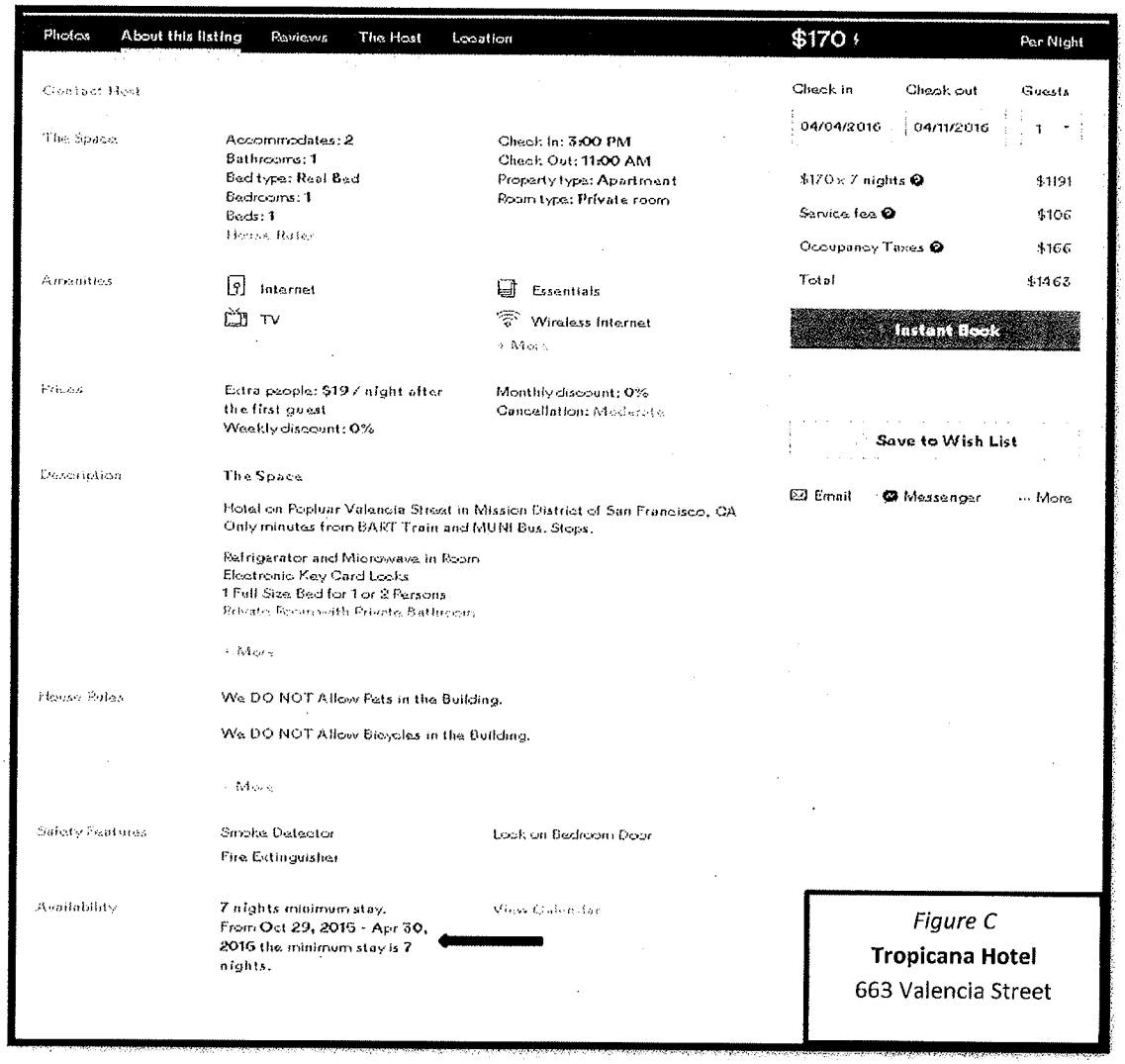


Figure C
Tropicana Hotel
663 Valencia Street

Angulo, Sunny (BOS)

From:	Sanbonmatsu, Jamie (DBI)
Sent:	Friday, January 13, 2017 12:54 PM
To:	pratibha tekkey (pratibha@thclinic.org); gen fujioka; raul fernandez; Diana Martinez
Cc:	Bosque, Rosemary (DBI); Angulo, Sunny (BOS)
Subject:	HCO hearing 1/23

Hi everyone

Supervisor Peskin is holding a hearing on important changes to the residential hotel conversion ordinance on Monday, January 23 at 1:30. The legislation will change the 7 day rule to 30 days and update penalties for the first time in a generation (among other items).

Please let your folks know, as well as those in your umbrella organizations.
If you have any questions, let me know, and keep up the good work!

Sincerely,

James Sanbonmatsu
Senior Housing Inspector
SRO Collaboratives Program Coordinator

SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 41
RESIDENTIAL HOTEL UNIT CONVERSION & DEMOLITION (HCO)
KEY ELEMENTS

To preserve the residential guest room inventory from conversion and demolition the HCO requires the following monitoring, implementation, and features.

- **Recordkeeping:** Hotel Operator must maintain the requisite records(records of use) that demonstrate the residential guest rooms are being rented properly. ***(Current record keeping requirements are subject to inaccuracies and do not readily reflect actual residential guest room rental.)***
  - Daily Logs
  - Weekly Reports
  - Corresponding Rent Receipts

- **Proper Rental:** Rent residential guest rooms for seven (7) days or more. ***(Add 30 day language)***

- **Annual Reporting:** Submit the Annual Unit Usage Report to DBI.
- ***(Add deficiencies)***

- **Obtain Approval to Convert:** File Permit to Convert application when converting residential guest rooms. ***(Add deficiencies)***

- **Consequences for Violations:** The HCO provides fines and penalties. ***(These have not been updated in 36 years)***
  - Failure to maintain/submit records
  - Illegally convert/demolish residential guest rooms.

HCO update needs from Chief Housing Inspector

I. Enforcement

A. Change 7 days to 32 days for Unlawful Conversion:

To effectively achieve the legislative intent of the HCO in today's economic market, residential use of a guest room certified for protection by Chapter41, should be defined as a thirty-two (32) day minimum rental. This is consistent with the HCO definition of a" Permanent Resident", and the Rent Ordinance. In addition, low income, elderly, and disabled persons should be allowed to pay in seven (7) day increments so they, as the target population to be served, have access to this housing.

- Section 41.20(a)(3): Revise this section to require a thirty-two (32) day minimum rental and ~~payment on a seven (7) day increment~~ to allow low income, elderly, and disabled persons to have economic access to these residential units.

B. Penalties (Section 41.11):

HCO code enforcement provisions reflect a thirty year old methodology, and do not require substantive consequences for illegal conversion /failure to maintain required records.

1. Penalties for failure to maintain the records of use should be more substantial than $250.00 per violation.
2. Notice of Apparent Violation (41.11(c): This Section should be amended to change Notices of Apparent Violation to Notices of Violation and be subject to Assessments of Costs similar to that for Housing and Building Code enforcement cost recovery.
3. Costs of Enforcement (41.11(g): Filing Fees and civil fines do not currently cover investigation and enforcement costs.

II. Records

1. Current residential hotel record keeping requirements are outdated, easily subject to misrepresentation, and do not reflect actual business activities.

Chapter 41 – Hotel Conversion Ordinance (HCO) Summary

The Way It Is Now	Why Is This A Problem?	Proposed Fixes in New Law
• *Background:* Single Resident Occupancy (SRO) hotels can be all residential units or have a mix of residential and tourist units, depending on what rooms were vacant in 1979 when the law took effect.	• From 1980-2000, thousands of SROs were converted to condos, the trend of the time. In recent years, the lucrative profits from short-term rentals and a booming tourist economy have led to a spike in illegal conversions to boutique hotels.	• Sup Peskin, Dept of Building Inspection, SRO Collaboratives, tenant orgs & hotel workers have all joined to update the HCO to address the threat of speculation schemes
• *Definitions:* Residential units must be rented for <u>at least</u> 7 days to "permanent residents" while tourist units are commercial rentals for one night or longer – so, not much of a difference in length of stay	• Private hotel owners rent these valuable residential housing units to short-term tourists for bigger profit, with none of the hassle of tenant protections. • Private hotel owners lie about who is staying in their residential units and warehouse those units to eventually convert the entire hotel to tourist use	• Redefines "tourist and transient use" as a rental of <u>less than 32 days</u> and cuts out "prospective resident" – basically, extends tenant protections to permanent residents as defined by the Rent Ordinance and expressly forbids weekly rentals to tourists • Redefines "unlawful conversion" to prohibit renting residential units as shortterm rentals (AirBnB, VRBO,etc)
• The current HCO allows special "seasonal" rentals of 25% of a hotel's residential units to tourists (during the "high season" of May 1-Sept 30) if the units are naturally vacant (ie., tenant left on own or had just cause eviction • Hotel owner can request DBI Commission hearing to rent out *more* than 25% residential units to tourists *but* because they have to prove that they are unable to "fill" vacant	• Flexibility creates culture that encourages "musical rooms" where hotel owners rent out valuable residential units for most of the year, which makes it harder to retain "permanent residents"- also makes it harder for DBI to enforce	• This is a big perk that hotel owners will now lose if they violate the law – no more summer "high season" rentals if there is a violation in the past year – which would make enforcing their existing designation of units easier

MEMORANDUM

To:	Supervisor Ahsha Safai
From:	Suhagey G. Sandoval
Re:	Proposed legislation amending the Residential Hotel Unit Conversion and Demolition Ordinance ("HCO"), Administrative Code Chapter 41 (File No. 161291) to be presented before the full Board of Supervisors on Tuesday, January 31, 2017.
Date:	January 30, 2017 (Monday)

I. BACKGROUND

The Ordinance amending the Residential Hotel Unit Conversion and Demolition Ordinance ("HCO"), Administrative Code Chapter 41, has been put forth because "private hotel owners rent these valuable residential housing units to short-term tourists for bigger profit, with none of the hassle of tenant protections."[1] The Department of Building Inspection (DBI) is responsible for HCO implementation and enforcement of the HCO. [2] The HCO "regulates [the] roughly 18,000 residential units within 500 residential hotels across the City that currently exist," and, of these 500 hotels,[3] 300 are for-profit and the remaining 200 are run by nonprofits. *Legistar*. Since its inception, the purpose of the HCO is to "benefit the general public by minimizing adverse impact on the housing supply and on displaced low income, and disabled persons resulting from the loss of residential hotel units through their conversion and demolition." Sec. 41.2, Admin. Code. The HCO prohibits "residential hotel operators from demolishing or

---

[1] Angulo, Sunny, "Chapter 41 – Hotel Conversion Ordinance (HCO) Summary," (henceforth, the "Summary"), via email, January 27, 2017.

[2] The proposed Ordinance timeline of events are as followed: (1) November 29, 2016, President London Breed assigned the Ordinance under the 30-Day Rule to the Land Use and Transportation Committee (due back on 12/29/2016); (2) On December 12, 2016, President London Breed received a substitute version of the Ordinance and "SUBSTITUTED AND ASSIGNED" to the Land Use and Transportation Committee (due back 12/29/2016); (3) On December 15, 2016, the Clerk of the Board referred the legislation (version 2) to the Planning Department for environmental review, to Small Business Commission for comment and recommendation and to Department of Building Inspection, Planning Department, Mayor's Office of Housing and Community Development, Department of Homelessness and Supportive Housing, and Department of Public Health for informational purposes; on December 15, 2016, the Planning Department reported that the Ordinance was not defined as a project under (CEQA) Guidelines; January 23, 2017, Supervisor Aaron Peskin amended the Ordinance (bearing same time), (P. 6, Line 21, striked "or prospective 'Permanent Resident' after ; January 23, 2017, the Ordinance was "RECOMMENDED AS AMENDED" to the full Board of Supervisors (will be before the Board on Tuesday, January 31, 2017).

[3] *Land Use and Transportation Committee*, January 23, 2017, Video, available at: http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=177&clip_id=26984.

converting registered residential units to tourist or transient use."[4] The HCO was first enacted in 1981 (Ordinance No. 330-81), following a 1979 moratorium and a declaration of a "housing crisis" by both the Board of Supervisors and Mayor. *This meant that starting in 1981, the HCO required all hotel owners/operators file an initial unit usage report and if not exemption applied, those guest rooms occupied by a permanent resident for (September 23, 1979, when the moratorium was implemented) were designated as residential units and subject to the protection of the HCO and those not occupied could be for tourist use.*

SUMMARY OF KEY TERMINOLOGY

Below, please find a list of key terms per the proposed Ordinance[5]:

1. Conversion: The change or attempted change of the use of a residential unit to a Tourist or Transient use, or the elimination of residential unit, or the voluntary demolition of a residential hotel, exempting changes to non-commercial uses which serves only the needs of permanent residents (e.g. resident's lounge, community kitchen, or a resident's lounge) provided that the "residential hotel owner establishes that eliminating or re-designating an existing tourist unit instead of a residential unit would be infeasiable." Ordinance, p. 4, Legistar, V3.

2. Permanent resident: A "person who occupies a guest room for at least 32 consecutive days." Id. This 32 consecutive day change is important and brings the HCO in compliance with the Rent Ordinance. This proposed change renders a rental of less than 32 days as transient or tourist.

3. Residential hotel: Any "building or structure which contains a Residential Unit as defined below unless exempted" (see below, #4). Id.

4. Residential Unit: Any guest room which had been occupied by a permanent resident on September 23, 1979. Any guest room constructed subsequent to September 23, 1979 or not occupied by a permanent resident on September 23, 1979 is exempted unless constructed as a replacement unit.

5. Tourist or transient use: Per the proposed change, any use of a guest room for less than a 32-day terms of tenancy by a party other than a Permanent Resident. This is crucial because the existing law requires that residential units be rented for at least seven days to "permanent residents" while tourist units are commercial rentals for one night or longer – "not

[4] The HCO defines "conversion as eliminating a residential unit, renting a residential unit for a leases than seven-day tenancy, or offering a residential unit for tourist or nonresidential use." Legistar, V3.

[5] Unless indicated otherwise, all references henceforth are to Chapter 41.

much of a difference in length of stay" and not in sync with the Rent Ordinance. Id.

6. Annual tourist season: Peak tourist season that begins May 1st and ends September 30th, current HCO allows special "seasonal" rentals of 25% of a hotel's residential units to tourists during this "high season" Section 41.3(j), Admin. Code . And, the hotel owner can request DBI Commission hearing to rent out more than 25% residential units to tourists if they can prove that the units cannot be "fill[e]d" and are vacant. Id.

7. Warehousing: Colloquial term for the purposeful vacancy of residential units by hotel owners/operators to then either sale the land or keep for tourists.

8. Evading tenancy in residential hotels ("musical rooming"): A hotel operator cannot require an occupant of a hotel room to move or to check out and re-register before the expiration of thirty-day occupancy period if a purpose of the move is to circumvent the law and deny the occupant tenant status. California Civil Code Section 1940.1; see Section 50519 of the California Health and Safety Code.

9. Certificate of Use: A certificate that is issued and that specifies the number of residential and tourist units therein. 41.4, Admin Code.

10. Hotel: Any building "containing six or more guest rooms intended or designated, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes and dwelling purposes by guests, whether rent is paid in money, goods or services." Id.

EFFECT OF ENACTING THE ORDINANCE

i. Summary of what ordinance will do

The proposed legislation is meant to honor the "original intent" of the initial HCO (HCO has been amended twice, in 1990 and 1992):

1. The HOC currently requires that residential guestrooms be available for low income, elderly and disabled person for a "term of tenancy of seven (7) days or more [proposed legislation will change this to 32 days, any rental of less than 32 days is considered a tourist rental]" DBI report, p. 5.[6]

[6] This term of tenancy is "defici[ent]" because it "does not adequately define a residential use in keeping with the intent of the HCO, and is not consistent with Rent Control and Short Term Rental residential occupancy time frames of *30-32 days*." *Land Use and*

From: Angulo, Sunny (BOS)
Sent: Monday, January 30, 2017 8:27 PM
To: acabande@somcan.org; tmecca@hrcsf.org
Cc: Randy Shaw <randy@thclinic.org>; Gen Fujioka <gfujioka@chinatowncdc.org>; Katie Selcraig <katie@dscs.org>; Diana Martinez <diana@dscs.org>; tim@dscs.org; Tan Chow <tchow@chinatowncdc.org>; Tammy Hung <thung@chinatowncdc.org>; Kitty Fong <kfong@chinatowncdc.org>; Rio Scharf <rio@thclinic.org>; Pratibha Tekkey <pratibha@thclinic.org>; Alexandra Goldman <agoldman@tndc.org>; ilewis@unitehere2.org; Sue Hestor <[redacted] Deepa Varma <deepa@sftu.org>; jennifer@sftu.org; fred@hrcsf.org; Tony Robles <tony@sdaction.org>; Theresa Imperial <theresa.imperial@vetsequitycenter.org>; brian.basinger@ahasf.org; joyce@cpasf.org; [redacted] cgomez@unitehere2.org; tenantorganizer@somcan.org; rquintero@tndc.org; [redacted] Gail Gilman <ggilman@chp-sf.org>; jwilson@hospitalityhouse.org; [redacted] <[redacted] 'Jordan Gwendolyn Davis' <[redacted] 'freebells@msn.com' <freebells@msn.com>; [redacted] <[redacted] [redacted] <[redacted]
Subject: FINAL PUSH: CH 41/SRO Conversion Update
Importance: High

Dear A-Team:

Thanks to all of you who have put your heart and souls into this legislation. I deeply appreciate your advocacy and commitment.

Tomorrow is a huge day and we need to keep everyone's feet to the fire. Although we have met with individual hotel operators and their representatives, we agreed to meet with over 50 more today and they flooded the halls and made the rounds to the various Supervisors after our meeting. Nothing much has changed: their chief concern is the very heart of the legislation. **They want to keep it at 7 days.** We have indicated that the community is committed to this core piece of the legislation.

Advocates are meeting at **12:30 at our office (Room 282)** to check in tomorrow and make the rounds to every Supervisor. At this point, the community should just be taking this up with every office before the vote.

You guys are rocks. I am excited to see us make some history tomorrow.

If you're in the audience tomorrow, Supervisor Peskin will ask you to stand if you support the legislation, depending on how many folks can show up. It's Item 41 on the agenda, so might be later in the meeting.

Please show up if you can. Let's do this.

Paz,

Sunny

Sunny Angulo
Supervisor Aaron Peskin, Chief of Staff
Sunny.Angulo@sfgov.org
415.554.7451 DIRECT
415.554.7450 VOICE

> WORKERS TO PROTECT SRO HOUSING
>
> _Legislative overhaul to Hotel Conversion Ordinance Would Protect
> 19,112 Units of Affordable Housing From Speculative Conversion
> Schemes_
>
> SAN FRANCISCO – Supervisor Aaron Peskin will host a rally on Monday,
> January 23rd to announce the details of his legislative update to
> Chapter 41 of the City's Administrative Code (also known as San
> Francisco Hotel Conversion Ordinance). Single Resident Occupancy (SRO)
> hotels are a critical source of rent-controlled affordable housing
> stock in San Francisco and have become attractive targets for
> conversion into boutique tourist hotels or illegally leased as
> short-term rentals. Supervisor Peskin has drafted legislation to
> address existing loopholes with input from the Department of Building
> Inspection, tenant organizations and hotel workers. The legislation
> will be heard at the Land Use & Transportation Committee meeting
> immediately following the rally and press conference.
>
> WHAT: Tenant Rally & Press Conference
>
> WHEN: Monday, January 23, 2017
>
> 12:00 noon
>
> WHERE: Polk Street Steps of City Hall
>
> WHO: Supervisor Aaron Peskin
>
> Supervisor Jane Kim
>
> Rosemarie Bosque, DBI Chief Housing Inspector
>
> Central City SRO Collaborative
>
> Mission SRO Collaborative
>
> Chinatown SRO Collaborative
>
> Community Tenants Association
>
> San Francisco Tenants Union
>
> UNITE HERE! Local 2
>
> Full Legislation can be found here:
> https://sfgov.legistar.com/View.ashx?M=F&ID=4824813&GUID=9DD04863-663A-497F-B871-F1921203C9D6
>
>
> Chinese & Spanish translation will be provided for interviews.
>
> FROM: Angulo, Sunny (BOS)
> SENT: Wednesday, January 18, 2017 5:11 PM
> TO: Team
> SUBJECT: RE: CH 41/SRO Conversion Update and next steps
>
> Hi, all –

From: Angulo, Sunny (BOS)
Sent: Monday, January 30, 2017 8:27 PM
To: TEAM
Subject: FINAL PUSH: CH 41/SRO Conversion Update
Importance: High

Dear A-Team:

Thanks to all of you who have put your heart and souls into this legislation. I deeply appreciate your advocacy and commitment.

Tomorrow is a huge day and we need to keep everyone's feet to the fire. Although we have met with individual hotel operators and their representatives, we agreed to meet with over 50 more today and they flooded the halls and made the rounds to the various Supervisors after our meeting. Nothing much has changed: their chief concern is the very heart of the legislation. **They want to keep it at 7 days.** We have indicated that the community is committed to this core piece of the legislation.

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You guys are rocks. I am excited to see us make some history tomorrow.

If you're in the audience tomorrow, Supervisor Peskin will ask you to stand if you support the legislation, depending on how many folks can show up. It's Item 41 on the agenda, so might be later in the meeting.

Please show up if you can. Let's do this.

Paz,

Sunny

Sunny Angulo
Supervisor Aaron Peskin, Chief of Staff
Sunny.Angulo@sfgov.org
415.554.7451 DIRECT
415.554.7450 VOICE
415.430.7091 CELL

District 3 Website

> Subject: RE: CH 41/SRO Conversion Update and next steps
>
> How are we doing on advocacy visits and lining up our votes?
>
> We really cannot take our progressive allies for granted. The Mayor
> and Board are being lobbied HARD by the hotel industry and in the last
> several days my line has blown up from lobbyists, hotel owners, the SF
> Hotel Council and others.
>
> Where are we at with Sandy Fewer, Norman Yee, Hillary Ronen and London
> Breed?
>

> Supervisor Jane Kim
>
> Rosemarie Bosque, DBI Chief Housing Inspector
>
> Central City SRO Collaborative
>
> Mission SRO Collaborative
>
> Chinatown SRO Collaborative
>
> Community Tenants Association
>
> San Francisco Tenants Union
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> UNITE HERE! Local 2
>
> Full Legislation can be found here:
> https://sfgov.legistar.com/View.ashx?M=F&ID=4824813&GUID=9DD04863-663A-497F-B871-F1921203C9D6
>
>
> Chinese & Spanish translation will be provided for interviews.
>
> FROM: Angulo, Sunny (BOS)
> SENT: Wednesday, January 18, 2017 5:11 PM
> TO: Team
> SUBJECT: RE: CH 41/SRO Conversion Update and next steps
>
> Hi, all –
>
> I wanted to send a follow-up recap from our meeting last week for
> folks that were unable to attend.
>
> Potential legislative amendments:
>
> · We are moving forward with striking "prospective permanent
> resident" from our definition of _Tourist and Transient Use._
>
> · I did meet with two hotel operators who asked that we lower the
> threshold of days required to rent a residential room, but I heard
> loud and clear the community organizers assembled here that they were
> unwilling to do this and that the community wanted to hold strong to
> the meat of the legislation. Please let me differently if that isn't
> the case…
>
> · Katie/Diana: Can you give me some additional detail about what
> you're looking for relative to strengthening SEC. 41.9? Were you
> thinking more of a required blueprint or floor plan upon submittal of
> application? Or a map detailing each room and its designation? Let's
> talk about it more tonight, but this is what the Daily Log reporting
> section currently says:
>
> "EACH RESIDENTIAL HOTEL SHALL MAINTAIN A DAILY LOG CONTAINING THE
> STATUS OF EACH ROOM, WHETHER IT IS OCCUPIED OR VACANT, WHETHER IT IS
> USED AS A RESIDENTIAL UNIT OR TOURIST UNIT, THE NAME UNDER WHICH EACH
> ADULT OCCUPANT IS REGISTERED, AND THE AMOUNT OF RENT CHARGED. EACH
> HOTEL SHALL ALSO PROVIDE RECEIPTS TO EACH ADULT OCCUPANT, AND MAINTAIN

COMMUNITY TALKING POINTS – SRO Conversions – Land Use Hearing

- Hello, my name is _____, and my SRO housing allows me to live in the neighborhood where I organize, where I volunteer, where I work and where I am deeply engaged. *[Talk about yourself and why this housing is so important to you!]*

- We are invested residents of this City. We are seniors, we are poets and artists, we are raising families, we are working multiple jobs and we are folks looking for a second chance.

- SRO Housing IS vital affordable housing. For many it is the only source of housing they can afford.

- Approximately 5% of our city's population currently lives in SROs.

- We have seen thousands of units of this vital housing stock taken off the market through speculative evictions, conversions and illegal short-term rentals.

- In the 1980s it was condo conversions, and now we are seeing how attractive the short-term/big-money pay-off is for hotel operators.

- It is so much more attractive to lease rooms to tourists and students than to rent rooms to the people who need them the most: San Francisco tenants!

- Tenants are entitled to tenant protections, and this is unattractive to hotel operators who can make more money renting to tourists, then warehouse the units and then ultimately sell the property almost entirely vacant for a huge profit.

- Supervisor Peskin's legislation
  1) gives residential tenants protections under the law,
  2) disincentivizes illegal conversions and the "musical rooms" speculation scheme and
  3) gives DBI stronger enforcement powers to actual monitor our homes!

HOTEL DES arts

447 Bush Street
San Francisco, CA 94108
415.956.3232 (p)
415.956.0399 (f)
reservations@sfhoteldesarts.com

APP ✓
SUNNY ✓

RECEIVED JAN 31 2017

January 27, 2017

Supervisor Aaron Peskin
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Hotel Conversion Ordinance Legislation - Preservation of Weekly Rentals for SRO Hotels.

Dear Supervisor Peskin:

My name is Samantha Felix and I manage Hotel Des Arts located on 447 Bush St., San Francisco, CA. 94108.

First, I would like to take this opportunity to thank you for hearing our concerns in the process of assigning the liquor license to the Bar Fluxus tenants on the ground floor of the Hotel, and for taking the time, along with Ms. Sunny Angulo, to meet with us. It was also pleasure to meet you at the Hotel and give you a tour.

The intent of this letter is to also express my deep concerns on the changes planned to be implemented to the HCO ordinance and how it would profoundly hurt our business. I believe that the proposed Amendment to the HCO needs further angles looked at. We are all in agreement that the issues are very complex. We trust though, that it requires further examination of current facts are required to fully assess the situation.

I understand your concerns and approach to help the housing situation that this City has and I was there myself at the SF Land Use Committee Hearing this past Monday January 23rd. As I was there, I listened to all the concerns and situations many people are going through and the necessities they have and the problems they encounter while living in other SRO hotels or while looking for one or any type of housing in the City. I too have some of those same concerns and as I was listening to some of the very valid and important points many people brought up, I couldn't help but think that many of these necessities that were being brought up, I cannot provide to them at Hotel Des Arts.

We are a hotel which has been extensively remodeled, is up to code, and provides maintenance to our building on a daily basis. We keep all common areas impeccably clean and do our best to always keep our property looking at its best. However, there are some variables we cannot control and which we deal with, especially if we consider having long term rentals or we would have to rent our units for 32 nights or more. We do not have the space nor have kitchens if we were to have long term residents in our building. Our units, like many in the city, are extremely small and cannot accommodate families, nor people with disabilities. We use to have many more permanent residents but they either moved out because they couldn't live in a building without a kitchen for that long and the cost of buying food every day was a lot, or they were getting older and could not live by themselves, especially in such small rooms, and the other

SROs are required?? to have grab bars?

HOTEL DES Arts

447 Bush Street
San Francisco, CA 94108
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415.956.0399 (f)
reservations@sfhoteldesarts.com

big factor was the noise we deal with on a day to day basis (especially in the middle of the night in our neighborhood due to garbage pick-ups mainly) drove them away. These are only a few of the reasons.

We are also located right in the heart of the financial/tourist district area and like most businesses in that area, we have a higher hotel tax to pay, along with the many other taxes and permits we pay. With only having 13 tourist rooms to rent on a day to day basis I have to try to be competitive with all the other many hotels in the area and encounter myself many times having to lower my rates due to competition. The remaining 38 SRO units are rented as well at a competitive price to anyone who is looking to reside in San Francisco, changing careers, changing schools, anyone looking for another place to reside, and to many other local residents in a similar situation. We also extend their stay to anyone who needs to do so. We also currently have one permanent resident who has been living at Hotel Des Arts since the early 90's and we are committed to giving him life-time residency.

Our weekly rentals allow for our temporary residents to have affordable housing. This is critical to the residency and economic needs of possible residents. If we change to 32 night rentals, I'm afraid that wouldn't be the situation as I would have to find myself raising the rents. I would also have to let go of many of my employees. Without the same income, employees who are local residents, would lose their jobs, jobs they've had for over 10 years. In addition, I would have to cut off a few of the services which will also impact my tourist units. Needless to say, this will also take away the opportunity of having many of local and international artist's work be displayed as we have art in every single unit. The current weekly rentals allow for many people to see these works. We have always supported our local artists and continue to do so by giving them a space to express themselves. We are proud to say we are the only hotel in San Francisco who does this and have art from many artists from all over the world in the rooms.

This will have a great impact on our property and will put us at risk of having to leave people without jobs. We are willing to cooperate with you in any way we can but we kindly ask you to give us the opportunity as well as managers and owners and to not implement the 32-minimum night restriction to our SRO's. We understand your concerns as well and wish to help. It is not our intention to take away from affordable housing and the situation our City is in, we are willing to help but I believe this will have a very negative impact to our hotel. I also believe we are not suitable to provide long term residency at our hotel and under the new legislation, it will be impossible to figure out who is a prospective permanent resident and how onerous the penalties are for non-compliance. WE DO NOT AND WILL NOT AIRBNB OUR ROOMS. AIRBNB IS A COMPETITOR.

By extending this restriction to 32 nights, I'm afraid that affordable housing will decrease as rents will go higher in order to compensate the loss of income and services. Who will be able to pay for these monthly rates in advance? I think that the ultimate result of passing the proposed legislation will be a decrease in the housing stock in San Francisco.

HOTEL DES ARTS

447 Bush Street
San Francisco, CA 94108
415.956.3232 (p)
415.956.0399 (f)
reservations@sfhoteldesarts.com

We have been under the magnifying glass for a few years in regards how the property has been operated and how we were selling our SRO's. I can assure you that since the new ownership took place as of November, of 2012, we have been doing everything by the books and we have been as cooperative as possible with the City and their compliances as we wish to build a positive and productive relationship with everyone in every way we can, and of course operate a successful business.

Thank you for your time and please know that you are more than welcome at any time to come and stop by at Hotel Des Arts, and enjoy Bar Fluxus as well.

Sincerely,

Samantha Felix
General Manager
925.200.3365
sfelix@sfhoteldesarts.com

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

December 15, 2016

File No. 161291

Lisa Gibson
Acting Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On December 6, 2016, Supervisor Peskin introduced the following substitute legislation:

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.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

for By: Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

SAN FRANCISCO DEPARTMENT OF BUILDING INSPECTION
HOUSING INSPECTION SERVICES

THE HOTEL CONVERSION ORDINANCE
CHAPTER 41 OF THE SAN FRANCISCO ADMINISTRATIVE CODE

INFORMATION SHEET #1

THE MOST COMMONNLY ASKED QUESTIONS
THE ANNUAL UNIT USAGE REPORT (AUUR)
AUUR must be filed November 1st, EVERY CALENDAR YEAR

1. ***What is the Annual Unit Usage Report and why must it be filed?***
   Chapter 41 of the San Francisco Administrative Code known as the Residential Hotel Unit Conversion and Demolition Ordinance (commonly referred to as the Hotel Conversion Ordinance or HCO) requires that all Apartment Houses or Hotels with certified residential guest rooms per said Ordinance, file this Annual Report unless the guest rooms are operated by an organization which is classified as a Nonprofit per Title 26 Section 501(c)(3) of the United States Code. The Housing Inspection Services Division of the Department of Building Inspection mails the Annual Unit Usage form to the property owner in the fall each 2016.

2. ***When must the Annual Unit Usage Report be filed?***
   The Annual Unit Usage Report should be submitted by November 1st each 2016.

3. ***Who is supposed to file the Annual Unit Usage Report?***
   The building owner, lessee, or hotel operator must file this Report. The form is sent to the owner of record because the City does not get notification when a Hotel manager, operator, or lessee changes.

4. ***Does my building have Certified residential guest rooms?***
   The Annual Unit Usage Report form you received to be filled out contains the "Certificate of Use Designations" for Residential and Tourist designations in the upper right corner on page one of the Report form.

5. ***What is the difference between a residential guest room, tourist guest room, and an apartment unit?***
   A guest room is a legal sleeping room typically without approved cooking facilities. Private bathrooms may exist but are not a requirement. A legal apartment unit is a dwelling unit by definition and must have cooking facilities and a private bathroom. Residential guest rooms must be rented for a period not less than 7 consecutive days to a San Francisco resident. A tourist guest room can be rented to a tourist on a nightly basis. For temporary changes to this requirement review Section 41.19 of the HCO.

6. ***Do I have to file this Report if I consider my building to be an Apartment House, a Bed & Breakfast, Boarding House, or another residential use?***
   Yes, you must file this Report if you have residential guest rooms certified by the HCO. Note that buildings that are considered a Residential Hotel for purposes of this Ordinance may have legal

SAN FRANCISCO DEPARTMENT OF BUILDING INSPECTION
HOUSING INSPECTION SERVICES

THE HOTEL CONVERSION ORDINANCE (HCO)
CHAPTER 41 OF THE SAN FRANCISCO ADMINISTRATIVE CODE

INFORMATION SHEET #2

SUMMARY OF THE RECORDS AS REQUIRED BY THE HCO
(THE CERTIFICATE OF USE MUST BE POSTED IN THE HOTEL LOBBY)
(RECORDS MUST BE MAINTAINED & AVAILABLE FOR REVIEW AT THE SUBJECT HOTEL)

What should the Daily Log contain?

1. Daily Logs must contain the address of the hotel and the date. (These logs are to be maintained on a daily basis, not weekly, monthly or only when rent payments are received.)
2. Daily Logs must include & account for all guest rooms on a daily basis (the first column of the Daily Log should indicate the room # or letter).
3. Daily Logs must indicate whether each guestroom was used for tourist use, residential use or vacant on a daily basis (by checking the appropriate column).
4. Daily Logs must provide the occupant(s) complete name for each occupied guest room on a daily basis.
5. Only include legal guest rooms. Do not include legal dwelling units or storage rooms in your Daily Log account.
6. Rent rolls, tenant rolls or housekeeping logs do not satisfy the requirements of Chapter 41 and will not be accepted as Daily Logs.
7. The hotel owner/operator must keep & maintain Daily Logs for a minimum of 2 YEARS, and have them available at the hotel site for inspection.

What should the Weekly Report contain?

1. Weekly Reports must be completed and posted in the lobby of the subject hotel before noon on Monday with information for the previous week.
2. Weekly Reports must contain the address of the hotel and the dates of the previous week (each week is from Monday to Sunday).
3. Weekly Reports must indicate how many guest rooms were rented for less than 7 days (tourist guest rooms) on each day of the previous week, Monday to Sunday.
4. The hotel owner/operator must sign & indicate the date the Weekly Report is posted.
5. The hotel owner/operator must keep & maintain Weekly Reports for a minimum of 2 YEARS, and have them available at the hotel site for inspection.

What should the Rent Receipts contain?

1. Rent Receipts must indicate the address of the hotel.
2. Rent Receipts must provide the date the receipt is issued and the name of the person who has issued the receipt.
3. The complete name and room number of the occupant must be stated on the Rent Receipt.
4. The Rent Receipt must state the dollar amount and the duration of stay paid for.
5. Rent Receipts must be maintained for all rent payments. Maintaining Rent Receipts only on request or for cash payments is not sufficient.
6. The hotel owner/operator must keep and maintain Rent Receipts for a minimum of 2 YEARS, and have them available at the hotel site for inspection.

HOTEL ADDRESS: _____

For **October 15, 2017** indicate how many units were being rented. Failure to correctly file information regarding usage and total number of guest rooms by requisite category will result in the issuance of a Notice of Apparent Violation until any discrepancies can be clarified. **Do <u>not</u> include legal apartment units (dwelling units established by building permit(s), which have private kitchens and bathrooms) in the guest room count you provide below.**

1) Number of **residential** guest rooms rented
(For 7 days or more, not used for a tourist or transient rental) + _____

2) Number of **tourist** rooms rented + _____

3) Total number of **vacant residential** guest rooms + _____

4) Total number of **vacant tourist** rooms + _____

5) **Total** number of hotel rooms in the hotel = _____

Please explain if **<u>total</u> number** of hotel rooms in the hotel **differs** from that on the ***Certificate of Use*** designations indicated on page one: _____

_____

_____

Please explain if more than 50% of the **residential units** are **vacant** as of **October 15th, 2017:** _____

_____

_____

6) **Average <u>monthly</u> rent** for the **residential** units in **October 2017.** $ _____
(Add the total amount of rent for all residential guest rooms for the Month of October **2017** and divide the dollar amount by total number residential guest rooms)

7) Please circle each and every **type of service** provided to **<u>permanent</u>** residents.

A. Maid service

B. Linen service

C. Security service

D. Intercom system

E. Meal service (meals included in rent)

F. Utilities paid (gas, electric, heat)

G. Other (specify): _____

_____

_____

DAILY LOG
REQUIRED BY CHAPTER 41 S. F. ADMINISTRATIVE CODE

Hotel Address:_____ **Date:** _____

GUEST ROOM #	RESIDENTIAL GUEST ROOM (Rental for 7 days or more, not used for tourist/transient use)	TOURIST GUEST ROOM (Rental for less than 7 days)	GUEST ROOM VACANT	FIRST AND LAST NAME OF GUEST ROOM OCCUPANT

Please place a check within the appropriate column above, next to the corresponding guest room number indicating how each of your guest rooms were being occupied on the date of this Daily Log. Include the first and last name of the Person who occupied the related guest room in the last column. **Note:** you must keep and maintain **Daily Logs**, **Weekly Reports** and corresponding **Receipts** at the Hotel indicated above per Sections 41.9 and 41.11 of Chapter 41 of the S. F. Administrative Code. ***Rent rolls, tenant rolls or housekeeping logs do <u>not</u> satisfy the requirements of Chapter 41 and will <u>not</u> be accepted as Daily Logs.***

EXHIBIT C

DENNIS J. HERRERA, State Bar #139669
City Attorney
ANDREA RUIZ-ESQUIDE, State Bar #233731
KRISTEN A. JENSEN, State Bar #130196
JAMES M. EMERY, State Bar #153630
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Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

SAN FRANCISCO SRO HOTEL COALITION, an unincorporated association, HOTEL DES ARTS, LLC, a Delaware limited liability company, and BRENT HAAS,

Plaintiffs and Petitioners,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a public agency, acting by and through the BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO; DEPARTMENT OF BUILDING INSPECTION OF THE CITY AND COUNTY OF SAN FRANCISCO; EDWIN LEE, in his official capacity as Mayor of the City and County of San Francisco,

Defendants and Respondents.

Case No. CPF-17-515656

AMENDED NOTICE OF PARTIAL CERTIFICATION OF ADMINISTRATIVE RECORD OF PROCEEDINGS

Date Action Filed: May 8, 2017
Trial Date: October 5, 2018

Attached Documents: N/A

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD IN THIS ACTION:

PLEASE TAKE NOTICE THAT Respondent City and County of San Francisco, sued herein as CITY AND COUNTY OF SAN FRANCISCO, a public agency, acting by and through the BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO; DEPARTMENT OF BUILDING INSPECTION OF THE CITY AND COUNTY OF SAN FRANCISCO; EDWIN LEE, in his official capacity as Mayor of the City and County of San Francisco ("the City"), hereby certifies certain documents that Petitioners SAN FRANCISCO SRO HOTEL COALITION, an unincorporated association, HOTEL DES ARTS, LLC, a Delaware limited liability company, and BRENT HAAS ("Petitioners") presented to the City as the administrative record of proceedings in this action ("Petitioners' Administrative Record"). The documents are described by Petitioners in an index attached as **Exhibit A**. Specifically, the City certifies that the documents below, contained in the Petitioners' Administrative Record, are true and correct copies of records found in the files of the City and County of San Francisco, specifically in the files of the Board of Supervisors, the Mayor's Office, the Planning Department, the Department of Building Inspection, the Department of Public Works, Budget Analyst's Office, Controller's Office, Hotel Conversion Taskforce, the Human Services Agency, the Department of Homelessness and Supportive Housing and Mayor's Office of Housing, and constitute the administrative record of proceedings for the legislation at issue in this CEQA action. Moreover, please be advised that the only amendment to the administrative record is the addition of true and correct copies of certified transcripts of public hearings available online at the City and County of San Francisco's Board of Supervisors' Government Television:

PPAR 0001-1110
PPAR 1111-1210
PPAR 1211-2127
PPAR 2160-2294
PPAR 2302-2436
PPAR 2703
PPAR 2711-2771
PPAR 2992-3168
PPAR 3379-3406
PPAR 3522-3533
PPAR 3544-3547
PPAR 3562-3565
PPAR 3571-5303
PPAR 5317-5323

PPAR 5352-5377
PPAR 5384-5439
PPAR 5441-5647
PPAR 5698-5703
PPAR 5750-5811
PPAR 5824-6084
PPAR 6288-6448
PPAR 6481-7113

As to any documents in Petitioners' Administrative Record not certified by the City, the parties have entered into a Stipulation and [Proposed] Order Regarding Certification of Administrative Record and Revised Hearing and Briefing Schedule ("Stipulation"). In the Stipulation, the parties agreed that they will attempt to resolve any disagreements about documents that the City has declined to certify as part of the administrative record of proceedings in this action by meeting and conferring or, in the alternative, by motion practice filed concurrently with the briefing on the merits. The Stipulation is on file with the Court.

Dated: August 29, 2018

DENNIS J. HERRERA
City Attorney
ANDREA RUIZ-ESQUIDE
KRISTEN A. JENSEN
JAMES M. EMERY
Deputy City Attorneys

By: */s/ Andrea Ruiz-Esquide*
ANDREA RUIZ-ESQUIDE

Attorneys for Respondent
CITY AND COUNTY OF SAN FRANCISCO

PROOF OF SERVICE

I, REYNA LOPEZ, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

On August 29, 2018 I served the following document(s):

AMENDED NOTICE OF PARTIAL CERTIFICATION OF ADMINISTRATIVE RECORD OF PROCEEDINGS

on the following persons at the locations specified:

Arthur F. Coon
Bryan W. Wenter
Miller Starr Regalia
1331 N. California Blvd., Fifth Floor
Walnut Creek, CA 94596

arthur.coon@msrlegal.com
bryan.wenter@msrlegal.com

Andrew M. Zacks
Scott A. Freedman
James B. Kraus
Zacks, Freedman & Patterson, P.C.
235 Montgomery Street, Suite 400
San Francisco, CA 94104

az@zfplaw.com
scott@zfplaw.com
james@zfplaw.com

in the manner indicated below:

☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the electronic service address(es) listed above. Such document(s) were transmitted *via* electronic mail from the electronic address: reyna.lopez@sfcityatty.org ☒ in portable document format ("PDF") Adobe Acrobat or ☐ in Word document format. OR

☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be served electronically through **File&ServeXpress** in portable document format ("PDF") Adobe Acrobat.

☐ **BY FACSIMILE**: Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number (415) 554-4757 to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and **a copy of the transmission report ☐ is attached** or ☐ **will be filed separately with the court**.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed August 29, 2018, at San Francisco, California.

Reyna Lopez
REYNA LOPEZ

EXHIBIT A

San Francisco SRO Hotel Coalition v. CCSF
San Francisco Superior Court Case No. CPF-17-515656
INDEX OF FINAL PETITIONERS' PROPOSED ADMINISTRATIVE RECORD

DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
A. THE NOTICE OF DETERMINATION (not applicable)				
A1. PLANNING COMMISSION CEQA DECISION				
12/15/2016	Angela Calvillo, Clerk of the Board of Supervisors; Alisa Somers, Legislative Deputy Director, Land Use and Transportation Committee; Joy Navarrete, Environmental Planning	Lisa Gibson, Acting Environmental Review Officer, San Francisco Planning Department	CEQA Determination (by Joy Navarrete)	PPAR_000001
B. ORDINANCE				
2016	Board of Supervisors	n/a	File No. ___, Legislative Digest [Administrative Code – Update Hotel Conversion Ordinance]	PPAR_000002-PPAR_000003
2016	Board of Supervisors	n/a	File No. 161291 Legislative Digest [Administrative Code – Hotel Conversion Ordinance Update]	PPAR_000004-PPAR_000006
2016	Supervisor Peskin, Board of Supervisors	n/a	File No.__ Ordinance No.__, [Administrative Code – Hotel Conversion Ordinance Update]	PPAR_000007-PPAR_000031
2016	Supervisor Peskin, Board of Supervisors	n/a	File No. 161291 Ordinance No.__, [Administrative Code – Hotel Conversion Ordinance Update]	PPAR_000032-PPAR_000054
2016	Supervisor Peskin, Board of Supervisors	n/a	File No. 161291 Ordinance No.__, [Administrative Code – Hotel Conversion Ordinance Update]	PPAR_000055-PPAR_000077
11/29/2016	Board of Supervisors	n/a	Legislation Introduced at Roll Call Tuesday, November 29, 2016 (DBI 027952 – 027960 and 028722 - 028730)	PPAR_000078-PPAR_000095
12/06/2016	Board of Supervisors	n/a	File No. 161291 Revised Legislative Digest Substituted, 12/06/2016 [Administrative Code – Hotel Conversion Ordinance Update]	PPAR_000096-PPAR_000097

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DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
12/06/2016	Supervisor Peskin, Board of Supervisors	n/a	File No. 161291 Ordinance Substituted 12/06/2016 [Administrative Code – Update Hotel Conversion Ordinance]	PPAR_000098-PPAR_000147
01/23/2017	Board of Supervisors	n/a	File No. 161291 Revised Legislative Digest Amended in Committee, 01/23/2017, [Administrative Code – Update Hotel Conversion Ordinance]	PPAR_000148-PPAR_000149
01/23/2017	Supervisors Peskin; Kim; Safai; Sheehy; Cohen; Ronen; Board of Supervisors	n/a	File No. 161291 Ordinance Amended in Committee 01/23/2017 [Administrative Code – Update Hotel Conversion Ordinance]	PPAR_000150-PPAR_000174
01/31/2017	Board of Supervisors	n/a	File No. 161291 Revised Legislative Digest 01/31/2017, Amended in Board [Administrative Code – Update Hotel Conversion Ordinance]	PPAR_000175-PPAR_000176
01/31/2017	Supervisors Peskin; Kim; Safai; Sheehy; Cohen; Ronen, Yee, Breed; Board of Supervisors.	n/a	File No. 161291 Ordinance Amended in Board 01/31/2017 [Administrative Code – Update Hotel Conversion Ordinance]	PPAR_000177-PPAR_000201
02/07/2017	City and County of San Francisco	n/a	File No. 161291 Ordinance Master Report [Administrative Code – Update Hotel Conversion Ordinance]	PPAR_000202-PPAR_000203
02/07/2017 02/17/2017	Board of Supervisors, Mayor	n/a	File No. 161291, Amended In Board 1/31/2017, Ordinance No. 38-17 [Administrative Code – Update Hotel Conversion Ordinance] (SRO 039236 – 039262)	PPAR_000204-PPAR_000230
C. COMMENTS				

San Francisco SRO Hotel Coalition v. CCSF
San Francisco Superior Court Case No. CPF-17-515656
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DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
11/25/2016 through 02/15/2017	Various Authors	Many Recipients at the City of San Francisco Offices (including numerous Supervisors)	E-mails with Comments about proposed Hotel Conversion Ordinance Amendments	PPAR_000231-PPAR_000504
01/27/2017	Juned Usman Shaikh, GM, Hotel Tropica	Hon. Mayor Edwin M. Lee, Board of Supervisors	Email re: Hotel Conversion Ordinance Legislation (HCO) – Preservation of Weekly Rentals for SRO Hotels – Hotel Owner/Operator Meeting – Monday January 30, 2017 at 2:30 pm Room 278 (MYR 006170 – 006171)	PPAR_000505-PPAR_000506
01/26/2017	Juned Usman Shaikh, GM, Hotel Tropica	Hon. Supervisor Aaron Peskin	Email re: Preservation of Weekly Rentals for SRO Hotels (MYR 006171 – 006173)	PPAR_000506-PPAR_000508
01/30/2017	Karen Stafko	Mayor Lee	Email re: Preserve SROs for Residents (MYR 006176 – 006177)	PPAR_000509-PPAR_000510
D. STAFF REPORTS, AGENDAS AND MINUTES OF HEARINGS				
12/05/2016	Mawuli Tugbenyoh	Mayor Lee – Senior Staff	Memorandum re: Legislation Introduced at 11/29/16 BoS Meeting (DBI 028131 – 028146 and CON 005988 - 006003)	PPAR_000511-PPAR_000542
12/06/2016	City and County of San Francisco	n/a	Legislation Introduced: Office of Economic Analysis Response December 6, 2016 (CON 004598 – CON 004599)	PPAR_000543-PPAR_000544
12/09/2016	Angela Calvillo, Clerk of the Board, City and County of San Francisco	Budget Analyst	Memorandum re: Fiscal Impact Determination (Legislation Introduced by Supervisors and by the President at the request of Departments on December 6, 2016, attaching Board of Supervisors Legislation Introduced at Roll Call Tuesday, December 6, 2016 (BUD 004313 – BUD	PPAR_000545-PPAR_000550

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DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
			004318)	
12/09/2016	City and County of San Francisco Board of Supervisors, Angela Calvillo, Clerk of the Board	Budget Analyst	Memorandum Clerk's Office – Board of Supervisors re: Fiscal Impact Determination (Legislation Introduced by Supervisors and by the President at the request of Departments on December 6, 2016 (BUD 004313-BUD 004318)	PPAR_000551-PPAR_000556
12/15/2016	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 Homeless and Supportive Housing; Barbara A. Garcia, Director, Department of Public Health	Alisa Somera, Legislative Deputy Director, Land Use and Transportation Committee	Memorandum re: Substitute Legislation Introduced, attaching File No. 161291 Ordinance Substituted 12/06/2016 [Administrative Code – Update Hotel Conversion Ordinance] (HSH 004341 – HSH 004369)	PPAR_000557-PPAR_000585
01/13/2017	Nicole Rossini (DBI)	rvbosque@yahoo.com; Bernadette Perez	Email re: SRO Task Force Agenda, attaching San Francisco SRO Task Force Agenda dated January 19, 2017, 9:00 a.m. – 10:30 a.m. (SRO 004425 – SRO 004427)	PPAR_000586-PPAR_000588
01/20/2017	Mawuli Tugbenyoh	Mayor Lee's Senior Staff	Memorandum re Weekly Update Land Use Ordinances before the Board of Supervisors the week of January 23, 2017 (CON 006006 – 006015)	PPAR_000589-PPAR_000598
01/23/2017	Daley Dunham (PRT)	Mawuli Tugbenyoh (MYR)	Email FW: Legislation Report – Week of 1/23/17, attaching Board of Supervisors Legislation (MYR	PPAR_000599-PPAR_000606

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DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
			006115 - 006122	
01/23/2017	City Staff	Committee: Land Use and Transportation/Board of Supervisors	File No. 161291 Agenda Packet	PPAR_000607-PPAR_000644
01/23/2017	City Staff	City and County of San Francisco: Land Use and Transportation Committee	Meeting Agenda	PPAR_000645-PPAR_000650
01/23/2017	City Staff	City and County of San Francisco: Land Use and Transportation Committee	Meeting Minutes	PPAR_000651-PPAR_000656
01/30/2017	Mawuli Tugbenyoh	Mayor Lee's Senior Staff	Memorandum re: Weekly Update Highlighting Legislation Introduced before the Board the week of January 30, 2017 (CON 006017 – 006031)	PPAR_000657-PPAR_000671
01/31/2017	City Staff	Committee: Land Use and Transportation/Board of Supervisors	File No. 161291 Agenda Packet	PPAR_000672-PPAR_000717
01/31/2017	City Staff	Board of Supervisors City and County of San Francisco	Meeting Agenda	PPAR_000718-PPAR_000742
01/31/2017	City Staff	Board of Supervisors City and County of San Francisco	Meeting Minutes - Draft	PPAR_000743-PPAR_000764
01/31/2017	City Staff	Board of Supervisors City and County of San Francisco	Meeting Minutes	PPAR_000765-PPAR_000791
01/31/2017	City Staff	Board of Supervisors City and County of San Francisco	Meeting Minutes (condensed Generated Agenda Viewer format)	PPAR_000792-PPAR_000793
02/07/2017	City Staff	Board of Supervisors City and County of San Francisco	File No. 161291 Agenda Packet	PPAR_000794-PPAR_000839
02/07/2017	City Staff	Board of Supervisors City and County of San Francisco	File No. 161291 Agenda Packet	PPAR_000840-PPAR_001055
02/07/2017	City Staff	Board of Supervisors City and	Meeting Agenda	PPAR_001056-

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DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
		County of San Francisco		PPAR_001074
02/07/2017	City Staff	Board of Supervisors City and County of San Francisco	Meeting Minutes - Draft	PPAR_001075-PPAR_001094
02/13/2017	Francis Tsang	Mayor's Senior Staff	Memorandum re: Commission Update for the Week of February 13, 2017 summarizing agenda items (MYR 006126 – 006133 and CON 005789 - 005796)	PPAR_001095-PPAR_001110
E. TRANSCRIPTS				
01/23/2017	City and County of San Francisco: Land Use and Transportation Committee	n/a	Transcript City and County of San Francisco Land Use and Transportation Committee Meeting	PPAR_001111-PPAR_001167
01/31/2017	City and County of San Francisco Board of Supervisors	n/a	Transcript of City and County of San Francisco Board of Supervisors Meeting	PPAR_001168-PPAR_001180
02/07/2017	City and County of San Francisco Board of Supervisors	n/a	Transcript of City and County of San Francisco Board of Supervisors Meeting	PPAR_001181-PPAR_001184
n/a	n/a	n/a	INTENTIONALLY BLANK	PPAR_001185-PPAR_001210
F. REMAINDER OF THE ADMINISTRATIVE RECORD				
n/a	Harold J. Schnitzer, President Harsh Investment Corp. P.O. Box Portland, OR 97208	San Francisco Planning Commission City Hall Polk and McAllister Streets San Francisco, CA 94102	Letter re: Residential Hotel Conversion Ordinance (Planning 008076 – 008077)	PPAR_001211-PPAR_001212
n/a	City and County of San Francisco Planning Department	n/a	Response To The Appeal Of The Preliminary Negative Declaration For The Residential Hotel Conversion And Demolition Ordinance (Planning 008237 – 008238)	PPAR_001213-PPAR_001214

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DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
n/a	Planning (approved as to form by City Attorney)	n/a	File No. 113-83-4, Proposed Ordinance No [Chinatown-North Beach Residential Hotel Unit Moratorium] Amending The San Francisco Administrative Code By Adding Chapter 41B Thereto, Imposing A Moratorium For Twelve Months On Permits To Convert Residential Hotel Units In The Chinatown-North Beach Area, Prohibiting Conversion Of Units, Establishing A Citizens' Advisory Committee, Prohibiting Permits For Sites Of Unlawful Demolition, And Establishing Penalties (Planning 008110 – 008121)	PPAR_001215-PPAR_001226
n/a	Planning	n/a	Proposed Amendments To The Preliminary Negative Declaration For 83.52D: Residential Hotel Conversion And Demolition Ordinance (Planning 007839)	PPAR_001227
n/a	Planning	n/a	Response To The Appeal Of The Preliminary Negative Declaration For The Residential Hotel Conversion And Demolition Ordinance (Planning 007840-007841)	PPAR_001228-PPAR_001229
n/a	Planning	n/a	Amending The San Francisco Administrative Code By Amending Chapter 41 Thereof, Revising The Definitions Of Hotel, Interested Party And Conversion And Limiting Seasonal Conversion Of Residential Units During The	PPAR_001230-PPAR_001234

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San Francisco Superior Court Case No. CPF-17-515656
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DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
			Tourist Season (Planning 007963 – 007967)	
n/a	Department of City Planning, City and County of San Francisco	n/a	An Annual Report on the Operation of the Residential Hotel Conversion and Demolition Ordinance (Planning 008437 – 008542)	PPAR_001235-PPAR_001340
n/a	Controller's Office, City and County of San Francisco	n/a	General Reasons the HCO Requires Extensive Update attaching memorandum from 2001 through 2015 (CON 005571 – 005580 and DBI 020759 - 020763)	PPAR_001341-PPAR_001355
n/a	Department of Building Inspection, City and County of San Francisco	Hotel Owner/Operator	Annual Unit Usage Report Form for Hotel Owner/Operator (CON005613 – 005620)	PPAR_001356-PPAR_001363
n/a	Harry Simon	n/a	Chapter: Municipal Regulation of the Homeless in Public Spaces (HSH-HSA 002841 – 002851)	PPAR_001364-PPAR_001374
n/a	Human Services Agency and the Department of Homelessness and Supportive Housing	n/a	San Francisco Leasing Strategies Report Draft HSH-HSA 002215 – 002230)	PPAR_001375-PPAR_001390
n/a	Department of Building Inspection	n/a	Ordinance No. 38-17 Changes To San Francisco Administrative Code Chapter 41 Residential Hotel Unit Conversion And Demolition Ordinance (HCO) Effective March 20, 2017 (DBI 017455 – 017456)	PPAR_001391-PPAR_001392
03/09/1973	Planning Department, City and County of San Francisco	n/a	Memorandum: Non-Physical And Ministerial Projects Not Covered By The California Environmental Quality Act (Planning 004148 – 004150)	PPAR_001393-PPAR_001395
01/05/1981	Board of Supervisors, San Francisco	n/a	File No. 384-79-4, Ordinance No. 15-81 (Planning 008308 – 008338)	PPAR_001396-PPAR_001426

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06/11/1981	Board of Supervisors, San Francisco	n/a	File No. 162-81-4, Ordinance No. 330-81, Amending The San Francisco Administrative Code By Amending Chapter 41 Thereof, Revising Definitions, Notice Requirements, Reporting Requirements, Time Limits, Exemptions And Penalties Of The Residential Hotel Unit Conversion And Demolition Ordinance (Planning 008213 – 008231)	PPAR_001427-PPAR_001445
01/21/1983	San Francisco Superior Court	City and County of San Francisco, et al	Tentative Decision in the case of *Terminal Plaza Corporation vs. City and County of San Francisco et al.*, Superior Court Case No. 786779 (Planning 008256 – 008274)	PPAR_001446-PPAR_001464
01/31/1983	Edwin M. Lee Attorney At Law Asian Law Caucus, Inc.	Ms. Alice Barkley, Esq. City Attorney's Office City Hall, 2nd Floor San Francisco, CA 94102 cc: CCBH – Chinatown Coalition for Better Housing; SHE – Self-help for the Elderly; AND – Asian Neighborhood Design; SFNLAF – San Francisco Legal Aid; CNIRC – Chinatown Neighborhood Resources Center; CCHC – Chinatown Community Housing Coalition; NMPC – North of Market	Letter re: Residential Hotel Conversion Ordinance (Planning 008101 – 008103)	PPAR_001465-PPAR_001467

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		Planning Coalition; LSE – Legal Services for the Elderly; Old St. Mary's Church – Housing Committee		
02/02/1983	Bay Guardian, Frank Clancy, Alan Ramo	Planning	Article entitled, "Thousands of SF residential rooms lost despite controls" (Planning 008339 – 008342)	PPAR_001468-PPAR_001471
02/04/1983	Paul Wartelle, San Francisco Neighborhood Legal Assistance Foundation 870 Market Street, 11th Floor San Francisco, CA 94102	Alex Bash San Francisco Planning Commission 450 McAllister Street San Francisco, CA 94102	Letter re: Residential Hotels (Planning 008091)	PPAR_001472
02/07/1983	City and County of San Francisco, Board of Supervisors, John L. Taylor, Clerk of the Board	Mr. Dean Macris, Director, City Planning, City and County of San Francisco	Letter enclosing the introduced Ordinance Amending The San Francisco Administrative Code By Amending Chapter 41 Thereof, Revising Definitions, Notice Requirements, Reporting Requirements, Time Limits, Exemptions And Penalties Of The Residential Hotel Unit Conversion And Demolition Ordinance (Planning 007928 – 007962)	PPAR_001473-PPAR_001507
02/14/1983	John L. Taylor Clerk of the Board City and County of San Francisco Board of Supervisors	Mr. George Agnost City Attorney; Mr. Dean Macris Director City Planning cc: Supervisor Silver	Letter re: File No. 151-83-2, enclosing introduced Ordinance Amending The S.F. Administrative Code Revising The Definitions Of Hotel, Interested Party, Unlawful Actions, Conversions And Posting; Limiting Seasonal Conversion; Providing For Additional Remedies and Civil Penalties; Revising	PPAR_001508-PPAR_001521

DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
			Renewal And Issuance Of New Certificate Of Use; Extending Challenge Period On Annual Report Filing; Prohibiting Conversion Or Residential Hotel Units To Apartments; And Revising One-For-One Replacement Requirements (Supervisor Silver) (Planning 008199 – 008212)	
03/03/1983	Jeffrey Lee, Director of Public Works and Clean Water Program	John L. Taylor Clerk of the Board City Hall	Letter enclosing Amendments to Residential Hotel Conversion & Demolition Ordinance (Planning 008191 – 008198)	PPAR_001522-PPAR_001529
04/15/1983	Alec S. Bash, Environmental Review Officer for Dean L. Macris, Director of Planning	Planning, City of San Francisco	Environmental Evaluation Checklist (Initial Study); File No: 83.52E; Title: Residential Hotel Ordinance; Initial Study Prepared by: Ginny Puddefoot (Planning 007900 – 007903)	PPAR_001530-PPAR_001533
04/27/1983	William A. Falik Hodge, Falik & Dupree Attorneys At Law 300 Montgomery Street, Suite 1200 San Francisco, CA 94104	Mr. Dean Macris, Director Department of City Planning 100 Larkin Street San Francisco, CA 94102	Letter re: San Francisco Residential Hotel Ordinance (Planning 008067 – 008070)	PPAR_001534-PPAR_001537
04/28/1983	Robert D. Links Colvin, Martin & Links 111 Sutter Street, Suite 1840 San Francisco, CA 94104	Mr. Dean Macris, Director Department of City Planning 100 Larkin Street San Francisco, CA 94102	Letter re: San Francisco Residential Hotel Ordinance (Planning 008066 and 008247)	PPAR_001538-PPAR_001539
05/04/1983	Peter Bullock M. D. Abigail Hotel	Dean Macris, Director Department of City Planning 450 McAllister Street, 4th Floor San Francisco, CA 94102 cc: Mr. Toby Rosenblatt	Letter re: San Francisco Residential Hotel Conversion Ordinance (Planning 008064 – 008065)	PPAR_001540-PPAR_001541

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		(President) Dr. Yoshil Nakashima (Vice-President) Ms. Susan Bierman Mr. Jerome Klein Mr. C. Mackey Salazar Mr. Norman Karasick Mr. Douglas Wright		
05/05/1983	Alec Bash Environmental Review Officer San Francisco Department of City Planning 450 McAllister Street San Francisco, CA 94102	William A. Falik Hodge, Falik & Dupree Attorneys At Law 300 Montgomery Street, Suite 1200 San Francisco, CA 94104 cc: Alice Barkley, Deputy City Attorney	Letter re: 83.52E, Residential Hotel Conversion Ordinance (Planning 008246)	PPAR_001542
05/10/1983	William A. Falik Hodge, Falik & Dupree Attorneys At Law 300 Montgomery Street, Suite 1200 San Francisco, CA 94104	Alec Bash Environmental Review Officer San Francisco Department of City Planning 450 McAllister Street San Francisco, CA 94102 cc: Walter Leff, M.D. Robert Links, Esq. Alice Barkely, Esq.	Letter re: Terminal Plaza/Residential Hotel Ordinance(Planning 008062 and 008245)	PPAR_001543-PPAR_001544
05/11/1983	Robert D. Links Colvin, Martin & Links 111 Sutter Street, Suite 1840 San Francisco, CA 94104	Mr. Dean Macris, Director Department of City Planning 100 Larkin Street San Francisco, CA 94102 cc: Terminal Plaza Corporation Alice S.Y. Barkley, Esq. William A. Falik, Esq.	Letter re: Hotel Conversion and Demolition Ordinance (Planning 008058 – 008060 and 008242 – 008244)	PPAR_001545-PPAR_001550
05/11/1983	John H. Jacobs Executive Director	Mr. Toby Rosenblatt President, Planning	Letter re: Residential Hotel Ordinance (Planning 008061)	PPAR_001551

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	San Francisco Chamber of Commerce	Commission 450 McAllister Street San Francisco, CA 94102 cc: Dean Macris		
05/12/1983	Dean Macris Director of Planning City and County of San Francisco	Robert D. Links Colvin, Martin & Links 111 Sutter Street, Suite 1840 San Francisco, CA 94104	Letter re: 83.52E, Residential Hotel Conversion Ordinance (Planning 008057)	PPAR_001552
05/12/1983	Russell D. Keil Keil Estate Co. Keil Building 244 Kearney Street Sutter 1-5546 San Francisco, CA 94108	City of San Francisco Planning Commission, City Hall	Letter re: Residential Hotel Ordinance (Planning 008056)	PPAR_001553
05/12/1983	Lee Woods, Jr. Administrative Secretary 450 McAllister St. 4th Floor San Francisco, CA 94102	Interested Parties	Official Mailing Notice, City Planning Commission Notice of Hearing: The proposed addition to the San Francisco Administrative Code of Chapter 41, commonly referred to as the Residential Hotel Conversion and Demolition Ordinance, which regulates the conversion and demolition of residential hotels. (Planning 008239)	PPAR_001554
05/16/1983	Alec S. Bash Environmental Review Officer City and County of San Francisco Department of City Planning	William A. Falik Hodge, Falik & Dupree Attorneys At Law 300 Montgomery Street, Suite 1200 San Francisco, CA 94104	Letter re: 83.52E, Residential Hotel Conversion Ordinance (Planning 008092 – 008093 and 008240 - 008241)	PPAR_001555- PPAR_001558
05/16/1983	Hamburger Properties 520 So. El Camino Real, Suite 810	City Planning Commission 450 McAllister Street, 4th Floor San Francisco, CA 94102	Letter: re Incorporating the Residential Hotel Conversion and Demolition Ordinance into the San	PPAR_001559

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	San Mateo, CA 94402		Francisco Administrative Code (Planning 008084)	
05/16/1983	Vincent Kircher 640 Eddy Street San Francisco, CA 94109	Mr. Dean Macris, Director Department of City Planning 450 McAllister Street, 4th Floor San Francisco, CA 94102	Letter re: San Francisco Residential Hotel Ordinance (Planning 008083)	PPAR_001560
05/16/1983	Edward H. Lawson, Executive Director	Dean Macris, Director Department of City Planning 450 McAllister Street, 4th Floor San Francisco, CA 94102	Letter re: Residential Hotel Ordinance (Planning 008055)	PPAR_001561
05/17/1983	Barbara Kolesar, Administrative Director, Coalition For Better Housing	Commissioner Toby Rosenblatt, President, San Francisco City Planning Commission	Letter re: Residential Hotel Ordinance (Planning 008049)	PPAR_001562
05/17/1983	Richard Quintanilla Hotel Burbank 317 Leavenworth Street San Francisco, CA 94102 cc: Toby Rosenblatt	Mr. Dean Macris, Director Department of City Planning 450 McAllister Street, 4th Floor San Francisco, CA 94102	Letter re: Residential Hotel Ordinance (Planning 008052)	PPAR_001563
05/17/1983	Richard Quintanilla Hotel Burbank 317 Leavenworth Street San Francisco, CA 94102	Mr. Dean Macris, Director Department of City Planning 450 McAllister Street, 4th Floor San Francisco, CA 94102	Letter re: Hotel Conversion and Demolition Ordinance (Planning 008051)	PPAR_001564
05/18/1983	John D. Maatta Attorney At Law 22 Battery Street, Suite 333 San Francisco, CA 94111	Hon. Dean Macris Director of the Department of City Planning 450 McAllister Street San Francisco, CA 94102	Letter re: San Francisco Residential Hotel Ordinance (Planning 008079)	PPAR_001565
05/18/1983	Burk H. Chung Residential Hotel Owner 837 Washington Street San Francisco, CA 94108	Dean Macris, Director Department of City Planning 450 McAllister Street, 4th Floor San Francisco, CA 94102	Letter re: San Francisco Residential Hotel Ordinance (Planning 008080 – 008081)	PPAR_001566- PPAR_001567
05/19/1983	City Planning Commission, City and County of San	n/a	Hearing transcript: Appeal of the Preliminary Negative Declaration,	PPAR_001568- PPAR_001644

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	Francisco		Residential Hotel Conversion and Demolition Ordinance; Public Hearing, Residential Hotel Conversion and Demolition Ordinance (Planning 008360 – 008436)	
05/19/1983	Henry A Musto, Vice President Joseph Musto Estate Co. 1280 Columbus Ave San Francisco, CA 94133	Mr. Dean Macris, Director San Francisco Department of City Planning 450 McAllister Street, 4th Floor San Francisco, CA 94102	Letter re: San Francisco Residential Hotel Ordinance, Chapter 41: Case No. 83.52E – Planning Commission Hearing of 5/19/83 (Planning 008078)	PPAR_001645
05/19/1983	Zane O. Gresham, President San Francisco Forward 690 Market Street, Suite 800 San Francisco, CA 94104	Toby Rosenblatt, President City Planning Commission 450 McAllister Street, 4th Fl San Francisco, CA 94102 cc: Members, City Planning; Dean Morris, Director, Department of City Planning; Members, Board of Directors, San Francisco Forward	Letter re: Project 83.52E – Residential Hotel Conversion and Demolition Ordinance – Appeal of Negative Declaration (Planning 008073 – 008075)	PPAR_001646-PPAR_001648
05/20/1983	Y. Chaban, Owner The Essex Hotel 684 Ellis Street San Francisco, CA 94109	Dean Macris, Director Department of City Planning 450 McAllister Street, 4th Floor San Francisco, CA 94102	Letter re: Hotel Conversion and Demolition Ordinance (Planning 008072)	PPAR_001649
05/20/1983	Y. Chaban, Owner The Essex Hotel 684 Ellis Street San Francisco, CA 94109	Dean Macris, Director Department of City Planning 450 McAllister Street, 4th Floor San Francisco, CA 94102	Letter re: Residential Hotel Ordinance (Planning 008071)	PPAR_001650
06/23/1983	Lee Woods, Jr. Secretary San Francisco City Planning Commission	n/a	Resolution No. 9728 (Planning 008097)	PPAR_001651
06/23/1983	Dean L. Macris, Director of Planning, City and County of	n/a	File No. ____, recommended Ordinance No. ___, Adopting Final	PPAR_001652-PPAR_001654

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	San Francisco		Negative Declaration, Finding And Determining That Amendment Of The Administrative Code Concerning Residential Hotel Unit Conversions And Demolitions Will Have No Significant Impact On The Environment, And Adopting And Incorporating Findings Of Final Negative Declaration (Planning 008232 – 008234)	
06/23/1983	San Francisco Planning Commission	n/a	File No. 83.52E, draft Motion No. M, DRAFT Residential Hotel Conversion & Demolition Ordinance (Planning 008235 – 008236)	PPAR_001655-PPAR_001656
06/23/1983	Alec Bash, Environmental Review Officer, City and County of San Francisco, Department of City Planning	cc: Robert Passmore; Dan Sullivan; Joe Fitzpatrick; George Williams; Lois Scott Mike Estrada; Alice Barkley; Paul Wartelle; Distribution List; DCP Bulletin Board; Board of Supervisors	Negative Declaration, Hotel Conversion Ordinance (Planning 007892 – 007899 and 008248 - 008255)	PPAR_001657-PPAR_001672
07/19/1983	Arlene Joe, MPH Health Promoter North East Medical Services 1520 Stockton Street San Francisco, CA 94133	Honorable Mayor Dianne Feinstein City Hall San Francisco, CA 94102	Letter re: Residential Hotel Moratorium (Planning 008190)	PPAR_001673
07/26/1983	John S. Chiu 12 ½ Ross, #C San Francisco, CA 94108	Hon. Mayor Dianne Feinstein City Hall San Francisco, CA 94102	Letter re: Residential Hotel Moratorium (Planning 008189)	PPAR_001674

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07/26/1983	Edwin M. Lee, Staff Attorney, Asian Law Caucus, Inc	Hon. Mayor Dianne Feinstein City Hall San Francisco, CA 94102	Letter re: Residential Hotel Preservation Moratorium (Planning 008188)	PPAR_001675
08/17/1983	San Francisco Notice of Determination	City Clerk, City and County of San Francisco	Notice of Determination (Planning 007849)	PPAR_001676
08/17/1983	Mike Estrada	Ginny Puddefoot	Memorandum re: Amendments to the Residential Hotel Conversion and Demolition Ordinance (Planning 008187)	PPAR_001677
02/16/1984	Alec S. Bash Environmental Review Officer for Dean L. Macris, Director of Planning City and County of San Francisco Department of City Planning	n/a	Environmental Evaluation Checklist (Initial Study), File No: 83.600ETT, Chinatown-North Beach Residential Hotel Conversion Moratorium, prepared by Ginny Puddefoot (Planning 008127 – 008130)	PPAR_001678-PPAR_001681
04/30/1984	Board of Supervisors, San Francisco, approved as to form: George Agnost, City Attorney, Board of Supervisors	n/a	File No. 113-83-3, Amendment Of The Whole As Amended In Committee 4/17/84, Ordinance No. 18584 [Chinatown-North Beach Residential Hotel Unit Moratorium] (Planning 008135 – 008141)	PPAR_001682-PPAR_001688
12/18/1984	Alec S. Bash, Environmental Review Officer for Dean L. Macris, Director of Planning	n/a	Environmental Evaluation Checklist (Initial Study), File No: 84.564ET/84.236ET, Residential Hotel Conversion Ordinance Amendment, prepared by Catherine Bauman (Planning 008147 – 008149)	PPAR_001689-PPAR_001691
01/09/1985	Alec Bash, Environmental Review Officer, City and County of San Francisco, Department of Planning	n/a	Negative Declaration; Amendments to the Residential Hotel Conversion and Demolition Ordinance affecting definition of interested parties, time limits for	PPAR_001692-PPAR_001693

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			compliance, and penalties for violation and other aspects of administration of the Ordinance. (Planning 008145 – 008146)	
07/21/1987	Planning Department, City and County of San Francisco	n/a	Residential Hotel Workshop Notes for July 21, 1987 (Planning 009014 – 009018)	PPAR_001694-PPAR_001698
07/30/1987	Barbara W. Sahm, Environmental Review Officer for Dean L. Macris, Director of Planning	n/a	Environmental Evaluation Checklist (Initial Study), File No. 87.351E, Extend Chinatown-North Beach Residential Hotel Conversion Moratorium, prepared by Andrea Mackenzie (Planning 008174 – 008176)	PPAR_001699-PPAR_001701
08/11/1987	Barbara W. Sahm, Environmental Review Officer, City and County of San Francisco, Department of Planning	n/a	Negative Declaration; Amend Sections 41B.2 and 41B.11 of the San Francisco Administrative Code to extend for twelve months, the moratorium on permits to convert residential hotel units in the Chinatown-North Beach area (Planning 008171 – 008173)	PPAR_001702-PPAR_001704
03/11/1988	City and County of San Francisco, Department of City Planning	n/a	Report on Residential Hotels Policy and Legislative Issues (Planning 008837 – 008847)	PPAR_001705-PPAR_001715
03/31/1988	Planning Department, City and County of San Francisco	n/a	Minutes for the March 24, 1988 Meeting on Residential Hotels (Planning 009198 – 009199)	PPAR_001716-PPAR_001717
02/22/1989	Amit Ghosh, DCP	Erik Shapiro, Mayor's Office	Memorandum re: Potential Homeless Population and the Supply of Transient Hotel Units (Planning 008750 – 008754)	PPAR_001718-PPAR_001722
08/07/1989	Richard J. Evans, Director of Public Works, Department of	Brad Paul, Director Mayor's Office of Housing and	Letter re: Proposed Amendments to the Hotel Conversion Ordinance	PPAR_001723-PPAR_001726

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	Public Works, Bureau of Building Inspection, City and County of San Francisco	Development 100 Larkin Street San Francisco, CA 94102 cc: Ms. Kate Herrmann Mr. Erik Schapiro	(Planning 008708 – 008711)	
09/22/1989	Carol Roos, Office of Environmental Review	Files 83.52E: Residential Hotel Conversion and Demolition Ordinance, and 84.236ET/84.56ET: Amendments to Residential Hotel Conversion Ordinance	Memorandum re: Modification Of The Project (Planning 007842 – 007845)	PPAR_001727- PPAR_001730
2002	Department of Building Inspection	n/a	Exhibit A HCO Annual Reports Initiated by DBI in 2000 (DBI 032937 – 032973)	PPAR_001731- PPAR_001767
03/22/2002	San Francisco Public Works	n/a	San Francisco Public Works Code: Article 24: Shopping Carts (DPW 004133 – 004137)	PPAR_001768- PPAR_001772
12/28/2005	City and County of San Francisco, Department of Building Inspection	n/a	Record Retention and Destruction Policy Approved by Ephraim Hirsch, President, Building Inspection Commission; Ed Harrington, Controller, Records Relating to Financial Matters; Dennis J. Herrera, City Attorney, Records of Legal Significance; Clare M. Murphy, Executive Director, Retirement System, Records Relating to Payroll Matters (DBI 004374 – DBI 004386)	PPAR_001773- PPAR_001785
01/01/2006	City and County of San Francisco Department of Public Works	n/a	Code Of Safe Practice (DPW 004029)	PPAR_001786
07/14/2008	Superior Court of California,	Ms. Star Terrell, Mayor's Office	Letter enclosing the 2007-0-2008	PPAR_001787-

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	County of San Francisco, Office of the Grand Jury	of Policy & Finance, City Hall, San Francisco	San Francisco Civil Grand Jury Report entitled, "The Homeless Have Homes, But They Are Still On The Street." (HSH-HSA 001058 - 001089)	PPAR_001818
2009	City and County of San Francisco Human Services Agency and Applied Survey Research	City and County of San Francisco; U.S. Department of Housing and Urban Development (HUD)	2009 San Francisco Homeless Count and Survey	PPAR_001819-PPAR_001902
06/01/2009 – 04/05/2016	Department of Building Inspection	n/a	Exhibit B, Inquiry Item No. 3, HCO Hotel Unit Usage Report, Group By Status (DBI 033048 – 033272)	PPAR_001903-PPAR_002127
12/2009	City and County of San Francisco, Department of Public Works	n/a	Department Procedures Manuals Vol. 2 – Administrative, Procedure 2.1.5, Records Retention and Storage Policy (DPW 003943 – 003974)	PPAR_002128-PPAR_002159
2010-2015	Office of Management and Budget	City and County of San Francisco Mayor's Office	Consolidated Plan – Executive Summary (exp. 07/31/2015) (MOH 005802 – MOH 005936)	PPAR_002160-PPAR_002294
02/2010	City and County of San Francisco, Department of Public Works	n/a	Department Procedures Manuals Vol. 16 – Street Environmental Services, Procedure 16.9.3, Steamer Operator (DPW 004114 – 004116)	PPAR_002295-PPAR_002297
2/22/2010	City and County of San Francisco, Department of Public Works	n/a	Department Procedures Manuals Vol. 16 – Street Environmental Services, Procedure 16.5.5, Homeless/Shopping Cart Program (DPW 004110 – 004113)	PPAR_002298-PPAR_002301
07/01/2010 – 06/30/2015	City and County of San Francisco Mayor's Office	n/a	Executive Summary, ES-05 Executive Summary – 24 CFR 91.200©, 91.220(b) (MOH 011164 – 011298)	PPAR_002302-PPAR_002436

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2011	City and County of San Francisco, Applied Survey Research	n/a	2011 San Francisco Homeless Point-In-Time Count & Survey Comprehensive Report	PPAR_002437-PPAR_002511
10/13/2011	City and County of San Francisco, Office of The Controller – City Services Auditor	n/a	Human Services Agency And Department Of Public Health: The City's Efforts and Resources to House Homeless Individuals Have Increased, but New Strategies Could Lead to Improved Program Effectiveness (HSH-HSA 001118 – 001166)	PPAR_002512-PPAR_002560
2013	City and County of San Francisco, Applied Survey Research	City and County of San Francisco; U.S. Department of Housing and Urban Development (HUD)	2013 San Francisco Homeless Point-In-Time Count & Survey Comprehensive Report	PPAR_002561-PPAR_002616
2013	City and County of San Francisco, Applied Survey Research	City and County of San Francisco; U.S. Department of Housing and Urban Development (HUD)	2013 San Francisco Homeless Unique Youth Count & Survey Comprehensive Report	PPAR_002617-PPAR_002648
7/2013	City and County of San Francisco, Department of Public Works	n/a	Department Procedures Manuals Vol. 16 – Street Environmental Services, Procedure 16.05.04, Steam Cleaning Operations (DPW 004099 – 004101)	PPAR_002649-PPAR_002651
7/2013	City and County of San Francisco, Department of Public Works	n/a	Department Procedures Manuals Vol. 16 – Street Environmental Services, Procedure 16.05.05, Homeless/Shopping Cart Program (DPW 004120 – 004122)	PPAR_002652-PPAR_002654
7/2013	City and County of San Francisco, Department of Public Works	n/a	Department Procedures Manuals Vol. 16 – Street Environmental Services, Procedure 16.09.03, Steam Operator (DPW 004102 – 004103)	PPAR_002655-PPAR_002656

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07/26/2013	City and County of San Francisco Board of Supervisors, Office of the Budget and Legislative Analyst	Supervisor Ferrell	Policy Analysis Report re: Homeless Services and Benefits Provided by the City and County of San Francisco (HSH-HSA 000938 – 000983)	PPAR_002657-PPAR_002702
09/18/2013	Sarah Jones, Environmental Review Officer	San Francisco Planning Department	Memorandum re: Processing Guidance: Not a project under CEQA (Planning 004151)	PPAR_002703
09/25/2013	Planning Department	n/a	Planning Department, CEQA Exemptions Map (The City and County of San Francisco referenced this document in their production cover letter dated 10/12/2017, 7 pages)	PPAR_002704-PPAR_002710
10/30/2013	City and County of San Francisco Board of Supervisors, Budget and Legislative Analyst	Supervisor Campos	Policy Analysis Report re: Analysis of Tenant Displacement in San Francisco (BUD 004152-BUD 004212)	PPAR_002711-PPAR_002771
12/2013	City and County of San Francisco, Department of Public Works	n/a	Department Procedures Manuals Vol. 2 – Administrative, Procedure 02.01.05, Records Retention and Storage Policy (DPW 004063 – 004098)	PPAR_002772-PPAR_002807
12/20/2013	Angus McCarthy, President Building Inspection Commission City and County of San Francisco; Tom C. Hui, S. E., C. B. O. Director Department of Building Inspection City and County of San Francisco	Honorable Mayor Edwin M. Lee Honorable Board of Supervisors, City and County of San Francisco	Letter enclosing the Building Inspection Commission and Department of Building Inspection Annual Report for Fiscal Year 2012-2013 (CON 005853 – 005944)	PPAR_002808-PPAR_002899

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DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
2014 – 2015	City and County of San Francisco Department of Building Inspection	City and County of San Francisco	Annual Report, Fiscal Year 2014-2015 (CON 005797 – 005852)	PPAR_002900-PPAR_002955
07/15/2014 – 01/16/2015	San Francisco Public Works	City and County of San Francisco	Tenderloin Pit Stop Program (DPW 004642)	PPAR_002956
10/17/2014	Supervisor Chiu, Board of Supervisors	n/a	File No. 140381 Ordinance No. 218-14, Amended in Board [Administrative, Planning Codes-Amending Regulation of Short-Term Residential Rentals and Establishing Fee] (MOH 011299 – 011333)	PPAR_002957-PPAR_002991
12/15/2014	City and County of San Francisco, Board of Supervisors, Budget and Legislative Analyst's Office	Supervisor Farrell	Policy Analysis Report re: Analysis of Supportive Housing Programs (HSH-HSA 001285 – 001317)	PPAR_002992-PPAR_003024
2015	City and County of San Francisco: SRO Families United Collaborative	City and County of San Francisco	2015 SRO Families Report: Living in the Margins: An Analysis and Census of San Francisco Families Living in SRO (MOH 005371 – MOH 005440 and MOH 005441 – MOH 005514)	PPAR_003025-PPAR_003168
2015	City and County of San Francisco, Applied Survey Research	City and County of San Francisco; U.S. Department of Housing and Urban Development (HUD)	2015 San Francisco Homeless Point-In-Time Count & Survey Comprehensive Report	PPAR_003169-PPAR_003254
2015	City and County of San Francisco, Applied Survey Research	City and County of San Francisco; U.S. Department of Housing and Urban Development (HUD)	2015 San Francisco Homeless Unique Youth Count & Survey Comprehensive Report	PPAR_003255-PPAR_003316
2015	U.S. Department of Housing and Urban Development	n/a	Environmental Assessment, Determination and Compliance Findings for HUD-assisted Projects 24 CFR Part 58 (MOH 013913 –	PPAR_003317-PPAR_003378

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			013974)	
03/02/2015	City and County of San Francisco, Human Services Agency and the Department of Homelessness and Supportive Housing	n/a	San Francisco SRO Leasing Strategies (HSH-HSA 002269 – 002296)	PPAR_003379-PPAR_003406
05/2015	Laura Gerhardt Goldman School of Public Policy University of California, Berkeley	City of San Francisco, Mayor's Office	Advanced Policy Analysis, Housing Inspection Data For Performance (MYR 006804 – 006883)	PPAR_003407-PPAR_003486
06/02/2015	Coalition on Homelessness, San Francisco	n/a	The Roadmap: A Five-Year Plan to End the Crisis of Family Homelessness in San Francisco (HSH-HSA 001250 – 001281)	PPAR_003487-PPAR_003518
07/2015 – 09/2016	San Francisco Public Works	n/a	Pit Stop Pilot Program Analysis, Pit Stop Pilot Program Analysis, Tenderloin Pit Stops (DPW 004623 – DPW 004625)	PPAR_003519-PPAR_003521
08/24/2015	City and County of San Francisco Board of Supervisors, Budget and Legislative Analyst's Office	Supervisor Farrell	Policy Analysis Report re: Number of Vacant Single-Room Occupancy (SRO) Hotel Units in San Francisco (BUD 004307-BUD 004312)	PPAR_003522-PPAR_003527
08/24/2015	City and County of San Francisco Board of Supervisors, Budget and Legislative Analyst's Office	Board of Supervisors	Policy Analysis Report re: Number of Vacant Single-Room Occupancy (SRO) Hotel Units in San Francisco (HSH-HSA 002037 – 002042)	PPAR_003528-PPAR_003533
08/27/2015	Noelle Simmons (HSA) (DSS)	Trent Rhorer (HSA) (DSS)	Email re: Mandatory Shelter (HSH-HSA 001727 – 001729)	PPAR_003534-PPAR_003536
08/28/2015	Nan Roman (NRoman@NAEH.org)	Trent Rhorer (HSA) (DSS)	Email re: Following Up attaching policy documents and DHS Historical Timeline as produced	PPAR_003537-PPAR_003543

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			(HSH-HSA 001733 – 001739)	
09/14/2015	Jason Lally (MYR)	Sophie Hayward (MYR); AnMarie Rodgers (CPC); Delene Wolf (RNT); Ted Egan (CON); Ken Rich (ECN); Sarah Dennis-Phillips (ECN); Keith DeMartini (CON); Joy Bonaguro (MYR); Nicole Elliott (MYR); William Strawn (DBI); Teresa Ojeda (CPC); Charles MacNulty (MYR); John Rahaim (CPC); Gil Kelley (CPC)	Email string re: Requesting you and/or your staff at a pre-hearing briefing: this Monday, 4pm (MYR 007689 – 007690)	PPAR_003544-PPAR_003545
09/15/2015	Jason Lally, (MYR)	AnMarie Rodgers (CPC); Rosemary Bosque (DBI); Charles MacNulty (MYR); Sarah Dennis-Phillips (ECN); Joy Bonaguro (MYR); Ted Egan (CON); Sophie Hayward (MYR); Teresa Ojeda (CPC); Ken Rich (ECN); Delene Wolf (RNT); Keith DeMartini (CON); William Strawn (DBI); Nicole Elliott (MYR); Daniel Lowrey (DBI); Gino Salcedo (CPC)	Email string re: Recap & Next Steps: Today's Housing Balance (MYR 007659 – 007660)	PPAR_003546-PPAR_003547
11/16/2015	San Francisco Department of Public Works	City of San Francisco	San Francisco Pit Stop Pilot Public Toilet Program (DPW 004626 – DPW 004639)	PPAR_003548-PPAR_003561
01/21/2016	Rosemary Bosque (DBI)	Mary Gallagher	Email string re: Quick Question on Hotel Conversion Ordinance	PPAR_003562-PPAR_003563
02/23/2016	William Strawn (DBI)	Dan Sider (CPC)	Email string re HCO	PPAR_003564-PPAR_003565
02/23/2015	Department of Public Works	n/a	Enhanced Residential Corridor Cleaning Program (Pilot) (DPW 014003 – 014007)	PPAR_003566-PPAR_003570

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02/24/2016	William Strawn (DBI)	Tom Hui (DBI)	Email string re Legistar Alert (Legislation): City and County of San Francisco-Legislation	PPAR_003571-PPAR_003572
03/10/2016	William Strawn (DBI)	Rosemary Bosque (DBI), Lily Madjus (DBI), Daniel Lowrey (DBI), Ronald Tom (DBI), William Strawn (DBI), Tom Hui (DBI)	Email string re: Draft HCO Presentation attaching the Draft PowerPoint Presentation	PPAR_003573-PPAR_003587
03/15/2016	Rio Scharf	Barbara Lopez (BOS)	Email string re: Stopping SRO Conversion in Their Tracks	PPAR_003588-PPAR_003592
03/29/2016	William Strawn (DBI)	Kate Conner (CPC), Rosemary Bosque (DBI), Daniel Lowrey (DBI), Ronald Tom (DBI), Tom Hui (DBI)	Email string re: Records Request on HCOs from Sup. Peskin (and attached requested records for transmittal to Peskin)	PPAR_003593-PPAR_003595
04/01/2016	Rosemary Bosque (DBI)	Jason Lally (MYR); Eugenio Salcedo (CPC); Joy Bonaguro (MYR); Sophie Hayward (MYR); Charles MacNulty (MYR); Teresa Ojeda (CPC); Glenn Cabreros (CPC); Robert Collins (RNT); Daniel Lowry (DBI) cc: AnMarie Rodgers (CPC); Chandra Egan (MYR); Paula Chiu (CPC); Lily Madjus (DBI)	Email string re: Housing Data Coordination Monthly Meeting (MYR 006209 – 006222)	PPAR_003596-PPAR_003609
04/03/2016	William Strawn (DBI)	Tom Hui (DBI)	Email string Fwd: Records Request on HCOs from Sup. Peskin attaching the Residential Hotel Conversion BOS Inquiry (DBI 026103 – 026106 and 026431 - 026434)	PPAR_003610-PPAR_003782
04/04/2016	William Strawn (DBI)	Kate Conner (CPC), Rosemary Bosque (DBI), Daniel Lowrey (DBI), Ronald Tom (DBI)	Email string re: Records Request on HCOs from Sup. Peskin	PPAR_003783-PPAR_003786

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04/04/2016	Rosemary Bosque (DBI)	William Strawn (DBI), Daniel Lowrey (DBI), Ronald Tom (DBI)	Email string re: Records Request on HCOs from Sup. Peskin	PPAR_003787-PPAR_003791
04/04/2016	Kate Conner (CPC)	Angela Calvillo (BOS), Sunny Angulo (BOS), Andrea Ausberry, Tom Hui (DBI), Olson Lee (MYR), William Strawn (DBI), Rosemary Bosque (DBI), Dan Sider (CPC), AnMarie Rodgers (CPC), John Rahaim (CPC), Aaron Peskin (BOS), Christine Silva (CPC)	Email re: BOS Inquiry: Residential Hotels Reference number 60 (attaching the Planning Department's response to the Board of Supervisors Inquiry)	PPAR_003792-PPAR_003954
04/04/2016	Kate Conner Housing Implementation Specialist San Francisco Planning Department	Angela Calvillo, Clerk Honorable Supervisor Aaron Peskin Board Of Supervisors City and County of San Francisco	Letter re: Transmittal of Response to Board of Supervisors Inquiry Residential Hotels Conditional Use Authorizations Reference Number: 60 attaching related documents (DBI 021682 -021843 and DBI 022973 - 023133)	PPAR_003955-PPAR_004277
04/05/2016	Rosemary Bosque (DBI)	Bernadette Perez (DBI), Nicole Rossini (DBI), Christina Lee (DBI), Andy Karcs (DBI)	Email string re: HCO Data Exhibits	PPAR_004278-PPAR_004281
04/05/2016	Rosemary Bosque (DBI)	Jamie Sanbonmatsu (DBI)	Email re: Draft HCO Highlights attaching "Areas Where the HCO Requires Update" document	PPAR_004282-PPAR_004286
04/05/2016	City and County of San Francisco	Controller's Office, City and County of San Francisco	Housing Inspection Services, Residential Hotel Unit Conversion and Demolition Ordinance (Chapter 41 of the S.F. Administrative Code) Executive Summary for Hotel Unit Usage Report – Group By Status (CON 05586 – 005606)	PPAR_004287-PPAR_004307
04/06/2016	Rosemary Bosque, Chief	Ms. Angela Calvillo, Clerk;	Letter re: Transmittal of Response	PPAR_004308-

DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
	Housing Inspector, City and County of San Francisco, Department of Building Inspection	Honorable Supervisor Aaron Peskin; Board of Supervisors	to Board of Supervisors Inquiry Ref No. 60 For Chapter 41 of the San Francisco Administrative Code Administrative Records Residential Hotel Unit Conversion and Demolition Ordinance (HCO) enclosing Exhibit A, HCO Annual Reports, Inquiry Item Nos. 1 & 3 (DBI 033273 – 033591)	PPAR_004626
04/06/2016	Rosemary Bosque (DBI)	Angela Calvillo, Clerk and Supervisor Aaron Peskin, San Francisco Board of Supervisors	Letter transmitting Response to Board of Supervisors Inquiry No. 60 (and enclosed DBI HCO Annual Reports dating back to 2000)	PPAR_004627-PPAR_004853
04/06/2016	Jamie Sanbonmatsu (DBI)	Rosemary Bosque (DBI)	Email string re: Draft HCO Highlights	PPAR_004854
04/06/2016	Jane Sun (DBI)	Dan Kreuscher (DBI), Taras Madison (DBI)	Email string re: Board of Supervisors Inquiry (attaching Analysis in Cash Account for the Residential Hotel Preservation Projects)	PPAR_004855-PPAR_004859
04/06/2016	William Strawn (DBI)	Rosemary Bosque (DBI), Daniel Lowrey (DBI), Tom Hui (DBI)	Email string re: HCO Records Production (with enclosures)	PPAR_004860-PPAR_004871
04/12/2016	Sunny Angulo (BOS)	Rosemary Bosque (DBI), Bernadette Perez (DBI), Jamie Sanbonmatsu (DBI)	Email string re: HCO Records Production	PPAR_004872-PPAR_004873
04/19/2016	William Strawn (DBI)	Tom Hui (DBI), Angus Mcarthy, Edward Sweeney (DBI), Daniel Lowrey (DBI), Taras Madison (DBI), Ronald Tom (DBI), William Strawn (DBI), Sonya Harris (DBI), Lily Madjus (DBI), Naomi Kelly (ADM), Bill Barnes (ADM), Robb Kapla (CAT)	Email string re: Press Release: Supervisor Aaron Peskin Initiates Reforms to Chapter 41 Hotel Conversion Ordinance	PPAR_004874-PPAR_004876

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04/19/2016	Sonya Harris (DBI)	William Strawn (DBI)	Email string re: Press Release: Supervisor Aaron Peskin Initiates Reforms to Chapter 41 Hotel Conversion Ordinance	PPAR_004877-PPAR_004880
04/19/2016	William Strawn (DBI)	Connie Chan (BOS), Tom Hui (DBI)	Email string re: Press Release: Supervisor Aaron Peskin Initiates Reforms to Chapter 41 Hotel Conversion Ordinance	PPAR_004881-PPAR_004883
04/19/2016	William Strawn (DBI)	Andy Karcs (DBI)	Email string re: Press Release: Supervisor Aaron Peskin Initiates Reforms to Chapter 41 Hotel Conversion Ordinance	PPAR_004884-PPAR_004885
04/20/2016	William Strawn (DBI)	Jamie Sanbonmatsu (DBI)	Email string re: Press Release: Supervisor Aaron Peskin Initiates Reforms to Chapter 41 Hotel Conversion Ordinance	PPAR_004886-PPAR_004887
04/21/2016	Sunny Angulo (BOS)	William Strawn (DBI), Connie Chan (BOS), Tom Hui (DBI)	Email string re: Press Release: Supervisor Aaron Peskin Initiates Reforms to Chapter 41 Hotel Conversion Ordinance	PPAR_004888-PPAR_004891
04/25/2016	Jamie Sanbonmatsu (DBI)	Rosemary Bosque (DBI)	Email re: HCO Article with a link to an article by Randy Shaw entitled, "Peskin Moves To Save SRO Hotels" (article attached)	PPAR_004892-PPAR_004895
04/26/2016	Jamie Sanbonmatsu (DBI)	Barbara Lopez (BOS)	Email attaching HCO Analysis April 2016 (w/attachments)	PPAR_004896-PPAR_004906
05/16/2016	Randy Shaw	Barbara Lopez (BOS), Rosemary Bosque (DBI), gfujioka@chinatowncdc.org, [redacted] Aaron Peskin (BOS), Sunny Angulo (BOS)	Email re: Need to Reform DBI HCO Report Forms attaching (DBI Report Forms)	PPAR_004907-PPAR_004915
05/16/2016	Sunny Angulo	Randy Shaw, Barbara Lopez (BOS), Rosemary Bosque (DBI),	Email string re: Need to Reform DBI HCO Report Forms	PPAR_004916

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		gfujioka@chinatowncdc.org, [redacted] Aaron Peskin (BOS)		
05/16/2016	Rosemary Bosque (DBI)	Andy Karcs (DBI), Christina Lee (DBI), Bernadette Perez (DBI), Johanna Coble (DBI)	Email string re: Need to Reform DBI HCO Report Forms	PPAR_004917-PPAR_004918
05/16/2016	Barbara Lopez (BOS)	Rosemary Bosque (DBI), Randy Shaw, gfujioka@chinatowncdc.org, [redacted] Aaron Peskin (BOS), wu.cindy@gmail.com, Aaron Peskin (BOS), Sunny Angulo (BOS)	Email string re: Need to Reform DBI HCO Report Forms	PPAR_004919-PPAR_004920
05/16/2016	Randy Shaw	Rosemary Bosque (DBI)	Email string re: Need to Reform DBI HCO Report Forms	PPAR_004921-PPAR_004922
05/16/2016	Rosemary Bosque (DBI)	Barbara Lopez (BOS), Randy Shaw, gfujioka@chinatowncdc.org, Aaron Peskin (BOS), Sunny Angulo (BOS)	Email string re: Need to Reform DBI HCO Report Forms	PPAR_004923-PPAR_004924
05/23/2016	William Strawn (DBI)	Bernadette Perez (DBI), William Strawn (DBI)	Email re: Planning Response to Sup. Peskin's Original Chapter 41/HCO Questions to Departments, attaching PDF entitled "BOS Inquiry Residential Hotel Conversion" (with extensive enclosures) (DBI 026268)	PPAR_004925-PPAR_005088
05/24/2016	Sunny Angulo (BOS)	BOS Legislation (BOS), Alisa Somera (BOS), John Carroll (BOS)	Email re: PESKIN – Resolution – Hotel Conversion Interim Controls, attaching documents entitled, "RES Final.DOCX" and "Peskin – Intro – HCO Interim Controls.pdf"	PPAR_005089-PPAR_005093
05/25/2016	Sunny Angulo (BOS)	Rosemary Bosque (DBI), Jamie Sanbonmatsu (DBI)	Email string FW: PESKIN – Resolution – Hotel Conversion Interim Controls	PPAR_005094-PPAR_005095

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05/31/2016	Rosemary Bosque (DBI)	Jamie Sanbonmatsu (DBI)	Email re: HCO, attaching document "Areas Where the HCO Requires Update.docx"	PPAR_005096-PPAR_005101
05/31/2016	Jamie Sanbonmatsu (DBI)	Jamiesan@ix.netcom.com, Sunny Angulo (BOS)	Email attaching document "Housing Chief HCO Needs.docx"	PPAR_005102-PPAR_005107
06/2016	City and County of San Francisco, Civil Grand Jury, 2015-2016	Mayor; Board of Supervisors; San Francisco Police Department Chief; Controller's Office; 311; Director of 311; The Department of Homelessness and Supportive Housing (DHSH)	Grand Jury report entitled: "San Francisco Homeless Health & Housing – A Crisis Unfolding On Our Streets"	PPAR_005108-PPAR_005154
06/01/2016	Rosemary Bosque (DBI)	Andy Karcs (DBI), Nicole Rossini (DBI), Christina Lee (DBI), Bernadette Perez (DBI), Lily Madjus (DBI)	Email FW: Data Clarification Question, attaching screenshots of the "HCO Annual Reporting Highlights "DBI 2014-2015 Annual Report" page 45 and "2013-2014 Annual Report" on page 36	PPAR_005155-PPAR_005159
06/03/2016	Rosemary Bosque (DBI)	Asim Khan (CON), Patty Herrera (DBI), Lily Madjus (DBI)	Email string re: Data Clarification Question, attaching background information on Chapter 41 of the Administrative Code	PPAR_005160-PPAR_005201
06/07/2016	Bernadette Perez (DBI)	Christina Lee (DBI), Nicole Rossini (DBI)	Email re: Supervisor Peskin's Inquiry	PPAR_005202
06/08/2016	Rosemary Bosque (DBI)	Asim Khan (CON), Lily Madjus (DBI), Andy Karcs (DBI), Bernadette Perez (DBI)	Email string re: Data Clarification Question attaching documents associated with Chapter 41	PPAR_005203-PPAR_005219
06/11/2016	Pratibha Tekkey (pratibha@thclinic.org)	Barbara Lopez (BOS), Sunny Angulo (BOS), Rio Scharf (rio@thclinic.org)	Email re: Action Items	PPAR_005220-PPAR_005221
06/13/2016	San Francisco Budget and	Board of Supervisors of the City	Performance Audit of Homeless	PPAR_005222-

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	Legislative Analyst	and County of San Francisco	Services in San Francisco (HSH-HSA 000984 – 001057)	PPAR_005295
06/20/2016	Rosemary Bosque (DBI)	Ronald Tom (DBI), Daniel Lowrey (DBI)	Email re: Chapter 41 Information, attaching an excerpt of the FY 2014-2015 HCO Annual Report and a copy of the stamp	PPAR_005296-PPAR_005301
06/24/2016	Rosemary Bosque (DBI)	Jamie Sanbonmatsu (DBI), Bernadette Perez (DBI)	Email re: HCO Cost Recovery & Penalties Outline, attaching a document, "HCO Fees & Penalties Outline 6 24 2016.docx"	PPAR_005302-PPAR_005303
06/27/2016	San Francisco Planning Department	n/a	San Francisco Property Information Map, Report for: Latitude: 37.76972 Longitude: -122.41296 (DPW 015637 – 015649)	PPAR_005304-PPAR_005316
06/27/2016	Jamie Sanbonmatsu (DBI)	Sunny Angulo (BOS)	Email attaching document "HCO Fees & Penalties Outline 6 24 2016.docx"	PPAR_005317-PPAR_005323
06/29/2016	San Francisco Chronicle	n/a	Article entitled, "The streets' sickest, costliest: the mentally ill" (MOH 013975 – 014002)	PPAR_005324-PPAR_005351
07/11/2016	Sunny Angulo (BOS)	Rio Sharf, Bobbi Lopez, [redacted], Jamie Sanbonmatsu (DBI), Rosemary Bosque (DBI), Pratibha Tekkey	Email string re: Re-grouping to Discuss Amendments to HCO	PPAR_005352-PPAR_005354
07/13/2016	Jamie Sanbonmatsu (DBI)	Lily Madjus (DBI)	Email string re: Follow Up from Mission Community Meeting	PPAR_005355-PPAR_005359
07/13/2016	Bobbi Lopez	Sunny Angulo (BOS), Rio Sharf, Bobbi Lopez, Jamie Sanbonmatsu (DBI), Rosemary Bosque (DBI), Pratibha Tekkey	Email string re: Re-grouping to Discuss Amendments to HCO	PPAR_005360-PPAR_005362
07/14/2016	Rosemary Bosque (DBI)	Rosemary Bosque	Email string FW: Re-grouping to Discuss Amendments to HCO	PPAR_005363-PPAR_005365
07/14/2016	Jamie Sanbonmatsu (DBI)	Sunny Angulo (BOS), Rio	Email string re: Re-grouping to	PPAR_005366-

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		Sharf, Bobbi Lopez, Rosemary Bosque (DBI), Pratibha Tekkey	Discuss Amendments to HCO	PPAR_005368
07/14/2016	Sunny Angulo (BOS)	Jamie Sanbonmatsu (DBI), [redacted], Rio Sharf, Rosemary Bosque (DBI), Pratibha Tekkey	Email string re: Re-grouping to Discuss Amendments to HCO	PPAR_005369-PPAR_005371
07/14/2016	Sunny Angulo (BOS)	Jamie Sanbonmatsu (DBI), Bobbi Lopez (lopezbobbi@gmail.com), Rio Sharf, Rosemary Bosque (DBI), Pratibha Tekkey	Email string re: Re-grouping to Discuss Amendments to HCO	PPAR_005372-PPAR_005374
07/19/2016	Sunny Angulo (BOS)	Rio Sharf, Bobbi Lopez, [redacted] Jamie Sanbonmatsu (DBI), Rosemary Bosque (DBI), Pratibha Tekkey	Email string re: Re-grouping to Discuss Amendments to HCO	PPAR_005375-PPAR_005377
07/19/2016	City and County of San Francisco, Department of Public Works	City of San Francisco	DRAFT version 1 July 19, 2016, Public Works Policy and Guidelines for Removal and Temporary Storage of Personal Items Collected from Public Property (DPW 004332 – DPW 004337)	PPAR_005378-PPAR_005383
07/20/2016	Jamie Sanbonmatsu (DBI)	Sunny Angulo (BOS), Rio Sharf, Bobbi Lopez, [redacted] Rosemary Bosque (DBI), Pratibha Tekkey	Email string re: Re-grouping to Discuss Amendments to HCO	PPAR_005384-PPAR_005386
07/27/2016	Rosemary Bosque (DBI)	Lily Madjus (DBI)	Email string FW: HCO Inventory attaching document "HCO Protected Units 6.14.2016.xls"	PPAR_005387-PPAR_005405
07/28/2016	Rosemary Bosque (DBI)	Andy Karcs (DBI)	Email string FW: Code 79 & 93 attaching document "Code 92 Changes for FY 2016 – 17.xlsx"	PPAR_005406-PPAR_005409
08/05/2016	Rio Scharf (rio@thclinic.org)	Sunny Angulo (BOS)	Email string re: Update on HCO Amendment Process	PPAR_005410-PPAR_005411

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08/10/2016	Rosemary Bosque (DBI)	Sonya Harris (DBI), Tom Hui (DBI)	Email string re: Letter to DBI Commission	PPAR_005412-PPAR_005413
08/10/2016	Sonya Harris (DBI)	Rosemary Bosque (DBI), Tom Hui (DBI)	Email string re: Letter to DBI Commission	PPAR_005414-PPAR_005416
08/10/2016	Rosemary Bosque (DBI)	Nicole Rossini (DBI), Christina Lee (CON), Andy Karcs (DBI), Bernadette Perez (DBI)	Email string FW: Please Review – Draft Report, attaching document "BLA Policy Analysis.SRO Vacancies.DBI Review.docx"	PPAR_005417-PPAR_005427
08/24/2016	City and County of San Francisco Board of Supervisors, Budget and Legislative Analyst's Office	Supervisor Farrell	Policy Analysis Report re: Vacant Single-Room Occupancy (SRO) Hotel Units in the Bay Area (BUD 004298-BUD 004306)	PPAR_005428-PPAR_005436
08/25/2016	Rio Scharf (rio@thclinic.org)	Sunny Angulo (BOS)	Email string re: Update on HCO Amendment Process	PPAR_005437-PPAR_005439
09/2016	City and County of San Francisco, Department of Public Works	City and County of San Francisco, Department of Public Works	Public Works Procedure for Collecting Personal Items in the Field (DPW 004338)	PPAR_005440
09/13/2016	Sunny Angulo (BOS)	Rio Scharf, Pratibha Tekkey	Email string re: HCO Amendment Update	PPAR_005441
09/23/2016	Diana Martinez (Diana@dscs.org)	Sunny Angulo (BOS)	Email string re: Ch 41 Check In – Tuesday Maybe?	PPAR_005442-PPAR_005444
10/2016	San Francisco Mayor's Office	n/a	Mission Action Plan 2020 (MOH 010666 – 010743)	PPAR_005445-PPAR_005522
10/05/2016	Rio Scharf (rio@thclinic.org)	Sunny Angulo (BOS)	Email re: Data re: 7-day Rentals, attaching document "Briefing Points.docx"	PPAR_005523-PPAR_005527
10/07/2016	Department of Building Inspection	City of San Francisco	Housing Inspection Services, Residential Hotel Unit Conversion and Demolition Ordinance (Chapter 41 of the S.F. Administrative Code) Executive Summary for Hotel Unit Usage Report – Group By Status (DBI 032974 – 033047 and DBI007834 -	PPAR_005528-PPAR_005638

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			007870)	
10/11/2016	Diana Martinez (Diana@dscs.org)	Sunny Angulo (BOS)	Email string re: Ch 41 Check In – Tuesday Maybe?	PPAR_005639-PPAR_005642
10/12/2016	Jason Lally (MYR)	Joy Bonaguro (MYR)	Email string FW: DPH Data Process Meeting (MYR 006223 – 006226)	PPAR_005643-PPAR_005646
10/14/2016	Diana Martinez (Diana@dscs.org)	Sunny Angulo (BOS)	Email re: Hotel Conversion Ordinance	PPAR_005647
10/25/2016	City & County of San Francisco, Office of the Controller, City Services Auditor, City Performance	City and County of San Francisco	Street & Sidewalk Maintenance Standards Fiscal Year 2015-16 Annual Report	PPAR_005648-PPAR_005697
10/27/2016	Jamie Sanbonmatsu (DBI)	Nicole Rossini (DBI), Rosemary Bosque (DBI)	Email re: HCO, attaching an article from the San Francisco Examiner entitled, "First-of-its-kind report details code enforcement cases in SF homes"	PPAR_005698-PPAR_005702
10/28/2016	Rosemary Bosque (DBI)	Nicole Rossini (DBI), Bernadette Perez (DBI), Andy Karcs (DBI), Johanna Coble (DBI)	Email re: HCO	PPAR_005703
11/02/2016	Mayor's Office of Housing and Community Development	City Staff, et al.	Housing Preferences and Lottery Procedures Manual, Revised November 2, 2016	PPAR_005704-PPAR_005749
11/17/2016	SRO Task Force	City of San Francisco	San Francisco Single Room Occupancy (SRO) Task Force Contact Sheet & Attendance Log for Members and Guests, November 17, 2016 Regular Meeting (SRO 039186 – 039195)	PPAR_005750-PPAR_005759
11/29/2016	Sunny Angulo (BOS)	BOS Legislation (BOS), John Carroll (BOS)	Email re: Peskin – Ordinance – Admin Code Chapter 41 Amendments, attaching the Ordinance Amending Chapter 41	PPAR_005760-PPAR_005786

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			of the Administrative Code and the legislative digest	
11/30/2016	BOS Legislation (BOS)	Sunny Angulo (BOS), BOS Legislation (BOS)	Email string re: Peskin – Ordinance – Admin Code Chapter 41 Amendments, attaching the Updated Ordinance Amending Chapter 41 of the Administrative Code and the legislative digest	PPAR_005787-PPAR_005811
12/2016	San Francisco Public Works	n/a	Department Procedures Manual Vol. 16 – Street Environmental Services, Procedure 16.05.08, Removal and Temporary Storage of Personal Items Collected from Public Property (DPW 004123 – 004132 and DPW 004145 - 004146)	PPAR_005812-PPAR_005823
12/01/2016	Sunny Angulo (BOS)	BOS Legislation (BOS)	Email string re: Peskin – Ordinance – Admin Code Chapter 41 Amendments	PPAR_005824-PPAR_005825
12/02/2016	Lisa Pagan (ECN)	Jeff Buckley (MYR) cc: Laurel Arvanitidis (ECN); Sarah Dennis-Phillips (ECN); Bryan Quevedo (ECN)	Email re: Hotel Conversion Ordinance Update (MYR 006265)	PPAR_005826
12/05/2016	William Strawn (DBI)	Tom Hui (DBI), Edward Sweeney (DBI), Daniel Lowrey (DBI), Taras Madison (DBI), Ronald Tom (DBI), [redacted] Carolyn Jayin (DBI), Lily Madjus (DBI), Steven Panelli (DBI), David Leung (DBI), Ken Hu (DBI)	Email re: Update on newly proposed Board Ordinances and the December 8th Hearing on Drink Tap Stations	PPAR_005827-PPAR_005828
12/05/2016	Diana Martinez (Diana@dscs.org)	Sunny Angulo (BOS), Tim Hoang, Katie Selcraig	Email string re: Hotel Conversion Ordinance	PPAR_005829-PPAR_005831
12/06/2016	Sunny Angulo (BOS)	BOS Legislation (BOS), John	Email re: Peskin – Substitute	PPAR_005832-

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DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
		Carroll (BOS)	Ordinance – Hotel Conversion Ordinance Update, attaching substitute legislation and new legislative digest	PPAR_005859
12/07/2016	Sunny Angulo (BOS)	Rosemary Bosque (DBI)	Email string Fwd: CH 41/SRO Conversion Update and next steps, attaching documents entitled, "CH 41 Legislative Digest.pdf," "CH 41 Update.pdf," and "SRO Hotel Voting History.docx"	PPAR_005860-PPAR_005892
12/08/2016	Rosemary Bosque (DBI)	Sonya Harris (DBI)	Email string re: DBI Articles as of 12/8/16	PPAR_005893-PPAR_005894
12/14/2016	Katie Selcraig (Katie@dscs.org)	Sunny Angulo (BOS), Diana Martinez	Email re: Following up on the HCO	PPAR_005895
12/15/2016	Lisa Lew (BOS)	Lisa Gibson (CPC), Joy Navarrete (CPC), Jeanie Poling (CPC), Alisa Somera (BOS)	Email re: BOS Referral: File No. 161291 – Administrative Code – Update Hotel Conversion Ordinance, attaching substitute legislation	PPAR_005896-PPAR_005924
12/15/2016	Lisa Lew (BOS)	Tom Hui (DBI), John Rahaim (CPC), Olson Lee (MYR), Jeff Kositsky (HOM), Barbara Garcia (DPH), William Strawn (DBI), Carolyn Jayin (DBI), Scott Sanchez (CPC), Lisa Gibson (CPC), AnMarie Rodgers (CPC), Aaron Starr (CPC), Joy Navarrete (CPC), Jeanie Poling (CPC), Eugene Flannery (MYR), Kate Hartley (MYR), Greg Wagner (DPH), Colleen Chawla (DPH), Alisa Somera (BOS)	Email re: BOS Referral: File No. 161291 – Administrative Code – Update Hotel Conversion Ordinance, attaching substitute legislation	PPAR_005925-PPAR_005954
12/15/2016	Lisa Lew (BOS)	Regina Dick-Endrizzi (ECN),	Email re: BOS File No. 161291 –	PPAR_005955-

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		Menaka Mahajan (ECN), Alisa Somera (BOS)	Administrative Code – Update Hotel Conversion Ordinance, attaching referral to be referred to the Small Business Commission	PPAR_005984
12/15/2016	Tom Hui (DBI)	Sonya Harris (DBI), William Strawn (DBI), Lily Madjus (DBI), Carolyn Jayin (DBI)	Email string re: BOS Referral: File No. 161291 – Administrative Code – Update Hotel Conversion Ordinance, attaching substitute legislation	PPAR_005985-PPAR_006015
12/15/2016	William Strawn (DBI)	Daniel Lowrey, Rosemary Bosque (DBI), David Leung (DBI), Kirk Means (DBI), Ronald Tom (DBI), Edward Sweeney (DBI), Tom Hui (DBI), Lily Madjus (DBI), William Strawn (DBI)	Email re: Supervisor Peskin's amendments to Admin Code Chapter 41, Updating the Hotel Conversion Ordinance, attaching latest version of draft ordinance	PPAR_006016-PPAR_006045
12/16/2016	Joy Navarrete (CPC)	Lisa Lew (BOS), Jeanie Poling (CPC), Alisa Somera (BOS)	Email string re: BOS Referral: File No. 161291 – Administrative Code – Update Hotel Conversion Ordinance, attaching substitute legislation	PPAR_006046-PPAR_006074
12/16/2016	William Strawn (DBI)	Tom Hui (DBI), Sonya Harris (DBI) Carolyn Jayin (DBI), Lily Madjus (DBI), William Strawn (DBI)	Email re: DBI December 2016 Legislative Update.docx, attaching Legislative Update for 12/21/16 BIC meeting	PPAR_006075-PPAR_006084
12/19/2016	Sam Dodge, (HOM)	Emily Cohen, (MYR)(DPH)	Email string re: FW: BOS Referral: File No. 161291 – Administrative Code – Update Hotel Conversion Ordinance (HSH 004339 – HSH 004340)	PPAR_006085-PPAR_006086
2017	City and County of San Francisco, Department of Public Works	n/a	Chart re: Goal 3: Improve and inspire stewardship of public spaces (DPW 003977 – 003978)	PPAR_006087-PPAR_006088
2017	City and County of San	City and County of San	2017 San Francisco Homeless	PPAR_006089-

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	Francisco, Applied Survey Research	Francisco, U.S. Department of Housing and Urban Development (HUD)	Count & Survey Comprehensive Report (MOH 005635 – 005714)	PPAR_006248
2017	City and County of San Francisco, Applied Survey Research	City and County of San Francisco, U.S. Department of Housing and Urban Development (HUD)	2017 San Francisco Homeless Point-In-Time Count and Survey (2 page graphic summary)	PPAR_006249-PPAR_006250
2017	City and County of San Francisco, Applied Survey Research	City and County of San Francisco, U.S. Department of Housing and Urban Development (HUD)	2017 San Francisco Homeless Unique Youth Count & Survey Comprehensive Report	PPAR_006251-PPAR_006287
01/06/2017	Sunny Angulo (BOS)	Juned (js@hoteltropica.com)	Email re: Meeting re: HCO Update	PPAR_006288
01/10/2017	Sunny Angulo (BOS)	David Kim (ADM), Barbara Lopez (BOS)	Email string re: Jan 23 Press Conference - Sup Peskin, attaching a Steps Use Permit	PPAR_006289-PPAR_006290
01/10/2017	Sunny Angulo (BOS)	Rosemary Bosque (DBI), Jamie Sanbonmatsu (DBI), Aaron Peskin (BOS)	Email string re: HCO Date Confirmed – January 23rd	PPAR_006291-PPAR_006292
01/13/2017	Sunny Angulo (BOS)	Jennifer Fieber, Kitty Fong, Tony Robles, Diana Martinez, Katie Selcraig, Tim Hoang, Gen Fujioka, Tan Chow, Tammy Hung, Rio Scharf, Pratibha Tekkey, Alexandra Goldman, Ian, Sue Hestor, Deepa Varma, tmecca@hrcsf.org, fred@hrcsf.org, Theresa Imperial, theresa@sdaction.org, brian.basinger@ahasf.org, [redacted] joyce@cpasf.org	Email string re: CH 41/SRO Conversion Update and next steps, attaching document "HCO chart.pdf"	PPAR_006293-PPAR_006295
01/13/2017	Jamie Sanbonmatsu (DBI)	Pratibha Tekkey (pratibha@thclinic.org), Gen Fujioka, Raul Fernandez, Diana Martinez, Rosemary Bosque	Email re: HCO Hearing 1/23 (DBI 025601)	PPAR_006296

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		(DBI), Sunny Angulo (BOS)		
01/13/2017	Diana Martinez	Jamie Sanbonmatsu (DBI), Katie Selcraig	Email string re: HCO Hearing 1/23	PPAR_006297
01/13/2017	Rosemary Bosque (DBI)	Andy Karcs (DBI), Nicole Rossini (DBI)	Email string re: HCO Hearing 1/23	PPAR_006298
01/18/2017	Katie Selcraig	Malia Cohen (BOS), Yoyo Chan (BOS), Brittni Chicuata (BOS), Diana Martinez	Email re: Requesting a meeting about the Hotel Conversion Ordinance	PPAR_006299
01/18/2017	Rosemary Bosque (DBI)	Jamie Sanbonmatsu (DBI)	Email string FW: CH 41/SRO Conversion Update and next steps	PPAR_006300-PPAR_006303
01/19/2017	Sam Dodge (HOM)	Emily Cohen (HOM)	Email string FW: CH 41/SRO Conversion Update and next steps (HSH 004370 – HSH 004373)	PPAR_006304-PPAR_006307
01/19/2017	Sunny Angulo (BOS)	Rosemary Bosque (DBI), Jamie Sanbonmatsu (DBI)	Email string re: CH 41/SRO Conversion Update and next steps	PPAR_006308-PPAR_006312
01/19/2017	Alisa Somera (BOS)	Yoyo Chan (BOS)	Email string re: Land Use Agenda – 1/23 Draft, attaching the January 23, 2017 Final Draft Land Use Agenda	PPAR_006313-PPAR_006321
01/19/2017	Rosemary Bosque (DBI)	William Strawn (DBI), Jamie Sanbonmatsu (DBI), Daniel Lowrey (DBI)	Email re: 1st Draft Land Use Presentation, attaching document, "HCO Amend Pres to BOS Land Use 1.23.2017"	PPAR_006322-PPAR_006328
01/20/2017	Jamie Sanbonmatsu (DBI)	Rosemary Bosque (DBI)	Email re: HCO leg Chief needs reorganized attaching document "Housing Chief HCO needs" and an article from the SF Examiner entitled, "First-of-its-kind report details code enforcement cases in SF homes"	PPAR_006329-PPAR_006338
01/20/2017	William Strawn (DBI)	Ronald Tom (DBI)	Email FW: 1st Draft Land Use Presentation, attaching powerpoint document "HCO Amend Pres to BOS Land Use 1.23.2017"	PPAR_006339-PPAR_006345

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01/20/2017	William Strawn (DBI)	Ronald Tom (DBI), William Strawn (DBI), [redacted]	Email re: Sup. Peskin's proposed amendments/updates to the 36-year old Hotel Conversion Ordinance to preserve low-cost housing for elderly, disabled, with a link to the Agenda Packet for the hearing on January 23, 2017	PPAR_006346-PPAR_006384
01/20/2017	Janan New (janan@sfaa.org)	Sunny Angulo (BOS), Aaron Peskin (BOS), Brook Turner	Email re: HCO	PPAR_006385
01/20/2017	William Strawn (DBI)	Tom Hui (DBI), Edward Sweeney (DBI), Daniel Lowrey (DBI), Taras Madison (DBI), Ronald Tom (DBI), [redacted], Carolyn Jayin (DBI), Lily Madjus (DBI), William Strawn (DBI)	Email re: Board next week	PPAR_006386
01/20/2017	Rosemary Bosque (DBI)	William Strawn (DBI), Jamie Sanbonmatsu (DBI), Lily Madjus (DBI), Daniel Lowrey (DBI)	Email re: 1st Draft Land Use Presentation, attaching powerpoint document "HCO Amend Pres to BOS Land Use 1.23.2017"	PPAR_006387-PPAR_006394
01/20/2017	William Strawn (DBI)	Rosemary Bosque (DBI), Ronald Tom (DBI), Daniel Lowrey (DBI), Tom Hui (DBI)	Email re: HCO Amend Pres to BOS Land Use 1.23.2017, attaching powerpoint document, "HCO Amend Pres to BOS Land Use 1.23.2017"	PPAR_006395-PPAR_006402
01/20/2017	Sunny Angulo (BOS)	Katie Selcraig, Diana Martinez, tim@dscs.org, Gen Fujioka, Tan Chow, Tammy Hung, Kitty Fong, Randy Shaw, Rio Scharf, Pratibha Tekkey, Alexandra Goldman, ilewis@unitehere2.org, Sue Hestor, Deepa Varma, Jennifer@sftu.org,	Email re: CH 41/SRO Conversion Update and next steps, attaching document "CH 41 HCO Peskin Summary"	PPAR_006403-PPAR_006410

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		tmecca@hrcsf.org, fred@hrcsf.org, Tony Robles, Theresa Imperial, brian.basinger@ahasf.org, Barbara Lopez (BOS), joyce@cpasf.org, [redacted], Angelica Cabande, cgomez@unitehere2.org, tenantorganize@somcan.org, rquintero@tndc.org, joyce@cpasf.org, Jamie Sanbonmatsu (DBI), Rosemary Bosque (DBI), [redacted], Gail Gilman, jwilson@hospitalityhouse.org, Sam Dodge (HOM)		
01/20/2017	Sunny Angulo (BOS)	Aaron Peskin (BOS), Jane Kim (BOS)	Email FW: CH 41/SRO Conversion Update and next steps, attaching document " CH 41 HCO Peskin Summary"	PPAR_006411-PPAR_006417
01/22/2017	Sunny Angulo (BOS)	Katie Selcraig, Diana Martinez, tim@dscs.org, Gen Fujioka, Tan Chow, Tammy Hung, Kitty Fong, Randy Shaw, Rio Scharf, Pratibha Tekkey, Alexandra Goldman, ilewis@unitehere2.org, Sue Hestor, Deepa Varma, Jennifer@sftu.org, tmecca@hrcsf.org, fred@hrcsf.org, Tony Robles, Theresa Imperial, brian.basinger@ahasf.org, Barbara Lopez (BOS),	Email re: CH 41/SRO Conversion Update and next steps, attaching document "Community Talking Points – SRO Conversions – Land Use Hearing.pdf"	PPAR_006418-PPAR_006422

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DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
		joyce@cpasf.org, [redacted], Angelica Cabande, cgomez@unitehere2.org, tenantorganize@somcan.org, rquintero@tndc.org, joyce@cpasf.org, Jamie Sanbonmatsu (DBI), Rosemary Bosque (DBI), [redacted], Gail Gilman, jwilson@hospitalityhouse.org, [redacted]		
01/22/2017	Sunny Angulo (BOS)	Katie Selcraig (Katie@dscs.org), Diana Martinez (Diana@dscs.org +33 more recipients (names are not visible)	Email string re: Ch 41/SRO Conversion Update and next steps	PPAR_006423-PPAR_006425
01/23/2017	Mawuli Tugbenyoh (MYR)	Crezia Tano (ECN)	Email string re: Legislative Update Week of January 23, 2017, attaching Hotel Conversion File No. 161291, Ordinance No. __, [Administrative Code – Hotel Conversion Ordinance Update] (MYR 006089 – 006114)	PPAR_006426-PPAR_006451
01/23/2017	Bernadette Perez (DBI)	Sunny Angulo (BOS), Alisa Somera (BOS), Rosemary Bosque (DBI), Daniel Lowrey (DBI), William Strawn (DBI), Lily Madjus (DBI), Jamie Sanbonmatsu (DBI)	Email re Power Point Presentation for today's meeting 1/23/2017, attaching document "HCO Amend Pres to BOS Land Use 1 23 2017.pptx"	PPAR_006452-PPAR_006459
01/23/2017	Sunny Angulo	Rosemarie Bosque, William Strawn (DBI)	Email re: QUOTE for release	PPAR_006460
01/23/2017	Sunny Angulo	Rosemarie Bosque, William Strawn (DBI)	Email string re: QUOTE for release	PPAR_006461
01/23/2017	William Strawn (DBI)	Tom Hui (DBI), Daniel Lowrey	Email re HCO Amend Pres to BOS	PPAR_006462-

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		(DBI), Ronald Tom (DBI), William Strawn (DBI), Lily Madjus (DBI)	Land Use 1 23 2017.pptx, attaching powerpoint document " HCO Amend Pres to BOS Land Use 1 23 2017.pptx"	PPAR_006469
01/23/2017	Sunny Angulo (BOS)	Katie Selcraig, Diana Martinez, tim@dscs.org, Gen Fujioka, Tan Chow, Tammy Hung, Kitty Fong, Randy Shaw, Rio Scharf, Pratibha Tekkey, Alexandra Goldman, ilewis@unitehere2.org, Sue Hestor, Deepa Varma, Jennifer@sftu.org, tmecca@hrcsf.org, fred@hrcsf.org, Tony Robles, Theresa Imperial, brian.basinger@ahasf.org, Barbara Lopez (BOS), joyce@cpasf.org, [redacted], Angelica Cabande, cgomez@unitehere2.org, tenantorganize@somcan.org, rquintero@tndc.org, joyce@cpasf.org, Jamie Sanbonmatsu (DBI), Rosemary Bosque (DBI), [redacted], Gail Gilman, jwilson@hospitalityhouse.org	Email string re: Ch 41/SRO Conversion Update and next steps	PPAR_006470-PPAR_006474
01/23/2017	Mawuli Tugbenyoh (MYR) Liaison to the Board of Supervisors Office of Mayor Edwin Lee	Colleagues	Email re: Legislative Update Week of January 23, 2017 (CON 006004 – 006005)	PPAR_006475-PPAR_006476
01/23/2017	Rosemary Bosque (DBI)	Jamie Sanbonmatsu (DBI)	Email string re: QUOTE for release	PPAR_006477-PPAR_006478

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01/23/2017	William Strawn (DBI)	Rosemary Bosque (DBI), Sunny Angulo (BOS), William Strawn (DBI)	Email string re: Revisions to the quote	PPAR_006479-PPAR_006480
01/23/2017	Sunny Angulo (BOS)	Janan New, Aaron Peskin (BOS)	Email string re: today's hearing follow-up	PPAR_006481
01/23/2017	Bernadette Perez (DBI)	Rosemary Bosque (DBI)	Email string FW: Supervisorial Districts Count for HCO attaching a map of profit and nonprofit SRO hotels in supervisors' districts	PPAR_006482-PPAR_006484
01/24/2017	Randy Shaw (randy@thclinic@gmail.com)	Sunny Angulo (BOS), Dipak Patel (dipakstayinsf@gmail.com)	Email string FW: HCO	PPAR_006485
01/24/2017	Jamie Sanbonmatsu (DBI)	Rosemary Bosque (DBI), William Strawn (DBI), Daniel Lowrey (DBI), Ronald Tom (DBI), Tom Hui (DBI), Lily Madjus (DBI)	Email string re: article re: SRO legislation would make it harder to rent residential hotel rooms to tourists	PPAR_006486-PPAR_006487
01/24/2017	Dipak Patel (dipakstayinsf@gmail.com)	Sam Patel, Aaron Peskin (BOS), Lee Hepner (BOS), Sunny Angulo (BOS), Nasir Patel	Email string re: HCO	PPAR_006488-PPAR_006492
01/25/2017	nasir24@aol.com	dipakstayinsf@gmail.com, spatel@csvhospitality.com, Aaron Peskin (BOS), Lee Hepner (BOS), Sunny Angulo (BOS)	Email string re: HCO	PPAR_006493-PPAR_006497
01/25/2017	Sunny Angulo (BOS)	Diana Martinez, Katie Selcraig	Email string re: HCO at full Board	PPAR_006498-PPAR_006499
01/26/2017	Juned Usman Shaikh (js@hoteltropica.com)	Aaron Peskin (BOS), Sunny Angulo (BOS), Lee Hepner (BOS), sdarbar@aol.com, dipakstayinsf@gmail.com, sp@bmshotels.com, amotawala@live.com,	Email re: Hotel Conversion Ordinance Legislation (HCO) – Preservation of Weekly Rentals for SRO Hotels – January 26th, 2016 to: Honorable Supervisor Aaron Peskin	PPAR_006500-PPAR_006502

DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
		anilpatel855@yahoo.com, vikcpatel@gmail.com, nap310@sbcglobal.net, rstratton@hansonbridgett.com, nayno33@sbcglobal.net, dpatel46@sbcglobal.net, pagnoletti@ehmergroup.com, clubrio232@aol.com, laynehotel@aol.com, Kiran Patel, kenpatel04@gmail.com, kbthakor@gmail.com, dannypatel73@yahoo.com, winsor206@sbcglobal.net, akshayamin@sbcglobal.net, rpatel1541@gmail.com, nasir24@aol.com		
01/26/2017	Sunny Angulo (BOS)	Ahsha Safai (BOS), Jane Kim (BOS), Aaron Peskin (BOS), Jeff Sheehy (BOS), Malia Cohen (BOS), Suhagey Sandoval (BOS), Andres Power (BOS), Yoyo Chan (BOS), Barbara Lopez (BOS)	Email re: CH 41/SRO Conversion Fact Sheet Summary, attaching document "CH 41 HCO Peskin Summary.pdf"	PPAR_006503-PPAR_006506
01/27/2017	Janan New (janan@sfaa.org)	Sunny Angulo (BOS), Lee Hepner (BOS), Aaron Peskin (BOS)	Email re: HCO	PPAR_006507
01/27/2017	Katie Selcraig	Natalie Gee (BOS), Diana Martinez	Email string re: Meeting: Hotel Conversion Ordinance & 16th Bart Plaza Development	PPAR_006508-PPAR_006510
01/27/2017	William Strawn (DBI)	Tom Hui (DBI), Edward Sweeney (DBI), Daniel Lowrey (DBI), Taras Madison (DBI), Ronald Tom (DBI), [redacted], Carolyn Jayin (DBI), Lily	Email re: Board Next Week	PPAR_006511

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		Madjus (DBI), William Strawn (DBI)		
01/27/2017	Jonathan Moftakhar	Malia Cohen (BOS)	Email re: San Francisco Headlines	PPAR_006512-PPAR_006519
01/30/2017	Suhagey G. Sandoval	Supervisor Ahsha Safai	Memorandum re: Proposed legislation amending the Residential Hotel Unit Conversion and Demolition Ordinance ("HCO"), Administrative Code Chapter 41 (File No. 161291) to be presented before the full Board of Supervisors on Tuesday, January 31, 2017	PPAR_006520-PPAR_006523
01/30/2017	Katie Selcraig	Natalie Gee (BOS), Diana Martinez, Carolyn Goossen (BOS)	Email string re: Meeting: Hotel Conversion Ordinance & 16th Bart Plaza Development	PPAR_006524-PPAR_006527
01/30/2017	Erica Major (BOS)	Sunny Angulo (BOS), Suhagey Sandoval (BOS), Yoyo Chan (BOS), Andres Power (BOS), Ivy Lee (BOS), Alisa Somera (BOS)	Email string re: 161292 – SRO Co-Sponsorship, attaching Special Handing/Noticing Requirements	PPAR_006528-PPAR_006535
01/30/2017	Mawuli Tugbenyoh (MYR)	Sam Dodge (HOM)	Email string re: Legislative Update Week of January 30,2017 (MYR 006123 – 006125)	PPAR_006536-PPAR_006538
01/31/2017	Erica Major (BOS)	Sunny Angulo (BOS), Suhagey Sandoval (BOS), Yoyo Chan (BOS), Andres Power (BOS), Ivy Lee (BOS), Alisa Somera (BOS)	Email string re: 161292 – SRO Co-Sponsorship, attaching Master Report dated January 31, 2017	PPAR_006539-PPAR_006543
01/31/2017	Chad Pradmore (chad3919@gmail.com)	Aaron Peskin (BOS)	Email re: HCO and Conversion Project	PPAR_006544-PPAR_006545
01/31/2017	Janan New (janan@sfaa.org)	Sunny Angulo (BOS), Aaron Peskin (BOS)	Email re: update on requested HCO amendments	PPAR_006546
01/31/2017	Rosemary Bosque (DBI)	Sunny Angulo (BOS)	Email string re: FINAL PUSH: Ch 41/SRO Conversion Update	PPAR_006547-PPAR_006558

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DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
01/31/2017	Sunny Angulo (BOS)	BOS Legislation (BOS), Alisa Somera (BOS)	Email re: PESKIN: File 161291: Amendment, attaching Supervisor Peskin's HCO leg as amended in board today (January 31, 2017)	PPAR_006559-PPAR_006584
01/31/2017	Sheila Chung Hagen (BOS)	Erica Major (BOS)	Email string re: Adding Supervisor Ronen as Co-sponsor of Update to Hotel Conversion Ordinance	PPAR_006585-PPAR_006586
02/01/2017	Yoyo Chan (BOS)	Katie Selcraig, Diana Martinez	Email string re: Requesting a meeting about the Hotel Conversion Ordinance	PPAR_006587-PPAR_006590
02/01/2017	Sunny Angulo (BOS)	acabande@somcan.org, tmecca@hrcsf.org, Randy Shaw, Gen Fujioka, Katie Selcraig, Diana Martinez, tim@dscs.org, Tan Chow, Tammy Hung, Kitty Fong, Rio Scharf, Pratibha Tekkey, Alexandra Goldman, ilewis@unitehere2.org, Sue Hestor, Deepa Varma, jennifer@sftu.org, fred@hrcsf.org, Tony Robles, Theresa Imperial, brian.basinger@ahasf.org, joyce@cpasf.org, [redacted], cgomez@unitehere2.org, tenantorganizer@somcan.org, rquintero@tndc.org, [redacted], Gail Gilman, jwilson@hospitalityhouse.org, [redacted], Jordan Gwendolyn Davis, [redacted], Barbara Lopez (BOS), Jamie Sanbonmatsu (DBI), Rosemary	Email string re: FINAL PUSH: CH 41/SRO Conversion Update	PPAR_006591-PPAR_006597

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DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
		Bosque (DBI), Sam Dodge (HOM)		
02/01/2017	Sunny Angulo (BOS)	acabande@somcan.cor, tmecca@hrcsf.org, +37 more recipients (names are not visible)	Email string re: FINAL PUSH: CH 41/SRO Conversion Update, attaching Community Talking Points – SRO Conversions – Land Use Hearing	PPAR_006598-PPAR_006606
02/01/2017	Sunny Angulo (BOS)	Rosemary Bosque (DBI), Jamie Sanbonmatsu (DBI)	Email string re: HCO follow-up and thank you	PPAR_006607-PPAR_006611
02/03/2017	William Strawn (DBI)	Tom Hui (DBI), Edward Sweeney (DBI), Daniel Lowrey (DBI), Taras Madison (DBI), Ronald Tom (DBI), [redacted], Carolyn Jayin (DBI), William Strawn (DBI), Lily Madjus (DBI)	Email re Board next week	PPAR_006612
02/06/2017	Sonya Harris (DBI)	William Strawn (DBI)	Email re: BIC Agenda Item	PPAR_006613
02/06/2017	William Strawn (DBI)	Sonya Harris (DBI)	Email string re: BIC Agenda Item	PPAR_006614
02/06/2017	William Strawn (DBI)	Sonya Harris (DBI)	Email string re: Hotel Conversion Ordinance amendments from Sup. Peskin	PPAR_006615
02/07/2017	Bryan Wenter (Miller Starr Regalia)	London Breed, President, and Honorable Supervisors, City and County of San Francisco, cc: Angela Calvillo, et al.	Letter re: February 7, 2017 Board of Supervisors Agenda Item #13 161291 – Administrative Code – Update Hotel Conversion Ordinance And Public Act Records Request	PPAR_006616-PPAR_006628
02/10/2017	William Strawn (DBI)	Sonya Harris (DBI), Tom Hui (DBI), Edward Sweeney (DBI), Taras Madison (DBI), Daniel Lowrey (DBI), Ronald Tom (DBI), Carolyn Jayin (DBI), Lily Madjus (DBI), William Strawn (DBI)	Email re: Emailing: BICLeisUpdateFEb2017Combo.pdf attaching the Legislative Update for BIC next week	PPAR_006629-PPAR_006652
02/10/2017	Bernadette Perez (DBI)	Carolyn Jayin	Email re: Mapping by Supervisorial	PPAR_006653-

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DATE	AUTHOR(S)	RECIPIENT(S)	DESCRIPTION	BATES NOS.
		(carolyn.jayin@sfgov.org)	Districts, attaching HCO Totals by District 2-10-2017	PPAR_006654
02/10/2017	Sonya Harris (DBI)	Dyanna Quizon (BOS)	Email string FW: AGENDA, attaching the Building Inspection Commission Agenda	PPAR_006655-PPAR_006665
02/13/2017	City and County of San Francisco, Department of Building Inspection	n/a	Department of Building Inspection, Total Distribution Number of Residential Hotels, Guestrooms City-Wide by Supervisorial District, Updated February 13, 2017 (025606)	PPAR_006666
02/13/2017	Bernadette Perez (DBI)	Carolyn Jayin (carolyn.jayin@sfgov.org)	Email re: HCO Data, attaching documents HCO Totals of Buildings in Supervisorial District 2-13-2017 and Hotels By Tim Mansur 2-13-2017	PPAR_006667-PPAR_006689
02/13/2017	Bernadette Perez (DBI)	Andy Karcs (DBI), Nicole Rossini (DBI)	Email string FW: HIS Residential Hotel for Profit and Non-Profit, attaching Hotels By Tim Mansur 2-13-2017, HCO Totals of Buildings in Supervisorial District 2-13-2017 and BOS Supervisorial Districts of Hotels-bp 2-13-2017	PPAR_006690-PPAR_006713
02/13/2017	Bernadette Perez (DBI)	Rosemary Bosque (DBI)	Email re: HCO Data, attaching BOS Supervisorial Districts of Hotels-bp 2-13-2017, Hotels By Tim Mansur 2-13-2017 Merged, and HCO Totals of Buildings in Supervisorial District 2-13-2017	PPAR_006714-PPAR_006737
02/13/2017	Bernadette Perez (DBI)	Andy Karcs (DBI), Nicole Rossini (DBI)	Email FW: HCO Data, attaching BOS Supervisorial Districts of Hotels-bp 2-13-2017, Hotels By Tim Mansur 2-13-2017 Merged, and HCO Totals of Buildings in	PPAR_006738-PPAR_006761

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			Supervisorial District 2-13-2017	
02/13/2017	Bernadette Perez (DBI)	Rosemary Bosque (DBI)	Email re: HCO Data Information, attaching Hotels By Tim Mansur 2-13-2017 Merged, BOS Supervisorial Districts of Hotels-bp 2-13-2017, and HCO Totals of Buildings in Supervisorial District 2-13-2017	PPAR_006762-PPAR_006785
02/13/2017	Bernadette Perez (DBI)	Rosemary Bosque (DBI)	Email re: HCO Data, attaching HCO Totals of Buildings in Supervisorial District 2-13-2017, Copy of Hotels By Tim Mansur 2-13-2017 Merged, BOS Supervisorial Districts of Hotels-bp 2-13-2017, and HCO Mapping 02-13-17 – Google Fusion Table	PPAR_006786-PPAR_006810
02/13/2017	Rosemary Bosque (DBI)	Sunny Angulo (BOS), Daniel Lowrey (DBI), Tom Hui (DBI), Bernadette Perez (DBI), Jamie Sanbonmatsu (DBI), William Strawn (DBI), Kimberly Madjus (TIS)	Email string FW: HCO Hotel Data, attaching BOS Supervisorial Districts of Hotels-bp 2-13-2017, Copy of Hotels By Tim Mansur 2-13-2017 Merged and HCO Mapping 02-13-17 – Google Fusion Table	PPAR_006811-PPAR_006835
02/17/2017	City and County of San Francisco Board of Supervisors	n/a	Complete Board of Supervisors' File No. 161291 as produced with the City's letter dated April 9, 2018 (BOS 039385 – BOS 039662)	PPAR_006836-PPAR_007113

EXHIBIT D

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

SAN FRANCISCO SRO HOTEL COALITION, an unincorporated association, HOTEL DES ARTS, LLC, a Delaware limited liability company, and BRENT HAAS,

Plaintiffs and Petitioners,

v.

CITY AND COUNTY OF SAN FRANCISCO, a public agency, acting by and through the BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO; DEPARTMENT OF BUILDING INSPECTION OF THE CITY AND COUNTY OF SAN FRANCISCO; EDWIN LEE, in his official capacity as Mayor of the City and County of San Francisco, and DOES 1 through 100, inclusive,

Respondents and Defendants.

Case No. CPF-17-515656

PETITIONERS' OPENING TRIAL BRIEF ON THE MERITS IN SUPPORT OF PETITIONS FOR PEREMPTORY WRITS OF MANDATE UNDER (1) CEQA AND (2) PUBLIC RECORDS ACT

Date: January 18, 2019
Time: 9:30 a.m.
Dept.: 503

CEQA Case

Action Filed: May 8, 2017
First Amended and Supplemental Petition Filed: August 23, 2017
Trial Date: January 18, 2019 (On CEQA and PRA Writ Petitions)

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners San Francisco SRO Hotel Coalition (the "Coalition"), Hotel Des Arts, LLC, and Brent Haas (collectively "Petitioners") seek peremptory writs of mandate: (1) setting aside Respondent City and County of San Francisco's ("City") approval of Ordinance No. 38-17 (Board of Supervisors File No. 161291) (the "Ordinance" or "HCO Amendments"), whereby it materially amended its Residential Hotel Unit Conversion and Demolition Ordinance ("HCO") without performing any review of that discretionary action under the California Environmental Quality Act ("CEQA"; Pub. Resources Code, § 21000 et seq); and (2) remedying City's remaining violations of the California Public Records Act ("PRA"; Gov. Code, § 6250 et seq.) in responding to PRA requests.[1]

Petitioners' CEQA claim raises a purely legal issue going to the heart of that statute: Did the City violate the law when it summarily dispensed with CEQA review of an Ordinance enacting major revisions to its HCO, materially changing the terms on which SRO units can be rented and occupied, based solely on its *ipse dixit* that the Ordinance is not a "project" under CEQA? The City's unsupported – and incredible – assertion that the Ordinance is not a "project" triggering CEQA review contravenes not only its own past practice, but CEQA's plain language (Pub. Resources Code, §§ 21065(a), 21080(a)); CEQA Guidelines, § 15378(a)(1)), and decades of case law holding similar land use ordinances, plans and regulations are CEQA "projects," both categorically and because they may result in direct or reasonably foreseeable

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[1] These two writ claims are set forth in the First (Violations of CEQA) and Sixth (Violations of PRA) Causes of Action of Petitioners' "First Amended And Supplemental Verified Petition For Writ Of Mandate; Complaint For Declaratory And Injunctive Relief For Takings, Denial of Due Process, And Denial Of Equal Protection," filed and served on August 23, 2017 (the "FAP"). This Court's (Hon. Lynn O'Malley-Taylor) original "Case Management Order Setting Briefing And Hearing Schedule" entered on April 17, and filed on April 18, 2018 (the "CMO"), set these two claims for consolidated briefing and hearing on October 5, 2018, at 1:30 p.m. in Department 503. The Court's (Hon. Cynthia Ming-mei Lee) First Amended CMO rescheduled the hearing to January 18, 2019, at 9:30 a.m., and adjusted the briefing and related deadlines. The FAP's remaining claims (Second through Fifth Causes of Action) are not at issue in this hearing and are currently the subject of Petitioners' pending appeal of this Court's (Hon. Terri Jackson) denial of Petitioners' motion for a preliminary injunction based on those claims. That appeal has been fully briefed since February 22, and is now set for oral argument on September 20, 2018.

indirect changes to the physical environment. (E.g., *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 381 ["Whether an activity constitutes a project subject to CEQA is a categorical question respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity will actually have environmental impact"]; *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 701-702 [holding examples of CEQA projects listed in Public Resources Code § 21080(a), including but not limited to enactment and amendment of zoning ordinances and approval of tentative subdivision maps, are *categorically* CEQA projects].) The HCO is an ordinance regulating the use of buildings, structures and land akin to a zoning ordinance, and it is not only "reasonably" but *plainly* foreseeable that the HCO Amendments may directly or indirectly result in changes in SRO room occupancy, tenant displacement, and related environmental effects. Accordingly, as a matter of law, the HCO Amendments are *categorically* a "project" within CEQA's purview, and the City violated its mandatory legal duties when it failed to conduct an initial study and summarily dispensed with CEQA review based on its contrary conclusion.

The PRA claim has in part, but not completely, been mooted by the City's belated production of responsive documents. After six months of the City's stonewalling, intentionally misconstruing and narrowing the scope of Petitioners' broad PRA requests, and producing barely 2,500 pages of documents in response to those requests, Petitioners were forced to amend and supplement their Petition to add a claim seeking a writ for the City's PRA violations. Beginning two weeks after that, and continuing over the next five months, the City produced an additional approximately 18,000 pages of documents, including numerous previously withheld documents responsive to Petitioner's PRA requests, many of which are now part of the certified Administrative Record in this action. Crucially, this belated production came only *after* (1) the City had repeatedly violated the PRA's deadlines, (2) the City had repeatedly – and falsely – claimed to have produced *everything*, (3) the City had intentionally and illegally construed Petitioner's requests narrowly in an effort to avoid producing relevant documents, and (4) Petitioners had been forced to file and serve their August 2017 FAP adding the Sixth Cause of Action for PRA violations. As a matter of law, the Coalition has thus *already prevailed* on the

PRA claim. (*Sukumar v. City of San Diego* (2017) 14 Cal.App.5th 451, 462-467 [plaintiff prevails in PRA action, even where writ relief denied as moot, where filing of lawsuit causes release of responsive, previously withheld documents].) However, that PRA claim has not yet been adjudicated, is not entirely mooted, and a writ should still issue to compel the City to produce legally required declarations evidencing that thorough searches of City officials' and employees' personal files, accounts and devices were appropriately conducted for responsive documents – a legal mandate with which the City has still never complied. (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608 [holding city employees' communications related to the conduct of public business are public records regardless of whether sent or received on personal account or device, and allowing city to rely on employees' searches so long as it obtains employee affidavits with sufficient factual showing of PRA compliance].)

For these reasons, as set forth in more detail below, the Court should issue: (1) a peremptory writ of mandate voiding and directing the City to set aside Ordinance No. 38-17 enacting the HCO Amendments, which it unlawfully adopted without any environmental review based on its legally erroneous assertion that such discretionary action was not a CEQA "project"; and (2) an appropriate peremptory writ remedying the City's remaining PRA violations.

II. LEGAL ANALYSIS OF CEQA WRIT CLAIM

A. Relevant Factual and Procedural Background

1. Basic Nature Of Single Room Occupancy Units And Hotels Generally

The HCO regulates approximately 18,000 to 20,000 SRO units in about 500 SRO hotels (both profit and non-profit) throughout the City. (PPAR 4, 703, 6520, 6890.)[2] An SRO unit is a small hotel room, usually from 100 to 350 square feet in size, that generally lacks private bathrooms and kitchens. (5/9/17 Zacks Decl. in Supp. Of Mot. For Prelim. Inj., ¶ 5.) SROs

[2] Petitioners' Proposed Administrative Record is cited "PPAR [page no/s]" and consists of 7,208 pages Bates labeled PPAR 000001 - 007208. The PPAR has been partially certified by the City, and relevant documents that the City did not certify are the subject of Petitioners' concurrently filed Motion to Augment the Record and/or Request for Judicial Notice.

generally use shared bathrooms; some may have communal kitchens; for others, residents must use their own microwaves, hot plates, etc., or in some cases, bring in prepared food. (*Ibid.*) Essentially, they resemble college dormitory rooms, not apartment units. (PPAR 7141.) These units have long provided a critical supply of relatively low-cost rooms for rent on a weekly, or multi-week, basis. (PPAR 703, 6606 [approximately 5% of City's population lives in SROs].); Zack's decl., ¶ 6.) As the Supreme Court has recognized, while SRO units "may not be an ideal form of housing, *such units accommodate many whose only other options might be sleeping in public spaces* or in a City shelter" and "residential hotel units *serve many who cannot afford security and rent deposits for an apartment.*" (*San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, 674, emph. added.)[3]

2. San Francisco's Hotel Conversion Ordinance

a. History, Key Provisions, And Past Treatment As "Project" Subject To CEQA

San Francisco's HCO is a local land use ordinance, codified at chapter 41 of the San Francisco Administrative Code, that regulates the rental and use of designated SRO units. (*Bullock v. City and County of San Francisco* (1990) 221 Cal.App.3d 1072, 1080; S.F. Admin. Code, § 41.1; see PPAR 175-230.) First enacted in 1981, its predecessor was a 1979 moratorium on the demolition or conversion of SRO units to tourist units or condominiums in response to a perceived serious housing shortage for low-income and elderly residents caused by such conversions. (*Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 898; PPAR 6521.) In February 1981, the City replaced the moratorium with the permanent HCO. (*Terminal Plaza Corp., supra*, 177 Cal.App.3d at 898.) As revised and redrafted through amendments later that year, the HCO required owners of SRO units

[3] These statements of the Supreme Court alone, and without regard to their factual basis, show that the City's actions in enacting and amending its HCO are *categorically* a general kind of activity with which CEQA is concerned. (*See Muzzy Ranch, supra,* 41 Cal.4th at 382.) In fact, a variety of people rent SRO rooms, including lower-income people who would be homeless if their only other option was to rent in a traditional, monthly manner; short-term visitors who cannot afford tourist hotel rates; people coming in to work in the City for short periods of time; and even medical patients and their families, who also cannot afford to pay tourist rates. (Zacks decl., ¶ 6.)

to obtain a permit prior to demolishing or converting such SRO units to any other use. (*Id.*) A unit's designation as "residential" or "tourist" was determined as of September 23, 1979, by its occupancy status according to definitions contained in, and documented pursuant to procedures specified in, the HCO. (*Id.*)

Because the originally adopted rule requiring 32-day minimum rentals proved to be problematic and unworkable for both SRO hotel owners and their tenants (PPAR 1695-1697, 1706-1708, 1719), in 1990 the City amended the HCO to change the minimum allowable occupancy period of residential rooms to at least seven days (i.e., weeklies). (PPAR 52 [showing language of § 41.20(a)(2) prior to HCO Amendments providing it would be unlawful to "[r]ent any residential unit for a term of tenancy less than seven days"]; 1724; [8/7/89 City DBI letter noting "proposed change will allow landlords to rent weekly"]; 1728 [9/22/89 City environmental review memo noting 1990 amendments would authorize "weekly rather than monthly rentals during winter months"].)[4]

Importantly, the original HCO and all subsequent amendments made to it and to related ordinances were – until the adoption of the HCO Amendments challenged in this action, which became effective as of March 19, 2017 – treated by the City, and held by the courts, to be "projects" subject to CEQA review. (PPAR 1213-1214, 1227-1229, 1446-1455, 1530-1533, 1653-1672, 1677-1681, 1689-1693, 1699-1704, 1727-1729; see *Terminal Plaza Corp., supra*, 177 Cal.App.3d at 903-905 [holding City's adoption of original HCO was project requiring CEQA review].)

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[4] In 1990, the City also amended the HCO to enable certain nonprofit organizations (specifically, Tenderloin Housing Clinic ("THC")) to be "interested parties" with standing to enforce the HCO and also required such parties to report lawsuits to the City. (S.F. Admin. Code, § 41.20(e); see also *Tenderloin Housing Clinic, Inc. v. Astoria Hotel, Inc.* (2000) 83 Cal.App.4th 139, 141 [THC sued hotel for violating HCO].) Accordingly, THC, the largest non-profit operator of SRO hotels in the City, actually acts as a primary enforcer of the HCO through private litigation, typically against privately owned, for-profit SRO hotel owners and operators such as those comprising petitioner San Francisco SRO Hotel Coalition.

b. Stated Purpose Of The HCO To Protect Low Income SRO Tenants From Displacement

The stated purpose of the HCO 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." (PPAR 3.) "The HCO includes findings that the City suffers from a severe shortage of affordable rental housing; [and] that many elderly, disabled and low-income persons reside in residential hotel units[.]" (*Ibid.*)

Since the last major HCO amendments were made in 1990, and up until the challenged HCO Amendments, the City has consistently interpreted and enforced the HCO such that weekly rentals to *anyone* were lawful even if the weekly occupants failed to become permanent, residential rent-controlled tenants by staying in the rented SRO unit for at least thirty days. HCO Annual Reports issued by Respondent Department of Building Inspection ("DBI"), which were initiated in 2000 (PPAR 1731), have consistently stated the rule that: "Residential hotel owners and operators must rent residential guest rooms certified by the HCO for seven days or longer." (PPAR 1747, 1750, 1754, 1765, 4391, 4630, 4638, 4645, 4665, 4669, 4678, 4686, 4692, 4705, 4710.) Similarly, DBI's informational materials regarding its required Annual Unit Usage Reports ("AUUR") stated that "Residential guest rooms must be rented for a period not less than 7 consecutive days to a San Francisco resident" (PPAR 7141) and referred to "guest rooms rented for less than 7 days" as "tourist guest rooms." (PPAR 7144.) The City's AUUR forms themselves similarly objectively define residential rooms as those rented "for 7 days or more." (PPAR 7162, 7164.)[5] Thus, the ability of SROs to lawfully offer and provide short-term weekly rentals has for decades provided a vital public service to the most economically-disadvantaged residents of San Francisco.

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[5] The HCO also allowed SRO hotel operators to rent vacant units as *short-term* rentals of *less than 7 days* to tourists during the designated tourist season (May 1-September 30) without being deemed to have "converted" such SRO units to unlawful tourist or transient use. (*Terminal Plaza, supra*, 177 Cal.App.3d at 899.)

c. This Court Has Already Found That, Prior To The Challenged 2017 HCO Amendments, The City Consistently Interpreted The HCO To Prohibit Rentals Of Residential Units Only for Periods Of Less Than 7 Days

The City previously argued to this Court in opposing Petitioners' preliminary injunction motion that the 2017 HCO Amendments did not make any substantive *changes* to the HCO, but merely "clarified" existing law: "The Amendments to the HCO define 'tourist or transient use' and clarify San Francisco's long-standing interpretation of the HCO. There are no substantive changes in the obligations of SRO owners." (5/19/17 City MPA in Opp. to Prelim. Inj. 1:5-7.) It is anticipated the City will again argue in opposition to Petitioners' CEQA claim that SRO owners have never had the legal right to rent SRO units for periods of between 7 and 32 days except to permanent residents.[6] In the proceedings on the preliminary injunction motion, this Court rejected that argument based on Petitioners' proffered evidence of the City's and THC's contrary historical interpretation in litigation, both in appellate arguments and trial court stipulated settlements. (5/26/17 Plaintiffs' Reply Request For Jud. Not. In Supp. of Mot. for Prelim. Inj., Exs. A – H.) City's past interpretation of the HCO, plainly appearing in matters subject to this Court's judicial notice, as well as in the plain language of prior versions of the HCO itself and other documents in the administrative record, shows that prior to the challenged HCO Amendments at issue in this action, the HCO was consistently interpreted and enforced such that Petitioners had a lawful right to make SRO rentals of 7 days or more. As this Court found in its Order denying the preliminary injunction motion: "The pre-2017 Amendments version of the Residential Hotel Unit Conversion and Demolition Ordinance ('HCO') did allow

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[6] The City may make this argument in an effort to claim its failure to perform CEQA review of the HCO Amendments is allowed under precedent holding that while local ordinances are *potential* CEQA projects, "[a] municipal ordinance that merely restates or ratifies existing law does not constitute a project and is therefore not subject to environmental review under CEQA." (*Union of Medical Marijuana Patients, Inc. v. City of Upland* (2016) 245 Cal.App.4th 1265, 1272-1275.) But any such argument would be unavailing here for numerous reasons, including that (1) the HCO Amendments regulate land use (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 750) and affect housing of last resort for the otherwise homeless (*San Remo Hotel, supra,* 27 Cal.4th at 674), and are thus *categorically* a CEQA "project" (e.g., *Rominger, supra,* 229 Cal.App.4th at 702-703); (2) both the face of the HCO Amendments and the record here plainly show that the Ordinance materially amended, and did not merely restate, the preexisting HCO; and (3) this Court itself has already duly considered and flatly rejected this argument.

certain types of rentals of residential units that are now prohibited by the Amendments, e.g., seven day (or longer) rentals for residential use to non-permanent residents." (6/14/17 Order Denying Mot. For Prelim. Inj. 2:9-12.)

The California Supreme Court has also interpreted the HCO consistently with this Court's – and the City's previous and longstanding – interpretation: "The HCO makes it unlawful to eliminate a residential hotel unit without obtaining a conversion permit or to rent a residential unit for a term shorter than seven days." (*San Remo Hotel, supra*, 27 Cal.4th at 651, citing S.F. Admin. Code, § 41.20(a).) *San Remo Hotel* was decided 16 years ago. And as Petitioners have previously pointed out, as late as 2016, THC was continuing to stipulate to injunctions in HCO enforcement actions that only enjoined the renting of rooms for a period of less than 7 days – without regard to the residency status of those occupants. The contrary "revisionist history" offered by the City in this litigation does not withstand scrutiny.

Indeed, as clearly recognized by the proponents of this legislation, the *major purpose* of the HCO Amendments was to "close a loophole" in the HCO by *changing* the minimum allowable rental term for SRO units from 7 days to 32 days. (E.g., PPAR 233 [1/20/17 United to Save the Mission letter "support[ing] the shift from 7 to 32 days"]; 235 [1/22/17 DBI Commissioner letter re closing "loopholes such as the amount of days a unit must be occupied to be considered "residential""]; 6554 [Supervisor Peskin press release re purpose of "legislation to address existing loopholes"]; 6296 [1/13/17 email from DBI Senior Housing Inspector re "important changes to the residential hotel conversion ordinance" and stating "[t]he legislation will change the 7 day rule to 30 days"]; 6326, 6330, 6408 [City's informational materials noting changes].)

A January 30, 2017 staff memo written to Supervisor Safai regarding the proposed HCO Amendments stated, in summarizing a DBI report: "The HCO currently requires that residential guestrooms be available for low income, elderly and disabled persons for a "term of tenancy of seven (7) days or more [proposed legislation will change this to 32 days, any rental of less than 32 days is considered a tourist rental]."" (PPAR 6522, bracketted text in orig.) The memo further noted: "This 32 consecutive day change is important and brings

the HCO in compliance [sic] with the Rent Ordinance. This proposed change renders a rental of less than 32 days as transient or tourist." (PPAR 6521.)

Sunny Angulo, the Chief of Staff of HCO Amendments sponsor Aaron Peskin, succinctly stated in an email rallying support for the legislation that the hotel operators' "chief concern is the very heart of the legislation. **They want to keep it at 7 days.** We have indicated that the community is committed to this core piece of the legislation." (PPAR 6549, emph. in orig.) In another email to her "team" of proponents, Angulo referred to "the threshold of days required to rent a residential room" as "the meat of the legislation," and urged them to "make history" by securing the Ordinance's adoption. (PPAR 6594.)

3. The HCO Amendments Materially Changed The HCO And Were Adopted Without Required Public Notice Or Any CEQA Review

In late 2016, members of Respondent Board of Supervisors proposed the HCO Amendments, purportedly to address (among other concerns) perceived problems characterized by City staff as rentals by private hotel operators of SRO units to "short-term tourists for bigger profit, with none of the hassle of tenant protections." (PPAR 6520.)

The HCO Amendments proposed in late 2016, and subsequently enacted and challenged herein, make the following material changes to the HCO: (1) redefining prohibited "tourist or transient" use and "unlawful actions" so as to *entirely eliminate* SRO hotel operators' preexisting year-round right to rent SRO units for minimum terms of at least seven (7) days (the provision the Ordinance sponsor's Chief of Staff referred to as "the very heart" and "the meat of the legislation"); (2) prohibiting the rental of SRO units (except in compliance with the HCO's restrictive seasonal tourist rental provisions) for any term less than 32 days, thus converting all SRO hotel units into "apartments" for at least half the year and thereby subjecting them to the restrictions of City's Rent Ordinance; (3) entirely eliminating previously lawful tourist rentals of SRO units (i.e., for terms less than 32 days) between May 1 and September 30 (where the unit has become vacant due to voluntary vacation or lawful eviction of the permanent resident) when the SRO hotel owner or operator has committed *any* violation of the HCO within the past year; (4) changing conversion permit application requirements to include requiring specifying the location

of replacement units, historic rental rates for vacant converted units, and "sufficiently detailed financial information, such as letters of intent and contracts, establishing how the owner or operator is constructing or causing to construct" any off-site replacement units; (5) redefining "comparable unit" so as to require a replacement unit for conversion purposes to be "designated the same category of housing as the existing unit" and "similarly affordable for low income, elderly, and disabled persons" as well as newly subjecting replacement units to "restrictions recorded against title to the real property"; (6) increasing the information required to be provided in AUURs to include a "graphic floor plan reflecting room designations for each floor," and substantially increasing the penalties for providing late or insufficient reports to $500 per day plus elimination of eligibility for seasonal tourist rentals for the next 12 months; (7) granting the Director of Respondent DBI the authority to issue administrative subpoenas to conduct on-site inspections of documents and units, and to recover costs of enforcement; and (8) substantially increasing monetary penalties for unlawful "conversions" (which now include previously lawful weekly rentals of SRO rooms) to up to $750 per day for each converted unit, plus costs of enforcement including attorneys' fees. (PPAR 175-201.)[7]

On December 15, 2016, the City's Planning Department – without citing or making reference to any facts, evidence or analysis of potential environmental, housing or tenant displacement impacts in the record – issued a terse written determination that the City's consideration of the HCO Amendments for approval was not a "project" as defined by CEQA

[7] By design, as a result of the HCO Amendments, and specifically the new 32-day minimum rental term contained therein, SRO hotel unit rentals may no longer lawfully be rented for 7 to 31 day terms that would be exempt from regulation under the City's Rent Ordinance (Administrative Code, Chapter 37), which extensively regulates rent charges and increases, pass-through charges for capital improvements and utilities, and evictions, inter alia. The relevant Rent Ordinance exemption provides that "rental units" regulated thereunder "shall not include … housing accommodations in hotels, motels, inns, tourist houses, rooming and boarding houses, *provided that at such time as an accommodation has been occupied by a tenant for thirty-two (32) continuous days or more, such accommodations shall become a rental unit subject to the provisions of the chapter*…." (S.F. Admin. Code, § 37.2-8, emph. added.)

because it would allegedly not result in *any* physical change to the environment, citing CEQA Guidelines § 15378. (PPAR 1.)[8]

Despite awareness of private SRO hoteliers' strong concerns with and objections to the proposed elimination of weekly rentals (e.g., PPAR 238-243, 402-403, 474-475 [hotelier emails and letters], 6592, 6594), on January 31, 2017, after a recommendation from its Land Use and Transportation Committee, respondent Board amended (to add the floor plan provisions), and voted to pass on first reading as amended, the HCO Amendments. (PPAR 175-203.) On February 7, 2017, despite further and continued hotelier objections (e.g., PPAR 474-499), respondent Board voted to pass on second reading the HCO Amendments. (PPAR 229-230.) In taking both actions, it relied without elaboration on the Planning Department's earlier determination summarily dispensing with any CEQA review.

The notice for Respondent Board's January 31 and February 7, 2017 meeting agendas for the proposed HCO Amendments provided in its entirety as follows:

> **[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 [sic] 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 units 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.

(PPAR 175, 204, 229.) This notice did not meet applicable requirements of state and local law. It provided an inadequate "brief general description" of the material changes and

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[8] This determination appears to be inconsistent with the City's own guidance on this topic as expressed in a September 18, 2013 Planning Department memo entitled "Processing Guidance: Not a project under CEQA." (PPAR 2703.) The City's referenced guidance refers to certain interior and exterior renovations and repairs to structures that are not visible to the public, legalization of existing occupied uses or units, and condominium conversions requiring no building permit or Planning Commission authorization, or which are limited to permitted work not considered a project. (*Ibid.*) Nowhere does the guidance include major revisions to land use ordinances such as the HCO.

impacts of the HCO Amendments, which is inconsistent with the requirements of the Brown Act (*Moreno v. City of King* (2005) 127 Cal.App.4th 17, 21, 26-27) and City's own Sunshine Ordinance (S.F. Admin. Code, Chapter 67), because it did not provide "a meaningful description of each item of business to be transacted or discussed at the meeting." (*id.*, at § 67.7(a); see *id.*, at § 67.7(b) [to be "meaningful" description must be "sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item."].)[9] While the "notice" mentioned "affirming the Planning Department's determination under [CEQA]," it did not provide any clues – even in the most general terms – of the *substance* of that determination, i.e., that *CEQA does not apply at all* because City's discretionary action in amending the HCO for the first time in decades supposedly is not even a "project." (See, e.g., *San Joaquin Raptor Rescue Center v. County of Merced* (2013) 216 Cal.App.4th 1167, 1176-1179 [failure of County's agenda to list consideration of adoption of MND under CEQA as distinct item of business to be transacted at public meeting violated Brown Act].)

Pursuant to relevant provisions of the City's Charter and local law, enactment of ordinances such as the HCO Amendments does not occur until the City's mayor timely signs the ordinance or, in the event of a mayoral veto, the Board acts to override the veto. On February 17, 2017, then-Mayor Ed Lee signed the ordinance and the HCO Amendments were thereby finally adopted and enacted on that date by Respondents. (PPAR 230.) The HCO Amendments became effective 30 days thereafter on March 19, 2017. Because the City determined its adoption of the HCO Amendments was not a "project," it did not file any Notice of Determination ("NOD") or

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[9] Instead of fairly describing the essential nature of the major HCO Amendments, the City's agenda notices provided a sanitized description that fails to disclose the substantial eliminations of previously existing rights and the severe new restrictions being placed on operation and use of SRO hotels, including saying nothing about their key feature of prohibiting SRO unit rentals of less than 32 days, which eliminated a previously lawful and important weekly rental option that had existed under the HCO for decades, and effectively converted SRO units into apartments subject for the first time to extensive and mandatory regulation under the City's Rent Ordinance.

Notice of Exemption ("NOE") under CEQA. Petitioners' instant action challenging the HCO Amendments on CEQA and other grounds was timely filed on May 8, 2017.[10]

B. Legal Argument

1. CEQA Has A Broad Definition Of "Project"

CEQA broadly defines "projects" to include any activities directly undertaken by public agencies which have the potential to ultimately culminate in physical change to the environment. (*City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 537; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 277-278, & fn. 16.) The Supreme Court and Courts of Appeal "ha[ve] given the term "project" a broad interpretation and application to maximize protection of the environment." (*Tuolumne County Citizens For Responsible Growth, Inc. v. City of Sonoma* (2007) 155 Cal.App.4th 1214, 1222-1223, and cases cited; see *Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 278; *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143.)

The courts' broad definition of a CEQA "project" is compelled by the plain language of the CEQA statutes and Guidelines. Thus: ""Project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (1) An activity directly undertaken by any public agency." (Pub. Resources Code, § 21065(a).) "[T]his division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances . . . ." (Pub. Resources Code, § 21080(a).)[11]

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[10] Petitioners' First Amended And Supplemental Petition for Writ of Mandate, which added the Sixth Cause of Action for Violations of the PRA, was filed on August 23, 2017. The facts relevant to the PRA cause of action are set forth in detail in the accompanying Declaration of Arthur F. Coon filed in support of that claim, and are discussed briefly in the section of this brief relating to the PRA claim; they are not relevant to the legal issue whether the City violated CEQA by not treating the HCO Amendments as a "project" and adopting them without CEQA review.

[11] While the HCO may not be a classic "zoning" ordinance, it clearly operates like a zoning ordinance because it "ha[s] the effect of "[r]egulat[ing] the use of buildings, structures, and land"" (*People v. Optimal Global Healing, Inc.* (2015) 241 Cal.App.4th Supp. 1, 8), and as a local law

The CEQA Guidelines, in relevant part, define "project" as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: (1) An activity directly undertaken by any public agency including but not limited to . . . enactment and amendment of zoning ordinances . . ." (14 Cal. Code Regs., § 15378(a)(1).) It is important to note that the determination of whether an activity constitutes a "project" for purposes of CEQA is a *threshold* and *antecedent* inquiry that is made *prior to* "CEQA review" of the nature and significance of a project's environmental effects. In other words, there is no requirement that the "physical change" in the environment that may be caused, directly or indirectly, by an activity be either significant or adverse for the activity to qualify as a "project" that must undergo CEQA review. The mere fact that a public agency's action *may*, directly or indirectly, cause a *physical change* in the existing environment *alone* makes it a CEQA "project."

Under CEQA's broad definition of a "project," ordinances, laws and regulations affecting the use of land or structures have consistently been held to be CEQA "projects" over the course of many decades. (See, e.g., *Apartment Assn. of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1169 ["Ordinances passed by cities are clearly activities undertaken by a public agency and thus "projects" under CEQA."], citing 60 Ops.Cal.Atty.Gen. 335, 338 (1977); *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1558 [treating County ordinance restricting sewage sludge application on County lands as project under CEQA and further holding "CEQA requires the preparation of an EIR whenever substantial evidence supports a fair argument that an ordinance will cause potentially significant environmental impacts"]; *id.* at 1578 ["Amendment or adoption of an ordinance is a legislative act subject to review under section 21168.5"], citations omitted; *Plastic Pipe & Fittings Assn. v. California Building Standards Com.* (2004) 124 Cal.App.4th 1390, 1412 ["A regulation fitting the description of a discretionary project is a discretionary project under CEQA."]; *De Vita v. County*

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regulating land use it shares, for purposes of CEQA, the key attribute of zoning ordinances. "The purpose of a zoning law is to regulate the *use* of land." (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 750.) As discussed below, zoning ordinances are *categorically* CEQA "projects."

of Napa (1995) 9 Cal.4th 763, 794 ["Although not explicitly mentioned in the CEQA statutes, general plans 'embody fundamental land use decisions that guide the future growth and development of cities and counties,' and amendments of these plans 'have a potential for resulting in ultimate physical changes in the environment.' General plan adoption and amendment are therefore properly defined in the CEQA guidelines as project subject to environmental review."], citations omitted; *Rosenthal v. Board of Supervisors* (1975) 44 Cal.App.3d 815, 823 ["In view of the fact that city ordinances were the subject matter in the *No Oil* case, it appears that it was held impliedly therein that adopting an ordinance was a project within the meaning of the Environmental Quality Act"], citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68 [impliedly holding adoption of zoning ordinance permitting drilling of oil test wells was project within meaning of CEQA].) Indeed, as noted above, the City's adoption of the original HCO was squarely held to be a project requiring CEQA review. (*Terminal Plaza Corp., supra*, 177 Cal.App.3d at 903-905.)

2. Whether An Activity Constitutes A CEQA "Project" Is A Question Of Law And No Deference Is Given To The Agency's Position On This Issue

The cases are uniform that the issue whether a proposed activity is a "project" subject to CEQA is a *question of law* for the courts, upon which the lead agency's determination is given *no deference*. (See, e.g., *Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 952 ["whether a proposed activity is a project within the meaning of CEQA is, as we have recognized, a predominantly legal question, for it depends on whether "undisputed data in the record on appeal" satisfy the detailed statutory definition of the term "project""], citing *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 382; *Black Property Owners Assn. v. City of Berkeley* (1994) 22 Cal.App.4th 974, 984 ["Whether a particular activity constitutes a project in the first instance is a question of law"]; *see also California Unions for Reliable Energy v. Mojave Desert Air Quality Management Dist.* (2009) 178 Cal.App.4th 1225, 1239 [same], quoting *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186, 1203; *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 795 [whether State Board of Education's

approval of school district secession plan for presentation to voters was CEQA project was "an issue of law which can be decided on undisputed data in the record on appeal" and thus "presents no question of deference to agency discretion or review of substantiality of evidence"]; accord, *Chung v. City of Monterey Park* (2012) 210 Cal.App.4th 394, 401; *see Association For A Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 637 [same].)

3. Whether An Activity Constitutes A CEQA "Project" Is A Categorical Question To Be Determined Without Regard To Whether It Will Actually Have Environmental Effects

As held by our Supreme Court: "Whether an activity constitutes a project subject to CEQA is a categorical question respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity will actually have environmental impact." (*Muzzy Ranch, supra,* 41 Cal.4th at 381; *id.* at 382 ["The question is whether the Commission's adoption of the TALUP is the sort of activity that may cause a direct or a reasonably foreseeable indirect physical change in the environment (Pub. Resources Code, § 21065) so as to constitute a project"].) The Courts of Appeal are in accord. (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2016) 4 Cal.App.5th 103, 120 ["... it is important to keep in mind that, as our Supreme Court has explained, in assessing whether the enactment of the Ordinance is a project within the meaning of CEQA, courts must take a "categorical" approach"] (review granted 1/11/17, Case No. S238563), citing *Muzzy Ranch, supra,* 41 Cal.4th at 381; see *Rominger, supra,* 229 Cal.App.4th at 702 [observing that whether activity constitutes a project under CEQA is a *categorical* question and that by enacting Public Resources Code § 21080(a) "the Legislature has determined that certain activities, including [but not limited to] the [enactment and amendment of zoning ordinances, and the] approval of tentative subdivision maps *always* have at least the *potential* to cause a direct physical change or a reasonably foreseeable indirect physical change in the environment. ... Thus, the Romingers are correct that under subdivision (a) of section 21080, the approval of a tentative subdivision map is categorically a CEQA project."]; *id.* at 703 ["Our Supreme Court's conclusion in *Muzzy Ranch* that an activity can qualify as a CEQA project because it is of the *sort* that *may* cause environmental effects but can, in turn, be exempt from CEQA because, *in fact*, it *will not* cause any such effects supports our

conclusion here that whether the approval of the Adams subdivision qualifies as a CEQA project must be determined by looking at the activity *categorically*. Because the Legislature has determined in section 21080 that the approval of a tentative subdivision map is the sort of activity that may cause physical changes to the environment, the Adams subdivision qualifies as a CEQA project."], emph. in orig.; *see id.* ["with the potential for greater or different use comes the potential for environmental impacts from that use."]; see also, *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1379-1380 [where possibility of significant impact "cannot be rejected categorically" and "cannot be positively ruled out," activity in question is CEQA "project"].)

4. As A Matter Of Law, The HCO Amendments Are Categorically The "Sort" Of Activity That Meets CEQA's Broad Definition Of "Project" And The City Therefore Failed To Proceed In The Manner Required By Law When It Enacted Them With No Prior CEQA Review

a. The HCO Amendments Constitute A Land Use Ordinance, Similar To A Zoning Ordinance, And Are Likewise Categorically Subject To CEQA

(i) The HCO Is Akin To A Zoning Ordinance Because It Regulates The Use of Buildings, Structures, and Land

The key feature of zoning ordinances and general plans from a CEQA perspective is that they guide and regulate the physical use of land and the structures that are developed on land. (*Morehart v. County of Santa Barbara, supra*, 7 Cal.4th at 750 ["The purpose of a zoning law is to regulate the *use* of land."]; *DeVita, supra*, 9 Cal.4th at 794; see *People v. Optimal Global Healing, Inc., supra,* 241 Cal.App.4th at pp. Supp. 7-8 [holding it "self-evident" that ordinance making it a misdemeanor to own, establish or operate medical marijuana businesses had a "zoning component" under Gov. Code § 65880 as it necessarily regulated "use of buildings, structures, and land"].) As such, they clearly "have a potential for resulting in ultimate physical changes in the environment." (*DeVita, supra*, 9 Cal:4th at 794.) The HCO Amendments share this key feature: they regulate the use of buildings, structures and land, specifically the use and occupancy of SRO hotels. It is not hard to envision that an Ordinance containing occupancy restrictions which may result in SRO units being held off the market, or otherwise becoming unavailable to low-income persons only able to afford weekly (but not monthly) rentals, may change the environment by

displacing persons from their only available housing option. Indeed, our Supreme Court has already plainly and categorically stated that the availability of SRO housing implicates such issues. (*San Remo Hotel v. City and County of San Francisco, supra,* 27 Cal.4th at 674 [while SRO units "may not be an ideal form of housing, such units accommodate many whose only other options might be sleeping in public places or in a City shelter" and "residential hotel units serve many who cannot afford security and rent deposits for an apartment"].)

(ii) The City And Courts Have Treated The Original HCO And All Subsequent Amendments Prior To The Challenged HCO Amendments As Projects Subject To CEQA Review

As noted previously, the original adoption of the HCO was squarely held to be a "project" with potential environmental impacts subject to CEQA review. (*Terminal Plaza Corp., supra,* 177 Cal.App.3d at 902-905.) And as reflected by CEQA and related documents in the record before the Court here, the City treated the original HCO, related ordinances, and all subsequent amendments – *except* the HCO Amendments challenged in this case – as CEQA "projects." (PPAR 1213-1214, 1227-1229, 1446-1455, 1530-1533, 1653-1672, 1677-1681, 1689-1693, 1699-1704, 1727-1729.)

There is no valid reason for the City to have disregarded the clear law and its consistent past practice by summarily dispensing with CEQA review of its first major revision of the HCO in nearly 30 years.

b. The HCO Amendments May Directly or Indirectly Cause Numerous Reasonably Foreseeable Physical Changes In The Environment

While the simple application of logic and common sense to the purely legal issue here would lead inexorably to the same conclusion (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175 ["common sense in the CEQA domain is not restricted to the regulatory guideline discussed in *Muzzy Ranch* . . . [but] is an important consideration at all levels of CEQA review"]), evidence contained in the Administrative Record and other judicially noticeable evidence in the City's own files also shows the HCO Amendments may, directly or indirectly, cause reasonably foreseeable environmental effects and thus constitute a CEQA "project."

The evidence shows that the HCO Amendments may cause reasonably foreseeable displacement of vulnerable, economically disadvantaged SRO tenants or potential tenants, resulting in potentially significant effects on both human beings and the existing environment in which they live. Such displacement may foreseeably occur for various reasons as a result of the HCO Amendments. As one example, hoteliers who are precluded from offering weekly rentals, and compelled to become apartment landlords renting for 32-day minimum terms, may be unable to rent vacant rooms if prospective tenants do not wish to pay or commit to stay for more than one week. This very foreseeable potential effect was noted in a March 11, 1988 report by the City's Planning Department discussing the original HCO's prohibition on less-than-32-day rentals: "The 32 day rental requirement often works against the rental of vacant residential hotel units as operators have to refuse occupancy to weekly tenants, even though some residential hotel units may have been vacant for long periods." (PPAR 1706.) Another clearly foreseeable potential effect is that SRO hoteliers who are forced to lease units like apartment landlords may start requiring the security and rent deposits that are customary to that business model, thus displacing weekly SRO unit renters who simply can't afford such deposits onto the streets or other public places and thus increasing the City's homeless population. (*San Remo Hotel, supra,* 27 Cal.4th at 674.)[12] It is also entirely foreseeable that hoteliers *not* desiring to change their entire business model and become rent-controlled apartment landlords, or not wanting to take the risk of permanently committing to potentially bad tenants, may choose to hold some or all of their SRO units off the rental market altogether, thus reducing the available stock of what the City itself has found is a critical supply of low-cost housing for its most vulnerable residents. This potential effect of eliminating weekly rentals was also foreseen and discussed in the City Planning Department's 1988 report, which noted: "Weekly rentals are used by operators to screen potential trouble making tenants. Without this option, operators are leaving units vacant rather than risk renting to potentially troublesome tenants on a monthly basis." (PPAR 1707.) In any event,

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[12] Nothing in the HCO Amendments precludes hoteliers from charging first and/or last month's rent and security deposits, nor does anything therein provide for any degree of government subsidization of deposits and security.

economically disadvantaged persons just a step away from homelessness may foreseeably be displaced in a number of different ways as a direct or reasonably foreseeable indirect result of the HCO Amendments.

Tenant displacement potentially caused by the types of restrictions contained in the HCO Amendments was not only reasonably *foreseeable*, but the record reflects it was *actually foreseen* – and not only by the City three decades ago, but by its current staff and officials, and others who commented on the recently proposed HCO Amendments prior to their adoption. (PPAR 1341, 1345 [City memo suggesting change in residential use definition to 32-day minimum rental, and also suggesting *never-adopted* change to allow "low income, elderly, and disabled persons … to pay in seven (7) day increments *so they, as the target population to be served, have access to this housing*"], emph. added; 1375-1376 ["San Francisco Leasing Strategies Report Draft" suggesting "[u]nderstanding Landlord interests and behavior is a key consideration" in efforts to engage them to house homeless and vulnerable populations, and pointing out "[a]s business people, landlords are driven by financial incentives, including profit, stability of income, protection of their assets, and minimizing tenant conflict and legal action"]; 1377-1378 [suggesting "risk mitigation pools" to guarantee reimbursement to landlords for damages (where security is inadequate) and payment of rent]; 1379-1380 [suggesting programs to provide landlords with increased security deposits as incentive to rent to those with poor rental history]; 1382-1383 [suggesting providing rent subsidies to landlords housing homeless or those at risk of homelessness]; 1388 [noting "City will need to provide additional financial incentives and/or risk mitigation to demonstrate to landlords that renting to [homeless and vulnerable] clients makes good business sense."]; see PPAR 238-243, 402-403, 474-475, 489-508 [letters and emails from numerous SRO hoteliers expressing concern that HCO Amendments will have undesirable and even tragic consequences for low income and vulnerable tenants who can afford weekly rentals but cannot afford monthly rents and deposits that would be required for longer, 32-day rentals]; 476-483 [1/7/17 letter from Petitioners' attorney Wenter outlining in detail foreseeable displacement impacts from HCO Amendments] *see also* PPAR 3379-3403.) Of course, if CEQA review is summarily dispensed with on the basis that an action is not a "project," as occurred here,

a public agency will also predictably ignore its CEQA-mandated obligation to consider feasible mitigation measures and project alternatives addressing its action's potentially significant impacts.

Tenant displacement, in and of itself, has been recognized as a significant adverse environmental impact subject to CEQA analysis and mitigation. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425 [holding CEQA mitigation measures designed to mitigate tenant displacement impacts of project, contained in a vesting tentative map, were enforceable and did not conflict with Ellis Act].) Public entities possess the power under existing law "to mitigate adverse impacts on displaced tenants." (*San Francisco Apartment Assn. v. City and County of San Francisco* (2016) 3 Cal.App.5th 463, 484, citing *Pieri v. City and County of San Francisco* (2006) 137 Cal.App.4th 886, 892; see Gov. Code, § 7060.1.) As explained by the *Lincoln Place* Court of Appeal, "CEQA . . . is made relevant . . . by the Ellis Act's explicit exceptions for a public agency's power to regulate, among other things, . . . the mitigation of adverse impacts on persons displaced by reason of the withdrawal of rental accommodations. *Such items are the common focus and byproducts of the CEQA process . . . .*" (*Lincoln Place Tenants Assn., supra,* 155 Cal.App.4th at 451, emph. added.) Indeed, the Supreme Court has recently reaffirmed "that CEQA addresses human health and safety" and "that public health and safety are of great importance in the statutory scheme." (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 386, citations omitted.) CEQA's "express language . . . requires a finding of a "significant effect on the environment" ([Pub. Resources Code,] § 21083(b)(3)) whenever the "environmental effects of a project will cause substantial effects *on human beings*, either directly or indirectly."" (*Id.* at 386, emph. Court's.)

In addition to the impacts of displacement on the displaced human beings themselves, the physical environmental impacts caused by displaced *homeless* persons – public trash, discarded syringes, human feces and urination, abandoned shopping carts, pollution of waterways, waters, and City public and private spaces, crime, and impacts to City services – are also, obviously, cognizable physical environmental impacts under CEQA. As recognized by the Court of Appeal in *Placerville Historic Preservation League v. Judicial Council of California*

(2017) 16 Cal.App.5th 187, "urban decay" is a physical impact on the environment for purposes of CEQA, which is defined as "physical deterioration" that "includes abnormally high business vacancies, abandoned buildings, boarded doors and windows, parked trucks and long-term unauthorized use of the properties and parking lots, extensive or offensive graffiti painted on buildings, dumping of refuse or overturned dumpsters on properties, dead trees and shrubbery, and uncontrolled weed growth *or homeless encampments*." (*Id.*, fn. omitted, emph. added, citing *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 685.)

While it is, emphatically, not Petitioners' burden to show any significant or adverse environmental impacts in order to prevail on their claim that the City was required to review the HCO Amendments under CEQA before adopting them, there is nonetheless abundant evidence in the record and from judicially noticeable documents produced from the City's own files showing blighting "urban decay"-type environmental impacts resulting from displaced, homeless persons living on the streets of San Francisco. (E.g., PPAR 3534 [City HSA/DSS email discussing "public health risk" and "individual human suffering that results from homelessness"]; 3539 [HSH-HSP draft policy document noting homelessness is City's "#1 problem" and "public health crisis" that "poses risks to the general public due to the presence of excrement, used needles, vermin, etc. that are often byproducts of persons living on the streets or in our parks"]; *see also*, e.g, Declaration of Arthur F. Coon In Support of Motion to Augment Administrative Record, Exs. 1, 2, 3, 5, 6, 7, 8, 9, 10.) In discussing the somewhat analogous concept of "displaced development," our Supreme Court has stated: "Depending on the circumstances, a government agency may reasonably anticipate that its placing a ban on development in one area of a jurisdiction may have the consequence, notwithstanding existing zoning or land use planning, of displacing development to other areas of the jurisdiction." (*Muzzy Ranch, supra,* 41 Cal.3d at 383.) A government agency may likewise reasonably anticipate that imposing further restrictions on SRO hotel operators' ability to rent SRO units to vulnerable persons on acceptable economic terms and conditions – including weeklies – may displace those who would otherwise rent such units, either because they cannot afford the rent and security

deposits required by the hotel operators due to the new restrictions, or because the hotel operators hold the units off the rental market altogether due to their inability to vet tenants, or their desire to avoid going into the entirely new business of renting "apartment" units subject to the City's Rent and Eviction Control Ordinance. In any case, for the City to adopt HCO Amendments that may foreseeably result in the displacement of hundreds – even thousands – of additional persons from its more than 18,000 residential units *without any CEQA analysis or study of potential impacts and feasible mitigation for those impacts whatsoever* is not only unlawful, but unconscionable.

5. The City Failed To Carry Its Initial Burden Of Environmental Investigation And To Comply With CEQA In The First Instance

Because the City's CEQA violation here was so blatant and extreme – and so fundamental – it is also unusual in that it implicates "first principles" of CEQA that are seldom violated or even questioned by public agencies. It should be obvious that government agencies in general have a fundamental legal duty to comply with CEQA in undertaking discretionary activities and that they may not sidestep its requirements by the simple expedient of labeling such an activity with potential environment impacts "not a project." "[T]he primary duty to comply with CEQA's requirements must be placed on the public agency. 'To make faithful execution of the duty contingent upon the vigilance and diligence of particular environmental plaintiffs would encourage attempts by agencies to evade their important responsibilities. It is up to the agency, not the public, to ensure compliance with [CEQA] in the first instance.'" (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 939, citing *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 205.) "CEQA places the burden of environmental investigation on government rather than the public." (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1202, quoting *Gentry v. City of Murietta* (1996) 36 Cal.App.4th 1359, 1378-1379; *cf. also Sundstrom v. County of Mendocino* (1998) 202 Cal.App.3d 296, 311 ["While a fair argument of environmental impact must be based on substantial evidence, mechanical application of this rule would defeat the purpose of CEQA where the local agency has failed to undertake an adequate initial study. The agency should not be allowed to hide behind its own failure to gather relevant data .... CEQA

places the burden of environmental investigation on government rather than the public."]; *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1347 ["CEQA contemplates serious and not superficial or pro forma consideration of the potential environmental consequences of a project."].)

While announced in other contexts, these fundamental CEQA principles apply with no less force to an agency's threshold determination regarding whether a discretionary land use ordinance it is proposing to adopt constitutes a "project" triggering CEQA review. To conclude otherwise would be to eviscerate, and sanction "end runs" around, California's signature environmental law.

6. The Record Here Would Not Support Application Of The "Common Sense" Exemption Had The City Properly Treated Its Enactment Of The HCO Amendments As A CEQA "Project" – A Fortiori, The City's Burden To Dispense With CEQA Review Should Not Be Less By Virtue Of Its Unsupported Legal Claim That This Activity Is "Not A Project".

Where a discretionary activity proposed to be undertaken directly by an agency – such as the adoption or amendment of a land use ordinance – *may* ultimately cause *some* physical change in existing environmental conditions, there exists a "project" and CEQA review *must* be conducted unless the project is properly found to be exempt. While this antecedent determination is analytically distinct from "CEQA review" – i.e., the analysis of whether an activity that qualifies as a CEQA project *may* have a *significant* environmental effect – review of the rules governing the earliest stage of CEQA review are nonetheless instructive in demonstrating the egregious nature and prejudicial effect of the City's violation here.

In this vein, it is relevant that CEQA's "common sense" exemption may properly be invoked *only* when the lead agency can declare "with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (CEQA Guidelines, § 15061(b)(3).) "In the case of the commonsense exemption, the agency has the burden to "provide the support for its decision before the burden shifts to the challenger. Imposing the burden on members of the public in the first instance to prove a possibility for substantial adverse environmental impact would threaten CEQA's fundamental purpose of ensuring that government officials 'make decisions with environmental consequences in mind.'"" (*California Farm Bureau*

Federation v. California Wildlife Conservation Bd. (2006) 143 Cal.App.4th 172, 186, citing *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116, quoting *Bozung, supra,* 13 Cal.3d at 283.) "A remote or outlandish possibility of an environmental impact will not remove a project from the common sense exemption, but if legitimate reasonable questions can be raised about whether a project might have a significant impact, the agency cannot find with certainty the project is exempt." (*Id.*, at 194, citing *Davidon Homes, supra,* 54 Cal.App.4th at 117-118.)

"[A] party challenging what is essentially a claim of the commonsense exemption under Guidelines section 15061, subdivision (b)(3), unlike a party asserting an exception to a categorical exemption, need only make a "slight" showing of a reasonable possibility of a significant environmental impact. (*Davidon Homes, supra,* 54 Cal.App.4th at p. 117.) It is the lead agency that has the burden of establishing the commonsense exemption, i.e., that there is *no* possibility the project may cause significant environmental impacts. "[T]he agency's exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision." (*California Farm Bureau Federation, supra*, 143 Cal.App.4th at 195-196, citing *Davidon Homes, supra,* 54 Cal.App.4th at 117, *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 171.)

Unlike the threshold and *antecedent* "categorical" issue of law whether an activity is a "project" subject to CEQA at all, a lead agency intending to invoke the common sense exemption thus has the burden to consider the record and facts in the case before it prior to doing so. (*Muzzy Ranch, supra,* 41 Cal.4th at 386 ["Insofar as it failed to consider the record in determining that adopting the TALUP fell within the common sense exemption, the Commission erred."].) As explained by the Supreme Court:

> "An agency obviously cannot declare "with certainty that there is no possibility that the activity in question may have a significant effect on the environment" (CEQA Guidelines, § 15061, subd. (b)(3)) if it has not considered the facts of the matter."

(*Id.* at 387, citing *Davidon Homes, supra,* 54 Cal.App.4th at 117.)

As seen above, a CEQA petitioner's burden to overcome an agency's claim of the common sense exemption is "slight" and it arises only *after* the agency has met its initial burden of providing some evidentiary support for its claim by reference to the facts in the record. These rules and standards serve an important prophylactic function: ensuring that agencies do not summarily dispense with meaningful CEQA review, and that government officials make decisions with environmental consequences in mind. The reasoning of *Davidon Homes* is particularly instructive in this regard. The Court there, noting that no implied finding of no significant impact by the Resources Agency supports an agency's determination under the common sense exemption, stated:

> "[T]he city's action was supported only by a conclusory recital in the preamble of the ordinance that the project was exempt under Guidelines Section 15061, subdivision (b)(3). There is no indication that any preliminary environmental review was conducted before the exemption decision was made. The agency produced no evidence to support its decision and we find no mention of CEQA in the various staff reports. ***A determination which has the effect of dispensing with further environmental review at the earliest possible stage requires something more.*** We conclude the agency's exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision."

(*Davidon Homes, supra*, 54 Cal.App.4th at 116-117, emph. added.)

A determination that an activity undertaken by a public agency is not a CEQA "project" at all is *necessarily* made at an *even earlier stage* than the "earliest possible stage" referred to by the *Davidon Homes* Court in connection with the "common sense" exemption. By parity of reasoning, and to ensure that CEQA serves its fundamental purpose, it would make no sense at all to impose a *lesser* burden of environmental due diligence and CEQA compliance on agencies that summarily dispense with any environmental review at that even earlier stage. To do so would undermine the *Davidon Homes* standard approved in *Muzzy Ranch* by allowing agencies that are unable to support even a "common sense" exemption determination based on "the facts of the matter" to improperly dispense with CEQA review by simply declaring, without any legal, factual or analytical support, that an action is not a "project." This certainly cannot be the law, and if it were CEQA would soon be a dead letter.

Here, the City clearly could *not* have supported a determination that the "common sense" exemption applied to the HCO Amendments had it considered the relevant "facts of the matter" as reflected in the record, or had it exercised even a modicum of "common sense." So it decided to "ram through" ill-considered but politically popular legislation materially amending its HCO while doing a complete "end run" around CEQA by simply declaring its action was "not a project." Allowing this unlawful and cynical *ipse dixit* determination to stand would undermine CEQA's fundamental purpose of mandating that government decisions be made with environmental consequences in mind, and would encourage the City and other public agencies to similarly evade CEQA review of proposed local land use ordinances in the future. As a matter of law, more is required.

7. Conclusion

This case is not complicated. The City of San Francisco does not stand above the law. This Court should grant a peremptory writ of mandate under CEQA voiding and directing the City to set aside the HCO Amendments (Ordinance No. 38-17, Board of Supervisors File No. 161291), and any actions taken under or to enforce them, and requiring the City to review as a "project" under CEQA any further proposed amendments to the HCO prior to enacting them.

III. LEGAL ANALYSIS OF PRA WRIT CLAIM

As U.S. Supreme Court Justice Louis D. Brandeis once wrote in an article on the benefits of publicity, "sunlight is said to be the best of disinfectants." This powerful idea animates our state's Public Records Act ("PRA"), which "is an indispensable component of California's commitment to open government." (League of California Cities, *"The People's Business: A Guide to the California Public Records Act"* (Rev. April 2017), p. 5 [hereinafter *"The People's Business"*].)

The PRA states that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code, § 6250.) Enacted in 1968 as the result of the Legislature's impatience with and desire to minimize secrecy in government, the PRA's purposes are "to: (1) safeguard the accountability of government to the public; (2) promote maximum disclosure of the conduct of governmental operations; and (3)

explicitly acknowledge the principle that secrecy is antithetical to a democratic system of "government of the people, by the people and for the people."" (*The People's Business, supra,* at 5, fn. and citations omitted.) "The PRA provides for two different rights of access. Once is a right to inspect public records. . . . . The other is a right to prompt availability of copies of public records[.] . . . Agency records policies and practices must satisfy both types of public records access that the PRA guarantees." (*Id.* at p. 6.) As well summarized in the League of California Cities' important treatise on the PRA:

> The balance that the PRA strikes among the often competing interests of government transparency and accountability, privacy rights, and government effectiveness intentionally favors transparency and accountability. . . . The courts have consistently construed exemptions from disclosure narrowly and agencies' disclosure obligations broadly. Ambiguities in the PRA must be interpreted in a way that maximizes the public's access to information unless the Legislature has expressly provided otherwise.

(*Id.* at p. 7, fns. omitted, citing *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476; *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 772-773; *Sierra Club v. Superior Court of Orange County* (2013) 57 Cal.4th 157, 175-176.)

Further, the California Constitution enshrines the PRA by providing: "The People have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const. Art. I, § 3(b)(1).) It mandates that statutes, court rules and other authorities "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." (Cal. Const. Art. I, § 3(b)(2).) "[T]he Constitution requires local agencies to comply with the PRA, the Ralph M. Brown Act (The Brown Act), any subsequent amendments to either act, any successor act, and any amendments to any successor act that contain findings that the legislation furthers the purposes of public access to public body meetings and public official and agency writings." (*The People's Business, supra,* at p. 8, citing Cal. Const., Art. I, § 3(b)(7).)

The Coalition's PRA claim was added to this action because, in its zeal to win this litigation, the City lost sight of the foregoing, well-established legal principles of governmental transparency and disclosure governing its conduct. Petitioners did not commence this CEQA and property rights case looking for a PRA fight, and given the City's vast financial and legal resources, such a fight was the last thing Petitioners wanted. Nonetheless, and despite Petitioners' best efforts to convince the City to voluntarily comply with its PRA disclosure obligations, the City's repeated, blatant and egregious PRA violations ultimately made litigation of the PRA claim asserted herein unavoidable.

This portion of Petitioners' brief will be brief – it will not belabor the relevant facts and evidence, which are set forth in detail in the accompanying Declaration of Arthur F. Coon in Support of Petitioners' Petition for Writ of Mandate Under Public Records Act ("Coon PRA decl."), which is incorporated herein by reference. It will suffice here to summarize that: (1) Petitioner Coalition made broad PRA requests to the City, including all its departments, beginning on February 7, 2017, to obtain relevant information and assist in their preparation of the CEQA administrative record; (2) for over 6 months after that, and despite Petitioner's diligent efforts and follow-up, the City stonewalled, and *intentionally* and improperly *narrowly* interpreted and misconstrued Petitioner's broad requests to avoid producing the requested public records (e.g., Coon PRA decl., ¶¶ 24-25, Exs. 21 and 23); (3) during this time the City produced barely 2,500 pages of documents in response to Petitioner's requests, and repeatedly falsely claimed that it had produced everything; (4) Petitioners were forced to amend and supplement their Petition on August 23, 2017, to add a claim seeking a writ of mandate directed to the City's PRA violations; and (5) beginning two weeks after Petitioners sued the City under the PRA it began a process of producing over the next five months approximately 18,000 pages of additional, responsive, and previously withheld documents.

While the City's belated production of responsive documents after Petitioners amended to assert a PRA claim has substantially mooted that PRA writ claim, the evidence establishes that the Coalition has already prevailed on that claim because it caused the release by the City of previously withheld documents responsive to the PRA requests. (Coon PRA decl., ¶¶

3-16 [Petitioner's PRA requests and follow-ups and City's responses and false claims to have produced everything]; 16-20 [City's litigation counsel's obstruction of PRA responses, and Petitioners' filing of amended and supplemental petition asserting PRA claim]; 21-36 [City's post-PRA claim production of approximately 18,000 pages of additional responsive documents]; see *Sukumar v. City of San Diego, supra,* 14 Cal.App.5th at 462-467 [holding plaintiff prevails in PRA action, even when writ relief denied as moot, where filing of lawsuit causes release of responsive, previously withheld documents].)

Nor is the PRA claim entirely moot because the Court can still issue a writ providing meaningful relief; despite Petitioner's repeated requests, the City has yet to produce a single affidavit or declaration evidencing that thorough searches of City officials' and employees' personal files, accounts and devices were appropriately conducted for responsive documents, as required by law. (Coon PRA decl., ¶ 37; see *City of San Jose, supra,* 2 Cal.5th 608.) This Court should issue a writ compelling it to do so with respect to those individuals from whom the Coalition has sought public records. (Coon PRA decl., ¶ 5.)

IV. CONCLUSION

This case isn't complicated. The City of San Francisco does not stand above the law. For all the reasons set forth above, the Court should issue: (1) a peremptory writ of mandate voiding and directing the City to set aside Ordinance No. 38-17 enacting the HCO Amendments, which constituted a discretionary project unlawfully adopted by the City without environmental review in violation of CEQA; and (2) an appropriate peremptory writ of mandate remedying the City's PRA violations, including ordering it to produce legally required affidavits regarding the adequacy of its searches of its officials' and employees' personal files, accounts and devices for responsive documents.

Dated: September 13, 2018

Respectfully submitted,

MILLER STARR REGALIA

By: _____

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

SAN FRANCISCO SRO HOTEL COALITION, an unincorporated association, HOTEL DES ARTS, LLC, a Delaware limited liability company, and BRENT HAAS,

Plaintiffs and Petitioners,

v.

CITY AND COUNTY OF SAN FRANCISCO, a public agency, acting by and through the BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO; DEPARTMENT OF BUILDING INSPECTION OF THE CITY AND COUNTY OF SAN FRANCISCO; EDWIN LEE, in his official capacity as Mayor of the City and County of San Francisco, and DOES 1 through 100, inclusive,

Respondents and Defendants.

Case No. CPF-17-515656

PETITIONERS' REPLY BRIEF ON THE MERITS IN SUPPORT OF PETITIONS FOR PEREMPTORY WRITS OF MANDATE UNDER (1) CEQA AND (2) PUBLIC RECORDS ACT

Date: January 18, 2019
Time: 9:30 a.m.
Dept.: 503

CEQA Case

Action Filed: May 8, 2017
First Amended and Supplemental Petition Filed: August 23, 2017
Trial Date: January 18, 2019 (on CEQA and PRA Writ Petitions)

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

CEQA Claim: City concedes that whether its enactment of the HCO Amendments was a CEQA "project" is a question of law to be resolved without deference to its position. (City Opp. Brief ("RB") 10:24-28; Pet. Opening Brief ("PB") 23:14-24:5.) City claims lengthening the minimum SRO hotel room rental term from 7 to 32 days was not a change in law (RB1:19-20), but both this Court (PB15:14-17:9) and the Court of Appeal have squarely held otherwise. (10/15/18 CA Opn. 8 ["Amendments effected a *substantial change* by making the minimum term 32 days"], emph. added.) City thus cannot rely on cases holding enactments merely "restating" existing law are not "projects." (RB19:12-19).

City also asserts that because the HCO Amendments do not "require or authorize" environmental changes (RB1:17-18) they cannot be a CEQA "project."[1] But land use regulations need not "require," "direct" or "authorize" physical changes in order to *potentially* cause *indirect* changes and thus require CEQA review. Land use plans and regulations are subject to CEQA because it is *reasonably foreseeable* the physical environment will *ultimately* be changed as an *indirect* result. (*City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409 ["CEQA reaches beyond the mere changes in the language in the agency's policy to the ultimate consequences of such changes to the physical environment."].) If City's position were correct, general plans and zoning ordinances could *never* be CEQA projects since they do not "direct" or "require" physical environmental changes. That is not the law.

City next argues the HCO Amendments are not a CEQA "project" because it is not reasonably foreseeable they *may* result – even *indirectly* – in *any* physical environmental change. (RB18:23-26:8.) This position, too, is untenable; despite City's extensive attempts to argue favorable evidentiary inferences regarding whether the HCO Amendments will *actually* have

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[1] *See* RB6:18-19 ("Amendments [do not] direct or authorize construction or demolition"); 19:9-14 (Amendments "could have no impact on the environment" because they "do not amend the one-for-one replacement requirement, or otherwise require owners of SRO hotels to modify the physical structures of their hotels"); 25:12 ("Amendments do not direct or encourage construction or demolition"); 5:23-26, 18:26-19:1 (claiming "actions that do not result in physical changes to [building] structures" are not "projects").

environmental impact (*id.* at pp. 21-24), such analysis is inappropriate and this purely legal issue must instead be decided "as a [threshold] *categorical* question respecting whether the activity is *of a general kind* with which CEQA is concerned, *without regard to whether the activity will actually have environmental impact.*" (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 381, emph. added; *id.* at 382 [issue is whether enactment "is the sort of activity that may cause a direct physical change or a reasonably foreseeable indirect physical change in the environment"].) Like zoning ordinances, the HCO Amendments regulate the use of buildings, structures and land, and they convert the allowed use and occupancy of 18,000 SRO hotel rooms from weekly rentals to rent-controlled apartments. That is just the "sort of activity" that *categorically* "ha[s] a potential for resulting in ultimate physical changes in the environment." (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 794.)[2]

PRA Claim: City self-servingly argues it would have produced all documents responsive to Petitioners' PRA requests without first being sued, but this claim is belied by the evidence. City ironically accuses Petitioners of "abuse" of the PRA to gain a tactical litigation advantage (RB2:11-12; 28:14), when the facts show otherwise: it was *City* that refused to search for relevant and responsive records in all departments possessing them; illegally and intentionally narrowed the scope of Petitioners' broad requests; improperly stopped producing documents for over two months before Petitioners sued; and ultimately delayed and avoided producing all responsive documents (many of which are now in the certified record) for *over a year.* (Coon PRA decl., ¶¶ 18-25, 36-37, and *passim.*) City's gambit sought to force Petitioners to give up their PRA rights and proceed with their CEQA claim on an inadequate administrative record, or else suffer expensive litigation delays violating CEQA's expedited procedures. City plainly violated the PRA, was called on it, and was ultimately forced to relent. This Court should hold it fully accountable.

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[2] Even if evidence were needed to answer this "categorical" legal question, the record and judicially noticeable evidence confirm the HCO Amendments may cause reasonably foreseeable displacement of vulnerable, economically disadvantaged persons, resulting in potentially significant effects on both human beings and their existing environment. (PB 27-28.)

II. RELEVANT CONTEXT: CEQA'S THREE-TIER PROCESS

Our Supreme Court has explained CEQA's three-step process for evaluating agency actions. The *first* step is *jurisdictional*, and requires the agency to conduct a *preliminary review* to determine whether CEQA applies at all to a proposed activity. (*Muzzy Ranch*, 41 Cal.4th at 379-380.) At the *second* step, if the agency has determined the proposed action is a "project" subject to CEQA, it must determine whether it qualifies for any exemption from review, and if not must conduct an *initial study* to determine whether the project may have any significant environmental effects. (*Id.* at 380.) Finally, if the initial study shows the project does not qualify for a negative declaration, the *third* step is for the agency to prepare an EIR. (*Id.* at 380-381.) This case arises because City summarily dispensed with CEQA review of the HCO Amendments at the "first-tier" *preliminary review stage* without even conducting review for possible exemptions or an initial study of potential environmental effects. (CEQA Guidelines, § 15063(c).)

III. CITY VIOLATED CEQA AS A MATTER OF LAW BY SUMMARILY DISPENSING WITH ENVIRONMENTAL REVIEW ON THE BASIS THAT ADOPTION OF THE HCO AMENDMENTS WAS NOT A "PROJECT"

City concedes it treated the *original* HCO and *all subsequent amendments* as "projects." (RB13:25-26, fn. 2; PB13:14-20; 26:7-18.) It cannot dispute that "[w]hether an activity constitutes a project subject to CEQA is a categorical question respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity will actually have environmental impact." (*Muzzy Ranch*, 41 Cal.4th at 381.) It makes two arguments to justify treating the HCO Amendments in a categorically different manner than all past HCO legislation: (1) zoning ordinances are not *per se* CEQA "projects" (RB13:4-18:22); and (2) the HCO Amendments will not result in a reasonably foreseeable physical change in the environment. (RB18:23-26:8.) Both arguments lack merit under applicable law.

A. An Agency's Adoption of Zoning Or Similar Ordinances Regulating Land Use Categorically Constitutes A CEQA "Project"

1. City Has Failed To Refute Petitioners' Showing

Ordinances and regulations affecting the use of land or structures have consistently, for many decades, been held to fall within CEQA's broad definition of a "project." "Ordinances

passed by cities are clearly activities undertaken by a public agency and thus 'projects' under CEQA." (*Apartment Assn. of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1169; 60 Ops.Cal.Atty.Gen. 335, 338 (1977).) "Amendment or adoption of an ordinance is a legislative act subject to review under [Public Resources Code] section 21168.5." (*County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1578; *id.* at 1558 [County ordinance restricting sewage sludge application on County lands was CEQA "project"].) "A regulation fitting the description of a discretionary project is a discretionary project under CEQA." (*Plastic Pipe & Fittings Assn. v. California Building Standards Com.* (2004) 124 Cal.App.4th 1390, 1412.) For more than 40 years, California courts have recognized "that adopting an ordinance was a project within the meaning of the Environmental Quality Act." (*Rosenthal v. Board of Supervisors* (1975) 44 Cal.App.3d 815, 823.) Similarly, even though (unlike zoning ordinances) general plans are "not explicitly mentioned in the CEQA statutes, [they] 'embody fundamental land use decisions that guide the future growth and development of cities and counties,' and amendments of these plans 'have a potential for resulting in ultimate physical changes in the environment.' General plan adoption and amendment are therefore properly defined in the CEQA guidelines as projects subject to environmental review." (*DeVita,* 9 Cal.4th at 794.) While all these authorities were previously cited by Petitioners (PB22:13-23:13), *none* are even *mentioned* in City's Opposition.[3]

2. <u>City's Statutory Interpretation Arguments Fail.</u>

Whether an activity constitutes a CEQA "project" is a categorical legal question. By enacting Public Resources Code § 21080(a) "the Legislature has determined that certain activities,

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[3] Land use regulations akin to zoning ordinances, while categorically CEQA "projects," *could* be subject to a "common sense" exemption at the *second tier* of CEQA review in cases where they merely *restate* existing law *without change*. (*Cf. Union of Medical Marijuana Patients, Inc. v. City of Upland* (2016) 245 Cal.App.4th 1265, 1272-1275 ["A municipal ordinance that merely restates or ratifies existing law does not constitute a project and is therefore not subject to environmental review under CEQA."].) But the "common sense" exemption could not apply in this case both because City never proceeded as required to a second tier of evaluation where it might apply, and because the HCO Amendments did not merely restate, but "effected a substantial change" in, preexisting law. (10/15/18 CA Opn., 8.)

including [but not limited to] the [enactment and amendment of zoning ordinances, the issuance of zoning variances and conditional use permits, and the] approval of tentative subdivision maps *always* have at least the *potential* to cause a direct physical change or a reasonably foreseeable indirect physical change in the environment" and are thus "projects" subject to CEQA. (*Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 702.)

City quibbles that § 21080(a)'s language stating it applies to "discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances" is qualified by the introductory phrase "[e]xcept as otherwise provided in this division," and the concluding phrase "unless the project is exempt from this division." (RB14:2-5.) These quibbles fail. The concluding phrase refers to statutory and categorical *exemptions* that could apply only to activities *already* determined to be CEQA "projects," and has nothing to do with the threshold definition of a "project." The statute's prefatory language points to nothing in CEQA "otherwise provid[ing]" – or even suggesting – that a "zoning ordinance" is *not* a discretionary project within its purview. Public Resources Code § 21065 (which broadly defines a CEQA "project") does not "otherwise provide" or even suggest that zoning and similar land use ordinances are not CEQA projects. Rather, it simply confirms that a CEQA "project" has the *potential* to cause (i.e., "*may*", not "will" cause), whether as a direct or reasonably foreseeable indirect effect, *some* "physical change" in the "environment." Section 21065's use of the conjunctive "and" to connect this inherent project attribute to its text setting forth three broad categories of public agency actions neither states nor suggests zoning and land use ordinances are not projects. It merely clarifies (1) not all activities with potential to cause physical environmental change are covered by CEQA (only discretionary activities with the specified public agency involvement), and (2) not all activities involving public agencies necessarily have potential to cause physical environmental change.

Keeping in mind CEQA must be interpreted "to afford the most thorough possible protection to the environment that fits within the scope of its text" (*CBIA v. BAAQMD* (2015) 62 Cal.4th 369, 381), these basic propositions do not undermine *Rominger*'s analysis or § 21080(a)'s express inclusion of zoning ordinances as among the specific discretionary public agency projects

the Legislature has declared subject to CEQA. Nor does § 21080(a)'s specification of certain types of public agency actions falling within § 21065's broader (and more abstract) definition of "project" render the latter's "*potential* causation" requirement "surplusage" or "meaningless." (RB14:22-25.) It simply makes clear that CEQA's broad definition of "project" encompasses § 21080(a)'s specifically enumerated examples – which include zoning ordinances. There is no conflict.[4]

3. City's "Settled Case Law" Argument Fails.

City claims "decades of well-settled case law" rejects the proposition that zoning ordinances are *per se* CEQA projects, but cites only two appellate decisions allegedly supporting this contention. (RB16:4-10.) The first, *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2016) 4 Cal.App.5th 103, *did* hold zoning ordinances are not *per se* CEQA projects; but the Supreme Court's grant of review in that case on that specific issue casts considerable doubt on the correctness of that holding, as well as any contention that "well-settled" case law supports it.[5]

The second decision, *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, *did not* hold a zoning ordinance was not a CEQA "project." Rather, the portion of it addressing plaintiff's CEQA challenge to the zoning amendments there at issue – which prohibited development of "big box" retail stores with a full service grocery department – held City's zoning action was adequately reviewed under CEQA because it was consistent with a general plan for which an EIR had been certified, i.e., the zoning amendments' broad environmental effects were covered by that EIR, and were not shown to have any reasonably foreseeable project-specific

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[4] City's citation of CEQA Guidelines that "reiterate the requirements of the statute" and the legislative history (RB15:1-2, 9-21) adds nothing to its argument, and does nothing to undermine the above analysis. City's case citations support *Petitioners'* position: A CFD is merely a financing mechanism, not a zoning ordinance or akin to one, and is *not* a CEQA "project" (*Kaufman & Broad – South Bay, Inc. v. Morgan Hill Unified School District* (1992) 9 Cal.App.4th 464), while a LAFCO's revision of sphere of influence guidelines – regulations affecting land use *much less directly* than either a general plan or zoning ordinance – *is* a CEQA "project" because it "may" promote a shift in development patterns that "could arguably" affect the environment. (*City of Livermore v. Local Agency Formation Comm.* (1986) 184 Cal.App.3d 531.)

[5] The Supreme Court does not exercise its discretionary review powers to grant review in cases correctly applying long-settled law. (Cal. Rules of Ct., Rule 8.500(b).)

effects peculiar to the zoning or site. (*Id.* at 279.)[6] *Wal-Mart* thus held the city's zoning enactment had already been adequately reviewed under CEQA, and expressly assumed the enactment was a "project" for purposes of its opinion. (*Id.* at 286.)

City relies on *Wal-Mart's* dicta surrounding an issue of "statutory construction" it expressly did *not* resolve, "to wit, whether subdivision (a) of section 21080 establishes a bright-line rule of law that all enactments of zoning ordinances are discretionary projects regardless of whether all of the requisite elements contained in section 21065's definition of a 'project' have been met." (*Id.* at 286.) In footnoted dicta, the Court opined: "Sections 21065 and 21080 could be construed to mean that the enactment of a zoning ordinance is not automatically a project and will not be a project unless all of the essential elements for a project contained in section 21065 are met." (*Id.*, at 286, fn. 7.) It stated that "[u]nder this view" § 21080's "[e]xcept as otherwise provided in [CEQA]" language "would be construed to mean that all of the essential elements for a project contained in section 21065... are not eliminated by the language in section 21080 that states discretionary projects include the enactment of zoning ordinances." (*Ibid.*) It mused that the leading CEQA treatises had not raised this issue, but that the Guidelines' "meld[ing]" of § 21080(a)'s provisions into § 15378(a)(1)'s definition of "project" "appear[ed] to have rejected by implication a bright-line rule that all zoning amendments are projects." (*Ibid.*)

While perhaps academically interesting, *Wal-Mart's* dicta played no role in its actual holding and are ultimately unpersuasive. First, nothing in § 21065 actually provides a zoning ordinance is *not* a per se CEQA project. Second, *Wal-Mart's* dicta notes that, under its hypothetical construction, in order to answer the threshold question whether a particular zoning

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[6] The Court applied CEQA Guidelines, § 15183, which creates a streamlined CEQA review procedure for projects consistent with the development density established by existing general plan policies for which an EIR was certified, such that no *additional* CEQA review is required "except as might be necessary to examine whether there are project-specific significant effects peculiar to the project or its site." (*Id.* at 286, quoting § 15183(a).) The Guideline further provides that where the general plan EIR relied on by the lead agency meets its requirements, "any rezoning action consistent with the general plan... shall be treated as a project subject to this section." (*Id.*, quoting § 15183(a)(i).) City has not relied on any CEQA streamlining procedure to claim the environmental effects of the HCO Amendments have been adequately reviewed in a prior EIR, but has refused to analyze such effects at all on the grounds that there is no "project."

ordinance is a CEQA "project" "courts... would have to review the administrative record for evidence establishing both the requisite causal link as well as the requisite physical change in the environment." (*Id.* at 286, fn. 7.) Requiring a detailed review of record evidence concerning an activity's environmental impacts prior to resolving the threshold "first-tier" issue whether it is a "project" would run directly counter to *Muzzy Ranch's* teaching that "[w]hether an activity constitutes a project subject to CEQA is a categorical question respecting whether the activity is of a *general kind* with which CEQA is concerned, *without regard to whether the activity will actually have environmental impact.*" (*Muzzy Ranch,* 41 Cal.4th at 381, emph. added.) Third, *Wal-Mart* was published in 2006, when that Court did not have the benefit of the Supreme Court's 2007 *Muzzy Ranch* decision, nor the Third District's 2014 *Rominger* decision. *Rominger* applied *Muzzy Ranch* and held a discretionary public agency activity listed in § 21080(a) (tentative subdivision map approval) is *categorically* a CEQA "project" because it *always* has at least the *potential* to cause a direct or reasonably foreseeable indirect change in the environment, *without regard* to whether it will, *in fact,* cause environmental effects. (*Rominger,* 229 Cal.App.4th at 702-703.)

Finally, City's attempt to misconstrue *Muzzy Ranch* to require a detailed preliminary examination of whether an activity *will actually* cause environmental effects, prior to deciding the categorical question whether it is a "CEQA project" (RB17:21-18:6), similarly fails. *Muzzy Ranch's* examination of the record evidence came only *after* it held the action before it was a CEQA project as a matter of law; only then did it take the separate and subsequent analytical step of addressing the agency's claimed "common sense" *exemption,* which analysis implicated review of the record. As *Rominger* correctly observed: "Our Supreme Court's conclusion... that an activity can qualify as a CEQA project because it is of the *sort* that *may* cause environmental effects but can, in turn, be exempt from CEQA because, *in fact,* it *will not* cause any such effects supports our conclusion here that whether the approval ... qualifies as a CEQA project must be determined by looking at the activity *categorically.* Because the Legislature has determined in section 21080 that the approval of a tentative subdivision map is the sort of activity that may cause physical changes to the environment, the Adams subdivision qualifies as a CEQA project." (*Id.* at 703.) The same is true of zoning and similar ordinances; there is no material distinction between

the HCO Amendments and zoning enactments that would remove the former from the general category of a regulation affecting the use of land and structures, which is just the "sort" of activity with which CEQA is concerned.

4. *Muzzy Ranch*'s And *Rominger*'s Holdings Are Binding Law; Following Them Will Not Lead To Absurd Results.

City's argument that treating zoning ordinances categorically as CEQA projects will "considerably expand[]" CEQA review and lead to absurd results (RB18:7-22) fails. That CEQA and the Planning and Zoning Law do not specifically define "zoning ordinance" is irrelevant; it is a commonly-used, well-understood term referring to local laws that regulate the "use of buildings, structures, and land." (*People v. Optimal Global Healing, Inc.* (2015) 241 Cal.App.4th Supp. 1, 7-8; *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 750 ["purpose of a zoning law is to regulate the *use* of land."].) The HCO Amendments share this essential characteristic and thus have the potential for physically changing the environment.

City's worry that CEQA's intentionally broad and categorical definition of project will require "CEQA review for all discretionary governmental actions" unless excluded by statute (RB18:16-18) is overblown and untenable. Not all discretionary government actions regulate the use of land and structures, and requiring local agencies to review *land use regulations* as "projects" at CEQA's "second tier" of environmental evaluation would not be onerous. If it were clear that a land use ordinance was truly environmentally benign, the agency could likely support application of an exemption,[7] dispensing with the need for further review, or alternatively perform an initial study supporting a negative declaration, thus dispensing with a full-blown EIR. City's "shortcut" here in summarily dispensing with CEQA review at the "first tier," on the baseless

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[7] In addition to statutory exemptions, the "common sense" exemption and numerous categorical exemptions exist and are potentially available (where applicable by their terms) to relieve agencies of any otherwise "burdensome" obligation to conduct even an initial study. An agency invoking the "common sense" exemption at the "second tier" of evaluation bears the burden of proof to show, as a factual matter based on evidence in the record, "with certainty that there is no possibility that the activity in question may have a significant effect on the environment[.]" (*Muzzy Ranch*, 41 Cal.4th at 380, 387; *Rominger*, 229 Cal.App.4th at 704.)

ground that its adoption of the HCO Amendments was not even a "project," and in the face of legitimate issues raised about possible environmental impacts, plainly violated CEQA.

B. Adoption Of The HCO Amendments Is A Project As A Categorical Matter Because It Is The Sort Of Activity That May Cause Direct Or Reasonably Foreseeable Indirect Physical Changes In The Environment

1. City Ignores The Required Inquiry's Categorical Nature.

City's determination that adoption of the HCO Amendments was not a "project" is inconsistent with the *categorical* determination CEQA requires. To the extent City's "policy" provides otherwise (RB18:27-19:2), that policy violates CEQA. CEQA's concern with the environment certainly *includes*, but is not narrowly limited to actions physically altering the man-made "building structures" addressed by City's "policy." The "environment" includes not just structures but *all* of the "physical conditions" existing in the entire area "which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, [and] objects of historic or aesthetic significance." (§ 21060.5.) Changes in land use regulations that *may* foreseeably cause a physical change in *any* of those physical conditions – such as traffic, noise, air or water pollution, or urban blight – are "projects" under CEQA requiring environmental review for potentially significant impacts unless validly found exempt.

City's odd claim that its prior CEQA reviews of the original HCO and all subsequent amendments somehow *support* its position (RB19:3-8) has it backwards. In all prior instances, City consistently treated such land use legislation as a "project" subject to CEQA at the first-tier level, then conducted a second-tier environmental evaluation. (PPAR 1689-1693, 1727-1729.) This case marks the *first time ever* City has departed from that practice and determined at the first tier that HCO legislation is not even a "project." City thus never considered whether the significant change in law requiring minimum 32-day instead of 7-day SRO rentals might indirectly result in reasonably foreseeable physical environmental changes. (RB26:19-31:7.)

City's citation of three cases involving allegedly "similar ordinances" held not to be CEQA "projects" (RB19:9-23) is unavailing. *San Jose Country Club Apartments v. County of Santa Clara* (1982) 137 Cal.App.3d 948, 953-954 involved a "county ordinance that prohibited [the]

same type of discrimination already prohibited by state law" (RB19:14-16), and *Black Property Owners Assn. v. City of Berkeley* (1994) 22 Cal.App.4th 974, 985 involved an "updated housing element" that in relevant part "readopted existing policies without change." (RB19:17-19.) Here, by contrast, the HCO Amendments effected a substantial *change in law* by mandating 32-day minimum SRO rentals instead of the previously permissible weeklies. Thus, even assuming there exists a "no change in existing law" exception to CEQA's general rule that zoning and similar land use enactments are categorically "projects," City could not rely on it to evade CEQA review here.

Nor does City's citation to *Taxpayers for Accountable School Board Spending v. San Diego Unified School District* (2013) 215 Cal.App.4th 1013, 1064 (RB19:19-23) avail it. That case did not involve enactment or amendment of any zoning ordinance, nor did it sanction failure to conduct CEQA review of any proposed activity that might have physical effects. Rather, it held an EIR was required for a specific school district project – due to its inadequate parking and spillover physical parking impacts on the adjacent streets and neighborhood – but that the district's related zoning resolution exempting 12 proposed high school projects from a city's zoning and land use laws under Government Code § 53094 was not "approval" of a "project" requiring *separate* CEQA review. The zoning exemption resolution did not commit the district to a definite course of action regarding any of the proposed projects, and "was not a separate activity requiring its own CEQA review in addition to the CEQA review required for each high school project." (*Id.* at 1064, citing CEQA Guidelines, § 15378(c).) The Court explained: "Rather, before District approves each of the 12 high school projects, it must comply with CEQA." (*Id.* at 1065.) Here, the HCO Amendments do not declare inapplicable another agency's zoning regulations, but enact into law substantial changes to City's own applicable land use regulations, committing it to a definite course of action with the potential for environmental changes, i.e., enforcement of the 32-day minimum SRO hotel room rental term rather than a 7-day minimum.[8]

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[8] This change effectively converted all SRO *hotels* to rent-controlled *apartment buildings*, with all of the reasonably foreseeable changes attendant to that change in the legally-mandated land use and business model. Unlike in *Taxpayers*, approval of the HCO Amendments committed City to a definite course of action with regard to a project that could foreseeably result in physical

City argues it is not reasonably foreseeable the HCO Amendments may indirectly result in physical environmental changes because such potential impacts are "unsubstantiated and speculative." (RB19:24-27.) City argues the Administrative Record "contains no evidence that the 2017 Amendments ***will cause any tenant displacement whatsoever***." (RB20:1-3.) But even if that assertion were *factually* true – which it is not – it fails under the *legal standard* governing whether an agency's activity is a CEQA "project." The issue must be resolved as a *categorical* matter *without regard* to whatever "facts" might be shown by or argued from the evidentiary record. An action that "will" cause an environmental change – e.g., displacement of current or potential renters into the streets or other public places, with the accompanying adverse environmental effects – would clearly be a CEQA project. But an action that has even the *potential* to cause such changes is *also* a CEQA project as a *categorical* matter. As *Muzzy Ranch* held with respect to the analogous concept of displaced development and resulting impacts: "[N]othing inherent in the notion of displaced development places such development, when it can be reasonably anticipated, categorically outside the concern of CEQA." (*Muzzy Ranch,* 41 Cal.4th at 383 [accordingly holding ALUC erred in concluding adoption of TALUP was not CEQA "project" on basis that potential resulting housing displacement was too speculative].)[9]

City extensively engages in arguments based on inferences it claims can be drawn from the record evidence as to whether the HCO Amendments will *actually* result in effects or changes in the physical environment. (RB20:1-25:3.) But an initial study at the "second tier" of CEQA's three-step process, not a legal brief, is the appropriate vehicle for such analysis. City's arguments

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environmental changes, which would not only occur without the future project-specific CEQA review that was assured in *Taxpayers*, but *without any CEQA review at all.*

[9] *See also Rominger,* 229 Cal.App.4th at 703 ("Supreme Court's conclusion in *Muzzy Ranch* that an activity can qualify as a CEQA project because it is the of the *sort* that *may* cause environmental effects but can, in turn, be exempt from CEQA because, *in fact*, it *will not* cause any such effects supports our conclusion here that whether the approval ... qualifies as a CEQA project must be determined by looking at the activity *categorically.*"); *cf. San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1379-1380 (where *possibility* of significant impact "cannot be rejected categorically" and "cannot be positively ruled out," activity in question is CEQA "project"). "[T]he word 'may' connotes a 'reasonable possibility.'" (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309, citation omitted.)

about actual environmental impacts, in addition to being meritless, are simply inappropriate in the context of a threshold "first-tier" determination of whether a "project" exists – which must be decided as a *categorical* question *apart from the factual record.*

2. Even If City's Factual Arguments Were Relevant They Are Meritless.

Even if City's factual arguments were legally cognizable, they are patently meritless. Its argument that no current SRO room tenants will be "forcibly displaced" because they are already either rent control-protected permanent tenants or protected from displacement by state law (RB20:1-14) fails to account for transient hotel renters who rent on a weekly basis and voluntarily honor the law and their contractual rental agreements by vacating the premises when their agreed and paid for rental term is up. It also fails to account for weekly renters properly evicted for non-payment of rent or other just cause. Eliminating the 7-day rental option foreseeably displaces tenants who rely on (or attempt to rely on) weekly rentals to provide an affordable living option.

City next argues that because "[n]othing in the 2017 Amendments *requires* payment of a deposit or first or last month's rent, or *prohibits* payment in 7-day increments" (RB20:17-18, emph. added) it is not reasonably foreseeable that SRO hoteliers forced to become apartment landlords will require such rental or security deposits. (RB20:19-20 ["To the extent residential hotels choose to charge these costs for a 32-day rental or for security or last month's rent deposits, that is not a result of the 2017 Amendments."].) This argument is another variation of City's meritless claim that if the HCO Amendments do not *directly mandate* something then it is not reasonably foreseeable that they may *indirectly* result in it. But "an activity which may cause ... a reasonably foreseeable indirect physical change in the environment" constitutes a CEQA "project." (§ 21065(a).) Whether the HCO Amendments *require* it or not, they still have the reasonably foreseeable potential effect of causing SRO hoteliers forced to become apartment landlords to begin requiring the security and rent deposits customary to that business model, with the predictable effect of displacing weekly SRO unit renters unable to afford such deposits. (*San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643, 674 [recognizing while SRO units "may not be an ideal form of housing, such units accommodate many whose only other options might be sleeping in public spaces or in a City shelter" and "residential hotel units serve

many who cannot afford security and rent deposits for an apartment."].) As foreseen and documented by City itself 30 years ago: "The 32 day rental requirement often works against the rental of vacant residential hotel units as operators have to refuse occupancy to weekly tenants, even though some residential units may have been vacant for long periods." (PPAR 1706.) It is equally reasonably foreseeable that hoteliers not desiring to change their business model and become rent-controlled apartment landlords, or not wanting to risk permanently committing to undesirable tenants not vetted through weekly rentals, may hold some or all of their SRO units off the rental market. This potential effect was also foreseen and discussed by City. (PPAR 1707 [1988 City Planning report: "Weekly rentals are used by operators to screen potential trouble making tenants. Without this option, operators are leaving units vacant rather than risk renting to potentially troublesome tenants on a monthly basis."].)

City argues future tenants "priced out" of an SRO room they could otherwise afford by the HCO Amendments' prohibition of weekly rentals cannot be "displaced" as a matter of "logic" or "from a CEQA standpoint." (RB20:27-21:11.) The argument makes no sense. SRO hotel occupancy, like the number of homeless persons living on City's streets, is a fluctuating, not static, environmental condition that varies over time, based on various causal factors. The same is true of many CEQA baseline conditions such as traffic, noise, energy and water use, and pollutant emissions. As relevant here, the same and different persons move in and out of the same and different SRO hotels and hotel units over time, but if the limited supply of available units is decreased the result will foreseeably – and logically – be that a larger number of these persons will end up living on the streets, whether permanently or for longer than would otherwise be the case.

While City claims it is purely speculative to "ask this court to believe that ... a significant number of future tenants only want or can afford weekly rentals" the record shows such units have long provided a critical supply of low-cost rooms for rent on a weekly, or multi-week, basis (PPAR 703, 6606 [5% of City's population lives in SROs]), and the Supreme Court has recognized such units serve many who cannot afford apartments and would otherwise be homeless. (*San Remo Hotel,* 27 Cal.4th at 674.) The "natural reactions of SRO owners" to protect themselves through rent and security deposits, and to hold units off the market rather than risk

unvetted troublesome tenants and rent control restrictions, are readily foreseeable, as confirmed by the record (e.g., PPAR 1341, 1345, 1375-1376, 1377-1378, 1379-1380, 1382-1383, 1388), and also so probable that City is currently considering legislation *imposing a tax on vacant SRO units.* Given the substantial percentage of City's total population living in its 18,000 SRO units, it is not speculative to anticipate that many prospective tenants will be unable to find other affordable housing, and this is self-evident based on the number of homeless persons observed every day on City's streets.[10] Contrary to City's contentions, *any* increase in homeless persons on its streets resulting from its enactment of laws that may foreseeably reduce the availability of SRO rental units *constitutes a physical environmental impact cognizable under CEQA.* (E.g., *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 685 [CEQA impact of "urban decay" is "physical deterioration" including "homeless encampments"].) While perhaps not *all* homeless persons "soil the City streets" (RB21:23-25), a great many unfortunately do and abundant evidence in the record and from judicially noticeable documents in City's files shows myriad blighting, "urban decay" – type impacts from homeless persons on City's streets. (PB30:12-20, and record evidence cited.) City's argument that there is no "record [evidence] indicating that the 2017 Amendments will lead to physical environmental impacts" (RB22:22-23) is thus doubly wrong, as a matter of both law and fact.

City's attempts to distort the record also fail. City mischaracterizes its own 1988 Planning Department report as evidence of SRO owners' efforts to circumvent the HCO, rather than adverse impacts of the 32-day rule, misquoting it to falsely assert SRO hoteliers voluntarily *chose* not to rent to weekly tenants (RB23:6-10), when in fact, the report's point was that the 32-day rule then in effect *prohibited* weekly rentals and led to vacant units that would otherwise have been occupied. (PPAR 1706 ["The 32 day rental requirement often works against the rental of vacant residential hotel units as operators *have to refuse occupancy to weekly tenants*, even though some

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[10] City's claim that it is speculative "future tenants will choose to live on the streets … rather than seek more affordable housing elsewhere" is absurd in implying that homelessness is always a choice of the homeless person, and particularly absurd in light of the fact that it is City's own failed housing policies that have left so many homeless persons with no "choice."

residential hotel units may have been vacant for long periods."], emph. added.)

City also mischaracterizes and downplays the significance of more recent reports from its Controller's Office, Human Services Agency and Department of Homelessness and Supportive Housing. (RB23:14-18.) But these reports contain a great deal of relevant factual information evidencing the very kinds of interests, behaviors and financial incentives of private hoteliers that would foreseeably lead to rent and security deposits – and SRO units being held off the market – should the 32-day rental minimum be enacted without considering and implementing any of the "mitigation measures" discussed in the reports. (PB28:4-22.)[11] And while City summarily dismisses evidence to the same effect submitted by the regulated hoteliers (RB24:3-13), such evidence is, in fact, credible and corroborative of what City already knew (or should have known) from its own documents. (PPAR 238-243, 402-403, 474-475, 489-508.)

Finally, City's attempts to distinguish cases holding "tenant displacement" is a cognizable CEQA impact because they dealt with impacts caused by units lost to physical demolition, rather than economic causes, or displacement under the Ellis Act rather than CEQA, are unavailing. (RB25:5-15.) If it is reasonably foreseeable the HCO Amendments will result in the unavailability of SRO units for *any* reason, displacement of persons onto the streets is also a reasonably foreseeable effect, as are the additional resulting environmental impacts. City's analysis of *Placerville Historic Preservation League,* 16 Cal.App.5th 187, misses the point, which is that the legal definition of "urban decay" for CEQA purposes expressly includes (but is not limited to) "homeless encampments." Whether additional homelessness and related physical changes to the environment would actually be *likely* to occur and cause *significant* impacts is not the issue here, and cannot be known until City complies in good faith with CEQA: what is known is that those are reasonably foreseeable *potential* effects the HCO Amendments *may* have, and they are therefore a "project" City was required to – but did not – analyze under CEQA. The Court should

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[11] Having dispensed with CEQA review based on its legally erroneous "first-tier" determination the HCO Amendments were not a "project," City did not consider these or other possible mitigation measures that it would have been required to consider had it complied with CEQA, and which could well have resulted in significant changes to the HCO Amendments.

therefore grant a peremptory writ setting aside the HCO Amendments and requiring City to comply with CEQA prior to taking further action to adopt them.

IV. PETITIONERS HAVE PREVAILED ON THEIR PRA CLAIM

While City is large and has many departments, it also has many resources and does not have an exemption from timely and full PRA compliance. City abused its power and ignored its legal duties and responsibilities under the PRA here in an effort to gain a litigation advantage. After enduring more than seven (7) months of City's stonewalling, intentional misconstruction of the scope of Petitioners' PRA requests, and refusal to search for or produce responsive documents while claiming to have already produced them, Petitioners had two choices: accept City's PRA violations and proceed to brief their CEQA claim on an inadequate administrative record, or amend their Petition to assert a PRA writ claim seeking to force City to produce the documents. Petitioners chose to seek enforcement of their legal right to obtain access to the public records they had requested and to which they were entitled.

Petitioners have prevailed on their PRA claim because it caused City to finally produce responsive documents previously (and intentionally) withheld. (*Sukumar v. City of San Diego* (2017) 14 Cal.App.5th 451, 462-467.) Despite Petitioners' broad PRA requests first made in February 2017 (Coon PRA decl., ¶ 3, Ex. 1), clarified and reiterated in March 2017 (*id.*, ¶ 5, Ex. 3), and renewed and further clarified in July 2017 (*id.*, ¶ 8, Ex. 6), and numerous follow-up communications regarding the incomplete and evasive nature of City's responses (*id.*, ¶¶ 9, 11-17, and Ex. 7, 9-15), ***as of mid-August 2017, City had produced only about 2,500 pages of responsive documents and had not produced any documents in over two months.*** (*Id.*, ¶ 18, 11:13-15.) The Administrative Record, which Petitioners had elected to prepare and which was due to be certified by July 7, 2017, was already one-and-one half months overdue by that time (*id.*, ¶ 18, 11:20-22), because Petitioners had not received the complete PRA responses from City needed to prepare it. (*Id.*, ¶¶ 19-20.) Rather than accepting City's violations and proceeding with an inadequate record, Petitioners filed and served their amended and supplemental Petition seeking a PRA writ. (*Id.*, ¶ 18.)

Within two weeks of Petitioners' filing suit against City for PRA violations and related attorneys' fees, things changed dramatically. City's litigation attorney who had also been handling its PRA responses was removed from the process without explanation (Coon PRA decl., ¶ 20, Ex. 18), and City began producing substantial numbers of responsive and previously unproduced documents. (*Id.*, ¶¶ 21, 26, 29-36, & Ex. 19, 24, 26-33.) In total, City made a dozen separate and staggered productions of documents responsive to Petitioners' PRA requests over the course of more than a year; while only three of these productions, containing barely 2,500 pages of documents, were made *prior* to Petitioners' filing their PRA-claim, nine (9) additional productions containing approximately 18,000 pages of documents were made *after* that filing. (*Id.*, ¶ 36.)

City makes a number of factual arguments claiming that despite these undisputed facts Petitioners' PRA claim did not motivate its production of the additional documents. It claims it "never denied Petitioners' requests for documents" (RB27:7-8) – but does not dispute it informed Petitioners several times that it had completed its search and produced all responsive documents *prior* to the PRA claim being filed (Coon PRA decl., ¶ 4, Ex. 2; ¶ 7, Ex. 5; ¶11, Ex. 9), and then *subsequently* produced 18,000 pages of additional documents. (*Id.*, ¶ 36.)[12]

City claims the documents it produced only after being sued "were found as a result of searches instituted prior to the filing of the PRA writ … and were not disclosed in response to the filing of the lawsuit." (RB27:18-19.) It points to a letter its counsel sent on September 8, 2017 (Coon PRA decl., Ex. 19) – a date City characterizes as "approximately the time" of, but which was actually *more than two weeks after* the PRA claim was filed – asserting that "City departments *are* diligently searching their records" (*id.*, emph. added), and argues this letter supports the inference that City had already begun such searches for responsive documents "long before Petitioners filed the PRA writ." (RB27:23-25.) Wrong.

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[12] City appears to suggest its misconduct is somehow mitigated because Petitioners' initial requests (allegedly) sought only documents that would ultimately be included in the Administrative Record (RB27:8-9), but ignores that those initial requests were, in fact, not so limited, and were made months before the CEQA litigation was filed. (Coon PRA decl., Exs. 1, 4.) While one important purpose of the PRA requests was certainly to facilitate Petitioners' preparation of the Administrative Record, that is not an improper purpose nor was it (or was it ever represented by to be) their *only* purpose.

First, the facts show that after City's inadequate initial productions totaling only 2,500 pages of responsive documents, City stopped producing documents, and as of the August 23, 2017 date Petitioners filed their PRA writ claim City had not produced any responsive documents, despite Petitioners' diligent efforts through letter and email correspondence to persuade it to do so, for *over two months*. (Coon PRA decl., ¶ 18, 11:13-15.) Second, prior to the PRA writ filing City had repeatedly falsely represented its production had been complete. Third, it was not until **August 31, 2017** – more than a week *after* the PRA writ was filed – that the City Attorney's office finally transmitted the PRA requests to the other City departments (such as the Human Services Agency) referenced in its counsel's September 8, 2017 letter, so that they could *begin* conducting the required searches. (Coon PRA decl., ¶ 24, Ex. 22 [8/31/17 HAS email, Bates-stamped HAS-HAS 681-682, acknowledging receipt of PRA request that day].) Given the uncontradicted evidence showing City's other departments were not even provided with Petitioners' requests so that they could search for responsive documents until *after* the PRA writ claim had been filed, it is quite impossible to draw the inference urged by City that they had been searching diligently for such documents all along.

Fourth, City had consistently and unwaveringly – albeit erroneously – insisted prior to the PRA writ claim being filed that the PRA requests were limited only to the Board of Supervisors and DBI, and not directed to other City departments. (E.g, Coon PRA decl., ¶ 19, Ex. 17 [8/28/17 Wenter letter].) Again, City did not relent, change its position, and expand its search to all its relevant departments as required until *after* the PRA claim was filed.

City's assertion that Petitioners do not "argue that their PRA writ resulted in the City producing any documents that it is [sic] relying on it this case" (RB 26:13-14) is both legally irrelevant and factually false. City's PRA violations would be actionable whether or not Petitioners' PRA writ claim resulted in production of documents ultimately used in the CEQA action; nothing in the PRA limits the right to obtain public records to *only* those used in litigation. But the PRA writ did, in fact, result in City producing *numerous* previously withheld documents , including the CEQA and Administrative Record documents for the original HCO and its early amendments, which ultimately became part of the certified Administrative Record and which

Petitioners have cited and relied on to support their CEQA claim. (Coon PRA decl., ¶ 36.) This Court should thus issue an appropriate order finding Petitioners have already prevailed on their PRA claim and a writ requiring City to produce the search affidavits it has not yet provided.

V. CITY'S EXHAUSTION AND NOTICE ARGUMENTS FAIL

City concedes – by failing to dispute – that Petitioner Coalition exhausted its administrative remedies as to the CEQA claim and thus has standing to prosecute it, but argues petitioners Hotel Des Arts and Haas did not. (RB11:8-12:17.) Not so. The exhaustion doctrine does not apply in a CEQA action "if the public agency failed to give the notice required by law." (Pub. Resources Code, § 21177(e).) The public notice required by law here was notice complying with the Brown Act and City's Sunshine Ordinance, which require notice providing a meaningful description of both City's substantive action and its CEQA determination. City's notice failed to provide either (PB19:12-20:14, 24-28), and City thus cannot raise any failure-to-exhaust defense. Even assuming *arguendo* City's notice was legally adequate, however, both Hotel Des Arts and Haas are members of Petitioner Coalition, which City concedes has standing to prosecute the CEQA challenge, and they therefore have derivative standing.

Finally, in any event, City concedes petitioner Hotel Des Arts participated and timely *objected* to approval of the HCO Amendments during the administrative process. (RB11:17-18, 24-26.) Having done so, Hotel Des Arts sufficiently exhausted and obtained standing to sue and raise any CEQA issues and arguments in this litigation that were raised by *any other parties* – such as the Coalition and other hoteliers – in the administrative process. (§ 21177(a), (b).) Accordingly, even assuming *arguendo* that City's notice was legally adequate, and even if Hotel Des Arts and Haas lacked derivative standing, City effectively concedes both the Coalition and Hotel Des Arts properly exhausted and have standing to litigate all CEQA issues.

VI. CONCLUSION

This case isn't complicated, and City does not stand above the law. This Court should therefore issue: (1) a peremptory writ voiding Ordinance No. 38-17 due to City's failure to comply with CEQA; and (2) an order and writ finding Petitioners have prevailed on their PRA claim, and compelling City to provide the required PRA search affidavits.

Dated: December 17, 2018

Respectfully submitted,

MILLER STARR REGALIA

By: _____

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Dated: December 17, 2018

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PROOF OF SERVICE

San Francisco SRO Hotel Coalition, et al. v. City and County of San Francisco, et al.
San Francisco S.Ct., Case No. CPF-17-515656

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Contra Costa, State of California. My business address is 1331 N. California Blvd., Fifth Floor, Walnut Creek, CA 94596.

On December 17, 2018, I served true copies of the following document(s) described as **PETITIONERS' REPLY BRIEF ON THE MERITS IN SUPPORT OF PETITIONS FOR PEREMPTORY WRITS OF MANDATE UNDER (1) CEQA AND (2) PUBLIC RECORDS ACT** on the interested parties in this action as follows:

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BY ELECTRONIC SERVICE: I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to File & ServeXpress, through the user interface at www.fileandservexpress.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 17, 2018, at Walnut Creek, California.

Karen Wigylus

EXHIBIT E

APPEAL #A151847

COURT OF APPEAL - STATE OF CALIFORNIA

FIRST DISTRICT - DIVISION 5

SAN FRANCISCO SRO HOTEL COALITION, an unincorporated association, HOTEL DES ARTS, LLC, a Delaware limited liability company, and BRENT HAAS,

Plaintiffs and Appellants,

v.

CITY AND COUNTY OF SAN FRANCISCO, a public agency, acting by and through the BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO; DEPARTMENT OF BUILDING INSPECTION OF THE CITY AND COUNTY OF SAN FRANCISCO; EDWIN LEE, in his official capacity as Mayor of the City and County of San Francisco

Defendants and Respondents

APPELLANTS' REPLY BRIEF

In Support of An Appeal from the Denial of a Motion for Preliminary Injunction

San Francisco Superior Court
CPF17515656

The Hon. Teri L. Jackson

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INTRODUCTION TO REPLY

I. OVERVIEW OF APPELLANTS' POSITION

Notwithstanding the City's best efforts to confuse the issues, Appellants' position is grounded in straightforward and well-established law governing the elimination of established lawful nonconforming uses.[1] No one disputes that local governments generally have power to regulate the uses of real property, and may, by zoning and similar land use regulation generally prescribe permissible and impermissible uses of real property. Nor does anyone contend that landowners necessarily have a vested right in existing zoning – except under certain circumstances, no one has a right to expect that a currently permissible use of property that is not actually established will continue to be permitted indefinitely. (Anderson v. City Council of City of Pleasant Hill (1964) 229 Cal.App.2d 79, 88)

However, it is a different matter when an established, existing, lawful nonconforming use is immediately legislated out of existence. Where such an existing permissible use is not a nuisance, California

[1] "[A] lawful nonconforming use is one that existed lawfully at the time a new zoning prohibition or restriction came into force. . . ." (San Remo Hotel L.P. v. City And County of San Francisco (2002) 27 Cal.4th 643, 661)

law has long held that it cannot be legislated immediately out of existence without pre-termination compensation. This legal protection has resulted from the courts' recognition of "the hardship and doubtful constitutionality of compelling the immediate discontinuance of nonconforming uses." (County of San Diego v. McClurken (1951) 37 Cal.2d 683, 686) Here, the City has enacted legislation – the "HCO Amendments" – that purports to immediately outlaw established, existing, and previously-lawful single-room occupancy ("SRO") hotel uses and declare that henceforth only apartment uses shall be permissible. It has, without any finding of nuisance, and without providing for any amortization period or compensation, declared weekly rentals of SRO rooms that were lawful and permissible on one day to be misdemeanors the next. Such abrupt legislative termination of existing, lawful nonconforming uses is unlawful.

This conclusion does not rest on a traditional regulatory taking analysis of a land use regulation to determine whether "regulation goes too far." (Kavanau v. Santa Monica Rent Control Bd. (1997) 16 Cal.4th 761, 797) While such regulatory takings analysis also addresses the government's conduct vis-a-vis a landowner, its focus is

substantively different in that it primarily analyzes the economic impact on the owner of a parcel of land of a regulation limiting the parcel's *prospective* future uses. "[The takings clause of the 5th Amendment] is designed not to limit the governmental interference with property rights per se, but rather to secure compensation in the event of otherwise proper interference amounting to a taking." (First English Evangelical Lutheran Church of Glendale v. Los Angeles County, Cal. (1987) 482 U.S. 304, 315, cites om. [107 S.Ct. 2378, 2385-2386]) "[E]conomic regulation may constitute a taking [only] if it 'goes too far.'" (Bronco Wine Co. v. Jolly (2005) 129 Cal.App.4th 988, 1030, cit. om.) If an economic regulation goes too, then "[t]he claimant must establish (1) it has a protectable property interest, (2) there has been a taking of the property, and (3) the taking was for a public purpose." (Bronco Wine, supra, 129 Cal.App.4th at 1030)

In contrast, claims based on elimination of *existing*, lawfully-established, non-nuisance uses of property only require the property owner to establish a lawful, on-going use of land, and a subsequent change in land-use regulation that requires the owner to immediately cease that previously lawful use without pre-termination compensation. (See Hansen Brothers Enterprises, Inc. v. Board of

Supervisors (1996) 12 Cal.4th 533, 552) Where a municipality makes an "overly zealous effort to eliminate an existing nonconforming use . . . [the municipality] may pursue two constitutionally equivalent alternatives: 'It can eliminate the use immediately by payment of just compensation, or it can require removal of the use without compensation following a reasonable amortization period.'" (Griffin Development Co. v. City of Oxnard (1985) 39 Cal.3d 256, 267, quoting Metromedia, Inc. v. City of San Diego (1980) 26 Cal.3d 848, 881, and citing Livingston Rock etc. Co. v. County of Los Angeles (1954) 43 Cal.2d 121, 127) These requirements avoid hardship and constitutional concerns grounded in both takings and due process protections, and they apply in this context regardless of whether the property would retain economic value without the newly-prohibited use.

In 1981, the City enacted the Hotel Conversion Ordinance which, as relevant here, regulated the manner in which certain SRO hotel rooms, designated residential ("RDUs") could be rented. In 1990, the City amended the HCO to prohibit the rental of those rooms for periods of less than one week. (1 AA 100-103) As the City successfully argued to this Court, and the California Supreme Court,

over the next decade, *the HCO allowed unrestricted weekly rentals of these rooms*. (2 AA 333-357) That is, they could lawfully be rented to anyone so long as it was for at least 7 consecutive days. For decades, SRO hotel owners operated their businesses in accordance with, and in reliance on, this right, as unrestricted weekly rental hotels. (S.F. Administrative Code § 41.20(a)(2); 1 AA 59-60, 102, 2 AA 322-361; see San Remo, supra, 27 Cal.4th at 674; Terminal Plaza Corp. v. City and County of San Francisco (1986) 177 Cal.App.3d 892, 899) The availability of SRO weekly hotel rentals is a significant component of the City's available "housing stock" precisely because they are offered to a customer base that: 1) does not wish to rent for longer periods of time; and/or 2) cannot afford the additional costs associated with monthly rentals such as paying for a longer stay than is desired, first and last month's rent, and security deposit. (San Remo, supra, 27 Cal.4th at 674 - SRO units "serve many who cannot afford security and rent deposits for an apartment.") Suddenly, the HCO Amendments unlawfully outlawed a lawful, nonconforming use – and eliminated the private SRO hotel business model as it had existed for nearly three decades – by failing to provide any amortization period or compensation prior to terminating the use.

This appeal is from the order denying Appellants' motion for a preliminary injunction to enjoin operation of the HCO Amendments pending resolution of the merits. (2 AA 426-427) The motion should have been granted. Appellants are suffering irreparable harm, having been forced out of the SRO hotel business and into the apartment business (if they wish to operate by renting residential SRO rooms at all) with only the potential for a cumbersome, lengthy, expensive, and uncertain compensation process for the lost profit during this period. In the meantime, taxes, suppliers, and employees must be paid, and the owners rightly expect to make some profit.

Notably, the City does not directly challenge Appellants' positions. Instead, it engages in revisionist history by attempting to deny that weekly rentals were ever a lawful use (RB 9-14), provides irrelevant "justifications" for the amendment (RB 13-15), argues inapposite principles of regulatory takings law (RB 19-23), and erroneously claims that Appellants' cited case law requires the complete "elimination" or "eradication" of all commercial use of affected properties – effectively conflating this law with traditional regulatory taking analysis. (RB 18-19.)

In contrast, the core legal issue presented in this appeal is simple: may the City enact the 2017 HCO Amendments without a reasonable amortization period or pre-termination compensation? The answer is unequivocally, "no". The City does not deny that this Court has the power to decide that legal question on this appeal, regardless of Appellants' irreparable harm showing, and, further, that this Court should exercise it. Indeed, it is in everyone's interest to settle that purely legal question now. Accordingly, for the reasons previously advanced in Appellants' opening brief, and as further set forth below, this Court should reverse the Superior Court's order denying the motion for preliminary injunction with direction to enter a new and different order resolving the ultimate legal merits of the non-CEQA claims raised in this action in Appellants' favor.

II. SUMMARY OF THE PARTIES' ARGUMENTS ON APPEAL

A. Appellants' Pertinent Positions

As explained in their opening brief, Appellants filed this action because:

1) for more than 25 years, residentially-designated units (RDUs) in regulated SRO hotels were expressly allowed to be offered for weekly terms of occupancy to hotel guests regardless of whether

the occupant intended to continue renewing the term until an occupancy for more than 31 days occurred (AOB 22-29);

2) unrestricted weekly rentals were a key component of an SRO operator's business practice distinguishing hotel (or group housing) use from dwelling units or apartment buildings (AOB 13-18, 21);

3) the City amended the HCO to immediately prohibit weekly terms of occupancy and to require terms of at least 32 days. (AOB 11) This amended definition eliminated the use of hotels specifically built as SROs and effectively required these hotels to be used and operated as residential apartments (AA 11-13, 44-45);

4) the Amendments did not include an appropriate amortization period or require the City to pay pre-termination compensation as required by California law (AOB 11-12); and

5) SRO owners are being harmed by the loss of their ability to offer RDUs for weekly terms of occupancy. (AOB 50-53) Long-settled legal principles constrain the City's power to require the immediate cessation of pre-existing, lawful uses of land. Appellant SRO owners may not be immediately deprived of their right to offer weekly rentals without appropriate safeguards designed to insure fairness and prevent excessive financial harm.

B. The City's Pertinent Positions

In opposing this appeal, the City takes several positions that are either plainly erroneous (factually or legally) or irrelevant:

1. SRO owners could previously only rent RDUs for less than 32 days if rented to San Francisco residents for residential use. (RB 8, 11-12)

This is relevant but untrue. If SRO owners did not have the right to rent as they allege here, then they cannot prevail. However, as discussed in their opening brief at pages 26-31, and as further discussed below, Appellants were allowed to rent any RDU to anyone for a minimum of 7 days.

2. The City had sufficient justification to ensure that no residentially-designated SRO room was rented to anyone for less than 32 days. (RB 14-15)

Whether this is true is beside the point. Even assuming the City can eliminate the previously recognized property right to rent on a weekly basis, the issue presented here is whether it must either provide an appropriate amortization period or pay pre-termination compensation in order to do so.

3. Appellants have not satisfied the requirements to establish a taking. (RB 19-24)

This point is irrelevant because this appeal does not involve a traditional taking claim, but, rather, the special legal rules applicable to the unique context of the immediate elimination of non-nuisance, pre-existing, lawful, nonconforming uses.

4. Appellants have not met their burden of showing irreparable harm sufficient to justify a preliminary injunction. (RB 24-29)

This is erroneous. But even assuming Appellants are not entitled to a preliminary injunction, because irreparable injury is not an element of the merits of their claim, the ultimate legal issue should still be decided in Appellants' favor – and the City does not contend this Court should not reach the merits of that issue on this appeal.

ARGUMENT

I. THIS COURT SHOULD REJECT THE CITY'S REVISIONIST HISTORY OF THE HCO'S AUTHORIZED RENTALS

A. The Court Should Hold The City To The Interpretation It Routinely – And Successfully – Advanced In Court Years Ago, Particularly Since The City Concedes That That Interpretation Trumps A Contrary, Contemporaneous Administrative Declaration

Appellants acknowledge that the threshold issue on appeal is whether they had any right to rent RDUs for less than 32 days periods prior to the 2017 HCO Amendments. The City does not deny that the Amendments prohibit weekly rentals of RDUs and require rentals of at least 32 days; indeed, that is the Amendments' primary effect. (1 AA 111, 127) The City's position on this appeal ultimately hinges on a contention – expressly rejected by the trial court – that the Amendments did not materially change anything allowed by the HCO but simply "clarify" certain provisions. (RB 14, 26; 2 AA 422) The parties have offered contrasting evidence of the City's actual, pre-2017 interpretation of the HCO's permissible rental term, and, tellingly, the City has ignored Appellants' evidence as if it did not exist. (AOB 22-27, citing 2 AA 333-360, RB 13-15, 26)

The City's position ultimately hinges on its argument that the 2017 Amendments did not, in relevant part, make a wholesale change in the terms under which SRO rooms may be rented. (RB 8-14) As an initial matter, this Court should review the record below and the rely on the actual, unambiguous words of the pre-2017 version of the HCO to reject the City's revisionist history. Putting aside the City's failure to address the trial court's rejection of its position (2 AA 422), nowhere does it even acknowledge any of the points Appellants have raised regarding the City's previous contradictory interpretation. (AOB 22-29) Two of those points state:

> "HCO §41.20 regulates Patel's property exactly like residential zoning in prohibiting tourist use of less than seven days. [ ] While neither residential zoning nor HCO §41.20 require an owner to rent to tenants for thirty days or more, they both prohibit tourist rentals of less than seven days. HCO §41.20 and Planning Code §209 cannot be meaningfully distinguished in this critical aspect."

> "Both the HCO and the Planning Code prohibit occupancies of less than seven days' duration, referred to as 'tourist use' in this brief. [ ] Patel may leave the units vacant or rent the units to non-residential tenants from seven to 30 days without violating either Ordinance."

(AOB 24-25 quoting 2 AA 354-355, 2 AA 343 respectively)

Our Supreme Court eventually adopted San Francisco's interpretation of the HCO and its view that it was unlawful "to rent a residential unit for a term shorter than seven days" (San Remo, supra, 27 Cal.4th at 651); i.e., for tourist rentals, which are "occupancies of *less than seven days' duration*", as the City told the First District in 1997. (AOB 24, quoting City's application to file amicus brief in THC v. Patel, #A077469, emph. added (AA 347-349))

The City's new position ignores the actual language of the pre-2017 HCO, and its own history of interpreting and defending the HCO in Court. (1 AA 100-103; 2 AA 329-356) As it did below, the City cites a newly-minted, self-serving declaration of the chief of the enforcement arm of its Department of Building Inspection. (RB 13, citing Rosemary Bosque declaration; AA 145-146) Also below, the City primarily relied on Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1 for the principle that her declaration should be given substantial deference. (AOB 28, AA 145-146) In their opening brief, Appellants thoroughly explained why the City's own prior cases defeat its position and why this Court should completely disregard her declaration. (AOB 28-29) In response, just

as it has failed to address and explain its own, now-contradicted admissions to this Court 20 years ago, the City simply ignores this analysis and just reasserts the Bosque declaration as supposedly representing the City's longstanding interpretation of the HCO. (RB 13, 26)

In ignoring Appellants' position on Yamaha Corp., et al., the City concedes it. (People v. Bouzas (1991) 53 Cal.3d 467, 480 - government conceded defendant's position by responding to each of his other arguments while simply ignoring the one at issue) The City should not be allowed to disavow its own previously consistent, and successfully asserted, interpretation because it does not wish to comply with the requirements for terminating lawful, nonconforming uses. (See Auto Equity Sales v. Superior Court (1962) 57 Cal.2d 450 - California Supreme Court's decisions are binding on the Court of Appeal) Like the trial court below, this Court should reject the City's current, revisionist "interpretations".

B. This Court Should Reject The City's Attempted Justifications For Its Revisionist Position On The 2017 Amendments

In an attempt to support its effort to belatedly rewrite history, and necessarily ignoring its longstanding prior legal positions, the

City's brief makes contradictory or unsupported assertions (which this Court should reject) as follows:

1. Before the HCO Amendments, state and local law required RDUs to be rented to residents only. (RB 1) Setting aside that the definition of resident is circular – someone who is already in occupancy for at least 32 days – the City does not offer any authority for this proposition at the state level, and its own interpretations going back more than 20 years show otherwise at the local level. (2 AA 329-356)

2. The City refers to "the perceived loophole exploited by certain SRO owners". (RB 1) "A 'loophole' is defined as '[a]n ambiguity, omission, or exception (as in a law or other legal document) that provides a way to avoid a rule without violating its literal requirements.'" (People v. Peau (2015) 236 Cal.App.4th 823, 833, cit. om.) The prior unchallenged right to rent RDUs on a weekly basis was not a loophole. As Appellants explained in their opening brief:

a. Before the Amendment, "most SRO tenants paid by the week, in part because this avoids customary expenses of monthly rentals such as last month's rent and deposit." (AOB 21, citing 1 AA

60; San Remo, supra, 27 Cal.4th at 674) The City simply ignores this statement, thus conceding its accuracy.

b. While the policy wisdom of the HCO Amendments is irrelevant to the law's amortize-or-pay-to-terminate requirements, and is not challenged here, the City's decision to stress the importance of maintaining SRO units by increasing the minimum rental period completely ignores the salient point of the California Supreme Court's decision in San Remo – weekly rentals are important, in part, *precisely* because they avoid certain substantial expenses associated with apartment rentals. (San Remo, supra, 27 Cal.4th at 674) A 32-day rental requirement, turning weekly SRO hotel rooms into monthly apartment rentals, would eliminate the very benefits the City itself relied on in successfully defending the pre-2017 HCO against constitutional challenge in San Remo. The City's failure to acknowledge and explain its shifting interpretations underscores the meritlessness of the position it now advocates in this litigation.

3. The practical difference for law-abiding SRO owners is minimal. (RB 1) This is patently untrue since law-abiding SRO owners just lost a large group of potential hotel customers – those persons who seek to rent a room primarily on a weekly basis and,

regardless, for periods of less than 32 days. SROs have also lost an entire business model, the renting of rooms to any person for periods as short as, but not less than, one week. The difference is not trifling since SRO owners could previously rent to anyone by the week; if an occupant renewed for a fifth week, and if that resident became entitled to rent control, so be it – but it was up to that occupant, not a City regulation. Now, the HCO restricts all potential SRO rentals to 32 days or longer, whether the potential guest can afford, or wants, to rent for those terms.

4. The HCO Amendments facilitate enforcement against unscrupulous owners who improperly forced residents out to avoid rent control. (RB 1-2) The Amendments do not facilitate anything other than eliminating anyone's right to rent for periods of less than 32 days. Moreover, the City's position simply begs the question why not just enforce the prior law? It offers no answer. In any event, the wisdom of, and justification for, the Amendments are not relevant here. Presumably, the long line of California cases affirming the right of property and business owners to maintain existing, lawful uses considered and rejected similar policy arguments.

5. "The 2017 Amendments simply imposed explicit

regulations . . . ." (RB 2) The City does not explain how or where the same prohibition previously existed, implicitly or otherwise, for the simple reason that it did not. Similarly, the City does not explain what it means in stating that the Amendments now provide an objective standard, or just what was supposedly subjective about the permission to rent weekly. (RB 14-15)

6. The Amendments do not destroy or eradicate the SRO business. (RB 2) While this is not the legal standard, the Amendments actually do have such effect by compelling the owners of such hotel buildings – the rooms of which were never designed, constructed, or conceived of as apartments – to now make apartment-type rentals only. Ultimately, however, the City's position here is irrelevant since there is no law providing that the amortize-or-pay-to-terminate requirement only applies where the entire business potential of real property is destroyed or eradicated by elimination of a non-nuisance, legal nonconforming use.

II. THE CITY FAILS TO REBUT THE LONG LINE OF CASES HOLDING THAT MUNICIPALITIES MAY ONLY ELIMINATE ON-GOING, NON-NUISANCE, NONCONFORMING USES WITH AN APPROPRIATE AMORTIZATION PERIOD OR PRE-TERMINATION COMPENSATION

A. The Amortize-Or-Pay-To-Terminate Requirement Does Not Require That All Uses Of The Subject Property Be "Eradicated" Or "Eliminated"

The City urges a broader point that the amortization-or-pay-to-terminate requirement only applies if the challenged ordinance completely eliminates or eradicates all existing legal uses of property. (RB 19) Such a use limitation would be a taking because it would be an economic regulation that has gone too far. (Bronco Wine, supra, 129 Cal.App.4th at 1030) However, the City's contention does not follow from any of the cases it cites. The fact that some of Appellants' cases do involve complete elimination of existing uses is irrelevant because *none* of the legal analysis in those cases turns on that distinction, and the City underscores this by not citing anything in those cases supporting its position.

In fact, California law is quite the opposite: "The elimination of existing uses within a reasonable time *does not amount to a taking of property* nor does it necessary restrict the use of property so that it cannot be used for any reasonable purpose." (City of Los Angeles v.

Gage (1954) 127 Cal.App.2d 442, 460, emph. added) Additionally, the City appears to argue that the HCO Amendments should not be considered like zoning laws for this purpose. (RB 18) However, ordinances that regulate land use are equivalent to zoning ordinances. (Del Oro Hills v. City of Oceanside (1995) 31 Cal.App.4th 1060, 1072, fn.6, citing Lesher Communications, Inc. v. City of Walnut Creek (1990) 52 Cal.3d 531, 541; accord Building Industry Assn. v. City of Oceanside (1994) 27 Cal.App.4th 744, 762, fn. 10, citing Lesher)

B. Each Of The City's Attempts To Distinguish Appellants' Cases Fails

1. *Jones v. City of Los Angeles*

It is correct that Jones v. City of Los Angeles (1930) 211 Cal. 304 involved an ordinance that prohibited all sanitariums in a certain area and that the affected existing buildings had no current uses other than as sanitariums. However, the analysis in Jones was not limited to complete cessation of all use. (Jones, supra, 211 Cal. at 314-321) Jones is not a paradigmatic regulatory takings case premised on a taking of all economically beneficial use of a property, and its progeny, all of which support Appellants, are not takings cases of that kind, either. In fact, the standard set forth in Jones clearly favors

Appellants: "where . . . a retroactive ordinance causes substantial injury and the prohibited business is not a nuisance, the ordinance is to that extent an unreasonable and unjustifiable exercise of police power." (Jones, supra, 211 Cal. at 321) "[S]ubstantial does not mean overwhelming." (Lawson v. Reynolds Industries Inc. (9th Cir. 2008) 264 Fed.Appx. 546, 549) "[T]he term 'substantial' does not mean the greatest part or even a very great portion. . . . (Francis Edward McGillick Foundation v. C.I.R. (3d Cir. 1960) 278 F.2d 643, 647)

2. *City of Los Angeles v. Gage*

While Gage involved the elimination of all non-residential use through a re-zoning of property for residential use only, its analysis equally applies where only particular uses are eliminated. (Gage, supra, 127 Cal.App.2d at 453-461) Here, an entire kind of business is eliminated. Appellants are now required to be landlords offering apartment use and may no longer operate non-apartment hotel uses for shorter than 32 day terms. Weekly rentals are a significant use as shown by the City setting that minimum rental term in 1990. (See San Remo, supra, 27 Cal.4th at 674) A particular industry has relied on, and operated under, the right to offer 7-day rentals. (1 AA 60) Now

the City has taken that away. Nothing in Gage undercuts Appellants' position.

3. *Livingston Rock*

As for Livingston Rock, the City merely states that the ordinance therein prohibited plaintiff from continuing to operate its lawful cement mixing business in the rezoned district. (RB 18) It does not explain how this particular fact undercuts Appellants' argument. To the extent it means that this line of cases only applies to the elimination of all uses of a particular building, nothing in Livingston Rock, nor any of the other cases, stands for that proposition. The general rule is that the elimination of a nonconforming use may only occur under certain conditions. (Livingston Rock, supra, 43 Cal.2d at 127) The Amendment here eliminated a nonconforming use without complying with those mandated pre-conditions – i.e., an appropriate amortization period or pre-cessation compensation.

4. *Hansen Brothers*

Similarly, nothing in Hansen Brothers turned on any material distinction between that case and this one. Hansen Brothers states: "However, if the law effects an unreasonable, oppressive, or

unwarranted interference with an existing use . . . the ordinance may be invalid as applied to that property unless compensation is paid." (Hansen Brothers, supra, 12 Cal.4th at 551-552) Whether the elimination of weekly rentals in favor of 32-day rentals is unreasonable or unwarranted, it is certainly oppressive because it undermines an entire class of business that had depended on that right as a key element of its business. To the broader point, an oppressive interference with an existing use is not the same as eliminating all use.

5. *Castner v. City of Oakland*

While Castner v. City of Oakland (1982) 129 Cal.App.3d 94 did involve the elimination of plaintiff's entire business, it reiterated the doctrine upon which Appellants rely in a manner contrary to the City's implied position:

> However, California cases have firmly held zoning legislation may validly provide for the eventual termination of nonconforming property uses without compensation if it provides a reasonable amortization period commensurate with the investment involved.
>
> (Castner, supra, 129 Cal.App.3d at 96)

The HCO Amendments' fatal flaw is that they make no attempt to do this; rather, the City attempts to escape its legal obligations by

conjuring a revisionist history in which the terminated uses simply never existed or were permitted at all.

6. *Santa Barbara Patients' Collective Health Co-op. v. City of Santa Barbara*

Again, while this case did present the issue of complete cessation, and actually involved an amortization period - albeit insufficient - nothing in the court's analysis is limited to such cases. (Santa Barbara Patients' Collective Health Co-op. v. City of Santa Barbara (C.D. Cal. 2012) 911 F.Supp.2d 884, 893)

7. Appellants' Sign/Billboard Cases

Nothing in the sign/billboard cases that Appellants have cited turns on the fact that a sign/billboard was being removed. (AOB 36-37) Instead, they all involved exactly the issue here - elimination of a lawful nonconforming use. These cases simply happened to involve the removal of signs/billboards.

III. THE CITY'S "NO-IRREPARABLE-HARM" ARGUMENT DEPENDS UPON IT ESTABLISHING THAT SRO OWNERS HAD NO RIGHT TO MAKE UNRESTRICTED WEEKLY RENTALS

Whatever the extent of other laws' impact on the SRO hotel business and whatever the extent of SRO hotel owners' rights to operate their hotel businesses as they prefer, if Appellants' (and the

City's prior) interpretation of the previous version of HCO § 41.20 is correct, then the City cannot deny that it authorized a particular kind of business to operate lawfully and in a manner that is not a public nuisance. That business is the SRO hotel business *predicated on the right to offer weekly rentals to anyone* because tourist rentals, by their very definition, were any rentals for less than 7 days. Whether any particular SRO hotel was, or was not, prohibited from preventing an SRO unit occupant from remaining in possession long enough to acquire rent control is irrelevant. Those SRO owners who chose to obey the law cannot have a critical use eliminated without proper constitutional safeguards simply because there are other owners whose business model depends on weekly rentals plus some other unlawful act. (Cf. Tom v. City and County of San Francisco (2004) 120 Cal.App.4th 674, 680 - "focus is on persons and properties that would be affected by the ordinance"; Daro v. Superior Court (2007) 151 Cal.App.4th 1079, 1099 - "A lawful business activity is not transformed into an 'unlawful business practice' simply because it has some relationship to an activity forbidden by law.")

The act of offering SRO units in compliance with the weekly rental right permitted by the immediately prior version of the HCO

was not an unlawful act and was not a nuisance. (Cf. San Remo, supra, 27 Cal.4th at 651) If the City wishes to choose the extreme measure of eliminating the SRO business in order to eliminate improperly-operating SROs, it may do so, but only so long as it complies with the constitutional safeguards which have existed for over a hundred years as explicated in Dobbins v. City of Los Angeles (1904) 195 U.S. 223, 236, 25 S.Ct. 18, 20, and the many California cases which have protected property owners and businesses in the many decades since. Again, this rule was succinctly stated by our Supreme Court in 1954:

> The rights of the users of property as those rights existed under prevailing zoning conditions are well recognized and have always been protected. Accordingly, a provision which exempts existing nonconforming uses is ordinarily included in rezoning ordinances because of the hardship and doubtful constitutionality of compelling the immediate discontinuance of nonconforming uses.
>
> (Livingston Rock, supra, 43 Cal.2d at 127, cites om.)

IV. THE CITY'S TAKINGS ARGUMENTS ARE IRRELEVANT

The City's respondent's brief from Discussion-I-H on page 19 through 23, and III.B. (page 26) through 29 address classic regulatory

takings issues, and not the law governing elimination of preexisting lawful nonconforming uses that applies in the specific context involved here. Classic takings law protects the actual value of the property by requiring government to pay for what it takes, but government is allowed to take the property immediately. "[The takings clause of the 5th Amendment] is designed not to limit the governmental interference with property rights per se, but rather to secure compensation in the event of otherwise proper interference amounting to a taking." (First English, supra, 482 U.S. at 315, cites om., 107 S.Ct. at 2385-2386) Indeed, implicit in the concept that the government may permissibly take certain property rights subject only to post-deprivation compensation is that neither pre-cessation compensation nor an appropriate amortization period are required.

The law on which Appellants rely differs critically from the classic takings analysis because it is designed to protect related but distinct interests in a specific context. Due process and takings protections applied in the context of on-going business operations protect not only property rights and investments, but guard against unfair application of political power against lawfully established but newly-disfavored uses. (See Ixcot v. Holder (9th Cir. 2011) 646 F.3d

1202, 1207 - due process protects against political pressures that seek to use legislation as a means of retribution against unpopular groups or individuals) This doctrine protects property owners against immediate compelled cessation of substantial non-nuisance uses of property that had been legal until certain interested parties motivated a sufficient percentage of relevant legislators to eliminate the use. Accordingly, Appellants need not respond to the City's standard regulatory takings arguments on their merits because they pertain to inapposite claims and situations not presented in this appeal. Those claims remain alive below. Appellants' right to continue making weekly rentals until the City complies with applicable constitutional protections is protected by the case law specifically addressing the requirements for eliminating lawful, nonconforming uses, and does not rely upon the distinct regulatory taking framework and analysis that the City improperly attempts to apply.

CONCLUSION

As the City and Tenderloin Housing Clinic explained to this Court in reasoned appellate arguments some 20 years ago, the HCO permitted unrestricted rentals of SRO units so long as those rentals were for at least 7 days. In 2017, the City abruptly decided to

eliminate this longstanding right through the functional equivalent of re-zoning the entire City to prohibit rentals of SRO hotel rooms for periods of less than 32 days. All SRO owners are thus immediately deprived of a longstanding, legal right that was sufficiently important in 1990 to codify, and that has been exercised and relied on for nearly three decades since. Under the HCO Amendments, they cannot make such rentals, they must turn away customers who only want to rent on such terms, and they have effectively been forced into the residential apartment business and out of the SRO hotel business. Generally, and regardless of its wisdom as a policy matter, the City can do this through a proper exercise of its police power. However, here the City did not just prospectively eliminate this previous right (which would recognize lawful, nonconforming uses with their own legal rights and protections), but it required SRO owners to immediately cease renting SRO units for less than 32 days. As decades of case law holds, the City is constitutionally prohibited from requiring termination of lawful, non-nuisance, nonconforming uses in this manner without an appropriate amortization period or pre-termination compensation. This Court should reverse the trial court's order denying Appellants' motion for preliminary injunction.

There is one important point that both Appellants and the City appear to agree on. Even if there is some deficiency in Appellants' showing needed to reverse the denial of preliminary injunctive relief, the Court should still resolve the ultimate legal issue presented in this appeal – the constitutional validity of the HCO Amendments – on its merits. (AOB 57-58, not addressed in City's brief) Accordingly, this Court should reverse the trial court's order denying Appellants' motion for preliminary injunction or, if it must affirm, do so in a manner that properly resolves the merits of Appellants' non-CEQA claims, which present a purely legal issue on appeal to this Court.

Respectfully Submitted,

February 22, 2018

ZACKS, FREEDMAN & PATTERSON, PC

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By: Andrew M. Zacks

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Date: February 22, 2018 ZACKS, FREEDMAN & PATTERSON, PC

/s/ James B. Kraus

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Hotel Des Arts, LLC, and Brent Haas

APPEAL #A151847

COURT OF APPEAL - STATE OF CALIFORNIA

FIRST DISTRICT - DIVISION 5

SAN FRANCISCO SRO HOTEL COALITION, an unincorporated association, HOTEL DES ARTS, LLC, a Delaware limited liability company, and BRENT HAAS,

Plaintiffs and Appellants,

v.

CITY AND COUNTY OF SAN FRANCISCO, a public agency, acting by and through the BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO; DEPARTMENT OF BUILDING INSPECTION OF THE CITY AND COUNTY OF SAN FRANCISCO; EDWIN LEE, in his official capacity as Mayor of the City and County of San Francisco

Defendants and Respondents

APPELLANTS' OPENING BRIEF

In Appeal from the Denial of a Motion for Preliminary Injunction

San Francisco Superior Court
CPF17515656

The Hon. Teri L. Jackson

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL First APPELLATE DISTRICT, DIVISION 5	COURT OF APPEAL CASE NUMBER: A151847
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 184118 NAME: James B. Kraus FIRM NAME: Zacks, Freedman & Patterson, PC STREET ADDRESS: 235 Montgomery Street, Suite 400 CITY: San Francisco STATE: CA ZIP CODE: 94104 TELEPHONE NO.: 415-956-8100 FAX NO.: E-MAIL ADDRESS: james@zfplaw.com ATTORNEY FOR (name): Appellants S.F. SRO Coalition, Hotel Des Arts, Brent Haas	SUPERIOR COURT CASE NUMBER: CPF-17-515656
APPELLANT/ PETITIONER: San Francisco SRO Hotel Coalition RESPONDENT/ REAL PARTY IN INTEREST: City and County of San Francisco	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

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1. This form is being submitted on behalf of the following party *(name)*: San Francisco SRO Hotel Coalition, Hotel Des Arts, LLC

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208. - Coalition

   b. [X] Interested entities or persons required to be listed under rule 8.208 are as follows: (Hotel Des Arts, LLC)

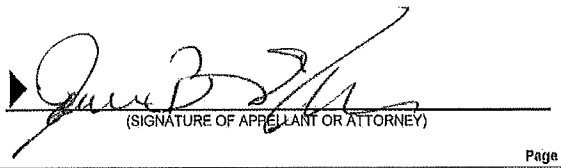
Full name of interested entity or person	Nature of interest *(Explain):*
(1) Stefan Forget	Member of Hotel Des Arts, LLC
(2) Florence Solal	Member of Hotel Des Arts, LLC
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: November 6, 2017

James B. Kraus
(TYPE OR PRINT NAME)


(SIGNATURE OF APPELLANT OR ATTORNEY)

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I. OVERVIEW

This is an appeal from the denial of a preliminary injunction against enforcement of a San Francisco land use ordinance amendment. (2 Appellants' Appendix ("AA") 426-427) The San Francisco Superior Court found that Plaintiffs had not established a vested right to continue previously-lawful operations but did not reach the balance of hardships question. (2 AA 427) On this appeal of the denial, this Court should determine that the ordinance is facially invalid. It should further determine that, even though the trial court did not reach the factor of relative hardships – which is not an issue at trial – Plaintiffs will win on the merits, which present only pure questions of law.

California Property owners and users are protected against unfettered retroactive application of land use regulations under the doctrine of lawful, prior nonconforming uses. (E.g. Jones v. City of Los Angeles (1930) 211 Cal. 304, 321; Hansen Brothers Enterprises, Inc. v. Board of Supervisors (1996) 12 Cal.4th 533, 552) This doctrine recognizes the constitutional right of property owners (and their commercial tenants) to maintain existing, lawful land uses that are not nuisances per se, and that local governments may not force the immediate discontinuance of these lawful uses without either compensation as a pre-condition of the discontinuance or an appropriate amortization period to enable the property owner to recoup as

much of its investment as is reasonably practicable. (Hansen Brothers, supra, 12 Cal.4th at 552) Our Supreme Court has stated that the main purpose of this doctrine is to avoid questions as to the constitutionality of new zoning and other use laws' application to such previously-existing lawful land uses. (Hansen Brothers, supra, 12 Cal.4th at 552)

As is relevant to this dispute, San Francisco's Planning Code authorizes what are known as "single room occupancy" rooms and hotels ("SROs"). (2 AA 401-403, 407-411, 405; S.F. Planning Code §§ 102, 209.1, 210.2) These uses have long been given the zoning classification of "group housing". (S.F. Planning Code § 102) In addition, for decades, San Francisco has also regulated the operation of SROs in its Administrative Code at chapter 41 (the "Residential Hotel Unit Conversion and Demolition Ordinance" – "Hotel Conversion Ordinance" or "HCO"). The City has long-recognized that SROs play a vital role in providing housing for both lower-income residents and visitors. SRO owners, in turn, have relied on the City's regulatory scheme to be able to operate their businesses as SROs, not as rent-controlled apartments.

Yet in 2017, the City abruptly pulled the rug out from under SRO owners and occupants alike when it amended the HCO to immediately, and without compensation, bar the rental of SRO rooms for less than *32* days, instead of less than *7* days as was previously permitted. (1 AA 111, 127 – the "HCO Amendments") This change would immediately make all SRO

units rent-controlled apartments under local law once a person remained in occupancy of the same unit for at least 32 consecutive days. (S.F. Administrative Code ("Rent Ordinance") §§ 37.2(r)(1), 37.3) The City's volte-face stripped SRO owners of their vested property rights to offer rentals for a minimum term of 7 days and without the penalties of rent and eviction controls attaching. However, San Francisco failed to comply with that long-established doctrine requiring either immediate compensation for affected owners or delaying the change as to those owners. (Infra at 35-45) Here, in eliminating SRO rentals between 7 and 30 days, the City followed neither permissible option. (1 AA 106-131)

A coalition of SRO hotel owners/operators and others filed this lawsuit to preliminarily and permanently enjoin the 2017 amendment. (1 AA 12-33) The trial court refused to issue a preliminary injunction because it believed that the law allows the City to the mandate the conversion of SRO rooms immediately without restriction, and that Plaintiffs had not established a vested right to continue operating as hotels. (2 AA 421-422) However, the trial court's order was based on a legally-erroneous interpretation about the nature of vested rights in the nonconforming use context. (2 AA 421-422) Because the HCO Amendments deprive all SRO owners/operators of their preexisting rights to continue operating SROs, not rent-controlled apartments, and the Amendments took away this right without compensation or a reasonable amortization period, the trial court

erred in failing to find that the balance of hardships favors Plaintiffs. Because "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury'" (Melendres v. Arpaio (9th Cir. 2012) 695 F.3d 990, 1002, quoting Elrod v. Burns (1976) 427 U.S. 347, 373, 96 S.Ct. 2673), the record compels a finding that the balance of hardships favors Plaintiffs.

II. STATEMENT OF FACTS

A. Single Room Occupancy Units And Hotels

An SRO unit is a small hotel room, usually up to 350 square feet, that generally lacks private bathrooms and kitchens. (1 AA 59-60) SROs generally use shared bathrooms. (1 AA 59-60) Some may have communal kitchens; for others, residents must use their own microwaves, hot plates, etc., or in some cases, bring prepared food in. (1 AA 59-60) Essentially, they are like college dormitory rooms. (1 AA 59-60) These units have long provided a critical supply of relatively low-cost rooms for rent on a weekly, or multi-week, basis. (1 AA 60) While SRO units "may not be an ideal form of housing, such units accommodate many whose only other options might be sleeping in public spaces or in a City shelter" and "residential hotel units serve many *who cannot afford security and rent deposits for an apartment.*" (San Remo Hotel v. City and County of San Francisco (2002) 27 Cal.4th 643, 674, emph. added) A wide variety of people rent these rooms: lower-income people who would be homeless if their only other

option was to rent in a traditional, monthly manner; short-term visitors who cannot afford tourist hotel rates; people coming in to work in the City for short periods of time; and even medical patients and their families, who also cannot afford to pay tourist rates. (1 AA 60)

B. The Parties

1. San Francisco SRO Hotel Coalition

Plaintiff San Francisco SRO Hotel Coalition (the "Coalition") is an unincorporated association whose members are private, for-profit owners and operators of numerous residential hotels in San Francisco that are subject to regulation under the HCO. (1 AA 59) The HCO currently regulates approximately 18,000 residential units within about 500 hotels, of which approximately 300 are owned by for-profit entities whose interests are represented in this suit by the Coalition. (1 AA 59)

2. Hotel Des Arts, LLC

Plaintiff Hotel Des Arts, LLC ("Des Arts") is a Delaware limited liability company, in active standing with the California Secretary of State. (1 AA 75-76, 81) In 2012, the Des Arts's hotel – the "Hotel Des Arts" located at 447 Bush Street, San Francisco, was purchased by Stephan Forget and Florence Solal (collectively, the "Forgets"). (1 AA 76) When the Forgets bought the Hotel Des Arts, it needed substantial refurbishing. (1 AA 76) The Forgets spent thousands of dollars on physical improvements, new paint, new room furnishings, and installing art throughout the hotel,

including in each room. (1 AA 76) In 2016, it paid $215,638.21 in various City taxes (hotel tax, gross receipts tax, payroll tax, property tax). (1 AA 77)

The Hotel Des Arts contains 51 guest rooms, 38 of which are designated "residential" under the Hotel Conversion Ordinance ("HCO") and 13 of which are designated "tourist". (1 AA 76) Eleven of the rooms use shared bathrooms. (1 AA 76) The Hotel Des Arts has one permanent resident. (1 AA 76) There are no kitchen facilities anywhere on the premises. (1 AA 76) The rooms do not even have microwave ovens and are not allowed to under law. (1 AA 76) The Hotel Des Arts takes reservations from a variety of people: university students; people coming to work in San Francisco for short periods of time; people considering moving to San Francisco who want to visit the City for 1-2 weeks first; and, of course, some tourists. (1 AA 76)

Both the Hotel Des Arts and the Carl Hotel, discussed next, are in districts that allow SROs. (2 AA 413, 416) The Hotel Des Arts strictly rents in compliance with the HCO, meaning that the residential rooms must (prior to the recent HCO Amendments) be rented for a minimum of 7 days. (1 AA 76) During the offseason as designated under the HCO, the Hotel Des Arts usually books 7-10 day rentals. (1 AA 76) After the HCO Amendments took effect, the Hotel Des Arts shifted as many bookings to the 13 tourist rooms as possible. (1 AA 76)

If the Hotel Des Arts is forced to rent all of its residential rooms for at least 32 consecutive days, meaning that the occupants become rent-controlled, apartment tenants rather than hotel guests, it would have to terminate the employment of some of its employees and reduce the hours of others. (1 AA 76-77) It currently has six house keepers earning between $13.00 and $18.00 per hour, working between 32 and 40 hours per week. (1 AA 76-77) With only 13 tourist rooms, it would probably terminate five of the six house keepers. (1 AA 76-77) It would also have to reduce front desk staffing. (1 AA 76-77) Indeed, the rooms would not be affordable to people who would typically live in SRO rooms. (1 AA 76-77) This is because it would have to charge first month's rent, last month's rent, and security deposit. (1 AA 76-77) Because there is no way to separately meter each room, the hotel would have to build in all utilities as well. (1 AA 76-77) Such a hotel would also be substantially harder to manage because it would have to respond to both short-term guests and long-term residents. (1 AA 76-77) The hotel also currently employs two maintenance persons and if forced to operate under the Amendments, will have to let one go and/or reduce hours. (1 AA 76-77) However, Des Arts would probably not rent the residential units in order to protect its vested property rights, resulting in the same need to reduce services and staffing, and ultimately, an overall loss of housing as well. (1 AA 77) Shuttering the non-tourist rooms would also force Des Arts to eliminate them as a forum for local artists to display

their work, which would harm the local art community. (1 AA 77)

3. The Carl Hotel

Another Coalition SRO is the Carl Hotel located at 198 Carl Street. (1 AA 60-62) As of April 20, 2017, the Carl had 28 residential rooms but only three long-term permanent residents. (1 AA 62) The Carl is about 4 blocks from UCSF medical center on Parnassus Avenue. (1 AA 62) Over the years, many of its guests have included medical patients and their family members or friends, due to its proximity to UCSF medical center and its weekly rates that are more affordable than tourist hotels. (1 AA 62-72) If prohibited from making weekly rentals, the Carl Hotel will be unavailable to offer accommodations to the families of patients undergoing major, and often life-changing, surgery. (1 AA 62)

4. Brent Haas

Brent Haas ("Haas") is a hair stylist and visual artist who cares for his elderly, widowed mother (age 82) who lives alone in Ohio. (1 AA 74) He moved to San Francisco right after Loma Prieta in 1989. (1 AA 74) His father died about 30 years ago and he has been visiting his mother regularly since. (1 AA 74) These visits are important to both of them. (1 AA 74) Haas is a California resident – he gets healthcare here, pays California resident taxes, and considers San Francisco his home – but due to the circumstances of being the primary caregiver for his aging mother, he has to spend considerable time in Ohio, her state of legal residency. (1 AA 74)

For the past 12 years, he has generally spent approximately 10 days to 3 weeks out of every month living and working in the City, and he has spent the balance in Ohio caring for his mother. (1 AA 74) When he is in San Francisco for, he generally stays at the Twin Peaks Hotel on Market Street. (1 AA 74) The ability to rent rooms there for less than a month – meaning he does not pay first month, last month, and security deposit – is a godsend. (1 AA 74) Not having to pay expenses that he would not incur because of the ability to rent weekly or biweekly enables him to visit his mother. (1 AA 74) On rare occasion, he is in San Francisco for longer than 3 weeks in which case he stays at the S.F. Zen Center. (1 AA 74)

If San Francisco prohibits hotels like the Twin Peaks from being able to rent to him on a weekly or biweekly basis, it would be very difficult for him to continue to visit his mother regularly. (1 AA 74) He would have to pay much more in rent and would have little time to visit her. (1 AA 74) He certainly could not be gone for 2-3 weeks and not work if he were paying rent on an apartment or he would have to leave San Francisco. (1 AA 74) He does not want to do that any more than any other San Franciscan wants to. (1 AA 74)

5. City And County Of San Francisco

"The city and county of San Francisco is a municipal corporation, organized and existing under and by virtue of the laws of the state of California, operating under and by authority of a charter." (Stuart Arms Co.

v. City and County of San Francisco (1928) 203 Cal. 150, 151) The City enacted the Amendments at issue in this action. (1 AA 84)

C. San Francisco's Hotel Conversion Ordinance

1. History Of The Challenged Ordinance

San Francisco's HCO is a local ordinance, codified at chapter 41 of the San Francisco Administrative Code, that regulates the rental and use of SRO units. (Bullock v. City and County of San Francisco (1990) 221 Cal.App.3d 1072, 1080; S.F. Administrative Code § 41.1; 1 AA 84; 2 AA 117-141) Its predecessor was a 1979 moratorium on the demolition or conversion of SRO units to tourist units or condominiums in response to a perceived serious housing shortage for low-income and elderly residents caused by such conversions. (Terminal Plaza Corp. v. City and County of San Francisco (1986) 177 Cal.App.3d 892, 898) In February 1981, the City replaced the moratorium with the permanent HCO. (Terminal Plaza, supra, 177 Cal.App.3d at 898) As revised and redrafted through amendments later that year, the HCO required owners of SRO units to obtain a permit prior to demolishing or converting such SRO units to any other use. (Terminal Plaza, supra, 177 Cal.App.3d at 898) A unit's designation as "residential" or "tourist" was determined as of September 23, 1979, by its occupancy status according to definitions contained in, and documented pursuant to, procedures specified in the HCO. (Terminal Plaza, supra, 177 Cal.App.3d at 898)

By 1990, the City had amended the HCO to change the allowable occupancy period of residential rooms from a minimum of two days to at least seven days (i.e., weeklies). (1 AA 100-103) As Plaintiffs discuss in depth, infra at 23-24, this change is at the heart of the dispute in this appeal. In 1990, the City amended the HCO to enable certain nonprofit organizations (specifically, Tenderloin Housing Clinic ("THC")) to be "interested parties" for standing to enforce the HCO and also required such parties to report lawsuits to the City. (1 AA 103; S.F. Administrative Code § 41.20(e); see also Tenderloin Housing Clinic, Inc. v. Astoria Hotel, Inc. (2000) 83 Cal.App.4th 139, 141 - THC sued hotel for violating HCO) Accordingly, THC actually acts as the primary enforcer of the HCO through private litigation. (2 AA 322-337, 353-360)

2. The Purpose Of The HCO

The stated purpose of the HCO 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." (1 AA 84, S.F. Administrative Code § 41.2) In enacting the HCO, the City made certain findings, including that:

> (a) There is a severe shortage of decent, safe, sanitary and affordable rental housing in the City and County of San Francisco and this shortage affects most severely the elderly, the disabled and low-income persons.
> ...

> (c) Many of the elderly, disabled and low-income persons and households reside in residential hotel units.
>
> ...
>
> (j) The tourist industry is one of the major industries of the City and County of San Francisco. Tourism is essential for the economic well-being of San Francisco. Therefore, it is in the public interest that a certain number of moderately priced tourist hotel units be maintained especially during the annual tourist season between May 1st and September 30th.
>
> (1 AA 84-86; S.F. Administrative Code § 41.3)

When the HCO was originally enacted, most SRO tenants paid by the week, in part because this avoids customary expenses of monthly rentals such as last month's rent and deposit. (1 AA 60) Until the challenged amendments, weekly rentals to anyone were lawful even if the weekly occupants failed to become permanent, residential rent-controlled tenants by staying for at least thirty days. (S.F. Administrative Code § 41.20(a)(2); 1 AA 102; 2 AS 322-361) The HCO also allowed SRO hotel operators to rent vacant units as short-term rentals of less than 7 days to tourists during the designated tourist season (May 1-September 30) without being deemed to have "converted" such SRO units to unlawful tourist or transient use. (Terminal Plaza, supra, 177 Cal.App.3d at 899) Thus, the ability of SROs to lawfully offer and provide short-term, weekly rentals has for decades provided a vital public service to the most economically-disadvantaged residents of San Francisco, as well as its less-affluent visitors.

3. Prior to the 2017 Amendment, The City Consistently Interpreted The HCO To Prohibit Rentals Of Residential Units Only For Periods Of Less Than 7 Days

In the trial court, the City defended the validity of the 2017 HCO amendment by claiming that it was not a substantive change but instead a mere clarification of existing law: "The Amendments to the HCO define 'tourist or transient use' and clarify San Francisco's long-standing interpretation of the HCO. There are no substantive changes in the obligations of SRO owners." (1 AA 142, 144-145) In other words, according to the City, SRO owners have never had the right to rent, unfettered, for periods of 7-30 days except to permanent residents. However, on reply, Plaintiffs provided the trial court with a great deal of evidence of a contrary historical interpretation by both the City and THC in litigation – both in appellate arguments and trial court stipulated settlements. (2 AA 319-369) Because the past interpretation of the HCO is crucial to whether Plaintiffs have had a lawful right to make rentals of 7-30 days, and because the City will undoubtedly argue that the trial court erred in finding in favor of Plaintiffs in this regard, Plaintiffs lay the City's prior positions out, in detail, here:

In 1990, THC brought an HCO suit against Bhazubhai Patel, owner of the Beach Motel near the beach end of Judah Street. (2 AA 322-324 – THC v. Patel, San Francisco Superior Court #921307, First District Court of Appeal, Div. 2, #A077469) This lawsuit was originally concluded when

Patel and THC stipulated to the entry of a judgment permanently enjoining Patel: "from renting or offering to rent any room at the Beach Motel, . . . for a term of tenancy less than seven (7) days; . . ." (2 AA 322) Nothing in this stipulated judgment required Patel to rent to permanent residents for 7-30 day rentals. (2 AA 326-327)

In 1995, THC accused Patel of violating the 1990 injunction and sued him again. (THC v. Patel, San Francisco Superior Court #974667) In 1996, Patel invoked the Ellis Act and moved, in the first case (#921307), to dissolve the injunction on the grounds that it was no longer applicable. The Superior Court granted the motion. (2 AA 329-331) The City and THC joined forces to file a petition for writ of mandate in the Court of Appeal. (2 AA 329-331) While that petition did not discuss HCO § 41.20, it does show the connection between the City and THC in enforcing the HCO.

In 1997 and 1998, in appellate litigation arising from the Beach Motel cases, the City and THC took the position before this Court that the HCO allows rentals of at least 7 days without regard to permanent residence status. (2 AA 333-357) Supporting this, Plaintiffs requested that the trial court take judicial notice of the following documents:

1. May 7, 1997 - Excerpt of THC's Respondent's brief in THC v. Patel, #A077469, arising from the 1990 THC v. Patel case)

> "Moreover, while subsection (b) of Section 41.20 requires a minimum term of one week, subsections (a) and (c) do not. Like Planning Code section 209, subsections (a) and (c) regulate only the length of

> occupancy, not the term of the rental. The term may be daily, weekly, monthly, or otherwise, as long as actual occupancy is for at least seven days."
>
> (2 AA 354-355)

2. May 8, 1997 – Excerpt of City's application to file an amicus brief in an appeal in THC v. Patel, #A077469: "Both the HCO and the Planning Code prohibit occupancies of less than seven days' duration, referred to as 'tourist use' in this brief. [ ] Patel may leave the units vacant or *rent the units to non-residential tenants from seven to 30 days without violating either Ordinance.*" (2 AA 343, emph. added)

3. February 6, 1998 – City's application to file amicus brief in the now-consolidated appeal in THC v. Patel (#A077469 with #A080669 (arising from the 2nd Patel case – S.F. Superior Court #974667)): "The injunction prohibited Patel from renting any room in the Beach for an occupancy of less than seven days, namely, for tourist use. . . ." (2 AA 349)

4. June 17, 1998 – THC's appellant/cross-respondent's reply brief in the consolidated appeal in THC v. Patel (#A077469 with #A080669 arising from S.F. Superior Court #974667):

> "HCO §41.20 regulates Patel's property exactly like residential zoning in pro-hibiting tourist use of less than seven days. [ ] While neither residential zoning nor HCO §41.20 require an owner to rent to tenants for thirty days or more, they both prohibit tourist rentals of less than seven days. HCO §41.20 and Planning Code §209 cannot be meaningfully distinguished in this critical aspect."
>
> "HCO § 41.20(a) (1) and (3) do not regulate the term

> of a tenancy at all, which may be daily, weekly, monthly, or other-wise. The subsections only require that actual occupancy be at least seven days."
>
> (2 AA 354, 355)

Indeed, in upholding the HCO's in-lieu fee requirement against a constitutional challenge, the California Supreme Court's ultimate position on residential unit rentals is consistent with the City's: "The HCO makes it unlawful to eliminate a residential hotel unit without obtaining a conversion permit or to rent a residential unit for a term shorter than seven days." (San Remo Hotel, supra, 27 Cal.4th at 651, citing S.F. Administrative Code § 41.20(a)) San Remo Hotel was decided 15 years ago. As late as *2016*, THC was continuing to stipulate to injunctions in HCO enforcement actions that only enjoined the renting of rooms for a period of less than 7 days – without regard to the residency status of those occupants. (2 AA 359-360 (the Carl Hotel))

4. The 2017 HCO Amendments Materially Changed The HCO To Plaintiffs' Substantial Detriment

The HCO Amendments became effective on March 19, 2017. Under the Amendments, Plaintiffs are immediately and permanently prohibited from engaging in acts that were previously lawful under the HCO. (1 AA 5-11, 127) As relevant here, the key provisions of the Amendments are:

(1) redefining prohibited "tourist or transient" use and "unlawful actions" to entirely eliminate SRO operators' pre-existing year-round right

to rent SRO units on a weekly basis (1 AA 111; S.F. Administrative Code § 41.4 - "tourist or transient use");

(2) prohibiting the rental of SRO units (except in compliance with the HCO's restrictive seasonal tourist rental provisions) for any term less than 32 days, thus effectively converting all SRO hotel units into apartments for at least half the year, and irrevocably subjecting them to the restrictions of the City's Rent and Eviction Control Ordinance. (1 AA 127; S.F. Administrative Code § 41.20(a)(2))

5. At the Trial Court Hearing, The City Could Not Defend Its More Than 20-Year History Of Interpreting The HCO To Permit UnfetteredWeekly Rentals of Residential Hotel Rooms

At oral argument, the City's attorney stated: "The Hotel Ordinance before the recent amendments and after the recent amendments always prohibited the rental whether for seven days or 32 days or any amount of days to a tourist or a transient. It required occupancy to be by – to San Francisco residents who intended to be permanent residents of the hotel." (RT 35:18-24) The trial court inquired: "Didn't the City take a contrary position to that?" (RT 36:17-18) The City could not explain its conflicting position in the Patel litigation or before the Supreme Court, nor could it explain why it has consistently allowed THC to obtain judgments barring only less-than-7-day rentals without limitation to residence status. Instead, it initially denied ever having taken a contrary position. (RT 37:2-6) In response, the trial court read from the City's own amicus brief in THC v.

Patel, #A077469, quoted above, and the City ultimately had to acknowledge that it had taken a contrary position. (RT 37:25-38:1)

6. The Trial Court Properly Determined That The HCO Had Previously Allowed The Rentals That Plaintiffs Seek To Preserve

In its order denying the motion for preliminary injunction, the trial court agreed that Plaintiffs had accurately portrayed the relevant regulatory history of the HCO: "The pre-2017 Amendments version of the Residential Hotel Unit Conversion and Demolition Ordinance ('HCO') did allow certain types of rentals of residential units that are now prohibited by the Amendments, e.g., seven day (or longer) rentals for residential use to non-permanent residents." (2 AA 422) This is correct because "[t]he construction placed on a piece of legislation by the enacting body is of very persuasive significance." (City of Walnut Creek v. County of Contra Costa (1980) 101 Cal.App.3d 1012, 1021) If the City had always construed the HCO to prohibit rentals for less than 32-day periods, it would have advocated that position in prior litigation.

Below, the City cited to two things to establish that it has always interpreted the HCO to prohibit rentals of units designated residential to non-permanent residents for less than 32 days: the declarations of Department of Building Inspection ("DBI") Chief Housing Inspector Rosemary Bosque and deputy City Attorney Andrea Ruiz-Escuide. (1 AA 154; 2 AA 217) Neither one supports the City's position. First, the City

offers Chief Inspector Bosque's declaration to support DBI's interpretation of a City ordinance and argues that it should be given substantial deference. (1 AA 145-146) However, the law on which it relies, primarily Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, supports Plaintiffs:

> Whether judicial deference to an agency's interpretation is appropriate and, if so, its extent-the "weight" it should be given-is thus fundamentally *situational*. A court assessing the value of an interpretation must consider a complex of factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command. (Yamaha, supra, 19 Cal.4th at 12, emph. in orig.)

The evidence the City offers of DBI's "historical" interpretation of the prior HCO only goes back to 2016. In her declaration, Chief Inspector Bosque states that prior to the 2017 Amendments, "DBI consistently informed owners and operators of residential hotels that may not be rented for tourist or transient use" but only provided evidence from 2016 – the year during which the HCO Amendments were conceived. (1 AA 155, 15-169) There is no evidence how long this practice has been. In contrast, DBI annual reports going back to 2000-2001 only state that units designated residential must be rented for at least 7 days. (2 AA 362-364) Even the legislative digest for the amendment states: "The HCO defines conversion as . . . renting a residential unit for a less than 7-day tenancy. . . ." (2 AA 360)

Moreover, courts are more likely to defer to an agency's interpretation of its *own regulation* than to its interpretation of a *statute*. (Yamaha, supra, 19 Cal.4th at 12) In Tower Lane Properties v. City of Los Angeles (2014) 224 Cal.App.4th 262, the Court of Appeal gave *no* deference to a local agency interpretation of a Los Angeles municipal code section dealing with grading permits on large tracts of land. The Court discussed several factors that, even more so here, warranted independent judicial statutory construction, particularly unclear and inconsistent historical positions on the ordinance. (Tower Lane, supra, 224 Cal.App.4th at 275-278) Since DBI did not promulgate the HCO, which was enacted by the Board of Supervisors, and because the City Attorney, representing the City, has historically interpreted the HCO very differently than DBI, and has done so in various legal proceedings, the trial court properly rejected the City's new interpretation and this Court should as well.

However, notwithstanding its rejection of the City's justification for the inapplicability of the lawful non-conforming use doctrine, the trial court refused to enjoin enforcement of the 2017 amendment. (2 AA 427) As shown below, the trial court erred as a matter of law: the Amendments patently violate decades of settled law that lawful, non-nuisance, land uses cannot be enjoined without payment of compensation or amortization. Plaintiffs have an absolute likelihood of winning on the merits and the record discloses that all SROs are deprived of their lawful rights, without

due process, as a result of the Amendments. The trial court should have enjoined the Amendments pending trial on the merits.

STATEMENT OF THE CASE

Plaintiffs filed the underlying action on May 8, 2017. (1 AA 12) On June 7, the trial court heard oral argument on Plaintiffs' motion for preliminary injunction. (2 AA 427) On June 14, 2017, the trial court denied the motion. (2 AA 426-427) The trial court ruled that Plaintiffs had not demonstrated a likelihood of prevailing on the merits. It first found that the "pre-2017 Amendment version of the [HCO] did allow certain types of rentals of residential units that are not prohibited by the Amendments, e.g., seven day (or longer) rentals for resident use to non-permanent residents." (2 AA 427) Yet it concluded that Plaintiffs had not shown "the existence of a vested right of which they have been wrongfully and unlawfully deprived." (2 AA 427) The trial court issued its order denying the motion on June 19. (2 AA 428) On June 27, Plaintiffs filed their notice of appeal. (2 AA 429)

STATEMENT OF APPEALABILITY

An order denying a motion for preliminary injunction is appealable. (CCP § 904.1(a)(6)) The notice of appeal was filed 8 days after entry of the order denying the motion. (2 AA 429) Therefore, this appeal is both proper and timely. (Rule of Court 8.104(a))

STANDARD OF REVIEW

"In determining whether to issue a preliminary injunction, the trial court considers: (1) the likelihood that the moving party will prevail on the merits and (2) the interim harm to the respective parties if an injunction is granted or denied." (Sahlolbei v. Providence Healthcare, Inc. (2003) 112 Cal.App.4th 1137, 1145) "Ordinarily, the trial court's evaluation of the two foregoing factors is reviewed on appeal for abuse of discretion." (Association for Los Angeles Deputy Sheriffs v. Superior Court (2017) 13 Cal.App.5th 413, 430-431) "However, where the Superior Court [as here] limits its ruling to only one of these factors, it is that ground which must conclusively support the order." (Efstratis v. First Northern Bank (1997) 59 Cal.App.4th 667, 671) Further, "[w]here the 'likelihood of prevailing on the merits' factor depends upon a question of law ..., the standard of review is not abuse of discretion but ... de novo." (Efstratis, supra, 59 Cal.App.4th at 671)

In this case, the issue whether the Amendments deprive Plaintiffs of vested rights depends on the interpretation of the HCO, the Amendments, and their application to undisputed facts of SROs as nonconforming uses, and is thus a legal question subject to independent review. (Besaro Mobile Home Park, LLC v. City of Fremont (2012) 204 Cal.App.4th 345, 354)

ARGUMENT

I. CALIFORNIA LAW PROVIDES STRONG PROTECTION FOR LAWFUL NONCONFORMING USES OF PROPERTY WHICH PREVENTS MUNICIPALITIES FROM FORCING NON-NUISANCE USES TO BE DISCONTINUED IMMEDIATELY WITHOUT COMPENSATION OR WITHOUT A REASONABLE AMORTIZATION PERIOD

A. Constitutional Protection Of Nonconforming Uses Has Been Recognized For More Than 100 Years

"Land use regulation in California historically has been a function of local government under the [California Constitution's] grant of police power. . . ." (Big Creek Lumber Co. v. County of Santa Cruz (2006) 38 Cal.4th 1139, 1151) However, such power is limited by the due process and equal protection clauses of the federal and state Constitutions. (Griffin Development Co. v. City of Oxnard (1985) 39 Cal.3d 256, 270) Where the exercise of police power "'results in consequences which are oppressive and unreasonable, courts do not hesitate to protect the rights of the property owner against the unlawful interference with his property.'" (Griffin Development, supra, 39 Cal.3d at 270, cit. om.)

The limitations on municipal power to interfere with, and eliminate, land uses and business operations which Griffin Development refers to are well over 100 years old. In Dobbins v. City of Los Angeles (1904) 195 U.S. 223, 236, 25 S.Ct. 18, 20, the U.S. Supreme Court reversed a California Superior Court judgment sustaining a demurrer to a due process claim arising from a zoning enactment. The high court stated: "The legislature

may not, under the guise of protecting the public interests, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations." (Dobbins, supra, 195 U.S. at 236, 25 S.Ct. at 20, quoting Lawton v. Steele (1894) 152 U. S. 133-137) The Supreme Court further observed:

> [I]t is now thoroughly well settled by decisions of this court that municipal by-laws and ordinances, and even legislative enactments undertaking to regulate useful business enterprises, are subject to investigation in the courts with a view to determining whether the law or ordinance is a lawful exercise of the police power, or whether, under the guise of enforcing police regulations, there has been unwarranted and arbitrary interference with the constitutional rights to carry on a lawful business, to make contracts, or to use and enjoy property.
>
> (Dobbins, supra, 195 U.S. at 236, 25 S.Ct. at 20)

B. Decades Of Case Law Have Avoided Constitutional Infirmities By Barring Immediate And Uncompensated Cessation Of Lawful Business Operations

A quarter century after Dobbins, in the seminal state case Jones v. City of Los Angeles (1930) 211 Cal. 304, 321 the California Supreme Court held that "where . . . a retroactive ordinance causes substantial injury and the prohibited business is not a nuisance, the ordinance is to that extent an unreasonable and unjustifiable exercise of police power." In Jones, Los Angeles annexed a neighboring area (Mar Vista) and shortly thereafter enacted an ordinance barring the operation of sanitariums throughout the city except in certain locations which did not include Mar Vista. (Jones,

supra, 211 Cal. at 306) "The said ordinance was enacted independently of the general zoning plan of the city, and its restrictive provisions are directed toward one type of business." (Jones, supra, 211 Cal. at 305-306) Naturally, there were four lawfully-operating sanitariums in Mar Vista when the ordinance was enacted. (Jones, supra, 211 Cal. at 306)

Jones distinguished two different situations – one being businesses that constitute nuisances and the other being non-nuisance businesses operating in a lawful manner. (Jones, supra, 211 Cal. at 314-316) As to the former, the Supreme Court recognized broad municipal police power to immediately enjoin nuisances. (Jones, supra, 211 Cal. at 314-316) As to the latter, it recognized that "[o]nly a paramount and compelling public necessity could sanction so extraordinary an interference with useful business." (Jones, supra, 211 Cal. at 314) The ordinance in Jones was not "directed against actual nuisances." (Jones, supra, 211 Cal. at 316) The Court of Appeal and Supreme Court have continued to follow Jones.

Jones is so influential that it was cited 27 years later by Maryland's highest court for the observation that "[i]t soon was and still generally is held that it is unreasonable and unconstitutional for a zoning law to require immediate cessation of nonconforming uses otherwise lawful." (Grant v. Mayor and City Council of Baltimore (1957) 129 A.2d 363, 365, citing Jones, inter alia) The court in Grant was also "impressed . . . with the soundness of two California decisions", City of Los Angeles v. Gage (1954)

127 Cal.App.2d 442 and Livingston Rock & Gravel Co. v. County of Los Angeles (1954) 43 Cal.2d 121, discussed infra, and quoted both.

Biscay v. City of Burlingame (1932) 127 Cal.App. 213, 222 reversed a judgment for the City of Burlingame in a zoning ordinance case. In doing so, it noted that "Nonconforming uses may be required to be removed, but the majority of the cases seem to indicate that if this procedure is attempted the ordinance will be declared unconstitutional because unreasonable." (Biscay, supra, 127 Cal.App. at 220, quoting Byrne, The Constitutionality of a General Zoning Ordinance, 11 Marquette L. Rev. 189, 214)

In Wilkins v. City of San Bernardino (1946) 29 Cal.2d 332, 340, citing Jones, supra, 211 Cal. 304, the Supreme Court stated: "An examination of the California decisions discloses that the cases in which zoning ordinances have been held invalid and unreasonable as applied to particular property fall roughly into four categories: 1. Where the zoning ordinance attempts to exclude and prohibit existing and established uses or businesses that are not nuisances.

In Gage, supra, 127 Cal.App.2d at 460, the Court of Appeal stated: "Use of a reasonable amortization scheme provides an equitable means of reconciliation of the conflicting interests in satisfaction of due process requirements."

Also that year, our Supreme Court stated:

> *The rights of the users of property as those rights existed under prevailing zoning conditions are well*

> *recognized and have always been protected.* [cite] Accordingly, a provision which exempts existing nonconforming uses is ordinarily included in rezoning ordinances because of the hardship and doubtful constitutionality of compelling the immediate discontinuance of nonconforming uses.
>
> (Livingston Rock, supra, 43 Cal.2d at 127, cites om., emph. added)

In McCaslin v. City of Monterey Park (1958) 163 Cal.App.2d 339, 341, the Court of Appeal affirmed a "judgment for plaintiff permanently enjoining defendants from enforcing the provisions of two zoning ordinances expressly designed to compel the discontinuance of the use of plaintiff's property as a decomposed granite quarry." McCaslin relied extensively on Livingston Rock, Dobbins, and Jones. (McCaslin, supra, 163 Cal.App.2d at 346-347 and fn.5)

In 1960, in a case with similar political overtones, a New York trial court enjoined a "zoning ordinance and [ ] building code which were recently amended in a manner apparently calculated to legislate the defendant [owner/operator of a private school] out of existence." (Incorporated Village of Brookville v. Paulgene Realty Corp. (N.Y. Sup. Ct. 1960) 200 N.Y.S.2d 126, 130], aff'd (N.Y.App.Div. 1961) 218 N.Y.S.2d 264, aff'd (1962) 180 N.E.2d 905) New York, like California, protects nonconforming uses which were lawful at the time of a zoning change. (See Village of Brookville, supra, 200 N.Y.S.2d at 133)

The 1960s also saw an increase in billboard removal litigation. In

1962, the Court of Appeal stated:

> From the inception of zoning, it has been recognized that ultimate elimination of a nonconforming use may be effected by restrictions upon extension of the nonconforming building, prohibition of its replacement if it be destroyed, and proscription of renewal of the use after discontinuance. In general, the older cases drew the line, however, at outright prohibition of continuance of the use after the effective date of the zoning ordinance [cite]. In more recent years, it has been recognized that this rule bars only discontinuance which is immediate, and not that which allows a reasonable amortization period [cite]. Zoning legislation "looks to ... the eventual liquidation of nonconforming uses within a prescribed period commensurate with the investment involved" [cite]. But such legislation is valid only if the period of amortization be reasonable [cites].
>
> (National Advertising Co. v. Monterey County (1962) 211 Cal.App.2d 375, 380–381, disapproved of on other grounds by Metromedia, Inc. v. City of San Diego (1979) 23 Cal.3d 762, disapproved of on other grounds by Metromedia, Inc. v. City of San Diego (1980) 26 Cal.3d 848)

In a later action between National Advertising Co. and Monterey County, the California Supreme Court stated, "With respect to the other 11 signs, not yet fully amortized, *removal should await expiration of a reasonable amortization period* in order to permit plaintiff to recover their original cost." (National Advertising Co. v. County of Monterey (1970) 1 Cal.3d 875, 880, emph. added)

In another sign ordinance case, the Court of Appeal stated:

> California decisional precedent establishes beyond doubt "that a city seeking to eliminate

> nonconforming uses may pursue two constitutionally equivalent alternatives: It can eliminate the use immediately by payment of just compensation, or it can require removal of the use without compensation following a reasonable amortization period." [cite] The use of a reasonable amortization scheme does not constitute a taking of property, as it "provides an equitable means of reconciliation of the conflicting interests in satisfaction of due process requirements." (United Business Com. v. City of San Diego (1979) 91 Cal.App.3d 156, 179–180)

The principle that "zoning legislation may validly provide for the eventual termination of nonconforming property uses without compensation if it provides a reasonable amortization period commensurate with the investment involved" was affirmed in 1982 in Castner v. City of Oakland (1982) 129 Cal.App.3d 94, 96 and in 1991 by Tahoe Regional Planning Agency v. King (1991) 233 Cal.App.3d 1365, 1393 ("TRPA").

In the 1990s, the Supreme Court again affirmed these principles. (See Hansen Brothers, supra, 12 Cal.4th at 551-552) "The rights of users of property as those rights existed at the time of the adoption of a zoning ordinance are well recognized and have always been protected." (Hansen Brothers, supra,12 Cal.4th at 552, quoting Edmonds v. County of Los Angeles (1953) 40 Cal.2d 642, 651) "Zoning ordinances and other land use regulations customarily exempt existing uses to avoid questions as to the constitutionality of their application to those uses." (Hansen Brothers, supra,12 Cal.4th at 552) "Accordingly, a provision which exempts existing nonconforming uses 'is ordinarily included in zoning ordinances because of

the hardship and doubtful constitutionality of compelling the immediate discontinuance of nonconforming uses.'" (Hansen Brothers, supra,12 Cal.4th at 552)

In 2012, the Federal District Court for the Central District of California applied these and other cases to determine that a medical cannabis dispensary zoning ordinance with a 180 day amortization period denied the plaintiff due process of law. (Santa Barbara Patients' Collective Health Co-op. v. City of Santa Barbara (C.D. Cal. 2012) 911 F.Supp.2d 884 ("S.B. Patients")) In determining plaintiff's vested rights claim, the federal court reviewed the history of applicable California law and noted that under such law "a vested right to operate . . . cannot be infringed by [ordinance] without due process of law." (S.B. Patients, supra, 911 F.Supp.2d at 892-893, citing Communities for a Better Env't v. South Coast Air Quality Dist. (2010) 48 Cal.4th 310; O'Hagen v. Bd. of Zoning Adjustment (1971) 19 Cal.App.3d 151, 158; Bauer v. City of San Diego (1999) 75 Cal.App.4th 1281, 1292; Hansen Brothers, supra, 12 Cal.4th 533)

"[W]hile the government may infringe upon vested rights under certain circumstances, such rights may only be impaired 'with due process of law.'" (S.B. Patients, supra, 911 F.Supp.2d at 893, quoting Davidson v. County of San Diego (1996) 49 Cal.App.4th 639, 648; also citing TRPA, supra, 233 Cal.App.3d at 1395) "Along such lines, California courts have recognized the 'hardship and doubtful constitutionality of compelling the

immediate discontinuance of nonconforming uses.'" (S.B. Patients, supra, 911 F.Supp.2d at 893, quoting San Diego County v. McClurken (1951) 37 Cal.2d 683, 686) "For this reason, zoning ordinances 'customarily exempt existing land uses (or amortize them over time) to avoid questions as to the constitutionality of their application to those uses.'" (S.B. Patients, supra, 911 F.Supp.2d at 893, quoting Calvert v. County of Yuba (2006) 145 Cal.App.4th 613, 625) "'A zoning ordinance which requires the discontinuance forthwith of a nonconforming use existing when the ordinance was adopted is a deprivation of property without due process of law unless the use is a public nuisance.'" (S.B. Patients, supra, 911 F.Supp.2d at 893, quoting McCaslin, supra, 163 Cal.App.2d at 346-347)

Though the HCO and its amendments do not modify City zoning laws denominated as such per se, they have the same practical effect of zoning out, throughout the City, land uses that involve the business of operating SRO hotels. In City of Santa Barbara v. Modern Neon Sign Co. (1961) 189 Cal.App.2d 188 ("Modern Neon"), the Court of Appeal considered a local ordinance that prohibited the use of certain kinds of signs. (Modern Neon, supra, 189 Cal.App.2d at 190-193) The Court restated the, even-by-then, long-established rule: "In the field of zoning, it is established that destruction of a non-conforming building or discontinuance of its non-conforming use cannot be accomplished immediately without compensation; that a reasonable amortization period must be allowed."

(Modern Neon, supra, 189 Cal.App.2d at 195, disapproved of on other grounds by Metromedia, Inc., supra, 23 Cal.3d 762, disapproved of by Metromedia, Inc., supra, 26 Cal.3d 848) The Court then acknowledged that this principle also applies to non-zoning ordinances which interfere with vested rights:

> While the instant ordinance cannot be classified as zoning, these cases are equally applicable at bar for the question is one of fundamental constitutional rights. They do not vary with the form of attack upon them. If a zoning ordinance cannot effect an immediate non-cimpensated [sic] impairment of a property owner's vested rights neither can an advertising sign ordinance do so. The same principle applies.
>
> (Modern Neon, supra, 189 Cal.App.2d at 195, disapproved of on other grounds as stated above; see also Palacio De Anza v. Palm Springs Rent Review Com. (1989) 209 Cal.App.3d 116, 120, citing Modern Neon - local enactments created land-use property rights resulting in situation or status analogous to that of one who has established the right to pursue a nonconforming use on land following a zoning change)

Accordingly, as decades of California jurisprudence clearly establish, whether through traditional zoning ordinances or any other land use regulation, municipalities may not force lawful, non-nuisance businesses to cease operating without pre-cessation compensation or a reasonable amortization period within which to recoup their investments. In contravention of this constitutionally- compelled rule, the City's HCO Amendments compel SROs to immediately cease their lawful operation as

SRO businesses and thereafter operate, if at all, only as rent-controlled apartments. As shown below, he trial court abused its discretion in denying Plaintiffs an injunction preserving the status quo pending resolution on the merits.

II. THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE ERROR BY REFUSING TO PRELIMINARILY ENJOIN THE AMENDMENT

A. The Trial Court Committed Reversible Error As A Matter Of Law By Finding That Plaintiffs Have Not Demonstrated the Existence of a Vested Right Of Which They Have Been Wrongfully And Unlawfully Deprived

Below, the City argued that "[f]or . . . three independent reasons, the SRO Hotels have failed to demonstrate any vested right that would support a takings claim." (1 AA 147) The trial court agreed with the City's argument and found that "plaintiffs have not demonstrated the existence of a vested right of which they have been wrongfully and unlawfully deprived." (2 AA 427) Because the trial court did not specify why it found that Plaintiffs have not met this burden, they address all three reasons the City advocated and establish why the trial court erred in finding any of them in the City's favor.

1. The Law Relied On By The City And Trial Court Pertains To A Different Kind Of Vested Right Not Applicable In This Matter

The City conflates two different types of vested rights. One involves a "a vested right to complete a construction project in conformity with properly issued building permits once it has performed substantial work and

incurred substantial liabilities in good faith reliance thereon despite changes in the governing regulations." (Stokes v. Board of Permit Appeals (1997) 52 Cal.App.4th 1348, 1353, citing Avco Community Developers, Inc. v. South Coast Regional Com. (1976) 17 Cal.3d 785, 791) In a completely different form, "[t]he law recognizes a vested right to continue a use which existed at the time zoning regulations changed and the use thereafter became a nonconforming use." (Stokes, supra, 52 Cal.App.4th at 1353, citing Hansen Brothers, supra, 12 Cal.4th at 540) "A purchaser of land . . . acquires a right to continue a Use [sic] instituted before the enactment of a more restrictive zoning." (HFH, Ltd. v. Superior Court (1975) 15 Cal.3d 508, 516)

The vested right involved in this case is the latter kind – the right to continue a use which existed at the time the land use regulations changed. This is the rule that applies to the paradigm this case presents. None of the pre-compensation-or-amortization cases on which Plaintiffs rely turn whatsoever on the necessity of permits as a precondition of the right to continue a lawful use instituted before the enactment of a more restrictive land use scheme. Therefore, cases regarding the former type of vested right – the right to complete construction – are not relevant in any way. This includes Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach (2001) 86 Cal.App.4th 534, 553 and Toigo v. Town of Ross (1998) 70 Cal.App.4th 309, 322), on which the City relied on below. (1 AA 147, 148)

Additionally, while Plaintiffs did cite to Goat Hill Tavern v. Costa Mesa (1992) 6 Cal.App.4th 1519, that case is unnecessary to their position because the underlying act here was not the adjudicative act of improperly denying renewal of a conditional use permit of a nonconforming use but rather the legislative act of effectively eliminating SROs as a permitted or conditional use in San Francisco. (1 AA 111, 147) Indeed, the City's entire response to Goat Hill Tavern was predicated on an "interpretation" of the prior version of the HCO which not only did the trial court reject, but which was patently contrary to what the City has officially, and consistently, represented to various courts over the last 20+ years. (1 AA 148; 2 AA 322-356, 375-379) Given the City's interpretation of the HCO from 1995 until at least 2007, and given the obvious effect that 32-day rental has on SRO operations – triggering rent control and compelling apartment business operations – it is absurd to argue that the Amendment "preserves residential units for rent by existing or prospective Permanent Residents (people who already reside or intend to reside in the unit for 32 or more days)." (1 AA 148)

2. The Motion Did Not Require An Individualized, Fact-Based Inquiry

The vested rights doctrine protects not only the right to do a business or part of the business, but "the overall business operation" in effect at the time of the new law, including "incidental aspects". (Hansen Brothers, supra, 12 Cal.4th at 565) Plaintiffs seek the ability to rent rooms in the

same manner that they had been allowed to going back to 1990. Since the Amendments change the restrictions imposed on SROs to such a degree that they force them to become rent-controlled apartment buildings, it is wrong for the City to claim that "the HCO Amendments do not require residential hotels in San Francisco to go out of business." It is true that buildings in which the SROs operate may still be used for a residential purpose but that purpose is the rent-controlled apartment business, not the SRO hotel business. Though they share a similarity of residential use, these are, in effect, different kinds of businesses. The key difference is what the City has eliminated: the right to rent to anyone so long as the occupancy is at least 7 days. Paraphrasing the City's brief below, because SRO hotels had the right to "rent the units to non-residential tenants from seven to 30 days without violating" the HCO, they *do* have a vested right to rent out these units for weekly rentals as they did since as far back as 1990. (1 AA 148)

The City also argues "whether or not legislation interferes with a vested right is a fact-based inquiry, which precludes injunctive relief." (1 AA 149) It then cited a case involving *administrative* decisions. (1 AA 149, quoting Standard Oil Co. v. Feldstein (1980) 105 Cal.App.3d 590, 603-604) However, "zoning ordinances . . . are legislative acts." (Arnel Development Co. v. City of Costa Mesa (1980) 28 Cal.3d 511, 514) Indeed, "the amending of an ordinance is a legislative and not an administrative act." (Plum v. City of Healdsburg (1965) 237 Cal.App.2d 308, 319)

"Generally speaking, a legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts." (Strumsky v. San Diego County Employees Retirement Assn. (1974) 11 Cal.3d 28, 35) The City did not explain how cases involving adjudicatory acts apply to disputes over legislative acts. Nothing in this action, or on the underlying motion, involves an administrative adjudication of any particular SRO hotel's situation.

Moreover, this matter does not present a particularized fact-based inquiry. The City argues that "those facts would include the precise terms of the conditional use permit(s) or other lawful government permit which provide the source of the vested right." (1 AA 149) That is wrong. Termo Co. v. Luther (2008) 169 Cal.App.4th 394 rejects the City's position that the owner/operators needed a specific permit to operate in the manner allowed by the prior version of the HCO: "To argue that the issuance of a license or permit per se is outcome determinative is to elevate form over substance. We are talking about government permission of one sort or another to carry on a business. . . ." (Termo, supra, 169 Cal.App.4th at 408)

The essential permission that all SRO owner/operators had was that granted by the Planning Code read in conjunction with the prior version of the HCO – weekly rentals. This was permitted, as of right, by local codes and ordinances irrespective of whether Plaintiffs had pieces of paper called

"permits". Now, the City has decided that no SRO can continue to rent these units by the week. Instead, they must, as a class, undergo a fundamental change to their business operations and be forced into the rent-controlled *apartment* business, with the occupants entitled to rent control status. (See S.F. Rent Ordinance § 37.9(a)) For this reason, the City misapplied Standard Oil, supra, 105 Cal.App.3d at 603-604 for the proposition that every SRO owner/operator must make an as-applied challenge to determine whether the impact of the HCO Amendments on them violated a vested right. Here, all the SRO owner/operators share exactly the same relationship to the Amendments: each owner/operator is permitted, under the Planning Code, to rent residential units by the week. (S.F. Planning Code § 102, defining "residential use" to include "group housing")

The City is also incorrect in arguing that Plaintiffs "must establish that they have incurred substantial 'hard' costs in reliance on the permits to operate." (1 AA 149) Again, the City conflates the two types of vested rights. The hard-costs requirement only pertains to the vested right to complete construction, not the vested right to continue operating a lawful use in a structure that already exists. Indeed, the very case the City relies on, Avco, supra, 17 Cal.3d at 791, is a "vested right to complete construction" case. In contrast, under the "vested right to continue use"-type of vested right, incurring costs is not a factor. (See City of Ukiah v.

County of Mendocino (1987) 196 Cal.App.3d 47, 57 – where use permitted as a matter of right prior to zoning prohibition, no use permit required and right to operate is vested) In fact, none of the nonconforming use/zoning change cases Plaintiffs cite above required anything like what the City argues is necessary here. The only applicable questions are: 1) were the SRO hotels lawfully operating in a particular manner when the HCO was changed, 2) did the Amendment require immediate discontinuance of that use, and 3) did the City compensate the owners as a condition of immediate discontinuance? The answers are: 1) yes, 2) yes, and 3) no. Therefore, the Amendments are prohibited by California law.

Whatever the wisdom and merits of rent control status for SRO occupants, it fundamentally changes the nature of all of Plaintiffs' businesses. Some owner/operators may suffer greater impacts than other owner/operators, but the illegitimate, forced loss of their right to rent residential rooms by the week, without rent control impacts, affects all of them in the exact, same way. (See Tom v. City and County of San Francisco (2004) 120 Cal.App.4th 674, 680-681 – facial challenge focuses on those affected by the law) What their other damages are is different, and not relevant here, but how they are affected, and the loss of their underlying, fundamental right to continue operating until the City complies with Jones, et al., is not. Therefore, to the extent that the trial court agreed with the City that each SRO hotel owner/operator had to establish their individual

entitlement to preliminary relief, it erred as a matter of law and therefore abused its discretion.

3. The City's Position That There Is Now A Compelling Public Need To Eliminate Weekly SRO Rentals Is Not Supported By The Record

The City's third argument in support of its position is that the "SRO Hotels acknowledge that the government may revoke a permit for 'good cause'" and that it has "determined there was a compelling public necessity supporting the Amendments." (1 AA 150) The City is simply wrong and this case does not involve the quasi-judicial revocation of permits. The ability to force businesses to cease operating immediately and without payment of compensation *may* exist where the operation is a public *nuisance*. (Jones, supra, 211 Cal. at 306; McCaslin, supra, 163 Cal.App.2d at 346-347; O'Hagen, supra, 19 Cal.App.3d at 161) The City cites nothing to support the proposition that the weekly rentals of residentially-classified SRO rooms is a public nuisance. Indeed, what was, until a short time ago, housing, on a weekly basis, for "many who cannot afford security and rent deposits for an apartment" (San Remo Hotel, supra, 27 Cal.4th at 674) did not suddenly become a public nuisance by fiat simply so that the City could force SRO operators to shoulder additional burdens of society-at-large's failure to deal with its housing problems. (See Levin v. City and County of San Francisco (N.D. Cal. 2014) 71 F.Supp.3d 1072, 1089, appeal dismissed and remanded (9th Cir. 2017) 680 Fed.Appx. 610 - "The Constitution

prohibits the City from taking the policy shortcut it has taken here, in which the City seeks to "forc[e] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.") Simply put, the operation of SROs in compliance with the Planning Code and the prior version of the HCO is no more a nuisance now, in the sense of compelling public necessity, than it was the day before the Amendments took effect.

B. On This Record, This Court Should Find That The Balancing Of Harms Favors Plaintiffs

1. This Court Should Resolve The Balance Of Hardships In Plaintiffs' Favor

In resolving the motion, the trial court was required to weigh both "how likely it is that the moving party will prevail on the merits" and "the relative harm the parties will suffer in the interim due to the issuance or nonissuance of the injunction." (Tosi v. County of Fresno (2008) 161 Cal.App.4th 799, 803)

> The determination whether to issue a preliminary injunction requires the trial court to exercise its discretion by considering and weighing " 'two interrelated factors,' specifically, the likelihood that plaintiffs will prevail on the merits at trial, and the comparative harm to be suffered by plaintiffs if the injunction does not issue against the harm to be suffered by defendants ... if it does." The more likely it is that plaintiffs will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue. Further, "if the party seeking the injunction can make a sufficiently strong showing of likelihood of success on the merits, the trial court has discretion to issue

> the injunction notwithstanding that party's inability to show that the balance of harms tips in his favor."
>
> (Right Site Coalition v. Los Angeles Unified School Dist. (2008) 160 Cal.App.4th 336, 338-339, cits. om.)

Because the trial court did not reach the issue of relative hardship, this court must determine whether the determination of merits conclusively supports the trial court's ruling on the motion regardless of the remaining considerations. (Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist. (1992) 8 Cal.App.4th 1554, 1561 ("ACID")) Citing ACID, Miller v. City of Hermosa Beach (1993) 13 Cal.App.4th 1118, 1143 stated:

> Since the trial court did not engage in a balancing of the harms analysis, we would ordinarily remand this matter for a hearing on that issue and determination whether a preliminary injunction should issue pending a final judgment on the petition. However, respondents were given a full opportunity in the trial court to present evidence on and brief this issue and failed to identify any significant harm which would result from the issuance of a preliminary injunction. Since the material facts pertaining to the hotel project are not seriously disputed, in the interest of judicial economy [cite], we have undertaken the required balancing on the record before us and conclude that an injunction should issue.

Accordingly, while this Court can remand for a determination of relative hardship, given the record and the on-going interference with established constitutional land-use rights, this Court should either find that Plaintiffs' merits position is so well-established that judgment will be compelled in their favor or it should resolve the balance of hardships in

their favor.

2. It Would Be An Abuse Of Discretion To Find That The Balance Of Hardships Does Not Favor Plaintiffs

If Plaintiffs are forced to comply with the HCO Amendments, that will: 1) force Des Arts and all the Coalition's members to cease engaging in weekly rentals, thereby losing the income derived from such rentals; 2) force them to reorganize their operations substantially (or be subject to criminal sanctions[1]); 3) turn away occupants who cannot afford monthly rentals with the additional types of apartment expenses not charged for weekly rentals (e.g., first and last months rents, and security deposit); 4 cancel existing reservations for less than 32 days; and 5) most importantly, be subject to the onerous requirements of the Rent Ordinance, including eviction controls, if they decide not to leave units empty. These are serious consequences with no benefit to the public.

Below, the City argued San Remo Hotel's observation regarding SROs, quoted above at page 15, that they "serve many who cannot afford security and rent deposits for an apartment." (1 AA 150) Ironically, the net, and completely foreseeable, effect of enforcing the HCO Amendments is that it will likely cause many SRO operators to keep units vacant. As to those units not kept vacant, as Plaintiffs stated in their opening memorandum below: because of the Amendments, SRO residents "will

[1] "If charged as a misdemeanor, the penalty upon conviction therefor shall be a fine of not less than $500 or more than $1,000 or imprisonment in the county jail, not exceeding six months, or both fine and imprisonment." (1 AA 119-120)

either be forced to sign and bind themselves to long-term conventional rental agreements, and post large security and advance rental deposits. . ." or leave San Francisco. (1 AA 46, 76-77) The Amendments thus do the exact opposite of what the City claims they will do, and that alone provides a compelling reason for this Court to find, on this record, that it was an abuse of discretion to deny the injunction.

In contrast, there is no harm at all to the City nor did it cite any. The operation of SROs where otherwise lawfully-permitted is not a nuisance. Operation in conformity with Plaintiffs' vested rights will not cause noxious odors or loud sounds to be emitted, do not present threats to life or limb, do not injure public morals, and do not have any characteristics that justifies immediate elimination. Indeed, if they did, then all tourist hotels in San Francisco would have to be shuttered. Moreover, the City produced no evidence that any person would be harmed by maintaining the status quo that was acceptable to it for more than 20 years.

C. Because The City Must Either Pay Pre-Cessation Compensation Or Provide An Amortization Period, Post-Deprivation Damages Is Not An Adequate Remedy

1. California's Pre-Cessation Compensation-Or-Amortization Rule Does Not Permit The Post-Deprivation Compensation Rule The City Advocates

It has long been judicial policy that determination on appeal of constitutional issues is to be avoided when a case can be decided on other grounds. (See Palermo v. Stockton Theaters, Inc. (1948) 32 Cal.2d 53, 65;

In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 507, citing Palermo) California (and other jurisdictions) have gone further and adopted the rule – in order to avoid constitutional questions and due process violations in zoning-change, and similar, cases – that lawful businesses may not be eliminated without either pre-cessation compensation or an amortization period. (Supra at 35-45) San Francisco may not avoid this rule by fait accompli and then offer to be dragged through administrative and judicial takings processes as a "remedy" for its wrongful conduct. That there is a cognizable distinction between Jones, which parallels the HCO Amendments in their absence of constitutional safeguards, and ordinances which did provide safeguards, was made clear in Gage, supra, 127 Cal.App.2d 442, and Livingston Rock, supra, 43 Cal.2d 121, discussed and cited above. In each, although the challenged ordinances were retroactive and thereby made unlawful previously-operating businesses that were not nuisances, they were not subject to being enjoined because they provided appropriate constitutional safeguards. (Gage, 127 Cal.App.2d at 457-458; Livingston, supra, 43 Cal.2d at 126) This distinction, directly stated in Gage, makes clear that it is no defense to a request for injunctive relief to point to the possibility of future correction that does not exist within the challenged ordinance at the time of the challenge. For these reasons, as explained further below, Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd. (1994) 23

Cal.App.4th 1459 and Hensler v. City of Glendale (1994) 8 Cal.4th 1 do not apply.

2. *Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* Does Not Apply

Tahoe Keys did not involve a zoning or land use regulation that required immediate cessation of lawful land uses. Instead, it involved the payment of a mitigation fee which plaintiffs considered unlawful. Nothing in that case has anything to do with the concept that lawful nonconforming uses may not be enjoined without pre-compensation or amortization. Moreover, while Tahoe Keys does state the general rule that "if the plaintiff may be fully compensated by the payment of damages in the event he prevails, then preliminary injunctive relief should be denied" (Tahoe Keys, supra, 23 Cal.App.4th at 1471), that rule does not apply in this situation or decades of explicit jurisprudence would have held the opposite – that municipalities may compel the immediate cessation of disfavored, but otherwise lawful land uses and businesses, only subject to forcing the owner/operators through a cumbersome and expensive post-cessation takings process. Moreover, Tahoe Keys recognizes that courts are not precluded from enjoining unconstitutional acts. (Tahoe Keys, supra, 23 Cal.App.4th at 1471)

3. *Hensler v. City of Glendale* Does Not Apply

Hensler is also factually inapposite because it did not involve a local ordinance which prohibited an *on-going*, lawful business. In complete

contrast, that case involved a local ordinance which prohibited *future* development on part of plaintiff's property, which is, at most, similar to a claim that a zoning change deprives a landowner of *future* uses. (Hensler, supra, 8 Cal.4th at 11-12) Hensler simply has nothing to do with this case. If Hensler intended to overrule 90 years of state and federal decisions holding that existing lawful uses may not be immediately eliminated by zoning changes without *prior* compensation (or eliminated with an amortization period), it would have said so. It would also have found a reason to apply inapposite law to that case. Moreover, had Hensler overruled decades of settled law, such cases as Hansen Brothers and S.B. Patients – both post-dating Hensler – would have been decided differently.

Regardless, the application of Hensler that the City argues makes no sense here given that, on the merits, municipalities can only force the discontinuance of lawful, non-nuisance business operations either by paying compensation *as a condition* of immediate discontinuance or by providing a reasonable amortization period in which to wrap up operations. (E.g. United Business Com., supra, 91 Cal.App.3d 156, 179–180) If a municipality cannot eliminate on-going operations except by either paying the business to stop or giving it adequate time in which to do so, it cannot be that the same municipality can ignore this body of law, force the immediate cessation under threat of criminal sanction, and then essentially say "sue us for damages". That is not the law in California.

III. THIS COURT SHOULD RESOLVE THE ULTIMATE MERITS OF THE DISPUTE AND REMAND TO THE TRIAL COURT FOR FURTHER PROCEEDINGS

California law recognizes that, under narrow circumstances, an appellate court can resolve the merits of a controversy in reviewing a preliminary injunction order. (King v. Meese (1987) 43 Cal.3d 1217, 1227-1228) As discussed next, those narrow circumstances exist here, particularly since if Plaintiffs are correct about the constitutionality of the Amendments, there is nothing left to do but enjoin their application.

> Ordinarily, appellate review is limited to whether the trial court abused its discretion in evaluating the foregoing [preliminary injunction] factors. [cite] "Occasionally, however, the likelihood of prevailing on the merits depends upon a question of pure law rather than upon [t]he evidence to be introduced at a subsequent full trial. This issue can arise, for example, when it is contended that an ordinance or statute is unconstitutional on its face and that no factual controversy remains to be tried."
>
> (Jamison v. Department of Transportation (2016) 4 Cal.App.5th 356, 362, cits. om.; accord Law School Admission Council, Inc. v. State (2014) 222 Cal.App.4th 1265, 1280; Citizens to Save California v. California Fair Political Practices Com. (2006) 145 Cal.App.4th 736, 746)

Here, the question on the merits of the ultimate controversy is whether the City may require SROs to immediate operate as rent-controlled apartments without pre-conversion compensation. This presents a pure question of law. The answer is "no". Plaintiffs are unaware of any other legal or factual determinations that the trial court must make in order to find

the Amendments unenforceable. Accordingly, further delay in vindicating Plaintiffs' constitutional rights serves no purpose. "The issue of the validity of the challenged regulations is solely one of law, and this court is in as good a position to resolve the issue now as the trial court would be after determination of this appeal. (North Coast Coalition v. Woods (1980) 110 Cal.App.3d 800, 805)

> Normally, it would be appropriate to remand the case to the trial court for consideration of the latter question [balance of hardships]. However, plaintiffs have argued, and we agree, that there exist no contested factual questions necessary to resolve the case. In addition, the legal issues have been exhaustively briefed by the parties and numerous amici. In light of these factors and the importance of the case, we take the unusual, but practical, step of reaching and resolving the merits ourselves.
>
> (King, supra, 43 Cal.3d at 1227-1228)

This Court should take that unusual, but practical step too and resolve the merits in favor of Plaintiffs.

CONCLUSION

This is the latest in a series of San Francisco land use decisions that have sought to force private property owners to bear the public's burden of easing the twin problems of housing – availability and cost. Here, rather than take Plaintiff SRO owners' property outright and operate it as the City sees fit, it amended its Administrative Code to immediately force SROs to cease long-allowed weekly rentals and rent only to permanent residents on at least a 32-day basis, transforming purpose-operated hotel buildings into

rent-controlled apartments. Long-standing constitutional law bars San Francisco from doing this. The City can either compensate SROs as a condition of ceasing business or it can provide a reasonable amortization period in which to wrap up current operations. The City chose neither.

The Court should reverse the order denying the preliminary injunction and find that, under long-controlling case law, the Amendments may not be enforced as written. Even if the Court simply remands for determination of the balance of hardships issue, it should still make clear that the merits are with Plaintiffs.

Respectfully Submitted,

November 6, 2017

ZACKS, FREEDMAN & PATTERSON, PC

/s/ Andrew M. Zacks

By:Andrew M. Zacks
Counsel for Plaintiffs/Appellants

CERTIFICATE OF WORD COUNT
(CRC 8.204)

The text of this brief consists of 12,366 words as counted by the Wordperfect word-processing program used to prepare the brief.

November 6, 2017

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SAN FRANCISCO SRO HOTEL COALITION,
HOTEL DES ARTS, LLC, and BRENT HAAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

SAN FRANCISCO SRO HOTEL COALITION, an unincorporated association, HOTEL DES ARTS, LLC, a Delaware limited liability company, and BRENT HAAS,

Petitioners and Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO, a public agency, acting by and through the BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO; DEPARTMENT OF BUILDING INSPECTION OF THE CITY AND COUNTY OF SAN FRANCISCO; EDWIN LEE, in his official capacity as Mayor of the City and County of San Francisco, and DOES 1 through 100, inclusive,

Respondents and Defendants.

Case No. CPF-17-515656

DECLARATION OF ANDREW M. ZACKS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

CEQA ACTION

Date: June 5, 2017
Time: 2:00 p.m.
Dept: CEQA, room 503
Judge: Hon. Teri L. Jackson

I, Andrew M. Zacks, declare as follows:

1. I am an attorney for Plaintiffs in this action. I have personal knowledge of the following facts and could testify truthfully thereto if called to do so.

2. I have been practicing San Francisco land use law since 1991. I have been defending hotel owners and operators in litigation involving the Hotel Conversion Ordinance ("HCO") since the beginning of my career. I have also represented multiple clients in legal challenges to prior versions of the HCO and other land use regulations. These cases have been litigated as far as the U.S. Supreme Court. These cases include: San Remo Hotel L.P. v. City And County of San Francisco (2002) 27 Cal.4th 643; San Remo Hotel, L.P. v. City and County of San Francisco, Cal. (2005) 545 U.S. 323, 125 S.Ct. 2491; Tenderloin Housing Clinic, Inc. v. Patel (1998) 1st Dist. #A077469; Tenderloin Housing Clinic, Inc. v. Astoria Hotel, Inc. (2000) 83 Cal.App.4th 139; Lambert v. City & County of San Francisco (1997) 1st Dist. #A076116; and Ching v. San Francisco Bd. of Permit Appeals (Harsch Inv. Corp.) (1998) 60 Cal.App.4th 888.

3. I participated, as counsel, in the formation of plaintiff San Francisco SRO Hotel Coalition (the "Coalition"), which is an unincorporated association whose members are private, for-profit owners and operators of numerous residential hotels in San Francisco that are subject to regulation under the HCO.

4. From representing and advising residential hotel owners, as well as from my litigation of the HCO, I have learned that the HCO regulates approximately 18,000 residential units within approximately 500 San Francisco hotels. Approximately 300 are owned by for-profit entities and the remaining 200 are run by nonprofit organizations.

5. A single room occupancy ("SRO") unit is a small hotel room, often as small as 100 square feet but can be as large as 350 square feet. SRO rooms generally do not have private bathrooms and kitchens. SRO hotels generally utilize shared bathrooms, often one or more per floor. Some SRO hotels may have communal kitchens; for others,

residents must use their own microwaves, hot plates, etc., or in some cases, bring prepared food in or eat out. Essentially, they are hotel rooms that often suffice as residences for persons of modest or little means.

6. These hotels provide a critical service of relatively low-cost rooms for rent on a weekly basis, or several-weekly basis. A wide variety of people rent these rooms: low-income people who would be homeless if they had to rent in a traditional, monthly manner; short-term visitors who cannot afford tourist hotel rates; people coming in to work in the City for short periods of time; and even medical patients, and their families, who also cannot afford tourist rates.

7. One good example is the Carl Hotel, which I represent, located at 198 Carl Street near UCSF hospital. The Carl is a 28-room hotel historically occupied by a mix of permanent San Francisco residents protected by San Francisco's rent control law and shorter term residents who are often in San Francisco to care for ailing family members in UCSF Benioff Hospital. The Carl has provided a decent, affordable and convenient place of respite for families of hospital patients who must be in San Francisco for longer than a week, but less than a month. The 2017 HCO amendments sweep this use away making it unlawful by their mere passage and enactment in direct violation of long standing California property rights jurisprudence.

I declare, under penalty of perjury of the laws of the State of California, that the foregoing is true and correct.

Date: May 4th, 2017

Andrew M. Zacks

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HOTEL DES ARTS, LLC, and BRENT HAAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

SAN FRANCISCO SRO HOTEL COALITION, an unincorporated association, HOTEL DES ARTS, LLC, a Delaware limited liability company, and BRENT HAAS,

Petitioners and Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO, a public agency, acting by and through the BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO; DEPARTMENT OF BUILDING INSPECTION OF THE CITY AND COUNTY OF SAN FRANCISCO; EDWIN LEE, in his official capacity as Mayor of the City and County of San Francisco, and DOES 1 through 100, inclusive,

Respondents and Defendants.

Case No. CPF-17-515656

DECLARATION OF BRENT HAAS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

[CCP sec. 526]

Date: June 5, 2017
Time: 2:00 p.m.
Dept: CEQA, room 503
Judge: Hon. Teri L. Jackson

I, Brent Haas, declare as follows:

1. I am over the age of 18 and have personal knowledge of the following facts. I could testify truthfully thereto if called to do so.

2. I am a hair stylist and visual artist. (www.brenthaas.com) I also care for my elderly, widowed mother (age 82) who lives alone in Ohio. I moved to San Francisco right after Loma Prieta in 1989. My father died about 30 years ago and I have been visiting my mother regularly since. These visits are important to both of us. I am a California resident – I get healthcare here, pay CA resident taxes, and consider San Francisco my home – but due to the circumstances of being the primary caregiver for my aging mother, I have to spend considerable time in Ohio, her state of legal residency.

3. For the past 12 years, I've generally spent about 10 days to 3 weeks of every month living and working in the City, and the other 1-3 weeks in Ohio with my mother.

4. When I am in the City, I generally stay at several SROs. The ability to rent rooms at these SROs by the week – meaning I don't pay first and last month, and security deposit – is a godsend. Not having to pay expenses that I do not incur because of the ability to rent weekly or biweekly enables me to visit my mother. On rare occasion, I am in the City for more than 3 weeks in which case I stay at the Zen Center.

5. If San Francisco prohibits hotels like the ones I stay at from being able to rent to me on a weekly or biweekly basis, it would be very difficult for me to continue to visit my mother regularly. I would have to pay much more in rent and would have little time to visit her. I certainly could not be gone for 2-3 weeks and not work if I were paying rent on an apartment or I would have to leave San Francisco. I certainly do not want to do that anymore than any other San Franciscan wants to.

I declare, under penalty of perjury of the laws of the State of California, that the foregoing is true and correct.

Date: April 24, 2017

Brent Haas

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Respondents and Defendants.

Case No. CPF-17-515656

DECLARATION OF HAMED SHAHAMIRI IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

[CCP sec. 526]

Date: June 5, 2017
Time: 2:00 p.m.
Dept: CEQA, room 503
Judge: Hon. Teri L. Jackson

I, Hamed Shahamiri, declare as follows:

1. I am over the age of 18 years. I have personal knowledge of the following facts and could testify truthfully thereto if called to do so.

2. I am the manager of the Carl Hotel, located at 198 Carl Street, San Francisco. The cross-street is Stanyan. The Carl has 28 rooms – 0 tourist and 28 residential. We have three permanent residents.

3. The Carl is about 4 blocks from UCSF medical center on Parnassus Avenue. Many of our guests comprise medical patients, and their family members or friends. I know this because many of theses guests tell me why they are visiting and particularly staying at the Carl. In fact, some of these guests take the time to write friendly notes to me, appreciating the availability of the Carl – both due to its proximity to UCSF, but also its affordability; our weekly rates range from $539 to $1085. I am attaching a true and correct sample of copies of these letters I have received as Exh. A.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Date: April 20, 2017

Hamed Shahamiri

A

Judy Vivian
November 11, 2012
Robert, Manager
Carl Hotel

Dear Robert,

Larry and I would like to thank you so much for all of your help and hospitality at your hotel.

My husband had surgery Oct. 29th, for his thyroid, and he had a totally successful surgery.

We want to thank you for your help and flexibility with a surgery we had no idea about, or how long Larry would be in the hospital. It took so much stress away with your flexability on our days in the hotel.

It was also a great help to have a single room for our daughter and letting her move to our room when Larry entered the hospital.

The convenience of your hotel was a great relief.

We will recommend our friends and family to your hotel with great confidence.

Sincerely,
Judy and Larry Vivian

Management of the Carl Hotel
198 Carl Street
San Francisco, CA 94117

May 26, 2010

Re: Hamed

To Whom It May Concern,

I feel compelled to write and let you know of the tremendous assistance your employee, Hamed, gave me in a great time of need. I am a nurse at an Alzheimer's facility in Eureka, CA and we serve many disabled adults not just those with Alzheimer's disease. We recently had the occasion to send one of our client's to San Francisco for a medical consult, an extensive surgery, and then back a third time for a follow up. She was accommodated quite comfortably in your hotel and was very grateful but on her final visit she ran into some problems that Hamed assisted me from this great distance away to rectify. She has some mental health issues and can be quite charming but lacks judgment. On each prior visit she had been accompanied by her children who were able to mange her affairs and cope with any problems that arose but on this visit they were unable to be there. On her final day she would have missed her transportation home and been stuck in San Francisco without any money had Hamed not helped her and me resolve the problems that arose and make the arrangements that she needed. I am completely in his debt and wanted you to be aware of the excellent employee that you have. We could not have resolved this problem were it not for his efforts and she would have been stuck in San Francisco without any money or accommodations. I have no idea how we would have found her and gotten her safely home. Thank you for everything and especially thank you to Hamed for saving the day. I am completely in his debt.

Sincerely,

Joan Edwards

To The Staff
of
The Carl Hotel.

A note to thank you
for your thoughtfulness
and for the warmth
you express with every
kind word.

Thank you so much for
your hospitality and help
while I stayed with you,
while my husband had his
surgery.

Sincerely,
Lynne Gilmore

November 14, 2007

Hamed (sp?),

Forgive me if I am misspelling your name, but the purpose of this letter is to thank you so much for your great customer relations. You were so helpful, courteous, and kind to me in helping me with my reservations at your hotel for the period of Nov. 1-8, 2007.

You helped make my journey from Orlando, Florida to San Francisco to be with my son during his radical surgery at UCSF during that period so much easier because of your friendly and helpful support.

Without offending you I would like to leave you with a quote from my Bible which is, "May the God of hope fill you with all joy and peace. Rom.15-13.

Thank you again for your friendly support and compassion.

Richard D. Jarvis

October 7, 2002

Dear Hamed,

This note is to express my family's deep appreciation to you for being so helpful and kind to all of us during the times we were in San Francisco for Danny's brain tumor surgery and treatments. We enjoyed our accommodations and the lovely patio. Dan's latest M.R.I. showed "no recurrent or residual tumor" and we thank God for this. He has recovered well but now is having chemo —

(over please)

Dear Staff Hotel Members,

Thank you for your kind and empathetic service you provided for my family while we went through my Mom's surgery. You were all very helpful and understanding during this difficult time. Thank you for being flexible and allowing us to adjust on accomodations.

My Mom is doing much better and we are looking forward to better days ahead.

Del Eugston

5/22/16

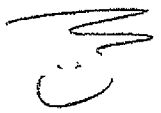
Dear Hamid (& Bill) –

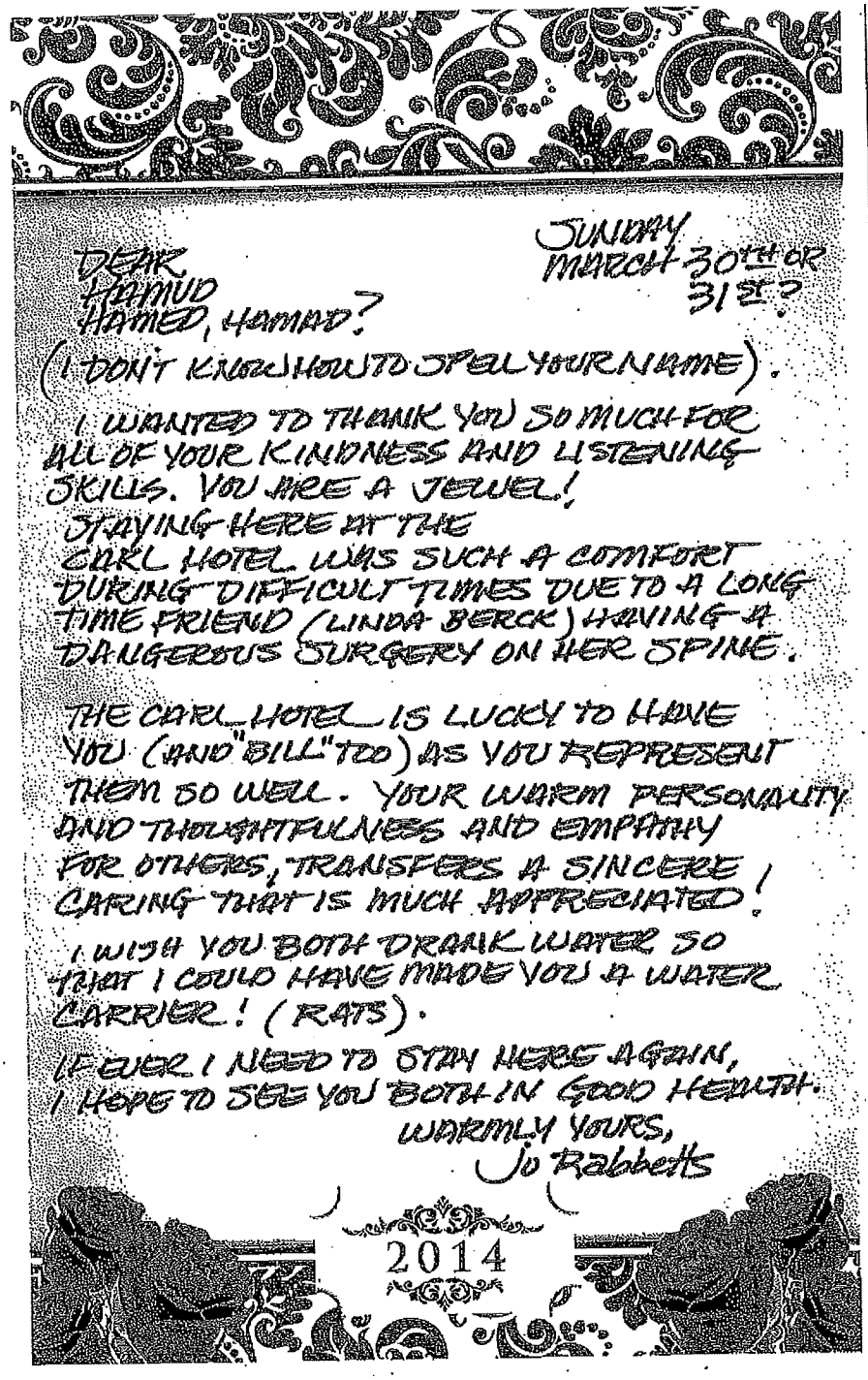
Before any more time elapsed, we wanted to let you know how much your kindness & conscientiousness meant during our stay earlier this month. Thank you for making what was an otherwise very stressful time for us @ UCSF a little bit easier.

All the best,

Erik & Stephanie Schoen
Reno, NV

P.S. –
Chelise has been doing remarkably better since the surgery! Seems we may have turned the corner for the better.





SUNDAY
MARCH 30TH OR
31ST?

DEAR
HAMUD
HAMED, HAMAD?
(I DON'T KNOW HOW TO SPELL YOUR NAME).

I WANTED TO THANK YOU SO MUCH FOR
ALL OF YOUR KINDNESS AND LISTENING
SKILLS. YOU ARE A JEWEL!
STAYING HERE AT THE
CARL HOTEL WAS SUCH A COMFORT
DURING DIFFICULT TIMES DUE TO A LONG
TIME FRIEND (LINDA BERCK) HAVING A
DANGEROUS SURGERY ON HER SPINE.

THE CARL HOTEL IS LUCKY TO HAVE
YOU (AND "BILL" TOO) AS YOU REPRESENT
THEM SO WELL. YOUR WARM PERSONALITY
AND THOUGHTFULNESS AND EMPATHY
FOR OTHERS, TRANSFERS A SINCERE!
CARING THAT IS MUCH APPRECIATED!

I WISH YOU BOTH DRANK WATER SO
THAT I COULD HAVE MADE YOU A WATER
CARRIER! (RATS).

IF EVER I NEED TO STAY HERE AGAIN,
I HOPE TO SEE YOU BOTH IN GOOD HEALTH.

WARMLY YOURS,
Jo Rabbetts

2014

long term bases. We chose your hotel as it was so close to hospital. It was a good choice and we told the hospital staff to put you at the top of the list.

My daughter had a very rough time and joined near the hotel - got bad and had to return to hospital this happened several times. One of these times we needed a cab fast - now came Hamed had Eddie take us in his car. To the emergency room.

Very special people

Regards

Lorraine Parrott

Mr Edardo Ihrihamiri,

I want to tell you of the wonderful care we received from Hamed and Eddie while we were at your hotel.

My daughter has a transplant surgery at the University Hospital. We were in your hotel 30 days.

Hamed was extremely caring and very helpful.

The social workers at the hospital had a list of places for family members to stay on

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Respondents and Defendants.

Case No. CPF-17-515656

DECLARATION OF SAMANTHA FELIX IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

[CCP sec. 526]

Date: June 5, 2017
Time: 2:00 p.m.
Dept: CEQA, room 503
Judge: Hon. Teri L. Jackson

I, Samantha Felix, declare as follows:

1. I am over the age of 18 years. I have personal knowledge of the following facts and could testify truthfully thereto if called to do so.

2. I am the general manager of the Hotel Des Arts ("Des Arts"), located at 447 Bush Street, San Francisco. I have held this position for 7 years.

3. In 2012, the Des Arts was purchased by Stephan Forget and Florence Solal (collectively, the "Forgets"). When the Forgets bought the Des Arts, it needed substantial refurbishing. The Forgets spent thousands of dollars on physical improvements, new paint, new room furnishings, and installing art throughout the hotel, including in each room.

4. The Des Arts contains 51 guest rooms, 38 of which are designated "residential" under the Hotel Conversion Ordinance ("HCO") and 13 of which are designated "tourist". Eleven of the rooms use shared bathrooms. The Des Arts has one permanent resident. There are no kitchen facilities anywhere on the premises. The rooms do not even have microwave ovens and are not allowed to under law.

5. The Des Arts takes reservations from a variety of people: university students; people coming to work in San Francisco for short periods of time; people considering moving to San Francisco who want to visit it for 1-2 weeks first; and, of course, some tourists. The Des Arts strictly rents in compliance with the HCO, meaning that the residential rooms must (prior to the recent HCO Amendments) be rented for a minimum of 7 days. During the offseason as designated under the HCO, we usually book 7-10 day rentals.

6. After the HCO Amendments took effect, the Des Arts shifted as many bookings to the 13 tourist rooms as possible. However, from May through November, we still have about 30 bookings, which were lawful under the prior version of the HCO, which we cannot shift, which we will have to cancel if the Amendments are in effect.

7. If the Des Arts is forced to rent all of its residential rooms for at least 32

consecutive days, meaning that the occupants become rent-controlled tenants, we would have to terminate the employment of some of our employees and reduce the hours of others. We currently have six house keepers earning between $13.00 and $18.00 per hour, working between 32 and 40 hours per week. With only 13 tourist rooms, we would probably terminate five of the six house keepers. We would also have to reduce front desk staffing. Indeed, the rooms would not be affordable to people who would typically live in SRO rooms. We would have to charge first month's rent, last month's rent, and security deposit. Because there is no way to separately meter each room, we would have to build in all utilities as well. Such a hotel would also be substantially harder to manage since we would have to respond to both short-term guests and long-term residents. We also have two maintenance persons and if forced to operate under the Amendments, I will have to let one go and/or reduce hours.

8. However, we would probably not rent the residential units in order to avoid having them become rent-controlled tenancies, resulting in the same need to reduce services and staffing. Shuttering the non-tourist rooms would force us to eliminate them as a forum for local artists to display their work, which would harm the local art community.

9. I reviewed the Des Arts' tax payments, which I have access to as general manager, in preparation for this declaration. The Des Arts has all required permits. In 2016, it paid $215,638.21 in various taxes (hotel tax, gross receipts tax, payroll tax, property tax). Ultimately, the HCO Amendments will result in less tax money to the City, people's employment terminated or reduced, fewer visitors to the City spending money here, and a reduction in opportunities for local artists to display their work.

10. I do not know how the Des Arts would survive in its present form on the few rooms which can be rented on a tourist basis under the HCO Amendments.

I declare, under penalty of perjury of the laws of the State of California, that the foregoing is true and correct.

Date: April 10, 2017

Samantha Felix

EXHIBIT G

The New York Times

Candice Payne Got 30 Hotel Rooms for Homeless People in Chicago During Severe Cold Snap

By Sandra E. Garcia

Feb. 2, 2019

As temperatures plunged to life-threatening lows this week, more than 100 homeless people in Chicago unexpectedly found themselves with food, fresh clothes and a place to stay after a local real estate broker intervened.

The broker, Candice Payne, 34, said it was a "spur-of-the-moment" decision to help. "It was 50 below, and I knew they were going to be sleeping on ice and I had to do something," she said on Saturday.

Ms. Payne contacted hotels and found 30 rooms available at the Amber Inn for Wednesday night at $70 per room. Temperatures in Chicago reached lows of minus 25 and minus 26 on Wednesday and Thursday, according to the National Weather Service.

After Ms. Payne paid for the rooms on a credit card, she asked on her Instagram account for anyone who could help transport the homeless people. Soon she had a caravan of cars, S.U.V.s and vans with volunteer drivers.

"We met at tent city, where all the homeless people set up tents and live on the side of the expressway," Ms. Payne said. "It is not a secret. The homeless have been living there for years."

She asked as many people as she could to go with her to the Amber Inn as donations were pouring in to her Cash App account.

Ms. Payne met two pregnant women and a family of five in the first group of homeless people who went to the inn.

"We had to accommodate everyone. It was really overwhelming," Ms. Payne said. "They were so appreciative. They couldn't wait to get in a bath and lay in a bed."

Ms. Payne bought toiletries, food, prenatal vitamins, lotions, deodorants and snacks and made care packages to help make the people feel comfortable. Restaurants donated trays of food, and many people called the inn.

She said she has spent about $4,700 so far on the rooms and other materials.

"People from the community, they all piggyback off Candice," said Robyn Smith, the manager of the Amber Inn. "Other people started calling and anonymously paying for rooms," she added, and Ms. Smith lowered the price to accommodate more people.

What started out as 30 rooms doubled to 60, Ms. Smith said. The rooms were only supposed to be occupied until Thursday, when temperatures in Chicago were expected to moderate. But with the donations Ms. Payne has received — more than $10,000 so far — she has been able to house the people in the hotel and feed them until Sunday.

"I am a regular person," Ms. Payne said. "It all sounded like a rich person did this, but I'm just a little black girl from the South Side. I thought it was unattainable, but after seeing this and seeing people from all around the world, that just tells me that it's not that unattainable. We can all do this together."

Ms. Payne wants to organize other ways to help homeless people in Chicago.

"This was a temporary fix, and it has inspired me to come up with more of a permanent solution," Ms. Payne said before she received a call on her other line — from J.B. Pritzker, the governor of Illinois.

"He thanked me," Ms. Payne said. "He said it was one of the biggest acts of kindness we have seen in a long time."

A version of this article appears in print on Feb. 2, 2019, on Page A19 of the New York edition with the headline: 'Spur-of-the-Moment' Act Gets Homeless Out of Cold