

BOARD of SUPERVISORS



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

MEMORANDUM

TO: Sophia Kittler, Mayor's Office
John Rahaim, Director, Planning Department

FROM: Victor Young, Assistant Clerk *Victor Young*
Rules Committee

DATE: June 19, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation on June 11, 2019:

File No. 190683

Ordinance amending the Administrative Code to re-enact and revise the Tourist Hotel Conversion Ordinance, which restricted the conversion of hotel rooms in large tourist hotels to condominiums, by deleting the sunset provision and deleting the sections allowing conversion credits and a lottery; and affirming the Planning Department's determination under the California Environmental Quality Act.

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

c: Andres Power, Mayor's Office
Rebecca Peacock, Mayor's Office
Eddie McCaffrey, Mayor's Office
Scott Sanchez, Planning Department
Corey Teague, Planning Department
Lisa Gibson, Planning Department
Devyani Jain, Planning Department
AnMarie Rodgers, Planning Department
Dan Sider, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Laura Lynch, Planning Department

1 [Administrative Code - Conversion of Large Tourist Hotels]

2

3 **Ordinance amending the Administrative Code to re-enact and revise the Tourist Hotel**
4 **Conversion Ordinance, which restricted the conversion of hotel rooms in large tourist**
5 **hotels to condominiums, by deleting the sunset provision and deleting the sections**
6 **allowing conversion credits and a lottery; and affirming the Planning Department’s**
7 **determination under the California Environmental Quality Act.**

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

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

16 Section 1. CEQA Finding. The Planning Department has determined that the actions
17 contemplated in this ordinance comply with the California Environmental Quality Act
18 (California Public Resources Code Sections 21000 et seq.). Said determination is on file with
19 the Clerk of the Board of Supervisors in File No. _____ and is incorporated herein by
20 reference. The Board affirms this determination.

21 Section 2. The Tourist Hotel Conversion Ordinance, which restricted the conversion of
22 hotel rooms in Large Tourist Hotels to condominiums, was enacted in 2008 as Chapter 41F of
23 the Administrative Code pursuant to Ordinance No. 41-08. Chapter 41F automatically expired
24 by operation of law 120 months after its initial effective date. The Board of Supervisors wants
25 to re-enact Chapter 41F and revise its provisions as shown in Section 3 of this ordinance.

1
2 Section 3. The Administrative Code is hereby amended by re-enacting and revising
3 Chapter 41F, to read as follows:

4 **CHAPTER 41F: TOURIST HOTEL CONVERSION**

5 **SEC. 41F.1. TITLE.**

6 This Chapter 41F may be referred to as the Tourist Hotel Conversion Ordinance.

7
8 **SEC. 41F.2. PURPOSE AND FINDINGS.**

9 (a) As one of the country's premier travel destinations, the City and County of San
10 Francisco ("San Francisco" or "the City") depends on visitors for its economic health and well-being.

11 (b) During the past ten years since 2008, San Francisco's economy has been bolstered by
12 its convention market. In 2013, San Francisco deepened its investment in the convention market by
13 financing the expansion of the Moscone Center, noting at the time that the City had lost over \$2 billion
14 worth of trade show business due to capacity limitations. To remain competitive with other large cities
15 with respect to attracting conventions, which typically book large blocks of rooms in large hotels, the
16 City needs to continue the restrictions on the conversion of rooms in large hotels to condominiums.

17 (c) Since its passage in 2008, the Tourist Hotel Conversion Ordinance (the "THCO") has
18 stabilized San Francisco's hotel sector and preserved thousands of hospitality industry jobs in the City
19 by restricting the conversion of rooms and suites in large hotels to condominiums. Because the THCO
20 has been a proven success over the past decade in fulfilling its purpose, the City wants to continue it
21 and strengthen its provisions.

22 (d) Absent the THCO, the high price of luxury housing would likely have resulted in the
23 conversion of thousands of tourist hotel units to condominiums, thereby constricting the number of
24 hotel rooms available to convention attendees and risking the loss of convention business to competing
25 markets. Given the continuing high prices of housing in San Francisco, it is vital to the City's

1 economic interest and well-being to continue the restriction on conversion of hotel rooms to
2 condominiums.

3 **SEC. 41F.3 2. DEFINITIONS.**

4 ~~(a) — "Baseline Inventory" shall mean an inventory of the number of Large Tourist Hotel~~
5 ~~Rooms commercially available for rent as of March 1, 2009, as calculated according to the process~~
6 ~~described in Section 41F.3(g).~~

7 ~~(b) — "Annual Inventory" shall mean the inventory of the number of Tourist Hotel Rooms~~
8 ~~commercially available for rent as updated in each year after the Baseline inventory, as calculated~~
9 ~~according to the process described in Section 41F.3(g).~~

10 For purposes of this Chapter 41F, the following definitions shall apply:

11 ~~(i)~~ "Ancillary Hotel Area" shall mean any area within a Large Tourist Hotel not
12 defined as a Large Tourist Hotel Room, including, but not limited to, restaurant, retail, and
13 parking areas.

14 ~~(e)~~ "Condominium Project" shall mean ~~(1 i)~~ a Community Apartment as defined in
15 Section 1308(b) of the Subdivision Code; ~~(2 ii)~~ a Condominium as defined in Section 1308(c)
16 of the Subdivision Code; ~~(3 iii)~~ a Stock Cooperative as defined in Section 1308(f) of the
17 Subdivision Code; or ~~(4 iv)~~ any other subdivided interest in land.

18 ~~(d)~~ "Convert" shall mean: ~~(1 i)~~ to change the type of ownership of any real property
19 to that defined as a Condominium Project and in which two or more units are newly created
20 wholly or in substantial part within the existing structure of a Large Tourist Hotel, regardless of
21 whether substantial improvements have been made to such structures; or ~~(2 ii)~~ to change the
22 ownership structure of one or more guest rooms, one or more suites of rooms, or any portion
23 thereof within an existing Large Tourist Hotel in a manner that reduces the number of Large
24 Tourist Hotel Rooms available for rent to the general public.

1 (e) ~~"Dwelling Unit" shall mean any building or portion thereof that contains living~~
2 ~~facilities, including provisions for sleeping, eating, cooking, and sanitation as required by the Housing~~
3 ~~Code, for not more than one Family.~~

4 (f) ~~"Family" shall mean one or more persons, related or unrelated, living together as a~~
5 ~~single integrated household in a dwelling unit.~~

6 (g) "Large Tourist Hotel" shall mean any building (or set of buildings, which shall mean
7 buildings on the same lot, adjacent lots, or within the same block and owned by the same owner) in the
8 City containing 100 or more guest rooms or suites of rooms intended or designated to be used
9 for commercial tourist use by providing accommodation to transient guests on a nightly basis
10 or longer, as contemplated by the definition in Section ~~216(b)~~ 102 of the Planning Code. The
11 definition of Large Tourist Hotel shall include, ~~for purposes of this Chapter,~~ a building (or set of
12 buildings, ~~which shall mean buildings on the same lot, adjacent lots, or within the same block and~~
13 ~~owned by the same entity)~~ which would have qualified as a Large Tourist Hotel in any of the five
14 years preceding the application for Conversion. ~~A building (or set of buildings) shall not be~~
15 ~~considered a Large Tourist Hotel if the total number of rooms intended to be operated separately for~~
16 ~~transient use is less than 100 rooms.~~

17 (h) "Large Tourist Hotel Room" shall mean any guest room, suite of rooms, or any
18 portion thereof in a Large Tourist Hotel intended or designated to be used for commercial
19 tourist use by providing accommodation to transient guests on a nightly basis or longer, as
20 contemplated by the definition in Section ~~216(b)~~ 102 of the Planning Code.

21 **SEC. 41F.4 3. CONVERSIONS RESTRICTED.**

22 (a) **General Prohibition.** Except as provided in subsection (b) below, ~~It~~ shall be
23 unlawful for any person to Convert any portion of a Large Tourist Hotel. ~~except as provided in~~
24 ~~this Chapter. Notwithstanding Conversion approval under this Chapter, a Conversion project must in~~
25 ~~addition obtain all applicable City permits and approvals, including any applicable conditional use~~

1 *authorization requirements. This Chapter shall not limit City discretion to deny or approve with*
2 *conditions a proposed Conversion project.*

3 ~~(b) — **Conversion prior to November 1, 2010.** Notwithstanding the foregoing restriction, the~~
4 ~~Planning Commission may approve use of Conversion credits for a total of up to 550 Large Tourist~~
5 ~~Hotel Rooms to be Converted prior to November 1, 2010. The Planning Commission shall approve~~
6 ~~applications for Conversions under this section on a first-come first-served basis. An applicant's place~~
7 ~~in the Conversion queue for the 550 pre-lottery Conversion credits shall be based upon the date the~~
8 ~~Planning Department receives a complete subdivision or environmental application, as determined by~~
9 ~~the Zoning Administrator, and provided the application or subsequent written communication identifies~~
10 ~~the number of tourist hotel rooms to be Converted.~~

11 ~~(b e) **Ancillary Hotel Areas.** A person may Convert all or any portion of an Ancillary~~
12 ~~Hotel Area with a Conditional Use authorization and upon a showing to the Planning Commission~~
13 ~~that the Conversion ~~shall~~ will not result in a reduction in the number of Large Tourist Hotel~~
14 ~~Rooms in the subject hotel.~~

15 ~~(d) — **Conversion Lottery.** Beginning in 2010, the Planning Department shall hold an annual~~
16 ~~lottery for Conversion credits for Large Tourist Hotel Rooms in accordance with the following:~~

17 ~~(1) — The Planning Department shall hold the lottery only if:~~

18 ~~(i) — The Annual Inventory shows a net increase of at least 100 Large Tourist~~
19 ~~Hotel Rooms over the prior year's inventory, as calculated in Section 41F.3(g) below; and~~

20 ~~(ii) — Conducting a lottery would not result in a reduction in the number of~~
21 ~~Large Tourist Hotel Rooms below the Baseline Inventory.~~

22 ~~(2) — The number of Conversion credits available in each lottery shall equal the net~~
23 ~~increase in Large Tourist Hotel Rooms during the previous year's inventory. Large Tourist Hotel~~
24 ~~Rooms lost through authorized Conversions shall not be considered for purposes of calculating the net~~
25 ~~increase in Large Tourist Hotel Rooms under this section, as described in Section 41F.3(g), below.~~

1 (3) — ~~In order to participate in the conversion credit lottery, applicants must submit a~~
2 ~~Section 41F.3(f)(3) application within 15 business days of the formal adoption of the Annual Inventory~~
3 ~~update. The Planning Department shall issue one lottery ticket per Large Tourist Hotel applicant. Only~~
4 ~~one application may be submitted per Large Tourist Hotel.~~

5 (4) — ~~The Planning Department shall hold the lottery at a public hearing within 6~~
6 ~~weeks of the formal adoption of the Annual Inventory. Winning lottery tickets shall be chosen~~
7 ~~randomly, one at a time. If not enough credits remain in the pool to satisfy a winning ticket, then the~~
8 ~~applicant shall receive the number of credits remaining in the pool and be eligible to receive the~~
9 ~~remainder as the first applicant on the standby list. If a lottery would otherwise be required by the~~
10 ~~Chapter and the number of available credits exceeds the total number of applicants' requests for~~
11 ~~Conversion credits in a particular year, then the credits shall be granted and no lottery shall take~~
12 ~~place.~~

13 (5) — ~~If applicants collectively seek more Conversion credits than are available in the~~
14 ~~lottery pool, then, after the last winning ticket is drawn, the Planning Department shall draw a~~
15 ~~reasonable number of alternate tickets for inclusion in a standby list. If, nine months after the lottery,~~
16 ~~the Planning Department revokes winning credits according to subsection (e)(2), below, the credits~~
17 ~~shall be reallocated to the standby list, in the order drawn.~~

18 (e) — ~~**Large Tourist Hotel Conversion Credits.**~~

19 (1) — ~~Conversion is prohibited unless the applicant uses Conversion credits to offset~~
20 ~~the loss of Large Tourist Hotel Rooms. An award of Conversion credits does not grant the credit holder~~
21 ~~a right to development or otherwise limit City discretion to deny or approve with conditions a proposed~~
22 ~~Conversion project. A credit holder must still obtain all otherwise applicable City permits and~~
23 ~~approvals, including but not limited to Planning Commission approval of the Conversion pursuant to~~
24 ~~Section 41F.3(f).~~

1 (2) — Credits are building-specific and non-transferable, except that if the credit
2 holder does not make diligent and good faith efforts within nine months of issuance of the Conversion
3 credit(s), the credits may be revoked and reallocated to the queue, for pre-lottery credits, or the
4 standby list, for lottery credits. Credits shall expire if the applicant or standby-list recipient fails to
5 diligently and in good faith pursue Conversion for any 18 consecutive months, as determined by the
6 Zoning Administrator after notice and a public hearing. The Board of Appeals shall hear and
7 determine appeals under this section.

8 (f) — **Conversion Process.**

9 (1) — The City may not issue permits related to use of pre-lottery or lottery Conversion
10 credits until and unless the Planning Commission approves a Section 41F.3(f) Conversion application
11 for the proposed Conversion project.

12 (2) — The notice and hearing requirements applicable to conditional use
13 authorizations shall apply to Planning Commission's action to approve or deny Conversion
14 applications for use of Conversion credits under this Chapter.

15 (3) — Any party seeking Conversion under this Chapter shall submit a written
16 Conversion application to the Planning Department containing, at minimum, the following
17 information:

18 (i) — The name and address of the building in which the conversions are
19 proposed;

20 (ii) — The names and addresses of all owners and operators of said building;

21 (iii) — A description of the proposed Conversion including the nature of the
22 Conversion, the total number of Large Tourist Hotel Rooms prior to and following Conversion, a
23 description of the area and/or rooms to be Converted, including floor number and location, and the
24 estimated total number of Condominium Units to be created;

1 *appeal the decision to the Board of Supervisors pursuant to the appeals process set forth in Section 308*
2 *of the Planning Code.*

3 ~~(g) — **Inventory Procedure.**~~

4 ~~(1) — **Adoption of Inventory.** The Planning Commission shall adopt a Baseline~~
5 ~~Inventory and subsequent Annual Inventories of the number of Large Tourist Hotel Rooms in the City~~
6 ~~as of March 1 of each year. The Planning Department shall provide the public with an opportunity for~~
7 ~~meaningful review and comment on Baseline and Annual Inventories, including a public hearing no~~
8 ~~later than March 15th of each year.~~

9 ~~(2) — **Calculating Additions to the Annual Inventory.** Large Tourist Hotel Rooms~~
10 ~~created by new Large Tourist Hotel construction and/or expansion shall be counted as part of the~~
11 ~~Annual Inventory year in which the City issues final certificates of occupancy.~~

12 ~~(3) — **Calculating Losses from the Annual Inventory.**~~

13 ~~(i) — Losses of Large Tourist Hotel Rooms shall count in the inventory year in~~
14 ~~which the rooms cease to be commercially available for rent.~~

15 ~~(ii) — In conducting its Annual Inventory, the Planning Department will~~
16 ~~distinguish how many Large Tourist Hotel Rooms were lost due to authorized Conversions, and how~~
17 ~~many were lost for other reasons.~~

18 ~~(4) — **Calculating the number of Conversion credits available for the annual lottery.**~~

19 ~~The number of Conversion credits available for each year's lottery shall equal the number of additions~~
20 ~~as calculated in subsection (2) above, less the number of rooms lost due to reasons other than~~
21 ~~authorized Conversions, as calculated in subsection (3) above.~~

22 **SEC. 41F.5 4. ENFORCEMENT.**

23 (a) The Department of Building Inspection, in consultation with the Departments of
24 Planning and Public Works, shall be responsible for enforcement of this Chapter 41F as it may
25 relate to physical alterations to a Large Tourist Hotel and may take any appropriate action

1 within its powers to enforce this Chapter, including, but not limited to, denial of any building,
2 construction, or change of use permits. The Department of Public Works, in consultation with
3 the Departments of Building Inspection and Planning, shall be responsible for enforcement of
4 this Chapter as it may relate to actions involving a subdivision under the Subdivision Map Act,
5 California Government Code ~~s~~Sections 66410 et seq.

6 (b) **Civil Penalties.**

7 (1) The Department of Building Inspection or the Department of Public Works
8 may recommend to the City Attorney initiation of a civil action *to enforce this Chapter hereunder*.
9 The City Attorney shall have the power to bring an action for injunctive relief to restrain or
10 summary abatement to cause the correction or abatement of the violation of this article and
11 for assessment and recovery of a civil penalty and reasonable attorney's fees for such
12 violation, or other judicial relief hereunder.

13 (2) Any person who violates this *Article Chapter 41F* may be liable for a civil
14 penalty, not to exceed \$500.~~00~~ per room for each day such violation is committed or permitted
15 to continue, which penalty shall be assessed and recovered in a civil action brought in the
16 name of the people of the City by the City Attorney in any court of competent jurisdiction. The
17 City Attorney also may seek recovery of ~~the~~ attorney's fees and costs incurred in bringing a
18 civil action pursuant to this *Subsection (b)*.

19 (c) **Criminal Penalties.**

20 (1) The Department of Building Inspection or the Department of Public Works
21 may recommend to the District Attorney initiation of a criminal action *to enforce this Chapter*
22 *hereunder*.

23 (2) Any person who violates this *Article Chapter 41F* shall be deemed guilty of
24 a misdemeanor. Every violation determined to be a misdemeanor is punishable by a fine of
25

1 not more than \$1,000 or by imprisonment in the County Jail for a period of not more than six
2 months, or by both such fines or imprisonments.

3 ***SEC. 41F.5. SUNSET PROVISION.***

4 *This Chapter shall automatically expire by operation of law 120 months after its initial effective*
5 *date unless the Board of Supervisors, on or before that date, extends or re-enacts it. The City Attorney*
6 *shall cause the Chapter to be removed from future editions of the Code.*

7 **SEC. 41F.6. SEVERABILITY.**


8 *In the event that a Court or agency of competent jurisdiction holds that a Federal or State law,*
9 *rule or regulation invalidates any clause, sentence, paragraph or section of this ordinance or the*
10 *application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the*
11 *court or agency sever such clause, sentence, paragraph or section so that the remainder of this*
12 *ordinance shall remain in effect. If any section, subsection, sentence, clause, phrase, or word of this*
13 *Chapter 41F, or any application thereof to any person or circumstance, is held to be invalid or*
14 *unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the*
15 *validity of the remaining portions or applications of this Chapter. The Board of Supervisors hereby*
16 *declares that it would have passed this Chapter and each and every section, subsection, sentence,*
17 *clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other*
18 *portion of this Chapter or application thereof would be subsequently declared invalid or*
19 *unconstitutional.*

20
21 Section 4. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides the Mayor's veto of the ordinance.
25

1 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to enact those words, phrases, paragraphs, subsections, sections, articles, numbers,
3 punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that
4 are explicitly shown in this ordinance as additions and Board amendment additions, as
5 signified by the "Note" that appears under the official title of the ordinance, and also intends to
6 enact all words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation
7 marks, charts, diagrams, or any other parts of the Municipal Code that are not shown as
8 deletions or Board amendment deletions, as signified by the "Note" that appears under the
9 official title of the ordinance. Words, phrases, paragraphs, subsections, sections, articles,
10 numbers, punctuation marks, charts, diagrams, or any other parts of the Municipal Code that
11 are shown as deletions or Board amendment deletions are not being enacted.

12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

By: 
JUDITH A. BOYAJIAN
Deputy City Attorney
n:\legana\as2018\1800709\01363354.docx