



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing
- Childcare Requirement
- Jobs Housing Linkage Program
- Downtown Park Fee
- Public Art
- Public Open Space
- First Source Hiring (Admin. Code)
- Transit Impact Development Fee
- Other: Residential Hotel Conversion Ordinance

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Planning Commission Motion No. 17610

Hearing Date: June 5, 2008
Case No.: **2007.1163EC**
Project Address: **140 ELLIS STREET**
Zoning: C-3-G (Downtown General Commercial)
 80-130-F Height and Bulk District
Block/Lot: 0326/023
Project Sponsor: C-Two Hotels c/o Tuija Catalano of Reuben & Junius LLP
 One Bush Street, Suite 600
 San Francisco, CA 94104
Staff Contact: Adam Light – (415) 558-6254
Adam.light@sfgov.org

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION TO ALLOW THE EXPANSION OF THE TOURIST HOTEL USES, AND APPROVAL OF THE CONVERSION OF EXISTING RESIDENTIAL HOTEL ROOMS INTO TOURIST HOTEL ROOMS ON THE PROPERTY AT 140 ELLIS STREET (ASSESSOR'S BLOCK 0326, LOT 023) LOCATED WITHIN THE C-3-G (DOWNTOWN GENERAL COMMERCIAL) DISTRICT AND AN 80-130-F HEIGHT AND BULK DISTRICT.

RECITALS

1. On October 17, 2007, Tuija Catalano of Reuben & Junius, LLP on behalf of C-Two Hotels filed an application for a Conditional Use authorization to allow the existing 77 residential hotel rooms at the Hotel Fusion at 140 Ellis Street (Project Site) to be converted into tourist hotel rooms ("Project"). The Project Site is currently used as a 124-room hotel with 47 tourist rooms and 77 residential rooms. After the conversion proposed by the Project, the Project Site would contain up to 124 tourist rooms.
2. The Project would be reviewed concurrently with a conversion of 65 existing tourist hotel rooms to 65 residential hotel rooms at 317 Leavenworth Street. The 65-room residential hotel project at 317 Leavenworth Street requires a variance for the open space

requirement, which was filed with the Department on October 17, 2007 under Planning Department Case No. 2007.1164V.

3. Twelve of the existing 77 residential rooms are anticipated to be converted into tourist hotel rooms through the in-lieu fee process pursuant to Administrative Code Section 41.13(a)(4), and thus the in-lieu fee payment option does not require and is not subject to this conditional use authorization.
4. On October 26, 2007 and April 21, 2008, the Planning Department determined the Project to be categorically exemption from review under the California Environmental Quality Act (CEQA) pursuant to Class 1 (Existing Facilities).
5. On June 5, 2008, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on the application for a conditional use. The Zoning Administrator conducted a duly noticed public hearing at a regularly scheduled meeting on the related application for a variance for 317 Leavenworth Street (Case No. 2007.1164V) also on June 5, 2008.
6. **MOVED**, that the Commission hereby approves the conditional use requested in Application No. 2007.1163C for the Project, subject to conditions contained in Exhibit A attached hereto and incorporated by reference, based on the following findings:

FINDINGS

Having reviewed the materials identified in the recitals above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and also constitute findings of this Commission.
2. **Project Site:** The subject site with a total area of 13,724 square feet, is an irregularly shaped parcel located at the northeast corner of Cyril Magnin and Ellis Streets. The Project Site is within the C-3-G District and an 80-130-F Height and Bulk District.

The Project Site currently contains a five-story-over-basement structure that covers the lot almost entirely. The existing building contains commercial space on the ground level, and 124 hotel rooms consisting of 47 tourist hotel rooms and 77 residential hotel rooms. The existing 77 residential hotel rooms that are proposed for conversion to tourist hotel rooms do not have any existing tenants, and thus none will be displaced by the Project.

3. **Surrounding Area:** The C-3-G District covers the western portions of downtown San Francisco and is composed of a variety of uses: hotels, offices, places of entertainment, residential buildings, and retail establishments. Many of these uses serve a citywide or regional clientele, but the intensity of development is lower than in the downtown core. Tourist hotel uses are a conditionally permitted use within the C-3-G District.

The scale of development in the vicinity of the project site is diverse, with most of the parcels to the east, north and south located in the 80-130-F Height and Bulk District, and the parcels to the west and southwest, including the parcels immediately across the street on Cyril Magnin Street and diagonally across the intersection at Cyril Magnin and Ellis Streets, located in the 225-S or 225-X Height and Bulk District. The buildings immediately adjacent to the subject building on Ellis and Cyril Magnin Streets are approximately 7-story structures. The approximately 30-story Parc 55 Hotel is located diagonally across the Project Site at the southwest corner of Cyril Magnin and Ellis Streets. Currently, office, hotel and other commercial, including retail and restaurant, uses predominate in the project site vicinity.

4. **Proposed Project:** The proposed Project involves the conversion of the existing 77 residential hotel rooms into tourist hotel rooms at the project site. With the approved conversion, the Property would contain up to 124 tourist rooms in an existing five-story building.

The Project is part of a two-way reorganization of hotel rooms whereby in addition to the proposed conversion of 65 residential hotel rooms to tourist hotel rooms at the Project Site, a reverse conversion of 65 tourist hotel rooms into residential hotel rooms will occur at 317 Leavenworth Street. The Project Sponsor also proposes to convert the remaining 12 of the 77 total residential hotel rooms to tourist rooms by paying an in-lieu fee as provided in Administrative Code Section 41.13(a)(4). This in-lieu payment option is not, however, subject to the Conditional Use process.

The Project Sponsor intends to provide a service area for use by the Department of Human Services, or similar service provider, at the subject building's ground level.

The Project Sponsor intends to seek conversion of the remaining 12 residential hotel units in accordance with Chapter 41 of the Administrative Code, if such conversion is not cost prohibitive.

5. A conditional use authorization is required because tourist hotel use is a conditionally permitted use in the C-3-G District wherein the Project Site is located pursuant to Section 216(b)(1), and because the San Francisco Administrative Code requires Planning Commission evaluation of the proposed 65-room conversion between the subject Property and 317 Leavenworth.
6. **Conditional Use Findings.** Under Section 303(c), the Commission may authorize a conditional use after finding that:
 - (1) The proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or community.

The conversion provides additional tourist hotel rooms in an existing location and building that already contains 47 existing tourist hotel rooms. The Project Site is close to many visitor attractions and services, and transit services thus providing an appropriate location for a tourist hotel.

The reverse conversion of 65 existing tourist hotel rooms at 317 Leavenworth into residential hotel rooms eliminates tourist hotel uses from the North of Market Residential Special Use District, wherein 317 Leavenworth Street is located, and wherein tourist hotel uses are not permitted per Section 249.5(c)(4)(A). The Project and the related reverse conversion at 317 Leavenworth re-locates 65 tourist rooms in a more appropriate location for a tourist hotel at the Project Site close to tourist attractions and services, and 65 residential hotel rooms in a more appropriate location at 317 Leavenworth within a more residential neighborhood eliminating the existing, non-conforming tourist hotel use.

- (2) Such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements, or potential development in the vicinity, with respect to aspects including, but not limited to the following:

- (A) The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures:

The Project proposes to convert the existing 77 residential hotel rooms into tourist hotel rooms within an existing 124-room hotel. After the Project, the Project Site will continue to be occupied by a 124-room hotel, and the total room count will be unchanged by the Project. The Project changes the room type so that after the Project, the hotel will contain up to 124 tourist rooms, instead of the current 47 tourist rooms and 77 residential rooms. The tourist hotel use is appropriate for the Project Site due to its proximity to transit services and attractions and services frequented by tourists.

- (B) The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading:

Given the proximity of multiple public transit alternatives (BART, Golden Gate Transit, MUNI, and SamTrans), the Project Site is well served by various transit services. The existing building does not contain any parking spaces, and none are proposed by the project, or required by the Code. No changes to the building's total room count is proposed, and thus the Project is anticipated to have a minimal, if any, impact on traffic and transportation patterns.

- (C) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor:

The Project does not propose any uses likely to generate offensive emissions, such as noise, glare, dust, or odor.

- (D) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs:

The Project would not alter the transit, traffic, or parking patterns on the adjacent streets nor would it disrupt pedestrian traffic. No changes to existing landscaping, open space, parking, loading, lighting or services areas, or to the building exterior, are proposed by the Project.

- (3) That such use or feature as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project does not require any variances or exceptions, and is consistent with and will not adversely affect the General Plan and the Planning Code.

- (4) That the addition of new tourist hotel rooms is consistent with the following Section 303(g) factors:

- (A) The impact on the employees of the hotel or motel on the demand in the City for housing, public transit, child care, and other social services:

Since the Property is currently operated as a 124-room hotel with 47 tourist hotel rooms and 77 residential rooms, the Section 303(g) factors may not be relevant since the Project does not propose a new tourist hotel, but rather an expansion of the number of tourist hotel rooms at the Property. Nevertheless, the Project is consistent with the factors. The existing use of the Property is a 124-room hotel, and thus conversion of 77 residential rooms into tourist hotel rooms will have negligible impact on employment opportunities, or on the housing, child care, transportation or other social services needs for the employees, particularly since 65 of the 77 new tourist hotel rooms will be a result of a transfer of tourist hotel rooms from the Hotel Verona at 317 Leavenworth Street.

- (B) The measures that will be taken by the Project Sponsor to employ residents of San Francisco in order to minimize increased demand for regional transportation:

Since the Property is already used as a 124-room hotel, the conversion of the existing 77 residential rooms into tourist hotel rooms is anticipated to have a small impact on employment opportunities at the Property. However, the Project Sponsor advertises job openings via media that is specific to San Francisco, such as Craig's List for San Francisco, and via word of mouth from current employees. Currently, approximately 60% of the hotel's employees are San Franciscans.

- (C) The market demand for a hotel or motel of the type proposed:

According to information available from the San Francisco Convention & Visitors Bureau (as compiled by PKF Consulting), the San Francisco hotel market substantially increased between 1994 and 2000, rising from an average annual occupancy rate of 73.7% in 1994 to 81.7% in 2000. During the same period, the average daily room rate increased from \$116.50 to \$169.74. Thereafter, the occupancy rate declined sharply in 2001 to 67.7%, and in 2002 to 65.4%. After 2002, the occupancy rate has increased slightly each year from 68.1% in 2003 to 77.9% in 2007. The average annual occupancy rate has similarly increased from \$144.81 in 2003 to \$182.28 in 2007.

The potential net increase in the number of new tourist hotel rooms that results from the Project is only 12 rooms, since 65 of the existing residential rooms are proposed to be converted into tourist rooms in conjunction with the elimination of 65 existing tourist hotel rooms at 317 Leavenworth. The Project's impact on the tourist hotel room supply will be minimal increase, however, such increase is supported by the market demand according to the recent San Francisco hotel occupancy and rate trends.

7. **General Plan Conformity.** The Project will affirmatively promote the following objectives and policies of the General Plan:

Downtown Plan Element

OBJECTIVE 4: ENHANCE SAN FRANCISCO'S ROLE AS A TOURIST AND VISITOR CENTER.

Policy 4.1 Guide the location of new hotels to minimize their adverse impacts on circulation, existing uses, and scale of development.

The Project supports this policy by locating additional tourist hotel rooms in a location that is geographically in close proximity to the attractions, entertainment, transit, retail and food services frequented by many tourists. The total number of hotel rooms in the Project Site is not increased by the Project, and thus the change in the number of occupants is expected to be minimal.

Commerce and Industry Plan Element

Neighborhood Commerce

OBJECTIVE 6: MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Guidelines for Specific Uses – Hotels

Hotels should be discouraged if they displace existing retail sales and services which are necessary and desirable for the surrounding neighborhoods.

- Districts with an overconcentration of hotels and similar accommodations, it is preferable that new hotels be located at least 300 feet from any existing hotel, motel or bed and breakfast establishment unless there are factors such as traffic circulation, parking, or land use distribution which make clustering appropriate.

The Project does not involve a new hotel. The existing building contains 124 hotel rooms, consisting of 47 tourist hotel rooms and 77 residential hotel rooms. The Project converts the existing 77 residential hotel rooms into tourist hotel rooms, and thus the Project does not result in overconcentration of hotel uses within the area. Furthermore, Union Square is San Francisco's primary tourist district, where a higher concentration of hotel uses is appropriate.

- New hotels should contribute to an active retail frontage by providing stores, coffee shops, or convenience retail on the ground story of the major street frontage.

The existing building provides active ground floor retail/commercial space, as well as commercial space at the basement level.

- Hotel development should be compatible in scale and design with the overall district character and especially with buildings on the same block.

The Project does not propose any changes to the existing building envelope or façade. Thus, the existing building will continue to be compatible in scale and design with the vicinity.

- Access to required hotel parking should be designed to minimize interruption of the active retail frontage and disturbance to adjacent residences.

The Project is located within an existing hotel with existing improvements and facilities that provide services to the visitors. The conversion of the existing 77 residential hotel rooms into tourist hotel rooms will not result in any new interruption or disturbance to the area.

Visitor Trade

OBJECTIVE 8: ENHANCE SAN FRANCISCO'S POSITION AS A NATIONAL CENTER FOR CONVENTIONS AND VISITOR TRADE.

Policy 8.1: Guide the location of additional tourist related activities to minimize their adverse impacts on existing residential, commercial, and industrial activities.

The Project Site is ideally located in the Union Square neighborhood, close to many visitor attractions and services. With the conversion of the 77 existing residential room to tourist hotel rooms, the Project directly supports this policy.

8. **Priority Policy Findings.** Section 101.1(b) establishes eight priority planning policies and requires the review of permits for consistency with said policies:

- (1) That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.

The subject building contains commercial uses at the ground level. The Project does not propose any changes to the commercial uses, and thus will have no impact on neighborhood-serving retail uses.

- (2) That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The Project will have a positive effect on this area by increasing the number of tourists in an area with many visitor attractions, transit and other services. The reverse conversion of existing tourist hotel rooms at 317 Leavenworth into residential hotel rooms eliminates tourist hotel uses from the North of Market Residential Special Use District, wherein 317 Leavenworth Street is located, and wherein tourist hotel uses are not permitted per Section 249.5(c)(4)(A).

- (3) That the City's supply of affordable housing be preserved and enhanced.

The Project will have a neutral impact on this policy. The vacant residential hotel rooms currently located at the Project Site will be transferred to another location, at 317 Leavenworth Street. Thus, there will be no loss of existing residential hotel rooms.

- (4) That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking.

The Project converts the existing 77 residential hotel rooms into tourist hotel rooms, and thus changes in the number of occupants/residents is minimal, if any. Thus, the Project will have an insignificant impact on traffic or transit services.

- (5) That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project is not an office project, and does not displace any industrial or service sector uses, and thus has no impact on this policy.

- (6) That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project does not involve any construction, and thus will have no impact on this policy.

- (7) That landmarks and historic buildings be preserved.

The existing structure is located within the Kearny-Market-Mason-Sutter Conservation District under Article 11 of the Planning Code. However, the Project does not involve any interior or exterior construction, and thus will have no impact on this policy.

- (8) That our parks and open space and their access to sunlight and vistas be protected from development.

The Project does not involve any interior or exterior construction, and thus will have no impact on this policy.

9. The Commission hereby finds, determines and concludes that approval of the conditional use authorization will promote the health, safety, and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department, and other interested parties, the oral testimony presented to the Commission at the public hearing, and all other written materials submitted by all parties, the Commission hereby APPROVES Conditional Use Application No. 2007.1163C for the Project subject to the following conditions attached hereto as Exhibit A which are incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this conditional use authorization to the Board of Supervisors within thirty (30) days after the date of this Motion. The effective date of this Motion shall be the date of this Motion if not appealed (after the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting on June 5, 2008.

Linda D. Avery
Commission Secretary

AYES: Olague, Antonini, W. Lee, Miguel, Sugaya
NOES: None
ABSENT: Moore
ADOPTED: June 5, 2008

EXHIBIT A

CONDITIONS OF APPROVAL

Wherever "Project Sponsor" is used in the following conditions, the conditions shall also bind any successor to the Project or other persons having an interest in the Project or underlying property.

This conditional use authorization allows the conversion of the existing 77 residential hotel rooms at the Hotel Fusion into tourist hotel rooms at the project site (140 Ellis Street, Lot 023 in Assessor's Block 0326, in a C-3-G (Downtown General Commercial) District and an 80-130-F Height and Bulk District. With the approved conversion the Property would contain up to 124 tourist rooms in an existing 5-story building. The Project is part of a two-way reorganization of hotel rooms whereby in addition to the proposed conversion of 65 residential hotel rooms to tourist hotel rooms at the Project Site, a reverse conversion of 65 tourist hotel rooms into residential hotel rooms will occur at 317 Leavenworth Street. The Project Sponsor also proposes to convert the remaining 12 of the 77 total residential hotel rooms to tourist rooms by paying an in-lieu fee as provided in Administrative Code Section 41.13(a)(4). This in-lieu payment option is not subject to the Conditional Use process, however, the actual conversion of the remaining 12 residential hotel rooms, which results in an increase in the number of tourist rooms at the Project Site, is approved only subject to compliance with the payment of the in-lieu fee required in 41.13(a)(4).

1. In order to convert up to 77 residential hotel rooms to tourist hotel rooms at 140 Ellis Street, the Project Sponsor must also obtain a conversion permit under the Hotel Conversion Ordinance, Administrative Code Section 41.1, et seq. (hereinafter "HCO"). Section 41.13 of the HCO requires one for one replacement of residential hotel rooms in order to convert a residential room to a tourist room. In order to obtain the HCO conversion permit, the Project Sponsor will convert 65 tourist hotel rooms at 317 Leavenworth Street to residential hotel rooms. Assuming Project Sponsor obtains the conversion permit, this satisfies the Planning Commission's concerns that affordable rental housing opportunities will not be lost. Obtaining the conversion permit under the HCO is a condition of this approval.
2. The Project Sponsor shall ensure that a Notice of Special Restrictions is recorded on the property at 317 Leavenworth Street indicating that the hotel shall be classified a 65-room residential hotel subject to the provisions of Chapter 41 of the San Francisco Administrative Code, and also subject to any other conditions imposed by variances granted by the Zoning Administrator under Case No. 2007.1164V.
3. A building permit to re-designate the up to 77 residential hotel rooms at the Project Site shall be reviewed by Staff of the Planning Department as well as the Housing Division of the Department of Building Inspection and shall be obtained by the Project Sponsor within one year of the date of this Motion or said authorization shall become null and void. This authorization may be extended at the discretion of the Zoning Administrator

if the failure to issue a permit by the Department of Building Inspection for the Project is delayed by a City, state or federal agency or by appeal of issuance of such permit.

4. The existing up to 77 residential hotel rooms at the Project Site are not occupied by any residents, and thus there are no relocation requirements for existing tenants under the HCO.
5. The Project Sponsor shall appoint a person or persons to act as a neighborhood liaison. The function of the liaison shall be to consult with residents of the project and neighbors in the surrounding neighborhood to resolve problems or complaints arising from the operation of the project. The Project Sponsor shall report the name and telephone number of the said community liaison to the Zoning Administrator for reference.
6. Should implementation of this project result in complaints from interested property owners, residents or commercial lessees, which complaints are not resolved by the Project Sponsor (and/or the appointed community liaison for the project), and are subsequently reported to the Zoning Administrator and found to be in violation of the Code and/or the specific conditions of approval for the project as set forth in this Exhibit A, pursuant to Section 174 of the Code, the Zoning Administrator shall take appropriate violation abatement action and the Commission, after holding a public hearing on the matter in accordance with the hearing notification and conduct procedures as set forth in Section 174, pursuant to Section 306.3 and 306.4 of the Code, may revoke the subject Conditional Use authorization.
7. Prior to the issuance of any building permit for the construction of the Project, the Zoning Administrator shall approve and order the recordation of a notice in the Official Records of the Recorder of the City and County of San Francisco, which notice shall state that construction of the Project has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied, and record said writing if requested.
8. Severability. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other of the remaining provisions, clauses, sentences, or sections of these conditions. It is hereby declared to be the intent of the Commission that these conditions of approval would have been adopted had such invalid sentence, clause, or section or part thereof not been included herein.

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