



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

DATE: April 11, 2019
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Lisa Gibson, Environmental Review Officer
RE: Not a Project/Note to File under CEQA –
BOS File No. 190049, Administrative Code – Definition of
Tourist or Transient Use Under the Hotel Conversion
Ordinance

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ATTACHMENTS:

- **Planning Department Case No. 83.52E: Residential Hotel Conversion and Demolition Ordinance, Final Negative Declaration, June 23, 1983**
- **Planning Department Case No. 84.236T/84.564ET: Amendments to Residential Hotel Conversion Ordinance, Final Negative Declaration, January 9, 1985**
- **Memorandum to Files 83.52E Residential Hotel Conversion and Demolition Ordinance and 84.236ET/84.564ET: Amendments to Residential Hotel Conversion, September 22, 1989**
- **Non-Physical and Ministerial Projects Not Covered by the California Environmental Quality Act, March 9, 1973**

As explained below, the Planning Department finds that the Board of Supervisors-proposed legislation, BOS File No. 190049, Administrative Code – Definition of Tourist or Transient Use Under the Hotel Conversion Ordinance, is not considered a project under the California Environmental Quality Act (CEQA) or, in the alternative, that because no new impacts would result, environmental review of the ordinance can be documented in a note to file, updating the prior Negative Declaration prepared for previous amendments to the Residential Hotel Conversion and Demolition Ordinance, Chapter 41 of the San Francisco Administrative Code (“Hotel Conversion Ordinance”).

I. Background

CEQA Review for the Hotel Conversion Ordinance

On June 23, 1983, the Planning Department (formerly “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 or Hotel Conversion Ordinance.¹ The Negative Declaration analyzed the ordinance, which regulated the conversion of rooms in residential hotels to other use, including tourist occupancy, the demolition of such rooms, as well as required construction of replacement units, if applicable. The Hotel Conversion Ordinance applied to residential hotels citywide. The project contemplated possible physical changes to the environment, such as replacement of units. No mitigation measures were required.

On January 9, 1985, the Planning Department issued a Final Negative Declaration for amendments to the ordinance affecting the definition of interested parties, time limits for compliance, penalties for violation, and other aspects of administration of the ordinance.² The amendments did not contemplate possible physical changes to the environment. No mitigation measures were required.

On September 22, 1989, the Planning Department issued a memorandum to the file³ for amendments to the ordinance.⁴ The proposed amendments made several administrative changes to the ordinance, such as revising definitions, notice requirements, reporting requirements, and time limit replacement requirements. The 1989 amendments included the “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”. The memorandum to file found that the proposed amendments would be largely procedural and housekeeping measures to improve operation and enforcement of the ordinance, affecting only the administration of the ordinance. The memorandum found “Clearly, they could have no physical effect on the environment.” and therefore no new environmental review was necessary under CEQA Guidelines Section 15162.

¹ Planning Department Case No. 83.52E: *Residential Hotel Conversion and Demolition Ordinance, Final Negative Declaration*, June 23, 1983.

² Planning Department Case No. 84.236T/84.564ET: *Amendments to Residential Hotel Conversion Ordinance, Final Negative Declaration*, January 9, 1985

³ A memorandum to the file memorializes that the department has looked at whether a proposed change in a project warrants further environmental review. Consistent with CEQA Guidelines Section 15162, Section 31.19(c)(1) of the San Francisco Administrative Code states that a modified project must be reevaluated and that, “If, on the basis of such reevaluation, the Environmental Review Officer determines, based on the requirements of CEQA, that no additional environmental review is necessary, this determination and the reasons therefor shall be noted in writing in the case record, and no further evaluation shall be required by this Chapter.

⁴ Memorandum to Files 83.52E Residential Hotel Conversion and Demolition Ordinance and 84.236ET/84.564ET: *Amendments to Residential Hotel Conversion*, September 22, 1989.

II. The 2017-2019 Amendments to the Hotel Conversion Ordinance

The Department has reviewed two new ordinances amending the Hotel Conversion Ordinance since 2017:

- **BOS Ordinance No. 0038-17 (the “2017 Amendments”)** Ordinance amending Administrative Code, Chapter 41, to update the Hotel Conversion Ordinance, including: adding or refining definitions of tourist and transit use to change the term of tenancy from less than 7 days to less than 32 days, 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. The BOS passed this legislation on January 31, 2017.
- **BOS File No. 190049 (the “2019 Amendment”)** Ordinance amending the Administrative Code to revise the definition of Tourist or Transient Use under the Hotel Conversion Ordinance, to change the term of tenancy from less than 32 days to less than 30 days.⁵

III. CEQA Analysis

The 2017 Amendments

On December 15, 2016 the Department determined that the 2017 Amendments were not a project because they would not have either direct or reasonably foreseeable indirect physical impacts on the environment, and therefore were not subject to CEQA.⁶

⁵ The legislation on its face changes the term of tenancy from 32 to 30 days. (See Section 2). However, the Planning Department is aware that in pending litigation in *San Francisco SRO Hotel Coalition v CCSF* (San Francisco Superior Court Case No. CPF 17-515656), the parties have stipulated that subsections 41.20(a)(2) and 41.20(a)(3), as amended in 2017 by Ordinance No. 0038-17, are not enforceable. Therefore, the applicable term of tenancy for purposes of analysis under CEQA is that which was in effect prior to Ordinance No. 0038-17, that is, 7 days. (CEQA Guidelines Section 15125 [Environmental Setting].)

⁶ BOS Ordinance File 161291-2.

The 2019 Amendment

A. The 2019 Amendment is Not a Project Under CEQA Guidelines 15060(c).

In evaluating the appropriate level of environmental review, the lead agency must first establish whether the proposed activity is subject to CEQA. Pursuant to CEQA Guidelines Section 15060(c), an activity is not subject to CEQA if:

- (1) The activity does not involve the exercise of discretionary powers by a public agency;
- (2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or
- (3) The activity is not a project as defined in Section 15378.

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; see also CEQA Guidelines Section 15378).

CEQA Guidelines Section 15360 defines “environment” as “the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The environment includes both natural and man-made conditions.”

Attached is a memorandum entitled the “Non-Physical and Ministerial Projects Not Covered by the California Environmental Quality Act,” which was issued by the San Francisco Planning Department on March 9, 1973. The memorandum lists the types of local government actions that are excluded from CEQA, pursuant to CEQA’s mandate that local agencies enact procedures to implement the statute. (CEQA Guidelines Section 15022.) Item 1 on the attached list of City and County of San Francisco governmental actions determined to be excluded from CEQA is: “Legislation with respect to non-physical activities.”

The 2019 Amendment is an ordinance to revise the definition of Tourist or Transient Use under the Hotel Conversion Ordinance, to change the term of tenancy from less than 7

days to less than 30 days.⁷ Adoption of an ordinance is clearly an activity undertaken by a public agency and thus is a potential “project” under CEQA. Nevertheless, enactment of the ordinance does not qualify as a “project” under CEQA because there is no basis to conclude that it “may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” In determining whether an activity may create a “reasonably foreseeable indirect physical change in the environment,” as required to be a “project” under CEQA, it is important to understand that a physical change is identified by comparing existing physical conditions with the physical conditions that are predicted to exist when the proposed activity has been implemented. The difference between these two sets of physical conditions, if any, is the relevant “physical change” for CEQA purposes. (Pub. Res. Code § 21065).

Here, enactment of the 2019 Amendment would not result in a direct physical change in the environment, as the legislation does not include a proposal for a specific physical project, such as construction of new hotels or rehabilitation of existing ones.

Furthermore, enactment of the 2019 Amendment would not cause a reasonably foreseeable indirect physical change in the environment. Any potential physical changes that may be caused by enactment of the proposed legislation are too speculative or unlikely to be considered reasonably foreseeable. The ordinance would not change the locations in which hotels are permitted in the city. Instead, both before and after adoption of the 2019 Amendment, hotels are allowable in locations spread throughout the city. A change in the duration of tenancy would also not alter the type of activities that regulated hotels engage in, and therefore would not lead to reasonably foreseeable indirect physical changes in the environment. The types of activities associated with the occupants of existing residential hotels would not change. Therefore, whatever impacts these residential hotels have on the physical environment today, prior to the adoption of the proposed legislation, would remain the same, as there is no change in the fundamental nature of the use. 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. If anything, with longer tenancies there would be less turnover of tenants and therefore a reduction of the types of activities associated with move ins/move outs. Therefore, this legislation does not lead to reasonably foreseeable indirect physical changes in the environment, because it would lead to no adverse change in physical environmental conditions.

The Planning Department received the packet submitted to the Board of Supervisors by the Zacks, Freedman and Patterson law firm on February 4, 2019. This law firm represents SRO hotel owners currently in litigation against the City, challenging the City’s adoption

⁷ See footnote 5, above.

of the 2017 Amendments to Chapter 41.⁸ In their packet, the hotel owners argue that the 2019 Amendment would cause environmental impacts similar to those they have raised in the litigation, including that extending the term of tenancy defined as “Residential” use beyond 7 days could result in significant displacement of current tenants, and related environmental effects. Specifically, the hotel owners have argued that extending the minimum tenancy required for residential tenants could result in displaced persons, leading to homelessness, and resulting in physical environmental impacts such as increased trash in public streets, discarded syringes, human feces and urination, abandoned shopping carts in public and private spaces, pollution of waterways, increased crime, and impacts to City services, and urban decay. Also, it has been argued that the proposed legislation would result in hotel owners choosing to leave rooms vacant, because it would allegedly be onerous to rent to 30 (or 32, in the case of the previous legislation)-day tenants, or it would be difficult to find tenants for such longer periods.

The Planning Department has reviewed these claims and determined that these alleged indirect environmental effects are speculative and are not supported by evidence. In determining the significance of environmental effects caused by a project, CEQA Guidelines section 15064(f) states that the decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency. CEQA Guidelines section 15064(f)(5) offers the following guidance: “Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumption predicated upon facts, and expert opinion supported by facts.”

There is no support in the record that the proposed legislation would result in the above-mentioned types of indirect physical changes in the environment, and the Department has no reason to believe that it would, as the alleged effects are highly speculative. First, the Department has found nothing in the 2019 Amendments, or in the 2017 Amendments, that require hotel owners to require monthly payments from tenants. While the minimum term of tenancy is proposed to be changed to 30 days, from 7, the Amendments do not mandate that hotel owners require that the tenants pay rent in monthly installments. Further, the alleged environmental ills cited are based on other assumptions that the Department finds unlikely, such as the assumption that most if not all hotel owners will choose to leave a majority of their residential hotel rooms vacant, leading to displacement of current tenants, and that such tenants, as a group, would become homeless, live in the City streets, litter such streets, etc. In the Department’s experience, these are unreasonable assumptions, as people’s motives for acting in one way or another are multifaceted and complex. Therefore,

⁸ *San Francisco SRO Hotel Coalition v CCSF* (San Francisco Superior Court Case No. CPF 17-515656).

the Department finds the hypothetical environmental impacts set forth in the submittals by the Zacks firm to be speculative and unsupported by the administrative record. Moreover, enactment of the 2019 Amendment would not change the City's authority to enforce its laws, to clean up City streets, pursue affordable housing programs, or to pursue nuisance abatement proceedings under its inherent police powers.

The City's homelessness problem is a complex one with multiple causes, and is not subject to simplification and linear causal relationships, like those claimed in the letters submitted by the attorneys for the hotel owners. The San Francisco 2017 Homeless Count & Survey⁹ states:

“The primary cause of an individual's inability to obtain or retain housing is difficult to pinpoint, as it is often the result of multiple and compounding causes. Nearly one quarter (22%) of respondents reported job loss as the primary cause of their homelessness. Fifteen percent (15%) reported drugs or alcohol. Thirteen percent (13%) reported an argument with a friend or family member who asked them to leave, 12% reported eviction, 10% reported divorce or separation, and 7% reported an illness or medical problem.”

Moreover, the speculative impacts described above, even if any were to occur, are considered under CEQA to be socioeconomic, rather than environmental, impacts. CEQA generally does not require the analysis of socioeconomic impacts. As stated in CEQA Guidelines Section 15131(a), “[e]conomic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.” In general, analysis of the potential adverse physical impacts resulting from economic activities has been concerned with the question of whether an economic change would lead to physical deterioration in a community. The proposed legislation is not anticipated to create an economic change that would lead to the physical deterioration of any community within San Francisco, for the reasons stated above.

Additionally, CEQA Guidelines Appendix G XIII (Population and Housing) requires that we ask the question: Would the project displace substantial numbers of existing housing

9 Applied Survey Research (ASR), *San Francisco 2017 Homeless Count & Survey Comprehensive Report*. <http://hsh.sfgov.org/wp-content/uploads/2017/06/2017-SF-Point-in-Time-Count-General-FINAL-6.21.17.pdf> accessed February 12, 2019.

units or people, necessitating the construction of replacement housing elsewhere? The answer here would be no; the 2019 Amendments will not lead to displacement of substantial amounts of persons, resulting in the construction of housing elsewhere, for the reasons set forth above. Therefore, no environmental impacts would occur.

For the above reasons, the Planning Department has determined that there would be no direct or indirect physical change in the environment as a result of enacting this legislation. The Planning Department has determined that BOS File No. 190049 (and the preceding Ordinance No. 0038-17) is not a project under CEQA.

B. Analysis under CEQA Guidelines Section 15162

The Department has determined that the 2019 Amendments do not constitute a “project” under CEQA, for the reasons set forth above. However, in an abundance of caution and to be thorough in its analysis, it has also considered whether the 2019 Amendments can be considered to be fully evaluated under the prior Negative Declaration prepared for the HCO, such that no supplemental environmental review is necessary now.

CEQA requires additional review when one or more of the following events occurs:

- (a) Substantial changes are proposed in the project that will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase of previously identified significant effects;
- (b) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase of previously identified significant effects; or
- (c) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, becomes available, and shows any of the following: that the project will have one or more significant impacts not discussed in the previous EIR or Negative Declaration; significant effects previously examined will be substantially more severe; or mitigation measures or alternatives which would substantially reduce the significant impact have been identified, but the project proponents decline to adopt them.

(Pub. Res. Code Section 21166; CEQA Guidelines Section 15162.)

Here, none of these circumstances is present. For the reasons discussed above, the 2017 and 2019 Amendments would not cause any direct environmental impacts. The Amendments would not be considered a "substantial modification" as described in San Francisco Administrative Code Section 31.19(c). The changes in the Hotel Conversion Ordinance included in the 2017 and 2019 Amendments are largely procedural and administrative in nature. They would not displace substantial numbers of existing housing units or people, necessitating the construction of replacement housing elsewhere, nor would they involve new significant environmental effects requiring revisions to the Final Negative Declaration.

There are no changed circumstances that would require additional analysis under City procedures or CEQA which would require major revisions of the previous Negative Declaration due to the involvement of new significant environmental effects. There is no evidence that these Amendments would substantially increase the numbers of persons experiencing homelessness in the City. Since the Hotel Conversion Ordinance was enacted in 1981, the homeless population has increased commensurate with the City population. More recently, a four-year trend of comparable Point-in-Time count data identified a two percent increase in the number of persons experiencing homelessness in San Francisco between 2013 and 2017.¹⁰ As mentioned above, the primary cause of an individual's inability to obtain or retain housing is difficult to pinpoint, as it is often the result of multiple and compounding causes.

No new information of substantial importance, which was not known and could not have been known at the time the Hotel Conversion Ordinance Negative Declaration was adopted, became available to show any of the following: that the project will have one or more significant impacts not discussed in the previous Negative Declaration or mitigation measures which would substantially reduce the significant impact have been identified, but the project proponents decline to adopt them.

The 1983 Final Negative Declaration analyzed the Hotel Conversion Ordinance, which sought to maintain the residential hotel uses that existed at that time. The Ordinance was adopted in 1981 in response to concerns about the loss of residential hotels as a housing source because of the conversion of these hotels to tourist occupancy and other uses. The Ordinance did not change any existing uses and no direct environmental impacts were found in the Negative Declaration. The environmental effects of the Ordinance, if any, were limited to the following potential indirect effects:

¹⁰ Ibid.

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.

These two indirect effects would be subject to additional environmental review.

“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.”¹¹

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.

¹¹ Planning Department Case No. 83.52E: *Residential Hotel Conversion and Demolition Ordinance, Final Negative Declaration*, June 23, 1983

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

Alec Bash
Alec 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 City: 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. 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. 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.

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.

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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.
3. "Trends in the Hotel Industry, Northern California," 1982 Annual Results, December 1982 (prepared by Pannell Kerr Forster, Certified Public Accountants).

These reports are on file with the Office of Environmental Review.

3970C

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 parties, 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 referred 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 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 Inspection 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.

File # 83.52E
82.52E



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September 22, 1989

M E M O R A N D U M

^{82.52E}
TO: 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 be 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 Declaration 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



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March 9, 1973

NON-PHYSICAL AND MINISTERIAL PROJECTS NOT COVERED BY THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act of 1970, as amended, and the Guidelines for implementation of the Act adopted by the Secretary of the California Resources Agency, require that local agencies determine the types of local government actions, relating to both public and private projects, that are excluded from the Act. The principal exclusions are with respect of (1) projects that will have no physical effects, and (2) projects that involve no discretionary action by the local government, but only ministerial action. Any project that is either non-physical or ministerial, or both, is excluded from the Act.

The State Guidelines define the terms “discretionary” and “ministerial” as follows:

Discretionary Project. Discretionary project means an activity defined as a project which requires the exercise of judgment, deliberation, or decision on the part of the public agency or body in the process of approving or disapproving a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.

Ministerial Projects. Ministerial projects as a general rule, include those activities defined as projects which are undertaken or approved by a governmental decision which a public officer or public agency makes upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority. With these projects, the officer or agency must act upon the given facts without regard to his own judgment or opinion concerning the propriety or wisdom of the act although the statute, ordinance, or regulation may require, in some degree, a construction if its language by the officer.

As required by law, the Department of City Planning has prepared the following list of types of government actions of the City and County of San Francisco that are determined to be, in themselves, either non-physical or ministerial, or both, and therefore excluded from the California Environmental Quality Act of 1970, as amended, and from the State Guidelines for implementation of the Act.

1. Legislation with respect to non-physical activities.
2. Services to people (at established facilities): education, child care, adoption, employment training and referral, equal opportunity programs, human relations, health care, financial

- assistance, libraries, museums, other cultural activities, recreation, food, housing, consumer protection, other counseling.
3. Public safety (using established facilities): police and fire protection, security, detention, emergency services.
 4. Information and records: collection, research, storage, processing, analysis, publication, distribution.
 5. Investigation and inspection.
 6. Personnel: selection, hiring and firing, training, supervision, setting salaries, payroll, health plan, safety, retirement.
 7. Supplies, services and movable equipment: Purchase (except fleets of transit vehicles), storage, maintenance, sale.
 8. Real property: management, appraisal, negotiation, jurisdictional transfers within the City and County government without change of use of the property.
 9. Financial: assessment and collection of taxes, rents, fees, fines and other charges; assessment appeals; budget preparation and review; accounting; disbursements; control of expenditures; management of funds and investment for income.
 10. Legal: counseling, drafting, negotiation, claims settlement, litigation, prosecution and defense, judicial proceedings.
 11. Enforcement against violations of regulatory codes.
 12. Liaison, coordination, consultation and direction among officials and departments.
 13. Conduct of hearings, meetings and conferences.
 14. Appointment of officials, boards, commissions and committees.
 15. Voting and related activities, including submission of any proposition or other matter to the electorate.
 16. Community relations.
 17. Achievement awards.
 18. Neighborhood, area and citywide planning, not including adoption or amendment of Master Plan elements.
 19. Abatement of hazards to health and safety.
 20. Animal, weed and litter control pursuant to established laws and regulations, except for use of economic poisons in maintenance of landscaping, native growth and water supply reservoirs.
 21. Lot divisions and adjustments not governed by the Subdivision Map Act, when in compliance with the City Planning Code and other ordinances and regulations.
 22. Changes of use involving no discretion on the part of the department issuing the permit or license for such change; where the new use, as compared with the former use, is first permitted in the same or a more restrictive zoning district under the City Planning Code.
 23. Transfer of permits for operation of motorized vehicles, excluding issuance of new permits.
 24. Annual and other periodic renewals, and changes in ownership, of existing permits, licenses, concessions, leases and other entitlements, other than for extraction of natural resources, where no construction, expansion or change of use is involved.
 25. Issuance of general business licenses.

26. Issuance of sign permits by the Department of City Planning where no permit is required under the Building Code.
27. Issuance of permits to collect fees for inspections and investigations, including boiler inspection, surveys, engineering, electrical sales dealers, gas appliance dealers, plan checking, industrial waste discharge, dairies and skimming and pasteurization plants.
28. Issuance of permits and licenses for people, animals and light equipment (rather than for activities, places, heavy equipment and motorized vehicles), including library cards and other documents for identification, dog licenses, marriage licenses, bicycle licenses, auctioneer permits, permits for solicitations and advertisers, permits for firearms, parking permits for disabled persons, driver permits, guide permits, permits for amusement devices and mechanical contrivances, permits for street photographers, permits for special police and patrol persons, licenses for street artists, licenses for motion picture projectionists, licenses for journeyman plumbers, permits for removal of human remains and cremation, sealing of weighing and measuring devices.
29. Issuance of Central Permit Bureau permits over which no department has discretion (where the work is not part of a larger project for which environmental review is required), including boiler installation, flues and chimneys, electrical wiring and fixtures, electrical sign wiring, electrical maintenance by plant owners, plumbing and gas (lines, fixtures and appliances), sewer, side sewer, garage door installation, partition relocation, repairs and alterations (not expanding exterior dimensions of the structure, not involving a change of use or occupancy, and not including paving of parking lots subject to Conditional Use zoning review or environmental review as part of a larger project), demolition (not affecting landmarks or historic districts designated or currently under formal consideration for designation), filling of excavations to the elevation of surrounding properties, grading and excavating not in connection with new buildings, installation and repair of sidewalks, minor street openings for public utilities, debris boxes, signs (not including signs for designated landmarks or historic districts, or for sites regulated by prior stipulations under the City Planning Code), occupancy of apartment houses and hotels, street numbers.
30. Issuance of Department of Public Health permits for kitchens in boarding houses and charitable and public institutions, offices of fumigation and vending machine companies.