Amendment of the Whole
12/15/08

FILE NO. 081564
ORDINANCE NO. 14-09

[Administrative Code – Amendment to Large Tourist Hotel Conversion Ordinance.]

Ordinance amending Administrative Code Chapter 41F to clarify the scope and implementation of the Large Tourist Hotel Conversion Ordinance, including minor edits to the definition of "Convert" and additional guidance regarding the conversion process for Large Tourist Hotels Rooms, and making required findings.

Note: Additions are single-underline italics Times New Roman; deletions are strikethrough italics Times New Roman. Board amendment additions are double underlined. Board amendment deletions are strikethrough normal.

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

Section 1. Findings.

(1) On March 18, 2008, the Board of Supervisors adopted the Large Tourist Hotel Conversion Ordinance.

(2) The Board of Supervisors has determined that selected amendments to the ordinance will facilitate the efficient and orderly implementation of the Large Tourist Hotel Conversion Ordinance.

(3) On May 23, 2008 the Zoning Administrator promulgated a Bulletin and Letter of Determination setting forth the process that the Planning Department would follow to determine “complete applications” subject to first-come, first-served priority under Section 41F.3(b) of the Large Tourist Hotel Conversion Ordinance. As amended on July 14, 2008, the Letter of Determination applied the principles of the Bulletin to establish a priority listing of pending projects ("Queue"). The Bulletin, Letter of Determination, and Queue contained errors that the Zoning Administrator requested the Board of Appeals correct. The Board of Appeals affirmed the Zoning Administrator's
determination issued a decision on November 12, 2008, that corrected the Bulletin, Letter of Determination, and Queue to conform with the Zoning Administrator’s intent.

(4) The Board of Supervisors intends that these amendments apply retroactively to the effective date of the original ordinance, April 24, 2008, except to the extent that such application would abridge vested rights under the law.

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. 081564 and is incorporated herein by reference.

Section 3. The San Francisco Administrative Code Section 41F is hereby amended to read as follows:

SEC. 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, as calculated according to the process described in Section 41F.3(g). 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

Supervisor Peskin
BOARD OF SUPERVISORS
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) "Annual Inventory" shall mean the inventory of the number of Tourist Hotel Rooms commercially available for rent as updated in each year after the Baseline inventory, as calculated according to the process described in Section 41F.3(g).

(bc) "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.

(ed) "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 the ownership structure of one or more guest rooms, one or more suites of rooms, or any portion thereof within an existing Large Tourist Hotel in a manner that reduces the number of Large Tourist Hotel Rooms available for rent to the general public.

(de) "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.

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

(fg) "Large Tourist Hotel" shall mean any building in the City containing 100 or more guest rooms or 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.

"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.

"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 RESTRICTED.

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

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

(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 the number of 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 Annual update to the Baseline Inventory shows a net increase of
       at least 100 Large Tourist Hotel Rooms over the prior year's inventory, as calculated in
       Section 41F.3(g) below; and 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) Conducting a lottery would not result in a reduction in the number of
       Large Tourist Hotel Rooms below the 2009 Baseline Inventory, except as provided in Section

       41F.3(g) below. 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 year's inventory, 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, as described in Section 41F.3(g), below.

(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 Annual 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 Annual 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 be eligible to 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) **Large Tourist Hotel** Conversion Credits.

(1) Except as provided in Sections 41F.3(b) or (e), 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 **issuance of the Conversion credit(s)** the lottery in support of Conversion, the credits will may be revoked and reallocated to the Queue for pre-lottery credits, or the standby list, for lottery credits. 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, as determined by the Zoning Administrator after notice and a public hearing. The Board of Appeals shall hear and determine appeals under this section.

(f) Conversion Process.

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

(4) The notice and hearing requirements applicable to conditional use authorizations shall apply to all Planning Commission's action to approve or deny Conversion applications for use of Conversion credits decisions under this Chapter.
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 to levels below the 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.

(xi) As a condition of approval, an applicant must provide annual updates to the Planning Department on the status of the approved Conversions until such time as the Conversions are complete or the approved Conversion credits have been used, revoked, or have expired.

(3)(4) 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.

(g) Annual Inventory Procedure.

(1) Adoption of Annual Inventory. The Planning Commission shall adopt a Baseline Inventory and subsequent Annual Inventories of the number of Large Tourist Hotel Rooms in the City as of March 1 of each year. The Planning Department shall provide the public with an opportunity for meaningful review and comment on Baseline and Annual Inventories, including a public hearing no later than March 15th of each year.
(2) Calculating Additions to the Annual Inventory. Large Tourist Hotel Rooms created by new Large Tourist Hotel construction and/or expansion shall be counted as part of the Annual Inventory year in which the City issues final certificates of occupancy.

(3) Calculating Losses from the Annual Inventory.

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

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

(4) Calculating the number of Conversion credits available for the annual lottery.

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

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 imprisonments.

SEC. 41F.5. SUNSET PROVISION.

This Chapter shall 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
File Number: 081564

Ordinance amending Administrative Code Chapter 41F to clarify the scope and implementation of the Large Tourist Hotel Conversion Ordinance, including minor edits to the definition of "Convert" and additional guidance regarding the conversion process for Large Tourist Hotel Rooms, and making required findings.

December 16, 2008  Board of Supervisors — PASSED ON FIRST READING
Ayes: 11 - Alioto-Pier, Campos, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

January 6, 2009  Board of Supervisors — FINALLY PASSED
Ayes: 10 - Alioto-Pier, Campos, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin
File No. 081564

I hereby certify that the foregoing Ordinance was FINALLY PASSED on January 6, 2009 by the Board of Supervisors of the City and County of San Francisco.

1/16/09
Date Approved

Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom