



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

October 24, 2017

David Cincotta
JMBM, LLP
Two Embarcadero Center, 5th Floor
San Francisco, CA 94111-3813

Name: Abandonment of Transient Hotel Use
Site Address: No Address Specified
Staff Contact: Corey Teague, (415) 575-9081 or corey.teague@sfgov.org
Record Number: 2017-011804ZAD

Dear Mr. Cincotta:

This letter is in response to your request for a Letter of Determination regarding the theoretical abandonment of a transient hotel use. You specifically requested a determination as to whether the temporary conversion to a residential use for less than three years (i.e. during a 9-month academic calendar) would constitute abandonment of the transient hotel use.

If such a hotel use is a legal nonconforming use, then the abandonment of that use is governed by Planning Code Section 183(a). That section states that "Whenever a nonconforming use has been changed to a conforming use, or discontinued for a continuous period of three years, or whenever there is otherwise evident a clear intent on the part of the owner to abandon a nonconforming use, **such use shall not after being so changed, discontinued or abandoned be reestablished**, and the use of the property thereafter shall be in conformity with the use limitations of this Code for the district in which the property is located" (emphasis added). As such, temporarily converting a legal nonconforming transient hotel use to a residential use (i.e. student housing), even for a period of less than three years (i.e. 9 months) would constitute abandonment of the hotel use.

If such a hotel use is a legal conditional use, then abandonment of that use is governed by Planning Code Section 178(d). That section states that "A permitted conditional use which is discontinued for a period of three years, **or otherwise abandoned**, shall not be restored, except upon approval of a new conditional use application pursuant to the provisions of Article 3 of this Code" (emphasis added). Temporarily converting the legal conforming use to a residential use (i.e. student housing), even for a period of less than three years (i.e. 9 months), would constitute abandonment of the hotel use.

If such a hotel use is a legal, principally permitted use, then no specific abandonment provisions in the Planning Code apply. However, conversion of the hotel use to a residential use (i.e. student housing) for any amount of time would require all applicable approvals (i.e. building permit, entitlements, etc.) to

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

David Cincotta
JMBM, LLP
Two Embarcadero Center, 5th Floor
San Francisco, CA 94111-3813

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legally establish the residential use, and such approvals would be subject to applicable Planning Code controls, as well as any applicable controls from other Municipal Codes. Were this scenario to occur, and the land use was legally changed from a hotel use to residential use, then all the applicable approvals and controls would be required to convert the space to a hotel use again in the future.

Please note that this Letter of Determination only responds to the question as it relates to the Planning Code. You should consult other city Departments to determine if other Municipal Codes (i.e. Building Code, Fire Code, Health Code) include provisions relevant to a temporary conversion from a hotel use to a residential use.

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,



Scott F. Sanchez
Zoning Administrator

cc: Corey Teague, Assistant Zoning Administrator
Citywide Neighborhood Groups

David Cincotta
Direct: (415) 984-9687
Fax: (800) 365-1372
dcincotta@jmbm.com

R# 2017-011804 ZAD
CK # 66717 \$ 664. -
C. TEAGUE

Two Embarcadero Center, 5th Floor
San Francisco, California 94111-3813
(415) 398-8080 (415) 398-5584 Fax
www.jmbm.com

July 18, 2017

RECEIVED

Scott Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103-2479

JUL 24 2017
CITY & COUNTY OF S.F.
DEPT. OF CITY PLANNING
ADMINISTRATION

Re: Request for Letter of Determination regarding
Abandonment of Transient Hotel Use

Dear Mr. Sanchez:

On behalf of our client, we are seeking an answer to the primary question for this Letter of Determination, which is whether leasing of a hotel which contains transient hotel rooms (Hotel) for a short-time as a residential use by students or other residential uses for a period of less than three years would constitute abandonment of the transient hotel use.

The Hotel is permitted for approximately 87% tourist units and 13% residential units. The Property's Building Department files include numerous permits for both residential and tourist use. It is the desire of the Hotel to periodically rent on a temporary basis for use by students and others. It is understood that the Planning Code has permitted short term changes in residential uses within Hotel operations during summer periods which has not created a change in use from the residential use to a transient use. However, this question does not appear to be directly addressed by the Planning Code. In this case, it is not the intent of the Hotel to abandon use of the Hotel for transient hotel use; rather, the Hotel wishes to accommodate limited-term requests for use of the Hotel for student housing, in addition to its use as a predominantly transient hotel.

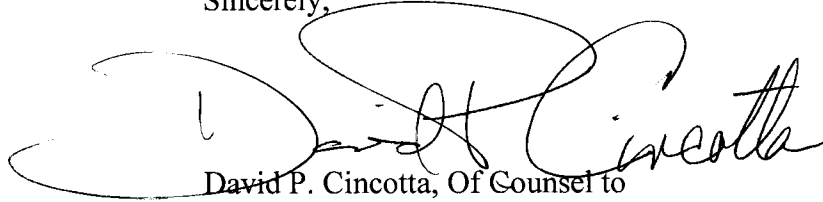
By this letter, we are requesting your confirmation that our understanding is correct that use of the Hotel for student housing for a period of less than three years does not constitute abandonment of the transient hotel use.

Specifically, the Hotel requests confirmation that using the Hotel as student housing during the 9-month academic calendar and as a tourist motel during the summer months would not constitute abandonment of the transient hotel use.

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Thank you for your immediate attention to this matter. The answer to this question is critical to allow to provide immediate short term solutions to schools within San Francisco by periodically providing much needed low-income student housing.

Sincerely,

A handwritten signature in black ink, appearing to read "David P. Cincotta". The signature is fluid and cursive, with a large initial "D" and "C".

David P. Cincotta, Of Counsel to
Jeffer Mangels Butler & Mitchell LLP

DPC:lw