

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

January 22, 2020

File No. 191075

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On January 14, 2020, Supervisor Peskin submitted the following substitute legislation:

File No. 191075-2

Ordinance amending the Planning Code to create the Intermediate Length Occupancy residential use characteristic; amending the Administrative Code to clarify existing law regarding the enforceability of fixed-term leases in rental units covered by the just cause protections of the Residential Rent Stabilization and Arbitration Ordinance (the "Rent Ordinance"), prohibit the use of rental units for temporary occupancies by non-tenants, require landlords to disclose in advertisements for such units that the units are subject to the Rent Ordinance, and authorize enforcement through administrative and/or civil penalties; requiring the Controller to conduct a study to analyze the impacts of new Intermediate Length Occupancy units in the City; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in black ink, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

1 [Planning, Administrative Codes - Residential Occupancy]

2
3 **Ordinance amending the Planning Code to create the Intermediate Length Occupancy**
4 **residential use characteristic; amending the Administrative Code to clarify existing law**
5 **regarding the enforceability of fixed-term leases in rental units covered by the just**
6 **cause protections of the Residential Rent Stabilization and Arbitration Ordinance (the**
7 **“Rent Ordinance”), prohibit the use of rental units for temporary occupancies by non-**
8 **tenants, require landlords to disclose in advertisements for such units that the units**
9 **are subject to the Rent Ordinance, and authorize enforcement through administrative**
10 **and/or civil penalties; requiring the Controller to conduct a study to analyze the**
11 **impacts of new Intermediate Length Occupancy units in the City; affirming the**
12 **Planning Department’s determination under the California Environmental Quality Act;**
13 **and making findings of consistency with the General Plan, and the eight priority**
14 **policies of Planning Code, Section 101.1, and findings of public necessity,**
15 **convenience, and welfare under Planning Code, Section 302.**

16 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
17 **Additions to Codes** are in *single-underline italics Times New Roman font*.
18 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
19 **Board amendment additions** are in double-underlined Arial font.
20 **Board amendment deletions** are in ~~strikethrough Arial font~~.
21 **Asterisks (* * * *)** indicate the omission of unchanged Code
22 subsections or parts of tables.

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

24 Section 1. CEQA, General Plan, and Planning Code Findings.

25 (a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources

1 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
2 Supervisors in File No. 191075 and is incorporated herein by reference. The Board affirms
3 this determination.

4 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
5 findings that the actions contemplated in this ordinance are consistent, on balance, with the
6 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
7 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
8 Board of Supervisors in File No. _____, and is incorporated herein by reference.

9 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
10 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
11 Planning Commission Resolution No. _____, and incorporates such reasons by this
12 reference thereto. A copy of said Resolution is on file with the Clerk of the Board of
13 Supervisors in File No. _____, and is incorporated herein by reference.

14
15 Section 2. The Planning Code is hereby amended by revising Section 102 (including
16 placing a new defined term in alphabetical sequence), adding Section 202.10, and revising
17 Sections 209.1, 209.2, 209.3, 209.4, 210.1, 210.2, 210.3, 210.4, and 710, to read as follows:

18 **SEC. 102. DEFINITIONS.**

19 * * * *

20 *Intermediate Length Occupancy. A Residential Use characteristic that applies to a Dwelling*
21 *Unit offered for occupancy by a natural person for an initial stay, whether through lease, subscription,*
22 *license, or otherwise, for a duration of greater than 30 consecutive days but less than one year. This*
23 *use characteristic is subject to the requirements of Section 202.10.*

24 * * * *

1 **Residential Use.** A Use Category consisting of uses that provide housing for San
2 Francisco residents, rather than visitors, including Dwelling Units, Group Housing, Residential
3 Hotels, and Senior Housing, Homeless Shelters, and for the purposes of Article 4 only any
4 residential components of Institutional Uses. Single Room Occupancy, Intermediate Length
5 Occupancy, and Student Housing designations are considered characteristics of certain
6 Residential Uses.

7 * * * *

8 **Use Characteristic.** A feature of a Use, related to its physical layout, location, design,
9 access, or other characteristics. Use Characteristics may be regulated independently of a
10 Use itself. Residential Use Characteristics include Single Room Occupancy, Intermediate
11 Length Occupancy, and Student Housing. Commercial Use Characteristics include Drive-up
12 Facility, Formula Retail, Hours of Operation, Maritime Use, Open Air Sales, Outdoor Activity,
13 and Walk-Up Facility.

14 * * * *

15 **SEC. 202.10. LIMITATION ON INTERMEDIATE LENGTH OCCUPANCIES.**

16 (a) Purpose. To encourage the use of Dwelling Units for long-term occupancy by
17 permanent San Francisco residents with initial terms of occupancy of at least one year, the following
18 provisions shall apply to Intermediate Length Occupancy units.

19 (b) Controls.

20 (1) Permitting. Intermediate Length Occupancy units shall be permitted as follows:

21 (A) For buildings with nine or fewer Dwelling Units, requests to authorize
22 the establishment of an Intermediate Length Occupancy Use Characteristic shall be principally
23 permitted, provided that:

24 (i) No more than 25% of the Dwelling Units in the building may be
25 permitted as Intermediate Length Occupancy units.

1 (ii) Each unit proposed to be permitted as an Intermediate Length
2 Occupancy unit is specifically identified.

3 (B) For buildings with 10 or more Dwelling Units, Intermediate Length
4 Occupancy units shall be prohibited, unless authorized pursuant to a conditional use authorization
5 under Section 303, provided that:

6 (i) No more than 20% of the Dwelling Units in the building may be
7 permitted as Intermediate Length Occupancy units.

8 (ii) Each unit proposed to be permitted as an Intermediate Length
9 Occupancy unit is specifically identified.

10 (2) **Maximum Amount.** No more than 1,000 Intermediate Length Occupancy units
11 shall be permitted in the City.

12 (3) **Exceptions.** The requirements of this Section 202.10 shall not apply to:

13 (A) Any Dwelling Unit that is defined as Student Housing in Section 102; or

14 (B) A Residential Hotel unit subject to the provisions of Administrative Code
15 Chapter 41.

16 (4) **Ineligible units.** Dwelling Units that are subject to the City's Inclusionary
17 Affordable Housing Program set forth in Sections 415.1. et seq., or otherwise designated as below
18 market rate or income-restricted under City, state, or federal law, and Dwelling Units that are subject
19 to the rent increase limitations in Administrative Code Section 37.3 shall not be eligible to be
20 Intermediate Length Occupancy units.

21 (c) **Compliance.**

22 (1) **Abandonment.** Any Dwelling Unit permitted as an Intermediate Length
23 Occupancy unit pursuant to this subsection (b) may be offered for an initial term of occupancy of one
24 year or greater without losing the Use Characteristic, provided that the Use Characteristic shall be
25

1 considered abandoned if discontinued or otherwise abandoned for the time periods specified in Article
2 1.7.

3 (2) **Compliance Schedule.** Within six months of the Effective Date of this ordinance
4 in Board File No. _____, the Department shall develop and publish procedures for evaluating
5 requests to establish Intermediate Length Occupancy units. The owner or operator of each
6 Intermediate Length Occupancy unit must submit a complete application within 24 months of the
7 Effective Date of this ordinance in Board File No. _____.

8 (d) **Annual Reports.** No later than March 1 of each year, the owner or operator of each
9 Intermediate Length Occupancy unit shall submit to the Department an Annual Unit Usage Report for
10 the prior calendar year containing the following information:

11 (1) The address and location of the Intermediate Length Occupancy unit.

12 (2) The number of times the unit was occupied by a natural person for an initial
13 stay, whether through lease, subscription, license, or otherwise, for a duration of greater than 30
14 consecutive days but less than one year, including the duration and dates of each of those stays.

15 (3) The average duration of each stay.

16 (4) The average vacancy between each stay.

17 (5) The nature of the services, if any, that are provided to occupants of the
18 Intermediate Length Occupancy units, including furnishings, or other amenities, and whether there has
19 been an increase or decrease in the services since the last report.

20 **SEC. 209.1. RH (RESIDENTIAL, HOUSE) DISTRICTS.**

21 * * * *

22 **Table 209.1**

23 **ZONING CONTROL TABLE FOR RH DISTRICTS**

Zoning Category	§ References	RH-1(D)	RH-1	RH-1(S)	RH-2	RH-3
-----------------	--------------	---------	------	---------	------	------

* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate Length Occupancy</i>	<i>§§ 102, 202.10</i>	<i>P(9)</i>	<i>P(9)</i>	<i>P(9)</i>	<i>P(9)</i>	<i>P(9)</i>
Single Room Occupancy	§ 102	P	P	P	P	P

* * * *

(9) C for buildings with 10 or more Dwelling Units.

SEC. 209.2. RM (RESIDENTIAL, MIXED) DISTRICTS.

* * * *

Table 209.2

ZONING CONTROL TABLE FOR RM DISTRICTS

Zoning Category	§ References	RM-1	RM-2	RM-3	RM-4
-----------------	--------------	------	------	------	------

* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate Length Occupancy</i>	<u>§§ 102, 202.10</u>	<u>P(10)</u>	<u>P(10)</u>	<u>P(10)</u>	<u>P(10)</u>
Single Room Occupancy	§ 102	P	P	P	P

* * * *

(10) C for buildings with 10 or more Dwelling Units.

SEC. 209.3. RC (RESIDENTIAL-COMMERCIAL) DISTRICTS.

* * * *

Table 209.3

ZONING CONTROL TABLE FOR RESIDENTIAL-COMMERCIAL DISTRICTS

Zoning Category	§ References	RC-3	RC-4
-----------------	--------------	------	------

* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate Length Occupancy</i>	<u>§§ 102, 202.10</u>	<u>P(11)</u>	<u>P(11)</u>
Single Room Occupancy	§ 102	P	P

* * * *

(11) C for buildings with 10 or more Dwelling Units.

SEC. 209.4. RTO (RESIDENTIAL TRANSIT ORIENTED) DISTRICTS.

* * * *

Table 209.4

ZONING CONTROL TABLE FOR RTO DISTRICTS

Zoning Category	§ References	RTO	RTO-M
-----------------	--------------	-----	-------

* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate Length</i>	<u>§§ 102, 202.10</u>	<i>P(10)</i>	<i>P(10)</i>
<i>Occupancy</i>			
Single Room	§ 102	P	P
Occupancy			

* * * *

(10) C for buildings with 10 or more Dwelling Units.

SEC. 210.1. C-2 DISTRICTS: COMMUNITY BUSINESS.

* * * *

Table 210.1

ZONING CONTROL TABLE FOR C-2 DISTRICTS

Zoning Category	§ References	C-2
-----------------	--------------	-----

* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<u>Intermediate Length</u>	<u>§§ 102, 202.10</u>	<u>P(6)</u>
<u>Occupancy</u>		
Single Room Occupancy	§ 102	P

* * * *

(6) C for buildings with 10 or more Dwelling Units.

SEC. 210.2. C-3 DISTRICTS: DOWNTOWN COMMERCIAL.

* * * *

Table 210.2

ZONING CONTROL TABLE FOR C-3 DISTRICTS

Zoning Category	§ References	C-3-O	C-3-O(SD)	C-3-R	C-3-G	C-3-S
-----------------	--------------	-------	-----------	-------	-------	-------

* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<u>Intermediate Length</u>	<u>§§ 102, 202.10</u>	<u>P(8)</u>	<u>P(8)</u>	<u>P(8)</u>	<u>P(8)</u>	<u>P(8)</u>
Single Room Occupancy	§ 102	P	P	P	P	P

* * * *

(8) C for buildings with 10 or more Dwelling Units.

SEC. 210.3. PDR DISTRICTS.

* * * *

Table 210.3

ZONING CONTROL TABLE FOR PDR DISTRICTS

Zoning Category	§ References	PDR-1-B	PDR-1-D	PDR-1-G	PDR-2
-----------------	--------------	---------	---------	---------	-------

* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate Length Occupancy</i>	<u>§§ 102, 202.10</u>	<i>NP</i>	<i>NP</i>	<i>NP</i>	<i>NP</i>
Single Room Occupancy	§ 102	NP	NP	NP	NP

* * * *

SEC. 210.4. M DISTRICTS: INDUSTRIAL.

* * * *

Table 210.4

ZONING CONTROL TABLE FOR M DISTRICTS

Zoning Category	§ References	M-1	M-2
-----------------	--------------	-----	-----

* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate Length</i>	<u>§§ 102, 202.10</u>	<u>P(4)</u>	<u>P(4)</u>
<i>Occupancy</i>			
Single Room	§ 102	P	P
Occupancy			

* * * *

(4) C for buildings with 10 or more Dwelling Units.

SEC. 710. NC-1 – NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT.

* * * *

**Table 710. NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT NC-1
ZONING CONTROL TABLE**

* * * *

Zoning Category	§ References	NC-1 Controls
-----------------	--------------	------------------

* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate Length</i>	<u>§§ 102; 202.10</u>	<u>P(10)</u>
<i>Occupancy</i>		
Single Room Occupancy	§ 102	P

* * * *

(10) C for buildings with 10 or more Dwelling Units.

Section 3. Amendment of Specific Zoning Control Tables.

1 Zoning Control Tables 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722,
 2 723, 724, 725, 726, 728, 729, 730, 731, 732, 733, 734, 750, 751, 752, 753, 754, 755, 756,
 3 757, 758, 759, 760, 761, 762, 763, and 764 are hereby amended identically to the
 4 amendment of Zoning Control Table 710 in Section 2 of this ordinance, to create
 5 “Intermediate Length Occupancy” as a new Residential Use Characteristic, citing Planning
 6 Code Sections 102 and 202.10 as references, identifying “P” as the zoning control, and
 7 including the note (“C for buildings with 10 or more Dwelling Units”), provided that the note
 8 shall be numbered as appropriate for each table, as follows.

Zoning Control Table	Note #
711	12
712	11
713	8
714	8
715	6
716	7
717	6
718	7
719	9
720	5
721	5
722	13
723	8
724	6
725	5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

726	7
728	7
729	5
730	5
731	6
732	6
733	6
734	6
750	9
751	7
752	7
753	5
754	8
755	6
756	6
757	10
758	9
759	8
760	4
761	6
762	7
763	6
764	9

1 Section 4. The Administrative Code is hereby amended by adding Section 37.9F, to
2 read as follows:

3 **SEC. 37.9F. CIRCUMVENTION OF TENANT PROTECTIONS.**

4 (a) **Findings.** *As market rents continue to increase in San Francisco, landlords of rent-*
5 *controlled units have a greater incentive to prevent long-term tenancies. Complementing the just cause*
6 *protections in Section 37.9, this Section 37.9F addresses the growing efforts among some landlords to*
7 *induce their tenants into believing that they are required to vacate their units at a specific time*
8 *designated in the lease or agreement, despite existing law to the contrary, or to try to avoid certain*
9 *landlord-tenant obligations altogether. This trend is especially common with respect to corporate*
10 *rentals, though it is not limited to corporate rentals. Such tactics by landlords undermine rent control*
11 *and frustrate the purpose of ensuring that rent-controlled units in the City remain available as a long-*
12 *term housing option for the City's renters.*

13 (b) **Prohibition of Fixed-Term Agreements.** *Consistent with Section 37.9(a)(2) and Section*
14 *37.9(e), any provision of any lease or rental agreement that purports to require a tenant to vacate a*
15 *rental unit at the expiration of a stated term, or that purports to characterize a tenant's failure to*
16 *vacate the rental unit at the end of the stated term as a just cause for eviction (either of them, a "Fixed-*
17 *Term Agreement"), shall be void as contrary to public policy, and a landlord may not attempt to*
18 *recover possession of the unit without just cause. This prohibition shall not apply where this Chapter*
19 *37 expressly authorizes a fixed-term tenancy (e.g., Section 37.2(a)(D)), or where it expressly authorizes*
20 *a tenant to be evicted without just cause (e.g., Section 37.9(b)).*

21 (c) **Restrictions on Non-Tenant Uses.**

22 (1) *A rental unit is being used for a "Non-Tenant Use" when the landlord is*
23 *allowing the unit to be occupied by a person or entity who is not a "tenant" as defined in Section*
24 *37.2(t). Renting a unit to a corporate entity or other non-natural person, or using a unit as housing for*
25 *one's employees, licensees, or independent contractors rather than one's tenants, are nonexclusive*

1 examples of Non-Tenant Uses. This subsection (c) is not intended to narrow the definition of “tenant”
2 under Section 37.2(t) or to limit the just cause protections in Section 37.9; the sole intent is to prevent
3 landlords from circumventing or undermining the tenant protections of this Chapter 37, by restricting
4 when a landlord may provide a rental unit to a person or entity to the extent that person or entity does
5 not otherwise qualify as a “tenant.”

6 (2) Commencing April 1, 2020, it shall be unlawful to use a rental unit or allow a
7 rental unit to be used for a Non-Tenant Use, subject to the exemptions listed in subsection (c)(3). Any
8 provision of any agreement entered into on or after April 1, 2020 that purports to allow a unit to be
9 used for an unauthorized Non-Tenant Use shall be void as contrary to public policy, and the occupants
10 shall instead be deemed tenants under Section 37.2(t).

11 (3) This subsection (c) does not apply to any of the following:

12 (A) where the rental unit is subject to an agreement authorizing a Non-Tenant
13 Use that was entered into before April 1, 2020, for the existing duration of that agreement.

14 (B) the use of a rental unit as a lawful short-term rental as set forth in
15 Administrative Code Chapter 41A.

16 (C) where the landlord is providing the rental unit to its employees as a
17 condition of their employment to assist in the maintenance or management of a building owned or
18 managed by the landlord (e.g., resident managers).

19 (D) where an organization with tax-exempt status under 26 United States Code
20 Sections 501(c)(3) or 501(c)(4) is providing access to the unit in furtherance of its primary mission to
21 provide housing.

22 (d) **Required Disclosures.** Commencing April 1, 2020, every online listing for a
23 rental unit, excluding listings by landlords or master tenants who will reside in the same rental unit as
24 their tenants or subtenants, must contain a legible disclosure in at least 12-point font that includes the
25 following text: “This unit is a rental unit subject to the San Francisco Rent Ordinance, which limits

1 evictions without just cause, and which states that any waiver by a tenant of their rights under the Rent
2 Ordinance is void as contrary to public policy.” The foregoing text should also be included in print
3 advertisements, if practicable.

4 (e) **Monitoring and Enforcement.**

5 (1) The Board shall receive referrals regarding online listings that do not comply
6 with subsection (d). Upon receipt of a referral, if the Board determines that the listing does not
7 substantially comply with subsection (d) and that the defects have not been cured, the Board shall
8 inform the landlord in writing. The landlord shall be required to correct the violation within three
9 business days after receiving the notice. If the landlord has not corrected the violation within three
10 business days, the Board may impose a reasonable administrative penalty of up to \$100 per day, not
11 counting the three-day correction period, provided that in no event shall the total administrative
12 penalty for a single listing exceed \$1,000. The procedure for the imposition, enforcement, collection,
13 and administrative review of the administrative penalty shall be governed by Administrative Code
14 Chapter 100, “Procedures Governing the Imposition of Administrative Fines,” which is hereby
15 incorporated in its entirety. Any administrative penalties collected under this subsection (e)(1) shall be
16 deposited in the General Fund of the City and County of San Francisco to be used for enforcement of
17 this Section 37.9F.

18 (2) The City Attorney may bring a civil action in San Francisco Superior Court
19 against a party who has failed to comply with this Section 37.9F. A nonprofit organization with tax
20 exempt status under 26 United States Code Section 501(c)(3) or 501(c)(4) and with a primary mission
21 of protecting the rights of tenants in San Francisco may also bring such a civil action, provided that the
22 organization shall first provide 30 days’ written notice of its intent to initiate civil proceedings by
23 servicing a draft complaint on the City Attorney’s Office and on any known address(es) of the affected
24 tenant(s), and may not initiate civil proceedings until the end of this 30 day period. A party who
25 violates this Section 37.9F may be liable for civil penalties of not more than two times the amount paid

1 or received for use of the rental unit during the period of the unlawful activity, and each rental unit
2 used in violation of this Section 37.9F shall constitute a separate violation. Any monetary award
3 obtained in such a civil action shall be deposited in the General Fund of the City and County of San
4 Francisco to be used for enforcement of this Section 37.9F. The court shall also award reasonable
5 attorney's fees and costs to the City Attorney or a nonprofit organization that is the prevailing party in
6 such a civil action.

7 (3) The remedies available under this subsection (e) shall be in addition to any other
8 existing remedies that may be available.

9
10 Section 5. Additional Findings. Section 5 of this ordinance is intended to clarify
11 existing law regarding fixed-term agreements, and prevent landlords from circumventing
12 eviction controls by allowing residential occupancy through non-tenant uses. Accordingly, the
13 Board finds that the City’s Residential Rent Stabilization and Arbitration Ordinance (the “Rent
14 Ordinance”), as amended by this ordinance, is consistent with the Tenant Protection Act of
15 2019 (Assembly Bill No. 26 (Chiu), hereafter “AB 1482”); and that it further limits the reasons
16 for termination of a residential tenancy, results in higher relocation assistance amounts, and
17 provides additional tenant protections, and is therefore more protective than AB 1482; and the
18 Board intends that the Rent Ordinance (as hereby amended) shall apply rather than AB 1482.

19
20 Section 6. Controller’s Study. No later than January 1, 2021, the Controller, with the
21 support of consultants as necessary and consistent with the civil service provisions of the
22 Charter, and in consultation with the Planning Department and other City agencies as
23 necessary, shall conduct a study to analyze the impacts created by the development of new
24 Intermediate Length Occupancy units on the City and relevant City services. The Controller’s
25 study shall be submitted to the Board of Supervisors.

1 Section 7. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

5
6 Section 8. Scope of Ordinance. Except as stated in Section 3 of this ordinance, in
7 enacting this ordinance, the Board of Supervisors intends to amend only those words,
8 phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts,
9 diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this
10 ordinance as additions, deletions, Board amendment additions, and Board amendment
11 deletions in accordance with the "Note" that appears under the official title of the ordinance.

12
13 Section 9. Severability. If any section, subsection, sentence, clause, phrase, or word
14 of this ordinance, or any application thereof to any person or circumstance, is held to be
15 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
16 shall not affect the validity of the remaining portions or applications of the ordinance. The
17 Board of Supervisors hereby declares that it would have passed this ordinance and each and
18 every section, subsection, sentence, clause, phrase, and word not declared invalid or
19 unconstitutional without regard to whether any other portion of this ordinance or application
20 thereof would be subsequently declared invalid or unconstitutional.

21
22 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

23
24 By: _____

AUSTIN M. YANG
Deputy City Attorney

n:\legana\as2020\1800552\01419050.docx

REVISED LEGISLATIVE DIGEST

(Substituted, 1/14/2020)

[Planning, Administrative Codes - Residential Occupancy]

Ordinance amending the Planning Code to create the Intermediate Length Occupancy residential use characteristic; amending the Administrative Code to clarify existing law regarding the enforceability of fixed-term leases in rental units covered by the just cause protections of the Residential Rent Stabilization and Arbitration Ordinance (the “Rent Ordinance”), prohibit the use of rental units for temporary occupancies by non-tenants, require landlords to disclose in advertisements for such units that the units are subject to the Rent Ordinance, and authorize enforcement through administrative and/or civil penalties; requiring the Controller to conduct a study to analyze the impacts of new Intermediate Length Occupancy units in the City; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

The Planning Code Section 102 defines Residential Use as a category of uses that “provide housing for San Francisco residents, rather than visitors.” Under Planning Code Section 102, a Use Characteristic is a “feature of a Use, related to its physical layout, location, design, access, or other characteristics.” The Planning Code regulates Residential Uses, and Use Characteristics through the zoning controls.

The City’s Rent Ordinance (Admin. Code Ch. 37) protects tenants in covered rental units from evictions without just cause. Expiration of a lease generally is not a just cause to evict. See Admin. Code § 37.2(a)(2). In addition, an agreement that requires a tenant to waive their rights under Chapter 37 is void as contrary to public policy. Id. § 37.9(e).

Amendments to Current Law

The legislation would amend the Planning Code and create a new Residential Use Characteristic -- Intermediate Length Occupancy (“ILO”) that is applicable only to Dwelling Units. In addition to being subject to the zoning table of the relevant zoning district, the Use Characteristic would be subject to a new section 202.10. Section 202.10 would provide:

- Section 202.10 would state that for buildings with nine or fewer Dwelling Units, ILO units would be principally permitted, but only 25% of the Dwelling Units would be allowed to be permitted as ILO. For buildings with 10 or more Dwelling Units, ILO units would be prohibited. However, an owner or operator of seeking to establish an ILO unit could seek a Conditional Use Authorization to establish ILO units in a building with 10

or more Dwelling Units. For buildings with 10 or more Dwelling Units, only 20% of those units may be permitted as ILO units.

- The legislation would provide that no more than 1,000 Intermediate Length Occupancy units would be permitted.
- The legislation would also require annual reporting by an owner or operator of an Intermediate Length Occupancy unit.
- The legislation would exempt Residential Hotels, and Student Housing from the provisions of Section 202.10.
- Inclusionary and other below-market-rate units, and units subject to the rent increase limitations of the Rent Ordinance would not be eligible for this Use Characteristic.
- The legislation would require the Planning Department to develop standards to evaluate applications to establish the ILO Use Characteristic within six months of the effective date of the ordinance.
- Owners and operators of ILO units would have 24 months to submit complete applications to establish ILO units.

The legislation would amend the Rent Ordinance in several respects:

- First, it would clarify existing law (see Admin. Code §§ 37.9(a)(2), 37.9(e)) by stating that an agreement that would require a tenant to vacate a rental unit at the expiration of a stated term (a “fixed-term agreement”) is void as contrary to public policy, unless an existing just cause exception applies (for example, where the landlord resides in the same rental unit as the tenant).
- Second, it would regulate “non-tenant uses” by restricting when landlords can allow their units to be occupied by persons or entities who are not tenants. Renting a rental unit to a corporate entity or other non-natural person for any purpose, or using a rental unit as housing for one’s employees or “licensees,” are examples of non-tenant uses. Commencing April 1, 2020, it would be unlawful to use a rental unit for a non-tenant use, and any such “non-tenants” would be deemed tenants and could seek just cause protections as forth in the Rent Ordinance. However, the prohibition on non-tenant uses would not apply (1) if the landlord has entered into a contract before April 1, 2020 that specifically authorized the non-tenant use; (2) to the use of a rental unit as a lawful short-term rental under Administrative Code Chapter 41A; (3) where the landlord is using the unit to house an employee in charge or maintaining or managing the building; or (4) to rental units operated by non-profits that provide housing as part of their primary mission.
- The legislation would also require landlords to include a disclosure when advertising their rental units online. The disclosure would state that the unit is subject to the Rent Ordinance, and that the Rent Ordinance limits evictions without just cause, and that any waiver by a tenant of their rights under the Rent Ordinance is void as contrary to

public policy. The Rent Board would have the power to monitor violations and impose administrative penalties for violations that are not timely corrected.

- Finally, the legislation would authorize the City Attorney or a non-profit tenants' rights organization to sue for civil penalties.

The legislation would also direct the Controller, in consultation with the Planning Department and other City agencies as necessary, to conduct a study to analyze the impacts created by the development of new Intermediate Length Occupancy units on the City and relevant City services.

Background

The sponsor introduced a substitute ordinance on January 14, 2020. Changes included in the substitute include:

- Allowing existing units to be eligible for the ILO use characteristic; however Inclusionary and below market rate units, as well as units subject to the rent increase limitations of the Rent Ordinance are not eligible for the ILO use characteristic.
- Increasing the total number of permitted ILO units to 1,000.
- Allowing up to 25% of Dwelling Units in buildings with nine or fewer Dwelling Units to be principally permitted.
- Providing owners and operators of ILO units 24 months to submit a complete application to establish the ILO use.

n:\legana\as2019\1800552\01419948.docx