



# STAFF REPORT

SAUSALITO CITY COUNCIL – MARCH 24, 2009

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## AGENDA TITLE:

Ordinance Amending the Zoning Code Regarding the Conversion of Hotels and Motels to Hotel-Condominiums

## RECOMMENDED MOTION:

Staff Recommends that the City Council:

Waive First Reading, Read by Title Only and Introduce an Ordinance of the City Council of the City of Sausalito Amending Title 10 (Zoning Ordinance) to; Add a New Chapter 10.67 Hotel-Condominium Conversion Permit, Amend Table 10.40-1 Regarding Parking Requirements, Amend Section 10.50.040 Regarding Application Filing, Amend Section 10.88.040 to Add a Definition of "Hotel"; and Amending Title 3 (Revenue and Finance) of the Sausalito Municipal Code to Include Hotel-Condominiums in the definition of "Hotel"

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## SUMMARY

The City currently has a moratorium in place on the conversion of motels and hotels to condominiums. The Council extended the term of the moratorium in accordance with the provisions of the Government Code. With this extension the moratorium can remain in place until June 18, 2009.

The City Council directed staff to draft modifications to the City's Zoning Ordinance to address the conversion of hotels and motels in the City to Hotel-Condominiums and return the ordinance to the City Council for consideration prior to the expiration of the moratorium.

In accordance with the requirements of California Government Code Section 65853 *et seq.* and Section 10.80.070 of the City's Zoning Ordinance the Planning Commission held noticed public hearings on February 11, 2009, February 25, 2009 and March 4, 2009 on the proposed ordinance and has recommended that the City Council adopt the attached ordinance.

## BACKGROUND

On June 19, 2007, the City Council adopted Ordinance No. 1186, establishing a 45-day moratorium on the approval of condominium conversions of motels and hotels. On July 31, 2007, the City Council adopted Ordinance No. 1187 extending the moratorium for an additional 10 months, 15 days. On May 20, 2008 the Council adopted Ordinance No. 1191 and thereby extended the moratorium for an additional period of one year that is

until June 18, 2009. Under Section 65858 of the Government Code no further extensions of the moratorium are allowed.

The City Council directed staff to prepare an amendment to the City's Zoning Code establishing criteria and a process for the conversion of hotels and motels in the City to condominiums. On November 25, 2008 the Council authorized staff to bring the attached draft Ordinance to the Planning Commission for review and recommendation.

The proposed ordinance adds a new Section 10.67 to the Zoning Code and requires that prior to any conversion of hotels or motels to hotel condominium a Hotel-Condominium Conversion Permit be obtained. The proposed regulations have a number of similarities with the provisions of Chapter 10.66 regarding residential condominium conversions. In addition, the proposed ordinance modifies Table 10.40-1 to establish parking requirements for Hotel-Condominium at 1 per 250 square feet of office plus 1.25 per guest room and amends the definition of "hotel" in Section 10.88 of the Zoning Code to include "hotel-condominium."

Although not a change to the Zoning Code the proposed ordinance also modifies Title 3 of Municipal Code, specifically the provisions regarding Transient Occupancy Tax, to amend the definition of hotel.

The Planning Commission held noticed public hearings on February 11<sup>th</sup>, February 25<sup>th</sup> and March 4<sup>th</sup> 2009 on the proposed ordinance and voted unanimously to recommend that the City Council adopt the ordinance as set forth in Attachment No. 1.

The City Council may approve, modify or deny the Planning Commission's recommendation. Any modifications to the ordinance not previously considered by the Planning Commission have to be referred back to the Planning Commission for review and recommendation.

In the event that the Council introduces the ordinance on March 24<sup>th</sup>, second reading will be scheduled for April 7<sup>th</sup> and the ordinance would go into effect 30 days thereafter.

## **ENVIRONMENTAL REVIEW**

The proposed amendments, which do not affect any changes in land use or density, are categorically exempt from environmental review in accordance with Section 15305 (Minor Alterations in Land Use Limitations) of the California Environmental Quality Act (CEQA) Guidelines.

## **GENERAL PLAN CONSISTENCY**

Staff has reviewed the General Plan objectives and policies and determined the proposed ordinance is consistent with the General Plan. The proposed regulations would retain visitor serving uses by ensuring hotel-condominiums are operated in the same manner as conventional hotels and that such facilities would not be used for residential purposes. These actions are consistent with Policy LU 2.4 which states:

Visitor-Serving Uses in Downtown. Emphasize visitor-serving commercial uses in the Downtown area which not discouraging uses which also serve local resident needs.

## **PUBLIC NOTICE AND WRITTEN COMMENTS**

Notice: At least ten days prior to the hearing date, notice of this public hearing was posted at City Hall and published in the *Marinscope*.

Written Comments: To date, no comments have been received on this matter.

## **FISCAL IMPACT**

There is no anticipated financial impact to the City. If the City Council adopts the proposed ordinance staff will come back to the City Council with modifications to the Mater Fee Schedule to include a fee for Hotel-Condominium Conversion Permits.

## **STAFF RECOMMENDATIONS**

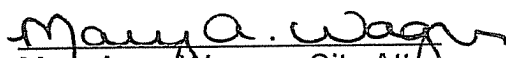
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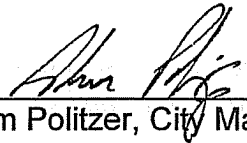
## **ATTACHMENTS**

1 – Ordinance of the City Council of the City of Sausalito Amending Title 10 (Zoning Ordinance) to Include a New Chapter 10.67 Hotel-Condominium Conversion Permit Amend Table 10.40-1 Regarding Parking Requirements, Amend Section 10.50.040 Regarding Application Filing, Amend Section 10.88.040 to Add a Definition of "Hotel"; and Amending Title 3 (Revenue and Finance) of the Sausalito Municipal Code to Include Hotel-Condominiums in the definition of "Hotel"

PREPARED BY:

  
Mary-Anne Wagner, City Attorney

REVIEWED AND SUBMITTED BY:

  
Adam Politzer, City Manager

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**ATTACHMENT NO. 1**

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**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAUSALITO  
AMENDING TITLE 10 (ZONING ORDINANCE) TO:  
ADD A NEW CHAPTER 10.67 HOTEL-CONDOMINIUM CONVERSION PERMIT,  
AMEND TABLE 10.40-1 REGARDING PARKING REQUIREMENTS,  
AMEND SECTION 10.50.040 REGARDING APPLICATION FILING,  
AMEND SECTION 10.88.040 TO ADD A DEFINITION OF "HOTEL"; AND  
AMENDING TITLE 3 (REVENUE AND FINANCE) OF THE SAUSALITO  
MUNICIPAL CODE TO INCLUDE HOTEL-CONDOMINIUMS IN THE  
DEFINITION OF "HOTEL"**

**The City Council of the City of Sausalito hereby ordains as follows:**

**SECTION ONE:**

The proposed modifications to the Zoning Ordinance are consistent with all applicable provisions of the Sausalito General Plan.

Adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Section 15305 (Minor Alterations in Land Use Limitations) of the California Environmental Quality Act (CEQA) Guidelines.

**SECTION TWO:**

A new Chapter 10.67 "Hotel-Condominium Conversion Permit" is hereby added to Title 10 of the Sausalito Municipal Code to read as follows:

**CHAPTER 10.67 HOTEL CONDOMINIUM CONVERSION PERMITS**

**10.67.010 Purpose and Applicability**

The conversion of any Hotel to a Hotel-Condominium shall require the issuance of a Hotel-Condominium Conversion Permit.

In addition to the general purposes of this Title, the specific purposes of establishing procedures and a framework for Hotel-Condominium Conversion Permit are as follows:

- A. To establish regulations for the processing of Hotel-Condominium Permits and the operation of Hotel-Condominiums;
- B. To ensure that Hotel-Condominiums are operated and governed in the same manner as conventional hotels, and that such facilities are not used for residential purposes;

- C. To ensure the maintenance and upkeep of converted structures to avoid public nuisances and hazards to public health and safety;
- D. To ensure that structures converted to Hotel-Condominiums meet physical standards as required by all applicable laws, ordinances and regulations; and
- E. To ensure that the purchasers of the Hotel-Condominium units have been properly informed as to the physical condition of the structure that is offered for purchase.

**10.67.020 Authority.**

The Planning Commission may approve, conditionally approve, or deny a Hotel-Condominium Conversion Permit application, unless otherwise restricted by State law. Development of a Hotel-Condominium must comply with all applicable requirements of this Title. Such development shall also comply with Title 9 (Subdivisions) and the Subdivision Map Act.

**10.67.030 Applications.**

Applications for Hotel-Condominium Conversion Permits shall include all information specified by Chapter 10.50 (Land Use Permit Procedures) and Title 9 (Subdivisions). Each submittal shall also include:

- A. A map showing all common areas and usage of the building, showing the boundaries of all units for informational purposes.
- B. A physical elements report prepared by a registered engineer or architect or licensed, qualified contractor describing the physical elements of all structures and facilities. The report shall include, but not be limited to, the following:
  - 1. The structural condition of all elements of the property, including foundations, electrical, plumbing, utilities, walls, roofs, ceilings, windows, recreational facilities, sound transmission of each building, mechanical equipment and parking facilities.

For each element, the report shall state to the best knowledge or estimate of the applicant: when such element was built, the condition of each element, when said element was replaced, the approximate date upon which said element will require replacement, the cost of replacing said element, and any variation of the physical condition of said element from the current zoning regulations and from the City Construction Code in effect on the date that the last construction permit was issued for the subject structure. The report shall identify any defective or unsafe elements and set forth the proposed corrective measures to be employed.



2. A report from a licensed structural pest control operator approved by the City on each structure and each unit within the structure.
  3. A report on soil and geological conditions regarding soil deposits, rock formations, faults, groundwater and landslides in the vicinity of the project and a statement regarding any known evidence of soils problems relating to the structures. Reference shall be made to all known previous soil reports for the site. Copies of all known previous soil reports shall be submitted with said report.
  4. A statement of repairs and improvements to be made by the subdivider necessary to refurbish and restore the project to achieve a high degree of appearance and safety.
- C. Full architectural plans, including floor plans, elevations and site plan, as determined necessary by the Community Development Director.
- D. Any other information that, in the opinion of the Community Development Director, will assist in determining whether the proposed project will be consistent with the purposes of this Chapter.

The applicant shall deliver copies of the final reports and materials required under subsection 10.67.030 to each initial purchaser at least ten (10) days prior to the sale of such unit or units within the Hotel Condominium. The final reports and materials shall remain on file with the Community Development Department for review by any interested persons. The reports and materials shall also be referenced in the staff report to the Planning Commission.

Application procedures and processing time frames shall be consistent with Chapter 10.50 (Land Use Permit Procedures), this Chapter, State law and additional procedural guidelines established by the Community Development Director. Acceptance of an application does not constitute any indication of approval.

#### **10.67.040 Public Notice and Hearing.**

The Planning Commission shall hold a public hearing on an application for a Hotel-Condominium Conversion Permit following completion of a staff report pursuant to Section 10.50.090 (Staff Reports and Recommendations). The Public Hearing shall be noticed and held in accordance with Chapter 10.82 (Public Hearings).

#### **10.67.050 Findings.**

The Planning Commission may approve a Hotel-Condominium Conversion Permit only if the following findings can be made:

- A. The Planning Commission has received and reviewed physical elements report regarding the general condition of all buildings and listing all code violations.
- B. The project will conform to all applicable laws, ordinances and regulations, including but not limited to those pertaining to building, fire, subdivision and formula retail (Section 10.00.240 of the Municipal Code).
- C. The project is consistent with the Sausalito General Plan.
- D. All provisions of this Chapter are met, or, alternatively the parking requirements for Hotel-Condominium are met, any existing nonconformities are not increased, and, to the greatest extent practicable, existing nonconformities are decreased.
- E. The overall design and physical condition of the project achieves a high degree of appearance, quality and safety.

**10.67.060 Conditions of Approval.**

The Planning Commission may apply reasonable conditions of approval to assure compliance with applicable regulations and standards, including those recommended by City Departments and those specified in Section 10.50.100 (Recommended Conditions of Approval). In addition, the following conditions of approval shall apply:

- A. **Covenants, Conditions and Restrictions (CC&Rs).** CC&Rs and all other agreements, including but not limited to, Property Owner's Association agreements, hotel management agreements, and hotel management agreements, relating to a Hotel-Condominium project shall be submitted for review and approval by the Community Development Director and City Attorney to ensure that: (i) the long-term maintenance and operation of the Hotel-Condominium is in accordance with this Chapter and the terms of the Hotel-Condominium Conversion Permit; (ii) all units, except for the Resident Manager unit prescribed in Section C below, remain available for occupancy by transients (as defined in Chapter 3 of Title 10); (iii) except for ownership interests held by a corporation, limited liability company, limited partnership, general partnership or similar entity, or a tenancy-in-common or joint tenancy (which shall be treated as a single entity), the ownership interest in any individual unit or units shall not be divided by any form of fractional ownership, including, without limitation, a time share; (iv) no storage or long term parking of vehicles or other items (except for storage facilities provided in individual units) shall be allowed; and (v) notice is provided to future purchasers of the City's right to enforce the CC&Rs and all other agreements. Any future amendments to such documents shall be subject to review and approval by the Community Development Director and City Attorney.
- B. **Owner's Association.** All Hotel-Condominium projects shall require the establishment of a Property Owner's Association (a "POA") to oversee the maintenance and operation of the Hotel-Condominium and its services. The

structure and responsibilities of the POA shall be approved by the Community Development Director and the City Attorney and shall comply with all applicable regulations of the California Department of Real Estate.

- C. **Guest Management Entity.** All Hotel-Condominium projects shall require the POA to hire a hotel management entity to manage and operate the Hotel-Condominium and its services as a single Hotel facility. The POA shall submit a letter identifying the hotel management entity and its professional qualifications to the Community Development Director and City Attorney. The hotel management entity shall: (i) provide transient guest services to all owners of the Hotel-Condominium units; (ii) be the sole entity to manage and operate the reservations of individual Hotel-Condominium units; and (iii) be responsible for collection of the transient occupancy tax. All unit owners shall be required to participate in the reservation program provided by the hotel management entity. The management and operations of a Hotel-Condominium shall be subject to compliance with Section 10.44.240 (Formula Retail) of the Municipal Code.
- D. **Enforcement and Inspection.** The POA and the hotel management entity shall have the right, power and obligation to enforce the terms set forth by the CC&Rs and all other agreements, together with the terms of the Hotel-Condominium Conversion Permit and any other permits issued by the City for the site. This includes, without limitation, the right to enter any portion of the Hotel-Condominium, including individual units, to cure any failure or defect in order to satisfy such terms. In addition, all Hotel-Condominium facilities, including individual units, shall be subject to inspection upon reasonable notice by the Community Development Department to ensure compliance with the terms of any use permits issued for the Hotel-Condominium, the terms of this Chapter, and all other applicable laws and regulations.
- E. **Occupancy and Rates.** Units shall be available for transient occupancy by the general public at all times, and shall not be used for purposes that are not subject to the transient occupancy tax (TOT). Occupancy by unit owners or their designees shall be limited to no more than twenty-eight (28) days per calendar year per unit. Any such occupancy shall be subject to the TOT in accordance with Chapter 3.12 of the Sausalito Municipal Code. Calculation of the TOT for unit owners or their designees shall be based on the same reservation/guest rates as utilized for the general public.
- F. **Resident Manager.** Notwithstanding the terms of this Chapter, a Hotel-Condominium facility may contain one unit that may be used on a full-time basis by a Resident Manger(s), and, if applicable, such unit shall be subject to the governance of the POA and the hotel management entity.
- G. **Reservation System.** All Hotel-Condominium facilities shall provide a central reservation system for the reservation of units as an integral part of Hotel-Condominium services.

- H. Furnishings and Utilities.** All Hotel-Condominium facilities shall contain a central lobby with a front desk and/or reservation desk. All units within the Hotel-Condominium facility shall contain and maintain standardized furniture, furnishings, and décor, and shall be served by centrally metered utility services, including, but not limited to, telephone and cable services. No units shall contain a kitchen, or any lockable storage closet or cabinet unless access to such closet or cabinet is uniformly provided to all Hotel-Condominium occupants.
- I. Parking.** Parking shall be provided in accordance with the requirements of Section 10.40.100 (Parking Standards) in addition, owners shall not be allowed to store vehicles.
- J. Utility Undergrounding.** Utilities serving the structure(s) shall be undergrounded in accordance with Chapter 18.08 of the Sausalito Municipal Code from the meter to the distribution lines.
- K. Physical Condition.** The project shall conform to the applicable standards of Title 8 of the Municipal Code regarding Uniform Construction Codes in effect on the date the last construction permit was issued for the subject structure or structures, except as herein provided.
- 1- Each bathroom in each unit shall be provided with ground fault circuit interrupters.
  - 2- Each unit shall be provided with approved smoke detectors conforming to the latest Uniform Building Code standards, mounted on the ceiling or wall at a point centrally located near rooms used for sleeping purposes.
  - 3- All fire hydrants, fire alarm systems, portable fire extinguishers, sprinklers, fire life safety warning systems and other fire protective appliances shall be maintained in operable condition at all times in accordance with current requirements of the City's Fire Code.
  - 4- The structure(s) shall comply with the accessibility requirements of Title 24 of the California Building Code and the Americans with Disabilities Act.
  - 5- All landscaping shall be restored as necessary and maintained to achieve a high degree of appearance and quality. If a significant amount of new landscaping is required, the applicant shall obtain an Administrative Design Review Permit in accordance with Section 10.54.040.
  - 6- All main buildings, structures, fences, patio enclosures, carports, accessory buildings, sidewalks, driveways, landscaped areas, and additional elements as required by the Community Development Director shall be refurbished and restored as necessary to achieve a high degree of appearance, quality and safety.
  - 7- Prior to final approval, the applicant shall provide evidence to the City that a long term reserve fund for replacement of the improvements identified in subsection 6 above has been established in the name of the POA. Such

fund shall be equal to two (2) times the estimated monthly homeowner's assessment for each unit.

- L. **Signage.** Any signage for the Hotel-Condominium shall conform to the requirements of Chapter 10.42.
- M. **Financial Records.** The financial records of the Hotel-Condominium pertaining to the usage of each unit, including any occupancy by owners or their designees, shall be open for inspection by authorized representatives of the City, upon reasonable notice, in order to ensure compliance with the Sausalito Municipal Code.
- N. **Additional Terms and Conditions.** In addition to the regulations set forth in this Chapter, the City may impose additional terms and conditions on the Hotel-Condominium Conversion Permit as is deemed necessary to further the goals of this Chapter and the Sausalito Municipal Code.
- O. **Compliance with Law.** It shall be the responsibility of the applicant for a Hotel-Condominium project, as well as the unit owners, the POA, and the Rental Management Entity, to comply with the requirements of this Chapter, as well as other applicable federal, state and local laws and regulations.

**10.67.070 Notice of Decision.**

The decision of the Planning Commission shall be in the form of a written resolution, which shall include findings on which the decision was based, applicable conditions of approval. Written decisions shall be mailed to the applicant.

**10.67.080 Appeals.**

All decision of the Planning Commission may be appealed to the City Council within ten (10) days of the decision date. All appeals shall be in writing and shall be submitted and processed in accordance with Chapter 10.84 (Appeals) of this Title.

**10.67.090 Effective Date.**

Hotel Condominium Conversion Permits shall become effective ten (10) days after the decision has been rendered, provided no appeal has been filed.

**10.67.100 Expiration.**

Hotel Condominium Conversion Permits are valid for two (2) years unless a different expiration date is stipulated at the time of approval, a building permit has been issued and construction diligently pursued, or the permit is renewed or extended. If more than one phase of a development is approved in a single action and later phases remain outstanding, approval shall lapse at the end of the authorized time frame.

**SECTION THREE:**

The Section entitled "Transient Lodging Land Use" in Table 10.40-1 PARKING REQUIREMENTS of Chapter 10.40 of the Sausalito Municipal Code is hereby amended to add the following:

"Hotel-Condominium                    1 per 250 sq. ft. of office, plus 1.25 per quest room"

**SECTION FOUR:**

Section 10.50.040 of Chapter 10.50 of the Sausalito Municipal Code is hereby amended to add Hotel-Condominium Conversion Permit (Chapter 10.67) to the list of applications provided and accepted by the Community Development Department.

**SECTION FIVE:**

The definition of "Hotel" in Section 10.88 of the Municipal Code is hereby amended to read in its entirety as follows: "Hotel. Any structure, or any portions of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel-condominium, inn, motel, studio hotel, bachelor hotel, lodging house, tourist home or house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof. A "hotel" facility excludes time-share estates and/or time-share properties, but includes hotel-condominiums and their respective hotel management entities wherein the owners of hotel-condominiums obtain an estate in real property consisting of an undivided interest in common space together with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof."

Section 10.88 is further amended to add a new definition of "Hotel-Condominium Conversion" to read as follows:

"Hotel-Condominium Conversion" shall mean the change in the form of ownership of any Hotel to separate, saleable condominium units as defined in Section 1351(f) of the California Civil Code.'

**SECTION SIX:**

Section 3.12.020 Definitions of Chapter 3.12 Transient Occupancy Tax of Title 3 of the Sausalito Municipal Code is hereby amended to read in its entirety as follows:

**3.12.020 Hotel.**

“Hotel” shall mean any structure, or any portions of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, Hotel-Condominium, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof. A “hotel” facility excludes time-share estates and/or time-share propertied, but includes Hotel-Condominiums and their respective hotel management entities wherein the owners of Hotel-Condominiums obtain an estate in real property consisting of an undivided interest in common space together with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof.

**SECTION SEVEN:**

If any section or portion of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

**SECTION EIGHT:**

This Ordinance shall be in full force and effect thirty (30) days after the date of its adoption.

**SECTION NINE:**

This Ordinance shall be published once within fifteen (15) days after its passage and adoption in a newspaper of general circulation in the City of Sausalito.

**THE FOREGOING ORDINANCE** was read at a regular meeting of the Sausalito City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, and was adopted at a regular meeting of the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by the following vote:

AYES: COUNCILMEMBER:

NOES: COUNCILMEMBER:

ABSENT: COUNCILMEMBER:

ABSTAIN: COUNCILMEMBER:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Deputy City Clerk