



SAN FRANCISCO PLANNING DEPARTMENT

April 27, 2015

Ms. Angela Calvillo, Clerk
Honorable Mayor Edwin M. Lee
Honorable Supervisors Kim, Campos, and Farrell
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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**Re: Transmittal of Planning Department Case Nos. 2014-001033PCA, 2015-003861PCA, and 2015-004765PCA
Board File Nos. 141036, 150295, 150363
Planning Commission Recommendation: Approval with Modification**

Dear Ms. Calvillo, Mayor Lee and Supervisors,

On April 23, 2015, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider proposed amendments to Chapter 41A of the Administrative Code relating to Short-Term Rentals. At the hearing, the Planning Commission reviewed all three proposed ordinances and recommended approval with modification.

The Department determined that the proposed amendments are not defined as a project under CEQA Guidelines Section 15378 and 15060(c) (2) because they do not result in a physical change in the environment.

Please find attached documents relating to the actions of the Planning Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr", with a long horizontal flourish extending to the right.

Aaron D. Starr
Manager of Legislative Affairs

cc:
Marlena Byrne, Deputy City Attorney
Ivy Lee, Aide to Supervisor Kim
Carolyn Goossen, Aide to Supervisor Campos
Jess Montejano, Aide to Supervisor Farrell

Nicole A. Elliot, Legislative Director, Commission & Board Liaison, Office of Mayor Edwin M. Lee
Andrea Ausberry, Assistant Clerk, Land Use and Transportation Committee

Attachments:

Planning Commission Resolution

Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 19360

HEARING DATE APRIL 23, 2015

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San Francisco,
CA 94103-2479

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Project Name: **Amendments Relating to Short-Term Rentals**
Case Number: **2014-001033PCA, 2015-003861PCA, and 2015-004765PCA**
[Board File No. 141036, 150295, 150363]
Initiated by: Supervisor Kim/ Introduced October 7, 2014
Supervisor Campos/Draft Ordinance Introduced March 24, 2015
Mayor Edwin Lee, Supervisor Farrell/ Introduced April 14, 2015
Staff Contact: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Reviewed by: AnMarie Rodgers, Senior Policy Advisor
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS THE THREE PROPOSED ORDINANCES THAT WOULD AMEND CHAPTER 41A OF THE ADMINISTRATIVE CODE; AND MAKING ENVIRONMENTAL FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

WHEREAS, on October 7, 2014, Supervisors Kim and Breed introduced a proposed Ordinance (hereinafter "Kim" ordinance) under Board of Supervisors (hereinafter "Board") File Number 141036, which would amend the Administrative Code, Chapter 41A, to prohibit certain residential units that have been the subject of an Ellis Act eviction from use as short-term residential (hereinafter STR) rentals and provide for private rights of action to enforce the requirements of this Chapter; and

WHEREAS, on April 14, 2015, Supervisor Campos introduced a proposed Ordinance (hereinafter "Campos" ordinance) under Board File Number 150295, amending the Administrative Code, Chapter 41A, to revise the Residential Unit Conversion Ordinance to: limit short-term rental of a Residential Unit to no more than 60 days per calendar year; require Hosting Platforms to verify that a Residential Unit is on the City Registry prior to listing, remove a listing once a Residential Unit has been rented for Tourist or Transient Use for more than 60 days in a calendar year, and provide certain useage data to the Planning Department; prohibit short-term rental of certain "in-law" units; revise the definition of Interested Parties who may enforce the provision of Chapter 41A through a private right of action to include Permanent Residents residing within 100 feet; amend the private right of action provisions to allow for a private right of action against Hosting Platforms and create an additional private right of action against Owners, Business Entities, and Hosting Platforms under certain circumstances; and provide for criminal penalties against Hosting Platforms in violation of this Chapter 41A; and

WHEREAS, on April 14, Mayor Edwin Lee and Supervisor Farrell introduced a proposed Ordinance (hereinafter “Mayoral” ordinance) under Board File Number 150364 amending the Administrative Code, Chapter 41A, to revise the Residential Unit Conversion Ordinance to limit short-term rental of a Residential Unit to no more than 120 days per calendar year; revise the definition of Interested Parties who may enforce the provisions of the Administrative Code, Chapter 41A, through a private right of action to include Permanent Residents residing within 100 feet of the Residential Unit; create an additional private right of action under certain circumstances; and direct the Mayor to create an Office of Short-Term Residential Rental Administration and Enforcement staffed by the Planning Department, Department of Building Inspection, and Tax Collector’s Office; and

WHEREAS, The Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinances on April 23, 2015; and,

WHEREAS, the three proposed Ordinances have been determined not to be a project under the California Environmental Quality Act Section 15060(c) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinances.

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinances.

The Planning Commission adopted the following recommendations regarding the three proposed Ordinances:

1. Remove the distinction between hosted and un-hosted rentals, per the Campos and Mayoral ordinances. **PASSED**

AYES: Fong, Johnson, Moore, Richards, and Wu
NOES: Antonini, Hillis
ABSENT: none

2. Prohibit units that have been subject to an Ellis Act Eviction within the last 5 years from registering on the STR registry, per the Kim ordinance. **PASSED**

AYES: Fong, Hillis, Johnson, Moore, Richards, and Wu
NOES: Antonini
ABSENT: none

3. Allow the City to institute civil proceedings against a Hosting Platform, Business Entity, or Owner at any time, per all three ordinances. **PASSED**
AYES: Antonini, Fong, Hillis, Johnson, Moore, Richards, and Wu
NOES: none
ABSENT: none
4. Allow private right of action for non-profits as outlined in the Kim ordinance. **PASSED**
AYES: Fong, Hillis, Johnson, Moore, Richards, and Wu
NOES: Antonini
ABSENT: none
5. Add "Permanent Resident or owner residing within 100 feet" to the definition of Interested Party per the Campos ordinance and the Mayoral ordinance. **PASSED**
AYES: Antonini, Fong, Hillis, Johnson, Moore, and Wu
NOES: none
ABSENT: Richards
6. Prohibit Hosting Platforms from listing any unit that did not maintain good standing on the City's STR registry, per the Campos ordinance. **FAILED**
AYES: Moore, Richards, and Wu
NOES: Antonini, Fong, Hillis, and Johnson
ABSENT: none
7. Add a provision to the STR law directing the Mayor to set up a STR Office that would be staffed by the Planning Department, Department of Building Inspection and The Tax Collector's office, per the Mayoral ordinance. **PASSED**
AYES: Antonini, Fong, Hillis, and Johnson
NOES: Moore, Richards, and Wu
ABSENT: none
8. Make the maximum number of nights a unit can be used as a hosted or un-hosted STR at 120 days. Adjust as needed if future studies can confirm the point where such use would incentive the illegal conversion of residential units to fulltime tourist use, per the changes proposed in the Mayoral ordinance. **PASSED**
AYES: Antonini, Fong, Hillis, and Johnson
NOES: Moore, Richards, and Wu
ABSENT: none
9. Remove the provision in the Administrative Code that requires an Administrative Hearing if a violation is found. This modification was proposed by the Planning Department. **PASSED**
AYES: Antonini, Fong, Hillis, Johnson, Moore, Richards, and Wu

NOES: none
ABSENT: none

10. Remove the provision in the Administrative Code that allows cross-examination of witnesses during the Administrative Hearing. This modification was proposed by the Planning Department. **PASSED**

AYES: Antonini, Fong, Hillis, Johnson, Moore, Richards, and Wu
NOES: none
ABSENT: none

11. Do not Require Hosting Platforms to report quarterly to the Planning Department the number of nights the Residential Unit was occupied as a Short-Term Residential Rental, per the Campos ordinance. **PASSED**

AYES: Antonini, Fong, Hillis, and Johnson
NOES: Moore, Richards, and Wu
ABSENT: none

12. Do not remove "the Owner of the Residential Unit in which the Tourist or Transient Use is alleged to occur" from the definition of Interested Party, per the Campos ordinance. **PASSED**

AYES: Antonini, Fong, Hillis, Johnson, Moore, and Richards
NOES: Wu
ABSENT: none

13. Do not allow private rights of action for any Interested Party after 90 days if the Department has not instituted civil action, as proposed in the Campos ordinance. **PASSED**

AYES: Antonini, Fong, Hillis, and Johnson
NOES: Moore, Richards, and Wu
ABSENT: none

14. Do not prohibit units that have been approved under Section 207.3 of 715.1 of the Planning Code from being used as a STR, per the Campos ordinance. **PASSED**

AYES: Antonini, Fong, Hillis, Johnson, Moore, Richards, and Wu
NOES: none
ABSENT: none

15. Do require noticing to "*any Permanent Resident of the building in which the Residential Unit is located, any homeowners' association associated with the Residential Unit, and any individual or neighborhood association that has requested notification regarding Registry applications for the property on which the Residential Unit is located,*" informing them that an application to the Registry for the unit has been received, per the most recent version of the Campos ordinance introduced on 4/21/15. **PASSED**

AYES: Antonini, Fong, Hillis, Johnson, Moore, Richards, and Wu
NOES: none
ABSENT: none

In addition, the Planning Commission considered and recommended further study on the following issues, but did not take action on them.

1. Allowing Private Right of Action against Hosting Platforms, per the Campos Ordinance;
2. The 135 day timeline for Private Rights of Action, per the Mayoral Ordinance;
3. Prohibiting Interested Parties from receiving Civil Penalties, per the Mayoral Ordinance; and
4. Allowing a different number of days for Hosted and Non-hosted rentals.

FINDINGS

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

1. Generally, the Commission supports efforts to amend the law now that the City has a better understanding of STR and now that implementation of the STR program has begun. The Commission continues to believe that STRs should be allowed within a reasonable regulatory structure. Many of the proposed amendments in these three ordinances would add regulation that enables limited STR while seeking to protect the public interest by minimizing the potential effects on neighborhoods and the housing stock. The proposed amendments generally increase the City's capacity for enforcement either by adding additional resources, data for checks and balances or more easily verified limits. However, some proposed changes would undermine the City's enforcement ability and rights the rights of landlords.
2. The Commission finds that removing the distinction between hosted and un-hosted rentals is a great improvement to the current law. Without this change, enforcement of the law would continue to be compromised as the Planning Department has not identified an effective method to determine if a rental is truly hosted or not. Further, the distinction between hosted and un-hosted rentals creates an avenue to operate a fulltime bed and breakfast type use in their home without public notice or Planning Commission review.
3. Paramount to the Commission's recommendations is protecting the existing housing stock for San Francisco's residents and workers. An Ellis Act Eviction, by its very nature, is the property owner's statement that they are exiting the rental market. The existing and proposed versions of the law seek to keep the unit as primarily residential by limiting STR to the occupant of the unit. An owner move-in eviction is another eviction type that would allow the owner to move in and engage in STR. By allowing STR in owner-move in evictions; the owners' rights to STR are maintained. Removing the capacity for STR in the circumstance of Ellis Act Eviction removes a potential enforcement problem and removes the incentive to evict tenants when STRs may be more lucrative.

4. The Commission finds that the proposed Ordinance increases the Department's enforcement powers and gives the City more power in prosecuting the most egregious cases by allowing the City to take immediate action against repeat offenders.
5. The Commission finds that the proposed ordinances increases the Department's enforcement capacity by allowing non-profits that have in their bylaws a focus on housing the ability to go after some of the city more vulnerable housing, including units where an Ellis Act Eviction has occurred within the last five years and in buildings with three or more rent-controlled units.
6. The Commission finds that including in the definition of Interested Party "residents and owners within 100" of the unit in questions allows those most directly impacted by STR to initiate civil proceedings once the Department has found a violation.
7. The Commission finds that prohibiting Hosting Platforms from listing any unit that did not maintain good standing on the City STR registry would diminish the City's role in enforcing its own laws.
8. The Commission finds that increasing the limit on STRs for individual properties to 120 days would not incentivize the conversion of rental housing to short-term rentals; however, should more data become available that provides further insight on this issue, this limit should be reconsidered.
9. The Commission finds that the City should pursue improved data collection and technologic solutions to inform policy-makers and assist with enforcement, and explore collaboration with other city agencies that may provide better information across hosting platform types rather than requiring Hosting Platforms to provide quarterly report to the City on the number of nights units listed on their serves are rented.
10. The Commission finds that unit owners have an inherent interest in the unit that they own and therefore should not be removed from the definition of Interested Party.
11. The Commission finds that allowing any Interested Party to initiate civil proceedings before the Planning Department has determined if a violation has occurred could open up the entire process for abuses. Further, it would limit the Planning Department's ability to bring decisive action against violators.
12. The Commission finds that the current regulation, which only allows the primary resident to register the unit as a STR, is sufficient enough to ensure that Accessory Dwelling Units are not illegally converted to a permanent hotel use. The Commission does not find a policy reason to prohibit the permanent residents of these units from participating in the City's STR program.
13. **General Plan Compliance.** The proposed amendments to the Planning Code are consistent with the following Objectives and Policies of the General Plan.

HOUSING ELEMENT

OBJECTIVE 2

RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.

As amended, the proposed Ordinances would be consistent with Object two of the Housing Element because they would limit the number of days that a unit could be utilized as a short term rental and how much that could be charged for a short-term rental, helping to preserve the City's existing housing stock.

OBJECTIVE 3

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.

POLICY 3.1

Preserve rental units; especially rent controlled units, to meet the City's affordable housing needs.

With the proposed amendments, the proposed Ordinances would help preserve rental units by ensure that they are not converted into full time short-term rentals.

OBJECTIVE 11

SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

POLICY 11.8

Consider a neighborhood's character when integrating new uses, and minimize disruption caused by expansion of institutions into residential areas.

While not an entirely a new use, short-term rentals are proliferating within the City like never before and having a new and distinct impact on the City's residential neighborhoods. With the Commission's proposed amendments, the proposed Ordinances would help preserve the distinct residential character of the City's residential neighborhoods by limiting the number of nights a residential unit can be rented out as a short-term rental.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

POLICY 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Short-term rentals are commercial activity and these Ordinances seeks to retain that commercial activity in the City while providing sufficient regulatory controls to ensure that any negative impacts are addressed.

OBJECTIVE 3

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS,
PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED

Policy 3.4

Assist newly emerging economic activities

Short-term rentals and short-term rental hosting platforms are an emerging economic activity; the proposed Ordinances would maintain the legality of this activity within San Francisco.

14. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

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 proposed Ordinances would not have a negative effect 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 Commission's proposed amendments to the proposed Ordinances seek to minimize any impacts that this proposal would have on existing housing and neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinances would not negatively affect the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinances would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

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 proposed Ordinances would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

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

The proposed Ordinances would not have an impact on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinances would not have an impact on the City's Landmarks and historic buildings.

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

The proposed Ordinances would not have an impact on the City's parks and open space access to sunlight and vistas.

- 8. Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT WITH MODIFICATIONS the proposed Ordinances as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on April 23, 2015.

Jonas P. Ionin
Commission Secretary

ADOPTED: April 23, 2015



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Administrative Code Text Change HEARING DATE: APRIL 23, 2015

Date: April 16, 2015
Project Name: **Amendments Relating to Short-Term Rentals**
Case Number: **2014-001033PCA, 2015-003861PCA, and 2015-004765PCA**
[Board File No. 141036, 150364, 150363]
Initiated by: Supervisor Kim/ Introduced October 7, 2014
Supervisor Campos/Draft Ordinance Introduced March 24, 2015
Mayor Edwin Lee, Supervisor Farrell/ Introduced April 14, 2015
Staff Contact: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Reviewed by: AnMarie Rodgers, Senior Policy Advisor
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: **Recommend Approval with Modifications**

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ADMINISTRATIVE CODE AMENDMENTS

Sponsors Supervisors Kim and Breed: Short Term Rental Ordinance, Duplicated File.

The proposed Ordinance sponsored by Supervisors Kim and Breed (hereinafter “Kim Ordinance”) would amend the Administrative Code’s provisions on Short-Term Rentals (hereinafter “STR”) (Chapter 41A) to prohibit certain residential units that have been the subject of an Ellis Act Eviction from use as short-term residential rentals and provide for private right of action to enforce the requirements of Admin Code Chapter 41A; and making findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1.

The Way It Is Now:

1. Units that have been subject to an Ellis Act Eviction¹ are not prohibited from being used as a STR.
2. The City may institute civil proceedings against a Hosting Platform², Business Entity³, or Owner⁴, but only following the filing of a complaint and the determination of a violation by the Planning Department.

¹ Administrative Code Section 37.9(a)(13)

² **Hosting Platform** is defined as “A person or entity that provides a means through which an Owner may offer a Residential Unit for Tourist or Transient Use. This service is usually, though not necessarily, provided through an online platform and generally allows an Owner to advertise the Residential Unit through a website provided by the

3. Interested Parties⁵ may only institute civil proceedings against a Business Entity or Owner and only following the filing of a complaint and the determination of a violation by the Planning Department.

The Way It Would Be:

1. Units that had been subject to an Ellis Act Eviction within the last five years could not be used as a STR.
2. The City could institute civil proceedings against a Hosting Platform, Business Entity, or Owner at any time.
3. Interested Parties could still only institute civil proceedings against a Business Entity or Owner and only following the filing of a complaint and the determination of a violation by the Planning Department; however two additional private rights of action would be allowed, which are as follows:
 - (a) Non-profit Organization that has the preservation or improvement of housing as a stated purpose in its articles of incorporation or bylaws may institute a civil action against the Owner or Business Entity, if within 5 years prior to the date of the filing of the Complaint, the Owner or Business Entity terminated the tenancy of one or more tenants in the building using the Ellis Act, where the tenant was served with a notice of eviction after October 7, 2014. An Interested Party may institute a civil action under this subsection only if (1) the Interested Party has filed a Complaint with the Department; (2) 30 days have passed since the filing of the Complaint; (3) after such 30-day period has passed, the Interested Party has provided 30 days' written notice to the Department and the City Attorney's Office of its intent to initiate civil proceedings; and (4) the City has not initiated civil proceedings by the end of that 30-day period.
 - (b) Non-profit organization that has the preservation or improvement of housing as a stated purpose in its articles of incorporation or bylaws and has existed as such for no less than five years from February 1, 2015, may institute civil proceedings against an Owner or Business Entity of a rent-controlled building of at least three Residential Units for injunctive relief. An Interested Party may institute a civil action under this subsection only if the Interested Party has (1) filed a Complaint with the Department; (2) 45 days have passed since the filing of the

Hosting Platform and provides a means for potential tourist or transient users to arrange Tourist or Transient Use and payment, whether the tourist or transient pays rent directly to the Owner or to the Hosting Platform."

³ **Business Entity** is defined as "A corporation, partnership, or other legal entity that is not a natural person that owns or leases one or more residential units."

⁴ **Owner** is defined as "Any person who is the owner of record of the real property. For the purposes of the City's STR regulations, the term "Owner" includes a lessee where the lessee is offering a Residential Unit for Tourist or Transient use."

⁵ **Interested Parties** is defined as "A Permanent Resident of the building in which the Tourist or Transient Use is alleged to occur, any homeowner association associated with the Residential Unit in which the Tourist or Transient Use is alleged to occur, the Owner of the Residential Unit in which the Tourist or Transient Use is alleged to occur, the City and County of San Francisco, or any non-profit organization exempt from taxation pursuant to Title 26, Section 501 of the United States Code, which has the preservation or improvement of housing as a stated purpose in its articles of incorporation or bylaws."

Complaint; and (3) after such 45-day period has passed, the Interested Party has provided written notice to the Department and the City Attorney's Office of its intent to initiate civil proceedings.

Sponsors Supervisors Campos, Mar and Avalos: Amendments to the STR Ordinance

The proposed ordinance sponsored by Supervisors Campos, Avalos, and Mar (hereinafter the "Campos" ordinance) would amend the Administrative Code to revise the Residential Unit Conversion Ordinance to: limit short-term rental of a Residential Unit to no more than 60 days per calendar year; require Hosting Platforms to verify that a Residential Unit is on the City Registry prior to listing, remove a listing once a Residential Unit has been rented for Tourist or Transient Use for more than 60 days in a calendar year, and provide certain usage data to the Planning Department; prohibit short-term rental of certain "in-law" units; revise the definition of Interested Parties who may enforce the provision of Chapter 41A through a private right of action to include Permanent Residents residing within 100 feet; amend the private right of action provisions to allow for a private right of action against Hosting Platforms and create an additional private right of action against Owners, Business Entities, and Hosting Platforms under certain circumstances; and provide for criminal penalties against Hosting Platforms in violation of this Chapter 41A; and affirming the Planning Department's determination under the California Environmental Quality Act.

The Way It Is Now:

1. An Interested Party is defined as "*A Permanent Resident of the building in which the Tourist or Transient Use is alleged to occur, any homeowner association associated with the Residential Unit in which the Tourist or Transient Use is alleged to occur, the Owner of the Residential Unit in which the Tourist or Transient Use is alleged to occur, the City and County of San Francisco, or any non-profit organization exempt from taxation pursuant to Title 26, Section 501 of the United States Code, which has the preservation or improvement of housing as a stated purpose in its articles of incorporation or bylaws.*"
2. The City may institute civil proceedings against a Hosting Platform, Business Entity, or Owner, but only following the filing of a complaint and the determination of a violation by the Planning Department.
3. Interested Parties may only institute civil proceedings against a Business Entity or Owner and only following the filing of a complaint and the determination of a violation by the Planning Department.
4. Non-hosted rentals are limited to 90-days a year and hosted rentals are unlimited⁶.
5. Hosting Platforms are not prohibited from listing a Residential Unit that does not maintain good standing on the City's Short-term Residential Registry⁷.

⁶ The actual text states that The Permanent Resident must occupy "*the Residential Unit for no less than 275 days out of the calendar year in which the Residential Unit is rented as a Short-Term Residential Rental,*" the effect of which is to limit non-hosted rentals to 90-day.

⁷ **Short-Term Residential Rental Registry** is defined as "A database of information maintained by the Planning Department that includes information regarding Permanent Residents who are permitted to offer Residential Units for Short-Term Residential Rental. Only one Permanent Resident per Residential Unit may be included on the

6. The Permanent Resident must submit a report to the Department every year regarding the number of days the Residential Unit or any portion thereof has been rented as a Short-Term Residential Rental; however, Hosting Platforms are not required to report the number of nights a Residential Unit was occupied as a Short-Term Residential Rental.
7. Dwelling Units authorized under Section 207.3 of 715.1 of the Planning Code, also known as Accessory Dwelling Units (ADUs) or in-laws, are not prohibited from being used as a STR.
8. The Planning Department is required to redact the name of the Permanent Resident included in the STR register for records available for Public Review.
9. Existing law provides for misdemeanor criminal penalties against an Owner or Business Entity who violates Chapter 41A and unlawfully rents a unit as a short-term rental.

The Way It Would Be:

1. For the definition of Interested Party, *“Permanent Resident or owner residing within 100 feet”* would be added to the definition and *“the Owner of the Residential Unit in which the Tourist or Transient Use is alleged to occur”* would be deleted from the definition.
2. The City could institute civil proceedings against a Hosting Platform, Business Entity, or Owner at any time (the same change as prescribed in the Kim Ordinance’).
3. An Interested Party would be able to institute a civil action against the Owner, Business Entity or Hosting Platform for injunctive and monetary relief prior to the Department finding that a violation has occurred if the Interested Party has filed a Complaint with the Department; 60 days have passed since the filing of the Complaint; after such 60-day period has passed, the Interested Party has provided 30 days’ written notice to the Department and the City Attorney’s Office of its intent to initiate civil proceedings; and the City has not initiated civil proceedings by the end of that 30-day period.
4. Both non-hosted and hosted rentals would be limited to 60-days a year.
5. Hosting Platforms would be prohibited from listing any unit that did not maintain good standing on the City’s Short-term Residential Registry.
6. Permanent Residents would still be required to report to the Department how many times their unit had been rented over the past year as a STR, and the Hosting Platforms would now be required to report quarterly to the Planning Department the number of nights the Residential Unit was occupied as a Short-Term Residential Rental. Further, if a Hosting Platform has information that a unit has been used as a STR for more than 60 days, they would be required to immediately remove such listing from its platform.
7. ADUs or in-laws approved under Section 207.3 or 715.1 of the Planning Code would be prohibited from being used as a STR.
8. The Planning Department would be required to redact the street and unit numbers of any residences included in the STR register, in addition to the name of the Permanent Resident.

Registry at any given time. The Registry shall be available for public review to the extent required by law, except that, to the extent permitted by law, the Department shall redact any Permanent Resident names from the records available for public review.”

9. The proposed ordinance would allow for misdemeanor criminal penalties against a Hosting Platform, as well as an Owner or Business Entity, who violates the requirements of Chapter 41A.

Sponsor Mayor Edwin Lee, Supervisor Farrell: Amendments to the STR Ordinance

The proposed ordinance Sponsored by Mayor Edwin Lee and Supervisor Farrell (hereinafter the "Mayoral" Ordinance) would amend the Administrative Code to revise the Residential Unit Conversion Ordinance to limit short-term rental of a Residential Unit to no more than 120 days per calendar year, revise the definition of Interested Parties who may enforce the provisions of Chapter 41A through a private right of action to include Permanent Residents residing within 100 feet of the Residential Unit, create an additional private right of action under certain circumstances, and direct the Mayor to create an Office of Short-Term Residential Rental Administration and Enforcement staffed by the Planning Department, Department of Building Inspection, and Tax Collector's Office.

The Way It Is Now:

1. Non-hosted rentals are limited to 90-days a year and hosted rentals are unlimited.
2. An Interested Party is defined as *"A Permanent Resident of the building in which the Tourist or Transient Use is alleged to occur, any homeowner association associated with the Residential Unit in which the Tourist or Transient Use is alleged to occur, the Owner of the Residential Unit in which the Tourist or Transient Use is alleged to occur, the City and County of San Francisco, or any non-profit organization exempt from taxation pursuant to Title 26, Section 501 of the United States Code, which has the preservation or improvement of housing as a stated purpose in its articles of incorporation or bylaws."*
3. All STR functions, including registration and enforcement, are administered by the Planning Department.
4. The Planning Department is required to redact the name of the Permanent Resident included in the STR register for records available for Public Review.
5. The Planning Department is not required to include information on the Department's website about any pending or resolved Complaints regarding violations of Chapter 41A.
6. The City may institute civil proceedings against a Hosting Platform, Business Entity, or Owner, but only following the filing of a complaint and the determination of a violation by the Planning Department.
7. Interested Parties were eligible for civil penalties if the Interested Party won a lawsuit against a violation of Chapter 41A.
8. Interested Parties may only institute civil proceedings against a Business Entity or Owner and only following the filing of a complaint and the determination of a violation by the Planning Department.

The Way It Would Be:

1. Both non-hosted and hosted rentals would be limited to 120 days.
2. The definition of Interested Party would be amended to include *"Permanent Resident or owner residing within 100 feet,"* the same languages that is proposed in Campos ordinance.

3. The proposed Ordinance includes a provision directing the Mayor to set up a STR Office that would be staffed by the Planning Department, Department of Building Inspection and The Tax Collector's office.
4. The Planning Department would be required to redact the street and unit numbers of any residences included in the STR register, in addition to the name of the Permanent Resident.
5. The Planning Department would be required to include information on the Department's website about any pending or resolved complaints regarding violations of Chapter 41A.
6. The City could institute civil proceedings against a Hosting Platform, Business Entity, or Owner at any time (the same change as prescribed in the Kim ordinance and the Campos ordinance).
7. Only the City may be entitled to civil penalties if it wins the lawsuit, not an Interest Party.
8. Interested Parties would be able to institute civil proceedings against a Business Entity or Owner if the following conditions are met: (1) The Interested Party has filed a Complaint with the City; (2) The Planning Director has not made a determination that there is no violation of Chapter 41A or no basis for an investigation; (3) 105 days have passed since the filing of the Complaint and an administrative hearing officer has not issued a final determination regarding the Complaint; (4) After the 105-day period passes, the Interested Party notifies the City of its intent to file a lawsuit; and (5) The City does not file its own lawsuit by the end of the 30 day notice period.

BACKGROUND

Existing Regulations

With a valid Short-Term Residential Rental Registration number, a Permanent Resident⁸ may rent out their Primary Residential Unit for periods of less than 30 nights without violating the requirements of the City's Residential Unit Conversion and Demolition Ordinance (Administrative Code Chapter 41A) or the Planning Code. This includes renting a portion or the entire unit while the permanent resident is present for an unlimited number of nights per year and renting a portion of the entire unit while the permanent resident is *not* present for a maximum of 90 nights per year.

In order to obtain a Short-Term Residential Rental Registration number, the following conditions must be met:

1. The applicant must be the Permanent Resident (owner or tenant) of the residential unit that they intend to rent short-term.
2. The applicant must obtain a San Francisco Business Registration Certificate from the San Francisco Treasurer and Tax Collector's Office.
3. The applicant must obtain liability insurance in the amount of no less than \$500,000 or provide proof that liability coverage in an equal or higher amount is being provided by any and all hosting platforms through which the applicant will rent the unit.

⁸ To be a **Permanent Resident**, the applicant must live in that specific residential unit for at least 275 nights of any given calendar year. New residents must have occupied the specific unit for at least 60 consecutive days prior to applying for the Short-Term Residential Registration. Applicants may only register the specific residential unit in which they reside.

4. The applicant's residential unit must not have any outstanding Planning, Building, Housing, Fire, Health, Police, or other applicable City code violations.
5. The applicant may only register one residential unit.
6. Residential units that are subject to the Inclusionary Affordable Housing Program and residential units designated as below market rate (BMR) or income-restricted under City, state, or federal law are not eligible to register. Units subject to San Francisco's Rent Stabilization (Rent Control) Ordinance are able to register, but may charge tourists no more than a proportional amount of the residential rent.

Planning Commission's Original Recommendation

The Planning Commission heard the original STR ordinance introduced by Supervisor Chiu⁹ on August 7, 2014 and voted four (Antonini, Fong, Hillis, and Johnson) to two (Moore and Sugaya) with Commissioner Wu absent to recommend approval with modifications to the Board of Supervisors. In making their recommendation, Commission found that allowing residents to rent their units on a limited basis was of reasonable, that STRs needed to be limited in order to preserve the City's housing stock, to reduce impacts on affordable housing, and to protect the livability of residential neighborhoods.

The Commission's recommendation sought to create a legal avenue for hosts who want to occasionally rent their primary residence on a short-term basis, while balancing concerns over housing affordability and neighborhood character. Consequently, the Commission's recommendations mainly focused on improving the enforcement and monitoring of STRs; however the Commission also believed that the Ordinance needed to be expanded to regulate both hosted and non-hosted rentals and that all of the City's non-subsidized dwelling units should be treated the same under the new restrictions.

Of the Commission's 16 recommendations, six were not incorporated into the final ordinance. Those include:

1. Modify the Ordinance so that the proposed city-run registry tracks the number of nights a unit has been rented.
2. Require any STR platform or company doing business in San Francisco to provide information on the number of nights a property was rented. Information should be reported back to the city on a quarterly basis at a minimum.
3. Grant citation authority to the Planning Department if it is chosen to be the enforcement agency for STRs, and provide for increased penalties for repeat violators.
4. Limit hosted rentals by nights rented, similar to the restrictions placed on non-hosted rentals, or by limiting the number of rooms that can be rented at any one time.
5. Require the property owner's consent in tenant occupied units and/or a 30-day notification by the Department to the owner prior to listing a unit on the STR registry.
6. Require the Planning Department to maintain a list of registered hosting platforms.

The final ordinance did include a requirement similar to recommendation five that requires the Department to send a letter to the property owner notifying them that the permanent resident of the unit has applied to be on the STR registry; however, a property owner's consent is not required before listing a unit on the short-term rental ordinance.

⁹ Board File 140381, Ordinance Number 218-14, Final Action 10/27/2014

Budget and Finance Committee Hearing

Since the Board adopted the STR Ordinance, the Department also participated in a public hearing before the Budget and Finance Sub-Committee on March 4, 2015¹⁰. This hearing was at the request of Supervisors Farrell and Christensen and focused on the Planning Department's capabilities to enforce the STRs Ordinance, and the financial resources necessary for effective enforcement. At the hearing, Department staff presented an overview of the new law; the process for registration; some of the stats on how registration is progressing; and then provided our assessment of what's working and what could work better.

During the presentation, staff emphasized that the Planning Commission felt that if housing and neighborhood character could be preserved, it would be reasonable to allow STRs. So while the Commission felt comfortable with permitting the use in a way that did not reduce our housing, this use is predicated on this limits being enforced.

Staff also acknowledged that while some potential applicants complained about the burden of registering in person, appointments save both applicants and planners from a chaotic intake situation. The face-to-face meetings allow for applicants to ask important questions and learn about the program in greater detail. Staff believes the face-to-face, scheduled appointments also help to reduce the occurrence of fraudulent applications being filed.

The members of this Committee are typically Chair Farrell, Tang, and Mar. At the March 4 hearing, Supervisors Christensen, Campos, and Kim joined in for the hearing. Supervisor Farrell restated his commitment to ensuring sufficient resources to enforce this law. Supervisor Campos stated that he has asked the Board's Budget Analyst to report on the issue and that the City may need to subpoena some hosting platforms to increase our understanding. Supervisor Christensen wanted to increase motivation for registry and thought the City should get clear about our goals and develop a timeline for hosts to register. Supervisor Mar expressed his disappointment that a local, successful corporation was failing to cooperate. He said he liked the idea of adding a cap to the registry. Supervisor Kim again stated that the law has put the Planning Department in a difficult position of enforcing a law that is inherently difficult to enforce. As this was a hearing, no action was taken.

ISSUES AND CONSIDERATIONS

Planning Department's Short-Term Rental Data

As of April 3, 2015, 455 Short-Term Residential Rental Applications have been submitted to the Planning Department for review. While staff is currently reviewing these applications, the following is a summary of our current disposition of these applications:

Certificates Issued: 170 applications out of 455 applications (37%) have been reviewed by staff and found to be complete and accurate, resulting in the issuance of a registration certificate. This process involves 1) creating the record in the Project and Permit Tracking System (PPTS); 2) verifying accuracy and completeness of application materials; 3) checking for open enforcement violations with the Planning Department and Department of Building Inspection; 4) mailing notices to property owners when necessary; and, 5) creating/issuing the registration certificate and mailing registration packet to the applicant.

Ineligible Applications: 27 of the 455 applications (6%) have been reviewed by staff and appear to be

¹⁰ Board File 150198

ineligible. Ineligible applicants are those who do not appear to be permanent resident of the unit in question. This is often determined by information the applicant has provided during their appointment or information available as a result of previous enforcement action. These applicants have been issued a Notice of Intent to Deny Based Upon Incomplete or Ineligible Short-Term Residential Rental Application (“Notice”). The Notice provides 30 days for the applicant to submit additional materials. Failure to respond will result in denial of the application.

Incomplete Applications: Staff has found that at least 53 of the 455 (12%) applications include inadequate or inconsistent information. This includes documents that show ownership of the property with different mailing addresses for supporting materials. Staff has also received applications for multi-unit buildings where the owner claims residency in one unit (the unit they are also applying to rent short-term), while also submitting documentation revealing that they live in another unit in the same building. These inconsistencies prevent staff from being able to process and issue certificates. During the intake appointment, applicants are informed of the missing or inaccurate documents and are given the opportunity to email or physically drop off the missing documentation (avoiding the need for a separate appointment). Those applicants that have not submitted missing documentation have been issued a Notice of Intent to Deny Based Upon Incomplete or Ineligible Short-Term Residential Rental Application (“Notice”). The Notice provides 30 days for the applicant to submit additional materials. Failure to respond will result in denial of the application.

“No-Show” and Canceled Appointments: Since the program first began accepting appointments on February 2, 2015; staff has experienced a no-show/cancellation rate of 26%. Over time, staff has observed that a greater number of applicants fail to show up for their scheduled appointment. Staff believes that the high no-show/cancellation rate may decrease if applicants are charged a no-show/cancellation fee. The Department has begun offering after-hours drop-in application sessions (without need for appointment) once per month and plans to introduce business-hours drop-in sessions (beginning in May) to increase opportunities for the public to submit applications and optimize staff time for application intake.

	Number	Ratio
Applications Submitted	455	--
Certificates Issued	170	170/455
Applications Found to be Ineligible	27	27/455
Submitted Applications Currently Missing Materials	53	53/455
“No-Show” and Canceled Appointments	132	132/515* <small>*number of scheduled appointments</small>

Housing Affordability

The Planning Department’s paramount concern continues to be limiting the impact that STRs have on the availability and affordability of the City’s housing stock. This concern is derived from Objectives Two and Three of the City’s Housing Element, which seek to “retain existing housing units” and “protect the affordability of the existing housing stock” respectively. Many hosts (56%) say the tourist use enables

them to pay their rent or mortgage¹¹. The concern is that the financial assistance for hosts may be coming at the expense of residential tenants' opportunity for permanent housing.

The critical questions for policy makers seeking to protect housing are: when does STR make more efficient use of unused resources and when does it incentivize the conversion of residential space to tourist use? While this report reviews a fair amount of new data, these fundamental questions remain unanswered.

This section of the staff report will review available data in relation to how tourist use of housing may affect housing availability and affordability.

Newly available data, specific to San Francisco since the August 2014 Commission hearing:

- 2014 August- datascape of Airbnb by an independent journalist¹²
- 2014 December- datascape of Airbnb by an independent journalist¹³
- 2015 February- datascape of Airbnb by an independent journalist¹⁴
- PENDING- Controller's Report by the Office of Economic Analysis
- PENDING- Board of Supervisors Budget and Legislative Analyst

New comparative reports on STR in other cities:

- 2014 October- NY State Attorney General Study, "Airbnb in the City"¹⁵
- 2015 March- LAANE, "Airbnb, Rising Rent, and the Housing Crisis in Los Angeles"¹⁶

In 2015, the Planning Department benefited from the graduate research of Alex Marqusee at the UC Berkeley Goldman School of Public Policy. A detailed memorandum summarizing this work to date is attached as Exhibit B. The attached memorandum collaborates multiple data sources to provide the most complete and transparent window yet into San Francisco's STR market. Highlights of the "Marqusee Memorandum" include:

1. Extent of San Francisco's STR Market. Using multiple sources, the memo reaffirms previous estimates that approximately 4000-5000 Airbnb listings currently exist in San Francisco. To understand how listings may translate into tourist stays and/or the loss of housing, this memo notes that:

- an estimated 130,000 tourists stayed in STRs in 2014, according to the San Francisco Travel Association;

¹¹ [Economic Impact Analysis](#). HR&A Associates, commissioned by Airbnb. 2012.

¹² Data collected and published by Tom Slee. Retrieved from <https://www.google.com/fusiontables/DataSource?docid=1WvonuxK6oy6c6gi7iIvLDIaJtcyHXbx8t0KKGh1p#map:id=3> in February 2015.

¹³ Data collected by: Murray Cox of <http://insideairbnb.com/> (personal communication with staff in March 2015).

¹⁴ Data collected by: Guss Dolan (<http://darkanddifficult.com/>) & Anti-Eviction Mapping Project (<http://www.antievictionmappingproject.net/>) (personal communication with staff in March 2015)

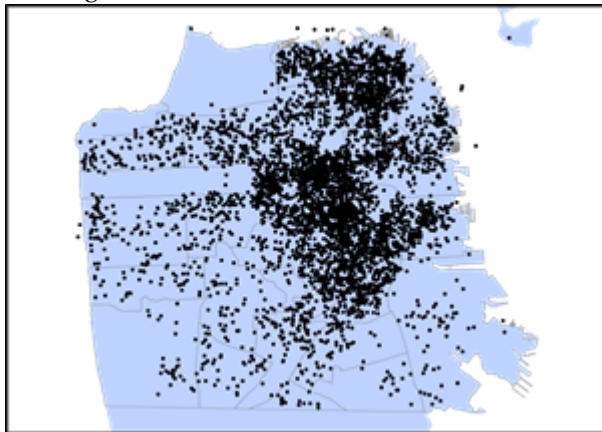
¹⁵ New York State Attorney General, Eric T. Schneiderman. "Airbnb in the city". October 2014. Retrieved from <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf> in November 2014.

¹⁶ LAANE, A New Economy for All. "Airbnb, Rising Rent, and the Housing Crisis in Los Angeles", March 2015. Retrieved from <http://www.laane.org/wp-content/uploads/2015/03/AirBnB-Final.pdf> in April 2015.

- the majority of hosts rent out their units less than once per month; however, a few hosts rent more frequently, there are about 500 listings that are booked at least 3.5 times per month; and
- Airbnb estimated that the average stay per booking is 5 nights per trip in 2011. This estimate is collaborated with a survey by the SF Travel Association Visitor Survey that found short-term rental stays averaged 5.1 nights.

2. Revenue and Economic Incentives for San Francisco Hosts. The memo estimates revenue of hosts by counting post-rental reviews and increasing this number by 28% to account for the percentage of bookings that Airbnb has said do not result in reviews. This estimation technique shows that most units generate little revenue per month (\$495 monthly revenue for 50% of hosts) but some hosts make a sizable income (\$1894 monthly revenue for the top 10% of hosts and \$2500 monthly revenue for the top 5% of hosts). When considering when the economic incentives that the STR market may provide to convert residential use to tourist use, it's important to compare the prices of similar units from both the residential and STR market. While a perfect comparison is not possible, the memo explores current Craigslist rental rates by neighborhood against STR rates by neighborhood. This data show that the median number of days where STR use would outcompete residential use is about 257 days¹⁷. This provides assurance that the highest STR cap proposed (120 day limit) in the pending ordinances would still protect housing by ensuring that residential use would be more lucrative than STR.

3. Description of STR Listings: Entire Units in the Northern and Eastern Neighborhoods. All three datascrapes cited in the memo confirm that a majority of hosts (61%) rent their entire unit. Private rooms account for about a third of the listings (35%). And, shared rooms represent the smallest fraction of San Francisco listings (4%). The density map below shows that STR units are concentrated where the City's housing is concentrated.



Note: Map points for listings are imprecise as the data available on Airbnb's website obscures the exact location by about ¼ mile. This obfuscation likely accounts for dots in the ocean and parks.

San Francisco Analysis. The data shows that the average, minimum booking per month is slightly less than once per month. If Airbnb's 2011 statement that bookings typically are for 5 rental days is still accurate; then the median tourist use of a listing represents 54 days per year or about 15% of the year. Allowing for tourist use of a unit for 15% of the year falls squarely within policymaker expectations. The current law allows tourist use of a full unit for 25% of the year. However, the most active 25% of listings average 2 bookings per month which results in tourist use for approximately 33% of the year and the top

¹⁷ This number overestimates the profitability of Airbnb by not accounting for some fees and operating costs. The Office of the Controller is expected to explore this topic in more detail in an upcoming report.

10% of listings are estimated to be in tourist use for the majority of the year—exceeding the limits proposed by all of the draft ordinances. The good news is that the average listing continues to be dedicated to tourist use for a fraction of the year. Without a more detailed survey of hosts, it cannot be determined if the listing is used for residential use for the remainder of the year. Along the same lines, there is no data to inform policymakers about when a tenant may decide to forego a roommate and instead periodically lease a portion of their unit as a STR. The data does show that a limited number of listings that are dedicated to tourist use for a majority of the year and have little capacity to house San Francisco residents.

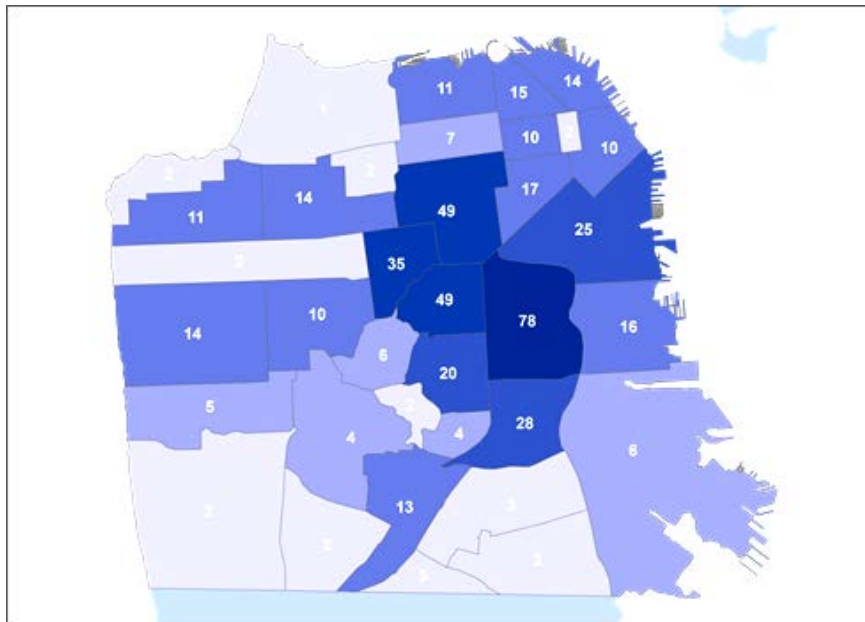
Minimum Estimated Bookings for all 5,148 Listed Units in San Francisco

**The Average Listings Comply with SF Policy Intent; But
 The Most Active Listings Are Dedicated to Tourist, Not Residential Use**

	Median (average) listings	Maximum use if 90 STR days allowed	Top 25% most active listings	Maximum use if 120 STR days allowed	Top 10% most active listings	Top 5% of active listings
Bookings per month	0.9	1.5	2	2	3.5	4.5
Approx. % of the year listing dedicated to tourist use*	15%	25%	33%	33%	58%	74%

* The length of stay per booking is estimated here at 5 days. This is based upon Airbnb’s 2011 statement that bookings are typically for 5 rental days and is slightly less than the 2014 SF Travel Association Visitor Survey stating short-term rental stays averaged 5.1 nights.

Density of STR Listings By Neighborhood That Appear to Be Rented as STR at Least 50% of the Year



This map demonstrates that some of the most frequently booked or commercially-oriented listings are concentrated in core neighborhoods. The numbers represent the listings per neighborhood which are believed to be rented at least 50% of the year.

Conclusions Beyond San Francisco. In addition to the Marqusee Memorandum, staff reviewed the New York Attorney General Report on New York City; the LAANE report on Los Angeles and a report commissioned by Airbnb as summarized in the Wall Street Journal¹⁸.

Together, the conclusions in these three reports seem to mirror the local public dialogue:

- 1) *While the majority of hosts may be offering units in a manner that aligns with public policy goals in San Francisco; a minority of commercial users dominate the market and*
- 2) *Although STRs likely have limited effect on the citywide housing market, the effect is more pronounced in high-demand neighborhoods.*

Highlights from these three reports on STRs include:

- **NY Attorney General Report:** This report analyzes Airbnb bookings from January 1, 2010 to June 2, 2014. It provides the first exploration of how users in NYC use the hosting platform. The intent of the report is to inform decision-makers on how to “best embrace emerging technology while protecting the safety and well-being of our citizens”.
 - **Effects on Housing Supply.** “Thousands of residential units in New York City were dedicated primarily or exclusively to private STRs. In 2013, over 4,600 unique units were each booked as private STRs for three months of the year or more. Of these, nearly 2,000 units were each booked as private STRs on Airbnb for at least 182 days—or half the year. While generating \$72.4 million in revenue for hosts, this rendered the units largely unavailable for use by long-term residents. Notably, more than half of these units had also been booked through Airbnb for at least half of the prior year (2012).” (pg. 12)
 - **Neighborhood Concentration.** “The majority of units converted to private STRs are in popular neighborhoods in Brooklyn and Manhattan. A dozen buildings in those same neighborhoods had 60% or more of their units used at least half the year as private STRs, suggesting that the buildings were operating as de facto hotels.” (pg. 12)
 - **Rate of Growth.** “Private STRs in New York City have grown at a staggering pace. The number of unique units booked for private STRs through Airbnb has exploded, rising from 2,652 units in 2010 to 16,483 in just the first five months of 2014. Private bookings in New York City saw a nearly twelvefold spike, rising from 20,808 in 2010 to an estimated 243,019 in 2014.” (pg. 6)
 - **Commercial Users.** “While commercial users represented a minority of hosts, they dominated the private STR market in units, reservations, and revenue. Commercial Users [represent only 6% of all hosts, but] controlled more than one in five unique units in New York City booked on Airbnb, accepted more than one in three private reservations, and received more than one of every three dollars in revenue from private STRs on Airbnb—for a total of \$168 million.” (pg. 10)

¹⁸ Kusisto, Laura. Wall Street Journal. “Airbnb Pushes Apartment Rents Up Slightly, Study Says” March 30, 2015. Retrieved from <http://blogs.wsj.com/developments/2015/03/30/airbnb-pushes-up-apartment-rents-slightly-study-says/> in April 2015.

New York City Commercial Users Accounted for a Disproportionate Share of Private STRs

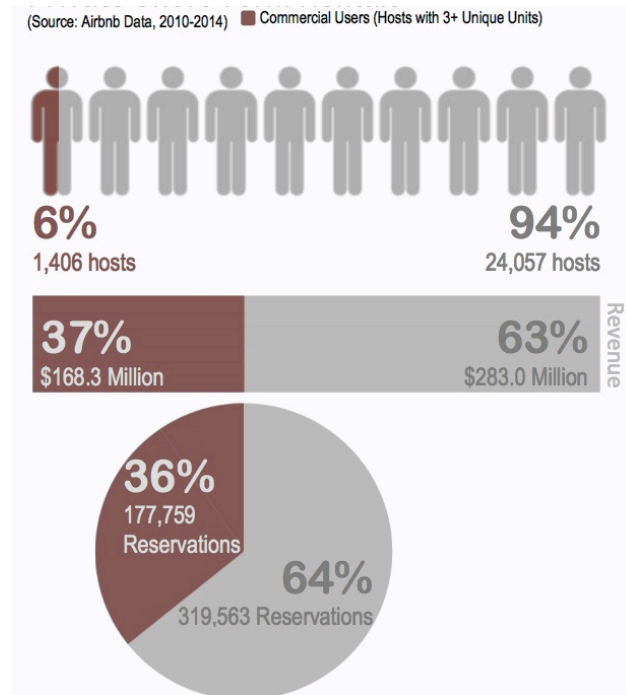


Image from NY Attorney General report illustrating that a minority of hosts garner the a high percentage of revenue and reservations.

- **LAANE Report on Los Angeles.** This report completed by a nonprofit that seeks to “build a new economy based upon: good jobs, thriving communities, and a healthy environment” is the most critical. It concludes with four principals for regulating short-term rentals 1) protect housing; 2) require approval for each STR; 3) hosting platforms should share the burden of enforcement; and 4) hosts should only be able to rent STR when they are present during the rental period.
 - **Characterization of STR in LA.** “these units are not, by and large, the “shared” space implied by terms like host or sharing economy. Instead, nearly 90 percent of AirBnB’s Los Angeles revenues are generated by lessors with whole units and leasing companies who rent out two or more whole units.” (pg. 3)
 - **Loss of Housing.** “AirBnB has created a nexus between tourism and housing that hurts renters. The 7,316 units taken off the rental market by AirBnB is equivalent to seven years’ of affordable housing construction in Los Angeles.” (pg. 3)
 - **Impact Varies by Neighborhood.** “In Venice, as many as 12.5% of all housing units have become AirBnB units, all without public approval.” (pg. 3)

- **Wall Street Journal.** This article¹⁹ summarizes a report commissioned by Airbnb and written by Thomas Davidoff of the University of British Columbia.
 - **Citywide Impacts on Housing May Be Limited.** “Airbnb increases the price of a one-bedroom unit by about \$6 a month. In San Francisco, he found that it increases rents by on average about \$19 a month... Even without relying on Airbnb’s estimates, Mr. Davidoff said that if one assumes that all listings are investors renting out units solely on Airbnb, the increases are modest. In New York, rents would likely go up around \$24 a month and San Francisco around \$76 a month.”
 - **Neighborhood Impacts May Be More Pronounced.** “Airbnb listings aren’t evenly spread across most cities but tend to be concentrated in prime neighborhoods, meaning that popular places could face more pressure on rents than others. Mr. Davidoff said it is difficult to measure how much Airbnb drives up rents in places like Venice Beach, which has about 200 places available for this Friday evening, because some people may just move to a different area, lessening the rent increase. He said in that case, the criticism of Airbnb is less about citywide affordability than the right of people to stay in desirable neighborhoods. ‘It’s not an affordability issue. It’s a luxury neighborhood issue or a bohemian neighborhood issue,’ he said.”

Since the Planning Commission hearing in August, decision-makers and the public benefit from much greater availability of data on STRs. Both the San Francisco data and the data from other reports point to limited impacts from the average host, while a small number of commercially-minded hosts disproportionately colonize the listing market. For this reason, a key need is to identify the apparently small number of hosts who provide year-round lodging to tourists at the expense of potential residents. Further, the current level of STRs likely has a limited effect on citywide housing prices and availability. However, certain neighborhoods that provide the City’s most affordable housing may also provide a ripe incentive to illegally convert housing to tourist use. Targeting legislative and enforcement efforts towards those commercial hosts and vulnerable neighborhoods may provide the greatest protections of the City’s precious housing resources. The pending reports to be published by the Controller’s Office of Economic Analysis and the Budget & Legislative Analyst may very well provide such data. Without such data, a broader legislative approach may be advisable given the current housing affordability crisis.

Neighborhood Character

There have been concerns raised that STRs are impacting neighborhood character and quality of life for residents. Many of the complaints that the Department receives about STRs have to do with the hours of activity that tourists keep compared to long-term residents. The Department believes that this may be a concern in some neighborhoods that have a concentration of units being used as STRs full time, but in most neighborhoods where occasional use is the norm this is not likely to be as much of a problem.

Hotels, Inns and Bed & Breakfast Uses in Residential Districts

In addition to STR provisions in the Administrative Code, the Planning Code also allows small hotel uses in Residential Districts with Conditional Use authorization. They are historically known as bed and breakfast inns or small hotels, and are limited to 5 rooms in all RH Districts except in RH-1 Districts,

¹⁹ The Wall Street Journal. “Airbnb Pushes Up Apartment Rents Slightly, Study Says”, Kusisto, Laura. March 30, 2015.

where the use is prohibited. Because the existing STR law doesn't place any restrictions on the number of days for hosted rentals, the law essentially allows small hotels in RH districts as of right. Prior to the recent legislative change hotels with less than six rooms required a Conditional Use authorization, which is accompanied by notice to the neighbors and a discretionary public hearing. There is clearly a difference between renting out a home while on vacation versus a fulltime bed and breakfast; however, as the Department's enforcement team has found, and subsequent studies have affirmed²⁰, a number of owners are using STR sites to circumvent traditional oversight processes and are effectively adding high-intensity hotel-like uses in a residential neighborhood.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinances and adopt the attached Draft Resolution to that effect.

The Department recommends approval on the following aspects of the three proposed Ordinances:

1. Remove the distinction between hosted and un-hosted rentals, per the Campos and Mayoral ordinances.
2. Prohibit units that have been subject to an Ellis Act Eviction within the last 5 years from registering on the STR registry, per the Kim ordinance.
3. Allow the City to institute civil proceedings against a Hosting Platform, Business Entity, or Owner at any time, per all three ordinances.
4. Allow private right of action for non-profits as outlined in the Kim ordinance.
5. Add "Permanent Resident or owner residing within 100 feet" to the definition of Interested Party per the Campos ordinance and the Mayoral ordinance.
6. Prohibit Hosting Platforms from listing any unit that did not maintain good standing on the City's STR registry, per the Campos ordinance.
7. Add a provision to the STR law directing the Mayor to set up a STR Office that would be staffed by the Planning Department, Department of Building Inspection and The Tax Collector's office, per the Mayoral ordinance.
8. Make the maximum number of nights a unit can be used as a hosted or un-hosted STR at 120 days. Adjust as needed if future studies can confirm the point where such use would incentive the illegal conversion of residential units to fulltime tourist use, per the changes proposed in the Mayoral ordinance.

²⁰ "Window into Airbnb's hidden impact on S.F." (June 16, 2014) Retrieved from www.SFChronicle.com on July 1, 2014.

The Department is proposing the following modifications, which are not proposed in any ordinance.

9. Remove the provision in the Administrative Code that requires an Administrative Hearing if a violation is found.
10. Remove the provision in the Administrative Code that allows cross-examination of witnesses during the Administrative Hearing.

The Department does not recommend approval of the following items:

11. Do not Require Hosting Platforms to report quarterly to the Planning Department the number of nights the Residential Unit was occupied as a Short-Term Residential Rental, per the Campos ordinance.
12. Do not remove “the Owner of the Residential Unit in which the Tourist or Transient Use is alleged to occur” from the definition of Interested Party, per the Campos ordinance.
13. Do not allow private rights of action for any Interested Party after 90 days if the Department has not instituted civil action, as proposed in the Campos ordinance.
14. Do not prohibit units that have been approved under Section 207.3 of 715.1 of the Planning Code from being used as a STR, per the Campos ordinance.

BASIS FOR RECOMMENDATION

Generally, the Department supports efforts to amend the law now that the City has a better understanding of STR and now that implementation of the STR program has begun. The Department continues to believe that STRs should be allowed within a reasonable regulatory structure. Many of the proposed amendments in these three ordinances would add regulation that enables limited STR while seeking to protect the public interest by minimizing the potential effects on neighborhoods and the housing stock. The proposed amendments generally increase the City’s capacity for enforcement either by adding additional resources, data for checks and balances or more easily verified limits. However, some proposed changes would undermine the City’s enforcement ability and rights the rights of landlords.

Recommendation 1: Remove the distinction between hosted and un-hosted rentals, per the Campos ordinance and Mayoral ordinance.

Both Supervisor Campos’s and the Mayoral ordinances would remove the distinction between hosted and non-hosted rentals. The current law permits hosted rentals 365 days per year and limits un-hosted rentals to 90 days per year. Removing this distinction is a great improvement to the current law. Without this change, enforcement of the law would continue to be compromised as the Department has not identified an effective method to determine if a rental is truly hosted or not. Further, the distinction between hosted and un-hosted rentals creates an avenue to operate a fulltime bed and breakfast type use in their home without public notice or Planning Commission review.

Recommendation 2: Prohibit units that have been subject to an Ellis Act Eviction within the last 5 years from registering on the STR registry, per the Kim ordinance.

Paramount to the Department’s recommendations is protecting the existing housing stock for San Francisco’s residents and workers. An Ellis Act Eviction, by its very nature, is the property owner’s statement that they are exiting the rental market. The existing and proposed versions of the law seek to keep the unit as primarily residential by limiting STR to the occupant of the unit. An owner move-in eviction is another eviction type that would allow the owner to move in and engage in STR. By allowing

STR in owner-move in evictions; the owners' rights to STR are maintained. Removing the capacity for STR in the circumstance of Ellis Act Eviction removes a potential enforcement problem and removes the incentive to evict tenants when STRs may be more lucrative.

Recommendation 3: Allow the City to institute civil proceedings against a Hosting Platform, Business Entity, or Owner at any time, per the Kim ordinance and Campos ordinance.

This provision increases the Department's enforcement powers and gives the City more power in prosecuting the most egregious cases by allowing the City to take immediate action against repeat offenders. It also helps restore balance between the City and other Interested Parties, which under the various proposal, would be allowed to act before the Department has found that a violation has occurred.

Recommendation 4: Allow private right of action for non-profits as outlined in the Kim ordinance.

This limited provision increases the Department's enforcement capacity by allowing non-profits that have in their bylaws a focus on housing the ability to go after some of the city more vulnerable housing, including units where an Ellis Act Eviction has occurred within the last five years and in buildings with three or more rent-controlled units. Further these entities' main focus is on the preservation or improvement of housing and have an inherent interest in ensuring that the City's housing stock is protected.

Recommendation 5: Add "Permanent Resident or owner residing within 100 feet" to the definition of Interested Party per the Campos ordinance and the Mayoral ordinance.

This modification will add those that are most directly impacted by STRs, those living within the immediate vicinity of the unit in question, to initiate civil proceedings once the Department has found a violation. Protecting neighborhood character is one of most important issues that the Department is concerned about when it comes to allowing STRs in residential districts, and the department finds that this modification is in line with that concern.

Recommendation 6: Prohibit Hosting Platforms from listing any unit that did not maintain good standing on the City's STR registry, per the Campos ordinance.

This amendment would prohibit Hosting Platforms from listing a STR property on their service without a valid STR registration number. The Department believes that this provision is essential to improving the City's enforcement capacities as it would prevent anyone from listing a unit without a registration number, and it makes the Hosting Platforms an active partner in ensuring that hosts are abiding by the City's rules.

Recommendation 7: Add a provision to the STR law directing the Mayor to set up a STR Office that would be staffed by the Planning Department, Department of Building Inspection and The Tax Collector's office, per Mayoral ordinance.

While this proposal is not outlined in detail, the Department understands that this new office will act as a one stop shop for all STR issues in the city, including enforcement, administration, and outreach. The office will allow a host to apply for the business license, sign up for the registry and get answer to their questions in one office. Having three agencies share in the responsibilities for the STR program will add more resources to enforcement and provide enhanced customer service to the City's residents.

Recommendation 8: Make the maximum number of nights a unit can be used as a hosted or un-hosted STR at 120 days. Adjust as needed if future studies can confirm the point where such use would incentivize the illegal conversion of residential units to fulltime tourist use, per the changes proposed in the Mayoral ordinance.

As mention on page 10, two pending reports (one each by the Controller's Office and Budget Analyst) may shed more light onto the financial aspects of STRs in the City. As part of that analysis, the Department understands the Controller may be looking at the number of days at which STRs become more profitable than renting a unit out full time to a permanent resident. When this item first came to the Planning Commission, the Department supported the 90-day limit because it was consistent with the accessory uses limits for dwelling units in the Code, which is currently one-fourth of the floor area (90 days is one-fourth of the year), and still maintained the unit as primarily residential. 120 days is one-third of the year, which still fits within the definition of an accessory use for other non-residential uses, and the units would still be primarily residential for the majority of the year. The Marqusee Memo estimates that the median days of STR needed to outcompete residential use is about 257 days²¹. This provides assurance that the recommended 120 day cap would still protect housing by ensuring that residential use would be more lucrative than STR. That said, the Department is hesitant to recommend further changes to the number of days until we better understand what impact the change will have on the City's housing stock. In particular, it is unclear if STR listings that are frequently booked would be put to residential use if STR were further limited. For example, even in cases where STRs are not as lucrative as residential uses and where the STR merely provides the host with a marginal funding source, the question remains: would the space be offered for another tenant if STR were not available? The answer to this question lies in individual living preferences as to whether it's easier to live with a roommate or intermittent tourists.

Recommendation 9: Remove the provision in the Administrative Code that requires an Administrative Hearing if a violation is found.

This amendment is not proposed in any of the pending ordinances. Existing law requires a mandatory administrative review hearing once the Department has found there is a violation. The Department is recommending that this be modified to make the hearing voluntary, so that if the Department finds there is a violation, it could be abated without a hearing. If the violation is contested, then a hearing could be requested by person or entity charged with a violation.

Recommendation 10: Remove the provision in the Administrative Code that allows cross-examination of witnesses during the Administrative Hearing.

This amendment is not proposed in any of the pending ordinances. Existing law allows for cross-examination of witnesses during the Administrative Hearing. This provision is a holdover from the administrative hearing processes that was in place prior to the STR program. The Department finds that cross-examination is unnecessary for a hearing of this type and removing cross-examination would reduce the potential for needless acrimony.

Recommendation 11: Do not require Hosting Platforms to report quarterly to the Planning Department the number of nights the Residential Unit was occupied as a Short-Term Residential Rental, per the Campos ordinance.

²¹ This number overestimates the profitability of Airbnb by not accounting for some fees and operating costs. The Office of the Controller is expected to explore this topic in more detail in an upcoming report.

The Department originally recommended this provision be added to the STR ordinance when it was first heard by the Planning Commission last August. At the time, the Department was concerned that without this information the ordinance could not be effectively enforced. However, if Recommendation 6 listed above is added to the City's STR program the Department believes that the law will be more enforceable. Further, not all Hosting Platforms are involved with the booking or the financial transaction between the host and the renter, making the information the City would get from these Hosting Platforms incomplete. This requirement would also subject those Hosting Platforms that do collect this information to a higher standard and scrutiny than those that do not, and these reporting requirements may shift hosts to other platforms that do not collect the information in order to circumvent the law.

Instead the Department believes that the City should pursue improved data collection and technologic solutions to inform policy-makers and assist with enforcement, and explore collaboration with other city agencies that may provide better information across hosting platform types. Certainly hosts who maintain booking information should be encouraged to share this data with the City, especially when a violation is alleged; however the Department does not believe that it should not be requirement of the STR program for the reasons stated above.

Recommendation 12: Do not remove "the Owner of the Residential Unit in which the Tourist or Transient Use is alleged to occur" from the definition of Interested Party, per the Campos ordinance.

This modification would remove the owner of the unit from the definition of Interested Party. Interested Parties are currently allowed to seek civil action against a tenant (Owner²²) or Business Entity once the Planning Department has found in violation. Removing owners of the unit from the definition of Interested Party would remove the unit owner's ability to seek civil action under Admin Code Section 41A. While the unit owner has other legal avenues to address violations of a lease agreement, the Department believes that unit owners have an inherent interest in the unit that they own and therefore should not be removed from the definition of Interested Party.

Recommendation 13: Do not allow private rights of action for any Interested Party after 90 days if the Department has not instituted civil action, as proposed in the Campos ordinance.

Supervisor Campos's ordinance proposes to allow anyone who is defined as an Interested Party to initiate civil proceedings if the Department has not determined if a violation has happened within 90-days. While the Department supports the limited expansion of private rights of action in Supervisor Kim and Breed's Ordinance; the Department finds that the provision in Supervisor Campos's ordinance is overly broad. The Department believes that the City should be responsible for enforcing its own laws, and allocate resources accordingly. Allowing any Interested Party, which is proposed to include everyone within 100 feet of the property, to initiate civil proceedings before the Department has determined if a violation has occurred could open up the entire process for abuses. Further, it would limit the Department's ability to bring decisive action against violators.

Recommendation 14: Do not prohibit units that have been approved under Section 207.3 of 715.1 of the Planning Code from being used as a STR, per the Campos ordinance.

Units approved under 207.3 and 715.1 are not subject to any income restrictions, and for all intents and purpose they are units like any other in the City. The Department believes that the current regulation, which only allows the primary resident to register the unit as a STR, is sufficient enough to ensure that

²² For the purposed of the City's STR regulations, the term "Owner" includes a lessee where the lessee is offering a Residential Unit for Tourist or Transient use.

these units are not illegally converted to a permanent hotel use. The Department does not see a policy reason to prohibit the permanent residents of these units from the City's STR program.

ENVIRONMENTAL REVIEW

The proposed Ordinance is not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any comments of support or opposition to the proposed ordinances.

RECOMMENDATION: Recommendation of Approval with Modifications

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Memo from Alex Marqusee, UC Berkeley Goldman School of Public Policy
- Exhibit C: Board of Supervisors File No. 141036
- Exhibit D: Board of Supervisors File No. 150364
- Exhibit E: Board of Supervisors File No. 150363