

FILE NO. 061688

ORDINANCE NO.

87-07

1 [Zoning –Use of TDRs.]
2

3 **Ordinance amending the San Francisco Planning Code by amending Sections 123, 124,**
4 **and 128 to address use of Transferable Development Rights (TDRs) under specified**
5 **circumstances; and adopting findings including environmental findings and findings of**
6 **consistency with the General Plan and the Priority Policies of Planning Code Section**
7 **101.1(b).**

8 Note: Additions are *single-underline italics Times New Roman*;
9 deletions are *strikethrough italics Times New Roman*.
10 Board amendment additions are double underlined.
11 Board amendment deletions are ~~strikethrough normal~~.

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

13 Section 1. Findings.

14 (a) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
15 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in
16 Planning Commission Resolution No. 17379, and incorporates those reasons
17 herein by reference. A copy of said Planning Commission resolution is on file with the Clerk
18 of the Board of Supervisors in File No. 061688.

19 (b) The Board of Supervisors finds that this ordinance is consistent with the General
20 Plan and the Priority Policies of Planning Code Section 101.1(b) for the reasons set forth in
21 Planning Commission Resolution No. 17379, and incorporates
22 those reasons herein by reference.

23 (c) The Planning Department has completed environmental review of this ordinance
24 pursuant to the California Environmental Quality Act ("CEQA"), the CEQA Guidelines,
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1 Chapter 31 of the San Francisco Administrative Code. Documentation of that review is on file
2 with the Clerk of the Board of Supervisors in File No. 061688.

3 Section 2. The San Francisco Planning Code is hereby amended by amending Section
4 123, to read as follows:

5 SEC. 123. MAXIMUM FLOOR AREA RATIO.

6 (a) The limits upon the floor area ratio of buildings, as defined by this Code, shall be
7 as stated in this Section and Sections 124 through 128. The maximum floor area ratio for any
8 building or development shall be equal to the sum of the basic floor area ratio for the district,
9 as set forth in Section 124, plus any premiums and floor area transfers which are applicable to
10 such building or development under Sections 125, 127 and 128, and as restricted by the
11 provisions of Sections 123(c) and (d) and 124(b) and(j).

12 (b) No building or structure or part thereof shall be permitted to exceed, except as
13 stated in Sections 172 and 188 of this Code, the floor area ratio limits herein set forth for the
14 district in which it is located.

15 (c) The amount of TDR that may be transferred to a development lot, as allowed by
16 Section 128, is limited as follows:

17 (1) The gross floor area of a structure on a lot in the C-3-O and C-3-O (SD)
18 Districts may not exceed a floor area ratio of 18 to 1;

19 (2) The gross floor area of a structure on a lot in the C-3-R, C-3-G and C-3-S
20 Districts may not exceed a floor area ratio that is 1 1/2 times the basic floor area limit for the
21 district as provided in Section 124. This section shall not apply to the C-3-S (SU) District.

22 (d) The gross floor area of a structure on a lot on which is or has been located a
23 Significant or Contributory Building may not exceed the basic floor area ratio limits stated in
24 Section 124 except as provided in Sections 128(c)(2) and 124(f).

1 Section 3. The San Francisco Planning Code is hereby amended by amending Section
2 124, to read as follows:

3 SEC. 124. BASIC FLOOR AREA RATIO.

4 (a) Except as provided in Subsections (b), (c) and (e) of this Section, the basic floor
5 area ratio limits specified in the following table shall apply to each building or development in
6 the districts indicated.

7 TABLE 124

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10 **BASIC FLOOR AREA RATIO LIMITS**

11 TABLE INSET:

District	Basic Floor Area Ratio Limit
RH-1(D), RH-1, RH-1(S), RH-2, RH-3, RM-1, RM-2	1.8 to 1
RM-3	3.6 to 1
RM-4	4.8 to 1
RC-1, RC-2	1.8 to 1
RC-3	3.6 to 1
RC-4	4.8 to 1

1	RED	1.0 to 1
2	RSD, SPD	1.8 to 1
3		
4	NC-1	
5	NC-S	
6	Inner Clement	
7	Inner Sunset	
8		
9	Outer Clement	1.8 to 1
10	Haight	
11	North Beach	
12		
13	Sacramento	
14	24th Street--Noe Valley	
15		
16	West Portal	
17	NC-2	
18	Broadway	
19	Upper Fillmore	2.5 to 1
20		
21	Polk	
22	Valencia	
23	24th Street-Mission	
24		
25		

1	Castro	3.0 to 1
2	Hayes-Gough	
3	Upper Market	
4	Union	
5	NC-3	3.6 to 1
6	Chinatown R/NC	1.0 to 1
7	Chinatown VR	2.0 to 1
8	Chinatown CB	2.8 to 1
9	C-1, C-2	3.6 to 1
10	C-2-C	4.8 to 1
11	C-3-C	6.0 to 1
12	C-3-O	9.0 to 1
13	C-3-R	6.0 to 1
14	C-3-G	6.0 to 1
15	C-3-S	5.0 to 1
16	C-3-O (SD)	6.0 to 1
17	C-3-S (SU)	7.5 to 1
18	C-M	9.0 to 1

24
25

1	M-1, M-2	5.0 to 1
2	SLR, SLI	2.5 to 1
3	SSO and in a 40 or 50 foot height district	3.0 to 1
4	SSO and in a 65 or 80 foot height district	4.0 to 1
5	SSO and in a 130 foot height district	4.5 to 1

7
8 (b) In R, NC, and Mixed Use Districts, the above floor area ratio limits shall not apply
9 to dwellings or to other residential uses. In NC Districts, the above floor area ratio limits shall
10 also not apply to nonaccessory off-street parking. In Chinatown Mixed Use Districts, the
11 above floor area ratio limits shall not apply to institutions, and mezzanine commercial space
12 shall not be calculated as part of the floor area ratio.

13 (c) In a C-2 District the basic floor area ratio limit shall be 4.8 to 1 for a lot which is
14 nearer to an RM-4 or RC-4 District than to any other R District, and 10.0 to 1 for a lot which is
15 nearer to a C-3 District than to any R District. The distance to the nearest R District or C-3
16 District shall be measured from the midpoint of the front line, or from a point directly across
17 the street therefrom, whichever gives the greatest ratio.

18 (d) In the Van Ness Special Use District, as described in Section 243 of this Code, the
19 basic floor area ratio limit shall be 7.0 to 1 where the height limit is 130 feet and 4.5 to 1 where
20 the height limit is 80 feet.

21 (e) In the Waterfront Special Use Districts, as described in Sections 240 through
22 240.3 of this Code, the basic floor area ratio limit in any C District shall be 5.0 to 1.

23 (f) For buildings in C-3-G and C-3-S Districts other than those designated as
24 Significant or Contributory pursuant to Article 11 of this Code, additional square footage above
25 that permitted by the base floor area ratio limits set forth above may be approved for

1 construction of dwellings on the site of the building affordable for 20 years to households
2 whose incomes are within 150 percent of the median income as defined herein, in accordance
3 with the conditional use procedures and criteria as provided in Section 303 of this Code. For
4 buildings in the C-3-G District designated as Significant or Contributory pursuant to Article 11 of this
5 Code, additional square footage above that permitted by the base floor area ratio limits set forth above
6 up to the gross floor area of the existing building may be approved, in accordance with the conditional
7 use procedures and criteria as provided in Section 303 of this Code, where: (i) TDRs (as defined by
8 Section 128(a)(5)) were transferred from the lot containing the Significant or Contributory building
9 prior to the effective date of the amendment to Section 124(f) adding this paragraph when the floor
10 area transferred was occupied by a non-profit corporation or institution meeting the requirements for
11 exclusion from gross floor area calculation under Planning Code Section 102.9(b)(15); (ii) the
12 additional square footage includes only the amount necessary to accommodate dwelling units and/or
13 group housing units that are affordable for not less than 2050 years to households whose incomes
14 are within 60 percent of the median income as defined herein together with any social, educational,
15 and health service space accessory to such dwelling units; and (iii) the proposed change in use to
16 dwelling units and accessory space and any construction associated therewith, if it requires any
17 alternation to the exterior or other character defining features of the Significant or Contributory
18 Building, is undertaken pursuant to the duly approved Permit to Alter, pursuant to Section 1110;
19 provided, however, that the procedures otherwise required for a Major Alteration as set forth in
20 sections 1111.2-1111.6 shall be deemed applicable to any such Permit to Alter.

21 (1) Any dwelling approved for construction under this provision shall be
22 deemed a "designated unit" as defined below. Prior to the issuance by the Director of the
23 Department of Building Inspection ("Director of Building Inspection") of a site or building
24 permit to construct any designated unit subject to this Section, the permit applicant shall notify
25

1 the Director of Planning and the Director of Property in writing whether the unit will be an
2 owned or rental unit as defined in Section 313(a) of this Code.

3 (2) Within 60 days after the issuance by the Director of Building Inspection of a
4 site or building permit for construction of any unit intended to be an owned unit, the Director of
5 Planning shall notify the City Engineer in writing identifying the intended owned unit, and the
6 Director of Property shall appraise the fair market value of such unit as of the date of the
7 appraisal, applying accepted valuation methods, and deliver a written appraisal of the unit to
8 the Director of Planning and the permit applicant. The permit applicant shall supply all
9 information to the Director of Property necessary to appraise the unit, including all plans and
10 specifications.

11 (3) Each designated unit shall be subject to the provisions of Section 313(i) of
12 this Code. For purposes of this Subsection and the application of Section 313(i) of this Code
13 to designated units constructed pursuant to this Subsection, the definitions set forth in Section
14 313(a) shall apply, with the exception of the following definitions, which shall supersede the
15 definitions of the terms set forth in Section 313(a):

16 (A) "Base price" shall mean 3.25 times the median income for a family of four
17 persons for the County of San Francisco as set forth in California Administrative Code Section
18 6932 on the date on which a housing unit is sold.

19 (B) "Base rent" shall mean .45 times the median income for the County of San
20 Francisco as set forth in California Administrative Code Section 6932 for a family of a size
21 equivalent to the number of persons residing in a household renting a designated unit.

22 (C) "Designated unit" shall mean a housing unit identified and reported to the
23 Director by the sponsor of an office development project subject to this Subsection as a unit
24 that shall be affordable to households of low or moderate income for 20 years.

1 (D) "Household of low or moderate income" shall mean a household composed
2 of one or more persons with a combined annual net income for all adult members which does
3 not exceed 150 percent of the qualifying limit for a median income family of a size equivalent
4 to the number of persons residing in such household, as set forth for the County of San
5 Francisco in California Administrative Code Section 6932.

6 (E) "Sponsor" shall mean an applicant seeking approval for construction of a
7 project subject to this Subsection and such applicants' successors and assigns.

8 (g) The allowable gross floor area on a lot which is the site of an unlawfully
9 demolished building that is governed by the provisions of Article 11 shall be the gross floor
10 area of the demolished building for the period of time set forth in, and in accordance with the
11 provisions of, Section 1114 of this Code, but not to exceed the basic floor area permitted by
12 this Section.

13 (h) In calculating the permitted floor area of a new structure in a C-3 District, the lot on
14 which an existing structure is located may not be included unless the existing structure and
15 the new structure are made part of a single development complex, the existing structure is or
16 is made architecturally compatible with the new structure, and, if the existing structure is in a
17 Conservation District, the existing structure meets or is made to meet the standards of Section
18 1109(c), and the existing structure meets or is reinforced to meet the standards for seismic
19 loads and forces of the 1975 Building Code. Determinations under this Paragraph shall be
20 made in accordance with the provisions of Section 309.

21 (i) In calculating allowable gross floor area on a preservation lot from which any TDRs
22 have been transferred pursuant to Section 128, the amount allowed herein shall be decreased
23 by the amount of gross floor area transferred.

1 (j) Within any RSD, SPD, SLR, SLI or SSO District, live/work units constructed above
2 the floor area ratio limit pursuant to Section 102.9(b)(19) of this Code shall be subject to the
3 following conditions and standards:

4 (1) Considering all dwelling units and all live/work units on the lot, existing and
5 to be constructed, there shall be no more than one live/work unit and/or dwelling unit per 200
6 square feet of lot area, except that, for projects in the RSD District which will exceed 40 feet in
7 height, and therefore are required to obtain conditional use approval, the allowable density for
8 dwelling units and live/work units shall be established as part of the conditional use
9 determination; and

10 (2) The parking requirement for live/work units subject to this subsection shall
11 be equal to that required for dwelling units within the subject district.

12 Section 4. The San Francisco Planning Code is hereby amended by amending Section
13 128, to read as follows:

14 SEC. 128. TRANSFER OF DEVELOPMENT RIGHTS IN C-3 DISTRICTS.

15 (a) Definitions.

16 (1) "Development Lot." A lot to which TDR may be transferred to increase the
17 allowable gross floor area of development thereon beyond that otherwise permitted by Section
18 124.

19 (2) "Owner of Record." The owner or owners of record in fee.

20 (3) "Preservation Lot." A parcel of land on which is either (i) a Significant or
21 Contributory building (as designated pursuant to Article 11); or (ii) a Category V Building that
22 has complied with the eligibility requirement for transfer of TDR as set forth in Section
23 1109(c); or (iii) a structure designated a landmark pursuant to Article 10 of this Code. The
24 boundaries of the Preservation Lot shall be the boundaries of the Assessor's lot on which the
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1 building is located at the time the ordinance or, as to Section 1109(c), resolution, making the
2 designation is adopted, unless boundaries are otherwise specified in the ordinance.

3 (4) "Transfer Lot." A Preservation Lot located in a C-3 District from which TDR
4 may be transferred. A lot zoned P (public) may in no event be a Transfer Lot. unless a
5 building on that lot is (i) owned by the City and County of San Francisco, and (ii) located in a P
6 District adjacent to a C-3 District, and (iii) designated as an historical landmark by Article 10 of
7 this Code or designated as a Category I Significant Building by Article 11 of this Code and
8 listed as a National Historical Landmark on the National Historical Register, and (iv) the TDR
9 proceeds are used to finance, in whole or in part, a project to rehabilitate and restore the
10 building in accordance with the Secretary of Interior standards. For the purposes of Section
11 128(b), a lot zoned P which satisfies the criteria of this subsection (4) to qualify as a "Transfer
12 Lot" shall be deemed to have an allowable gross floor area of 7.5:1 under Section 124.

13 (5) "Transferable Development Rights (TDR)." Units of gross floor area which
14 may be transferred, pursuant to the provisions of this Section and Article 11 of this Code, from
15 a Transfer Lot to increase the allowable gross floor area of a development on a Development
16 Lot.

17 (6) "Unit of TDR." One unit of TDR is one square foot of gross floor area.

18 (b) Amount of TDR Available for Transfer. The maximum TDR available for transfer
19 from a Transfer Lot consists of the difference between (aa) the allowable gross floor area
20 permitted on the Transfer Lot by Section 124 and (bb) the gross floor area of the development
21 located on the Transfer Lot.

22 (c) Eligibility of Development Lots and Limitation on Use of TDR on Development
23 Lots. TDR may be used to increase the allowable gross floor area of a development on a
24 Development Lot if the following requirements and restrictions are satisfied:
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1 (1) (i) The Transfer Lot and the Development Lot are located in the same C-3
2 Zoning District, or (ii) the Transfer Lot is located in a C-3-O, or C-3-R District and the
3 Development Lot is located in the C-3-O(SD) Special Development District; or (iii) the Transfer
4 Lot is a Preservation Lot that contains a Significant building and is located in the Extended
5 Preservation District or a C-3-G or C-3-S District and the Development Lot is located in the C-
6 3-O(SD) Special District, or (iv) the Transfer Lot is in a C-3-R District or a District designated
7 C-3-O (SD) in the Yerba Buena Center Redevelopment Plan and is located in the Yerba
8 Buena Center Redevelopment Project Area and the Development Lot is located in a C-3-O
9 District; or (v) the Transfer Lot is in a P District adjacent to a C-3 District and meets the
10 requirements established in subsection (a)(4) above and the Development Lot is located in a
11 C-3 District.

12 (2) TDR may not be transferred for use on any lot on which is or has been
13 located a Significant or Contributory building; provided that this restriction shall not apply if the
14 designation of a building is changed to Unrated; nor shall it apply if the City Planning
15 Commission finds that the additional space resulting from the transfer of TDR is essential to
16 make economically feasible the reinforcement of a Significant or Contributory building to meet
17 the standards for seismic loads and forces of the 1975 Building Code, in which case TDR may
18 be transferred for that purpose subject to the limitations of this Section and Article 11,
19 including Section 1111.6. Any alteration shall be governed by the requirements of Sections
20 1111 to 1111.6.

21 (3) Notwithstanding any other provision of this Section, development on a
22 Development Lot is limited by the provisions of this Code, other than those on floor area ratio,
23 governing the approval of projects, including the requirements relating to height, bulk,
24 setback, sunlight access, and separation between towers, and any limitations imposed
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1 pursuant to Section 309 review applicable to the Development Lot. The total allowable gross
2 floor area of a development on a Development Lot may not exceed the limitation imposed by
3 Section 123(c).

4 (d) Effect of Transfer of TDR.

5 (1) Transfer of TDR from a Transfer Lot permanently reduces the development
6 potential of the Transfer Lot by the amount of the TDR transferred, except as provided in Section
7 124(f). In addition, transfer of TDR from a Preservation Lot containing a Contributory building
8 or a landmark designated pursuant to Article 10 causes such building to become subject to
9 the same restrictions on demolition and alteration, and the same penalties and enforcement
10 remedies, that are applicable to Significant buildings Category I, as provided in Article 11.

11 (e) Procedure for Determining TDR Eligibility.

12 (1) In order to obtain a determination of whether a lot is a Transfer Lot and, if it
13 is, of the amount of TDR available for transfer, the owner of record of the lot may file an
14 application with the Zoning Administrator for a Statement of Eligibility. The application for a
15 Statement of Eligibility shall contain or be accompanied by plans and drawings and other
16 information which the Zoning Administrator determines is necessary in order to determine
17 whether a Statement of Eligibility can be issued. Any person who applies for a Statement of
18 Eligibility prior to expiration of the time for request of reconsideration of designation authorized
19 in Section 1105 shall submit in writing a waiver of the right to seek such reconsideration.

20 (2) The Zoning Administrator shall, upon the filing of an application for a
21 Statement of Eligibility and the submission of all required information, issue either a proposed
22 Statement of Eligibility or a written determination that no TDR are available for transfer and
23 shall mail that document to the applicant and to any other person who has filed with the
24 Zoning Administrator a written request for a copy. Any appeal of the proposed Statement of
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1 Eligibility or determination of noneligibility shall be filed with the Board of Permit Appeals
2 within 20 days of the date of issuance of the document. If not appealed, the proposed
3 Statement of Eligibility or the determination of noneligibility shall become final on the 21st day
4 after the date of issuance. The Statement of Eligibility shall contain at least the following
5 information: (i) the name of the owner of record of the Transfer Lot; (ii) the address, legal
6 description and Assessor's Block and Lot of the Transfer Lot; (iii) the C-3 use district within
7 which the Transfer Lot is located; (iv) whether the Transfer Lot is a Preservation Lot or
8 Development Lot; (v) if a Preservation Lot, whether the Transfer Lot contains a Significant or
9 Contributory building, a Category V building, or an Article 10 landmark; (vi) the amount of TDR
10 available for transfer; and (vii) the date of issuance.

11 (3) Once the proposed Statement of Eligibility becomes final, whether through
12 lack of appeal or after appeal, the Zoning Administrator shall record the Statement of Eligibility
13 in the Office of the County Recorder. The County Recorder shall be instructed to mail the
14 original of the recorded document to the owner of record of the Transfer Lot and, if a copy of
15 the document is presented at the time of the recordation, shall conform the copy and mail it to
16 the Zoning Administrator.

17 (f) Cancellation of Eligibility.

18 (1) If reasonable grounds should at any time exist for determining that a
19 building on a Preservation Lot may have been altered or demolished in violation of Articles 10
20 or 11, including Sections 1110 and 1112 thereof, the Zoning Administrator may issue and
21 record with the County Recorder a Notice of Suspension of Eligibility for the affected lot and,
22 in cases of demolition of a Significant or Contributory building, a notice that the restriction on
23 the floor area ratio of a replacement building, pursuant to Section 1114, may be applicable
24 and shall mail a copy of such notice to the owner of record of the lot. The notice shall provide
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1 that the property owner shall have 20 days from the date of the notice in which to request a
2 hearing before the Zoning Administrator in order to dispute this initial determination. If no
3 hearing is requested, the initial determination of the Zoning Administrator is deemed final on
4 the twenty-first day after the date of the notice, unless the Zoning Administrator has
5 determined that the initial determination was in error.

6 (2) If a hearing is requested, the Zoning Administrator shall notify the property
7 owner of the time and place of hearing, which shall be scheduled within 21 days of the
8 request, shall conduct the hearing, and shall render a written determination within 15 days
9 after the close of the hearing. If the Zoning Administrator shall determine that the initial
10 determination was in error, that officer shall issue and record a Notice of Revocation of
11 Suspension of Eligibility. Any appeal of the determination of the Zoning Administrator shall be
12 filed with the Board of Permit Appeals within 20 days of the date of the written determination
13 following a hearing or, if no hearing has been requested, within 20 days after the initial
14 determination becomes final.

15 (3) If after an appeal to the Board of Permit Appeals it is determined that an
16 unlawful alteration or demolition has occurred, or if no appeal is taken of the determination by
17 the Zoning Administrator of such a violation, the Zoning Administrator shall record in the
18 Office of the County Recorder a Notice of Cancellation of Eligibility for the lot, and shall mail to
19 the property owner a conformed copy of the recorded Notice. In the case of demolition of a
20 Significant or Contributory Building, the Zoning Administrator shall record a Notice of Special
21 Restriction noting the restriction on the floor area ratio of the Preservation Lot pursuant to the
22 provisions of Section 1114, and shall mail to the owner of record a certified copy of the Notice.
23 If after an appeal to the Board of Permit Appeals it is determined that no unlawful alteration or
24 demolition has occurred, the Zoning Administrator shall issue and record a Notice of
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1 Revocation of Suspension of Eligibility and, if applicable, a Notice of Revocation of the Notice
2 of Special Restriction pursuant to Section 1114, and shall mail conformed copies of the
3 recorded notices to the owner of record.

4 (4) No notice recorded under this Section 128(f) shall affect the validity of TDR
5 that have been transferred from the affected Transfer Lot in compliance with the provisions of
6 this Section prior to the date of recordation of such notice, whether or not such TDR have
7 been used.

8 (g) Procedure for Transfer of TDR.

9 (1) TDR from a single Transfer Lot may be transferred as a group to a single
10 transferee or in separate increments to several transferees. TDR may be transferred either
11 directly from the original owner of the TDR to the owner of a Development Lot or to persons,
12 firms or entities who acquire the TDR from the original owner of the TDR and hold them for
13 subsequent transfer to other persons, firms, entities or to the owners of a Development Lot or
14 Lots.

15 (2) When TDR are transferred, they shall be identified in each Certificate of
16 Transfer by a number. A single unit of TDR transferred from a Transfer Lot shall be identified
17 by the number "1." Multiple units of TDR transferred as a group for the first time from a
18 Transfer Lot shall be numbered consecutively from "1" through the number of units
19 transferred. If a fraction of a unit of TDR is transferred, it shall retain its numerical
20 identification. (For example, if 5,000- 1/2 TDR are transferred in the initial transfer from the
21 Transfer Lot, they would be numbered "1 through 5,000 and one-half of 5,001.") TDR
22 subsequently transferred from the Transfer Lot shall be identified by numbers taken in
23 sequence following the last number previously transferred. (For example if the first units of
24 gross floor area transferred from a Transfer Lot are numbered 1 through 10,000, the next unit
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1 transferred would be number 10,001.) If multiple units transferred from a Transfer Lot are
2 subsequently transferred separately in portions, the seller shall identify the TDR sold by
3 numbers which correspond to the numbers by which they were identified at the time of their
4 transfer from the Transfer Lot. (For example, TDR numbered 1 through 10,000 when
5 transferred separately from the Transfer Lot in two equal portions would be identified in the
6 two Certificates of Transfer as numbers 1 through 5,000 and 5,001 through 10,000.) Once
7 assigned numbers, TDR retain such numbers for the purpose of identification through the
8 process of transferring and using TDR. The phrase "numerical identification," as used in this
9 section, shall mean the identification of TDR by numbers as described in this Subsection.

10 (3) Transfer of TDR from the Transfer Lot shall not be valid unless (i) a
11 Statement of Eligibility has been recorded in the Office of the County Recorder prior to the
12 date of recordation of the Certificate of Transfer evidencing such transfer and (ii) a Notice of
13 Suspension of Eligibility or Notice of Cancellation of Eligibility has not been recorded prior to
14 such transfer or, if recorded, has thereafter been withdrawn by an appropriate recorded Notice
15 of Revocation or a new Statement of Eligibility has been thereafter recorded.

16 (4) Transfer of TDR, whether by initial transfer from a Transfer Lot or by a
17 subsequent transfer, shall not be valid unless a Certificate of Transfer evidencing such
18 transfer has been prepared and recorded. The Zoning Administrator shall prepare a form of
19 Certificate of Transfer and all transfers shall be evidenced by documents that are substantially
20 the same as the Certificate of Transfer form prepared by the Zoning Administrator, which form
21 shall contain at least the following:

22 (i) For transfers from the Transfer Lot only:

23 (aa) Execution and acknowledgment by the original owner of TDR as the
24 transferor(s) of the TDR; and
25

1 (bb) Execution and acknowledgment by the Zoning Administrator; and
2 (cc) A notice, prominently placed and in all capital letters, preceded by the
3 underlined heading "Notice of Restriction," stating that the transfer of TDR from the Transfer
4 Lot permanently reduces the development potential of the Transfer Lot by the amount of TDR
5 transferred, with reference to the provisions of this Section.

6 (ii) For all transfers:

7 (aa) The address, legal description, Assessor's Block and Lot, and C-3 use
8 district of the Transfer Lot from which the TDR originates; and

9 (bb) The amount of TDR transferred; and

10 (cc) Numerical identification of the TDR being transferred; and

11 (dd) The names and mailing addresses of the transferors and transferees of
12 the TDR; and

13 (ee) Execution and acknowledgment by the transferors and transferees of the
14 TDR; and

15 (ff) A reference to the Statement of Eligibility, including its recorded instrument
16 number and date of recordation, and a recital of all previous transfers of the TDR, including
17 the names of the transferors and transferees involved in each transfer and the recorded
18 instrument number and date of recordation of each Certificate of Transfer involving the TDR,
19 including the transfer from the Transfer Lot which generated the TDR.

20 (5) When a Certificate of Transfer for the transfer of TDR from a Transfer Lot is
21 presented to the Zoning Administrator for execution, that officer shall not execute the
22 document if a transfer of the TDR would be prohibited by any provision of this Section or any
23 other provision of this Code. The Zoning Administrator shall, within five business days from
24 the date that the Certificate of Transfer is submitted for execution, either execute the
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1 Certificate of Transfer or issue a written determination of the grounds requiring a refusal to
2 execute the Certificate.

3 (6) Each duly executed and acknowledged Certificate of Transfer containing
4 the information required herein shall be presented for recordation in the Office of the County
5 Recorder and shall be recorded by the County Recorder. The County Recorder shall be
6 instructed to mail the original Certificate of Transfer to the person and address designated
7 thereon and shall be given a copy of the Certificate of Transfer and instructed to conform the
8 copy and mail it to the Zoning Administrator.

9 (h) Certification of Transfer of TDR for a Project on a Development Lot.

10 (1) When the use of TDR is necessary for the approval of a building permit for
11 a project on a Development Lot, the Superintendent of the Bureau of Building Inspection shall
12 not approve issuance of the permit unless the Zoning Administrator has issued a written
13 certification that the owner of the Development Lot owns the required number of TDR. When
14 the transfer of TDR is necessary for the approval of a site permit for a project on a
15 Development Lot, the Zoning Administrator shall impose as a condition of approval of the site
16 permit the requirement that the Superintendent of the Bureau of Building Inspection shall not
17 issue the first addendum to the site permit unless the Zoning Administrator has issued a
18 written certification that the owner of the Development Lot owns the required number of TDR.

19 (2) In order to obtain certification as required in Section 128(h)(1), the permit
20 applicant shall present to the Zoning Administrator:

21 (i) Information necessary to enable the Zoning Administrator to prepare the
22 Notice of Use of TDR, which information shall be at least the following:

23 (aa) The address, legal description, Assessor's Block and Lot, and zoning
24 classification of the Development Lot;

1 (bb) The name and address of the owner of record of the Development Lot;
2 (cc) Amount and numerical identification of the TDR being used;
3 (dd) A certified copy of each Certificate of Transfer evidencing transfer to the
4 owner of the Development Lot of the TDR being used; and

5 (ii) A report from a title insurance company showing the holder of record of the
6 TDR to be used, all Certificates of Transfer of the TDR, and all other matters of record
7 affecting such TDR. In addition to showing all such information, the report shall guarantee that
8 the report is accurate and complete and the report shall provide that in the event that its
9 guarantee or any information shown in the report is incorrect, the title company shall be liable
10 to the City for the fair market value of the TDR at the time of the report. The liability amount
11 shall be not less than \$10,000 and no more than \$1,000,000, the appropriate amount to be
12 determined by the Zoning Administrator based on the number of TDR being used.

13 (iii) An agreement whereby the owner of the Development Lot shall indemnify
14 the City against any and all loss, cost, harm or damage, including attorneys' fees, arising out
15 of or related in any way to the assertion of any adverse claim to the TDR, including any loss,
16 cost, harm or damage occasioned by the passive negligence of the City and excepting only
17 that caused by the City's sole and active negligence. The indemnity agreement shall be
18 secured by a first deed of trust on the Development Lot, or other security satisfactory to the
19 Department of City Planning and the City Attorney.

20 (3) If the Zoning Administrator determines that the project applicant has
21 complied with the provisions of Subsection (h)(2) and all other applicable provisions of this
22 Section, and that the applicant is the owner of the TDR, that officer shall transmit to the
23 Superintendent of the Bureau of Building Inspection, with a copy to the project applicant,
24 written certification that the owner of the Development Lot owns the TDR. Prior to transmitting
25

1 such certification, the Zoning Administrator shall prepare a document entitled Notice of Use of
2 TDR stating that the TDR have been used and may not be further transferred, shall obtain the
3 execution and acknowledgment on the Notice of the owner of record of the Development Lot,
4 shall execute and acknowledge the Notice, shall record it in the Office of the County
5 Recorder, and shall mail to the owner of record of the Development Lot a conformed copy of
6 the recorded Notice. If the Zoning Administrator determines that the project applicant is not
7 the owner of the TDR, or has not complied with all applicable provisions of this Section, that
8 determination shall be set forth in writing along with the reasons therefor. The Zoning
9 Administrator shall either transmit certification or provide a written determination that
10 certification is inappropriate within 10 business days after the receipt of all information
11 required pursuant to Subsection (h)(2).

12 (i) Cancellation of Notice of Use; Transfer from Development Lot.

13 (1) The owner of a Development Lot for which a Notice of Use of TDR has
14 been recorded may apply for a Cancellation of Notice of Use if (i) the building permit or site
15 permit for which the Notice of Use was issued expires or was revoked or cancelled prior to
16 completion of the work for which such permit was issued and the work may not be carried out;
17 or (ii) any administrative or court decision is issued or any ordinance or initiative or law is
18 adopted which does not allow the applicant to make use of the permit; or (iii) a portion or all of
19 such TDR are not used.

20 (2) If the Zoning Administrator determines that the TDR have not been and will
21 not be used on the Development Lot based on the reasons set forth in subsection (i)(1), the
22 Zoning Administrator shall prepare the Cancellation of Notice of Use of TDR. If only a portion
23 of the TDR which had been acquired are not being used, the applicant may identify which
24 TDR will not be used and the Cancellation of Notice of Use of TDR shall apply only to those
25

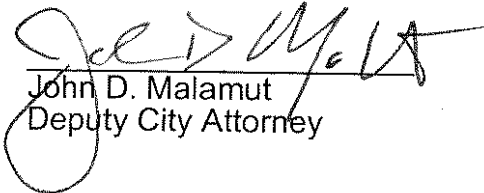
1 TDR. The Zoning Administrator shall obtain on the Cancellation of Notice of Use of TDR the
2 signature and acknowledgment of the owner of record of the Development Lot as to which the
3 Notice of Use of TDR was recorded, shall execute and acknowledge the document, and shall
4 record it in the office of the County Recorder.

5 (3) Once a Cancellation of Notice of Use of TDR has been recorded, the owner
6 of the Development Lot may apply for a Statement of Eligibility in order to transfer the TDR
7 identified in that document. The procedures and requirements set forth in this Section
8 governing the transfer of TDR shall apply to the transfer of TDR from the owner of a
9 Development Lot after a Notice of Use has been filed, except for the provisions of this Section
10 permanently restricting the development potential of a Transfer Lot upon the transfer of TDR;
11 provided, however, that the district or districts to which the TDR may be transferred shall be
12 the same district or districts to which TDR could have been transferred from the Transfer Lot
13 that generated the TDR.

14 (j) Erroneous Notice of Use; Revocation of Permit. If the Zoning Administrator
15 determines that a Notice of Use of TDR was issued or recorded in error, that officer may direct
16 the Superintendent of the Bureau of Building Inspection to suspend any permit issued for a
17 project using such TDR, in which case the Superintendent shall comply with that directive.
18 The Zoning Administrator shall thereafter conduct a noticed hearing in order to determine
19 whether the Notice of Use of TDR was issued or recorded in error. If it is determined that the
20 Notice of Use of TDR was issued or recorded in error, the Superintendent of the Bureau of
21 Building Inspection shall revoke the permit; provided, however, that no permit authorizing
22 such project shall be revoked if the right to proceed thereunder has vested under California
23 law. If it is determined that the Notice of Use of TDR was not issued or recorded in error, the
24 permit shall be reinstated.

1 (k) Effect of Repeal or Amendment. TDR shall convey the rights granted herein only
2 so long and to the extent as authorized by the provisions of this Code. Upon repeal of such
3 legislative authorization, TDR shall thereafter convey no rights or privileges. Upon amendment
4 of such legislative authorization, TDR shall thereafter convey only such rights and privileges
5 as are permitted under the amendment. No Statement of Eligibility shall convey any right to
6 use, transfer or otherwise utilize TDR if the maximum floor area ratio for the Transfer Lot is
7 reduced after the Statement of Eligibility is issued.

8
9
10 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

11 By: 
12 John D. Malamut
13 Deputy City Attorney



City and County of San Francisco

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

Tails Ordinance

File Number: 061688

Date Passed:

Ordinance amending the San Francisco Planning Code by amending Sections 123, 124, and 128 to address use of Transferable Development Rights (TDRs) under specified circumstances; and adopting findings including environmental findings and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1(b).

April 10, 2007 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

April 17, 2007 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 061688

I hereby certify that the foregoing Ordinance
was FINALLY PASSED on April 17, 2007 by
the Board of Supervisors of the City and
County of San Francisco.

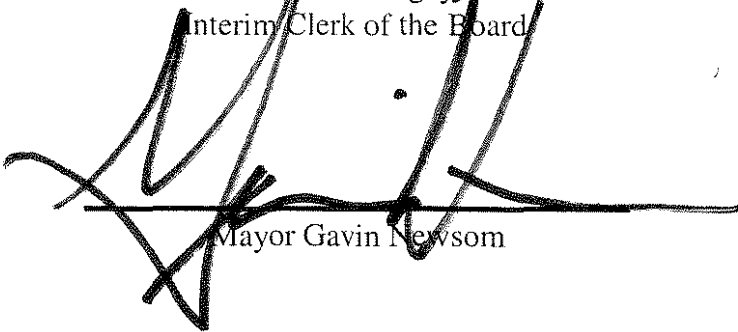
APR 27 2007

Date Approved



Kay Gulbengay

Interim Clerk of the Board



Mayor Gavin Newsom