Ordinance amending the Administrative Code to add Section 41F to limit conversion of Large Tourist Hotels into condominium projects, allowing the Planning Commission to approve conversion of up to 550 Large Tourist Hotel Rooms, before March 1, 2010, establishing conditions precedent and procedures for an annual lottery system for conversions after March 1, 2010, requiring applicants for conversions to provide the Planning Department with certain information regarding the conversion, creating a 120-month sunset period, and making environmental findings.

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

Section 1. Findings.

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

(2) In 2005, according to the California Employment Development Department, leisure and hospitality services accounted for 1 in 7 (14%) of the jobs in the City and the San Francisco hotel industry employed over 18,000 workers.

(3) In 2006, according to the San Francisco Convention and Visitors Bureau ("SFCVB"), San Francisco hosted 15.8 million visitors, contributing $7.8 billion to the City's economy. (San Francisco Visitor Volume and Spending Report 2006.)

(4) The hospitality industry also provides a crucial source of revenue to the City. 2006 visitor taxes totaled $478 million, or $14,563 per room (See San Francisco Visitor Volume and Spending Report 2006; SFCVB San Francisco Visitor Industry Statistics.) The San
Francisco Controller estimates that during FY 2007-08 the City will glean $210 million in Hotel Room Tax alone.

(5) There are roughly 33,000 tourist hotel rooms in the City, spread across approximately 200 hotels. The majority of these tourist hotel rooms are located in 80 large hotels with 100 or more tourist hotel rooms each. (SFCVB San Francisco Visitor Industry Statistics.)

(6) Competition between cities for major conventions, requiring in excess of 8,000 rooms, is intense. San Francisco has invested hundreds of millions of dollars in improving its tourism infrastructure, including the construction of public facilities for major conventions. Large conventions depend on a reliable supply of hotel rooms concentrated at one site. The ability of San Francisco to compete for major conventions or events (a national presidential convention, for example) or to bid for events such as the Olympics, will be compromised if the City’s major hotels convert tourist hotel rooms to residential use.

(7) Residential real estate prices remain near historic highs in San Francisco. Concerns have been raised that the combination of low interest rates and high real estate prices in the City will lead to the conversion of tourist hotel units in condominiums. Such conversions have become a growing trend in other cities such as New York City, Orlando, and the Miami-Ft. Lauderdale area. Such conversions could have a devastating impact on the City’s tourism industry and all those whom it employs. (San Francisco Real Estate Trends – Sep 07; NYT 3/6/05 “If They Come, Where Will They Sleep?”; NYT 10/19/05 “Fewer Rooms at the Inn.”)

(8) In other cities where hotel rooms have been converted to residential condominiums the units have been sold as extremely high-priced housing. According to the Housing Element of the San Francisco General Plan, San Francisco already exceeds the necessary
production of market-rate housing, with a substantial amount being high-end houses and
condominium units.

(9) In 2005, Board of Supervisors Ordinance 241-05 amended the Administrative Code
to add Chapter 41F prohibiting large hotel conversions, with certain exceptions. The
ordinance expired on September 18, 2007.

Section 2. Environmental Findings. The Planning Department has determined that the
actions contemplated in this Ordinance are in compliance 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. 071528 and is
incorporated herein by reference.

Section 3. The San Francisco Administrative Code is hereby amended to repeal the
previously codified Section 41F.

Section 43. The San Francisco Administrative Code is hereby amended to add Section
41F to read as follows:

SeeSEC. 41F: TOURIST HOTEL CONVERSION

SEC. 41F.1. TITLE.

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

SEC. 41F.2. DEFINITIONS.

(a) "Baseline Inventory" shall mean an inventory of the number of Large Tourist
Hotel Rooms commercially available for rent as of March 1, 2009. The Planning Commission
shall adopt a Baseline Inventory reflecting the number of Large Tourist Hotel Rooms in the
City as of March 1, 2009, and shall update the Baseline Inventory annually thereafter and no
later than March 15 of each year. The Planning Department shall provide the public with an
opportunity for meaningful review and comment on the Baseline Inventory and annual
updates, including a public hearing. Rooms created by new Large Tourist Hotel Construction and/or expansion shall qualify as additional Large Tourist Hotel Rooms in the year they obtain final certificates of occupancy from the City, and shall be added to the Baseline Inventory. Losses to the City’s Large Tourist Hotel inventory, including, but not limited to, Conversions, shall be subtracted from the Baseline Inventory.

(b) "Condominium Project" shall mean (i) a Community Apartment as defined in Section 1308(b) of the Subdivision Code; (ii) a Condominium as defined in Section 1308(c) of the Subdivision Code; (iii) a Stock Cooperative as defined in Section 1308(f) of the Subdivision Code; or (iv) any other subdivided interest in land.

(b-c) "Convert" shall mean: (i) to change the type of ownership of any real property to that defined as a Condominium Project and in which two or more units are newly created wholly or in substantial part within the existing structure of a Large Tourist Hotel, regardless of whether substantial improvements have been made to such structures; or (ii) to change one or more guest rooms, one or more suites of rooms, or any portion thereof within an existing Large Tourist Hotel.

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

(b-e) "Family" shall mean one or more persons, related or unrelated, living together as a single integrated household in a dwelling unit.

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

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

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

SEC. 41F.3. CONVERSIONS PROHIBITED RESTRICTED.

(a) General Prohibition. It shall be unlawful for any person to Convert any portion of an existing Large Tourist Hotel except as provided in this Chapter.

(b) Conversion prior to March 1, 2010. Notwithstanding the foregoing prohibition restriction, the Planning Commission may approve a total of up to 500 rooms to be Converted in the first two years following the effective date of this ordinance. Following the 24th month after the effective date of this Ordinance, the Planning Commission may further approve hotel rooms to be Converted if the applicant can demonstrate that such Conversion will not reduce the supply of Largest Tourist Hotel rooms available within the City and County of San Francisco prior to March 1, 2010. The Planning Commission shall approve applications for Conversions under this section on a first-come first-served basis.
Applicants' place in the Conversion queue shall be based upon the date the Planning Department receives a complete application, as determined by the Zoning Administrator.

(c) A person may convert all or any portion of a Large Tourist Hotel, provided that the right of any one person to occupy a Dwelling Unit, guest room, or suite after the Conversion is restricted to not more than 30 consecutive days per year or 90 days in aggregate per year, but only if the original approval of such Large Tourist Hotel was obtained before the effective date of this ordinance as part of a mixed-use development including both tourist hotel and residential uses. The foregoing restrictions on occupancy will not apply to the previously approved residential portion of the development.

(c) Ancillary Hotel Areas. A person may convert all or any portion of an Ancillary Hotel Area upon a showing that the Conversion shall not result in a reduction in Large Tourist Hotel Rooms in the subject hotel. Notwithstanding Conversion approval under the Chapter, a Conversion project must in addition obtain all applicable City permits and approvals, including any applicable conditional use authorization requirements. This Chapter shall not limit City discretion to deny or approve with conditions a proposed Conversion project.

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

1. The Planning Department shall hold the lottery only if:
   (i) The update to the Baseline Inventory shows a net increase of at least 100 Large Tourist Hotel Rooms during the previous Baseline Inventory year. Large Tourist Hotel Rooms lost through authorized conversions shall not be considered for purposes of calculating the net increase in Large Tourist Hotel Rooms under this section; and
(ii) The number of existing Large Tourist Hotel Rooms exceeds the March 2010 Baseline Inventory by at least the number of Conversion credits available in the proposed lottery pursuant to subsection (d)(2), below.

(2) The number of Conversion credits available in each lottery shall equal the net increase in Large Tourist Hotel Rooms during the previous Baseline Inventory year, not including Conversions authorized by lottery credits. Large Tourist Hotel Rooms lost through authorized Conversions shall not be considered for purposes of calculating the net increase in Large Tourist Hotel Rooms under this section.

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

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

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

(e) Conversion Credits.
(1) Except as provided in Sections 41F.3(b) or (c), Conversion is prohibited unless
the applicant uses Conversion credits to offset the loss of Large Tourist Hotel Rooms. A
lottery award of Large Tourist Hotel Conversion credits does not grant the credit-holder a right
to development or otherwise limit City discretion to deny or approve with conditions a
proposed Conversion project. A credit holder must still obtain all otherwise applicable City
permits and approvals, including but not limited to Planning Commission approval of the
Conversion pursuant to Section 41F.3(f).
(2) Credits are building-specific and non-transferable, except that if the credit holder
does not make diligent and good faith efforts within nine months of the lottery in support of
Conversion, the credits will be revoked and reallocated to the standby list. Credits shall
permanently expire if the applicant or standby-list recipient fails to diligently and in good faith
pursue Conversion for any 12 consecutive months.

(f) Conversion Process.
(1) The notice and hearing requirements applicable to conditional use
authorizations shall apply to all Planning Commission decisions under this Chapter.
(2) Any party seeking Conversion under this Chapter shall submit a written
Conversion application to the Planning Department containing, at minimum, the following
information:
   (i) The name and address of the building in which the conversions are
   proposed;
   (ii) The names and addresses of all owners and operators of said building;
(iii) A description of the proposed Conversion including the nature of the Conversion, the total number of Large Tourist Hotel Rooms prior to and following Conversion, a description of the area and/or rooms to be Converted, including floor number and location, and the estimated total number of Condominium Units to be created:

(iv) Preliminary drawings showing the existing floor plans and proposed floor plans:

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

(vi) Information specifying any changes to the subject building or buildings' inventory of rooms in the 5 years preceding the date of application for Conversion:

(vii) The average rental rates of the rooms to be converted, calculated over the calendar year preceding the year of application for Conversion:

(viii) Applicants for the lottery must provide information demonstrating that the Conversion will not reduce the supply of Large Tourist Hotel Rooms based upon the most recent Baseline Inventory.

(ix) Applicants for Ancillary Hotel Area Conversion must provide information demonstrating that the proposed Conversion will not result in loss of Large Tourist Hotel Rooms in the subject Large Tourist Hotel, including specifying any proposed changes to the subject buildings' inventory of rooms planned in the 5 years following the date of application for Conversion.

(x) Applicants for Conversion must pay the Planning Department a processing fee set by the Planning Director at a full cost recovery level.

(3) The Zoning Administrator shall make a recommendation regarding the approval, denial, or approval with conditions of the Conversion application to the Planning Commission.
based upon whether the proposed Conversion meets Planning Code requirements including, but not limited to, this Chapter. The Planning Commission shall approve the Conversion, deny it, or approve it with conditions. Any member of the public wishing to appeal the decision of the Planning Commission must appeal the decision to the Board of Supervisors pursuant to the appeals process set forth in Section 308 of the Planning Code.

SEC. 41F.4. ENFORCEMENT.

(a) The Department of Building Inspection, in consultation with the Departments of Planning and Public Works, shall be responsible for enforcement of this Chapter as it may relate to physical alterations to a Large Tourist Hotel and may take any appropriate action within its powers to enforce this Chapter, including, but not limited to, denial of any building, construction, or change of use permits. The Department of Public Works, in consultation with the Departments of Building Inspection and Planning, shall be responsible for enforcement of this Chapter as it may relate to actions involving a subdivision under the Subdivision Map Act, California Government Code Sections 66410 et seq.

(b) Civil Penalties.

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

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

(c) Criminal Penalties.

(1) The Department of Building Inspection or the Department of Public Works may
recommend to the District Attorney initiation of a criminal action hereunder.

(2) Any person who violates this Article shall be deemed guilty of a misdemeanor. Every
violation determined to be a misdemeanor is punishable by a fine of not more than $1,000 or by
imprisonment in the County Jail for a period of not more than six months, or by both such fines or
imprisons.

(d) Exemptions

(4) Applicants for Conversion pursuant to Section 41F.3(b) or Section 41F.3(c) must
provide the following information to the Planning Department:

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

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

(iii) A description of the proposed conversion including the nature of the
conversion, the total number of hotel rooms prior to and following conversion, a description of
the rooms to be converted, including floor number and location, the estimated total number of
Condominium Units to be created;

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

(v) A description of the improvements or changes proposed to be constructed
or installed and the tentative schedule for start of construction; and
(vi) The average rental rates of the rooms to be converted, calculated over the calendar year preceding the year of application for exemption; and

(vii) Evidence, if applicable, that such conversion will not reduce the supply of Large Tourist Hotel Rooms available within the City and County of San Francisco.

(2) Upon receipt of the application for exemption, the Planning Department shall issue public notice of the application. A ten-day comment period shall commence on the day of the notice. The Planning Commission shall hold a public hearing on the exemption no sooner than ten days after the day the notice is issued. The Zoning Administrator shall recommend approval of the exemption if the applicant meets the requirements in subsections 41.F.3(b) or 41.F.3(c). When reviewing the request for exemption, the Planning Department may take into consideration Large Tourist Hotel rooms under construction at the time of the application, and must take into consideration other exemptions previously approved pursuant to this subsection, to ensure that no single exemption and no exemptions in aggregate would result in net loss of Large Tourist Hotel rooms. Thus, increase in hotel rooms resulting from a Large Tourist Hotel under construction cannot justify an exemption or exemptions if such exemption or exemptions would reduce the net supply of Large Tourist Hotel rooms available within the City and County of San Francisco except to the extent allowable under subsections 41.F.3(b) or 41.F.3(c). To ensure that exemptions do not result in net loss of Large Tourist Hotel rooms, multiple applications for exemption under subsections 41.F.3(b) or 41.F.3(c) will be processed in the order received, and evaluated on the merits of each application, as if no other applications were pending. The Zoning Administrator shall make a recommendation regarding the approval, denial, or approval with conditions of the exemption application to the Planning Commission. The Planning Commission shall approve the exemption, deny it, or approve it with conditions. The decision of the Planning Commission may be appealed to the
Board of Supervisors by any member of the public pursuant to the appeals process set forth in Section 306.8 of the Planning Code.

SEC. 41F.5. SUNSET PROVISION.

This Chapter shall be repealed automatically expire by operation of law 120 months after its initial effective date unless the Board of Supervisors, on or before that date, extends or re-enacts it.

The City Attorney shall cause the Chapter to be removed from future editions of the Code.

SEC. 41F.6. SEVERABILITY.

In the event that a court or agency of competent jurisdiction holds that a federal or state law, rule or regulation invalidates any clause, sentence, paragraph or section of this ordinance or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this ordinance shall remain in effect.

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

By:
Andrew W. Garth
Deputy City Attorney
Ordinance amending the Administrative Code to add Section 41F to limit conversion of Large Tourist Hotels into condominium projects, allowing the Planning Commission to approve conversion of up to 500 units before March 1, 2010, establishing conditions precedent and procedures for an annual lottery system for conversions after March 1, 2010, requiring applicants for conversions to provide the Planning Department with certain information regarding the conversion, creating a 120-month sunset period, and making environmental findings.

March 11, 2008  Board of Supervisors — PASSED ON FIRST READING
    Ayes: 10 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, Mirkarimi, Peskin, Sandoval
    Excused: 1 - McGoldrick

March 18, 2008  Board of Supervisors — FINALLY PASSED
    Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
I hereby certify that the foregoing Ordinance was FINALLY PASSED on March 18, 2008 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Date Approved

3-24-08

Mayor Gavin Newson