

1 [Planning, Administrative Codes - Transfer of Development Rights]

2
3 **Ordinance amending the Planning Code, Sections 128 and 819, and Administrative**
4 **Code, Section 10E.1, to permit the transfer of development rights from any eligible**

5 **building in a Downtown Commercial (C-3) District or the South of Market Extended**
6 **Preservation District to a development site in a C-3 District; require annual reporting of**
7 **buildings designated as historic resources and of transferred development rights, and**
8 **requiring a Preservation, Rehabilitation, and Maintenance Plan to be submitted with an**
9 **application for Certificate of Transfer instead of with an application for Statement of**
10 **Eligibility; and adopting environmental findings, Section 302, findings, and findings of**
11 **consistency with the General Plan and the Priority Policies of Planning Code, Section**
12 **101.1.**

13 NOTE: Additions are *single-underline italics Times New Roman*;
14 deletions are *strike-through italics Times New Roman*.
15 Board amendment additions are double-underlined;
16 Board amendment deletions are ~~strikethrough normal~~.

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

18 Section 1. Findings.

19 (a) The Planning Department has determined that the actions contemplated in this
20 Ordinance comply with the California Environmental Quality Act (California Public Resources
21 Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of
22 Supervisors in File No. 110548 and is incorporated herein by reference.

23 (b) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
24 amendments will serve the public necessity, convenience, and welfare for the reasons set
25 forth in Planning Commission Resolution No. 18553 and the Board incorporates such reasons

1 herein by reference. A copy of Planning Commission Resolution No. 18553 is on file with the
2 Clerk of the Board of Supervisors in File No. 110548.

3 (c) This Board finds that these Planning Code amendments are consistent with the
4 General Plan and with the Priority Policies of Planning Code Section 101.1 for the reasons set
5 forth in Planning Commission Resolution No. 18553, and the Board hereby incorporates such
6 reasons herein by reference.

7
8 Section 2. The San Francisco Planning Code is hereby amended by amending
9 Sections 128 and 819, to read as follows:

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

11 (a) **Definitions.**

12 (1) "Development Lot." A lot to which TDR may be transferred to increase the
13 allowable gross floor area of development thereon beyond that otherwise permitted by Section
14 124

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

16 (3) "Preservation Lot." A parcel of land on which is either (A) ~~(i)~~ a Significant or
17 Contributory building (as designated pursuant to Article 11); or (B) ~~(ii)~~ a Category V Building
18 that has complied with the eligibility requirement for transfer of TDR as set forth in Section
19 1109(c); or (C) ~~(iii)~~ a structure designated an individual landmark pursuant to Article 10 of this
20 Code. The boundaries of the Preservation Lot shall be the boundaries of the Assessor's lot on
21 which the building is located at the time the ordinance or, as to Section 1109(c), resolution,
22 making the designation is adopted, unless boundaries are otherwise specified in the
23 ordinance.

24 (4) "Transfer Lot." A Preservation Lot located in a C-3 District from which TDR
25 may be transferred. A lot zoned P (public) may in no event be a Transfer Lot unless a building

1 on that lot is ~~(A) (i)~~ owned by the City and County of San Francisco, and ~~(B) (ii)~~ located in a P
2 District adjacent to a C-3 District, and ~~(C) (iii)~~ designated as an individual landmark pursuant
3 to Article 10 of this Code, designated as a Category I Significant Building pursuant to Article
4 11 of this Code, or listed on the National Register of Historic Places, and ~~(D) (iv)~~ the TDR
5 proceeds are used to finance, in whole or in part, a project to rehabilitate and restore the
6 building in accordance with the Secretary of Interior standards. For the purposes of Section
7 128(b), a lot zoned P which satisfies the criteria of this subsection (4) to qualify as a "Transfer
8 Lot" shall be deemed to have an allowable gross floor area of 7.5:1 under Section 124.

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

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

14 (b) **Amount of TDR Available for Transfer.** The maximum TDR available for transfer
15 from a Transfer Lot consists of the difference between ~~(1) (i)~~ the allowable gross floor area
16 permitted on the Transfer Lot by Section 124 and ~~(2) (ii)~~ the gross floor area of the
17 development located on the Transfer Lot.

18 (c) **Eligibility of Development Lots and Limitation on Use of TDR on Development**
19 **Lots.** TDR may be used to increase the allowable gross floor area of a development on a
20 Development Lot if the following requirements and restrictions are satisfied:

21 (1) Transfer of Development Rights shall be limited to the following:

22 ~~(A) (i) The Transfer Lot and the Development Lot are located in the same a~~
23 ~~C-3 Zoning District; or~~

24 ~~(ii) the Transfer Lot is located in a C-3-O, or C-3-R District and the~~
25 ~~Development Lot is located in the C-3-O(SD) Special Development District; or~~

1 (B) (iii) the Transfer Lot contains a Significant building and is located in
2 the South of Market Extended Preservation District, as set forth in Section 819, ~~or a C-3-G or C-~~
3 ~~3-S District~~ and the Development Lot is located in a the C-3-O (SD) Special District; or

4 (iv) ~~the Transfer Lot is in a C-3-R District or a District designated C-3-O (SD) in~~
5 ~~the Yerba Buena Center Redevelopment Plan and is located in the Yerba Buena Center Redevelopment~~
6 ~~Project Area and the Development Lot is located in a C-3-O District; or~~

7 (C) (v) the Transfer Lot is in a P District adjacent to a C-3 District and
8 meets the requirements established in subsection (a)(4) above and the Development Lot is
9 located in a C-3 District; or

10 (D) (vi) the Transfer Lot is located in any C-3 District and contains an
11 individual landmark designated pursuant to Article 10 and the Development Lot is located in
12 any C-3 District ~~but not within a Redevelopment Agency Plan Area.~~

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

22 (3) Notwithstanding any other provision of this Section, development on a
23 Development Lot is limited by the provisions of this Code, other than those on floor area ratio,
24 governing the approval of projects, including the requirements relating to height, bulk,
25 setback, sunlight access, and separation between towers, and any limitations imposed

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
7 Section 124(f). In addition, transfer of TDR from a Preservation Lot containing a Contributory
8 building or an individual landmark designated pursuant to Article 10 causes such building to
9 become subject to the same restrictions on demolition and alteration, and the same penalties
10 and enforcement remedies, that are applicable to Significant Buildings Category I, as provided
11 in Article 11.

12 **(e) Procedure for Determining TDR Eligibility.**

13 (1) In order to obtain a determination of whether a lot is a Transfer Lot and, if it
14 is, of the amount of TDR available for transfer, the owner of record of the lot may file an
15 application with the Zoning Administrator for a Statement of Eligibility. The application for a
16 Statement of Eligibility shall contain or be accompanied by plans and drawings and other
17 information which the Zoning Administrator determines is necessary in order to determine
18 whether a Statement of Eligibility can be issued. Any person who applies for a Statement of
19 Eligibility prior to expiration of the time for request of reconsideration of designation authorized
20 in Section ~~1105-1106~~ shall submit in writing a waiver of the right to seek such reconsideration.

21 (2) The Zoning Administrator shall, upon the filing of an application for a
22 Statement of Eligibility and the submission of all required information, issue either a proposed
23 Statement of Eligibility or a written determination that no TDR are available for transfer and
24 shall mail that document to the applicant and to any other person who has filed with the
25 Zoning Administrator a written request for a copy, and shall post the proposed Statement of

1 Eligibility or written determination on the Planning Department website. Any appeal of the
2 proposed Statement of Eligibility or determination of noneligibility shall be filed with the Board
3 of *Permit* Appeals within 20 days of the date of issuance of the document. If not appealed, the
4 proposed Statement of Eligibility or the determination of noneligibility shall become final on the
5 21st day after the date of issuance. The Statement of Eligibility shall contain at least the
6 following information: (A) ~~(i)~~ the name of the owner of record of the Transfer Lot; (B) ~~(ii)~~ the
7 address, legal description and Assessor's Block and Lot of the Transfer Lot; (C) ~~(iii)~~ the C-3
8 use district within which the Transfer Lot is located; (D) ~~(iv)~~ whether the Transfer Lot contains
9 a Significant or Contributory building, a Category V building, or an Article 10 individually
10 designated landmark; (E) ~~(v)~~ the amount of TDR available for transfer; and (F) ~~(vi)~~ the date of
11 issuance.

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

17 **(f) Cancellation of Eligibility.**

18 (1) If reasonable grounds should at any time exist for determining that a building
19 on a Preservation Lot may have been altered or demolished in violation of Articles 10 or 11,
20 including Sections 1110 and ~~1112~~ 1111 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
25 that the property owner shall have 20 days from the date of the notice in which to request a

1 hearing before the Zoning Administrator in order to dispute this initial determination. If no
2 hearing is requested, the initial determination of the Zoning Administrator is deemed final on
3 the twenty-first day after the date of the notice, unless the Zoning Administrator has
4 determined that the initial determination was in error.

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

14 (3) If after an appeal to the Board of *Permit* Appeals it is determined that an
15 unlawful alteration or demolition has occurred, or if no appeal is taken of the determination by
16 the Zoning Administrator of such a violation, the Zoning Administrator shall record in the
17 Office of the County Recorder a Notice of Cancellation of Eligibility for the lot, and shall mail to
18 the property owner a conformed copy of the recorded Notice. In the case of demolition of a
19 Significant or Contributory Building, the Zoning Administrator shall record a Notice of Special
20 Restriction noting the restriction on the floor area ratio of the Preservation Lot pursuant to the
21 provisions of Section 1114, and shall mail to the owner of record a certified copy of the Notice.
22 If after an appeal to the Board of *Permit* Appeals it is determined that no unlawful alteration or
23 demolition has occurred, the Zoning Administrator shall issue and record a Notice of
24 Revocation of Suspension of Eligibility and, if applicable, a Notice of Revocation of the Notice
25

1 of Special Restriction *pursuant to Section 1114*, and shall mail conformed copies of the recorded
2 notices to the owner of record.

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

7 (g) **Procedure for Transfer of TDR.**

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

14 (2) When TDR are transferred, they shall be identified in each Certificate of
15 Transfer by a number. A single unit of TDR transferred from a Transfer Lot shall be identified
16 by the number "1." Multiple units of TDR transferred as a group for the first time from a
17 Transfer Lot shall be numbered consecutively from "1" through the number of units
18 transferred. If a fraction of a unit of TDR is transferred, it shall retain its numerical
19 identification. (For example, if 5,000-1/2 TDR are transferred in the initial transfer from the
20 Transfer Lot, they would be numbered "1 through 5,000 and one-half of 5,001.") TDR
21 subsequently transferred from the Transfer Lot shall be identified by numbers taken in
22 sequence following the last number previously transferred. (For example if the first units of
23 gross floor area transferred from a Transfer Lot are numbered 1 through 10,000, the next unit
24 transferred would be number 10,001.) If multiple units transferred from a Transfer Lot are
25 subsequently transferred separately in portions, the seller shall identify the TDR sold by

1 numbers which correspond to the numbers by which they were identified at the time of their
2 transfer from the Transfer Lot. (For example, TDR numbered 1 through 10,000 when
3 transferred separately from the Transfer Lot in two equal portions would be identified in the
4 two Certificates of Transfer as numbers 1 through 5,000 and 5,001 through 10,000.) Once
5 assigned numbers, TDR retain such numbers for the purpose of identification through the
6 process of transferring and using TDR. The phrase "numerical identification," as used in this
7 section, shall mean the identification of TDR by numbers as described in this Subsection.

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

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

20 (A) ~~(i)~~ For transfers from the Transfer Lot only:

21 (i) ~~(aa)~~ Execution and acknowledgement by the original owner of
22 TDR as the transferor(s) of the TDR; and

23 (ii) ~~(bb)~~ Execution and acknowledgment by the Zoning
24 Administrator; and

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

5 (B) ~~(ii)~~ For all transfers:

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

8 (ii) ~~(bb)~~ The amount and sale price of TDR transferred; and

9 (iii) ~~(ee)~~ Numerical identification of the TDR being transferred; and

10 (iv) ~~(dd)~~ The names and mailing addresses of the transferors and
11 transferees of the TDR; and

12 (v) ~~(ee)~~ Execution and acknowledgment by the transferors and
13 transferees of the TDR; and

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

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

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

7 (h) **Certificate of Transfer of TDR for a Project on a Development Lot.**

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

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

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

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

24 (ii) ~~(bb)~~ The name and address of the owner of record of the
25 Development Lot;

1 (iii) ~~(ee)~~ Amount and numerical identification of the TDR being
2 used;

3 (iv) ~~(dd)~~ A certified copy of each Certificate of Transfer evidencing
4 transfer to the owner of the Development Lot of the TDR being used; and

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

14 (C) ~~(iii)~~ An agreement whereby the owner of the Development Lot shall
15 indemnify the City against any and all loss, cost, harm or damage, including attorneys' fees,
16 arising out of or related in any way to the assertion of any adverse claim to the TDR, including
17 any loss, cost, harm or damage occasioned by the passive negligence of the City and
18 excepting only that caused by the City's sole and active negligence. The indemnity agreement
19 shall be secured by a financial balance sheet certified by an auditor or a corporate officer
20 showing that the owner has assets equal to or greater than the value of the TDR, or other
21 security satisfactory to Planning Department and the City Attorney.

22 (3) If the Zoning Administrator determines that the project applicant has
23 complied with the provisions of Subsection (h)(2) and all other applicable provisions of this
24 Section, and that the applicant is the owner of the TDR, that officer shall transmit to the
25 Superintendent Director of the Bureau Department of Building Inspection, with a copy to the

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

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

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

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

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 Director* of the *Bureau Department* of Building Inspection to suspend any
17 permit issued for a project using such TDR, in which case the *Superintendent Director of the*
18 *Department of Building Inspection* shall comply with that directive. The Zoning Administrator
19 shall thereafter conduct a noticed hearing in order to determine whether the Notice of Use of
20 TDR was issued or recorded in error. If it is determined that the Notice of Use of TDR was
21 issued or recorded in error, the *Superintendent Director* of the *Bureau Department* of Building
22 Inspection shall revoke the permit; provided, however, that no permit authorizing such project
23 shall be revoked if the right to proceed thereunder has vested under California law. If it is
24 determined that the Notice of Use of TDR was not issued or recorded in error, the permit shall
25 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 there after convey no rights or privileges. Upon
4 amendment of such legislative authorization, TDR shall thereafter convey only such rights and
5 privileges as are permitted under the amendment. No Statement of Eligibility shall convey any
6 right to use, transfer or otherwise utilize TDR if the maximum floor area ratio for the Transfer
7 Lot is reduced after the Statement of Eligibility is issued.

8 (l) **Preservation Rehabilitation, and Maintenance Requirements for Preservation**
9 **Lots.**

10 (1) In addition to the material required to be submitted with an application for a
11 *Statement of Eligibility Certificate of Transfer for initial transfer from the Transfer Lot* set forth in
12 subsection 128(e)(g), the owner of the *Preservation Transfer* Lot shall:

13 (A) ~~(i)~~ Demonstrate that any and all outstanding Notices of Violation have
14 been abated; and

15 (B) ~~(ii)~~ Submit for approval by the Department a Preservation,
16 Rehabilitation, and Maintenance Plan that describes any proposed preservation and
17 rehabilitation work and that guarantees the maintenance and upkeep of the *Preservation*
18 *Transfer* Lot. This Plan shall include:

19 ~~(i)~~ ~~(aa)~~ a plan for the ongoing maintenance of the *Preservation*
20 *Transfer* Lot;

21 ~~(ii)~~ ~~(bb)~~ information regarding the nature and cost of any
22 rehabilitation, restoration or preservation work to be conducted on the *Preservation Transfer*
23 Lot, including information about any required seismic, life safety, or disability access work;

24 ~~(iii)~~ ~~(cc)~~ a construction schedule; and
25

1 inspection reports or other documentation from the Department of Building Inspection showing
2 completion of the work; ~~(D)~~ ~~(vi)~~ itemized receipts of payment for work performed; and ~~(E)~~ ~~(v)~~
3 any such other documentation as the Department may require to determine compliance with
4 the requirements of this subsection 128(l). The deadline for completion of the work and
5 submittal of this report may be extended at the discretion of the Department upon application
6 of the owner of the *Preservation Transfer* Lot and only upon a showing that the owner has
7 diligently pursued all required permits and completion of the work.

8 (4) Failure to comply with the requirements of this subsection (l), including all
9 reporting requirements, shall be grounds for enforcement under this Code, including but not
10 limited to under Sections 176 and 176.1. Penalties for failure to comply may include, but shall
11 not be limited to, a lien on the *Preservation Transfer* Lot equal to the sale price of the TDR sold.

12 **SEC. 819. SOUTH OF MARKET EXTENDED PRESERVATION DISTRICT.**

13 The *South of Market* Extended Preservation District, as shown on Sectional Map ~~7~~PD01
14 and ~~7~~PD07 of the Zoning Map, incorporates an area, formerly zoned C-3-S, in which
15 provisions of Article 11 and Section 128 continue to be in effect.

16
17 Section 3. The San Francisco Administrative Code is hereby amended by amending
18 Section 10E.1, to read as follows:

19 **SEC. 10E.1. DOWNTOWN PLAN.**

20 (a) **Findings.** The Board of Supervisors makes the following findings in support of this
21 ordinance.

22 (1) The Planning Commission has adopted the Downtown Plan as part of the
23 General Plan of the City and County of San Francisco, and the Board of Supervisors, acting
24 upon the recommendation of the Planning Commission, has adopted amendments to the
25 Planning Code called for in the Downtown Plan. The Planning Commission and Board of

1 Supervisors have adopted the Transit Center District Plan as a sub-area of the Downtown
2 Plan, as well as implementing Planning Code provisions.

3 (2) The focus of the Downtown Plan is to prevent development where change
4 would diminish the city's character or livability but to allow appropriately scaled development
5 that would further the City's economic, fiscal and social objectives.

6 (3) The Downtown Plan is based on certain assessments about the ability of the
7 City to absorb the impacts of growth in downtown San Francisco and the desirability of
8 increasing housing, ridesharing and transit use in light of the anticipated downtown growth.
9 The Downtown Plan proposes various actions which should be taken to achieve the following
10 goals: An increase in the City's housing supply by an average of 1,000 to 1,500 new housing
11 units per year; and increase in ridesharing to a point where the number of persons commuting
12 by auto or van rises from 1.48 to 1.66 persons per vehicle; and an increase in the use of
13 transit by downtown workers from 64 percent to 70 percent of all work trips.

14 (4) The Downtown Plan recommends the adoption of a formal process for
15 monitoring progress toward Plan goals. This monitoring process is necessary to evaluate the
16 effectiveness of the Plan and the impacts of downtown growth, and to make any adjustments
17 deemed appropriate to the controls described in the Downtown Plan or to additions to the
18 City's infrastructure and services.

19 (5) The purpose of this monitoring system shall be to determine whether the
20 infrastructure and support systems necessary to accommodate the growth of downtown,
21 particularly housing supply and transit capacity, have kept pace with development in the C-3
22 Districts. If downtown is growing at a faster pace than the necessary infrastructure and
23 support systems, it may become necessary to make further efforts to slow down the pace of
24 development, or devise additional mechanisms for providing required infrastructure and
25 support systems.

1 (6) The Planning Department shall undertake a two-tiered monitoring program.
2 The two tiers are: A) An annual collection and reporting of data from selected sources that are
3 gathered on a regular basis, and B) every five years, a more extensive data collection effort
4 that includes an analysis of long-term policy indicators such as the TDR program, urban form
5 goals, any impact fee funds, and provides analysis of the Downtown Plan's policy objectives.
6 The annual monitoring should provide an early warning system for trends that may develop,
7 indicating a shortfall in the long range goals.

8 (b) **Annual Report.** The Planning Department shall prepare an annual report detailing
9 the effects of downtown growth. The report shall be presented to the Board of Supervisors,
10 Planning Commission, Historic Preservation Commission, and Mayor, and shall address: (1)
11 the extent of development in the C-3 Districts; (2) the consequences of that development; (3)
12 the effectiveness of the policies set forth in the Downtown Plan in maintaining San Francisco's
13 environment and character; and (4) recommendations for measures deemed appropriate to
14 deal with the impacts of downtown growth.

15 (1) **Time Period and Due Date.** Reports shall be due by July 1st of each year,
16 and shall address the immediately preceding calendar year, except for the five year report,
17 which shall address the preceding five calendar years.

18 (2) **Data Source.** The Planning Department shall assemble a data base for 1984
19 and subsequent years for the purpose of providing the reports. City records shall be used
20 wherever possible. Outside sources shall be used when data from such sources are reliable,
21 readily available and necessary in order to supplement City records.

22 (3) **Categories of Information.** The following categories of information shall be
23 included:
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Commercial Space and Employment.

(A) The amount of office space "Completed," "Approved," and "Under Construction" during the preceding year, both within the C-3 Districts and elsewhere in the City. This inventory shall include the location and square footage (gross and net) of those projects, as well as an estimate of the dates when the space "Approved" and "Under Construction" will become available for occupancy.

(B) **Office Vacancy Ratio.** An estimate of the current office vacancy rate in the C-3 Districts and citywide.

(C) **Citywide and C-3 District Office Employment.** An estimate of additional office employment, by occupation type, in the C-3 Districts and citywide.

(D) **Tourist Hotel Rooms and Employment.** An estimate of the net increment or tourist hotel rooms and additional hotel employment in the C-3 Districts.

(E) **Retail Space and Employment.** An estimate of the net increment of retail space and of the additional retail employment relocation trends and patterns within the City and the Bay Area.

(F) **Business Formation and Relocation.** An estimate of the rate of the establishment of new businesses and business and employment relocation trends and patterns within the City and the Bay Area.

Housing.

(G) **Housing Units Certified for Occupancy.** An estimate of the number of housing units throughout the City newly constructed, demolished, or converted to other uses.

(H) **Jobs/Housing Linkage Program.** A summary of the operation of the Jobs/Housing Linkage Program (formerly the Office Affordable Housing Production Program)

1 and the Housing Affordability Fund, identifying the number and income mix of units
2 constructed or assisted with these monies.

3 **Transportation.**

4 (I) **Parking Inventory.** An estimate of the net increment of off-street
5 parking spaces approved in C-3 Districts.

6 (J) **Vehicle Occupancy Rates.** An estimate of vehicle occupancy rates
7 for vehicles in or entering the City.

8 (K) **Transit Service.** An estimate of transit ridership for peak periods.

9 (L) **Transit Impact Fee.** A summary of the use of the transit impact
10 development fee funds, collected from development.

11 **Fiscal.**

12 (M) **Revenues.** An estimate of the net increment of revenues by type
13 (property tax, business taxes, hotel and sales taxes) from office, retail and hotel space.

14 (N) **Transit Center District Revenues and Implementation of**
15 **Improvements.** A summary of the total revenues from Transit Center District Plan fees,
16 including the Open Space Impact Fee and Transportation and Street Improvement Impact
17 Fee, as well as from any Community Facilities District within the Transit Center District Plan
18 area boundaries, and a summary of expenditures on public improvements as described in the
19 Transit Center District Plan Program Implementation Document.

20 **Preservation.**

21 (O) **Significant or Contributory Buildings.** *Buildings designated as significant*
22 *or contributory buildings, or changes of designation, under Article 11 of the Planning Code.*

23 (P) **Transferred Development Rights.** *An inventory of buildings eligible for the*
24 *Transfer of Development Rights, of buildings where Transfer of Development rights have been*
25 *completed, and of Transfers of Development Rights completed within the year.*

1 (4) **Report.** The analysis of the factors under Commercial Space and
2 Employment will provide an estimate of the increase in housing and transit demand. The
3 comparison of increased demand with the increase in the supply of housing and in transit
4 ridership will indicate the degree that the City is able to accommodate new development.

5 Based on this data, the Department shall analyze the effectiveness of City policies governing
6 downtown growth and shall recommend any additional measures deemed appropriate.

7 (c) **Five Year Report.** On March 15, 1990, and every fifth year thereafter by July 1st,
8 the report submitted shall address the preceding five calendar years and, in addition to the
9 data described above, shall include, as deemed appropriate, a cordon count of downtown
10 oriented travel and an employer/employee survey and any other information necessary for the
11 purpose of monitoring the impact of downtown development. The five-year report shall
12 monitor long-term policy indicators such as the TDR program, urban form goals, *progress on*
13 *the Downtown Streetscape Plan*, any impact fee funds, and provide analysis of the Downtown
14 Plan's policy objectives. If the Planning Department determines that early warnings from the
15 annual reports indicate the need for collection of a cordon count and employer/employee
16 survey, it may include such data in any annual report, and may include an analysis of data for
17 a period of time earlier than the preceding calendar year.

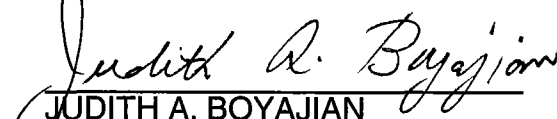
18 (d) **Information to be Furnished.** It shall be the duty of the heads of all departments,
19 offices, commissions, bureaus and divisions of the City and County of San Francisco, upon
20 request by the Planning Department, to furnish such information as they may have or be able
21 to obtain relating to the matters to be included in the reports required herein.

22
23 Section 4. **Effective Date.** This Ordinance shall become effective 30 days from the
24 date of passage.
25

1 Section 5. In enacting this Ordinance, the Board intends to amend only those words,
2 phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams,
3 or any other constituent part of the Planning Code that are explicitly shown in this legislation
4 as additions, deletions, Board amendment additions, and Board amendment deletions in
5 accordance with the "Note" that appears under the official title of the legislation.
6

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

9 By:


10 JUDITH A. BOYAJIAN
Deputy City Attorney

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City and County of San Francisco

Tails
Ordinance

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

File Number: 120474

Date Passed: April 16, 2013

Ordinance amending the Planning Code, Sections 128 and 819, and Administrative Code, Section 10E.1, to permit the transfer of development rights from any eligible building in a Downtown Commercial (C-3) District or the South of Market Extended Preservation District to a development site in a C-3 District; require annual reporting of buildings designated as historic resources and of transferred development rights, and requiring a Preservation, Rehabilitation, and Maintenance Plan to be submitted with an application for Certificate of Transfer instead of with an application for Statement of Eligibility; and adopting environmental findings, Section 302, findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code, Section 101.1.

April 01, 2013 Land Use and Economic Development Committee - AMENDED

April 01, 2013 Land Use and Economic Development Committee - RECOMMENDED AS AMENDED

April 09, 2013 Board of Supervisors - PASSED, ON FIRST READING

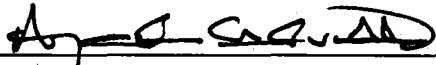
Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

April 16, 2013 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 120474

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 4/16/2013 by the Board of Supervisors of the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor


Date Approved