

WRITING SAMPLE FOR THOMAS CHOW
Letter to Board of Appeals Regarding Planning Department's Notice of Violation

March XX, XXXX

VIA FEDERAL EXPRESS

Board of Appeals
City & County of San Francisco
1660 Mission Street, Room 3036
San Francisco, CA 94103-2414

Re: *City Sights Partnership v. Zoning Administrator*
Appeal No. XX-XXX
Notice of Violation for XXX Main Street #X
Hearing Date: March XX, XXXX

Dear Members of the Board of Appeals:

On behalf of Mr. & Mrs. John Doe, who reside at XXX Main Street, Unit X (directly below Unit X), we are writing this letter to request that the Planning Department's Notice of Violation (hereafter "NOV") for the unit at XXX Main Street #X (hereafter "the unit") be upheld for the following reasons:

- City Sights Partnership's (hereafter "City Sights") use and operation of Unit X is as a time-share, a fact that is not disputed by City Sights on Appeal, and confirmed by its own documents attached to its Appeal. City Sights attempts to blur the issue by misstating the NOV as declaring the unit to be a hotel instead of consistent with a hotel usage as a time-share. (See City Sights Appeal, Exh. G (City Sights time-share rotation schedule setting forth which partners have access to Unit X during defined weeks in XXXX)).
- Time-share usage of the unit is properly classified as "hotel" usage, which requires conditional use authorization in an RM-1 Zoning District

City Sights' admitted time-share usage of the unit is in clear violation of the letter and spirit of the General Code and the proscribed uses in the residential Russian Hill neighborhood. XXX Main Street is currently zoned RM-1, which is a residential mixed district of low density. The Zoning Administrator correctly understood that the unit should be classified as a "hotel" rather

than a “dwelling unit” under the Administrator’s official interpretations of the Planning Code. As such, the NOV should be upheld and City Sights should comply with the Planning Code.

City Sight’s Usage Does Not Further The City’s Goal Of Protecting Existing Housing.

The City Planning Department’s General Plan sets forth the specific and important goal of conserving and protecting “existing housing and neighborhood character.” The NOV, which forbids use of the unit as a time-share without the proper Conditional Use Authorization, furthers this purpose. In passing the Time-Share Conversion Ordinance, the City found:

- (a) *There is a severe shortage of permanent housing in San Francisco.*
[¶]
- (d) *In light of housing demand and limited new construction, conserving existing permanent housing is especially important.*
- (e) *Conversion of permanent housing to tourist or other temporary use removes housing units from the available stock and worsens the existing shortage.*

(Planning Code § 41C.2 (emphasis added) (“findings”).)

City Sight’s current usage of the unit matches the description of a time-share.¹ Such a usage removes a perfectly habitable residential unit from the current pool of existing housing. Conservation of existing housing is of utmost importance to the City and the City Planning Department. This goal is clear and unequivocal.

City Sights’ Appeal implicitly recognizes that its admitted time-share usage of Unit X is inconsistent with the findings of the NOV. Instead of simply seeking a Conditional Use Authorization, in which it must explain (but perhaps cannot justify), *inter alia*, how its time-share usage still protects existing housing, City Sights has chosen to frame a technical argument that attempts to manipulate the language of the NOV. City Sights claims that the NOV only alleges that Unit X is a hotel, but City Sights’ usage does not fit the technical definition of a hotel. Thus, the NOV should be expunged so that its time-share usage may continue unabated. This is entirely incorrect because the NOV states that the usage “is considered to be consistent with that of a hotel under the Planning Code.” (See NOV at p. 1.) As such, City Sights never addresses the actual merits of the NOV.

¹ “‘Time-share use’ shall mean a right, whatever its legal form, in perpetuity, for life, or for a term of years, to the recurrent, exclusive use or occupancy of any segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted from among period established by deed, condition, agreement or other means, whether or not coupled with an estate in real property.” (Planning Code § 41C.3 (Time-Share Conversion Ordinance).)

City Sights' Time-Share Usage Qualifies As A Hotel Usage.

City Sights inappropriately claims that the NOV concludes that “the Partnership is using the Residence as a hotel (as defined in the Code).” The NOV makes no such statements. The language of the NOV states:

[T]he subject dwelling unit is being utilized as a timeshare with multiple parties occupying the dwelling unit for short visits (typically less than one week). The occupancy of a dwelling unit by multiple parties for short visits (less than one month) *is considered to be consistent with that of a hotel* under the Planning Code. Per Planning Code Section 209.2(d), a hotel use requires a Conditional Use Authorization and no such authorization is on file for the subject property.

(NOV, at p. 1 (emphasis added).) City Sights' argument is at best a red herring. Instead of conceding that the unit is being operated as a time-share, City Sights attempts to force the Board of Appeals to determine that the unit can only be one of two options: (1) a residential unit, or (2) a hotel. The obvious third option clearly exists under the Code: the unit is a residential unit being operated as a time-share.

City Sights spends much of its letter attempting to state that the unit does not have the characteristics of a hotel under the Planning Code's definition. For example, City Sights argues that it does not pay “rent” in the sense that a traveler must pay rent for a hotel. It also argues that City Sights *as an entity* does not rotate tenancy of the unit and that the unit is not “rented to or used by guests or any other type of transient visitor.” (City Sights Appeal, at p. 4.) Various partners of City Sights, however, rent out and/or provide their time-share allocations to their family, friends, and other third-parties—in other words, “guests.” (See e.g., City Sights Appeal, Exh. D, Fourth Amendment to Partnership, at ¶ 23.) While the partnership claims to use the unit only in a residential manner, City Sights operates it as a business for both personal use and profit. In this way, the unit is not only a time-share, but looks like a hotel.

Assuming *arguendo* that City Sights' factual assertions are actually true, the argument is still completely irrelevant. The unit is not a hotel room—it is a time-share, which the City has determined is consistent with a hotel usage.

The Planning Department's Interpretations of the Planning Code correctly recognizes that time-share usage is similar, and thus should be considered equivalent, to hotel usage. The City's definition of a time-share does not contain details as to amounts of time occupied by specific occupants as it does for hotels. This definition of a time-share matches those found in other counties.² The Planning Department, however, has consistently applied an interpretation of the terms “dwelling unit” and “hotel” to find that time-share units fall under a “hotel” classification. The Planning Code defines “dwelling unit” as:

² For example, Monterey County Zoning Ordinance Title 21 defines “Timeshare Project” as “a development in which a purchaser receives the right in perpetuity, for life, or for a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit or segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted from the use or occupancy period into which the project has been divided.” (Monterey County Zoning Ordinance § 21.06.1280.)

A room or suite of two or more rooms that is designed for, or is occupied by, one family doing its own cooking therein and having only one kitchen.

(Planning Code § 102.7.) The Planning Administrator has officially interpreted this section in a way that time-shares cannot be considered dwelling units:

This Section defines dwelling unit. It says that a dwelling unit must have a kitchen but it does not mention length of stay for renters. It has been ruled that a unit with a kitchen rented for a duration longer than one week but less than one month is a hotel. Such unit rented for less than a week is a transient hotelroom. These units would be subject to the rules of the Planning Code applicable to their respective uses.

(Interpretation of Planning Code § 102, effective 1/92.) Instead of serving as a dwelling unit, a time-share—by which persons pay for the privilege of rotating in and out of a unit based upon specified, shared increments of time—functions in a manner and usage that is similar to a hotel, which also caters to set of rotating tenants. In effect, this removes the unit from the residential housing supply.

City Sights, as acknowledged in its brief, is a partnership owned by 12 groups of people, all of whom rotate through the unit for one week periods of time. (*See e.g.*, City Sights Appeal Exh. D, ¶ 3 & 23(f); Exh. G.) This is a classic time-share. The NOV should be upheld, and City Sights should be required to file for a conditional use authorization.

The City Normally Recognizes Time-Share Usage As Hotel Usage.

Both the City and developers alike have recognized over the years that time-share units, including time-share condominium units, are considered “hotel” use and not merely “dwelling units.” For example, the Planning Commission Notice of Meeting & Calendar for May 8, 2003 reports:

150 POWELL STREET – . . . Option (2) would provide ground floor and mezzanine retail, with the upper three stories used for up to 50 units of time share condominiums, categorized as a “hotel” use under the Planning Code and requiring a Conditional Use authorization

150 POWELL STREET - . . . A request for a Conditional Use Authorization to allow up to 50 units of timeshare use (classified as a hotel) under Sections 216(b)(i) and 303 of the Planning Code.

Another similar Calendar for February 18, 2004, reports the plan of a developer:

690 MARKET STREET – [¶] . . . (4) Convert the existing office building use to a mixed-use project that would have at least 40, but up to 64 residential dwelling units, at least 49, but up to 73 hotel time-share units (for a total 113 hotel and residential unit mix)

Thus, it has been common practice for the City, developers, and property owners to classify time-share condominiums and units under the “hotel” usage. This usage requires a Conditional Use Authorization. The NOV clearly states that City Sights has not filed for a conditional use nor is such an authorization on file. City Sights is therefore compelled to comply with the normal process of filing for a conditional use as a hotel if the Board of Appeals upholds the NOV. We believe that no special exception for City Sights should be made on appeal.³

For the foregoing reasons, Mr. & Mrs. Doe respectfully request that the Board of Appeal uphold the City Planning Department’s Notice of Violation as to XXX Main Street #X.

Thank you very much for your attention and consideration.

Sincerely,

Thomas C. Chow

³ Mr. and Mrs. Doe also note that City Sights does not argue that the City Planning Code relating to time-share units cannot be imposed on the unit *ex post facto* as it did before the Planning Department. (See Letter to Scott Turow dated XX/XX/XX, attached hereto as Exhibit A; E-mail to Scott Turow dated XX/XX/XX, attached hereto as Exhibit B.) City Sights has already admitted that its arrangement is a time-share usage by the documentation included with its appeal. (See *e.g.*, City Sights Appeal Exh. D, ¶ 3 & 23(f); Exh. G.) Its failure to argue that the time-share ordinance does not apply is a tacit admission that the Planning Department, through the NOV, can indeed enforce the time-share ordinance against City Sights.